IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

CP(IB) No. 618/KB/2018

In the matter of :

Insolvency and Bankruptcy Code, 2016

State Bank of India having been constituted under the State Bank of India Act, 1955 having its registered Office at State Bank Bhawan, 14th floor, Corporate Centre, Madam Cama Road, nariman Point, Mumbai, Maharastra-400021

.. Financial Creditor

Versus

M/s. Surina Impex Pvt. Ltd., having its registered office at P.O. Narayanpur, Mouza-Narayanpur Baghbari Dag No. 927131, South 24 Parganas, Narayanpur, Kolkata - 743502

.. Corporate Debtor

For the Financial Creditor :

1. Mr. Ajay Gaggar, Advocate
2. Mr. Ramanuj Ray Chaudhuri, Advocate

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For the Corporate Debtor :

1. Mr. Prosenjit Burman, Advocate

2. Mr. Sushovon Dey, Advocate

Coram : Shri Madan B Gosavi, Member(Judicial)

Shri Virendra Kumar Gupta, Member(Technical)

ORDER

Per Shri Virendra Kumar Gupta, Member(Technical)

1. This Petition, under Section 7 of the Insolvency and Bankruptcy Code, 2016, has been filed by the State Bank of India, hereinafter referred to as the Applicant/ Financial Creditor, against Surina Impex Pvt. Ltd., a Corporate Person, having its registered Office at Kolkata, hereinafter referred to as the Corporate Debtor, for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor on the ground that the Corporate Debtor had

defaulted in making repayment of debt which is due pursuant to various loan agreements. The amount claimed to be default, stands at Rs. 117,91,21,868=33 and date of default has been stated as 21-05-2016.

2. The Financial Creditor had granted Cash Credit(EPC) and Cash Credit(Stocks) facilities to the Corporate Debtor from time to time starting from year 2008 through various loan agreements executed from time to time. Initial sanction had been done vide sanction letter dated OBK/RM11/08-09-109 dated 31-03-2008 for the amount of 19.37 crores. The Corporate Debtor also provided moveable and immovable properties to secure the loan. The Petitioner has submitted copies of the financial contracts through which the facilities were granted to the Corporate Debtor and also the details of immoveable properties/moveable properties provided as security by hypothecation/mortgage, as the case may be, for the benefit of Financial Creditor. The said documents are provided in various Annexures. The copy of Memorandum of Association of the Corporate Debtor Company is also enclosed. Apart from the above said loan facilities, non fund based limits by way of Letter of Credit and Bank Guarantee, were also provided which stand closed. The Financial Creditor has also filed CIBIL report as Annexure LIII as a as a record of default.

3. Having stated the facts as above, now we proceed to deal with the submissions made by the Parties hereafter.

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4. The Ld. Counsel for the Financial Creditor referred to the relevant documents of authorisation of signatories filing the subject Petition and also stated that Mr. Sanjay Kumar Gupta has been proposed as IRP. He also stated that no enquiry is pending against Mr. Sanjay Kumar Gupta him and he has also given consent to be appointed as IRP.

5. The Ld. Counsel drew our attention to the notice issued by Financial Creditor under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 dated 21-05-2016. The Ld. Counsel further submitted that in the said notice, the due amount was claimed at Rs. 83,18,54,905=29 which subsequently increased due to interest and other charges. It was also submitted that the Corporate Debtor vide its letter dated 15-07-2016 raised few issues regarding overcharging of interest, other charges etc. but the fact that such issues did not alter/vitiate the claim of the Financial Creditor in any manner. The Ld. Counsel further submitted that Petition with Debt Recovery Tribunal was filed in September, 2016. However, after the incorporation of Insolvency & Bankruptcy Code, 2016, present Petition was filed with National Company Law Tribunal, being adjudicating authority, on 26-04-2018. Hence, the present Petition was an instance of continuous cause of action and well within limitation

6. The Ld. Counsel for the Corporate Debtor referred to Col. 2 of Part-V of Form-I to contend that the Petition had not given detail of any order passed by Debt Recovery Tribunal in pursuance of the

Petition filed by the Financial Creditor which was the instance of not submitting complete facts. The other contention raised by the Ld. Counsel was concerned with the limitation aspect involved in the present Petition. He forcefully contended that the account(s) were classified as NPA on 28-10-2014 whereas the present Petition was filed on 26-04-2018. Hence, it was beyond four years and thus not maintainable due to barred by limitation as per the provision of Limitation Act. For this proposition, he relied on the decision of the Hon'ble Supreme Court in the case of BK Educational Services Private Limited in Civil appeal No. 23988 of 2017 dated October 11, 2018. Thereafter, he referred to letter written by he Financial Creditor on 12-10-2017 to the Corporate Debtor requiring the Corporate Debtor to resolve the issue and settle dues wherein the amount was mentioned at Rs. 122.39 cores. He, accordingly, contended that original claim amount when the matter was referred to Debt Recovery Tribunal stood at Rs. 83 Crores approximately which became Rs. 122.39 crores in 2017 and got reduced to Rs. 117 crores in 2018 when the Petition under Section 7 of the Insolvency & Bankruptcy Code, 2016 was filed. Thus, there was a case of wrong amount being claimed from time to time and in the present case, the financial Creditor was actually not coming with clean hands. He also emphasized on the fact that the say on the balance confirmation certificate dated 11-07-2015 was not a genuine one as the same did not bear stamp and name of the person who signed the same.

7. In the rejoinder, the Ld. Counsel for the Financial Creditor submitted that as far as the outcome of the Petition filed with the Debt Recovery Tribunal was concerned, no final adjudicating order had been filed and after promulgation of Insolvency & bankruptcy code, 2016, petition had been filed with NCLT as per the provisions of law. Hence, the plea taken by he Corporate Debtor, in fact, had no force. As regards, the genuineness of balance confirmation certificate dated 11-07-2015 was concerned, the Ld. Counsel drew our attention to then fact that this aspect had already been examined by NCLT and original certificate which was filed with the NCLT had already been inspected by the Corporate Debtor and no defect could be pointed out and merely to further drag the matter this issue was still being argued.

8. We have heard both the parties and perused the record in the matter.

9. First of all, it is considered necessary to deal with the aspect of genuineness of balance confirmation certificate dated 11-07-2015. This aspect has already been dealt with in two CAs. filed earlier and the Corporate Debtor has physically inspected the balance confirmation certificate provided to this authority earlier. No action in any other law for such alleged conduct has been taken and it is just an after thought. Hence, we do not find any merit in this claim of the Corporate Debtor and, therefore, reject the same.

10. As far as the aspect of limitation is concerned, the claim of the corporate Debtor is that the limitation period should be counted

from 28-10-2014 as that was the date of classification of account as NPA. We also do not find any merit in this contention of the Corporate Debtor for the reason that the proceedings with DRT were initiated on 15-07-2016 after complying with the requirements of applicable law which were well within the limitation period and there is a continuous cause of action as the Applicant had moved before an appropriate forum i.e. Debt Recovery Tribunal for appropriate relief and, therefore, claim of the Applicant/ Financial Creditor is not barred by limitation.

11. We further draw support for our finding from the reply affidavit filed by the Corporate Debtor, wherein letter dated 30-10-2017 addressed to the Financial Creditor, duly signed by the Director, has been, attached at Page 62-63 of such reply. In this letter, the Corporate Debtor has replied to Bank's letter No. SAMB/BR/1348 dated 12-10-2017 and referred to the disputes raised by the Corporate Debtor earlier by his letter dated 15-07-2016 and, more importantly, following has been mentioned :

> "You will thus agree that unless such serious disputes in claim amount are rectified and actual claim amount is arrived at, we are not in a position to come forward with resolution proposal/negotiation for regularization of our loan a/c.".

Thus, from the perusal of above, claims made by the Corporate Debtor it can be safely concluded that Corporate Debtor has confirmed the outstanding debt which they were willing to pay after resolution of disputes/differences which period is less than three years, hence, claim is not barred by limitation. We, therefore, hold that decision of Hon'ble Supreme Court in the case of BK Education Services Private Limited also does not come to the rescue of respondent in the facts and circumstances of the case.

12. Thus, in this case, existence of debt and default is reasonably evidenced in the documents filed along with the Petition as well as from the legal and factual position, brought to our notice during the course of hearing. Further, the Petition under Section 7 is complete. The Financial creditor have named the Interim Resolution Professional with his consent and there being no disciplinary proceedings pending against him, therefore, he is eligible for appointment as IRP. Accordingly, we are of the view that the present case is fit for admission under Insolvency & Bankruptcy Code, 2016. We, hereby, admit this Petition filed under Section 7 of Insolvency & Bankruptcy Code, 2016 against the Corporate Debtor for initiating Corporate Insolvency Resolution Process against the Corporate Debtor and declare moratorium with consequential directions as per order below :

ORDER

I. The Application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution process against the Corporate Debtor, M/s. Surina Impex Pvt. Ltd. is hereby admitted.

II. We hereby declare a moratorium and public announcement in accordance with Section 13 and 15 of the Insolvency & Bankruptcy Code, 2016.

III. Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The Insolvency Resolution Professional shall cause a public announcement of the initiation of the Corporate Insolvency Resolution process and call for the submission of claims under Section 15 of the Insolvency and Bankruptcy Code, 2016. The public announcement referred to in sub-section 1 of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.

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IV. Moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 prohibits the following :

a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 the possession of the corporate debtor.

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V. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended, or interrupted during moratorium period.

VI. The provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

VII. The order of moratorium shall have effect from today 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 IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.

VIII. This Bench, hereby, appoints Mr. Sanjay Kumar Gupta, having Registration Number IBBI/IPA-001/IP-P00592/2017-18/11045, Mobile Number – 98748-77220, E-Mail-casanjaigupta@gmail.com, as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circular/Directions issued in this regard.

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IX. The Financial Creditor will pay Rs. 1,00,000/- (Rupees one lakh only) to the Interim Resolution Professional as advance against his fees as per Regulation 33(3) of the Insolvency and Bankruptcy Board of India(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which shall be adjusted against the total fees.

X. The Interim Resolution Professional should convene meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall also identify the prospective Resolution applicant within 105 days from the insolvency commencement date.

13. The Registry is, hereby, 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.

14. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

15. List the matter on 23-09-2019 for filing of progress report.

Sd

(Virendra Kumar Gupta)

Member(Technical)

Sd 7/8/2019

(Madan B Gosavi)

Member(Judicial)

Signed on this, the 7th day of August, 2019

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