

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 78/KB/2023

***An application under Section 7 of the Insolvency and
Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and
Bankruptcy (Application to Adjudicating Authority) Rules, 2016.***

IN THE MATTER OF:

Indian Bank

... Financial Creditor/ Applicant.

Verses

P.C. Dey and Son Distributors Private Limited

[CIN: U51909WB2011PTC157451]

... Corporate Debtor/ Respondent.

Date of Pronouncement: January 12, 2024.

Coram:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearance:

For the Financial Creditor: Mr. Binay Kumar Upadhyay, Adv.

R. C. Prusti, Adv.

For Corporate Debtor: Debasish Karmakar, Adv.

ORDER

Per D. Arvind, Member (Technical)

1. This Court is congregated through hybrid mode.
2. Heard. Ld. Counsel for the parties.
3. This is an application preferred under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity "IBC") by **Indian Bank** (hereinafter referred as "Applicant"/ Financial Creditor") to

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initiate Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") of **P. C. Dey & Son Distributors Pvt. Ltd.** (hereinafter referred as "Respondent"/ "Corporate Debtor").

Brief facts in a nutshell:

4. As per Part IV of the application filed, in the prescribed form the Financial Creditor has sanctioned certain credit facilities aggregating to Rs. 21 crores on 30.01.2017 to the Corporate Debtor. The same was reviewed and enhanced to an aggregate limit of Rs. 21,85,24,000/- from time to time. Further, the Financial Creditor sanctioned a car loan of Rs. 23,30,000/- on 07.08.2017. The sanction letter of Financial Creditor dated 31.01.2017 for Rs. 21 crores along with relevant documents is in Annexure "C-7" to the application.
5. The Financial Creditor issued notice to Corporate Debtor on 27.11.2019 to review the credit facilities after noticing irregularities in payment which is in Annexure "C-8" to the application.
6. On 07.12.2019, the Financial Creditor issued another notice to the Corporate Debtor to regularize the credit facilities which was overdue amount for the month of October, 2019 and November, 2019 which is in Annexure "C-9" and "C-10" of the application.
7. The Financial Creditor restructured the credit facilities on 18.01.2020 and the restructuring sanction letter was issued on 28.01.2020 which is in Annexure "D" and "D-1" to the application.
8. The Financial Creditor, based on application made by the Corporate Debtor also sanctioned a car loan of Rs. 23,30,000/- on 07.08.2017.

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- 9.** In terms of above sanction letters disbursement were made and the statement of account maintained by the Financial Creditor has been filed to demonstrate such disbursements.
- 10.** Since, the Corporate Debtor started defaulting on the payments in terms of agreement executed between Financial Creditor and the Corporate Debtor, a notice under Section 13(2) on SARFAESI Act, 2002 was issued on 13.09.2022 and the matter is pending before the DRT-1 Kolkata by way of an application made under Section 19 of Recovery of Debts and Bankruptcy Act, 1993.
- 11.** This application has been filed claiming defaulted amount of Rs. 30,43,11,409/- which includes accrued interest up to 31.01.2023.
- 12.** The date of initial default of the loan account was on 01.10.2019 and said loan account was classified as NPA with effect from 28.01.2020 as per the RBI guidelines.
- 13.** Thus, the defaulted amount claimed is Rs. 30,43,11,409/- as on the date of default (i.e.) 28.01.2020 which is date of declaration the account as NPA.

Applicant's submissions:

- 14.** The Ld. Counsel for the applicant has submitted that in terms of sanction letter and the agreements made pursuant to the sanction letter, the Financial Creditor has disbursed as Rs. 21,85,24,000/- and by way of a separate sanction for car loan another Rs. 23,30,000/- was also disbursed.
- 15.** The Ld. Counsel for the applicant has placed reliance on the statement of account attached to the supplementary affidavit filed to demonstrate the disbursements made.

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- 16.** It is submitted that the date of initial default of the loan was on 01.10.2019 and the said loan was classified as NPA with effect from 28.01.2020 as per RBI guidelines.
- 17.** The Ld. Counsel for the applicant also took us to the record of default filed with the National E-Governance Services Limited wherein it has been shown as Rs. 12,6373,497 as the defaulted amount and date of default as on 01.10.2020.
- 18.** The Ld. Counsel for the applicant relied on the confirmation of due and non-payment of interest for the month of October, November and December 2019 by Corporate Debtor vide its letter dated 21.01.2020 and admission of their liabilities from time to time, thereafter.
- 19.** It is further submitted that the application filed in the year 2023 is within the time limit prescribed under IBC. He thereafter contended that the application may be allowed & CIRP of the Corporate Debtor is commenced.

Respondent's submissions per contra:

- 20.** The Ld. counsel for the Respondent has claimed that the application is barred by limitation as date of default was mentioned as 01.10.2019 and date of declaration of the account of Corporate Debtor as NPA as 28/01/2020. Thereafter the application is time barred after 30th September 2022, where as application has been made in March 2023.
- 21.** The Ld. counsel for the Respondent has further claimed that deponent of the application Mr. Ajit Kunal Jha does not have authorisation to sign or affirm the application. To show his purported authorisation, only a purported part of attorney dated

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31st January 2014 has been furnished. The said POA was issued by Allahabad Bank whereas after the merger of Allahabad Bank with Indian Bank, the former has lost its juristic status thereafter such POA has no legal sanction.

- 22.** It is further claimed that by reason of inaccurate delay on the part of the applicant bank in disbursement of credit facilities and to sanction of only part amount which is less than the capital need of the respondent, the Corporate Debtor had to suffer business loss, Hardship in carrying as its business.
- 23.** It is submitted that the Corporate Debtor had also requested the applicant to permit it to sell properties and to adjust the sale proceeds towards repayment of the alleged debt of the applicant bank. Here the applicant turned down the request to initiate these proceedings which is against guidelines of RBI. As per RBI guidelines, Bonus were obliged to seek reduction of such respondents by restructuring the account in IBC.
- 24.** It is further asserted that the Respondent is a going concern & running well. The application is merely a recovery proceeding and not for resolution of the Corporate Debtor. Thereafter he submits that this Adjudicating Authority may use its discretion under Section 7 of IBC and dismiss the application.

Counter submissions made by the Applicant:

- 25.** The Learned Counsel submits that Mr. Ajit Kumar Jha duly authorised and competent to sign, prosecute, purse, and do all other necessary and incidental acts the present application. He relied on POA executed in favour of the said person.

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- 26.** The Learned Counsel also relies on various documents executed between the Financial Creditor and Corporate Debtor to demonstrate the disbursement acknowledgement of the debt including letter of Corporate Debtor dated 21.01.2020 (Page no. 125 of the application).
- 27.** The Learned Counsel further relies on Demand Promissory note of Rs. 24 Crore dated 28.01.2020 executed in favour the Financial Creditor.
- 28.** The Learned Counsel submits that the application is not barred by limitation if the Supreme Court Suo Motu Order passed by the Hon'ble Apex Court in WPO 3 of 2020 dated March 08, 2021. declared pursuant to covid pandemic is taken into consideration.

Analysis and Findings:

- 29.** We find that date of declaration of account of the Corporate Debtor as NPA is 28.01.2020 and consequently, the three-year period expires on 27.01.2023 for the purpose of applying the limitation Act, whereas this application has been filed on 02.03.2023.
- 30.** By virtue of the Hon'ble Apex Court order in Writ No 3 of 2020, the period from 15.03.2020 to 28.02.2022 stands excluded from the period from 28.01.2020 to 02.03.2023 (filing date). **The relevant portion of the order is reproduced here under:**

“2. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

(Emphasis Added)

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- 31.** However, by the virtue of Order passed by the Hon'ble Apex Court in Suo Motu Writ Petition (C) No. 3 of 2020, the period from 15.03.2020 - 28.02.2022 of almost two years stands excluded and a further period of 90 days from 01.03.2022 which takes us to 29.05.2022.
- 32.** In the instant case, limitation period expired on 27.01.2023, whereas the applicant has filed the application only as 02.03.2023. Therefore, the benefit of the Hon'ble Supreme Court order mentioned above will not come to the rescue of the applicant from the time bar perspective.
- 33.** While, we find that Mr. Ajit Kumar Jha is indeed authorized by the bank and the pleas taken by the Respondent will be futile in this regard, the Application is still not maintainable as it is time barred.
- 34.** The Applicant is not able to furnish any other document such as letter of acknowledgement of debt post 2nd March 2020 or an acknowledgement of debt in the Balance Sheet of the Corporate Debtor for the financial year 2020-21 to pass the test of limitation. (Time bar).
- 35.** Therefore, we have no alternative but to **dismiss** the application as time barred for the purpose of this application filed under Section 7 of IBC.
- 36.** Liberty is however granted to the Petitioner to seek other remedies as may be available to it under any other law.
- 37. The Registry** is hereby directed to communicate this Order to the Parties by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.

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- 38.** Further, the **Registry** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), West Bengal, Kolkata by all available means.
- 39.** A certified copy of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties, subject to compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This order is signed on the 12th January, 2024.

Tiwari, V. [LRA]/ Bose, R. K. [LRA]/ AR_Steno