IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.542/MB-IV/2020

Under Section 7 of the I&B Code, 2016

In the matter of:

Gajraj Tradecom Private Limited

[CIN: U01403WB2011PTC165109]

…Financial Creditor/Applicant

V/s

Ramkrishna Electricals Limited

[CIN: U31100MH1986PLC039504]

...Corporate Debtor/Respondent

Order pronounced on : 30.09.2022

Coram:

Mr. Manoj Kumar Dubey Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s)	:	Mr. P.S. Thakre, Practising Company Secretary
For the Respondent(s)	:	Ms. Anjali Shahi, Advocate

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being C.P. (IB) No. 542/NCLT/MB/C-IV/2020 filed by Gajraj Tradecom Private Limited, the Financial

Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Ramkrishna Electricals Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Application is filed by Mr. Abhishek Ravishankar Asati, authorized by the Financial Creditor vide Board Resolution dated 20.01.2020, claiming default amount of Rs.50,00,000/- (Rupees Fifty Lakh only) as on 21.01.2020 in principal inclusive of interest @15% i.e. Rs. 42,000/- (Rupees Fourty Two Thousand Only) calculated on quarterly basis i.e. from 01.01.2020 to 21.01.2020 aggregating to an extent of Rs.50,42,000/- (Rupees Fifty Lakh Fourty Two Thousand only).

3. The date of Default is 31.03.2019. The petition is filed on 10.02.2020.

4. The case of the Financial Creditor is as under:

a) It is submitted that the Corporate Debtor/Respondent approached the Financial Creditor/Petition for grant/sanction of Commercial Loan of Rs.1,00,00,000/- (Rupees One Crore only). The Financial Creditor/Petitioner considered the request of the Corporate Debtor/Respondent and granted/sanctioned the Commercial Loan/Short Term Loan to an extent of Rs.1,00,00,000/- (Rupees One Crore only) through RTGS vide Cheque No. 038372 dated 04.04.2018. The RTGS fund transfer application form issued by Union Bank of India is annexed at "*Annexure-E*" at Page 44 of the Petition. The acknowledgement receipt issued by the Corporate Debtor is marked as "Annexure F" at Page 45 of the Petition.

b) The Financial Creditor/Petitioner submits that the after receipt of credit facility, the Corporate Debtor has repaid an amount of

Rs.50,00,000/- (Rupees Fifty Lakh) on 08.03.2019 and also expressed their inability to make the payment of entire dues.

c) The Financial Creditor/Petitioner issued letter dated 13.08.2019 and 05.10.2019 in favour of the Corporate Debtor/Respondent recalling for outstanding dues. Despite receipt of said recall notice, the Corporate Debtor/Respondent neither replied to the said recall notice in rebuttal nor repaid the dues. Hence, this Petition.

5. Ms. Uma Chatterjee, Ld. Counsel appeared on behalf of the Corporate Debtor and sought time for filing reply on 04.03.2020. Again on 22.03.2021, when the matter was called, one Ms. Gaurangi Patil and Ms. Anjali Shahi i/b GP & Associates, Ld. Counsel appeared on behalf of the Corporate Debtor and sought two weeks' time for filing reply. Despite several opportunities being granted, the Corporate Debtor failed to file its reply. Therefore, this Bench has forfeited the right of the Corporate Debtor to file reply on 04.04.2022.

6. We have heard and prudently gone through the pleadings available on record. The Financial Creditor/Petitioner has granted/sanctioned the credit facility in favour of Corporate Debtor. Despite repeated requests, the Corporate Debtor failed to repay the outstanding dues. The Financial Creditor/Petitioner has filed the ledger account of the Corporate Debtor/Respondent at page 59 of the Petition which itself shows that on 03.04.2018 the financial assistance was granted by the Financial Creditor to an extent of Rs.1,00,00,000/- (Rupees One Crore) in respect of which Rs. 50,00,000/- (Rupees Fifty Lakh only) was refunded by the Corporate Debtor. The Loan was granted to the Corporate Debtor by the Financial Creditor on 03.04.2018 and the Petition was filed on 10.02.2020. It

clearly shows that the Petition is filed within the period of limitation u/s 18 of the Limitation Act, i.e. three years.

7. The Hon'ble Supreme Court in Dena Bank (Now Bank of Baroda) Vs. C Shivkumar Reddy & Anr. has laid down that:

> *"118. It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. In Asset Reconstruction Company (India) Limited v. Bishal Jaiswall and Anr. (supra) authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff ,18 ["Bengal Silk Mills"] and in Re Pandem Tea Co.19 Ltd., the judgment of the Delhi High Court in South Asia Industries (P) Ltd. v. General Krishna Shamsher Jung Bahadur Rana20 and the judgment of Karnataka High Court in Hegde Golay Ltd. v. State Bank of India 21 and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt.*

8. Further, in Asset Reconstruction Company (India) Limited Vs. Tulip Star Hotels Limited, the Supreme Court held that:

> *" 85. It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. In Bishal Jaiswal (supra) authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of Calcutta High Court in Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff ,18 and Pandem Tea Co.19 Ltd., the*

> *judgment of the Delhi High Court in South Asia Industries (P) Ltd. v. General Krishna Shamsher Jung Bahadur Rana20 and the judgment of Karnataka High Court in Hegde Golay Ltd. v. State Bank of India 21 and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt."*

9. In view of the aforesaid judgements of the Hon'ble Supreme Court, it is settled law that the entries made in the Books of Accounts of the Corporate Debtor itself would amount to an acknowledgment of Debt. In the present case, the ledger account of the Corporate Debtor/Respondent filed by the Financial Creditor/Petitioner, clearly shows that the amount of Rs.1,00,00,000/- (Rupees One Crore Only) was extended to the Corporate Debtor/Respondent on 03.04.2018 and on 08.03.2019, the Corporate Debtor on the repeated requests of the Financial Creditor/Petitioner repaid an amount to an extent of Rs.50,00,000/- (Rupees Fifty Lakh only). Hence, it is clearly seen that there is debt and default on the part of the Corporate Debtor. Thus, this Petition deserves to be admitted.

10. The Financial Creditor has proposed the name of Mr. Sanjay Shrivastav, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01528/2018-2019/12425] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

<u>ORDER</u>

a) This Application being C.P. (IB) No. 542/NCLT/MB/C-IV/2020 filed by Gajraj Tradecom Private Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Ramkrishna Electricals Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d) the recovery of any property by an owner or lessor where such property is occupied by or in 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 the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, 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 I&B Code.

VI. That this Bench appoints Mr. Sanjay Shrivastav, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01528/2018-2019/12425] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

a) 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).

b) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

c) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp.

Sd/-	Sd/-
Manoj Kumar Dubey	Kishore Vemulapalli
Member (Technical)	Member (Judicial)
30.09.2022	