

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

CP (IB) No.1262/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

State Bank of India

[IN: TAN MUMB14834B]

...Financial Creditor/Applicant

V/s

R J Bio-Tech Limited

[CIN: L24234MH2005PLC158420]

...Corporate Debtor/Respondent

Order Dated: 20.09.2022

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Deep Roy a/w Ms. Radhika
Raman, Advocates.

For the Respondent(s) : Mr. Tanmay Kelkar a/w
Mr. Aniruth Purusothaman,
Advocates.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being C.P. (IB) No. 1262/MB/C-IV/2021 filed by State Bank of India, the Financial Creditor/Applicant, under section

7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against R J Bio-Tech Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Application is filed by Mr. Ram Kumar Sharma, Authorised Signatory of the Financial Creditor, claiming total default of Rs.50,13,08,535.88/- (Rupees fifty crore thirteen lakh eight thousand five hundred thirty-five only) which includes:

Principal outstanding of Rs.24,63,90,110.51/-;

Inters outstanding of Rs.22,94,22,162.31/-; and

Penal outstanding of Rs.2,54,96,263.06/- as on 30.08.2021

3. The Date of Default as mentioned in the Petition is 27.06.2016 which is the Date of NPA. The Petition is filed on 14.12.2021.

4. The case of the Financial Creditor is as under:

- a) Upon request of the Corporate Debtor, the Financial Creditor had sanctioned a Credit Facility of Rs.20,92,00,000/- (Rupees twenty crore ninety-two lakh only) by way of Demand Cash Credit and Medium-Term Loan on 09.01.2012. Pursuant to sanction letter for the Credit Facility dated 09.01.2012, the following agreements were executed:

- i. Letter of Arrangement dated 09.01.2012 was executed by Corporate Debtor, its Director and M/s Khadkeshwar Oil Mill Pvt. Ltd (Guarantor).

- ii. Agreement of loan-cum-Hypothecation dated 09.01.2012 was executed by the Corporate Debtor.
 - iii. Guarantee Agreement dated 09.01.2012 was executed by the Directors of the Corporate Debtor and M/s Khadkeshwar Oil Mill Pvt. Ltd.
 - iv. Memorandum for recording creation of Mortgage by Deposit of Title Deed dated 09.01.2012 was recorded by the Chief Manager of the Financial Creditor, in regards to the Equitable Mortgage of Immovable Properties owned by the Corporate Debtor, its Director and its Guarantor.
 - v. Letter of Confirmation dated 09.01.2012 for creation of Mortgage by Deposit of Title Deeds confirming the Equitable Mortgage created was provided by the Corporate Debtor and its Guarantor were sent to the Financial Creditor.
 - vi. The Maharashtra Industrial Development Corporation issued a Consent Letter dated 11.01.2012 and executed a Tripartite Agreement dated 16.01.2012 in respect of Equitable Mortgage in favour of the Financial Creditor.
- b) In November, the Corporate Debtor was in a further need of funds. Therefore, the Financial Creditor had enhanced the Credit Facility provided to the Corporate Debtor and sanctioned the Credit Facility of Rs.23,92,00,000/- (Rupees twenty-three crore ninety-two lakh only) on 30.11.2012, by way of Demand Cash Credit, Medium Term loan 1 and Medium-Term Loan II.

- c) In 2014, the Corporate Debtor requested to further enhance the Credit Facility granted to it. Therefore, the Financial Creditor had enhanced the Credit Facility provided to the Corporate Debtor and sanctioned a Credit Facility of Rs.27,15,00,000/- (Rupees twenty-seven crore fifteen lakh only) on 31.01.2014, by way of Demand Cash Credit, stand by line of Credit. Term Loan I and Term Loan II.
- d) Additionally, the Corporate Debtor along with its Directors and its Guarantor have executed revival letters dated 13.02.2014 and 23.09.2016 in favour of the Financial Creditor thereby acknowledging and accepting the correctness of balance outstanding in its loan accounts as on 31.03.2016.
- e) The Corporate Debtor has also executed Balance Confirmation dated 15.04.2016 in favour of Financial Creditor thereby acknowledging and accepting the correctness of balance outstanding in its loan accounts as on 31.03.2016.
- f) The Account of the Corporate Debtor has turned NPA on 27.06.2016 in accordance with the RBI guidelines and directives. Thereafter, the Bank issued Demand Notice dated 29.06.2016 under section 13(2) of SARFAESI Act, 2002. The Corporate Debtor did not reply to the said Demand Notice. Then the Financial Creditor issued a Legal Notice dated 30.03.2017 to the Corporate Debtor and its Guarantor in respect of outstanding dues of Corporate Debtor. the Legal Notice was duly served, however, neither the Corporate Debtor nor its Guarantor responded to the Legal Notice.

- g) The Annual Report for F.Y. 2017-18 and 2018-19 along with Annual Balance Sheet for F.Y. 2020 for the Corporate Debtor showing the existence of debt has been provided.
- h) The Financial Creditor submits that all the transactions of the money advanced and interest accrued, expenses lawfully incurred and the repayments received were entered into the books of extracts of the loan account, regularly maintained in the course of business of the Financial Creditor and a copy of the same, duly certified under the Banker's Books Evidence Act, 1891 and the same includes interest up to 12.08.2021. The Financial Creditor is also entitled for unapplied accrued interest from 10.04.2017 and future interest from 11.04.2017 till actual realization of entire loan amount.
- i) The current amount due and payable by the Corporate Debtor is Rs.50,14,08,535.88 as on date 30.08.2021. The details of dues are as under:

Sr. No.	Particulars of Outstanding Amount	Amount Due (INR)
1.	Principal Outstanding	24,63,90,110.51
2.	Interest Outstanding	22,94,22,162.31
3.	Penal Outstanding	2,54,96,263.06
Total		50,14,08,535.88

5. The Financial Creditor has submitted the NeSL Report dated 23.08.2021 showing the default amount Rs.1,09,16,217/- (Rupees one crore nine lakh sixteen thousand two hundred seventeen only) and the Date of Default as 30.03.2016. The Financial Creditor has also filed the Certificate under section 2A (a) of the Banker's Book of Evidence Act, 1891 for confirmation of balance outstanding.

6. The Corporate Debtor has filed its Affidavit in Reply dated 20.04.2022 and submits as under:
- a) The Financial Creditor has filed section 7 Petition against the Corporate Debtor claiming total outstanding of Rs.50,13,08,535.88/- (Rupees fifty crore thirteen lakh eight thousand five hundred thirty-five only). As per the submissions of the Financial Creditor, the Corporate Debtor has defaulted and the account of the Corporate Debtor was turned NPA on 27.06.2016.
 - b) The Financial Creditor has filed the present Petition on 01.09.2021 i.e. three years from the date of NPA. Therefore, the Petition filed by the Financial Creditor is barred by the limitation and hence liable to be dismissed as the period of limitation stand expired on 27.06.2019. The Financial Creditor has failed to prove the occurrence of default.
 - c) The Letter of Arrangement annexed to the Petition has been signed and acknowledged by the Branch Manager, Aurangabad Branch, whereas, the present Petition has been signed and initiated by the Assistant General Manager and hence the same is liable to be dismissed on this ground for want of authority.
 - d) The Financial Creditor has not paid the requisite Stamp Duty in respect of a sum of Rs.20,92,00,000/- (Rupees twenty crore ninety-two lakh only) as per the provisions of Maharashtra Stamp Act, 1958 on the following documents:
 - i. Board Resolution of the Corporate Debtor dated 09.01.2012;
 - ii. Letter of Arrangement of Corporate Debtor dated 09.01.2012;

- iii. Guarantee Agreement executed by the Directors and the Guarantor dated 09.01.2012;
 - iv. The Letter of Confirmation for creation of Mortgage by Deposit of Title Deeds dated 09.01.2012;
 - v. Consent Letter dated 11.01.2012 and Tripartite Agreement dated 16.01.2012;
 - vi. MIDC Consent Letter dated 11.01.2012 and Tripartite Agreement dated 16.01.2012;
- e) The Financial Creditor has not paid the requisite Stamp Duty in respect of a sum of Rs.23,92,00,000/- (Rupees twenty-three crore ninety-two lakh only) as per the provisions of Maharashtra Stamp Act, 1958 on the following documents:
- i. Board Resolution of the Corporate Debtor dated 11.12.2012;
 - ii. Letter of Arrangement of Corporate Debtor dated 11.11.2012;
 - iii. Supplemental Agreement of Loan Cum Hypothecation dated 12.12.2012;
 - iv. Guarantee Agreement executed by the Directors and the Guarantor dated 12.12.2012;
 - v. Memorandum for Recording extension of Mortgage dated 12.12.2012;
 - vi. The Letter of Confirmation for Recording extension of Mortgage dated 12.12.2012;

- f) The Financial Creditor has not paid the requisite Stamp Duty in respect of a sum of Rs.27,15,00,000/- (Rupees twenty-seven crore fifteen lakh only) as per the provisions of Maharashtra Stamp Act, 1958 on the following documents:
- i. Board Resolution dated 03.02.2014;
 - ii. Letter Arrangement dated 31.01.2014;
 - iii. Loan Cum Hypothecation 3 dated 13.02.2014;
 - iv. Guarantee Agreement (GA-3) dated 13.02.2014;
 - v. Memorandum Recording extension (MoE-3) of Mortgage by Deposit of Title Deeds dated 03.03.2014;
 - vi. Letter for extension of Mortgage by Deposit Title Deeds dated 05.03.2014;
 - vii. Letter of Arrangement dated 11.03.2014;
 - viii. Revival Letter dated 13.02.2014 and 23.09.2016.
7. The Financial Creditor has filed Affidavit of Re-joinder dated 13.05.2022 and submits as under:
- a) The Corporate Debtor has duly acknowledged the Balance Sheet for the F.Y. 2019-20 and signed by the Director of the Corporate Debtor. The period of limitation has begun from 29.06.2020, hence, the said Petition is filed within the limitation period.

- b) In the matter of *Asset Reconstruction Company (India) Limited V. Bishal Jaiswal & Anr. (CA No. 323 of 2021)*, the Hon'ble Supreme Court was pleased to set out the following:

“14. Several judgments of this Court have indicated that an entry made in the books of accounts, including the balance sheet, can amount to an acknowledgement of liability within the meaning of section 18 of the Limitation Act.

In *Mahabir Cold Storage V. CIT, 1991 Supp (1) SCC 402*, the Hon'ble Supreme Court held that

“12 The entries in the books of accounts of the appellant would amount to an acknowledgement of the liability to M/s Prayagchand Hanumanmal within the meaning of section 18 of the Limitation Act, 1963 and extend the period of limitation for the discharge of the liability as debt...”

- c) To support the said contention, the Financial Creditor has relied upon *A.V. Murthy Vs. B.S. Nagabasavanna* (supra) was followed in *S. Natarajan Vs. Sama Dharman (2002) 2 SCC 642, Crl/ A. No. 1524 of 2014*, judgement of Calcutta High Court in *Bengal Silk Mills Co. V. Ismail Golam Hossain Ariff, 1961 SCC OnLine Cal 128: AIR 1962 Cal 115*, etc.
- d) The Financial Creditor submits that the Financial Creditor has duly paid requisite stamp duty in respect of execution of all the agreements as annexed to the Petition. To support the above said contention, the Financial Creditor has relied upon *Ashish Kumar V.*

Nagpur Nagarik Sahakari Bank Limited & Anr (CA(AT) (Ins.) No. 355 of 2022), the Hon'ble NCLAT held as under:

“5. We have perused the impugned order. In para 7 of the impugned order, document executed by the Corporate Debtor has been noticed. One of the facts which has been noticed is that present is a case of mortgage by deposit of title deed. Even if the facility agreement was not stamped, there was other materials on the record which clearly prove the financial debt which was owed by the Appellant, hence, we do not find any error in the order of the Adjudicating Authority admitting the Application under section 7. We, thus, are of the view that there is no merit in the Appeal and Appeal deserves to be dismissed.”

Findings:

8. We have heard the arguments of the Learned Counsel for both the parties and perused the records.
9. It is observed by the Bench that the Financial Creditor had sanctioned a Credit Facility of Rs.20,92,00,000/- (Rupees twenty crore ninety-two lakh only) by way of Demand Cash Credit and Medium-Term Loan on 09.01.2012. The said facility was extended by the Financial Creditor up to Rs.27,15,00,000/- (Rupees twenty-seven crore fifteen lakh only). For this purpose, the Letter Arrangement and Loan Cum Hypothecation were entered between Financial Creditor and Corporate Debtor.
10. The Corporate Debtor has raised issue with respect to the limitation in the matter. The Corporate Debtor has contended that the account of the Corporate Debtor has turned NPA on 27.06.2016. Hence, the Petition is filed after 26.06.2019 which is barred by limitation. It is

observed by the Bench that the Corporate Debtor has time and again acknowledged its debt in its Balance Sheet for each Balance Sheet. The Corporate Debtor has neither where in reply has denied the facility availed by the Financial Creditor nor denied the debt amount claimed by the Financial Creditor. Hence, this Bench finds the present Petition filed well within limitation.

11. Hence, this Bench is of considered view that the Corporate Debtor is taking lame excuses with respect to the documents not properly stamped by the Financial Creditor and it is barred by the limitation.
12. The Company Petition was Reserved for Orders on 29.06.2022. Afterwards, the Corporate Debtor has filed an Application in the matter bearing IA 1900 of 2022 for recall of the said order of this Bench for hearing the legal submissions. The counsel for the Corporate Debtor was heard at length in the matter and the Corporate Debtor submitted at the time of hearing dated 21.07.2022 that in view of settlement, an amount of Rs.10,00,00,000/- (Rupees ten crore only) will be paid through Demand Draft within one week. In view of the above, one-week time was granted to the Corporate Debtor to settle the matter. However, the matter was again listed on 28.07.2022 for reporting settlement. On the hearing dated 28.07.2022, the counsel for the Corporate Debtor submitted that the Corporate Debtor unable to pay an amount of Rs.10,00,00,000/- (Rupees ten crore only) and the OTS proposal submitted by the Corporate Debtor to the Financial Creditor was rejected by the Financial Creditor.
13. Learned Counsel appearing on behalf of the Corporate Debtor has relied upon the Hon'ble Supreme Court Judgment in *Rais Ahmad Vs.*

State of UP & Ors. in C.A No. 4446 of 1999 decided on 13.08.1999 in paragraph 10. This Bench has observed that the fact of this particular Judgment is not applicable to the case of Corporate Debtor and hence, the contentions of the Corporate Debtor is not acceptable. Hence IA No.1900 of 2022 was dismissed on 28.07.2022. In view of this, the Bench is finds that the Petition filed by the Financial Creditor is liable to be admitted as the ample opportunity was given to the Corporate Debtor to settle the matter, and however, the Corporate Debtor failed to settle the same.

14. After perusal of the material on record, this Bench is of considered view that there is no reason to deny the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor as the Corporate Debtor himself has admitted its liability.
15. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, it is the fit case for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor is liable to be admitted.
16. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established.
17. The Applicant has proposed the name of Mr. Anurag Kumar Sinha, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00427/2017-18/10750] as Interim

Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being C.P. (IB) No. 1262/NCLT/MB/C-IV/2021 filed under Section 7 of I&B Code, 2016, filed by State Bank of India, Financial Creditor/ Applicant against R J Bio-Tech Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

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. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Mr. Anurag Kumar Sinha, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00427/2017-18/10750], as 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.

- e) 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).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) 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 Whats App. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Manoj Kumar Dubey
Member (Technical)
20.09.2022

Sd/-

Kishore Vemulapalli
Member (Judicial)