

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– II)
KOLKATA**

I.A.(I.B.C) No. 1434/KB/2022

In

C.P. (IB)226/KB/2021

A petition 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:

JM Financial Asset Reconstuction Company Limited a company within the meaning of Companies Act, 2013 having CIN U67190WB2007PLC174287 and having its registered office at 7th Floor, Cnergy, Appasaheo Marathe Marg, Prabhadevi, Mumbai- 400025

..... *Financial Creditor*

-versus-

Midnapur Netting Private Limited, a company within the meaning of Companies Act, 2013 having CIN U51909WB2006PTC112027 and having its registered office at village- Balluk, Post Office- Ballukhat, Tamluk, Midnapore, WB 721137 IN

..... *Corporate Debtor*

Date of Pronouncement of the order: 29th December, 2022

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing/physical):

For the Financial Creditor:

Mr. Vikash Singh, Adv.

Mr. Ratindranath Banerjee, Adv.

Ms. Arunima Mukhopadhyay, Adv.

For the Corporate Debtor:

Mr. Indranil Nandi, Adv.

Mr. Deba Prasad Samanta, Adv.

Mr. Arvind Kumar Mishra, PCS

ORDER

Rohit Kapoor, Member (Judicial):

1. This Court convened through hybrid mode.
2. This is a Company Petition under section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred as “the Code”) by **JM Financial Asset Reconstuction Company Limited**, hereinafter referred to as “*Financial Creditor*” seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Midnapur Netting Private Limited**, hereinafter referred to as “*Corporate Debtor*”.
3. The Corporate Debtor is a private limited company incorporated on 06 December 2006. The authorized share-capital of the company ₹1,00,00,000/- and the paid-up share capital of the company is ₹1,00,000/-.
4. The total amount claimed to be in default as on 31st July 2021, by the Financial Creditor, is ₹7,11,11,027.20/-. The account was classified as Non-Performing Asset (herein after referred as “NPA”) on 30th June 2009
5. Part – I of this petition contains particulars of the Financial Creditor. Part- II of this petition contains the particulars of the Corporate Debtor. Part – III of the petition caters to the particulars of proposed Interim Resolution Professional. Part – IV of this petition provides the particular of Financial Debt and Part -V of this petition contains the particulars of the Documentations, Record and Evidence of Default.

6. The Financial Creditor has relied on the various documents in support of its claims, including:

- a) Master Data of the Corporate Debtor, marked with Exhibit “D”;
- b) Copy of application filed before the Ld. Debt Recovery Tribunal No. II, Kolkata annexed as Exhibit “F”.
- c) Copy of letter dated 14th October 2019, annexed as Exhibit “K”.
- d) Copy of letter dated 10th December 2019, annexed as Exhibit “L”
- e) The Final Order dated 28th October 2021, passed by the Ld. Debt Recovery Tribunal – I, Kolkata in O.A. No. 639 of 2010, annexed as Annexure “B” to I.A. (I.B.C) No. 1434/KB/2022

7. Submissions on behalf of the Financial Creditor:

7.1 The Corporate Debtor availed certain financial assistance from Indian Overseas Bank. Upon failure to repay said debt the loan account of the Corporate Debtor was declared as NPA as per the RBI guidelines and the Indian Overseas Bank filed an Original Application before the Ld. Debt Recovery Tribunal II, Kolkata Bench being OA No. 639 of 2010.

7.2 By an assignment agreement dated 07 march 2011, Indian Overseas Bank transferred the said debt together with underlying rights. Title, interest and securities to the petitioner.

7.3 The total dues amount to a sum of ₹7,11,11,027.20/- as on 31 July 2021. The date of declaration of NPA is 30th September 2009.

8 I.A. (I.B.C.) No. 1434/KB/2022 filed by Financial Creditor:

The Financial Creditor has filed the instant interlocutory application in order to bring on record the OTS proposals of the Corporate Debtor as well as the final decree passed by the DRT in O.A. No. 639 of 2010, in favour of the Financial Creditor.

9 Analysis and Findings:

9.1 Heard the Ld. Counsel on behalf of the Financial Creditor and perused the record.

In the National Company Law Tribunal,
Kolkata Bench (Court- II)

JM Financial Asset Reconstruction Co. Ltd. vs. Midnapur Netting Pvt. Ltd.
I.A.(I.B.C) No. 1434/KB/2022 In C.P (IB) 226/KB/2021

- 9.2 It is noted that despite being given multiple opportunities, no reply affidavit was filed on behalf of the Corporate Debtor. As such, *vide* this Adjudicating Authority's order dated 6th July 2022, the Corporate Debtor's right to file reply-affidavit was closed.
- 9.3 Further, the documents sought to be submitted by the Financial Creditor *via* I.A. (I.B.C.) No. 1434/KB/2022 have been taken on record. As such, I.A. (I.B.C.) No. 1434/KB/2022 shall stand *disposed of*.
- 9.4 Now, on perusal of the records before us, the following picture emerges:

<i>10 s. no.</i>	<i>Date</i>	<i>Acknowledgement</i>	<i>End/Extension of Limitation</i>
1.	30.09.2009	Date of declaration of NPA	Limitation period to end on 30.09.2012
2.	14.08.2012	Letter by Corporate Debtor for extension of limitation period	Limitation period extended upto 14.08.2015
3.	24.09.2012	Letter by Corporate Debtor for OTS of debt	Limitation period extended upto 24.09.2015
4.	12.04.2013	Letter by Corporate Debtor for extension of limitation period	Limitation period extended upto 12.04.2016
5.	19.09.2013	Letter by Corporate Debtor for OTS of debt	Limitation period extended upto 19.09.2016

6.	03.06.2016	Letter by Corporate Debtor for settlement of debt	Extended to <u>03.06.2019</u>
7.	14.10.2019	Letter by Corporate Debtor for OTS of debt	<i>Limitation not extended</i>
8.	11.08.2021	The instant petition was filed	<i>Petition barred by limitation</i>
9.	28.10.2021	Final order by DRT was passed	New cause of action arose.

9.5 Section 18 of the Limitation Act 1963 allows for extension of limitation period in case of acknowledgment of the debt by the Corporate Debtor given within the limitation period. The aforementioned letters including letters dated 14th August 2012, 24th September 2012, 19th September 2013 and 3rd June 2016 give rise to fresh limitation periods. As a result, the limitation period would finally come to an end on 4th June 2019. The next letter for OTS was sent by the Corporate Debtor on 14th October 2019. However, the same having been sent outside the previously set limitation period, does not give rise to any fresh limitation period. As such, the instant petition has been filed beyond limitation.

9.6 Further, Part IV of the Form 1 of Insolvency and Bankruptcy Board of India (Application to Adjudication Authority) Rules, 2016 requires the applicant to provide the date of default. However, the Financial Creditor has not provided the same. The petitioner, in its submissions, has also not claimed that the petition is within limitation. However, in the written notes of the arguments provided by the Financial Creditor, it has been submitted that an inconclusive proceeding which does not affect in recovery would attract the provision of section 14 of the Limitation Act, 2002 and accordingly reference has been made to the decision of Hon'ble Supreme Court in the

matter of ***Sesh Nath Singh vs. Baidyabati Sheoraphuli Co-Operative Bank Ltd. & Ors.***¹.

9.7 Referring to the decision of the Hon'ble Supreme Court of India in the matter of ***Dena Bank vs. C. Shivakumar Reddy and Another***², it can be seen that the Hon'ble Apex Court made the following observation therein:

“143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings Under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.”

9.8 As such, the aforementioned final DRT order will give rise to fresh cause of action for the Financial Creditor. However, the instant petition was filed on 11th August 2021 and is barred by limitation.

9.9 Further referring to the decision of the Hon'ble National Company Law Appellate Tribunal (NCLAT) in the matter of ***Sri Bijay Kumar Agarwal versus State Bank of India & Anr.***³, wherein the Hon'ble Appellate Tribunal made the following observation:

“20. Applying the ratio of Hon'ble Supreme Court in the facts of the present case, the proceedings under Section 7 of IB Code is separate and independent proceedings, distinct from the

¹ (2021)7SC C 313, decided on 22.03.2021

² MANU/SC/0502/2021, decided on August 4, 2021

³ Company Appeal (AT) (Insolvency) No. 105 of 2022

remedy under the 1993 Act and the fact that proceedings under the 1993 Act, that is, filing of OA 493 of 2015, which was well within limitation has no bearing on the question of limitation for filing the Application under Section 7 of the Code. We, thus, are of the considered opinion that mere fact that OA 493 of 2015 filed on 24th September, 2015, within the limitation period, shall have no bearing on the question of limitation for filing Application under Section 7, nor by filing Application under the 1993 Act by State Bank of India the period of limitation for filing Application under Section 7 shall remain under suspension. The limitation for proceedings under Section 7 are independent and separate from proceedings under the 1993 Act and it is now well settled that Section 7 Application has to be filed within a period of limitation as prescribed under Article 137 of the Limitation Act. It is also well settled that limitation for filing Application under Article 137, the provisions of Section 18 of the Limitation Act are also attracted and in event the parties are able to satisfy the Court that they are entitled for extension of limitation, the Application under Section 7 even filed beyond three years from the date of declaring of NPA, will be within limitation when acknowledgement was made within the period of limitation. We thus find no substance in the submission of Shri Joy Saha that by filing the OA 493 Company Appeal (AT) (Insolvency) No. 105 of 2022 19 of 2015 on 24th September, 2015, limitation shall stop running for Section 7 Application and Section 7 Application even filed beyond three years from the date of NPA is entertainable on this ground.”

9.10 As is evident from the judgment in **Sri Bijay Kumar Agarwal** (*Supra*), DRT proceedings are independent from the insolvency proceedings under the Code.

- 9.11 Therefore, in light of the aforesaid facts and circumstance, this Adjudicating Authority is satisfied that the instant petition, being barred by limitation, is not maintainable and liable to the *rejected*. We are further of the view that in light of the judgment in *Dena Bank* (supra), while the Financial Creditor may have a right to file a fresh petition by virtue of the DRT order dated 28.10.2021, the present petition cannot be saved due to being barred by limitation.
- 9.12 Consequently, **C.P.(IB) No. 226/KB/2021** shall stand *rejected*. Needless to say, the petitioner is free to pursue its remedies under any other law, and the dismissal of the present petition shall not stand in the way of such pursuit of remedies.
- 9.13 The registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 9.14 Certified Copy of this order may be issues, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 29th day of December, 2022

SM(LRA)