

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**KOLKATA BENCH**

**KOLKATA**

**C.P.(IB) No. 238/KB/2021**

*An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.*

In the matter of:

**State Bank of India**

*....Financial Creditor*

*-Versus-*

**Jain Infraprojects Limited [CIN U45203WB2006PLC111712]**

*...Corporate Debtor*

**Date of Hearing: 06/07/2022**

**Date of pronouncement: 18/07/2022**

**Coram:**

**Shri Rohit Kapoor, Member (Judicial)**

**Shri Harish Chander Suri, Member (Technical)**

**Appearances:**

*For Financial Creditor* : Mr. Joy Saha, Sr. Adv.

Mr. Debashish Chakrabarti, Adv.

*For Corporate Debtor* : Mr. Shaunak Mitra, Adv.

Ms. Neha Somani, PCS

**ORDER**

*Per: Rohit Kapoor, Member (Judicial)*

1. The court convened through hybrid mode.
2. This Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **State Bank of India**, (hereinafter referred to as the Financial Creditor) through **Smt. Kanimozhi V.C** chief manager of State Bank of India. The Financial Creditor seeks initiation of Corporate Insolvency Resolution Process in respect of **Jain Infraprojects Limited** (Corporate Debtor).
3. Amount claimed to be in default is Rs. 1212,91,45,453.71/- (Rupees One Thousand Two Hundred Twelve Crores Ninety One Lacs Forty Five Thousand Four Hundred Fifty Three and Seventy One paisa) inclusive of interest calculated up to 15<sup>th</sup> of July, 2021.
4. In response to the notice, the Corporate Debtor appeared in the matter and was granted 2 weeks time to file its reply affidavit on 20<sup>th</sup> of December, 2021. The affidavit was not filed and on 8<sup>th</sup> of March, 2022. Two weeks further time was granted subject to payment of Rs. 20,000/- as the cost. The matter was fixed on 22<sup>nd</sup> of April, 2022.
5. On 22<sup>nd</sup> April, 2022, since the reply had not been filed therefore, right to file reply affidavit was closed and the matter was directed to be listed on 10<sup>th</sup> of June, 2022. The matter was preponed to 04<sup>th</sup> May, 2022
6. On 4<sup>th</sup> of May, 2022 the arguments of the Financial Creditor were completed. For conclusion of the arguments of the Corporate Debtor the matter was fixed on 18<sup>th</sup> of May, 2022.
7. The matter was again listed on 06<sup>th</sup> of June, 2022 wherein the Corporate Debtor sought 2 weeks time to file reply to the supplementary affidavit filed by the Financial Creditor and the matter was posted for concluding the arguments on 06<sup>th</sup> of July, 2022. No reply to the supplementary affidavit had been filed by the Corporate Debtor and on 6<sup>th</sup> of July, 2022. The arguments were heard and completed. The matter was reserved for orders.

8. The **Corporate Debtor** stated to be a company engaged in civil construction projects. The details of the financial debt are contained in part IV of this application along with sanction letter. In consideration for loan paragraphs 5 to 26.
9. It is stated in para 27 of this part of the application, the company failed and neglected to operate the loan account and despite given several reminders the account became highly irregular and was classified as NPA on 28<sup>th</sup> of July, 2013. In pursuance to loan account declared as NPA, demand notice was issued to the Corporate Debtor under Section 13(2) of SARAESI Act, 2002 to pay an amount of Rs. 421,97,93,794.56/- along with the interest within 60 days. The Corporate Debtor did not liquidate the amount and proceedings under SARFAESI Act, 2002 were initiated.
10. The bank filed an application under Section 19 of Recovery of Debt due to banks and Financial Institutions Act, 1993 and which is pending adjudication.
11. The Corporate Debtor on 14<sup>th</sup> of January, 2016 gave a settlement proposal for an amount of Rs. 120 Crores towards full and final payment towards the total dues. Thereafter, the Corporate Debtor again gave OTS proposal on 12<sup>th</sup> of December, 2019 to settle the amount for Rs. 70 Crores and again on 22<sup>nd</sup> of September, 2020 gave a compromise offer for the consolidated amount of Rs. 77.50 Crores.
12. The proposal of settlement was not accepted by the bank. The Corporate Debtor gave OTS proposals on 14<sup>th</sup> of January, 2016, 12<sup>th</sup> of December, 2019 and 22<sup>nd</sup> of September, 2020 making explicit acknowledgement under Section 18 of the Limitation Act. These OTS proposal letters are marked as Annexure- 2S. The amount claimed to be in default is Rs. 1212,91,45,453.71/- (Rupees One Thousand Two Hundred Twelve Crores Ninety One Lacs Forty Five Thousand Four Hundred Fifty Three and Seventy One paisa) inclusive of interest calculated up to 15<sup>th</sup> of July, 2021. The table of amount in default is stated in tabular form at page- 29 of the instant application.

13. The date of default is stated to be extended to 22<sup>nd</sup> of September, 2020.
14. The particular of all the documents, records, and evidence of default is contained in part- V of the instant application.

*We have heard the Ld. Counsel for the parties and perused the record.*

15. Mr. Shaunak Mitra Ld. Counsel appearing for the Corporate Debtor has taken 3 objections to the stand taken by the applicant. In response to the application as mentioned above, no reply affidavit has been filed by the Corporate Debtor.
16. The stand taken on behalf of the Corporate Debtor is summarized hereinafter;-
  - i. The instant application is barred by limitation
  - ii. Supplementary affidavit dated 17<sup>th</sup> of may, 2022 which has been filed by Sandipan Mukherjee cannot be taken on record as he is not the authorized person to file this affidavit. In view of the fact that one Smt. Kanimozhi V.C. Chief Manager of State Bank of India was authorized to filed the application etc. and this is evident from the part-I of the application. Therefore, the affidavit or any document in support thereof cannot be considered.
  - iii. Application for the same debt is in proceedings before DRT and once these proceedings are pending parallel proceedings under Section 7 are not permitted.
  - iv. In view of Section 10A moratorium for filing applications under IBC this application which has been filed on 30<sup>th</sup> of August, 2021 is not maintainable and the same is liable to be rejected on this ground alone.
17. We have heard the Ld. Counsel for the parties at length and perused the record.
  - i. Part I of the application contains the Particulars of Financial Creditor.
  - ii. Part II contains the Particulars of the Corporate Debtor.
  - iii. Part III of this application contains the Particulars of the Proposed Interim Resolution Professional.

iv. Part IV of this application contains the Particulars of Financial Debt.

18. While considering the question of limitation, our attention has been drawn to the supplementary affidavit filed on behalf of the applicant along with this affidavit sworn by Assistant General Manager letter dated 25<sup>th</sup> of July, 2018 has been placed on record as Annexure-C. This letter is admittedly written by the Corporate Debtor to the applicant bank wherein a revised proposal for compromise settlement of the loan account was furnished. It is mentioned in the letter;

*As known, the downturn in overall business, all over the country has a sharp plunging effect on the property prices, specially, during the last couple of years, the prices of real estate properties have plunged further. The Company has not earned any profit in its business during the last five years due to adverse business conditions, resulting in halt of business operation of the company.*

*Even in the stated situation, the company is making best efforts to settle the dues to your esteemed bank to the maximum by selling the properties kept as security with the bank.*

Besides the above, the time schedule for payment was also furnished by the Corporate Debtor in this letter.

19. Suffice it to say there is a clear cut admission on the part of the Corporate Debtor regarding the loan amount. The loan was classified as NPA on 28<sup>th</sup> of July, 2013.

20. In ***Laxmi Pat Surana V. Union Bank of India & Anr, decided*** on March 21, 2021, the Hon'ble Supreme Court has held that

*"37. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 of the Code. However, Section 7 comes into play when the corporate debtor commits "default". Section 7, consciously uses the expression "default" not the date of notifying the loan account of the corporate person as NPA. Further, the expression "default" has been defined in Section 3(12) to mean non-payment of "debt" when whole or any part or*

*instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor would get triggered the moment the principal borrower commits default due to non-payment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of PA but before the expiration of three years there from including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 of the Code enures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 of the Code. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under section 7 of the Code.”*

21. In *Rajendra Narottamdas Sheth and Another v. Chandra Prakash Jain and Another*<sup>1</sup>, the Hon’ble Supreme Court

“23. It is no more res integra that Section 18 of the Limitation Act is applicable to applications filed under Section 7 of the Code. In case the application under Section 7 is filed beyond the period of three years from the date of default and the financial creditor furnishes the required

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<sup>1</sup> 2021 SCC OnLine SC 843

information relating to the acknowledgement of debt, in writing by the corporate debtor, before the Adjudicating Authority, with such acknowledgement having taken place within the initial period of three years from the date of default, a fresh period of limitation commences and the application can be entertained, if filed within this extended period.”

22. In view of the above documents and the law laid down by the Hon’ble Supreme Court and the Hon’ble NCLAT referred above, we find that the application is well within the limitation period.
23. First OTS proposal was made by the Corporate Debtor on 14<sup>th</sup> of January, 2016 (page no. 535). Again on 25<sup>th</sup> of July, 2018 annexed with supplementary affidavit and then on 12<sup>th</sup> of December, 2019 (page no. 538), 22<sup>nd</sup> of September, 2020 (page no. 541) and 27<sup>th</sup> of September, 2020. The Corporate Debtor has clearly acknowledged its dues while seeking settlement in terms of OTS proposal, the Hon’ble NCLAT has held in ***Gulabchand Jain v. Punjab National Bank - [2022] 136 taxmann.com 194 (NCLAT)*** that since the corporate debtor had written letter to the financial creditor giving a proposal for OTS for outstanding dues, letters acknowledging debt issued by corporate debtor should give benefit to the financial creditor for extension of the limitation period.
24. The plea of the Corporate Debtor, the supplementary affidavit filed by the officer of the bank along with which a communication on 25<sup>th</sup> of July, 2018 cannot be taken on record as the same has not been filed by the person authorized, we note in the first instance the authenticity or the existence of this letter written by the Corporate Debtor in this letter dated 25<sup>th</sup> of July, 2018 has not been disputed or denied in any manner. We see it has been placed on record by a senior officer of the bank i.e., the Chief Manager and by placing it on record no prejudice can be said to be caused to the Corporate Debtor.
25. The plea of Corporate Debtor that this affidavit should not be considered is without any basis. Thus, because the affidavit has been filed by a public

officer of the bank does not make the document to be placed on record inadmissible for consideration by us. The plea of the Corporate Debtor is thus hereby rejected.

26. Now advertent to the plea of the Corporate Debtor regarding bar of this application under Section 10A, we see the Corporate Debtor was classified as NPA on 28<sup>th</sup> of July, 2013 and the default occurred much prior to 25<sup>th</sup> of March, 2020 as indicated hereinabove. For application of Section 10A the default has to be on or after 25<sup>th</sup> of March, 2020. Therefore, the plea of applicant on the face of is not correct and is hereby rejected.
27. In view of the above referred documents it is clear that there is a debt due by the Corporate Debtor and there is a default by the Corporate Debtor. The amount of debt claimed is above the threshold limit of 1 Crore. Further, the debt due and payable by the Corporate Debtor is duly admitted through various communications placed on record hereinabove.
28. Hence, in light of the above facts and circumstances, it is, accordingly, hereby ordered as follows:
  - a. The application bearing *C.P. (IB)/238/KB/2021* filed by State Bank of India, 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 Jain Infraprojects 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. Srigopal Choudhary* registration number **IBBI/IPA-001/IP-P01238/2018-2019/11893**, email: *sgchoudhary@yahoo.com*, 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 his 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 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.
- g. The IRP/RP shall submit to this Adjudicating Authority progress reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h. The Financial Creditor shall deposit a sum of **Rs.5,00,000/-** (Rupees Five 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).

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- i. 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, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
  - j. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata 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.
29. **C.P. (IB)/238(KB) 2021** to come up on **31.08.2022** for filing the progress report.
  30. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
  31. File be consigned to record.

**Harish Chander Suri)**  
**Member (Technical)**

**(Rohit Kapoor)**  
**Member (Judicial)**

Order pronounced on 18<sup>th</sup> day of July, 2022

SA, LRA/Zia