

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT-I**

**CP (IB)/ 445(MB) 2020**

Under section 7 of the Insolvency and  
Bankruptcy Code, 2016

*In the matter of*

**State Bank of India**

**[Identification number: TAN-  
MUMB14834B]**

... Applicant/Financial Creditors

Versus

**Vindhyavasini Corporation Private Ltd.**

**[CIN: U74900MH2010PTC204738]**

... Respondent/Corporate Debtor

**Order Pronounced on : 22.12.2023**

***Coram:***

Hon'ble Member (Judicial): Sh. Justice V. G. Bisht (Retd.)

Hon'ble Member (Technical): Sh. Prabhat Kumar

***Appearances:***

For the Financial Creditor : Mr. Arjun Sathees,  
Advocate

For the Corporate Debtor : None

**ORDER**

**Per:** Sh. Justice V. G. Bisht (Retd.)

1. This Company Petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **State Bank of India** ("hereinafter referred to as Applicant"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Vindhyavasini Corporation Private Limited** ("hereinafter referred to as Respondent").
2. The Corporate Debtor is a Private Limited company incorporated on 23.06.2010 under Companies Act, 1956 with the Registrar of Companies, Maharashtra, Mumbai. Its registered office being situated at Flat number 101, OG-III, Oberoi Garden, Thakur Village off western Express Highway, Kandivali (East), Mumbai - 400101. Therefore, this Bench has jurisdiction to deal with this Petition. The Authorised share capital of the Corporate Debtor is Rs. 1,00,00,00,000/- whereas the paid up capital is Rs. 60,00,00,000/-.
3. The Corporate Debtor is a company involved in the business of manufacturing steel products, including but not limited to TMT bars, Wiring rods, Structural Steel, etc.
4. The present Application was filed before this Adjudicating Authority on the ground that the Respondent has defaulted to repay an amount of Rs.338.55 crores as on 30.11.2019.
5. The date of Default is stated to be 30.11.2019 whereas the particulars of debt of the Applicant is detailed as under:

<b>Account no.</b>	<b>Facility</b>	<b>Limit (in Crs)</b>	<b>Principal outstanding</b>

31437956583	Term loan	35.00	22.64
31460058218	Cash credit	72.00	101.84
Total		107.00	124.48

**Submissions made by the Learned Counsel of the Applicant:**

6. The Applicant submits that the Corporate Debtor had approached the Financial Creditor in the year 2010 for availing credit facilities/loans. After conducting due diligence in accordance with the RBI guidelines and other banking laws, the Financial Creditor sanctioned amounts under Cash Credit & Term Loan facility to the extent of Rs. 81 Crores vide Letter of Arrangement dated 02.11.2010 to the Corporate Debtor. Further, in order to formalize the aforesaid credit facilities, various documents including Agreement of Loan for Overall Limit dated 10.11.2010, were executed.
7. The Financial Creditor filed IA 40 of 2021. for seeking liberty of this Tribunal to amend Part IV to correct the date of default and date of NPA and vide order dt. 04.09.2023, the said prayer was allowed. Consequently, the date of default was amended as 31.12.2012 and date of NPA as 31.03.2013.
8. That the Corporate Debtor failed to maintain financial discipline and defaulted in repayment of principal, interest and other monies on 31.12.2012. Due to continuous default on the part of the Corporate Debtor subsequently, the account of the Corporate Debtor was categorized as NPA in the books of the Financial Creditor on 31.03.2013 in line with applicable RBI guidelines.

9. Since the Corporate Debtor failed to regularize its account and clear its outstanding dues and liabilities, the Financial Creditor issued Notice dated 02.07.2013 under Section 13(2) of the SARFAESI Act, 2002 for recovery of outstanding dues. As the Corporate Debtor failed to respond in any manner to the said Notice, the Financial Creditor was constrained to issue a Legal Notice dated 02.06.2014 calling upon the Respondent to repay total sum of Rs.150,33,96,725/- as on 01.06.2014. The Corporate Debtor has failed to respond to the said Legal Notice.
10. The Corporate Debtor has acknowledged & admitted its liability towards the debt outstanding and payable to the Financial Creditor during the Limitation period multiple times as evidenced by way of Balance Sheet as on 31.03.2016, 31.03.2017 and 31.03.2018.
11. Thereafter, the directors of the Corporate Debtor on behalf of the entire Vindhyavasini Group approached the Financial Creditor with a Compromise Proposal for Rs.250 Crores vide Letter dated 16.05.2019 to settle the loan account of the Corporate Debtor and the other accounts of the Vindhyavasini Group and issued a Cheque of Rs. 25 Crores as upfront payment. The Financial Creditor after completing necessary discussions and deliberations rejected the Compromise Proposal.
12. After exploring all avenues of recovery of its legitimate dues the Financial Creditor was constrained to approach this Tribunal by way of the present Company Petition filed on 06.01.2020.
13. The Corporate Debtor in its Reply to the Company Petition has challenged the maintainability of the Company Petition on the grounds of limitation. The Application is liable to be dismissed since the Financial creditor had declared the account of Corporate Debtor as NPA on 31.03.2013 and the right to file the Insolvency Application against the Corporate Debtor accrued only on and

from 31.12.2012 & expired on 30.12.2015. Hence, the Application has been filed way beyond the expiry of 3 years of limitation and hence barred under Article 137 of the Limitation Act. The Financial Creditor has failed to establish the limitation and prove the cause of action. The Corporate Debtor has relied on two case laws viz., *B. K. Educational Services Pvt. Ltd. vs. Parag Gupta & Associates*, Civil Appeal no. 23988 of 2017 and *Babulal Vardhari Gurjar v. Veer Gurjar Alluminium Industries Pvt. Ltd. & Anr.* Civil Appeal no. 6347 of 2019 wherein it has been settled that the limitation for filing the application under Section 7 of the Code is three years from the date of default.

14. Heard learned Counsel and perused the material available on record.
15. We note from the record that the Corporate Debtor has acknowledged & admitted its liability towards the debt outstanding and payable to the Financial Creditor during the Limitation period multiple times which is evidenced by way of Balance Sheet as on 31.03.2016, 31.03.2017 and 31.03.2018.
16. The Hon'ble Supreme Court in the case of *Dena Bank (now Bank of Baroda) v. C. Shivakumar Reddy and Anr. (Civil Appeal No.1650 of 2020)* held that an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation shall extend the Limitation Period. The relevant portion is reproduced hereunder for convenience: " ...142. To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years... " It was

further held that “*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, ((AIR 1962 Cal 115)) [“Bengal Silk Mills”] and in Re Pandem Tea Co. Ltd., ((AIR 1974 Cal 170)) the judgment of the Delhi High Court in South Asia Industries (P) Ltd. v. General Krishna Shamsheer Jung Bahadur Rana ((ILR (1972) 2 Del 712)) and the judgment of Karnataka High Court in Hegde Golay Ltd. v. State Bank of India ((ILR 1987 Kar 2673)) and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt”.*

17. Since the audited financial statement reflects the debt due of applicant, we are of the considered view that the present application is within limitation.
18. Nonetheless, the Corporate Debtor had approached the Applicant with a proposal for compromise vide Letter dated 16.05.2019 to settle the loan account, such letter also constitutes a valid acknowledgement.
19. It is clearly evident from the records produced before this Tribunal that the financial debt amounting to more than Rs. 1,00,000 (Rupees One Lakh Only) is due & payable by the Corporate Debtor as on the date of filing the present Company Petition. Further, there is admission of default and outstanding liability by the Corporate Debtor in various correspondences annexed to the Company Petition.
20. The essential ingredients required to initiate Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor such as Financial Debt as defined u/s 5(8) & Default as defined u/s 3(12)

of the Code are proved by the Financial Creditor beyond reasonable doubt in the present case.

21. The application made by the Financial Creditors is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. Moreover, the contention of the Corporate Debtor that the present petition is barred by limitation does not stand since the balance sheets and various agreements between the parties produced before us constitute an acknowledgement of the debt. In view thereof, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
22. The Financial Creditor has proposed the name of Mr. Naren Sheth, Registration No. IBBI/IPA-001/IP-P00133/2017-18/10275, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
23. It is, accordingly, hereby ordered as follows: -
  - (a) The petition bearing CP (IB) 445/(MB) 2020 filed by State Bank of India, the Financial Creditor, under section 7 of the IBC for initiating Corporate Insolvency Resolution Process (CIRP) against **Vindhyavasini Corporation Private Limited** [CIN: U74900MH2010PTC204738], the Corporate Debtor, is admitted.
  - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

- (i) 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;
  - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
  - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:-
- (i) 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;
  - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) 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.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mr. Naren Sheth, Registration No. IBBI/IPA-001/IP-P00133/2017-18/10275, having registered address at 1014-1015, Prasad Chamber, Tata Road no.1, Opera House, Charni Road (East), Mumbai – 400004 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs 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). The remuneration of the IRP shall be such as is fixed by the Applicant till constitution of CoC and thereafter the constituted CoC shall decide the remuneration payable to the IRP.

- (i) The Registry is 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.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, 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.

**Sd/-**

**Prabhat Kumar**  
Member (Technical)

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**Sd/-**

**Justice V. G. Bisht (Retd.)**  
Member (Judicial)