

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH, KOLKATA

CP(IB) No. 1290/KB/2018

IN THE MATTER OF

An application Under Section 7 read with rule 4 of the Insolvency and Bankruptcy Code, 2016 (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process.

And

IN THE MATTER OF

Punjab National Bank, Having its Head Office at Plot No.4, Sector-10 Dwarka, New Delhi-110075 and carrying on business, inter-alia, from its Branch Office known as Asset Recovery Management Branch Kolkata, situated at 18A, Brabourne Road, Mezzanine Floor, PS- Hara Street, Kolkata- 700001.

.....Financial Creditor

Versus

M/s Jas Infrastructure and Power Ltd., having its Registered Office at FE-83, Sector-III Salt Lake City, Ground Floor, Kolkata-700106.

.....Corporate Debtor

Date of Hearing : 01.10.2019

Delivered on : 16.10. 2019

Coram:

Madan B Gosavi, : Member (J)

Virendra Kumar Gupta, : Member (T)

For the Financial Creditor : 1.Mr. Debasish Chakraborti, Advocate
2.Ms.Trisha Saha, Advocate

For the Corporate Debtor : 1.Mr. Manik Bose, Advocate
2.Mr.M.S.Tiwari. Advocate
3.Mr.S.Ganguly, Advocate
4.Mr. A.Sinha, Advocate

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ORDER**Per Virendra Kumar Gupta, Member (T)**

This application Under Section 7 has been filed by the Financial Creditor namely Punjab National Bank to initiate Corporate Insolvency Resolution Process against Corporate Debtor namely M/s Jas Infrastructure and Power Ltd. The amount of default has been stated at Rs. 689,19,83,028.19/- (Rs. Six Hundred Eighty Nine Crore Nineteen Lacs Eighty Three Thousand Twenty Eight and Nineteen paise only) which includes interest up to 31.08.2018.

2. The facts, in brief, are that the consortium of banks initially sanctioned and disbursed credit facility vide sanction letter dated , 29th September, 2010. The last disbursement was made on 31.01.2012 . The Corporate Debtor also submitted a proposal for revival on 16.02.2015 to the consortium. The Corporate Debtor, however, could not meet its obligation leading to classification of its account as N.P.A. as on 13.06.2015 by the Financial Creditor. The Financial Creditor also sent a notice on 19.01.2016 requiring the Corporate Debtor to pay outstanding sum as on 31.12.2015 with further interest.

3. The learned counsel appearing on behalf of the Financial Creditor narrated these basic facts and drew our attention of page 681 of V-3 containing balance confirmation by the Corporate Debtor as on 30.04.2013. Thereafter, he referred to page 826 to draw our attention to the proposal of revival sent by the Corporate Debtor on 16.02.2015, wherein acknowledgement of debt had been done. Thereafter, he drew

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our attention to page 897 containing CIBIL report showing the amount payable by the Corporate Debtor to the Financial Creditor. In this regard, he further referred to page 898 and 901 contending details of classification of account and nature of default with amount due. To further support his claim with the debt was not barred by limitation, he drew our attention of pages 930 and 931 containing the notes of account forming part of Financial Statement of as 31st March, 2016, where amount of loan due, details of security, the terms of repayment of loan were given in paras 3,3.1 and 3.2. He specifically drew our attention to para 3.3, wherein it was clearly mentioned that the Company had made certain defaults in payment of interest on term loan. Based upon such presentation in the balance-sheet and notes forming part thereof, he claimed that it was a case of acknowledgement of debt and, therefore, the petition was well within time as the debt was not barred by limitation. In support of this claim, he placed reliance on the decision of Mumbai Bench of NCLT in the case of **TJSB Sahakari Bank Ltd. Vs Unimetal Castings Ltd.** wherein, it was held that when the liability was shown in the balance-sheet, then that would amount to acknowledgement of debt by the Corporate debtor. He drew our attention to para 8 of the order, wherein the Tribunal had relied on various decisions in arriving at such conclusion.

4. The learned counsel for the Corporate Debtor, firstly contended that the petition was not filed by competent person who did not have requisite letter of authority as required for filing petition under section 7 of the Insolvency and Bankruptcy Code, 2016. To support his view, he

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drew our attention of pages 50 & 64. He drew our attention to the fact that some body was authorised, who further authorised somebody and somebody else signed the documents. He further said that delegatee cannot delegate was an accepted judicial principle. He further relied on the decision of the Hon'ble National Company Law Appellate Tribunal in the case of **Palogix Infrastructure Private Limited Vs ICICI Bank Limited** as reported in 2017 (SCC Online) NCLAT and read out para 41 and 45 of the said order. In nut-shell, he challenged the maintainability of the petition on technical ground. He further contended that the defect had not been cured nor any application was made to cure even now. No Board resolution was attached. Second plea was that the debt was barred by limitation as first default occurred in March, 2015 as the account was classified as NPA in June, 2015 after lapse of 90 days of period from the date of default, which was a norm as per RBI guidelines to declare an account as NPA. He further contended that even if date of declaration of NPA was taken as date of default then also that was barred by limitation, as the application under section 7 had been filed on 11.09.2018. He further contended that as per the decision of the Hon'ble Supreme Court in the case of **B.K.Educational Services Pvt. Ltd. as reported in (2018 SCC online SC 1921)** time barred petition could be filed only after obtaining condonation of delay in filing of the petition as per the provisions of Section 5 of the Limitation Act, 1963. In this regard, he drew our attention to para 48 of the said order. In support of his claim of debt being time barred, he further relied on the decision of the Hon'ble Supreme Court in the case of *Gaurav*

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Hargovindbhai Dave in Civil Appeal No. 4952 of 2019 order dated 18th September, 2019 and *Jignesh Shah & another Vs. Union of India & another in Writ Petition (Civil) No. 455 of 2019*) order dated September 25,2019. He also placed reliance on the decision of the Hon'ble Calcutta High Court in the case of *Dr. Dipankar Chakraborty Vs Allahabad Bank as reported in 2017 SCC online Calcutta 874* for the proposition that if a proceeding was barred by imitation on the date of its initiation could not be held as valid for the reason that there was a pending proceeding under other Act which was itself barred by limitation. He further placed reliance on the decision of the NCLT Kolkata Bench in the case of *M/s Prowess International (P) Limited Vs M/s Shyam Steel Industries Limited* passed in CP (IB) No. 159 /KB/2018 vide order dated 11th May, 2018 for the proposition that presentation in the financial statements do not amount of acknowledgement of debt.

5. In the Rejoinder, the learned counsel for the Financial Creditor relied on the observations of the Hon'ble Supreme in para 19 of the order in the case of *Jignesh Shah & another Vs. Union of India & another (Supra)* for the proposition that Corporate Debtor had acknowledged the amount of loan in balance-sheet and consequently limitation stood extended as per the provisions of Section 18 of the Limitation Act,1963. As regard to the proper authority of the person to file application Under Section 7 of the IBC, it was submitted that Mr. Arvind Kumar Gupta was competent to act on behalf of the Punjab National Bank and to institute legal proceedings. The learned counsel also referred to the decision of the **Palogix Infrastructure Private Limited** wherein in para

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38, 39 and 40 of Hon'ble NCLAT had held that Power of Attorney holder may not be empowered to file application under section 7 of the IB Code but authorized person had power to do so. The learned counsel, thereafter, took us to the contents of various clauses of Power of Attorney and on that basis contented that the said Senior Manager was having **Authority** for initiating proceeding for Corporate Insolvency Resolution Process against the Corporate Debtor. It was also contended that nomenclature of the authority letter as Power of Attorney would not take away the authority of such Officer. To draw support for such proposition, the learned counsel for the Financial Creditor referred to para 6 and 7 of the order of the Hon'ble NCLAT dated 30th August, 2017 in the matter of **Ramesh Chander Gupta Vs Punjab National Bank**, wherein in the same circumstances and after considering the decision of **Palogix Infrastructure Private Limited** (Supra), it was held that the Senior Manager, who filed the application under section 7 was competent to do so, hence, no interference was required.

6. We have considered the submissions made by both the sides and matter on record.

7. The first objection raised by the Corporate Debtor in regard to competency of person, who has signed and filed application under section 7 of IBC, 2016.

We have perused the contents of the relevant documents, which are wide enough in scope and also authorise the signatory of the petition to initiate Corporate Insolvency Resolution Process against the Corporate

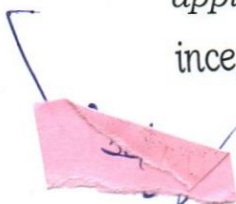


Debtor. In this regard particular reference of para d(iv) read with para d(ii) can be taken. We are further of the view that the decision of the Hon'ble NCLAT in the case of Ramesh Chander Gupta(Supra) also supports the claim of the Financial Creditor. We are further of the view that in sum and substance, the authority appears to have been vested in the person who has acted in bonafide manner then such technical reasons should not be given an overriding effect on the merits of case. It is noted that the Board ^{Resolutions} ~~Regulation~~ authorizing the applicant is also attached. Thus, in view of above discussion, we do not find any merit in this contention of the Corporate Debtor and therefore, we reject the same.

8. The second plea is that the debt is barred by limitation, hence, petition cannot be filed. In this regard reliance has been placed on the decision of the Hon'ble Supreme Court in the case of **Jignesh Shah & another and B.K. Educational Services Pvt. Ltd.** (Supra).

9. It is not in dispute that provisions of Limitation Act, 1963 are applicable to the proceedings under IBC, 2016. In the above cases, the Hon'ble Supreme Court has held that in case of delay, the limitation could be extended Under Section 18 of Limitation Act, 1963 by the act of parties as prescribed thereunder and the application can be filed after getting condonation of delay under Section 5 of Limitation Act, 1963. The findings of the Hon'ble Supreme Court in the case of B.K. Educational Services in para 48 of the order are reproduced as under:-

"48. It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets



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attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.

The finding of the Hon'ble Supreme Court in the case of Jignesh Shah & another in para 19 of the order are as under:-

"19. The aforesaid judgements correctly hold that a suit for recovery based upon a cause of action that is within limitation cannot in any manner impact the separate and independent remedy of a winding up proceeding. In law, when time begins to run, it can only be extended in the manner provided in the Limitation Act. For example, an acknowledgement of liability under Section 18 of the Limitation Act would certainly extend the limitation period, but a suit for recovery, which is a separate and independent proceeding distinct from the remedy of winding up would, in no manner, impact the limitation within which the winding up proceeding is to be filed, by somehow keeping the debt alive for the purpose of the winding up proceeding."

10. In the present case, it is not in dispute that in the balance-sheet for the financial year ended on 31.03.2016, the Corporate Debtor has categorically admitted the amount outstanding, amount of instalment payable and default in payment of interest. Copy of the relevant pages have been placed on pages 930 and 931 of Paper Book. It is also not in dispute that Corporate Debtor submitted a proposal for revival on 16.02.2015 in which the amount of loan has been admitted. The limitation, if counted from that date, ends on February 15, 2018. As per provisions of Section 18 of the Limitation Act, 1963 if the

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acknowledgement of debt happens before the expiry of said period, the limitation gets extended. As held in catena of decisions that presentation of debt in the balance-sheet amounts to acknowledgement of debt. Thus, taking into consideration of provisions of Section 18 of Limitation Act, 1963 and this legal proposition together, the presentation of outstanding loan and fact of default in the balance-sheet as on 31st March, 2016 of the Corporate Debtor amounts to valid acknowledgement of the loan, hence, limitation has to be counted from this date. This view is guided by the ratio of the decision of the Hon'ble Supreme Court in the case of Jignesh Shah & another as mentioned in para 19 reproduced hereinbefore. We further hold that in this view of the matter there is no need to seek condonation of delay under Section 5 of Limitation Act, 1963 in filing of application as canvassed by the Corporate Debtor.

11. Having the said so, we further find that as per Regulation 8(2) of IBBI (Insolvency Resolution Process for Corporate person) Regulation, 2016, the existence of debt due to the Financial Creditor may be proved on the basis of record available in information utility or other relevant documents or financial statements showing that the debt has not been paid. Thus, on this basis also existence of debt due and payable in alive mode stands proved.

12. As far as the reliance on the decision by Corporate Debtor on the decision of the NCLT Kolkata Bench in the case of **M/s Prowess**

International (P) Limited Vs M/s Shyam Steel Industries Limited

(Supra) is concerned, the said decision is no longer holds the field for

the reason of subsequent judicial decisions, wherein presentation of debt in financial statements has been held as acknowledgement. We further consider it pertinent to point out that in the case of M/s Prowess International (P) Limited Vs M/s Shyam Steel Industries Limited, finding was based on the basis of fact that name of Financial Creditor was not appearing in the balance-sheet which is not the case here and for this reason also the ratio of that case is not applicable .

13. The application filed under Section 7 of IBC is complete in all respects. The name of IRP has been proposed, who has given his consent, it has been pleaded that no disciplinary proceeding is pending against him. Accordingly, we approve his name.

14. Thus, this application is admitted, we order as under:-.

ORDER

- i. The application filed by the Financial Creditor under section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, M/s Jas Infrastructure and Power Ltd. is hereby admitted.
- ii. We declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii. Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

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- iv. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- 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 (54 of 2002);
 - 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.
- v. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- vi. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii. The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii. Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

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- ix. Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x. Shri Animesh Mukhopadhyay , having registration No.IBBI/ IPA-001/IP-P00124/2017-18/10266 email id animesh_fca@yahoo.co. is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- xi. The Financial Creditor to pay a sum of Rs. 3,00,000/- (Rs. Three Lakhs) to IRP as advance fee as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill. In case further funds are required during Corporate Insolvency Resolution Process and if not provided by Committee of Creditors then IRP/RP can approach this Tribunal for that purpose.
- xii. The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xiii. Registry is hereby directed under section 7(7) of the I.B.Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.
15. List the matter on 04.12.2019 for the filing of the progress report.
16. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


(Virendra Kumar Gupta)

Member (T)


(Madan B Gosavi)

Member (J)

Signed on 16th October 2019