IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH - I
KOLKATA

C.P (IB) No. 95/KB/2022

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:

State Bank of India

...Financial Creditor

Versus

SRC Metalicks Private Limited (CIN U27109WB2004PTC099172), a Company incorporated under the Companies Act, 1956 having its registered office at 224A, AJC Bose Road, Annapurna Apartment, 11th floor, Flat No. 11E Kolkata - 700019.

...Corporate Debtor

Date of Hearing: 12.05.2022
Date of pronouncing the order: 07.06.2022

Coram:

Shri Rajasekhar V.K.	:	***Member (Judicial)***
Shri Balraj Joshi	:	***Member (Technical)***

Appearances (through Video Conferencing/physical)

<u>For Financial Creditor</u>

1. Mr. Ajay Gaggar, Advocate
2. Mr. Uttiyo Mallick, Advocate
3. Mr. Hirawl Ganguly, Advocate

ORDER

Rajasekhar V.K., Member (Judicial)

1. The Court convened *via*hybrid mode.

2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 ***('the Code')*** read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Kaushik Das, Chief Manager, State Bank of India ***('Financial Creditor')***, duly authorised*vide*Letter of Authority dated 10 August, 2021[1]for initiation of Corporate Insolvency Resolution Process ('***CIRP***') against SRC Metalicks Private Limited ***('Corporate Debtor').***

3. The present Petition was filed on 02 March, 2022 before this Adjudicating Authority on the ground that the Financial Creditor had sanctioned fund based and non-fund based credit facilities with an overall limit of Rs.16,00,00,000/- (Rupees Sixteen Crore only) to the Corporate Debtor. However, the Corporate Debtor has defaulted in payment of the principle amount including interest i.e., Rs.86,34,80,232.40 (Rupees Eighty Six Crore Thirty Four Lakh Eighty Thousand Two Hundred Thirty Two and Forty Paisa only) as on 31 August, 2021, to the Financial Creditor.

4. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is Rs.7,70,00,000/- (Rupees SevenCrore Seventy Lakh only)with paid up Capital as Rs.4,47,80,000/- (Rupees Four Crore Forty Seven Lakh Eighty Thousand only).

5. Submissions by the Ld. Counsel appearing on behalf of the Financial Creditor

5.1 The Corporate Debtor was incorporated on 20 July, 2004 as *'VSS Electrocast Private Limited'*, however, *vide* certificate dated 26 June, 2009 issued by the

[1]Annexure – A of the Petition.

Registrar of Companies, West Bengal, the Corporate Debtor changed its name to *'SRC Metalicks Private Limited'*.

5.2 The Financial Creditor had sanctioneda credit facility of Rs. 16,00,00,000/- to the Corporate Debtor. The said credit facilities were secured by way of hypothecation of movables, execution of personal continuing guarantee and corporate continuing guarantee and creation of mortgage by deposit of title deeds over and in respect of right, title and interest of the mortgagors on their immovable properties.

5.3 The existing credit facilities were renewed and enhanced from time to time at the request of the Corporate Debtor.Such enhancements were accepted and acknowledged by the Corporate Debtor and the guarantors of the Corporate Debtor.The Corporate Debtor has reflected its debt due to the Financial Creditor in its Balance Sheet as on 3l March,2013.

5.4 As per the terms of the sanction agreed between the parties, the Corporate Debtor started making defaults in repayment of the credit facilities to the Financial Creditor and as a result the account of the Corporate Debtor became irregular and was finally classified as a Non Performing Asset on 11 September, 2013 in accordance with the directives and guidelines relating to asset classification issued by the Reserve Bank of India.

5.5 The Financial Creditor also issued a Notice of Demand dated 11 March, 2015 under Section l3(2) of the SARFAESI Act, 2002 to the Corporate Debtor demanding payment of all outstanding dues payable in respect of the Credit Facilities availed alongwith all interest, charges, expenses incurred, being a sum of Rs. 28,36,14,978.79 (Rupees Twenty Eight Crore Thirty Six Lakh Fourteen Thousand Nine Hundred Seventy Eight and Seventy Nine Paisa Only).

5.6 The Corporate Debtor have failed and neglected to serve the interest of the aforesaid Credit facilities taken from the Financial Creditor in spite of repeated requests and reminders. The Corporate Debtor has also failed and neglected to clear their outstanding dues to the Financial Creditor, in gross violation of terms of sanction and the Financial Creditor sent various letters to the Corporate Debtor demanding payment of the dues payable.

Analysis and Findings

6. We have heard the Ld. Counsel appearing on behalf of the Financial Creditor and perused the record. No reply has been filed on behalf of the Corporate Debtor.

7. Upon perusal of the records available, it is evident that no *'date of default'* has been mentioned in the application, which is essential for examining the maintainability from the limitation point of view. Further, the account of the Corporate Debtor was declaredas a Non Performing Asset on 11 September, 2013. The issue that arises in ***whether prior proceedings under the SARFAESI Act will qualify for the exclusion of time under Section 14?***As opined by the Hon'ble Supreme Court in ***Sesh Nath Singh & Anr. v. Baidyabati Sheoraphuli Co-operative Bank Limited & Anr.***[2], the exclusion under section 14 (2) of the Limitation Act applies to a proceeding where the party has prosecuted diligently and in good faith before the**wrong forum**.

8. Further, in light of the above judgment this Adjudicating Authority in ***The Federal Bank Limited Vs. Uniworth Limited***[3] has observed that the Debt Recovery Tribunal is not a wrong forum for exclusion of time under section 14 of the Limitation Act, since a Financial Creditor is perfectly entitled to maintain the proceedings initiated by it under The Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 before a Debt Recovery Tribunal for recovery of its dues.However, in this instant case the proceeding before the Ld. Debt Recovery Tribunal by the Financial Creditor does not come under the proceeding before a forum of defective

[2](2021) 7 SCC 313 decided on 22 March, 2021

[3]CP (IB) No.277/KB/2019 decided on 28 June, 2021

jurisdiction. Hence, the prior proceedings under the SARFAESI Act will not qualify for the exclusion of time under Section 14 in this instant matter.

9. In view of the above facts and circumstances the petition being ***C.P (IB) No. 95/KB/2022*** is ***dismissed*** as being barred by limitaion However, the Petitioner is at liberty to pursue its remedy under law, if any.

10. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

BALRAJ JOSHI

Digitally signed by BALRAJ JOSHI
Date: 2022.06.07 17:16:25 +05'30'

Balraj Joshi
Member (Technical)

Rajasekhar V K

Digitally signed by Rajasekhar V K
DN: c=IN, o=Personal, title=0605, pseudonym=490a45134c9adf68ed2365dbf55b7504ee43a6491c9e489ac8d67bacffde65cc, postalCode=600018, st=Tamil Nadu, serialNumber=f05120aee9b7978ef74f18a3ac75eb59d05e036c92d850593b5c6edc8a8c7396, cn=Rajasekhar V K
Date: 2022.06.07 16:58:42 +05'30'
Adobe Acrobat Reader version: 2022.001.20117

Rajasekhar V.K.
Member (Judicial)

The Order is pronounced on 07th day of June, 2022

Safura A., LRA