

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II
KOLKATA**

CP (IB) No. 288/KB/2021

In the matter of:

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

UCO Bank

...Financial Creditor

Versus

**Maa Ratanti Kalimata Cold Storage Private Limited
[CIN: U01403WB2014PTC200217]**

...Corporate Debtor

Order pronounced on: 25 January 2024

Coram:

Smt. Bidisha Banerjee	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (through hybrid mode):

For the Financial Creditor : Mr. S. Pal Choudhuri, Advocate

For the Corporate Debtor : Mr. Nimish Mishra, Advocate

Mr. Abir Mondal, Advocate

ORDER

Per Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (***“Code”***) by UCO Bank, represented by its Branch Manager, authorized through a Power of Attorney dated 09 July 2019¹

¹ Annexure A-2 at Pages 26-27 of C.P.

seeking to initiate Corporate Insolvency Resolution Process (“*CIRP*”) against Maa Ratanti Kalimata Cold Storage Private Limited (“*Corporate Debtor*”).

3. The Corporate Debtor was incorporated on 13 February 2014², having CIN: U01403WB2014PTC200217. It’s registered office is Rabindrapally, P.O. & P.S. Suri, Dist. Birbhum, PIN: 731101. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 30 April 2021 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.22,89,48,278.60 (Rupees Twenty Two Crore Eighty Nine Lakh Forty Eight Thousand Two Hundred and Seventy Eight and Sixty Paise). The date of default has been mentioned as 07 June 2019.

Submission of learned Counsel appearing for the Financial Creditor

5. The learned Counsel submitted that the Financial Creditor had advanced a loan of Rs. 10,00,00,000/- (Rupees Ten Crore only) *vide* Loan Agreement dated 27 August 2015.
6. The Corporate Debtor applied for Term Loan Facility of Rs.20,88,000/- (Rupees Twenty Lakh Eighty Eight Thousand only). With respect to the said loan, the Financial Creditor and the Corporate Debtor entered into a Loan Agreement dated 09 December 2015.
7. Thereafter *vide* several Loan Agreements, amounts were enhanced and disbursed to the Corporate Debtor. The Loan Agreements are as follows: Loan Agreement dated 18 December 2015, a sum of Rs. 70,00,000/- (Rupees Seventy Lakh only), *vide* Loan Agreement dated 10 March 2016, a sum of Rs.1880 Lakh, *vide* Loan Agreement dated 27 March 2017, a sum of Rs.70,00,000/- (Rupees Seventy Lakh only), *vide* Loan Agreement dated 08 May 2018 a sum of Rs.17,80,00,000/- (Rupees Seventeen Crore Eighty Lakh only), *vide* Loan Agreement dated 08 May 2018 a sum of Rs.70,00,000/- (Rupees Seventy Lakh only), were disbursed to the Corporate Debtor.

² Annexure A-3 at Page 28 of C.P.

8. The account of the Corporate Debtor was declared as NPA on 07 June 2019. The Financial Creditor issued notice under section 13(2) of the SARFAESI Act, 2002. Another notice was sent to the Corporate Debtor and its guarantors on 20 September 2019.
9. It is further submitted that the CIBIL report reflects that in account No. 03817 there is an outstanding of balance of Rs. 73,35,604/- as on March 2020, an outstanding balance of Rs. 9,13,98,601/- with respect to Account No. 04005 and in Account No. 013694 there is an outstanding of Rs. 9,95,62,605/- as on December 2020.
10. The Financial Creditor has placed the following documents on record:
 - a. Copies of Loan Agreements. [**Annexure A-7, A-22, A-38 @Pp. 47-73, 148-155, 256-265 respectively of the Company Petition**];
 - b. Copies of Demand Promissory Note [**Annexure A-8, A-10, A-12, A-19, A-26, A-27, A-30, A-32, A-34 @Pp. 74, 76, 79-80, 145, 191-193, 223, 228, 233 respectively of the Company Petition**];
 - c. Copy of CIBIL report [**Annexure A-46 @ Pp. 439-451 of the Company Petition**]
 - d. Copies of notices. [**Annexure A-48, A-49, A-50 @ Pgs. 455-463 of the Company Petition**]
11. The Financial Creditor has proposed the name of Mr. Samya Sengupta, registration number IBBI/IPA-001/P00098/2017-18/10198, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration³.

³ Annexure A-4 @Pp. 39-43 of C.P.

Submission of learned Counsel appearing for the Corporate Debtor

12. The learned Counsel submitted that in Form I of the Company Petition, the Financial Creditor has submitted that the first default occurred on 07 June 2019 but has claimed a default sum of Rs.19,83,26,703/- as on 31 July 2021. It is submitted that the date of classification of the loan account as NPA is not the date of default.
13. It is submitted that “default” is defined under section 3(12) of the Code however “NPA” is defined in section 2(o) of the SARFAESI Act and both have a different and distinct legal implication and meaning. The learned Counsel placed reliance on *Swiss Ribbons Private Limited and Another v. Union Bank of India and Others*⁴ wherein it was held that the Financial Creditor shall satisfy the Adjudicating Authority on the default through the records of the information utility and other documents. Hence, the foundation on which the Financial Creditor has preferred the Company Petition is bad in law and is misconceived.
14. The CIBIL report filed by the Financial Creditor states that there is no default and/or any litigation pending, and nor the CD is declared as willful defaulter.
15. The Financial Creditor has failed to establish that there is a default and has not filed any documents to substantiate the same.
16. The learned Counsel further submitted that the Corporate Debtor was made to suffer in the hands of the Financial Creditor. The Corporate Debtor is involved in the business of the cold storage and/or rental for storing potatoes. In the usual course of business period for the period from March to May. In the year 2018, while applying for the enhancement and fresh sanction of the credit facility, but the Financial Creditor sanctioned and disbursed the credit facility in the month of May, when the business season was already over.

⁴ (2019) 4 SCC 17

17. Being aggrieved of such an action by the Financial Creditor, the Corporate Debtor filed a Money Suit before the Suri Court, bearing Case No. Money Suit/10/2018. It is submitted that the present Company Petition is an outcome of vendetta and an aftermath of the Money Suit being filed and contested.
18. The learned Counsel averred that the Financial Creditor has failed to establish any default on the part of the Corporate Debtor and that the Company Petition has not been filed within the prescribed period of limitation.

Analysis and Findings

19. Heard the learned Counsel appearing for the Financial Creditor and the learned Counsel appearing for the Corporate Debtor and perused the record.
20. The learned Counsel has raised three contentions:
- a. Date of NPA cannot be considered as date of default;
 - b. There is no default;
 - c. Negligence of the Financial Creditor;
 - d. Barred by limitation
21. Let us first consider whether this Company Petition satisfies the two main conditions for initiation of CIRP under section 7 of the Code i.e. debt and default.
22. There is no doubt that the Corporate Debtor had availed loan facilities from the Financial Creditor, now let us consider whether there was a default and the contentions made around the date of default.
23. As per the Prudential norms issued by RBI, a loan account is classified as NPA only after 90 days from the date of default by the borrower. That is to say that only after the Corporate Debtor committed default, its account was classified as NPA.

24. Now, the question that arises is whether the date of NPA can be considered as the date of default. The Hon'ble NCLAT in ***Ramdas Dutta v. IDBI Bank Limited***⁵ has held that the date of NPA cannot be considered while calculating limitation and the date of default is to be taken into account while determining the period of limitation. The Hon'ble NCLAT in paragraph 19 has placed reliance on a catena of judgments such as ***Laxmi Pat Surana v. Union of India, (2021) 8 SCC 481, B.K. Educational Services Pvt. Ltd. V. Parag Gupta & Associates (2019) 11 SCC 633***, wherein the Hon'ble Supreme Court has held that the period of limitation would begin from the date on which the default occurs and not from the date of declaration of NPA.
25. It is thus clear that the date of declaration of NPA cannot be taken into consideration for calculating limitation. In the present case the date of NPA is 07 June 2019, hence, the date of default if calculated as the RBI Prudential Norms/Circular, 90 days before 07 June 2019 would be 09 March 2019. The present Company Petition has been filed 07 October 2021 and the period of limitation when calculated from 09 March 2019 ends on 07 June 2022, hence the present Company Petition has been filed within three years from the date of default.
26. Be that as it may, the question before us now is whether the date of classification of accounts as NPA can be considered for concluding that there is a default. An account is classified as a Non-Performing Asset only after the borrower commits a default in the payment of the debt. Hence, even though the date of NPA cannot be reckoned as a date of default for calculating the period of limitation but the date of NPA can be considered to determine whether the Corporate Debtor has committed default or not. In the present case, the since the account has been termed to be an NPA therefore Corporate Debtor has committed default. This negates the contentions raised by the Corporate Debtor.

⁵ (2023)ibclaw.in 269 NCLAT; CA(AT)(Ins.) No. 1285 of 2022

27. The Corporate Debtor has referred to the CIBIL report, wherein it is stated that the Corporate Debtor is not a wilful debtor, but that is negated by its own submission which is reflected in the order dated 28 March 2023, wherein the learned Counsel for the Corporate Debtor submitted that talks of settlement are going on between the parties. There would have been no question of considering the step of settlement if the Corporate Debtor was not in default.
28. Dealing with the contention that the Financial Creditor was negligent and disbursed the loan at a later date, we would like to seek reliance on para 15 of the judgment passed by the Hon'ble NCLAT in the matter of **State Bank of India v. N.S. Engineering Projects Private Limited**⁶ which is reproduced below:

15. The Hon'ble Supreme Court has had occasion to examine the contours of Section 7 Application. The Hon'ble Supreme Court in Innoventive Industries Limited vs. ICICI Bank and Anr.- (2018) 1 SCC 407 had noted the Scheme of Section 7 of the Code and also contrasted it with the Scheme under Section 8 and 9. Paragraphs 28 and 29 of the judgment of the Hon'ble Supreme Court is as follows:

“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed

⁶ CA(AT)(Insolvency) 978, 1000 and 1039 of 2022

interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be. 29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing—i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code”.

Further in Para 16 of the same judgement, it has been inter-alia mentioned that :

16. The Hon'ble Supreme Court in the above case has observed that the moment Adjudicating Authority is satisfied that default has occurred, the Application must be admitted, unless it is incomplete.

29. In view of the above judgment, the contention of the Corporate Debtor cannot be accepted.

30. There is a clear admission on the part of the Corporate Debtor that there is a debt owed to the Financial Creditor which was due and payable and that a default has indeed occurred, as brought out above. Also in light of the above, the petition is filed within the period of limitation.

31. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition and the submissions establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.

32. In the light of the above facts and circumstances, it is, hereby ordered as follows:-

- a. The application bearing **CP (IB) No. 288/KB/2021** filed **UCO Bank**, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Maa Ratanti Kalimata Cold Storage Private Limited**, the Corporate Debtor, is **admitted**.
- b. There shall be a moratorium under section 14 of the IBC.
- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes

an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. Mr. Samya Sengupta, registration number IBBI/IPA-001/P00098/2017-18/10198, email id: samyax@gmail.com, phone no. 9830129973, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out the functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The Directors, officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever, and is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all

assistance as may be required by the Interim Resolution Professional in this regard.

- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
 - i. The Financial Creditor shall deposit a sum of **Rs 3,00,000/- (Rupees Three Lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
 - j. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
 - k. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
33. **CP (IB) No. 288/KB/2021** to come up on **01 March 2024** for filing the periodical report.
34. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This order is pronounced on the 25th day of January 2024.