



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
COURT-I
KOLKATA**

CP (IB) No. 393/KB/2021

In the matter of:

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

State Bank of India

...Financial Creditor

Versus

**Reform Ferro Cast Limited
[CIN: U27101WB2006PLC112036]**

...Corporate Debtor

Order pronounced on: 21 November 2022

Coram:

Shri Rohit Kapoor : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

Appearances (through video conferencing):

For the Financial Creditor : Ms. Manju Bhuteria, Advocate
Mr. Debashish Chakraborti, Advocate

For the Corporate Debtor : Mr. Joy Saha, Senior Advocate
Ms. Urmila Chakraborty, Advocate
Mr. Bimalendu Das, Advocate
Mr. Debashis Karmakar, Advocate
Mr. S. Das, Advocate
Mr. Satyam Ojha, Advocate



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ORDER

Per Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 by State Bank of India, represented by **Shri Abhijit Naskar**, authorized through a Letter of Authority dated 16 November 2021, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Reform Ferro Cast Limited (“Corporate Debtor”).
3. The Corporate Debtor was incorporated on 07 December 2006, having CIN: U27101WB1006PLC112036, under the Companies Act, 1956. It’s registered office is Naupala, Bagnan-II, Howrah, 711303. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 17 December 2021 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.267,66,98,763/- (Rupees Two Hundred and Sixty Seven Crore Sixty Six Lakh Ninety Eight Thousand Seven Hundred and Sixty Three only) as on 31 October 2021.

Submission of Ms. Manju Bhuteria, learned Counsel appearing for the Financial Creditor

5. The learned Counsel submitted that in the year 2008, the Financial Creditor sanctioned credit facilities *vide* sanction letter dated 02 September 2008 being ADV/SNR/10/137 to the extent of Rs.35.01Crore. The credit facilities were enhanced on 14 November 2009 to Rs.45Crore, on 08 April 2011 to Rs.61.85Crore, on 16 January 2012 to Rs.70Crore, on 16 October 2012 to Rs.89.03Crore.



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6. The loan was further restructured and further enhanced to Rs.100.07Crore on 30 December 2013.
7. The Corporate Debtor defaulted in payment of interest and installments in the loan accounts on and from 26 April 2014 due to such default the restructuring failed and the default reverted to its original date of default i.e on 29 March 2011 and as such the date of NPA has been retrogressed to 26 June 2011.
8. Original Application (O.A No. 347 of 2015) was filed before the Debts Recovery Tribunal-I, Kolkata under the Recovery of Debts and Bankruptcy Act, 1993 on 29 June 2015.
9. The claim of the Financial Creditor is not barred by the laws of limitation as the Corporate Debtor has admitted its liabilities and default from time to time in its balance sheet. The last of the restructuring was done on 30 December, 2013. In the balance sheet for the year ended 31 March, 2015¹, 31st March, 2016, 31st March, 2017, 31st March, 2018, 31st March, 2019, the Corporate Debtor has admitted default in repayment of term loan and interest.
10. It has been held by the Hon'ble Supreme Court that acknowledgement in balance sheets constitutes acknowledgement of liability. Reliance is placed on the judgement dated 15th April, 2021 passed in *Asset Reconstruction Company (India) Limited –vs.- Bishal Jaiswal & Anr. (2021 SCC On Line SC 321)*.
11. After the filing of the petition the corporate debtor gave an offer for One Time Settlement on 2nd June, 2022 which has been rejected on 08.06.2022

¹ Balance Sheet annexed in the Supplementary Affidavit



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12. It is evident from the above that the corporate debtor has defaulted in making payments and has admitted its liability and default from time to time. It is submitted that the petition be admitted.
13. The Financial Creditor has placed the following documents on record:
- a. Copy of sanction letters dated 02 September 2008, 14 November 2009, 08 April 2011, 13 January 2012, 16 October 2012, 30 December 2013. [**Annexure 1-E @Pgs. 44-63, Annexure 1-L @Pgs. 202-221, Annexure 1-P @Pgs. 232-253, Annexure 1-U @Pgs. 273-290, Annexure 1-Z @Pgs. 308-324 , Annexure 2-G @Pgs. 362-380 respectively of the Company Petition**]
 - b. A copy CIBIL Report. [**Annexure 2-S @ Pgs. 648-649 of the Company Petition**]
 - c. A copy of the loan agreement dated 11 September 2008, 17 November 2009, 12 April 2011, 16 January 2012, 25 October 2012, 31 December 2012. [**Annexure 1-G @Pgs. 67-123, Annexure 1-N @Pgs. 226-229, Annexure 1-R @Pgs. 259-263, Annexure 1-W @Pgs. 294-298, Annexure 2-B @Pgs. 330-334, Annexure 2-I @Pgs. 383-428 respectively of the Company Petition**]
 - d. A copy of the demand notice dated 21 April 2015. [**Annexure 2-M @ Pgs. 493-506 of the Company Petition**]
14. The Financial Creditor has proposed the name of Mr. Arun Kumar Gupta, registration number IBBI/IPA-001/IP-P00013/2016-2017/10037, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.



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Submission of Mr. Joy Saha, learned Senior Counsel appearing for the Corporate Debtor

15. The learned Senior Counsel appearing on behalf of the Corporate Debtor submitted that the date of default is questionable as the account of the Corporate Debtor has been classified as NPA on 26 June 2011 whereas the Company Petition has been filed on 30 November 2021, hence, the Company Petition is barred by limitation.
16. The date of default was not specifically mentioned in the Form and the Financial Creditor filed a supplementary affidavit to amend the petition which was allowed *vide* order dated 11 February 2022.
17. The deponent who has signed the Company Petition does not have proper authorization, a letter of authority dated 16 November 2021 has been annexed to the petition authorizing Mr. Abhijit Naskar but no Board Resolution has been annexed in support of the letter of authority.
18. Further a supplementary affidavit has been filed by Mr. H.K. Prince Karimi, without any proper authorization.
19. It is further submitted that the balance sheet for the year ended 31 March 2019 of the Corporate Debtor would not acknowledge debt.
20. It is further contented that the Financial Creditor did not sanction the loans on time and there was inordinate delay on the part of the Financial Creditor which led to the loss in business of the Corporate Debtor and caused the Corporate Debtor to become sick and irreversibly damaged the Corporate Debtor.



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Analysis and Findings

21. Heard the learned Counsel appearing for the Financial Creditor and the learned Senior Counsel appearing for the Corporate Debtor and perused the record.
22. The first defence raised by the Corporate Debtor is that there is not proper authorization given to the persons signing the Company Petition and the Supplementary Affidavit.
23. We find from the record that the Petition is supported by a letter of authority given by the Assistant General Manager on 16 November 2021 which authorizes Mr. Abhijit Naskar to specifically file any documents with respect to the Corporate Debtor on behalf of the Financial Creditor and the supplementary affidavit is supported by a letter of authority given by the Deputy General Manager dated 23 April 2022 which authorizes Mr. H.K. Prince Karimi, to specifically file any documents with respect to the Corporate Debtor on behalf of the Financial Creditor which is valid on the basis of the Gazette Notification dated 02 May 1987 which has been filed along with the Supplementary Affidavit and the authority for filing applications for initiations of Corporate Insolvency Resolution Process before National Company Law Tribunal dated 16 June 2017².
24. There is no doubt that the loan was sanctioned and restructured on several dates. The last date of restructuring being 30 December 2013. The main defence raised by the Corporate Debtor is that the Company Petition is barred by limitation. The Corporate Debtor submits that the loan was last restructured in 2013 and the Company Petition was filed on 17 December 2021.
25. It is a matter of record that the Financial Creditor has filed the Balance Sheet for the financial year ending 31 March 2015, 31 March 2016, 31

² Annexure B at Pp. 387 to 403 of the Supplementary Affidavit.



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March 2017 and 31 March 2018, wherein it has been stated that the Company has defaulted in repayment of dues to financial institutions and banks. It is a settled proposition and has been held by the Hon'ble Supreme Court in Laxmi Pat Surana vs. Union Bank of India and Ors. (26.03.2021 - SC) : MANU/SC/0221/2021, that

“Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process Under Section 7 of the Code enures.”

26. Hence, the Company Petition is filed within limitation as the period of limitation is extended each time the Corporate Debtor has acknowledged its debt in the balance sheet.
27. The other plea raised by the Corporate Debtor with respect to the delay in disbursement of loan which led to loss in does not hold water and are vague and is thereby rejected.
28. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes 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. 393/KB/2021** filed 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 **Reform Ferro Cast Limited**, the Corporate Debtor, is **admitted**.



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- 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. Arun Kumar Gupta**, registration number IBBI/IPA-001/IP-P00013/2016-2017/10037, 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 his 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 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



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- 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. He 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.
- 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, email and WhatsApp 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.



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30. **CP (IB) No. 393/KB/2021** to come up on **22 December 2022** for filing the periodical report.
31. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

This order is pronounced on the 21st day of November 2022.