IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA

CP(IBC)/20/KOB/2022

(Under Section 7 of Insolvency and Bankruptcy Code, 2016)

Order delivered on: 30th June, 2022

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)
Hon'ble Mr. Anil Kumar. B, Member (Technical)

Kerala State Industrial Development Corporation Ltd.,
T C 11/266, Keston Road, Kowdiar,
Trivandrum, Kerala- 695 003. ... **Financial Creditor**

Versus

M/s. Solar Offset Printers Pvt Ltd.,
Plot No. 42, Industrial Development Plot,
Manvila, Kulathoor P.O., Trivandrum,
Kerala- 695 583. ... **Corporate Debtor**

Appearance (through video conferencing):-

For Financial Creditor ...Smt. Merin Thaliath,
Shri. Sandeep Kumar S.,
Smt. Midhuna K.C., PCS.
For Corporate Debtor ... Shri. Ishaan George,
Shri. Ajay Ben Jose,
Shri. Ajay V. Anand, Advocates.

Per: Ashok Kumar Borah, Member (Judicial)

This CP(IBC)/20/KOB/2022 has been filed by Kerala State Industrial Development Corporation Ltd. (hereinafter called as '**Financial Creditor)** on 28.02.2022 under Section 7 of the Insolvency and Bankruptcy Code against M/s. Solar Offset Printers Pvt Ltd. (hereinafter called as '**Corporate Debtor'**) stating that the total amount of debt granted is Rs.

12,50,00,000/- (Rupees Twelve Crores and Fifty Lakhs Only) through a loan agreement dated 27th March 2015. Presently as on the date of this petition, the Corporate Debtor, there is an outstanding default of 15,62,20,560/- (Rupees Fifteen Crore Sixty-Two Lakhs Twenty Thousand Five Hundred and Sixty Only).

The brief facts of the case are as under: -

3. The Petitioner/Financial Creditor is the premier agency of the Government of Kerala, mandated for industrial and investment promotion in Kerala, a non-deposit taking, non-banking financial company (NBFC-ND-SI) with primary objective to promote, facilitate and finance micro, medium and small-scale industries and catalyse the development of physical and social infrastructure required for industrial growth in the State of Kerala.

4. It is stated that the Corporate Debtor, through its promoter director and shareholder Mr. Sanjeev Charles approached the Petitioner/Financial Creditor for availing an Equipment Loan for purchasing 16 machineries, in order to enhance their capacity to undertake printing jobs and production of notebooks at their unit located in Industrial Estate, Manvila, Thiruvananthapuram, for an amount of Rs 12,50,00,000/- (Twelve Crores and Fifty Lakhs Only). The Applicant/Financial Creditor at its 292nd Board Meeting held on 19.01.2015 resolved to sanction the aforesaid loan of Rs 12,50,00,000/- (Rupees Twelve Crores and Fifty Lakhs Only) to the Corporate Debtor, subject to the covenants as specified in the Sanction Letter No. KSIDC/TVM/SCY8/292BM/2015/2951 dated 16.02.2015 & Loan Agreement dated 27.03.2015. The Corporate Debtor had also executed Deed of Hypothecation of Assets and Deed of Guarantee by Directors of the company Viz, Smt. Sajitha Devanayakom and Shri. Sanjeev

Charles on 27.03.2015. An Equitable mortgage by deposit of title deeds by way of constructive deposit creating a second charge with Canara Bank (Currently held by SBI), in respect of Plot No. 38 - 20 cents of land comprised in Sy No 496, Plot No. 43 - 43.75 cents of land comprised in Sy No 496, Plot No. 42 - 33.75 cents of land comprised in Sy No 496 and Plot No. 41- 48.25 cents of land comprised in Sy No 496/32 (Total 145.75 cents), lying at Development Plot, Manvila, Kulathoor, Trivandrum in Attipra Village, Trivandrum Taluk, Trivandrum District and also an equitable mortgage by deposit of title deeds by way of the first charge, as collateral security, by Sanjeev Charles, in respect of the properties having an extent of 12 cents of land in Sy. No. 3620- B- 2- 9 of Kowdiar Village, Thiruvananthapuram Taluk, Thiruvananthapuram District solely owned and possessed by him, as per Sale Deed dated 03.05.1996 Registered as Doc. No. 1592/1996 of Pattom SRO, was also executed on 28.03.2015.

5. It is stated that the loan amount of Rs. 10,00,00,000 (Rupees Ten Crores Only) was released on 30th March 2015 and Rs. 2,50,00,000/-(Rupees Two Crore and Fifty Lakhs Only) on 31st March 2015 to the Corporate Debtor. Thereafter the Corporate Debtor failed in procuring various machinery items worth Rs. 2,28,68,000/- (Rupees Two crores twenty-eight lakhs and sixty-eight thousand only), out of the Equipment Loan of 12,50,00,000/- (Rupees Twelve Crores and Fifty Lakhs Only). Therefore, the Corporate Debtor had provided to the Petitioner/Financial Creditor an extent of 10 cents of land in Vattiyoorkavu Village, Thiruvananthapuram District, solely owned and possessed by Smt. A. Sakeena Beevi, as additional collateral security, as a ‘stop-gap measure’, for meeting the security requirements.

6. Subsequently even though several requests were made by the Petitioner/Financial Creditor to the Corporate Debtor, they showed an apparent unwillingness to repay the due amount. Consequently, the loan was classified as a Non-Performing Asset on 29.03.2016 and thereafter Revenue Recovery measures were initiated against the Corporate Debtor and the Tahsildar (RR), Thiruvananthapuram had attached the properties of the guarantors namely, Shri. Sanjeev and Smt Sajitha. It is further stated that the Financial Creditor also filed two cases under Section 138 of The Negotiable Instruments Act, 1881.
7. Thereupon the Corporate Debtor approached the Petitioner/Financial Creditor for settling the loan account through One Time Settlement (hereinafter referred to as OTS). Based on this, a review meeting chaired by the Managing Director of Petitioner/Financial Creditor was held on 10.10.2019 to resolve the issues related to the repayment of the outstanding dues of the said equipment loan. During the meeting it was decided that the OTS proposal could be examined with a pre-condition that the promoters of the company must remit an amount of Rs.2,87,82,854/-(Rupees Two crores eighty-seven lakhs eighty-two thousand eight hundred and fifty-four Only), which was utilized by them towards other purposes, other than the purchase of machinery. Subsequently, the Corporate Debtor remitted an amount of Rs. 2,87,82,854/- (Rupees Two crores eighty-seven lakhs eighty-two thousand eight hundred and fifty four Only), in lieu of the amount unutilized due to non-purchase of machinery and accordingly Petitioner/Financial Creditor has released the additional collateral security owned by Smt. A. Sakeena Beevi, which was provided by the Corporate Debtor as a ‘stop-gap measure’.

8. In the meantime, M/s.Siddhi Vinayaka Enterprises, one of the Operational Creditors of the company approached this Tribunal, for initiating a Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, wherein this Tribunal ordered initiation of CIRP against the company, vide order dated 23.10.2019 in TIBA/15/KOB/2019 (IBA 630/2019 of Chennai Bench) and appointed an Interim Resolution Professional for the said proceedings. Subsequently, the Financial Creditor filed a claim before the Interim Resolution Professional and the IRP constituted the Committee of Creditors. Meanwhile M/s. Siddhi Vinayaka Enterprises, the Operational Creditor had settled the dispute with the Corporate Debtor and filed Form FA to withdraw the CIRP against the Corporate Debtor.

9. It is further stated that the promoter of the Corporate Debtor again approached the Petitioner/Financial Creditor with another OTS proposal expressing their willingness for settle the entire Loan under the OTS and the same was agreed upon by the Applicant/Financial Creditor. Based on the OTS proposal of the Corporate Debtor, a meeting of the OTS Committee was held on 28.09.2021 and decided to recommend the OTS proposal of the Corporate Debtor for an amount of Rs.9,16,19,684/- (Rupees Nine crores sixteen lakhs nineteen thousand six hundred and eighty-four Only).

10. It is stated that the 324th Board Meeting of KSIDC/Petitioner held on 18.10.2021 approved the OTS package subject to the condition that 10% of the OTS amount shall be remitted within one month of the Sanction Letter and also required to remit the balance OTS amount on or before 31.12.2021. However, the Corporate Debtor failed to make any payment and the OTS stands cancelled as on 31.12.2021.

11. Since, the Corporate Debtor has failed to comply its obligations as mentioned above, the present application has been filed by the Financial Creditor to initiate Corporate Insolvency Resolution Process against the Corporate Debtor under Section 7 of Insolvency and Bankruptcy Code, 2016.

Submission by the Corporate Debtor

12. The Corporate Debtor in their counter stated that the Respondent/ Corporate Debtor ran into financial troubles caused by external events and, therefore, could not fulfill its financial obligations to the Petitioner and subsequently, the account was declared as a Non-Performing Asset (NPA) on 29.03.2016.

13. It is further stated that the present Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, has been filed after the extinguishment of the period of 3 years as provided under Article 137 of the Limitation Act, 1963. It is stated that in the present case, as admitted by the Petitioner/ Financial Creditor themselves, the date of default of the loan in question is 29.03.2016 as the loan was classified as a Non- Performing Asset (NPA) on that date. Whereas, this petition was filed on 25.02.2022 i.e., well outside the limitation period of 3 years as prescribed under the Act. The Petitioner did not mention any ground for the long delay in filing this Petition and hence that ground itself the Petition cannot be entertained.

14. It is further stated that the Petitioner/ Financial Creditor had already instituted Revenue Recovery Proceedings against the Respondent/Corporate Debtor before the Tahsildar (RR), Thiruvananthapuram, and the proceedings are currently sub-judice. It is further stated that the Petitioner/ Financial Creditor had also initiated two cases under Section 138 of the Negotiable Instruments Act, 1881, for dishonouring the cheques in connection with recovery of the

outstanding amount which is the subject matter of the present Application as well. It is also stated that by filing this Petition even when the Petitioner/ Financial Creditor had already approached alternate forums amounts to a gross misuse of law and procedure and that this Petition is therefore liable to be dismissed.

15. On 04.05.2022 the Petitioner/ Financial Creditor filed a rejoinder and stated that as per the provisions of Section 18 of the Limitation Act, 1963, an acknowledgment of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed has the effect of commencing of a fresh period of limitation, from the date on which the acknowledgment is signed. The acknowledgment must be made before the period of limitation expires. It is further stated that the Corporate Debtor has duly acknowledged during the Financial Years 2016-2017, 2017-2018 and 2018-2019, the debt was due in their Balance Sheet and notes forming part to it and Auditor's Report and entries in such Balance Sheet being acknowledgments of the debt due for the purpose of Section 18 of the Limitation Act. 1963. Hence the Section 7 Petition is not barred by limitation.

16. It is further stated that the pendency of suit against Corporate Debtor before the Debts Recovery Tribunal or any action for Revenue Recovery and Cheque dishonour case under Section 138 of the Negotiable Instruments Act, 1881 cannot be a ground to reject a Petition in view of Section 238 of IBC which has an overriding effect over any provisions which are inconsistent in the provision of IBC. Further, non-reliance on the Revenue Recovery proceedings to extend the date of default and fit in the limitation period for filing Section 7 Petition

under IBC also elucidates the independence and paramount status of Section 7 Petition over Revenue Recovery proceedings.

FINDINGS

17. We have heard Smt. Midhuna K.C., the learned PCS for the Petitioner and Shri. Ishaan George, the learned counsel for the Corporate Debtor and perused the whole case records including documents appended with the case records. On perusal of the documents and hearing the arguments advanced by both the sides, this Bench finds it necessary to deal with the following issues:-

    i. *Whether the application is maintainable?*
    ii. *Whether this application will come in the purview of multiple proceeding with respect to the same debt?*
    iii. *Whether there is a Creditor-Debtor relationship between the Financial Creditor and Corporate Debtor herein?*

18. **Point No (i):** We have gone through Part IV of the application; wherein it is clearly stated that the loan accounts were classified as NPA on 29.03.2016 and the date of occurrence of default for the purpose of IBC is considered as 31.12.2021.

Section 238A of the IBC Act, 2016 defines “Limitation” which is as under:

Section 238A: Limitation.

> ***238A.*** *The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate*

Tribunal, the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal, as the case may be.

19. To get further clarity on this issue, we have gone through Article 137 of the Limitation Act, 1963 which reads as under:

PART II—OTHER APPLICATION

137. Any other application for which no period of limitation is provided elsewhere in this Division.	*Three years*	*When the right to apply accrues.*

20. It is settled law as decided by the Hon'ble NCLAT in its order in ***Neelkanth Township and Construction Pvt. Ltd. vs. Urban Infrastructure Trustee Ltd.*** (*Company Appeal (AT) (Insolvency) No. 44 of 2017)* that, those provisions of the IBC cannot be shackled by the Limitation Act. It was observed that: "*There is nothing on the record that Limitation Act, 2013 is applicable to I&B Code. Learned Counsel for the appellant also failed to lay hand on any of the provision of I&B Code to suggest that the Law of Limitation Act, 1963 is applicable. The I&B Code, 2016 is not an Act for recovery of money claim, it relates to the initiation of Corporate Insolvency Resolution Process. If there is a debt which includes interest and there is default of debt and having a continuous course of action, the argument that the claim of money by Respondent is barred by Limitation cannot be accepted.*"

21. We have also gone through the Judgment of the Hon'ble National Company Law Appellate Tribunal in ***G.S. Buildtech Pvt. Ltd. Vs. Ardee Infrastructure Venture Pvt. Ltd.*** (*Company Appeal (AT) (Insolvency) No. 388 of 2021)* wherein the Hon'ble NCLAT held that: -

"5. *The Balance Sheet for the Financial Year 2016-17 having been signed on 01.09.2017 and the above Application having been filed on 20.03.2020, it is well within three years' period from acknowledgment of debt as claimed by the Appellant. It is now well settled that acknowledgment in the Balance Sheet is sufficient acknowledgment under Section 18 of the Limitation Act, 1963."*

22. In the recent judgement of the Hon'ble Supreme Court in ***Dena Bank vs. C. Shivakumar Reddy and Ors.*** (*Civil Appeal No. 1650 of 2020)*, the Hon'ble Supreme Court reiterated that Section 18 of the Limitation Act, 1963 is fully applicable to proceedings under 'I&B Code' and entries in books of accounts and/ or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. The Hon'ble Supreme Court in paragraph 118, held as under: -

"118. It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. In Asset Reconstruction Company (India) Limited v. Bishal Jaiswall and Anr. (supra) authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff ,18 ["Bengal Silk Mills"] and in Re Pandem Tea Co.19 Ltd., the judgment of the Delhi High Court in South Asia Industries (P) Ltd. v. General Krishna Shamsher Jung Bahadur Rana20 and the judgment of Karnataka High Court in Hegde Golay Ltd. v. State Bank of India 21 and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt."

23. In this case the Corporate Debtor has acknowledged the debt during the Financial Years 2016-2017, 2017-2018 and 2018-2019 and the Balance Sheet and Auditor's Report forming part of it shows the debt due from the Corporate Debtor. We therefore are not agreeable with the submissions made by the

Corporate Debtor regarding the limitation in filing this Petition under Section 7 of IBC. Hence, the technical objection raised by the Corporate Debtor on the ground of maintainability is only for the sake of objecting and hence stands rejected.

24. **Point No. (ii).** On perusal of the records, we found out that Section 7 of the Code propounds the manner in which Corporate Insolvency Resolution Process (CIRP) is to be initiated by the "financial creditor" against a "corporate person being the corporate debtor".

25. The Hon'ble National Company Law Appellant Tribunal (**"NCLAT")** in various judgments has held that pendency of actions under the SARFAESI Act or actions under RDB Act does not create obstruction for filing an application under of IBC on the ground that provisions under IBC shall have overriding effect over any provisions inconsistent therewith contained in any other law for the time being in force.

26. In this connection the decision of the Hon'ble NCLAT in ***Rakesh Kumar Gupta v. Mahesh Bansal & Ors.,*** *(Company Appeal (AT) (Insolvency) No. 1408 of 2019*) on 20.02.2020, may be referred to.

27. Further on 26.02.2020, in the matter of ***Punjab National Bank v. M/s Vindhya Cereals Pvt. Ltd.,*** *(Company Appeal (AT) (Insolvency) No. 854 of 2019)* the question that arose before the Hon'ble NCLAT was whether subsequent to initiation of proceedings under the SARFAESI Act, a financial creditor can be precluded from filing an application under Section 7 of the Code, as the Hon'ble NCLAT held such proceedings are fraudulent or malicious against the Corporate Debtor. The Hon'ble NCLAT held that simply because the financial

creditor had initiated a parallel proceeding against a Corporate Debtor under SARFAESI Act as well as under the Code, it cannot be called malicious. The Hon'ble NCLAT further opined that Section 238 of Code provides that the provisions of the Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Therefore, this non-obstante clause of the Code will prevail over any other law for the time being in force. Hence, the contention regarding maintainability will not stand for scrutiny and is to be rejected.

28. **Point No. (iii)** From the records produced, we could find that there is a Creditor- Debtor relationship between the Financial Creditor and the Corporate Debtor, since the Corporate Debtor admitted that they received money from the Financial Creditor through various documents produced before this Tribunal and the Corporate Debtor has no case that they have repaid the money received from the Financial Creditor. This fact is evident from the records as also their proposals for a One Time Settlement, which was approved by the Financial Creditor.

29. As there is a default in the payment of the financial debt, which has been confirmed by them in the counter affidavit that the Financial Creditor paid the money to the Corporate Debtor, this Tribunal is of the view that the present Petition filed by the Financial Creditor satisfies all the definitions of "Financial Creditor", "Default" and "Financial Debt" and qualifies for filing an application under Insolvency and Bankruptcy Code. By mentioning various technical snags the Corporate Debtor cannot wash its hands in repaying the amount borrowed, which is a financial debt owed by them. Hence, there is a Creditor-Debtor relationship with them.

30. Therefore, we are of the considered view that the Petition filed in the capacity as a 'Financial Creditor' for a 'financial debt' which is recoverable from the Corporate Debtor viz., M/s Solar Offset Printers Pvt. Ltd. is a fit case for admission and initiation of CIRP against the Corporate Debtor. The documents produced on record prove the disbursement of various loan facilities by the Financial Creditor to the Corporate Debtor.

31. The Corporate Debtor committed default in repayment of the loan amount to the Financial Creditor, and hence its Loan Account was declared as NPA. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Financial Creditor as a major constituent for admission of an application under Section 7(4) of the I&B Code.

32. The Application under Sub-Section (4) of Section 7 of I&B Code, 2016 is complete in all respects. Accordingly, the application for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor deserves to be admitted. Hence, the Application No. **CP(IBC)/20/KOB/2022 is admitted** and the following order has been passed: -

ORDER

i. Having admitted the Application, the provisions of **moratorium** as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order shall be applicable by prohibiting institution of any suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc.

ii. The Financial Creditor has suggested the name of **Mr. Francis Mathew,** an Insolvency Resolution Professional whose name appears in the panel of IPs for appointment as Interim Resolution Professional for the period 01.01.2022 to 30.06.2022 for Kochi Bench, as an Interim Resolution Professional to carry out the functions as mentioned under IBC. Hence, Shri. Francis Mathew having **Registration No: IBBI/IPA-001/IP-P00995/2017-2018/11642, residing at 38/1614, Kannanthodath Lane, Edappally, Kochi, Ernakulam, Kerala**

682 024 is appointed as Interim Resolution Professional in this matter. The IRP shall carry out his duties as contemplated by Sections 15, 17, 18, 19, 20 and 21 of the IBC. He has produced the AFA and Form 2 before this Tribunal.

iii. The fee payable to IRP/RP shall comply with the IBBI Regulations/ Circulars/ Directions issued in this regard. The proposed IRP is directed to submit his consent along with copy of AFA issued to him in the prescribed format within 2 days from the date of receipt of this order.

iv. The Financial Creditor shall deposit an amount of Rs. 2,00,000/- (Rs. Two Lakhs Only) with the IRP to meet the initial expenses towards issue of public notice and inviting claims etc. These expenses are subject to approval by the Committee of Creditors (CoC). It is made clear that this amount cannot be construed as the fee paid to the IRP.

v. The supply of essential 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, by the Adjudicating Authority.

vi. 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 receipt of this order, as per the provisions of the Code.

vii. 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 C.I.R.P. and the compliance of the directions of this Order within 30 days to this Bench. Liberty is granted to intimate even at an early date, if need be.

viii. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order of Admission.

ix. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP in terms of Section 17 of the IBC. The Directors/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 a period of one week from the date of receipt of this Order, in default coercive steps will follow.

x. The Registry is directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and e-mail within two days from the date of this Order.

xi. A copy of this Order be also sent to the Registrar of Companies, Kerala, for updating the Master Data of the Corporate Debtor, who shall send a compliance report in this regard to the Registry of this Tribunal within seven days.

Dated this the 30th day of June, 2022

Sd/-

ASHOK KUMAR BORAH
Digitally signed by ASHOK KUMAR BORAH
Date: 2022.07.01 10:25:08 +05'30'

(Anil Kumar. B)
Member (Technical)

(Ashok Kumar Borah)
Member (Judicial)

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