

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

CP No. 4081/IBC/NCLT/MAH/2019

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 r.w. Rule 4 of
the Insolvency and Bankruptcy
(Application to Adjudicating
Authority) Rules, 2016

In the matter of

Bank of India

**.. Financial
Creditor
(Petitioner)**

V.

**Shree Mahalaxmi Agro Farms
Private Limited.**

**.. Corporate Debtor
(Respondent)**

Order delivered on: 23.12.2021

Coram:

Shri Bhaskara Pantula Mohan : Member (Judicial)

Shri Shyam Babu Gautam : Member (Technical)

For the Petitioner : Ms. Prajakta Menezes, Advocate

For the Respondent : Mr. Nilesh Ghadge, Advocate

ORDER

Per:- Shyam Babu Gautam, Member Technical

1. The Petitioner, 'Bank of India'(hereinafter as **Financial Creditor**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" on 17.10.2019 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code(hereinafter as **Code**) against 'Shree Mahalaxmi Agro Farms Private Limited' (hereinafter as 'Corporate Debtor'). The registered address of the Corporate Debtor is stated to be Flat No. 101, Vishvakarma Complex, K Building, Devkar Panand Vasahat, Kolhapur.
2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be Rs. 14,43,00,000/- (Rupees Fourteen Crores Forty Three Lakhs Only), and the amount claimed to be in default is Rs. 21,64,36,273.63/- (Rupees Twenty One Crores Sixty Four Lakhs Thirty Six Thousand Two Hundred Seventy Three and Sixty Three Paise Only). as on date of filing the Petition. The date of default is stated to be 31.12.2014. The loan account of the Corporate Debtor was declared as Non-Performing Asset on 31.12.2014.

SUBMISSIONS BY THE FINANCIAL CREDITOR

3. That the Corporate Debtor approached Applicant Bank on 02.12.2011 with a respect of Financial Assistance by way of :-

Facilities	Amount (Rs.)	Disbursement Date
Term Loan – I (Pulp Unit)	3,00,00,000	30.12.2011
Term Loan – II (Grading Unit)	1,50,00,000	31.12.2011
Total Term Loan (A)	4,50,00,000	
Cash Credit – (Pulp Unit)	80,00,000	30.12.2011 & 31.12.2011
Additional Limit Cash Credit – I	6,00,00,000	30.12.2011 & 31.12.2011
Cash Credit – II (Grading Unit)	15,00,000	30.12.2011 & 31.12.2011

Total Cash Credit (B)	6,95,00,000		
Term Loan – III (For Godown) (C)	48,00,000	26.04.2013 11.05.2013	&
Term Loan – IV (D)	2,50,00,000	07.06.2014 10.06.2014	&
Total [A+B+C+D]	14,43,00,000		

4. The Financial Creditor submits that the sanction letters for the above facilities are dated 29.12.2011, 25.04.2013 and 06.06.2014. Further the aforesaid facilities were executed vide following documents :-

- a. Board Resolution of the Directors of the Corporate Debtor Company dated 29.12.2011 for availing loan and security documents.
- b. Hypothecation cum Loan Agreement in Form IFD – X dated 30.12.2011.
- c. Certificates of Registration of Charge with ROC.
- d. Demand Promissory Note dated 30.12.2011, 26.04.2013 and 06.06.2014

- e. Instalment letter in form of L-440 dated 30.12.2011, 26.04.2013 and 06.06.2014.
 - f. Multipurpose Undertaking in Form L-516 dated 30.12.2011, 26.04.2013 and 06.06.2014.
 - g. Deed of Guarantee as per Form OD 194 executed by the Directors of the Corporate Debtor in their individual capacity in favour of the Financial Creditor, guaranteeing repayment of the loan amount along with interest charges dated 30.12.2011, 26.04.2013 and 06.06.2014.
 - h. Letter of Acknowledgment of Debt and Security in Form L 444C dated 17.01.2017.
5. Further the Financial Creditor states that the aforesaid credit facilities/loans were granted on hypothecation and charge of Plant and Machinery, Stock of Finished & Semi Finished Products etc. For the above mentioned loans the Corporate Debtor created Equitable Mortgage.
6. The Financial Creditor further states that the said credit facilities/loans were granted to the Corporate Debtor were repayable along with the interest as per the agreed terms from the date of disbursement of money to the date of payment in full with the

monthly rate or at such rates as revised by the Bank from time to time.

7. The Financial Creditor states that the Corporate Debtor failed to observe the terms and conditions on which the credit facilities/loans. In spite of regular request of the Financial Creditor, the said accounts became irregular and the Corporate Debtor failed to regularize the accounts. The Corporate Debtor failed and neglected to pay the overdue loan amount.
8. Thereafter, the Financial Creditor was constrained to initiate proceedings under SARFAESI Act, and issued Notice u/s 13(2) of the said Act on 02.03.2015. In spite of the said Notice, the Corporate Debtor failed to repay the due amount within the specified period. Considering the said default, possession of Factory 7 Building was taken on 26.06.2015.
9. Further in consideration and in acknowledgment of granting the said enhanced credit facilities/loans, the Corporate Debtor has been periodically confirming the debit balance in the account. The Financial Creditor has produced the letter of Acknowledgment of Debt and Security in Form L 44C dated 17.01.2017 in favour of the Financial Creditor.
10. Due to persistent failure on the part of the Corporate Debtor to repay the loan, the Financial Creditor issued a Recall Notice dated

29.05.2017 to the Corporate Debtor and all the guarantors on 03.06.2017. Even after the said notice, the Corporate Debtor failed and neglected to repay the entire dues to the Financial Creditor.

11. The Financial Creditor states that the debt was duly disbursed. The Corporate Debtor failed to repay the loan amount. Hence, loan account of the Corporate Debtor was declared NPA on 31.12.2014.
12. The Financial Creditor has produced on record the Financial Statements of the Corporate Debtor for the years 30.12.2011 to 02.08.2019 which reflect the debt payable to Financial Creditor.
13. The Petitioner draws the attention of this Bench towards the Bank Statement of Account of the Corporate Debtor to corroborate the amount claimed. Relevant certificates under section 2(a) of the Bankers' Book Evidence Act, 1891 has also been produced on record.
14. Hence, the petitioner submits that the petition is complete in all respects, the default has been corroborated by enough substantial evidences, therefore, the petition ought to be admitted and the Corporate Debtor's Corporate Insolvency Resolution process be initiated.

SUBMISSIONS BY THE CORPORATE DEBTOR

15. The only contention of the counsel for the Corporate Debtor was that that the Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) is barred by Limitation. The Date of default is 31.12.2014 i.e. the account of the Corporate Debtor was declared as NPA in the books of the Financial Creditor.
16. The Corporate Debtor states that Section 238A of the Code states that the period of Limitation under the Limitation Act, 1963 is applicable to the proceedings of the Code. The default date in the instant case is 31.12.2014, whereas the Application is filed in the month of July, 2019 much beyond the period of limitation.
17. Further the Corporate Debtor relies on the Judgement of the Hon'ble Supreme Court in the case of "*B.K. Educational Service private Limited v/s Parag and Associates*". *It is held that :-*

"48 It is clear that since the limitation Act is applicable to the application filed u/s 7 and 9 of the Code from the inception of the Code. Article 137 of the Limitation Act gets attracted. The right to sue therefore accrues when a default occurs. If the default has occurred over three years prior of

the date of filing the applications, the application would be barred by limitation under Article 137 of the Limitation Act, save and except in those cases where in the facts of the case, section 5 of the Limitation Act may be applied to condone the delay in filing the such application.

18. The Corporate Debtor states that Article 137 of the schedule of the Limitation Act, 1963 provides a limitation period of three years from the time when the right to apply accrues. Right to apply in the instant case arose from the date of default i.e. 31.12.2014. Hence, the period of limitation is also to be considered from 31.12.2014 and as the present application is filed in July, 2019, it is beyond limitation period.
19. The Corporate Debtor states that an acknowledgement of debt on 17.01.2017, a recall notice on 29.05.2017 and that the proceedings under SARFAESI Act, 2002 initiated on 02.03.2015 shall not be given advantage to the Financial Creditor to plead that the said action should be given an extended time limit and hence the Application should be dismissed as barred by limitation.

FINDINGS

20. On going through the submissions made by the Learned Counsel for both the sides and on perusing the documents produced on record, it is understood that the contention of the Corporate Debtor that the Application is filed beyond the period of limitation is no valid defence to this petition.
21. The Corporate Debtor has not disputed the loan disbursed and the execution of the agreement between the parties. There is no dispute as to receipt of money and also regarding the transaction. The Corporate Debtor himself in its Reply has admitted that an acknowledgement was given in the year of 2017.
22. It has also been seen that the grounds stated of limitation are not applicable in the present case as the said petition is filed well within limitation period. The date of NPA is said to be 31.12.2014 and within 3 years from the date of default, the Corporate Debtor has acknowledged the Debt in writing. In this regard reliance is placed on Hon'ble Supreme Court ruling in the case of "*Laxmi Pat Surana v/s Union Bank of India & Anr.*" wherein it has held that Section 18 of the Limitation Act applies to extend the period of limitation for filing an application under section 7 of the IBC. It also held that the intent of the Code was not to reopen or revive time-barred debts, but clarified that accrual of fresh period of limitation in terms of Section 18 is

under the Limitation Act and it will not be a case of giving new lease to time barred debts.

23. Further, the Corporate Debtor has not denied the amount claimed anywhere in the detailed reply to the said Company Petition, but has only sought the dismissal of the said Petition on the ground of the Limitation. The Corporate Debtor has nowhere denied his liability to pay the amount claimed. Therefore, not even an iota of doubt is left to believe that the Corporate Debtor had committed breach in payment of the Loan amount.
24. The Financial Creditor has also produced the CIBIL report dated 31.08.2019 recording the said default. The Corporate Debtor has not disputed the amount taken as loan from the Financial Creditor. The Hon'ble Supreme Court in the case of *Innoventive Industries Ltd. V. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 OF 2017]*, order dated **31.08.2017**, has been very clear that to admit a petition under section 7 of the I&B Code, the Adjudicating Authority's scope is restricted only to the ascertainment of 'debt', 'default', and whether the petition is complete or not. Hence, the only contention of the Corporate Debtor holds no water, hence rejected.

25. In this case, all the three pre-requisites for admission of this petition have been met, the debt is supported by substantive evidences and the evidences corroborate to the amount claimed.
26. Considering the above facts, we come to conclusion that the nature of Debt is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e. existence of ‘debt’ and ‘default’, for admission of a petition under section 7 of the I&B Code, have been met in this case.
27. As a consequence, keeping the said facts in mind, it is found that the Financial Creditor has not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Petitioner. We are of the conscientious view that this Petition deserves ‘**Admission**’.
28. Further that, we have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.
29. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Kamal Kishor Gurnani, having registration No. IBBI/IPA-001/IP-P-

01463/2018-19/11718, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

30. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
31. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
32. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 and Section 15 of the Code and inform the progress of the Resolution Plan and the compliance of the directions

of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

33. The Petition is hereby **“Admitted”**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

34. Ordered Accordingly.

Sd/-

**SHYAM BABU GAUTAM
MEMBER TECHNICAL**

Sd/-

**BHASKARA PANTULA MOHAN
MEMEBR JUDICIAL**

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

2. C.P.(IB)-4081(MB)/2019

CORAM: SHRI BHASKARA PANTULA MOHAN, HON'BLE MEMBER (J)
SHRI SHYAM BABU GAUTAM, HON'BLE MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 23.12.2021

NAME OF PARTIES:- Bank of India
V/s
Shree Mahalaxmi Agro Farms Private Limited
Section: 7 of the Insolvency & Bankruptcy Code, 2016.

ORDER

The matter is taken up through Virtual Hearing (VC). Counsel, Mr. Rakesh Gupta appeared for Financial Creditor. Counsel, Ms. Mamta Kadam appeared for the Corporate Debtor. **The Company Petition bearing no. (IB)/4081(MB)/2019 is admitted** vide separate order.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)
23.12.2021

Sd/-
BHASKARA PANTULA MOHAN
Member (Judicial)