

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT- 5, MUMBAI BENCH**

C.P. No. 4658/MB/I&B/2019

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r. w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

State Bank of India,
State Bank Bhavan, Madame Cama Road,
Nariman Point, Mumbai, Maharashtra-
400021.

....Petitioner/ Financial Creditor

v/s.

Vijay Trading Company Private Limited,
Flat No. 101, OG- III, Oberoi Garden, Thakur
Village Off Western Express Highway,
Kandivali- (E), Mumbai - 400101.

....Corporate Debtor

I.A. 22 of 2021

State Bank of India

....Applicant

Vijay Trading Company Private Limited

....Respondent

Order pronounced on: **28.03.2022**

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Petitioner : Mr. Rohit Gupta a/w. Mr. Abdullah Qureshi, Advocates

For the Corporate Debtor/ Respondent: Ms. Vandana Mishra, Advocate

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. The Petitioner/Applicant viz. 'State Bank of India' (hereinafter as Financial Creditor) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against 'Vijay Trading Company Private Limited' (hereinafter as 'Corporate Debtor').
2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be Rs. 66.16 crores. The date of default is stated to be 30.04.2013. The date of NPA is as follows;

Part- IV

PARTICULARS OF FINANCIAL DEBT						
1	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT*					
Principal Dues of Rs.24.79 crores (Rupees Twenty Four Crores and Seventy Nine Lakhs Only) as on 31.10.2019.						
	Account No.	Facility	Limit (in Crs)	Principal outstanding		
	32911373175	Cash Credit	25.00	24.79		
	TOTAL		25.00	24.79		
2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)					
Total Outstanding-Rs.66.16 crores (Rupees Sixty Six Crores and Sixteen Lakhs Only) as on 07.11.2019						
	Account No.	Facility	Principal outstanding	Interest	Other charges (Penal interest @ (IR))	Total Outstanding
	32911373175	CC	24.79	38.22	0.01+3.14	66.16
	TOTAL		24.79	38.22	3.15	66.16
Date of NPA- 28.07.2013						
Date of Default -30.04.2013						

3. The Corporate Debtor has approached the Petitioner and requested to grant Financial Facilities. Subsequently, the Petitioner had entered into an Agreement of Loan – cum- Hypothecation dated 28th March, 2013 and Letter of Arrangement dated 28th March, 2013.
4. The listed documents annexed by the Petitioner are as follows:
 - i. A copy of the letter of Confirmation for creation of Mortgage dated 30th March, 2013
 - ii. A copy of the Memorandum of Recording creation of mortgage by deposit of title deeds dated 28th March, 2013.
 - iii. A copy of certificate of Registration of charge issued by Registrar of Companies (RoC) along with the relevant forms for creation of charge before the ROC.
 - iv. A copies of valuation reports of the properties
 - v. A copy of the letter of arrangement dated 28th March, 2013

- vi. A copy of the loan – cum- Hypothecation dated 258th march, 2013.
 - vii. A copy of the legal notice dated 20th May, 2014
 - viii. A copy of Notice under Section 13(2) of SARFAESI Act, 2002 dated 28th July, 2013
 - ix. Certificate issued under Bankers Books of Evidence Act.
5. The Petitioner had further issued a Legal Notice dated 20th May 2014 recalling the outstanding dues payable by the Corporate Debtor Further, an Original Application filed before the Debt Recovery Tribunal, Mumbai against the Corporate Debtor and an interim order dated 09.05.2016 passed by the DRT-III.

Reply of the Corporate Debtor

6. The Corporate Debtor contended that the Petitioner has filed the application to condone the delay of 1450 days as an abundant caution, however, has not explained the sufficient cause for delay in filing the present application. The debt default occurred on 31.12.2012 and according the period of limitation end on 30.12.2015.
7. The counsel for the Petitioner chose to rely on the judgment of the Hon'ble Supreme Court in B. K. Educational Services Pvt. Ltd. Vs. Parag Gupta & Associates, wherein it was held that the limitation period for the application will be governed by Article 137 of the Limitation Act and no other Article of Limitation act can be applied.
8. The counsel also relied upon the judgement of the Hon'ble Supreme Court in Babulal Vardhari Gurjar Vs. Veer Gurjar Alluminium Industries Pvt. Ltd., which held that the Section 7 application shall be filed within three years from the date of default.

I.A. 22 of 2021

9. The present application was filed seeking condonation of delay of 1450 days in filing the present Company Petition. The counsel has also

enclosed the order of DRT Mumbai dated 08.01.2015, the order under Section 14 of Securitisation Act passed by District Magistrate, Palghar. Further, the applicant has also enclosed the OTS proposal dated 16.05.2019 proposed by the Vindyaivasini Group of Companies which includes the debts of the Corporate Debtor.

Finding

10. On going through the submissions made by the Learned Counsel for the Petitioner and the Corporate Debtor and perusing the documents produced on record, it is established beyond doubt the Petitioner had granted loan under Agreement of Loan cum hypothecation/ letter of arrangement dated 28.03.2013. A letter of confirmation was issued for creation of mortgage on 30.03.2013. Thereafter, the memorandum recording creation of mortgage, by deposit of title deeds, dated 28.03.2013 was issued. The said amounts become due and payable as on the date of default on 30.04.2013 and the date of NPA was 28.07.2013. The statement of account enclosed further evidenced the disbursement of monies to the Corporate Debtor and the outstanding liability. The Petitioner bank had issued a recall notice on 28.05.2014. They also issued notice under Securitisation Act on 28.07.2013. The Corporate Debtor filed the reply and pointed out that there is a delay of 1450 days in filing the petition and that the petition is barred by limitation.

11. This Bench notes that the Vindhyavasini Group of Companies on 16.05.2019 had initiated a compromise proposal of Rs. 250 crores for settlement of loan accounts of several group companies which includes the loan of the present Corporate Debtor. The proposal of settlement with regard to the Corporate Debtor is reproduced below:

VINDHYAVASINI GROUP OF COMPANIES

C-Solaris-11th floor, Opp L&T Gate no-6, Saki Vihar Road, Andheri (East) Mumbai-400 072

Vijay Trading Company

❖ Corporate Guarantee:-
M/s. Vindhyavasini Corporation Pvt Ltd
Additional Personal Guarantee of Directors

- PLANT & MACHINERY:-
- LAND & BUILDING:-

- 1) Hypothecation charge on entire stock of raw materials, stocks-in-process, finished goods, receivables stores & spares and all other current assets, present and future of the Firm
- 2) EM of industrial NA land admsg 26804.11 sq mts bearing plot No 1,2,3,4,5, under survey No 23/1/A situated at on Mumbai Ahmedabad Road at Village Talasari, District Wada

- 1) For the Payment of 250 Crores (Rupees Two Hundred Fifty Crores Only) Rajput Retail Limited (Shreem Corporation Limited), Vindhyavasini Corporation Pvt Ltd, Vindhyavasini Ispat Industries Pvt Ltd, Vindhyavasini Steel Corporation Pvt Ltd, Vindhyavasini Steel Products Pvt Ltd, Vijay Trading Company, Vindhyavasini Toll Infrastructure Pvt Ltd, Vindhyavasini Buildcon Pvt Ltd. will sale the Properties and Repay outstanding of OTS amount from the Proceed of sale and/or Find the Prospective Investors/Bussiness Partner to contribute towards Outstanding OTS Amount and/or avail Bank loan from other banks by providing security of above list of assets and therefore in this regard, we request you to issue NOC/required documents subject to the realization of 250 Crores (Rupees Two Hundred Fifty Crores Only)

- 2) We Request your bank to release assets of guarantor and Corporate / Personal Guarantee of Directors

- 3) The above offer is inclusive of legal charges/ court fee, advocate fee/ valuer fee/Publication charges and other applicable charges if any.

C-101, Oberoi Garden Bldg, Opp Bank Of Maharashtra, Thakur Village, Kandivali (East) Mumbai-400101



12. In view of settlement proposal of the Corporate Debtor, by its group companies dated 16.05.2019, the limitation stands extended in view of the acknowledgement in writing under Section 18 of the Limitation Act. Section 18 of the Limitation Act, 1963 is reproduced below;

“8. Effect of acknowledgment in writing.—

(1) Where, before the expiration of the prescribed period for a suit of 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.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”

13. This Bench, therefore concludes that the I.A No. 22 of 2021 which seeks condonation of delay of 1450 days is disposed of and that there is a clear acknowledgement of debt, which extends the limitation period from 16.05.2019 and therefore the contention that the Petition is barred by limitation is untenable. In view of the aforesaid, the petition is admitted.
14. Considering the above facts, we come to conclusion that the nature of Debt is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of ‘debt’ and ‘default’, for admission of a petition under section 7 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation.
15. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Corporate

Debtor and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves 'Admission'.

16. Further that, we have also perused the Form – 2 i.e., written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.
17. The Petitioner has proposed the name of Insolvency Professional. The IRP proposed by the Petitioner, Mr. Naren Sheth, having registration IBI/IPA-001/IP-P00133/2017-18/10275, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
18. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
19. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
20. That the Interim Resolution Professional shall perform the duties as assigned under Section 15 and Section 18 of the Code and inform the progress of the Resolution Process and the compliance of the directions

of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

21. In view of the above, the Bench "**Allows**" the Company Petition No. 4658 of 2019 u/s.7 initiating CIRP against the Corporate Debtor i.e. Atharva Auto Logistics Private Limited. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
22. Ordered Accordingly.

Sd/-
Anuradha Sanjay Bhatia
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)