

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**C.P. No. 3844/IBC/MB/2019**

Under Section 7 of the Insolvency and  
Bankruptcy Code, 2016 read with  
Rule 4 of the Insolvency and  
Bankruptcy (Application to  
Adjudication Authority) Rule 2016)

*In the matter of*

**State Bank of India**

State Bank Bhavan, Madame Cama,  
Road, Nariman Point, Mumbai,  
Maharashtra 400021

.....**Financial Creditor**

**Vs**

**Bilpower Limited**

(CIN: L51420MH1989PLC053772)

B-11, Viral Shopping Center,  
Mantriwadi Sainath Road, Malad  
West, Mumbai- 400064

.....Corporate Debtor

**Order delivered on: 07.09.2021**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

**For the Applicant:** Mr. Rohit Gupta i/b Abdullah Qureshi, Advocate

**For the Respondent:** Mr. Prashant Pandit, Advocate

**Per: Shri H.V. Subba Rao, Member (Judicial)**

**ORDER**

1. This Company petition is filed by *State Bank of India* (hereinafter called “Financial Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Bilpower Limited* (hereinafter called “Corporate Debtor”) for an unresolved Financial Debt of Rs.4,651,564,453.53 (Principal amount of Rs. 174,68,80,252.48 + Interest amount of Rs. 290,46,84,201.05). This petition has been filed by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The brief facts of case are as follows:-
  - I. The above Company Petition is filed by State Bank of India (hereinafter referred to as the Financial Creditor) against the Bilpower Limited (hereinafter referred to as the Corporate Debtor). The Corporate Debtor had approached the Financial Creditor and requested to grant Financial Facilities. Subsequently, the Financial Creditor had entered into a Agreement of Loan for overall limit dated 14.10.2005, 06.11.2006, 28.08.2007, 04.11.2008, 26.12.2009 and supplementary Agreement of Loan dated 25.03.2013 to the Corporate Debtor and there were amounts which was been sanctioned to the Corporate Debtor vide Sanction Letters on varous dates. Thereafter Financial Creditor has entered into a Memorandum of Deposit for creation of charge for term loan/overall limit on various dates and the details of all the Immovable and movable properties and the Estimated value of each property

mortgaged/hypothecated of the Corporate Debtor is been clearly scheduled in the document which is entered between the Applicant and the Corporate Debtor which is the Memorandum of Entry. The Corporate Debtor had issued a Guarantee executed by the Guarantors dated 14.10.2005 and 06.11.2006. The Corporate Debtor had executed agreement of Hypothecation Goods and Assets dated 14.10.2005, 06.11.2006, 28.08.2007, 04.11.2008, 26.12.2009 and supplementary Agreement of Hypothecation of Goods and Assets dated 25.03.2013. Further the Corporate Debtor had issued letter regarding the grant of individual limits within the overall limit dated 14.10.2005, 06.11.2006, 28.08.2007, 04.11.2008 and 26.12.2009 and also issued confirmation letter dated 07.10.2006 and dated 27.11.2007. The Corporate Debtor also entered into Inter Se Agreement dated 06.11.2006 and dated 28.08.2007 with the Financial Creditor.

- II. Thereafter the Financial Creditor had issued a Legal Notice dated 17.01.2014 and notice under Section 13(2) of SARFAESI Act, 2002 dated 14.02.2014. Further, an Original Application was also filed before the Debt Recovery Tribunal against the Corporate Debtor. The Debt Recovery Tribunal had passed an order in I.A. 2575 OF 2014 IN O.A. 424 OF 2015 DATED 05.09.2014 and order dated 29.12.2015 in S.A. 501 of 2014. Further Interim order passed in O.A. 424 of 2014 on 11.07.2016. Thereafter Debt Recovery Appellate Tribunal had passed an order dated 10.01.2017.

- III. In view of the above outstanding dues by the Corporate Debtor the same can be determined and verified by the Account Statements of the Financial Creditor along with the Interest Calculation sheet as on 31.03.2018 is been provided with respect to the loan facilities. The Financial Creditor also submitted balance sheet of the Corporate Debtor for the year ending 31.03.2015 and for the year ending 31.03.2018.
- IV. Hence the Corporate Debtor is liable for an amount of Rs. 465,15,64,453.53/- (Rupees Four Hundred Sixty-Five Crores, Fifteen Lakhs Sixty-four Thousand Four Hundred Fifty-Three and Paise Fifty Three only) as on 30.09.2019 (Amount inclusive of outstanding and accrued interest with penal interest since date of default 18.04.2012).
- V. Hence this petition.
3. The Corporate Debtor filed affidavit in reply contending that the cause of action for the above Company Petition arose on 17.01.2014 when the recall notice was issued by the Financial Creditor and the above Company Petition ought to have been filed on or before 16.01.2017 i.e. within 3 years from the date of cause of action and the above Company Petition being filed on 24.10.2019 is hopelessly barred by limitation. Apart from the above plea of limitation, the Corporate Debtor also raised several issues with regard to charging of rate of interest and creation of mortgage and in action on the part of the Financial Creditor Bank in not accepting and extending the credit facility so on and so fore which are not important for deciding the above Company Petition.

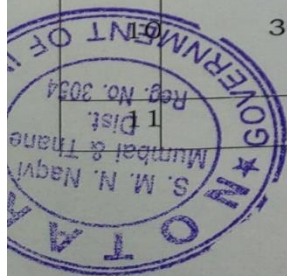
### **FINDINGS**

1. Basing on the above pleadings, the only question that falls for consideration in the above Company Petition is:
  - i. Whether the above Company Petition is barred by limitation and is liable to be rejected?
2. Heard the arguments on both sides and perused the record. Mr. Prasant Pandit, learned Senior Counsel appearing for the Corporate Debtor only confined his argument to the plea of limitation waiving all the remaining pleas pleaded in the affidavit in reply. As mentioned above, it is the submission of Mr. Pandit that the cause of action for the above Company Petition arose on 17.01.2014 when the recall notice was issued by the Financial Creditor and the above Company Petition ought to have been filed on or before 16.01.2017 i.e. within 3 years from the date of cause of action and the above Company Petition being filed on 24.10.2019 is hopelessly barred by limitation. It is his further submission that the explanation of the Financial Creditor with regard to limitation basing on the admission of liability shown in the balance sheets of the Corporate Debtor mentioned in the list of dates and events cannot be considered as a pleading. It is his further submission that the auditor's report mentioned in the balance sheet is not an acknowledgment of debt and the Financial Creditor having voluntarily withdrawn I.A. 408/2021 filed for condonation of delay in filing the above Company Petition, now cannot argue that the above Company Petition basing on the admission of liability in the balance sheets of the Corporate Debtor saves limitation.
3. In order to decide the above plea of limitation, it is important to mention the following list of dates and events mentioned by the Financial Creditor in the above Company Petition:

**LIST OF DATES AND EVENTS**

<b>SR. NO.</b>	<b>Dates</b>	<b>Particulars</b>
1.	14 <sup>th</sup> October, 2005, 6 <sup>th</sup> November, 2006, 28 <sup>th</sup> August, 2007, 4 <sup>th</sup> November, 2008, 26 <sup>th</sup> December, 2009 and 25 <sup>th</sup> March, 2013	The Corporate Debtor had approached the Applicant and requested to grant Financial Facilities. Subsequently, the Applicant had entered into a Agreement of Loan for overall limit dated 14 <sup>th</sup> October, 2005, 6 <sup>th</sup> November, 2006, 28 <sup>th</sup> August, 2007, 4 <sup>th</sup> November, 2008, 26 <sup>th</sup> December, 2009 and supplementary Agreement of Loan dated 25 <sup>th</sup> March, 2013 to the Corporate Debtor and there were amounts which was been sanctioned to the Corporate Debtor vide Sanction Letters on various dates.
2.	21 <sup>st</sup> August, 2006, 6 <sup>th</sup> November, 2006, 10 <sup>th</sup> July, 2007, 28 <sup>th</sup> November, 2007, 28 <sup>th</sup> August, 2009 and 14 <sup>th</sup> February, 2011	Thereafter Applicant has entered into a Memorandum of Deposit for creation of charge for term loan/overall limit on various dates and the details of all the Immovable and movable properties and the Estimated value of each property mortgaged/hypothecated of the Corporate Debtor is been clearly scheduled in the document which is entered between the Applicant and the Corporate Debtor which is the Memorandum of Entry.
	14 <sup>th</sup> October, 2005 and 6 <sup>th</sup> November, 2006	The Corporate Debtor had issued a Guarantee executed by the Guarantors dated 14 <sup>th</sup> October, 2005 and 6 <sup>th</sup> November, 2006.
	14 <sup>th</sup> October, 2005, 6 <sup>th</sup> November, 2006, 28 <sup>th</sup> August, 2007, 4 <sup>th</sup> November, 2008, 26 <sup>th</sup> December, 2009 and 25 <sup>th</sup> March, 2013	The Corporate Debtor had executed Agreement of Hypothecation Goods and Assets dated 14 <sup>th</sup> October, 2005, 6 <sup>th</sup> November, 2006, 28 <sup>th</sup> August, 2007, 4 <sup>th</sup> November, 2008, 26 <sup>th</sup> December, 2009 and Supplementary Agreement of Hypothecation of Goods and Assets dated 25 <sup>th</sup> March, 2013.

5.	14 <sup>th</sup> October, 2005, 6 <sup>th</sup> November, 2006, 28 <sup>th</sup> August, 2007, 4 <sup>th</sup> November, 2008 and 26 <sup>th</sup> December, 2009 7 <sup>th</sup> October, 2006 and dated 27.11.2007	Further the Corporate Debtor had issued Letter regarding the grant of individual limits within the overall limit dated 14 <sup>th</sup> October, 2005, 6 <sup>th</sup> November, 2006, 28 <sup>th</sup> August, 2007, 4 <sup>th</sup> November, 2008 and 26 <sup>th</sup> December, 2009 and also issued Confirmation Letter dated 7 <sup>th</sup> October, 2006 and dated 27.11.2007.
6.	6 <sup>th</sup> November, 2006 and 28 <sup>th</sup> August, 2007	The Corporate Debtor also entered into Inter Se Agreement dated 6 <sup>th</sup> November, 2006 and dated 28 <sup>th</sup> August, 2007 with the Applicant.
7.	17 <sup>th</sup> January, 2014 and 14 <sup>th</sup> February, 2014	Thereafter the Applicant had issued a Legal Notice dated 17 <sup>th</sup> January, 2014 and notice under Section 13(2) of SARFAESI Act, 2002 dated 14 <sup>th</sup> February, 2014.
8.	5 <sup>th</sup> September, 2014, 29 <sup>th</sup> December, 2015, 11 <sup>th</sup> July, 2016 and 10 <sup>th</sup> January, 2017	Further, an Original Application was also filed before the Debts Recovery Tribunal against the Corporate Debtor on 31 <sup>st</sup> January, 2014. The Hon'ble Debt Recovery Tribunal had passed an Order of the in I.A. 2575 of 2014 in O.A 424 of 2015 dated 5 <sup>th</sup> September, 2014 and order dated 29 <sup>th</sup> December, 2015 in S. A. 501 of 2014. Further Interim order passed in O.A. 424 of 2014 on 11 <sup>th</sup> July, 2016. Thereafter Debt Recovery Appellate Tribunal had passed an Order dated 10 <sup>th</sup> January, 2017.
9.	31 <sup>st</sup> March, 2015 and 31 <sup>st</sup> March, 2018	Account Statements of the Applicant along with the Interest Calculation sheet as on 31 <sup>st</sup> March, 2018 is been provided with respect to the Loan facilities. The Applicant also submitted Balance sheet of the Corporate Debtor for the year ending 31 <sup>st</sup> March, 2015 and for the year ending 31 <sup>st</sup> March, 2018.
	30.09.2019	Hence the Corporate Debtor is liable for an amount of Rs.465,15,64,453.53/- as on 30.09.2019.
		Hence, the present Petition.



*[Signature]*  
Advocate for the Applicant

4. It is very clear from the above list of dates and events that the Financial Creditor after issuing recall notice on January 2014 immediately initiated recovery proceeding by filing Original Application on 31.01.2014 i.e. within 3 years from the date of recall notice as well as the date of NPA and the said OA is decreed in favour of the Financial Creditor on 31.12.2020 and the Corporate Debtor did not file any appeal against the said Recovery Certificate issued by the DRT and the time allowed for preferring an appeal by the Corporate Debtor was also expired without filing any appeal by the Corporate Debtor. The Corporate Debtor also shown the outstanding debt payable to the Financial Creditor in their balance sheets for the financial year ending 31.03.2015 and 31.03.2018 even after filing Recovery Proceedings before DRT. The Corporate Debtor also addressed letters to the Financial Creditor on 30.09.2016 and 02.02.2021 for settlement under OTS by offering a total amount of Rs. 15 crores. Since the Financial Creditor has promptly initiated Recovery Proceedings within 3 years from the date of cause of action, the argument of Mr. Pandit on the plea of limitation did not hold any water and is liable to be rejected. As rightly contended by the Financial Creditor as per the law laid down by the Hon'ble Supreme Court in *Asset Reconstruction Company (India) Ltd. V. Bishal Jaiswal & Anr.* wherein it is laid down that entries in the balance sheet, which is required to be prepared to comply with statutory requirements, will amount to acknowledgment of debt under Section 18 of the Limitation Act and has the effect of extending the period of limitation for the purpose of filing an application for initiation of the Corporate Insolvency Resolution Process under the IBC. The Financial Creditor is

also right in their submission that as per the law laid down by the Hon'ble Supreme Court in case of *Dena bank Vs. C. Shivakumar Reddy and Anr.* that the Financial Creditor in order to file an application under Section 7 of the Code in statutory Form-1 is required only to fill in the particulars as specified in the various column of the form and there is no scope of elaborate pleadings.

5. It is appropriate to mention here that the Corporate Debtor is neither disputing the debt nor default in this case. The debt is within limitation. When once the debt and default are established and the debt is observed to be within limitation, the Adjudicating Authority has left no option except to admit the above Company Petition. The Financial Creditor has also suggested the name of Mr. Anuj Bajpai, proposed Interim Resolution Professional in part-3 of the Petition along with his consent letter in Form-2. Thus, the present Company Petition satisfies all the necessary requirement for admission.
6. In view of this, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the above Company Petition is admitted by passing the following:

**ORDER**

- a. The above Company Petition No. (IB) -3844(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against *Bilpower Limited*.
- b. This Bench hereby appoints **Mr. Anuj Bajpai**, Insolvency Professional, Registration No: IBBI/IPA/001/IP-P00311/2017-18/10575 as the Interim Resolution Professional to carry out the

functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of Rs.5 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion

of the corporate insolvency resolution process or until this Bench approves the resolution plan under subsection (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**

**CHANDRA BHAN SINGH  
MEMBER (TECHNICAL)**

**Sd/-**

**H.V. SUBBA RAO  
MEMBER (JUDICIAL)**