

**BEFORE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court– II)  
KOLKATA**

C.P. (IB)224/KB/2021

*A 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*

*In the matter of:*

**State Bank of India**, having its registered office at 16<sup>th</sup> Floor, madam Cama Road, Mumbai- 400021, Maharashtra.

..... *Financial Creditor/ Petitioner*

*-versus-*

**Salasar Ispat Limited**, a company within the meaning of Companies Act, 2013 having CIN U27109WB2004PLC098397 and having its registered office at Vill- Hetadoba (Deshibandh) P.O- Icchapur, Kamalpur, Durgapur, Bardhaman, West Bengal 713204 India

..... *Corporate Debtor/ Respondent*

**Date of Hearing:** 06 December 2022

**Date of Pronouncement of the order:** 14 July 2023

**Coram:**

**Smt. Bidisha Banerjee, Member (Judicial)**

**Shri Balraj Joshi, Member (Technical)**

**Appearances (via video conferencing/physical):**

*For the Financial Creditor:*

Mr. Jishnu Choudhury, Adv.

Mr. Uttiyo Mullick, Adv.

Ms. Payal Saha, Adv.

**ORDER**

***Balraj Joshi, Member (Technical):***

1. This Court convened through hybrid mode.

2. This is a Company Petition under section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred as “the Code”) by **State Bank of India**, hereinafter referred to as “*Financial Creditor*” seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Salasar Ispat Limited**, hereinafter referred to as “*Corporate Debtor*”.
3. The Corporate Debtor is a private limited company incorporated on 23 April 2004. The authorized share-capital of the company ₹6,60,00,000/- and the paid-up share capital of the company is ₹2,30,15,700/-.
4. The total amount claimed to be in default by the Financial Creditor, is ₹1,47,50,50,463.03/-. The date of declaration of the Corporate Debtor’s debt as Non Performing Assets (NPA) is 27.06.2013.
5. The Financial Creditor has relied on the various documents in support of its claims, including:
  - a) Master Data of the Corporate Debtor, marked with Exhibit “**B**”;
  - b) Agreement of loan com hypothecation dated 09.06.2010, annexed as Exhibit “**I**”;
  - c) Supplementary Agreement of loan cum hypothecation dated 22.06.2012, annexed as Exhibit “**S**”;
  - d) CIBIL Report, annexed as Exhibit “**CC**”;
  - e) Demand Notice dated 15.12.2014 under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, annexed as Exhibit “**FF**”;
  - f) Demand Notice dated 18.12.2014 issued by Ld. Advocate Mr. Ramesh Chandra Prusti, annexed as Exhibit “**GG**”;

6. **Submissions on behalf of the Financial Creditor:**

6.1 The case of the Financial Creditor is that sometime in May, 2010, the Corporate Debtor approached the Financial Creditor for availing credit facilities including Term Loan Account Limit of ₹13,50,00,000/-, Working Capital Account Limit of ₹9,00,00,000/- and SLC Account limit of ₹1,00,00,000/- and Letter of Credit (Inland) limit of ₹3,00,00,000/-. The aggregate amount of the credit facilities was ₹26,50,00,000/-. The Financial Creditor granted loans and various credit facilities to the Corporate Debtor on the terms and conditions contained in the sanction letter/letter of arrangement and diverse loan agreements were executed from time to time and the Corporate Debtor has availed and utilised the several credit facilities granted by the Bank since May, 2010.

6.2 The Credit facilities were enhanced periodically from time to time and the limits had been last sanctioned on 25 March, 2013 to the tune of ₹58,21,00,000/- by the Financial Creditor at the request of the Corporate Debtor. Accordingly, the Corporate Debtor executed several deeds of guarantee and the directors of the Corporate Debtor stood as personal guarantors for payment of the outstanding amount in respect of the loan account with interest, costs and charges.

6.3 Various other companies namely SAV Steels Limited, Astonish Financers Pvt. Ltd., Trishakti Minerals Developers Pvt. Ltd also resolved to furnish required Corporate Guarantee to the Financial Creditor for the various credit facilities granted to the Corporate Debtor and confirm extension of charge on the properties of the company in favour of the Financial Creditor.

6.4 Though the company guaranteed the Financial Creditor in terms of payment of the outstanding amount in respect of the said Loan account with interest, costs and charges, but has however failed to

repay the principal amount along with interest to the Financial Creditor. The existence of such liability shall also be evident from the audited balance sheet of the company as on 31.03.2014 wherein the Corporate Debtor has accepted and admitted the availability of credit facilities from the Financial Creditor and also admitted their liabilities in respect of the same.

6.5 The Corporate Debtor failed to clear its outstanding dues to the Financial Creditors. The term-loan account thus became irregular and accordingly, the account was declared NPA on 27.06.2013 according to RBI guidelines.

6.6 A demand notice under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) was issued by the Financial Creditor on 15 December, 2014 demanding repayment of the defaulted amount along with interest pursuant to the account being classified as Non-Performing Assets.

6.7 In spite of the receipt of the said notice the Corporate Debtor failed and/or neglected to liquidate the outstanding dues as mentioned therein. Thereafter, the Financial Creditor issued a demand notice dated 18 December, 2014 through its Advocate Mr. Ramesh Chandra Prusti to the Corporate Debtor calling upon for repayment of dues along with up to date interest.

6.8 Subsequently, proceedings under the provisions of Recovery of Debts due to Bank and Financial Act 1993, was initiated on 4th March, 2015 being OA No. 106 of 2015 before The Learned Debts Recovery Tribunal - I, Kolkata. The present application is filed within the prescribed period of limitation which can be evidenced

from the orders passed by the Learned Debt Recovery Tribunal No. I, Kolkata and the same is pending adjudication.

**7.0 Submissions on behalf of the Corporate Debtor:**

**7.1** Despite notices, none appeared for the Corporate Debtor and due to continued non-appearance of anyone on behalf of the Corporate Debtor, this Adjudicating Authority, *vide* order dated 1<sup>st</sup> July 2022, set the Corporate Debtor *ex parte*.

**8. Analysis and Findings:**

8.1 Heard the Ld. Counsel on behalf of the Financial Creditor and perused the record.

8.2 It is further noted that on 26<sup>th</sup> August 2022, the Ld. Counsel appearing for the Financial Creditor sought for the withdrawal of the instant petition on the grounds that the instant petition was barred by limitation. Accordingly, this Adjudicating Authority directed the Chief Manager, Stressed Assets Management Branch II of the Financial Creditor to be present before in on 13<sup>th</sup> September 2022. However, due to failure in complying with the said order, this Adjudicating Authority, *vide* order dated 13<sup>th</sup> September 2022 directed the Deputy General Manager of State Bank of India SAMB-II to be present before it.

8.3 Thereafter, on 16<sup>th</sup> September, 2022, the Deputy General Manager of State Bank of India SAMB-II (DGM) submitted that he has not instructed the Ld. Counsel on 26<sup>th</sup> August 2022 to make any statement regarding withdrawal of the instant petition during the previous hearing. In light of the said submission the DGM was instructed to file a personal affidavit thereby explaining the circumstances under which the wrong statement was made.

8.4 Accordingly, an affidavit was filed by the DGM on 20<sup>th</sup> September 2022. Not being satisfied with the said affidavit filed by the DGM, this Adjudicating Authority, *vide* order dated 14<sup>th</sup> October 2022, directed the General Manager of State Bank of India SAMB-II as well as the Ld. Counsel to file affidavits regarding the same issue. The affidavit was filed by the bank and therefore it emerged that there was no such instruction passed by the bank to the advocates.

8.5 Based on the above the hearing was held on the limited issue of limitation on 6<sup>th</sup> December 2022 and the order was reserved. The Ld. Counsel has relied on the following judgements to support his case.

- a. *Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-Operative Bank Limited & Anr*<sup>1</sup>;
- b. *Kalparaj Bharamshi & Anr Vs. Kotak Investment Advisors Limited & Anr.*<sup>2</sup>

8.6 Upon perusal of the records before us, the following timeline of events can be arrived at:

<b>Chronology</b>		
<b>Event</b>	<b>Date</b>	<b>Limitation</b>
Loan granted	May-10	30-04-2013
Loan disbursed/availed	May-10	
Sanction of last limit	25-03-2013	
Declaration of NPA	27-06-2013	26-06-2016
	31-03-2014	

<sup>1</sup> (2021) 7 Supreme Court Cases 313

<sup>2</sup> (2021) 10 Supreme Court Cases 401

Existence of liability accepted- Balance sheet/any other document		30-03- 2017
SARFAESI notice under 13(2)	15.12.2014	
Proceedings under RDDB(DRT)	04-03-2015	03-03- 2018
Loan recalled	18-12-2014	17-12- 2017
<b>Date of filing of application</b>	30.07.202 1	

8.7 In the instant petition, the Ld. Counsel on behalf of the Financial Creditor has attempted to exclude the time period between the filing of the proceedings before the DRT under the SARFAESI Act, 2002 and the filing of the instant petition in light of section 14 of the Limitation Act, 1963. It is noted that section 14 deals with exclusion of time of proceeding bona fide in court without jurisdiction and section 14(2) provides as under:

*(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*

8.8 In support of his arguments, the Ld. Counsel has relied on the decision taken by the Hon'ble Supreme Court in the matter of Sesh Nath Singh (Supra). In the said judgment, the Apex Court has dealt with in detail the applicability of Section 14 as well as the condonation of delay under

section (5) of the Limitation Act and has deliberated on the finer points of the consequence of pursuing a petition before a wrong forum. Paragraph 70 of the Sesh Nath Singh (supra) has been produced hereinunder:

*“Section 14(2) of the Limitation Act provides that in computing the period of limitation for any application, the time during which the Petitioner had been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance, or of appeal or revision, against the same party, for the same relief, shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of like nature, is unable to entertain it. The conditions for exclusion are that the earlier proceedings should have been for the same relief, the proceedings should have been prosecuted diligently and in good faith and the proceedings should have been prosecuted in a forum which, from defect of jurisdiction or other cause of a like nature, was unable to entertain it.”*

8.9 In light of Sesh Nath Singh (Supra) therefore, we can hold that for the applicability of Section 14, the following conditions need to be fulfilled:

- a) prosecuting ***civil proceedings*** with due diligence;
- b) the former proceeding was being prosecuted in good faith in a Court which, from ***defect of jurisdiction or other cause of like nature***, is unable to entertain it, (as such the prior forum should be a wrong one);
- c) earlier proceedings relate to the same mater in issue or are for the ***same relief***.

8.10 In regards to the first condition, the Ld. Counsel has cited paragraph 97 of **Sesh Nath Singh** (*supra*), which has been reproduced hereinunder:

*“The Chief Metropolitan Magistrate or the Judicial Magistrate, as the case may be, exercising powers Under Section 14 of the SARFAESI Act, functions as a Civil Court/Executing Court. Proceedings under the SARFAESI Act would, therefore, be deemed to be civil proceedings in a Court. Moreover, proceedings under the SARFAESI Act Under Section 13(4) are appealable to the DRT Under Section 18 of the SARFAESI Act. Mr. Dave's argument that proceedings under the SARFAESI Act would not qualify for exclusion Under Section 14 of the Limitation Act, because those proceedings were not conducted in a Civil Court, cannot be sustained”*

8.11 In light of the above decision, it is clear to us that the proceedings before the DRT under the provisions of the SARFAESI Act 2002 will indeed be deemed to be civil proceedings.

8.12 Coming to the next condition however, it can be seen from the DRT orders annexed to the petition on pages 252-258 that the DRT has not refused to entertain the said proceedings at all. Rather, the proceedings have been admitted and are pending adjudication. The same would signify that the DRT proceedings have not been aborted due to want of jurisdiction, which is an essential under section 14.

In this regard, we would also like to refer to paragraph 22 of **Sesh Nath Singh** (*supra*), wherein it is mentioned that :

*“The policy of the Section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding*

*which by reason of some technical defect cannot be decided on merits and is dismissed.”*

- 8.13 In the instant matter, not only have the prior proceedings not been dismissed on technical ground, rather they have been admitted. As such, the second condition for the applicability of section 14 of the Limitation Act has not been fulfilled.
- 8.14 The last condition is that both the proceedings must be in pursuance of the same relief. It is an accepted assertion that the IBC is not a recovery forum whereas the SARFAESI is so. However, it cannot be denied that there is actually an overlap between the two, since at the end of the day the IBC is also a mechanism for release of the stuck money into the credit market through a process of resolution, whereas SARFAESI adopts a more direct route of recovery. The question that needs determination is whether for the purpose of applicability of section 14 of the Limitation Act, the relief offered by the IBC and SARFAESI Act 2002 are the same.
- 8.15 In this regard, we would like to refer to the decision taken in the matter of *Niyogi Offset Printing Press Limited vs. Doctor Morepen Limited*<sup>3</sup> wherein the Hon’ble High Court of Delhi held that a company petition for winding up in which ultimately the petitioner may get the amount due to him or some amount on pro rata basis, does not necessarily mean that the matter in issue will be the same as in a suit for recovery of amount, had it been filed. The relevant paragraphs of the judgment are reproduced herein under:

*“18. One of the conditions required to be satisfied is that the proceedings taken earlier must be of same relief as claimed in the present proceedings as contemplated under Section 14(2) of the Act. ...What is to be considered is whether the*

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<sup>3</sup> MANU/DE/7303/2007, decided on 05.03.2007

*period of limitation to recover the amount shall be extended by filing a petition under Section 433 of the Companies Act, 1963.*

*19. For application of Section 14(1) it is necessary to show that the civil proceedings which were taken earlier by the petitioner were relating to the same matter in issue and the said matter was prosecuted in good faith in a Court which for the defect of jurisdiction or other cause of a like nature was unable to entertain it. A company petition for winding up in which ultimately the petitioner may get the amount due to him or some amount on pro rata basis does not necessarily mean that the matter in issue will be the same as in a suit for recovery of amount, had it been filed. In order to ascertain whether the claim of the petitioner is barred by time or not, what is to be considered is whether the petitioner can institute the suit for recovery of the amount claimed to be due from the respondent to the petitioner.*

*20. In Narayan Ambaji Chavan v. Hari Ganesh Navare MANU/MH/0095/1930 : AIR 1930 Bom 505, the High Court had refused to interfere on the ground that there was another remedy by way of suit in that matter and, therefore, it was held that in such a matter the condition necessary under Section 14 of the Limitation Act, 1963 were not satisfied. In the present matter it is apparent that two remedies are available to the petitioner. One was to file a civil suit for recovery of amount allegedly due to the petitioner and the other to file a winding up petition. No limitation is provided for winding up petition under Section 433 of the Companies Act, 1956 but filing a winding up petition will not save the*

*limitation for filing the suit in the facts and circumstances if the claim of the petitioner for recovery has become barred by time.”*

8.16 While making comparisons between SARFAESI proceedings and the proceedings under IBC, it is clear to us that in the process of CIRP, recovery is merely a byproduct. The object of IBC and SARFAESI Act 2002 are not the same and as such, both the reliefs offered by both cannot be deemed the ‘same relief’ for the purpose of applicability of section 14 of the Limitation Act.

8.17 Lastly, the Ld. Counsel has also cited the Hon’ble Supreme Court’s decision in the matter of ***Kalpraj Dharamshi*** (*Supra*), wherein the Apex Court has held the following:

*“....It has been observed, that when a certain period is excluded by applying the principles contained in Section 14, there is no delay to be attributed to the appellant and the limitation period provided by the statute concerned, continues to be the stated period and not more than the stated period. It was therefore held, that the principle of section 14, which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and pursued with due diligence but which end without a decision on the merits of the case.”(Para 67)*

8.18 In the instant matter, the prior proceedings have not ended and are still ongoing. As such, the principle of section 14 of the Limitation Act will not apply to the instant petition.

8.19 Having considered the facts and circumstances of the case in light of the aforementioned judgments, we are of the considered opinion that since the facts of the case do not meet the basic requirements for the

applicability of section 14 of the Limitation Act, the exclusion of time period sought by the Financial Creditor cannot be provided. As such, the instant petition filed on 30.07.2021 is barred by limitation and ought to be *rejected*.

8.20 Consequently, **C.P.(IB) No. 224/KB/2021** shall stand *dismissed*. Needless to say, the Operational Creditor is free to pursue its remedies under any other law, and the dismissal of the present petition shall not stand in the way of such pursuit of remedies.

8.21 The registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

8.22 Certified Copy of this order may be issues, if applied for, upon compliance of all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**Signed on this, the 14<sup>th</sup> day of July, 2023**

SM[LRA]