

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

CP (IB) 4058/MB/2019

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

State Bank of India

..... Applicant/ Financial Creditor

Versus

Bil Energy Systems Limited

..... Corporate Debtor

Order Delivered on :- 09.12.2022

Coram:

Justice P.N Deshmukh : Hon'ble Member (Judicial)

Mr. Shyam Babu Gautam : Hon'ble Member (Technical)

Appearances:

For the Financial Creditor : Mr. Rohit Gupta

For the Corporate Debtor : Mr. Prashant Pandit

ORDER

Per:- CORAM

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Bil Energy Systems Limited, (“the Respondent”) alleging default in payment of a Financial Debt.

The Submissions of the Financial Creditor are as follows: -

2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of outstanding financial Debt of Rs. 1,67,27,51,707.86/- (Rupees One Hundred Sixty-Seven Crores Twenty-Seven Lakhs Fifty-One Thousand Seven Hundred Seven and paise Eighty-Six Only) as on 31.10.2019. The date of default is on 01.10.2012 and the date of Non-Performing Asset was on 30.12.2012.
3. The Corporate Debtor had approached the Financial Creditor in the year 2011 for Financial Assistance. The Financial Creditor vide its Sanction Letter dated 18.11.2011 sanctioned Credit Facilities in the form of Fund Based Working capital facility (term loan and cash credit) and Non-Fund based facility. In order to formalize the said Credit facilities, the Financial Creditor had executed an Agreement of Loan for overall limit dated 08.03.2011, Memorandum of Deposit for creation of charge for term loan/overall limit dated 14.06.2011, Agreement of hypothecation of goods and assets dated 08.03.2011, letter regarding grant of individual limits within the overall limits

dated 08.03.2011, Deed of Guarantee dated 08.03.2011 were executed by the directors of the Corporate Debtor with the Financial Creditor.

4. The directors of the Corporate Debtor duly acknowledged the debt vide letter dated 31.03.2011. Further, the said facilities were renewed and enhanced vide Sanction letter dated 29.08.2011. Pursuant to which various security documents were also executed to secure the said facilities, Supplemental Agreement of loan for increase in overall limit dated 31.08.2011, Supplemental Agreement of hypothecation of goods and assets for increase in the overall limit dated 31.08.2011 and letter regarding grant of individual limits within the overall limits dated 31.08.2011, Supplementary Deed of Guarantee dated 31.08.2011, and Memorandum of Deposit for creation of charge for term loan/overall limit dated 02.09.2011. The facilities were also further renewed vide Sanction letter dated 29.09.2012. The security documents were also executed.
5. As the operations of the said facilities were not satisfactory and as the Corporate Debtor breached the terms and conditions of the sanction, the account of the Corporate Debtor was classified as Non-Performing Asset (NPA) on 30.12.2012.
6. Further, as there was failure on part of the Corporate Debtor to pay instalment on time, the Financial Creditor issued Demand Notice dated 30.01.2014 u/s 13(2) of the SARFEASI Act, 2002 for recovery of the outstanding loan amount.
7. Hence, the petitioner submits that the petition is complete in all respects, the default has been corroborated by enough substantial evidences, therefore, the petition ought to be admitted and the

Corporate Debtor's Corporate Insolvency Resolution process be initiated.

8. The Corporate Debtor filed its Reply dated 07.12.2020 in their defence. The Corporate Debtor has raised the issue of Limitation and states that the Petition is barred by Limitation. The cause of action arose on 04.07.2014 when the Applicant issued a demand recall notice and called upon to repay the entire dues under the facilities. The Applicant ought to have filed the present petition within 3 years of the date of cause of action. It is a settled law that limitation had already started on the date of Demand Recall Notice. The Insolvency and Bankruptcy Code, 2016 is in operation from 2016. Thus, the Applicant failed to prefer the present Petition within limitation of 3 years from the date of cause of action and thus the Petition is barred by limitation.
9. Further, at the time of the arguments, the Respondent Company pointed out that there are no pleadings as to Balance Sheet of the Company in the entire Petition. Further, there is no Balance sheet available on the record prior to three years before the date of filing of the Company Petition which reflects that the Petition as filed in 2019 is within the limitation of 3 years as the only balance sheet available on record is that of 2014-2015 and subsequently filed the Balance Sheets of 2020-2021 and 2021-2022 in order to take advantage of the Hon'ble Supreme Court on the point of limitation.
10. Hence, the Corporate Debtor in view of the Petition being hopelessly barred by Limitation, hereby prays to dismiss the present petition.

FINDINGS

11. We have heard the submissions of the Counsel appearing for the Financial Creditor and Counsel appearing for the Corporate Debtor.
12. It is observed that main issue that falls for consideration is whether the Petition under Section 7 is maintainable on the ground of Limitation. It is seen from the records that the cause of action arose on 04.07.2014 wherein the Financial Creditor issued a demand recall notice and called upon the Corporate Debtor to repay the dues and the Petition is filed in the year 2019. To corroborate the same, the Financial Creditor has placed on record Financial Statements for the period 01.04.2014 to 31.03.2015, 01.04.2018 to 31.03.2019 Annual Report for period 2019 to 2020 and Annual Report for period 2020 to 2021 wherein the Corporate Debtor has acknowledged the debt owed to the Financial Creditor and the amount therein is set out as Principal amount as secured loan owed by the Corporate Debtor.
13. Further, as held in *Asset Reconstruction Company (India) Ltd. vs. Bishal Jaiswal* entries in Balance Sheet amounts to an acknowledged of debt under Section 18 of the Limitation Act. It is also noted that even the Corporate Debtor has admitted the debt owed to the Financial Creditor vide the OTS letter dated 30.09.2016 wherein the Corporate Debtor had approached the Financial Creditor with One Time Settlement offer. The entries in the Balance Sheet has also extended the period of limitation for the purpose of filing the present Application.

15. It is clear that the petition filed is well within Limitation period and the same has been demonstrated vide the Financial Statements as annexed to the petition.

Hence, there were no cogent evidence to show that the Application is barred by Limitation as alleged by the Corporate Debtor.

17. Further, it is seen from the records available that the Financial Creditor has established that the various term loans/Credit facilities were duly sanctioned and duly disbursed to the Corporate Debtor but there is no payment of Debt on the part of the Corporate Debtor. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be admitted u/s 7 of the I&B Code.

18. Further, it is worth to reproduce sub-Section of (5) of S. 7 of the Code as follows:

(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

Hence, accordingly we, have perused this Petition/Application filed under Section 7 of the Code r.w. Rule 4 of the Rules and come to conclusion that, pursuant to S. 7 (7) (5) (a) of the Code this Application is complete under sub-section (2) of S. 7 of the Code.

19. Considering the above facts and on perusal of documents/ papers placed before the Bench, we come to the 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 ingredients, 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.

20. As a consequence, keeping the afore said facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent 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**’.

21. For the foregoing reasons, the above Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

ORDER

- a. **The above Company Petition No. (IB) -4058 (MB)/2019 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Bil Energy Systems Limited.
- b. This Bench hereby appoints Mr. Anuj Bajpai, Registration No: IBBI/IPA-001/IP-P00311/2017-18/10575 as the Interim Resolution Professional having registered office at C/o Headway Resolution and Insolvency Services Pvt. Ltd., 1006, Raheja Centre, Free Press Marg, Nariman Point, Mumbai - 400021 to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or

passes an order for liquidation of corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**SHYAM BABU GAUTAM
(MEMBER TECHNICAL)**

Sd/-

**JUSTICE P.N. DESHMUKH
(MEMBER JUDICIAL)**