

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court – I)
KOLKATA**

C.P.(IB)/739(KB)2020

An application under section 7 of the Insolvency & Bankruptcy Code, 2016.

Indian Bank

....Financial Creditor

Versus

**Machine Works (International) Limited
(CIN: U02720WB1984PLC037812)**

....Corporate Debtor

**Order reserved on: 14.07.2022
Order pronounced on: 27.09.2022**

Coram

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Counsel / Authorized Representative appeared through video conference:

For the Financial Creditor

1. Mr. Om Narayan Rai, Adv.

For the Corporate Debtor

1. Mr. Subhankar Nag, Adv.
2. Mr. Avishek Guha, Adv.
3. Mr. Chitresh Saraogi, Adv.

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ORDER

Per Balraj Joshi, Member (Technical):

1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Abhijeet Singh, Chief Manager, Indian Bank (*'Financial Creditor'*), duly authorized *videresolution* passed by the Board of Directors dated 12 December, 2017¹ for initiation of Corporate Insolvency Resolution Process (*'CIRP'*) against Machine Works (International) Limited (*'Corporate Debtor'*).
3. The present Petition was filed on **17 March, 2020** before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted in the payment of sum of Rs.7,56,86,986.33 (Rupees Seven Crore Fifty Six Lakh Eighty Six Thousand Nine Hundred and Eighty Six and Thirty Three paise only) as on **31 January, 2020** with interest accruing thereon from 01 February, 2020 @13.70% per annum with monthly rests in respect of the dues pertaining to Cash Credit Account @11.90% per annum with monthly rests in respect of the dues pertaining to the Term Loan Account from the Corporate Debtor. The *date of default* is stated to be as on **30 October, 2017**.
4. It is submitted in the Petition, Part – II that the authorized share capital of the Corporate Debtor is Rs.12,00,00,000/- (Rupees Twelve Crore only) with paid up Capital as Rs.11,34,82,000/- (Rupees Eleven Crore Thirty Four Lakh Eighty Two Thousand only).
5. ***Submissions by the Ld. Sr. Counsel appearing on behalf of the Financial Creditor***
 - 5.1 The Corporate Debtor approached the Financial Creditor with a request for financial assistance. Upon due appraisal of the Corporate Debtor's request, the Financial Creditor sanctioned credit facilities on 05 September, 1994 for a Sum of Rupees One Crore Five Lakh. Against the said credit facility, the Corporate

¹Annexure - A of the Petition.

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Debtor also executed security documents. Mr. Jugal Kishore Saraff and Smt. Vandana S Jatia, being the Directors of the Corporate Director, in their individual capacity executed letters of guarantee on 08 October, 1994.

- 5.2 Thereafter, on 18 April, 1995 the Corporate Debtor requested the Financial Creditor to transfer all its cash credit facilities to the international branch of the Financial Creditor. Subsequently, the account of the Corporate Debtor was transferred to the International Branch on 08 June, 1995 together with the loan documents.
- 5.3 Further, Motijug Agencies Limited, a company incorporated under the Companies Act, 2013 submitted an Original Title Deed No.5361 of 1995 dated 28 December, 1995 in favor of the Financial Creditor with an intention to create equitable mortgage in favor of the Financial Creditor. The said company also executed a corporate guarantee on 18 October, 1996 in favor of the Financial Creditor
- 5.4 From the year 1997 to 2013 [*at pages 07 to 26 of the Petition*] the cash credit facilities were reviewed and renewed by the Financial Creditor time to time. Every time the credit facility was renewed; Mr. Jugal Kishore Saraff, Smt. Vandana S Jatia, being the Directors of the Corporate Director in their individual capacity, and Motijug Agencies Limited, executed a fresh letter of guarantee.
- 5.5 On 31 March, 2016, the Corporate Debtor issued letter to the Financial Creditor, wherein they acknowledged the total debt of Rs.7,11,18,426.66/- (Rupees Seven Crore Eleven lakh Eighteen Thousand Four Hundred Twenty Six and Sixty Six Paisa only) as due and payable.
- 5.6 The Corporate Debtor failed to maintain the loan account. The Financial Creditor through written notices dated 18 April, 2017 and 01 July, 2017 reminded the Corporate Debtor to regularize the cash credit account immediately to ensure routing of business transactions. However, the Corporate Debtor and the its guarantor failed to do so, because of which the account of the Corporate Debtor was classified as NPA on 19 February, 2018.

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5.7 In view of such facts, a demand notice under section 13(2) of the SARFAESI Act, 2002 dated 30 March, 2018 was issued to the Corporate Debtor as well as to its guarantors. However, the said notice was withdrawn and a fresh demand notice dated 05 November, 2019 under section 13(2) of the SARFAESI Act, 2002 was issued upon the Corporate Debtor. Thereafter, proceeding was initiated against the Corporate Debtor before the Hon'ble Debt Recovery Tribunal and the same is pending adjudication.

6. *Submissions by the Ld. Counsel appearing on behalf of the Corporate Debtor*

6.1 There are two default amounts mentioned by the Operational Creditor and two corresponding different default dates i.e., Rs.5,99,44,914.41/- (Rupees Five Crore Ninety Nine Lakh Forty Four Thousand Nine Hundred Fourteen and Forty One Paisa only) as on 19 February, 2018 and Rs.7,56,86,986.33/- (Rupees Seven Crore Fifty Six Lakh Eighty Six Thousand Nine Hundred Eighty Six Hundred and Thirty Three Paisa only). Therefore, the application is defective and deserves to be dismissed.

6.2 The Operational Creditor has over the years, from time to time, granted and renewed credit facilities to the Operational Creditor for the purpose of its business as would also be evident from the application. The Corporate Debtor has always diligently abided by the terms and conditions of such facilities and has always been financially prudent in discharge of its repayment obligations in respect of the credit facilities availed by it.

6.3 In order to avail the aforesaid credit facilities, several banking agreements/ security documents among others were executed by and between the parties. [1997 to 2013 [at pages 07 to 26 of the Petition]]. Repayment of cash credit facility was primarily secured by exclusive hypothecation of charge over entire stock and book debts and all other current assets of the Corporate Debtor treating the same as primary security and repayment of term loan was secured by assignment of lease rentals of the properties at 'Motijug House', in the name of the Corporate Debtor. Repayment of the cash credit facility was further collaterally secured by equitable mortgage of the immovable property at Tangra

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in the name of Motijug Agencies Limited, also the corporate guarantor to the Corporate Debtor. The two properties are more particularly described hereunder:.

- i. Land measuring 68 Kottahs and 21 square feet with structures be the same a little more or less being Premises no. 12, Holding no. 6 (present no. 165), Tangra second lane, Division IV and Division I; Dehi, P.S. Entally, Mouza Gobra District- South 24 Parganas belonging to Motijug Agencies Limited.
- ii. ‘Motijug House’, 1 Auckland Place, Kolkata- 700017 belonging to the Corporate Debtor.

- 6.4 Upon request by the Corporate Debtor and upon due appraisal of the request, the credit facilities were renewed on 23 May, 2013. Upon such renewal the Cash Credit Limit remained at Rs.80,00,000/- (Rupees Eighty Lakh only) and Bank Guarantee Limit remained at Rs.10,00,000/- (Rupees Ten Lakh only). The credit facilities upon renewal were secured by the same Primary Securities and Collateral Securities as was there prior to the renewal along with other ancillary documents.
- 6.5 The Corporate Debtor all along duly complied with the terms and conditions and has always acted bona fide in respect of the aforesaid credit facilities. Subsequently, with passage of time, there were defaults in repayment although not attributable to the Corporate Debtor.
- 6.6 The Corporate Debtor received a notice dated 30 March, 2018, under Section 13(2) of the SARFAESI Act, 2002, through which it was informed that the account of the Corporate Debtor had been classified as NPA on 28 February, 2018 and called upon it to repay the outstanding amount with interest
- 6.7 The notice was subsequently withdrawn and fresh notice of demand dated 05 November, 2019 was served upon the Corporate Debtor, again under Section 13(2) of the SARFAESI Act, 2002, stating that the account had turned NPA on

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19 February, 2018 and calling upon the Corporate Debtor and Guarantors of the Corporate Debtor to clear the outstanding amount.

- 6.8 The Financial Creditor, thereafter, proceeded to take symbolic possession of the properties mentioned in above paragraph and issued sale notice in respect of the said property. However, the actions taken were challenged before the Ld. Debts Recovery Tribunal, Kolkata, numbered SA 107 of 2020 by Motijug Agencies Limited, the corporate guarantor to the credit facilities in question in the instant application. The matter is pending adjudication.
- 6.9 On or about the month of March, 2020, an application was filed on behalf of the Financial Creditor under Section 7 of the Code against the Corporate Debtor. Further, in the meanwhile, the Financial Creditor was allowed for the sale of the Property described above by the Ld. Debts Recovery Tribunal, Kolkata. From such sale the Financial Creditor recovered around Rs.6,32,00,000 (Rupees Six Crores Thirty Two Lakhs only) out of the total outstanding claim amount Rs.7,11,18,426.66/- (Rupees Seven Crore Eleven lakh Eighteen Thousand Four Hundred Twenty Six and Sixty Six Paise only) [*annexure D of the Reply*]
- 6.10 Upon sale of the Property and realization of the sale consideration an amount of Rs.1,02,79,179.35 (Rupees One Crore Two Lakh Nineteen Thousand One Hundred and Seventy Nine and Thirty Five Paise Only) remained due as per the notice issued under Section 13(2) SARFAESI Act,2002, dated 04 February, 2021.
- 6.11 In the meanwhile, the Corporate Debtor by a letter dated 01 March, 2021 tendered by way of cheque the balance due amount of Rs. 1,02,20,000/- (Rupees One Crore Two Lakh Twenty Thousand only) drawn in favour of the Authorized officer, Indian Bank in full discharge of the residue amount. The cheque was issued by Mr. Jugal Kishore sararf, one of the directors of the Corporate Debtor also the personal guarantor to the Corporate Debtor [*Annexure F of the Reply*].

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6.12 The supplementary affidavit filed by the Financial Creditor has wrongly claimed that it had only appropriated an amount of Rs 5,79,12,208/- (Rupees Five Crores seventy Nine Thousand Two Hundred and Eight only) out of the total sale proceeds of Rs. 6,32,00,000/- (Rupees six Crores Thirty-Two Lakhs Only) of the sale of the property. such statement by the Financial Creditor is completely false and contrary to the orders passed by the Learned Debts Recovery Tribunal and also to the admission made by the Financial Creditor before the Ld. Debts Recovery Tribunal, Kolkata where the Financial Creditor admitted to the realization of entire sale proceeds and also to the issuance of sale certificate and confirmation as per the provisions of the SARFAESI Act, 2002 on 22 December, 2020. Such fact shall also be evident from the order dated 06 January, 2021 passed in SA 107 of 2020 [*Annexure E of the Reply*].

Analysis & Findings

7. A perusal of the Order dated 18 March, 2021 [*at page 14 of the Reply*] of this Adjudicating Authority, shows the recording that '*the Bank has taken recourse to the power of SARFAESI Act and auctioned some of the properties mortgaged in its favour resulting in the liability being brought down from approximately Rs.7 crore to approximately Rs. 2 Crore.*'
8. Further, as per the Ld. Debt Recovery Tribunal Order dated 06 January, 2021, in S.A. No. 107 of 2020, where it records that '*As per Respondent in this matter nothing survived as SARFAESI proceeding has been disposed of since applicant has been given consent for sale of the property And property was sold and sale consideration was Rs.6.32 Crore and ,entire sale proceeds has been received and sale certificate and confirmation has been issued on 22/12/2020.*' [*at page 33 of the Reply*].
9. Considering the aforesaid fact, it is now clear that the sale was confirmed and the Financial Creditor has released a sum of Rs. 6.32 crores by selling one of the mortgaged properties of the Corporate Debtor. Hence, the amount due and payable would come to *a sum of Rs.1.02 Crore (Approx)* after deducting the sale proceed amount from the default amount as mention in this application.

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10. With respect to the outstanding amount of Rs.1.02 Crore (Approx) it is evident from various communications between the Corporate Debtor and the Financial Creditor that the Personal Guarantor of the Corporate Debtor, who is also one of the Directors of the Corporate Debtor issued the cheque for the said outstanding amount [at page 39 & of the Reply] but the same was returned by the Financial Creditor on the ground that the Corporate Debtor owes a sum of Rs.56,92,29,848.00 (Fifty Six Crores Ninety Two Lacs Twenty Nine Thousands Eight Hundred Forty Eight).
11. However, be that as it may upon examination of the records placed before us, it is unclouded that the default amount is Rs.7,56,86,986.33 (Rupees Seven Crore Fifty Six Lakh Eighty Six Thousand Nine Hundred and Eighty Six and Thirty Three paisa only) out of which an amount of Rs.6,32,00,000 (Rupees Six Crores Thirty Two Lakhs only) has been paid, thus leaving a total outstanding claim amount Rs.7,11,18,426.66/- (Rupees Seven Crore Eleven lakh Eighteen Thousand Four Hundred Twenty Six and Sixty Six Paisa only). The Corporate Debtor also tried to clear the said outstanding dues.
12. The Corporate Debtor on his part also brought out the dichotomy in the dates of default given in various pages in the Petition and stated that the Financial Creditor had erred in miscalculating while gross by including interests accruing after 09.02.2018 which is said to the date of NPA. He also circulated the Master Circular of RBI regarding NPA which says that interests shall not be charged on such loans which had been declared as the NPA.
13. From the hearing proceedings as then as after going through the pleadings it emerges that the Financial Creditor has filed its application only for the recovery of the interests and also that the Corporate Debtor is a going concern and in view of the recent judgment of Hon'ble Supreme Court in *Vidarbha Industries Power Limited v. Axis Bank Limited*², We are not satisfied that the present petition has been filed only for resolving the insolvency, as the Corporate Debtor had even tendered the balance amount, which the Financial Creditor did not accept .

²Civil Appeal No. 4633 Of 2021

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- 14.** In view of the above, ***C.P. (IB)/739(KB)2020*** stands ***dismissed***. However, the Petitioner is at liberty to pursue remedies as may be available to it under any other law.
- 15.** 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.
- 16.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities
- 17.** File be consigned to record.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 27th day of September, 2022

SA, LRA