IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) - 2915/I&B/MB/2019
Under Section 7 of the I&B Code, 2016

In the matter of

M/s Finquest Financial Solutions Private Limited
602, Boston House, Near Cinemax, Suren Road, Andheri (East), Mumbai – 400 093

.... Financial Creditor

Vs.

Ballarpur Industries Limited
P O Ballarpur Mills, Ballarpur,
Dist. Chandrapur, Maharashtra – 442 901

....Corporate Debtor

Order delivered on: 17.01.2020

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (J)
Hon'ble Shri Shyam Babu Gautam, Member (T)

For the Petitioner: Mr. Rahul Sarda a/w Mr. Rihal Kazi, Mr. Aniket Katre, Ms. Purva Buch i/b M & M Legal Ventures, Advocates

For the Corporate Debtor: Mr. Ashish Pyasi i/b Dhir & Dhir Associates, Advocate

Per: Shri Bhaskara Pantula Mohan, Member (Judicial)

ORDER

1. This is an application filed under Section 7 of the Insolvency and Bankruptcy (I&B) Code, 2016 by M/s Finquest Financial Solutions Private Limited. (hereinafter called the 'Financial Creditor') seeking to set in motion the Corporate Insolvency Resolution Process of Ballarpur Industries Limited (hereinafter called the 'Corporate Debtor') 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 on the ground that the Corporate Debtor committed a breach by making default in repaying of the amount of term loan agreement entered into both the parties.

2. The Financial Creditor is a non-banking financial corporation. It is a company incorporated on 03/06/2004 under the provisions of Companies Act, 1956 bearing CIN U74140MH2004PTC146715 whereas the Corporate Debtor is a company incorporated on 26/04/1945 bearing CIN L21010MH1945PLC010337 having Nominal Share Capital of Rs.400,00,00,000/- and Paid-Up Share Capital of Rs. 258,69,11,512/-.

3. The counsel appearing on behalf of the Financial Creditor submitted that the Corporate Debtor had availed a Term Loan for Rs. 50,00,00,000/- at a rate of 1.5% above base rate of 11.75% p.a. from State Bank of Travancore. It was further mentioned that the loan amount was sanctioned by the State Bank of Travancore which was later merged into the State Bank of India who actually disbursed the said loan amount. This amount was then assigned to the Financial Creditor vide an Assignment Agreement dated 17/12/2018 entered into between the State Bank of India and the Financial Creditor.

4. The Counsel for the Financial Creditor in his arguments relied upon the Schedule I of the Assignment Agreement entered into the State Bank of India with the Financial Creditor wherein the Total Outstanding Amount is Rs. 56,65,35,739.42 which is inclusive of the Principal Outstanding of Rs.50,00,00,000/- plus Interest as on cut-off date i.e. 31/03/2018.

5. The counsel for the Financial Creditor had also submitted that the Corporate Debtor had passed a Board Resolution on 12/11/2013 providing for creation of Pari-Passu First Charge over Movable Assets including machinery, tools etc. and obtained NOC for such Pari-Passu First Charge from GE Money, Exim Bank and LIC. A Deed of Hypothecation was executed by the Corporate Debtor in favour of the State Bank and thus the disbursement of the said Term Loan was sanctioned.

6. Further, the counsel for the Financial Creditor mentioned the letter dated 09/04/2019 annexed at Exhibit "D" of the copy of petition which was sent by the State Bank of India to the Corporate Debtor wherein it is mentioned that pursuant to the said Assignment Agreement dated 17/12/2018, the State Bank of India has assigned

to M/s Finquest Financial Solutions Pvt. Ltd. (the Financial Creditor in present matter) under Section 5 of the SARFAESI Act, the financial assistance granted by it to M/s Ballarpur Industries Limited (the Corporate Debtor in present matter) together with all underlying securities, rights, title and interest in respect thereof.

7. Also, the counsel mentioned that the Bank vide its letter dated 09/04/2019 which is annexed as Exhibit “E” addressed to the Financial Creditor wherein the consent under Section 5 of the SARFAESI Act, 2002 is given stating that Assignment of financial assets of the Corporate Debtor to the Financial Creditor, the Financial Creditor is deemed to be a lender to the Corporate Debtor and therefore, all the rights in relation to such financial assets shall consequently vest with the Financial Creditor.

8. Further, the counsel appearing on behalf of the Financial Creditor mentioned that a notice dated 27/06/2019 was sent by them to the Corporate Debtor for non-payment of outstanding due by them under the duly registered Assignment Agreement dated 17/12/2018 between the State Bank of India and the Financial Creditor company. The counsel submitted that this notice was duly received by the Corporate Debtor but there was neither any reply nor any payment was made pursuant to this notice. The amount to be in default according to the Financial Creditor including interest amounts to Rs.68,10,47,170/- as on 15/06/2019.

9. The Financial Creditor has annexed the following documents in support of the contentions made by them:

i. Copy of the Assignment Agreement entered into between the State Bank of India with the Financial Creditor dated 17/12/2018
ii. Copy of letters issued by the State Bank of India to the Financial Creditor dated 04/04/2019 and 09/04/2019
iii. Copy of letter issued by the State Bank of India to the Corporate Debtor dated 09/04/2019
iv. Copy of letter issued by the Financial Creditor to the Corporate Debtor dated 27/06/2019

10. On the other hand, the Corporate Debtor has denied all the contentions, submissions, allegations, contentions made by the Financial Creditor and mentioned that the present petition is a gross abuse of the process of law being a malafide attempt to allegedly claim amounts which are not due and payable in law and in fact.

11. The Corporate Debtor has raised four main issues for proving that this petition deserves to be dismissed or rejected. The very first contention made by the Corporate Debtor is that the Financial Creditor has failed to mention the date of default in order to deliberately seek initiation of proceeding, thus, misguiding this Bench and therefore, the present petition is not maintainable on account of being barred by the law of limitation. In support of this contention, the Corporate Debtor has relied on the judgment of the Hon'ble Supreme Court of India in the matter of **Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Ltd. & Anr. Civil Appeal No. 4952 of 2019** wherein it is mentioned that an application under section 7 of IBC is required to be filled within a period of 3 years from the date of default. It was further stated by the Corporate Debtor that the applicant herein is the assignee of the debt of State Bank of Travancore who in the Joint Lenders Meeting which was held on 02/12/2016 itself stated that their dues had crossed 90 days as on 02/02/2016 and therefore, the assignment of debt cannot grant new lease of life to debts which are time barred. It was further submitted that from the JLM minutes dated 02/12/2016, it appears that the default in the instant case has occurred 3 years prior to the filing of the instant petition.

12. The second contention made by the Corporate Debtor was that no amount is due and payable by them and that the Financial Creditor have approached this Tribunal erroneously. It was further submitted that the Financial Creditor in Part IV of Form I has not mentioned the date of default and in absence of it, this petition needs to be dismissed. For this contention, the Corporate Debtor has relied on para 28 from the judgment of the Hon'ble Supreme Court of India in the matter of **Innoventive Industries Ltd. v. ICICI Bank and Anr., Civil Appeal Nos. 8337-8338 of 2017.** Para 28 runs as follows:

"28. .....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..."

Therefore, it was contended that the Adjudicating Authority before admitting an application under Section 7 of the IBC, 2016 needs to satisfy itself that the default has occurred.

13. The third main contention raised by the Corporate Debtor is that the present petition has been filed by the Financial Creditor to take over the Corporate Debtor company which is legally impermissible and against the object and intent of the IBC. It was submitted that the Financial Creditor is a shareholder and member of the Corporate Debtor. Vide its letter dated 11/04/2018 addressed to the ICICI Bank Limited, the Financial Creditor offered proposals for buying out the secured and unsecured loans of the Corporate Debtor. These offers are said to be under consideration and in the Joint Lenders Meeting held on 23/07/2018, ICICI Bank informed the lenders that they have initiated the process of assignment of their debts and the other lenders confirmed that they will also run the process of assignment. Therefore, this petition is filed for the purposes other than resolution of the Corporate Debtor.

14. The next and the final contention made by the Corporate Debtor deals with the technical aspects of this petition and it was stated that the Form I filed in this petition is incomplete as the date from which the debt fell due and the date when the Corporate Debtor defaulted are not mentioned therein and therefore, it is liable to be dismissed. It was further contended that the record of default as available with the Information Utility is required to be annexed at Part V of Form 5 which the Financial Creditor failed to provide in the present petition.

15. On the above objections raised by the Corporate Debtor, the Financial Creditor has filed a detailed rejoinder wherein the copy of Term Loan Agreement dated 23/12/2013, copy of the extract of the Annual Report of the Corporate Debtor for the years ended on 31/03/2016 and 31/03/2017, copy of the letter issued by the

Corporate Debtor, copy of the extract of Annual Report of the Corporate Debtor for the year ended on 31/03/2019, the Independent Auditor's Report has been annexed. Therefore, this Bench is pleased to pass the following order:

FINDINGS

16. We have heard both the parties at length, taken all their submissions into account and perused the documents and evidences placed on record by them. It has become very clear that there was an express Term Loan Agreement dated 23/12/2013 entered between the State Bank of Travancore and the Corporate Debtor for an amount of Rs.50,00,00,000/-. State Bank of Travancore was later merged into State Bank of India who disbursed the said loan amount. The said loan was required to be repaid with interest in quarterly structured instalments starting in September, 2014 till June 2022. This loan was further assigned to the Financial Creditor vide Assignment Agreement dated 17/12/2018 and therefore the Financial Creditor is the assignee. This was also communicated to the Corporate Debtor by the State Bank of India vide letter dated 09/04/2019.

17. There were four main contentions raised by the Corporate Debtor which need to be dealt with one by one. Following are the four contentions:

i. That the petition is time barred and has failed to establish that the outstanding amount is within period of limitation. But this contention of the Corporate Debtor does not stand upon a careful reading of the Annual Report of the Corporate Debtor for the year ended on 31/03/2017 wherein it is evident that the first default occurred on 23/09/2016 and the said petition has been filed in the month of August, 2019. Moreover, the Balance Sheet, of the Corporate Debtor dated 06/05/2019 also clearly mentions that the amount is due upon them, which is a clear admission on their part. Also, during assignment of the loan by State Bank of India to the Financial Creditor, there has been an acknowledgement by the Corporate Debtor vide their letter dated 18/11/2016. Therefore, it can be safely concluded that any problem regarding the issue of limitation does not arise as the petition was filed on 9/08/2019 and thus, is well in time i.e. before the completion of three years.

ii. The second contention raised by the Corporate Debtor that no amount is due and payable by the Corporate Debtor to the Financial Creditor also does not survive because the Annual Report of the Corporate Debtor for the year ended on 31/03/2019 itself acknowledge the outstanding loan payable to the Financial Creditor. Also, it is to be noted that at the time of assignment of the matter to the Financial Creditor, the loan account of the Corporate Debtor in the books of the assignor was a Non-Performing Asset (NPA). There is no doubt that the Adjudicating Authority needs to satisfy itself that the default has occurred before admitting an application under Section 7 of the IBC, 2016. Therefore, after perusing the documents, it has become crystal clear that the Corporate Debtor is liable to pay the outstanding dues to the Financial Creditor.

iii. The third contention made by the Corporate Debtor is that the said petition has been preferred for the purposes other than resolution of the Corporate Debtor. Here it is pertinent to note that the only things to be looked upon while considering an application under Section 7 of the IBC, 2016 are that there is a disbursement of the loan amount and that there is default on the part of the Corporate Debtor and has no concern with any ongoing dispute. The Corporate Debtor has relied upon the minutes of the Joint Lenders Meeting dated 17/05/2018 and 23/07/2018 and contended this petition is merely an arm twisting method on the part of the Financial Creditor. Also, it can be made out from the past conduct of the Financial Creditor that they made efforts to restructure the debt of the Corporate Debtor and therefore, this cannot be used by them to shield themselves from their existence liability. In this present matter, this Bench has already established the existence of debt and the default on the part of the Corporate Debtor and therefore, this Bench is of the opinion that only because of this, the present petition has been preferred by the Financial Creditor against the Corporate Debtor.

iv. There was another contention made by the Corporate Debtor indicating the incompleteness of Form 1 filed by the Financial Creditor in terms of its Part IV wherein it is necessary to provide the date from which the debt fell due. This contention is merely technical in nature which can be easily rectified if the Bench directs so. We would also like to rely on the judgment of the Hon'ble National Company Law Appellate Tribunal in the matter of **Satyaprakash Aggarwal v. Vistar Metal Industries (P) Ltd., 2018 SCC OnLine NCLAT 264, dated 21-05-2018** wherein similar technical error was in question, the Hon'ble NCLAT has set aside the impugned order by the NCLT, Mumbai Bench rejecting the petition merely because the date of default was not mentioned in Form I of the petition. The relevant portion runs as follows:

> "Admittedly, we find that on the technical ground i.e. the application is defective, the Adjudicating Authority has rejected the application under Section 7 of the 'I&B Code'. Therefore, we cannot appreciate the impugned order, as before rejecting the application the Adjudicating Authority was required to give an opportunity to the Appellant to rectify the defect."

Moreover, the Counsel for the Financial Creditor has in their rejoinder clarified the dates of default which are also reflected in the Balance Sheet of the Corporate Debtor and basing on this it can be concluded that there is default on the part of the Corporate Debtor. Thus, the present argument of the Corporate Debtor is not sustainable.

Also, it was stated that the petition is to be dismissed for the reason that the petitioner failed to submit information from Information Utility. But we are of the opinion that while dealing with these objections this Bench finds no cogent reason/ground for rejecting this petition on such minor technical issues particularly when the existence of debt and default is established.

18. There was also a Demand Notice dated 17/06/2019 sent by the Financial Creditor to the Corporate Debtor demanding the outstanding amount along with interest amounting to Rs.68,10,47,170/- there was neither any reply to this notice nor was any payment made by the Corporate Debtor. Also, it is to be noted that this petition fulfils all the requisite conditions to admit a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 and therefore, the petition deserves to be admitted.

19. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Financial Creditor as a major constituent for admission of a petition under section 7 of the I&B Code. Therefore, the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

(I) (a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
(b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
(c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

(II) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(IV) That the order of moratorium shall have effect from 17.01.2020 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

(VI) That this Bench hereby appoints, Mr. Divyesh Desai, having office at B2 402B Marathon Innova, Off Ganpatrao Kadam Marg, Lower Parel (W), Mumbai 400013 and having Registration No. IBBI/IPA-001/IP-P00169/2017-18/10338 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

20. Accordingly, this Petition is admitted.

21. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-	**Sd/-**
Shyam Babu Gautam **Member (Technical)**	**Bhaskara Pantula Mohan** **Member (Judicial)**

/SNEHA/