

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL),
COURT NO. II
KOLKATA

CP (IB) No. 82/KB/2021

An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016.

IN THE MATTER OF:

State Bank of India

... Financial Creditor.

Verses

R. Piyarelall Iron & Steel private Limited

... Corporate Debtor.

Date of Pronouncement: 19 January 2024

Coram:

Rohit Kapoor, Member (Judicial)

Balraj Joshi, Member (Technical)

Appearance (in hybrid mode)

For the Financial Creditor: 1. Mr. Joy Saha, Senior Advocate

2. Mr. Debashish Chakrabarti, Advocate

3. Mr. Snehashish Chakraborty, Advocate

For the Corporate Debtor: 1. Mr. Ratnanko Banerji, Senior Advocate

2. Mr. Ratnesh Kr. Rai, Advocate

3. Mr. Ankan Rai, Advocate

ORDER

Per: Balraj Joshi, Member (Technical)

1. This court is congregated through hybrid mode.
2. Heard the Learned Senior Counsel, Mr. Joy Saha for the Financial Creditor and the Learned Senior Counsel, Mr. Ratnanko Banerji for the Corporate Debtor.
3. This instant application is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, (“Code”) by the **State Bank of India (“SBI”)**, (“**Financial**

Creditor”) against **R. Piyarelall Iron & Steel Private Limited,** (**“Corporate Debtor”**) seeking for the direction to initiate the Corporate Insolvency Resolution Process(“CIRP”) in respect of the Corporate Debtor.

4. The total principal outstanding dues as claimed by the Financial Creditor in respect of the various facilities is of Rs. 16,52,27,574/- and pursuant to the inclusion of accrued interest at the rate of 14.25% per annum, that cumulated to a total of Rs. 59,61,02,711/-. The Date of Default is claimed on June 30, 2012, the date of classifying the Corporate Debtor as Non-Performing Assets (“NPA”).

Applicant’s submissions:

5. The Learned Senior Counsel submits that on 14.08.2007 and 08.09.2007, the Corporate Debtor has applied to the Financial Creditor for EPC/PCFC of Rs. 15 Crore and Bank Guarantee (BG) of Rs. 5 Crore, totalling amount to Rs. 20 Crore. Vide a sanction letter dated 04.10.2007, annexed as Annexure “1-E” to the Application the Financial Creditor sanctioned the said loan of Rs. 20 Crore to the Corporate Debtor.
6. Further, it is submitted that in respect of the aforesaid loan for EPC/PCFC and BG, the Corporate Debtor executed the documents in favour of the Financial Creditor and delivered to the Financial Creditor such as:
 - a) *The Agreement for loan for overall limit dated 30.10.2007;*
 - b) *The Agreement of Hypothecation of Goods and Assets dated 30.10.2007;*
 - c) *The Agreement of Pledge of Goods and Assets dated 30.10.2007;*
 - d) *Omnibus Counter Guarantee dated 30.10.2007;*
 - e) *Letter regarding the grant of individual limits within overall limit dated 30.10.2007;*
 - f) *Default Clause dated 30.10.2007;*
 - g) *Consent Clause dated 30.10.2007.*
7. Further, the Learned Senior Counsel for the Applicant submits that the Corporate Debtor on or about 13.11.2007 the Corporate Debtor had again applied to the Applicant for EPC/PCFC of Rs. 15 Crore and Bank Guarantee (BG) of Rs. 5 Crore and FBD limited under LCs, outside ABF of Rs. 20 Crore. The total exposure being Rs. 40 Crore was applied for the purpose of expansion of their

business. The Financial Creditor, by their sanctioned letter dated 09.11.2007 had sanctioned the loan by way of EPC/PCFC of Rs. 15 Crore and Bank Guarantee (BG) of Rs. 5 Crore and FBD limited under LCs, outside ABF of Rs. 20 Crore. The Corporate Debtor executed the following documents in favour of the Financial Creditor and delivered to the Financial Creditor on 03.12.2007 as:

- a. Supplementary agreement of Loan for increase in the Overall limit dated 03.12.2007;*
 - b. Supplementary agreement of Hypothecation of Goods and Assets for increase in the overall limit dated 03.12.2007;*
 - c. Supplementary Agreement of Pledge of Goods and Assets for increase in the overall limit dated 03.12.2007;*
 - d. Letter regarding the grant of individual limits within the overall limit dated 03.12.2007.*
8. Further, it is submitted that on or about 17.01.2009, by a letter dated September 30, 2008, the Corporate Debtor had again applied for enhancement of existing credit facilities. The Applicant by their sanction letter dated 30.04.2009 sanctioned EPC/PCFC (100% interchangeability from EPC/PCFC to FBD/EBR) facility to the tune of Rs. 15 Crore, BG of Rs. 5 Crore, Export Bill Negotiated under LC Rs. 20 Crore and Forward Contract Limit of Rs. 1.20 Crore, totalling amount to Rs. 41.20 Crore.
9. Further, it is contended that by a letter dated 29.04.2010 and dated 15.07.2010, the, the Corporate Debtor had again applied for the enhancement of existing limit. The Financial Creditor by their sanction letter dated 29.11.2010 sanctioned EPC/PCFC facility to the tune of Rs. 15 Crore (100% interchangeability from EPC/PCFC to FBD/EBR), BG of Rs. 5 Crore and Export Bill negotiation under LC (outside ABF) of Rs. 20 Crore.
10. Further, it is contended that by a letter dated 25.11.2011, the Corporate Debtor had again applied for enhancement of existing credit facilities. The Financial Creditor by their sanction letter dated 31.03.2012 sanctioned EPC/PCFC facility to the tune of Rs. 12.50 Crore, BG of 5 Crore, Forward Contract Limit of Rs. 0.38 Crore and Export Bills negotiation under LC of Correspondent bank of SBI of

Rs. 20 Crore, totalling amount to Rs. 37.88 Crore (100% interchangeability from EPC/PCRC to FBD/EBR).

11. Further, it is contended that on or about 24.05.2013, the Corporate Debtor had applied for restructuring of the existing credit facilities. The Financial Creditor by their sanction letter dated 24.06.2013 sanctioned EPC/PCFC of Rs. 10.60 Crore WCTL of Rs. 4.30 Crore, FITL-I of Rs. 2.04 Crore, FITL-II of Rs. 0.46 Crore, Forward Contract Limit of Rs. 0.40 Crore and Foreign Bill discounting limit backed by LC of SBI/ Correspondent bank of SBI of Rs. 10 Crore total exposure being Rs. 27.80 Crore for the purpose of expansion of their business.
12. Further, it is submitted that the Corporate Debtor although enjoyed the entire loan limit of Rs. 27.80 Crore but failed to serve interest in the loan accounts as per the terms of sanction and also failed to pay the instalments in loan accounts as per the restructured sanction and as such has again committed default as it will be found from the entries of the statement of account. That due to failure on the part of the corporate debtor to comply the terms and conditions of restructuring of the loan account, the said loan accounts have been rolled back to its original NPA, i.e., on and from 30.06.2012.
13. It is further submitted that the financial statement of the Corporate Debtor for the financial year ended on 31.03.2015 has been filed and accepted vide I.A. (IB) No. 415/KB/2022, wherein the Auditor has mentioned that the Corporate Debtor has defaulted in repayment of several creditors and the name of the Financial Creditor has also been mentioned therein.
14. Further, it is submitted that the Corporate Debtor has filed a balance sheet before the ROC Kolkata as at **31.03.2018** wherein the Corporate Debtor admitted the default in repayment of the loan lying with the SBI and the amount of default has been mentioned as Rs. 4,30,00,000.00/-.
15. It is further submitted that in view of the said acknowledgment of the default on 31.03.2018, by the Corporate Debtor and in view of the recurring default committed by the Corporate Debtor from time to time since 30.06.2012 and resting with an acknowledgment on 31.03.2018 by express admission of the said default in the balance sheet. So, the principle relating to acknowledgement as per

Section 18 of the Limitation Act is applicable for extension of the time for the purpose of application under Section 7 of the Code.

Respondent's submissions per contra:

16. The Learned Senior Counsel for the Corporate Debtor has claimed that the loan accounts of the Corporate Debtor were classified as NPA on June 30, 2012, however, the Applicant has filed this Application under Section 7 of the I&B Code in 2021. Thus, the instant application is barred by limitation.
17. It is further claimed that Applicant has failed to mention the date of default in the application. The date of default is a *sine qua non* for maintaining a Section 7 Application and if the date of classification of NPA of the Corporate Debtor is taken to be as the date of default then the application is barred by limitation.
18. It is further claimed that upon the advanced talks of settlement and negotiation between the parties, an OTS proposal was offered to the Corporate Debtor and subsequently agreed upon between the parties. However, after making immense efforts to arrange funds to repay the loan, the Corporate Debtor was unable to pay off the sum as sought by the Applicant.
19. Further, it is submitted that the Corporate Debtor in 2014 filed a suit being C.S. 305 of 2014 (R. Piyarellal Import & Export Limited v. SBI) praying for, *inter alia*, a decree for a sum of Rs. 203,70,69,169/- and interest thereon at the rate of 12% per annum and the suit is still pending for consideration. The ground for the said suit was arbitrary action on the part of the applicant while dealing with the loan account of the Corporate Debtor.

Analysis and Findings:

20. We have considered the submissions made by the Learned Senior Counsel for both the parties.
21. The principal defence taken by the Corporate Debtor is that the Petition is barred by limitation. It is evident that the account of the Corporate Debtor has been declared as NPA on 30.06.2012. We would refer to the settled law as laid down by the Hon'ble Apex Court in *Laxmi Pat Surana vs. Union Bank of India* reported in (2021) 8 SCC 481: MANU/SC/0221/2021 that "... upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default

to enable the financial creditor to initiate action Under Section 7 of the Code. However, Section 7 comes into play when the corporate debtor commits "default". Section 7, consciously uses the expression "default" -- not the date of notifying the loan account of the corporate person as NPA."

22. Further, it is evident that the Financial Creditor herein has issued a notice under Section 13(2) of SARFAESI Act, 2002 on 19.06.2014 upon the Corporate Debtor, calling upon the Corporate Debtor to pay the applicant an aggerated amount of Rs. 19,63,05,874.43/- including interest as on 18.06.2014. Learned Senior Counsel for the Applicant submits that the Corporate Debtor has filed a balance sheet before the ROC Kolkata as on 31.0.3.2015 which has been prepared on 28 May 2015 and **31.03.2018**, wherein the Corporate Debtor admitted the default in repayment of the loan lying with the SBI and the amount of default has been mentioned as Rs. 4,30,00,000.00/-.
23. It is evident that this application has been filed on **09.03.2021**. Considering that the date of default has been referred to as 30 June 2012, the period of limitation would end on 30 June 2015, within that period the Corporate Debtor has explicitly acknowledged the default in payment in the financial statements for the financial year ended on 31 March 2015 which has been certified by the Auditor on 28 May 2015. This extends the period of limitation to 28 May 2018. The Balance Sheet of the Corporate Debtor for the financial year ended on 31 March 2018 also acknowledges the default of the Corporate Debtor. Thereafter, the period of limitation would end on **28 May 2021**.
24. We would refer the statutory provisions to examine the limitation question as under:
- (I) **Section 238(A) of the I&B Code, 2016 envisages that: -**
- “The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.”
- (II) **Section 18 of the Limitation Act, 1963** further prescribed that **the Effect of acknowledgment in writing** would be as under—

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(III) Section 19 of the Limitation Act, 1963, that deals with the *Effect of payment on account of debt or of interest on legacy* envisages the following —

Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made: Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment. Explanation.—For the purposes of this section,—

- (a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;
- (b) “debt” does not include money payable under a decree or order of a court.

(IV) Article 137 of the Limitation Act stipulates: -

That for any other application for which no period of limitation is provided elsewhere in this division.

The Period of limitation is “Three Years”.

Time from which period begins to run is: “When the right to apply accrues”.

25. The Hon’ble Supreme Court in *State Bank of India v. Krishidhan Seeds Pvt. Ltd., (2022) ibclaw.in 40 SC*, held that an acknowledgement in a balance sheet without a qualification can be relied upon for the purpose of the proceedings of

the Code. The Hon'ble NCLAT in *Haridas Gautamkumar Dave v. Indian Transformers Co. Ltd., (2022) ibclaw.in 951 NCLAT* and held that any acknowledgement in the Balance Sheets, or any part payments made thereunder can be construed as an 'Acknowledgement' under 'Section 18 of the Limitation Act, 1962'.

26. In view of the provisions cited above and also considering the law laid down with respect to acknowledgement and limitation, the present Company Petition has been filed within the period of limitation.
27. The Corporate Debtor is clearly in default of the debt provided by the Financial Creditor. There is a clear admission on the part of the Corporate Debtor that there is a debt owed to the Financial Creditor which was due and payable and that a default has indeed occurred, as brought out above.
28. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition and the submissions establish that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.
29. In the light of the above facts and circumstances, it is, hereby ordered as follows:-
 - a. The application bearing *CP (IB) No. 82/KB/2021* filed by State Bank of India, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against *R Piyarelall Iron & Steel Private Limited*, the Corporate Debtor, is *admitted*.
 - b. There shall be a moratorium under section 14 of the IBC.
 - c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Mr. Yogesh Gupta**, registration number IBBI/IPA-001/IP-P00349/2017-2018/10650, email id: **yogeshgupta31@rediffmail.com**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out the functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The Directors, officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever, and is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. II

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- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
 - i. The Financial Creditor shall deposit a sum of **Rs 3,00,000/- (Rupees Three 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).
 - j. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
 - k. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
30. **CP (IB) No. 82/KB/2021** to come up on **19.02.2024** for filing the periodical report.
31. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

This Order is signed on the 19th day of January, 2024.

RKB_LRA/GGRB_LRA