



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB) No.43/MB-IV/2020**

Under Section 7 of the I&B Code, 2016

In the matter of:

**State Bank of India**

...Financial Creditor/Applicant

V/s

**Vindhyavasini Steel Products Private  
Limited**

[CIN: U27310MH2011PTC222526]

...Corporate Debtor/Respondent

**Order Dated: 12.04.2023**

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. Arjun Sathees, Advocate  
For the Respondent(s) : None

**ORDER**

***Per : Kishore Vemulapalli, Member (Judicial)***

1. This is an application bearing C.P. (IB) No. 43/MB/C-IV/2020 filed by State Bank of India, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against, Vindhyavasini Steel Products Private Limited Corporate Debtor.

2. The Application is filed on 02.01.2020 by State Bank of India , the Financial Creditor, claiming total default of Rs.308,20,00,000/- (Rupees three hundred crore twenty lakh only), which includes:
- i. Rs.106,64,00,000/- (Rupees one hundred and six crore nine lakh only); and
  - ii. Rs. 187,74,00,000/- (Rupees one hundred and eighty seven crore seventy four lakh only) and Rs.13,82,00,000/- (Rupees Thirteen crore eighty two lakh only) as interest and other charges
  - iii. The date of default is 31.03.2013 as per Part IV of form 1.

2.1. It is submitted that the Corporate Debtor had approached the Applicant and requested to grant Term Loan and Cash Credit Facility. Subsequently, the Applicant had entered into an Agreement of loan for overall limit dated 31.10.2011 and Letter of Arrangement dated 24.10.2011 with the Corporate Debtor.

2.2. Further the Applicant had issued a Letter regarding grant of individual Limit within overall limits dated 31.10.2011. It is submitted that the said loan was secured by Hypothecation of Goods dated 31.10.2011, Memorandum of Deposit for creation of charge for term loan/overall limit dated 31.10.2011 and 12.09.2012 and Letter of Confirmation for creation of Mortgage by deposit for creation of charge for term loan/overall limit dated 31.10.2011 and 12.09.2012 and letter of Confirmation for creation of Mortgage by deposit of title deeds dated 14.09.2012 and 13.06.2012.

2.3. It is submitted by the Applicant that the Applicant had issued a Notice u/s 13(2) of SARFAESI Act, 2002 dated 02.07.2013 and also had filed an Original Application No. 725 of 2014 filed before Debt Recovery Tribunal, Mumbai dated 05.06.2014 against Corporate Debtor and wherein interim relief was granted vide order dated 08.01.2015 restraining the Corporate Debtor from creating any third party rights on the secured assets. Thereafter, the account of the Corporate Debtor was declared fraud on the basis of findings of Forensic Auditor. An Application was also filed u/s 14 of SARFAESI before hon'ble District Magistrate Palghar for taking possession of secured assets and the same was allowed vide order dated 25.11.2016. The Applicant took possession of those assets on 07.04.2017.

2.4. It is further submitted that pending disposal of recovery proceeding before various courts and tribunals, the directors of the Respondent vide Letter dated 16.05.2019 had approached Applicant with a Compromise offer to settle the loan account of the Corporate Debtor enclosing cheque of Rs. 25 Crores as advance and also admitted the debt therein. However, this offer was rejected by the Applicant.

2.5. It is also the submission of the Applicant that the outstanding dues can be determined and verified from the Statement of Accounts of State Bank of India from 01.04.2011 till 01.03.2017 along with certificate under the Bankers Book of Evidence Act, 1981.

2.6. Further, the Applicant has also placed on record the Financial Statements for the period of 2016-2017 and 2017-2018 wherein the remarks in the Financial Statement for the year 2016-2017 at pg. 21

an amount of Rs.106,64,30,041 has been listed under the head of indebtedness and also has been set out as “Principal Amount” of “Secured Loan” at pg. 14, also pg. 27 reflects that “*the Company has defaulted in repayment of dues to the bank and financial institutions*”, also at pg. 32, 40 it is mentions that “*principal outstanding of Rs. 76.23 crores towards Cash Credit*” also at pg. 38, 39 “*principal outstanding of 30.41 towards Term Loan*” is set out as “Borrowings” of the Corporate Debtor. Also, Financial Statements for the Financial year 2017-2018 at pg. 95, 96 an amount of Rs.106,64,30,041 has been listed under the head of indebtedness and also has been set out as “Principal Amount” of “Secured Loan” at pg. 86; also at pg. 110 it reflects that the “*Company has defaulted in repayment of dues to the Bank and financial Institution*”. At pg. 116 and 149 and 153 reflects that “*The Term Loan and Cash Credit account with State Bank of India has become NPA. However, the management is negotiating for restructuring of the same to make it regular account. Because of NPA bank has not charged interest on term loan and cash credit account*” and at pg. 118 it is stated as (Principal outstanding of Rs. 76.23 crores towards cash credit) and pg. 127 mentions (Principal outstanding of Rs. 30.41 towards Term Loan) as Borrowing of the Corporate Debtor.

2.7. Furthermore, the Applicant has also filed their written submissions wherein they have relied on the case of **Asset Reconstruction Company (India) Ltd v. Bishal Jaiswal** wherein the Hon’ble Supreme Court has laid down that entries in the balance sheet which is required to be prepared to comply with statutory requirements will amount to acknowledgement of debt u/s 18 of the Limitation Act and has the effect extending the period of limitation for the purpose

of filling an application for initiation of the Corporate Insolvency Resolution Process under the IBC.

2.8. The Applicant thus submits that the date of default in the present case is 31.03.2013 which was duly extended from time to time by way of an acknowledgement of debt by the Corporate Debtor in its balance sheet until 2017. Further as per the acknowledgement of debt by the Corporate Debtor in its audited balance sheet dated 31.03.2017, the limitation period in the present case stands extended till 31.03.2020.

3. The Corporate Debtor has filed its Affidavit in reply dated 19.12.2021 stating that the application that there is an enormous delay of 1450 days and no sufficient cause for delay in preferring the present Petition beyond the prescribed limitation period is explained by the Applicant. As the cause of action arose on 31.03.2012 and ended on 30.03.2015, the petition is barred by limitation .

3.1. It is submitted that the code was not legislated to renew the time barred claim. The Corporate Debtor has relied on the case of **B. K. Educational Services Private Limited v. Parag Gupta & Associates, Civil Appeal No. 23988 of 2017** wherein it was categorically settled that the limitation period of applications u/ 7 of the Code will be governed by Article 137 and no other Article of Limitation Act, 1963 can be applied for purpose of such an Application. The Applicant has also placed reliance on the case of **Babulal Vardhari Gurjar v. Veer Gurjar Alluminium Industries Private Limited Civil Appeal No. 6347 of 2019** wherein the Hon'ble Supreme Court reiterated and settled the law that the limitation for filling the application u/s 7 of IBC is three year from

the date of default and thus in the present case the date of default is 31.03.2012 and hence the Application is extremely time barred. Reliance is also placed by the Applicant on the case of **Jagdish Prasad Sarada v. Allahabad, Company Appeal (AT) (Ins) No. 183 of 2020** wherein the Appellate Tribunal held that the determining factor is three years period from the date of default/NPA.

3.2. It is also the submission of the Corporate Debtor that section 238 A of the Code cannot be invoked to condone the delay of time barred claim and the said delay can only be condoned u/s 5 of the Limitation Act, 1963 if the Applicant is able to explain and give sufficient cause for delay.

*Findings/Observations:*

4. We have heard the arguments of the Learned Counsel for both the parties and perused the records.

4.1. We find that the Applicant had initiated action against the Corporate Debtor under SARFAESI Act in July 2013 after commission of default on 31.12.2012. These actions continued till 07.04.2017 when the possession of certain secured assets was taken over under the SARFAESI Act. On perusal of Audited Financial Statements of the Corporate Debtor for the year 2016-17 & 2017-18, we find that the amount owed to the Applicant is distinctly stated as liability in these Financial Statements. The effect of such declaration in the Financial Statement has been held to be an acknowledgement u/s 18 of the Limitation Act by the superior Courts/Tribunals in various decisions, the latest one being Apex Court decision in **Dena Bank (Now Bank of Baroda) v. Shivakumar Reddy & Anr. (2021) 10 SCC 33.**

Accordingly, we find the present Application having being filed on 02.01.2020 is within 3 years from the date of declaration in the Audited Financial Statement for the year ended 31.03.2020 and Accordingly, is within limitation period prescribed under Article 137 of Schedule to the Limitation Act read with section 5 & 18 thereof.

- 4.2. On perusal of the documents submitted by the Applicant, financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only), being the threshold limit as specified in the notification no. S. O. 1205 (E) dated 24.03.2020 issued under section 4 of the Code, is due and payable by the Corporate Debtor to the Applicant. There is no dispute that the Corporate Debtor has defaulted in payment of said debt amount. Therefore, we find it a fit case to allow the application filed for initiation of CIRP u/s 7 of the Code against the corporate debtor.
5. The Applicant has proposed the name of Mr. Naren sheth, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00133/2017-2018/10275] as an Interim Resolution Professional to carry out the functions as mentioned under I&B Code.

### **ORDER**

1. This Application being C.P. (IB) No. 43/NCLT/MB/C-IV/2020 filed under Section 7 of I&B Code, 2016, filed by State Bank of India, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Vindhyavasini Steel Products Private Limited, Corporate Debtor is **admitted**.

- I. That this Bench as a result of this prohibits:
- 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;
  - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
  - b. a surety in a contract of guarantee to a Corporate Debtor.

- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- VI. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VII. That this Bench appoints Mr.Naren Sheth, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00133/2017-2018/10275] as an Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- IX. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim

Resolution Professional even by way of email or WhatsApp.  
Compliance report of the order by Designated Registrar is to be  
submitted within 7 days.

Sd/-  
Prabhat Kumar  
Member (Technical)  
12.04.2023

Sd/-  
Kishore Vemulapalli  
Member (Judicial)