IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P. (IB)/1226/KB/2019

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.

And

In the matter of:

Asset Reconstruction Company (India) Limited (CIN U65999MH2002PLC134884)

...Financial Creditor

Versus

Maeksin Shipping Company Private Limited (CIN U63090WB1996PTC079831)

...Corporate Debtor

Date of Hearing: 16.06.2022

Date of pronouncing the order: 14.07.2022

Coram:

Shri Rohit Kapoor	***:***	***Member (Judicial)***
Shri Harish Chander Suri	***:***	***Member (Technical)***

Appearances (through Video Conferencing/physical hearing)

For Financial Creditor	:	Mr. Victor Dutta, Adv.
	:	Mr. Sourojit Dasgupta, Adv.
For Corporate Debtor	:	Mr. Buddhadeb Das, Adv.

ORDER

Per Rohit Kapoor, Member (Judicial)

1. The Court is 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. Ashis Vora, Chief Manager, Asset Reconstruction Company (India) Limited (***'Financial Creditor'***), duly authorized by Power of Attorney dated 21 February, 2018 for initiation of Corporate Insolvency Resolution Process ***('CIRP')*** against Maeksin Shipping Company Private Limited ***('Corporate Debtor').***.

3. The present Petition was filed on 01 August, 2019 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted in a sum of Rs.5,95,24,264.00/- (Rupees Five Crores Ninety Five Lakh Twenty Four Thousand Two Hundred and Sixty Four only) as on 31 May, 2019 under cash credit and term loan. The account of the Corporate Debtor was declared as NPA on 29 March, 2012.

4. It is submitted in the Petition, Part – II that the authorized share capital of the Corporate Debtor is Rs.20,00,000/- (Rupees Twenty Lakh only) with paid up Capital as Rs.22,66,000/- (Rupees Twenty Two Lakh Sixty Six Thousand only).

5. ***Submissions by the Ld. Advocate on behalf of the Financial Creditor:***

   a) In the year 2006, the State Bank of India ***('SBI')*** had sanctioned term loan and cash credit facility to the Corporate Debtor. The credit facility was enhanced from time to time by the SBI.

   b) Thereafter, on 18 July, 2014, the SBI assigned its debt to the Financial Creditor (*Assignment Agreement at page 13 – 65 of the Petition*). As per the Assignment Agreement the total amount due was Rs.2,66,66,867/- (Rupees

Two Crore Sixty Six Lakh Sixty Six Thousand Eight Hundred Sixty Seven only) as on 28 February, 2014 along with interest.

c) In the year 2012, the SBI had also preferred an application under section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 fro recovery of money and advance with interest, cost and expenses and other reliefs.

d) The loan/credit facilities granted to the Corporate Debtor were against the following securities:

SI No.	***Particulars***
(i)	Mortgage of Building & Civil Work
(ii)	Hypothecation of Machinery
(iii)	Hypothecation of Electrical Installation
(iv)	Hypothecation of miscellaneous fixed assets.
(v)	Propert owned by the Corporate Debtor being Deed No.257 of 1999 comprising piece and parcel of landed property measuring about 5.02 acres in Dag No. 2166, 2167, 2306, 3619 and 3620 at Mouza Kalinagar.

e) After the Assignment Agreement dated 18 June, 2014, the Financial Creditor stepped into the shoes of the SBI. On 22 November, 2017, the Corporate Debtor admitted their claim and requested for one time settlement to the Financial Creditor for an amount of Rs.171.86 lacs (*Annexure K of the Petition*).

6. ***The Corporate Debtor has filed its reply affidavit, wherein the Corporate Debtor submits as follows:***

   a) The present application is not maintainable in law and also barred by limitation. Further, it has been filed by a person who is not authorized in law to represent the Financial Creditor.

   b) The Corporate Debtor had challenged the steps taken by the SBI under the Act of 2002 before the Ld. Debt Recovery Tribunal and diverse orders were passed from time to time. The Financial Creditor has failed to disclosed any documents which records the default.

7. ***Supplementary Affidavit on behalf of the Corporate Debtor***

   a) The Financial Creditor claims to be the assignee of the SBI and unequivocally admitted and acknowledged that the Corporate Debtor account stood as NPA as on 29 March, 2012 by SBI.

   b) The Corporate Debtor had initially made an offer of Rs.171.86 Lacs to settle the dues of SBI. Further, the Corporate Debtor also proposed to enhance its offer to settle the dues of the SBI.

   c) On 27 March, 2014, the Ld. Debt Recovery Tribunal directed to the Corporate Debtor to submit a concrete compromise proposal by enhancing its previous offer of Rs.171.86 lakh and to amke a down payment of 15% along with its offer.

   d) Pursuant to such order, the Corporate Debtor submitted their revised offer of Rs.1.80 Crores along with an upfront payment of Rs.15% being a sum of Rs.27,00,000/-. SBI accepted the revised proposal and appropriated the upfront payment of Rs.27,00,000/-. Hence, the Corporate Debtor was required to pay a balance of Rs.1.53 crores.

e) Thereafter, the Debt was assigned to the Financial Creditor. The Corporate Debtor was further informed the assignee i.e., the Financial Creditor will issue notice informing that the debt has been assigned to them and accordingly the Corporate Debtor would have liberty to pay the balance amount to the newly opened account by the assignee. However, no communications were received by the Corporate Debtor from the assignee.

f) In the year 2017, it transpires that after three year of assignment of the debt, the Financial Creditor filed an application before the Ld. Debt Recovery Tribunal. It is also pertinent to mention that the recovery proceeding initiated by the SBI is still pending adjudication before the Ld. Debt Recovery Tribunal.

8. ***Reply to the Supplementary Affidavit by the Financial Creditor.***

a) *Vide* letter dated 06 June, 2017, the Corporate Debtor was informed about the assignment in question by the Financial Creditor (*Annexure A of the Reply to Supplementary Affidavit).* The Corporate Debtor itself had accepted the settlement proposal on 22 November, 2017, thereby acknowledging its debts towards the Financial Creditor (*Annexure B of the Reply to Supplementary Affidavit*).

b) Further, the Corporate Debtor on 25 November, 2017 was specifically informed that the total outstanding was Rs.4,71,59,454/- and the settlement offer by the Corporate Debtor has been rejected. The Corporate Debtor had complete knowledge of the Financial Creditor being the assignor of the loan account.

Analysis & Findings

9. We have heard the Ld. Counsel appearing for the parties and perused the records and the concerned documents annexed to the Petition.

10. Upon perusal of the records at page 3 of the Reply by the Corporate Debtor, it is undisputed that the credit facility/loan was disbursed by the SBI to the Corporate Debtor and the Corporate Debtor defaulted in repayment of such debts. The account of the Corporate Debtor was declared as the NPA on 29 March, 2012. However, *vide* Assignment Agreement dated 18 July, 2014, the SBI assigned the debt to the Financial Creditor (*Assignment Agreement at page 13 – 65 of the Petition).*

11. With respect to the ground of limitation taken by the Corporate Debtor it is pertinent to mention that as per the letter dated 20 April, 2022 from the Corporate Debtor to the Financial Creditor, it is apparent that the Corporate Debtor was very much aware of the assignments of debt to the Financial Creditor. In the said letter, the Corporate Debtor has categorically stated that the revised settlement amount was Rs.180 Lakhs, out of which the Corporate Debtor had paid Rs.27,00,000 (Rupees Twenty Seven Lakh only) to the SBI. Further, the assignment of debt of debt happend after the payment of Rs.27,00,000 (Rupees Twenty Seven Lakh only) to the SBI. Hence, the rest of the amount could not be deposited. However, the Corporate Debtor ***undertakes*** to pay the balance amount i.e., Rs.153 Lakhs.

12. Further, from the Financial Statements for Financial years 2014-2015, 2015-2016, 2016-2017 and 2017-2018 of the Corporate Debtor (*Annexure A of the Rejoinder filed by the Financial Creditor*) it is clear that the Corporate Debtor has unconditionally acknowledged the debt.

13. In ***Laxmi Pat Surana V. Union Bank of India & Anr, decided*** on March 21, 2021, the Hon'ble Supreme Court has held that

"37. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 of the Code. However, Section 7 comes into play when the corporate debtor commits "default". Section 7, consciously uses the expression "default" not the date of notifying the loan account of the corporate person as NPA.

Further, the expression "default" has been defined in Section 3(12) to mean non-payment of "debt" when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor would get triggered the moment the principal borrower commits default due to non-payment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of PA but before the expiration of three years there from including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. ***Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 of the Code enures****.* ***Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 of the Code****. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under section 7 of the Code."*

14. In ***Rajendra Narottamdas Sheth and Another v. Chandra Prakash Jain and Another***[1], the Hon'ble Supreme Court

"23. It is no more res integra that Section 18 of the Limitation Act is applicable to applications filed under Section 7 of the Code. In case the application under Section 7 is filed beyond the period of three years from the date of default and ***the financial***

[1] 2021 SCC OnLine SC 843

creditor furnishes the required information relating to the acknowledgement of debt, in writing by the corporate debtor, before the Adjudicating Authority, with such acknowledgement having taken place within the initial period of three years from the date of default, a fresh period of limitation commences and the application can be entertained, if filed within this extended period."

15. From the above facts and circumstances it is clear that the Financial Creditor has successfully satisfied this Adjudicating Authority of the existing ***debt*** and ***default***. Hence, in light of the above facts and circumstances, it is, accordingly, hereby ordered as follows:-

(a) The application bearing ***C.P. (IB)/1226(KB)2019*** filed by Asset Reconstruction Company (India) Limited, the Financial Creditor, under section 7of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Maeksin Shipping Company Private Limited, the Corporate Debtor, is ***admitted***.

(b) There shall be a moratorium under section 14 of the IBC.

(c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(e) ***Mr. Soumitra Lahiri*** registration number ***IBBI/IPA-001/IP-P00734/2017-2018/1123***2, email: ***slahiri0207@gmail.com***, is hereby appointed as Interim

Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

(f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.

(g) The IRP/RP shall submit to this Adjudicating Authority progress reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

(h) 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).

(i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

(j) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

16. ***C.P. (IB)/1266(KB)2019*** to come up on ***29 August, 2022*** for filing the progress report.
17. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities**.**
18. File be consigned to record.

Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order pronounced on 14th day of July, 2022

SA, LRA