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IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Coram : (1) Shri Madan B. Gosavi,
Hon'ble Member (J)
&
(2) Shri Virendra Kumar Gupta,
Hon'ble Member(T)

CP (IB) No.176/KB/2019

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process 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;

-And-

In the matter of:

United Bank of India, having its Head office at 11, Hemanta Basu Sarani, Kolkata- 700 001;

...Financial Creditor

-Versus-

In the matter of:

Concast Amba Road Project Private Limited,
having its registered office at 21, Hemanta Basu Sarani,
1st floor, Kolkata- 700 001, CIN: U45400WB2011PTC171198;

....Corporate Debtor

Counsel last appeared:

- | | |
|--------------------------------|--------------------|
| 1. Mr. Avik Banerjee, Advocate |] Corporate Debtor |
| 2. Mr. Atul Sureka, Advocate |] |

Date of Pronouncement of Order: 18.03.2020

118/20
Sd

Sd

ORDER

Per Shri Madan B. Gosavi, Member (J):

United Bank of India, Financial Creditor filed this application under section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **Concast Amba Road Project Private Limited**, – Corporate Debtor to start Corporate Insolvency Resolution Process (in short, "CIRP") of the corporate debtor on the ground that the corporate debtor committed default in paying the financial debt of Rs.42,76,90,362/.

2. It is not in dispute that on 14.08.2012, the financial creditor sanctioned credit facilities to the corporate debtor. Terms of repayment of the debt arising out of such facility was extended from time to time. It was lastly extended till 21.02.2015.

3. Financial Creditor's case is that although on 31.07.2015, loan account of the corporate debtor was declared to be NPA but default occurred on 31.12.2015. Hence, this proceeding is filed to start CIRP of the corporate debtor on 21.12.2018.

4. Upon service of the notice, the corporate debtor appeared in the proceeding wherein its Director, Mr. Mohan Prasad Gupta filed affidavit-in-reply. We have gone through the same. Main defence appears to be raised by the corporate debtor is that it is a time-barred claim.

5. We heard the Ld. Counsel for the Financial Creditor and the Ld. Counsel for the corporate debtor.

6. In this case, the default committed by the corporate debtor is not in dispute. We have only to consider whether the debt is time-barred or not?

7. As per the financial creditor's own statement, the loan account of the corporate debtor was declared NPA on 31.07.2015 (Para-C, Part-IV of application form filed under Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016. This application is filed to start CIRP of the corporate debtor. On 21.12.2018, it appears to have been filed beyond period of limitation as stated under section 137 of Law of Limitation Act, 1963.

8. The Ld. Counsel for the financial creditor brought to our notice the fact that the corporate debtor in audited balance-sheet till the year 2017, has acknowledged the above debt. Hence, this proceeding may be held to be within the limitation. Moreover, the date of default is 31.12.2015.

9. As far as date of default is concerned, we hold that the date of default cannot be after declaring the loan account of the corporate debtor to be NPA. Date of default has to be three months' earlier than the date on which the loan account declared to be NPA. Hence, for the purpose of computing period of limitation, we hold the date of default as 31.07.2015, i.e. the date on which the loan account of the corporate debtor declared NPA.

10. Whether the fact that the corporate debtor acknowledged the debt in its audited balance-sheet can shift the cause of action to file this proceeding against the corporate debtor, vis-à-vis, period of limitation. It is the only question arises for our consideration.

11. Above question is succinctly being answered by the Hon'ble NCLAT in its order dated 12.03.2020 in case of V. Padmakumar -vs- Stressed Assets

Self

Self

Stabilisation Fund (SASF) & Anr. [(Company Appeal (AT)(Insolvency) 57 of 2020]
in the following words:

20. It is next submitted by the learned counsel appearing for the Respondents that the application under Section 7 was not barred by limitation as the 'Corporate Debtor' has acknowledged the claim in its Audited Balance Sheet for the F.Y. 2011-2012 & 2012-2013 onwards.

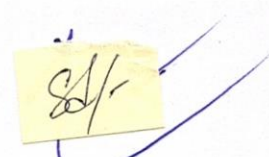
22. In view of the aforesaid findings, agreeing with the decisions aforesaid, at the cost of repetition, we hold:

(i) As the filing of Balance Sheet/ Annual Return being mandatory under Section 92(4) of the Companies Act, 2013, failing of which attracts penal action under Section 92(5) & (6), the Balance-Sheet / Annual Return of the 'Corporate Debtor' cannot be treated to be an acknowledgement under Section 18 of the Limitation Act, 1963.

(ii) If the argument is accepted that the Balance Sheet / Annual Return of the 'Corporate Debtor' amounts to acknowledgement under Section 18 of the Limitation Act, 1963 then in such case, it is to be held that no limitation would be applicable because every year, it is mandatory for the 'Corporate Debtor' to file Balance Sheet/ Annual Return, which is not the law."

12. In view of the above pronouncement of provisions of law by the Hon'ble NCLAT, we hold that this claim is also time-barred. We further hold the fact that the corporate debtor has acknowledged the debt in its recent balance-sheet does not bring the financial creditor's this application within the period of limitation. As per financial creditor's statement in this application, the loan account of the





corporate debtor became NPA on 31.07.2015. This application is filed on 21.12.2018. It is filed beyond period of limitation. The claim is time-barred. Hence, we proceed to pass the following order by rejecting the application.

ORDER

- i) Application in CP(IB) No.176/KB/2019 stands rejected.
- ii) Registry is hereby directed to communicate the order to the Financial Creditor and Corporate Debtor by Speed Post and also by email.
- ii) CP(IB) No.176/KB/2019 is disposed off.

Let the certified copy of the order be issued to all the concerned parties upon compliance with requisite formalities

Sd/- 18/3/2020
(Virendra Kumar Gupta)
Member (T)

Sd/- 18/3/2020
(Madan B. Gosavi)
Member (J)

Signed on this, the 18th day of March, 2020.