

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

C.P. (IB) No. 980/KB/2018  
C.A. (IB) No.1093/KB/2018

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016;

- And -

In the matter of:

Union Bank of India, a body corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its Head Office at 239, Vidhan Bhawan Marg, Mumbai-400 021 and carrying on business through its different branches including its branch office at Overseas Branch, 9, India Exchange Place, Police Station - Hare Street, Kolkata-700 001, West Bengal and Assets Recovery Branch, 15, India Exchange Place, Kolkata-700 001.

... .. Petitioner/Financial Creditor

- Versus -

In the matter of:

M/s. P K S Limited, a company constituted under the Companies Act, 1956 having its registered officer at 7, Camac Street, Azimgunj House, 4<sup>th</sup> Floor, Kolkata-700 017, West Bengal.


... .. Respondent/Corporate Debtor

- Coram: 1. Shri Madan B. Gosavi, Hon'ble Member (Judicial)  
2. Shri Virendra Kumar Gupta, Hon'ble Member (Technical)

Counsels on record:

- |                                    |   |                                     |
|------------------------------------|---|-------------------------------------|
| 1. Mr. Jay Saha, Ld. Sr. Counsel   | } |                                     |
| 2. Mr. Ramesh Ch. Prusti, Advocate | } | For Petitioner / Financial Creditor |
| 2. Ms. Mahuya Ghosh, Advocate      | } |                                     |





1. Mr. Rupak Ghosh, Advocate }  
2. Mr. Ayan Dutta, Advocate } For Respondent / Corporate Debtor  
3. Mr. Abhijit Sarkar, Advocate }

Date of Pronouncement of Order: 08/08/2019

ORDER

Per Shri V.K. Gupta, Member (T)

1. This application being C.A. (IB) No. 1093/KB/2018 has been filed by the petitioner under Section 7 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") in relation to the aforesaid C.P. No. 980/KB/2018.
2. The Ld. Counsel, appearing on behalf of the Financial Creditor, referred to paragraph 4 at page 6 of the Paper Book to point out that the total amount claimed to be in default stands at Rs. 315,42,05,323.09 and the date of default was 30<sup>th</sup> June 2010 when account was declared non-performing asset. The Ld. Counsel thereafter took us through various pages of Paper Book and submitted at chronological events relating to the sanction of loan at points of time starting from 25<sup>th</sup> January 1995 till recall of the loan. The Ld counsel also referred to pages 23 and 263 showing the recalled demand notice sent to Corporate Debtor for repayment of outstanding dues on 8.12.2010 and 23.12.2010 respectively. The Ld. Counsel thereafter referred to page 265 to draw our attention to application filed on 10.08.2011 under section 19 of the Recovery of Debts due to Banks & Financial Institutions Act, 1993. The Ld. Counsel also referred to page 271, clause IV to contend that the said application had been made well within the limitation period prescribed under clause 24 of Recovery of Debts due to Banks & Financial Institutions Act, 1993. The Ld. Counsel thereafter submitted that these proceedings became infructuous in view of promulgation of Insolvency & Bankruptcy Code ("IBC") w.e.f. 1<sup>st</sup> December, 2016.
3. The Ld. Counsel referred to page 26 of Company Petition that it was a case of continuous cause of action and company petition had been filed with NCLT on 20.07.2018.

4. The Ld. Counsel further submitted that Mr. Pinaki Sirkar, being eligible to act as IRP, was proposed to be appointed as Interim Resolution Professional ("IRP") as per applicable regulations and he had given his consent to act as such. It was further submitted that Mr. Pinaki Sirkar had no disciplinary proceedings pending against him.
5. The Ld. Counsel for the corporate debtor, on the other hand, took us through his reply affidavit as well as various pages of company petition and rejoinder filed by the financial creditor. The main contention / point of law canvassed was that debt was not payable due to same being barred by limitation. To substantiate his such claim, it was submitted that the date has become NPA in 2010 and present petition under section 7 was filed in 2018, hence barred by limitation. In this regard he also placed reliance on the decision of the Hon'ble Supreme Court in the case of B.K. Educational Services Private Limited reported on 11.10.2018. On being pointed out that the financial creditor had filed Original Application ("OA") before the DRT on 10.8.2011 and thereafter limitation regarding legal right to claim the recovery is stopped there and it was a case of continuous cause of action as held in several judicial decisions, how his proposition that the present claim was barred by limitation was tenable in law? The Ld. Counsel reiterated his view without bringing judicial precedents / statutory provisions to our notice to substantiate his claims.
6. The Ld. Counsel also referred to the CA No. 1093/KB/2018 filed by him in relation to the said C.P. and submitted the facts relating to the granting of loan till filing of the present petition under section 7 of IBC, 2016. The Ld. Counsel made various submissions regarding how the financial creditor had not acted in reasonable manner and had charged arbitrary interest. The Ld. Counsel also submitted that the financial creditor approached various Forums to realise debt parallelly and suppressed various facts, hence the petition of the financial creditor was liable to be dismissed.
7. The Ld. Counsel submitted that the corporate debtor, in the rejoinder, had admitted that the corporate debtor enjoyed and utilised various credit facilities but failed to repay the loan; hence, the financial creditor took the appropriate actions as per law and such actions cannot be considered as harassment or undue exercise of its rights. The Ld.

Counsel further submitted that the allegations made by corporate debtor were without any basis and were made merely to distract from main issue of non-repayment of loan taken from the financial creditor. It was also reiterated that the application filed by corporate debtor was without merits and had no force of law and consequently, the same was liable to be dismissed.

8. We have heard both the parties and perused the records in the matter.
9. In the present case, it is not in dispute that the amount payable by corporate debtor is more than the threshold limit of amount due and payable provided under IBC 2016 for triggering the code. It is also not in dispute that the petition is in compliance with all requirements of relevant rules and regulations under IBC as well as NCLT Rules.
10. The financial creditor had granted loans to the corporate debtor under various facilities from time to time through financial contracts entered between them, starting from 25<sup>th</sup> January, 1995 till 30<sup>th</sup> February, 2009. It is further noted that corporate debtor defaulted in repaying the outstanding dues leading to classification of accounts as NPA on 30.06.2010. The financial creditor thereafter filed recovery proceeding against the corporate debtor with DRT under section 19 of the Recovery of Debts due to Banks & Financial Institutions Act, 1993, on 10/8/2011. In our considered opinion, period of limitation stopped running against the financial creditor as it filed proceeding of recovery against corporate debtor within 3 years from right to sue accrued to it under Article 137 of Law of Limitation. Accordingly, we hold that the claim of financial creditor is not barred by limitation and there is a debt payable by corporate debtor in law. We also consider it pertinent to point out that our view is in accordance with the ratio of decision of the Hon'ble Supreme Court in the case of B.K. Educational Services Private Limited and the provisions of section 238A of the IBC 2016.
11. For the reasons aforesaid, we are of the view that present petition is fit and proper for admission under Section 7 of the Insolvency & Bankruptcy Code, 2016 and C.A. No. 1093/KB/2018 stands dismissed and order accordingly on the following terms & conditions:-


## ORDER

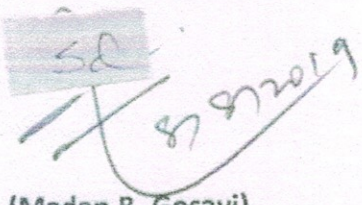
- i) The application filed by the Financial Creditor under section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, M/s P K S Ltd., is hereby admitted.
- ii) We declare a moratorium and cause public announcement in accordance 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.
- 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.
- ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x) MR. PINAKI SIRCAR, IP Registration No. IBBI/IPA-002/IP-N00063/2016-2017/10141, residing at 31/7, N. C. Chowdhury Road, Kolkata-700 042, 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 sum of Rs. 3,00,000/- (Rupees Three Lakh Only) to IRP as advance fees as per Regulation 33(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.

- 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) List the matter on 23/09/2019 for the filing of the progress report.
- 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.

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 (Technical)

  
(Madan B. Gosavi)  
Member (Judicial)

Signed on this, the 8<sup>th</sup> day of August, 2019.

cb