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**IN THE NATIONAL COMPANY LAW TRIBUNAL,**  
**KOLKATA BENCH, KOLKATA**

**CP (IB) No.1198/KB/2018**

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:

Asset Reconstruction Company (India) Ltd., having registered office at The Ruby, 10<sup>th</sup> Floor, 29, Senapati Bapat Marg., Dadar (West), Mumbai - 400 028.

.....Applicant/Financial Creditor

And

In the Matter of:

Dagcon (India) Private Limited, having its Registered Office and carrying on business at Flat No.2d, Ground Floor, 167, Rajdanga, Nabapally, Kolkata - 700 107, West Bengal - 743 504

..... Respondent/Corporate Debtor

Date of Hearing 7<sup>th</sup> November 2019

Order Delivered on 20<sup>th</sup> November 2019

**Coram:**

**Madan B Gosavi, Member (J)**

**Virendra Kumar Gupta, Member (T)**

For the Financial Creditor : 1. Mr. Pratik Ghose, Advocate  
2. Mr. Rahul Poddar, Advocate  
3. Mr. Avishek Roy Chowdhury, Advocate

For the Corporate Debtor : 1. Mr. Arup Nath Bhattacharyya, Advocate  
2. Mr. Pratik Garai, Advocate  
3. Ms. Sreetama Biswas, Advocate

**ORDER**

**Per Virendra Kumar Gupta, Member (Technical)**

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This application has been filed under Sec.7 of Insolvency & Bankruptcy

Code, 2016 by the financial creditor, viz., Asset Reconstruction Company (India) Ltd. to initiate corporate insolvency resolution process against the corporate debtor, viz., Dagcon (India) Private Limited. The amount of default has been stated in the application at Rs.74,62,39,740/- including claim for interest till the date of payment.

2. The facts, in brief, are that the Indian Overseas Bank was original lender who sanctioned credit facilities on 9<sup>th</sup> May 2016. Subsequently, documents were executed from time to time and further limits were sanctioned/ revised. Copies of such documents have been attached with the petition. Demand notice/hypothecation agreement are also attached with the application. Corporate debtor failed to repay the loan which resulted into classification of its account as NPA on 29<sup>th</sup> March 2012. Notice of recalling of loan/facilities was issued by the Bank on 30/9/2013. Proceedings with Debts Recovery Tribunal were also initiated. Subsequently, through a Deed of Assignment dated 22/6/2015 the debt was assigned to the applicant.

3. Ld. Counsel appearing on behalf of the financial creditor reiterated the facts of sanctioning of loan, disbursement and event of default leading to filing of recovery proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). On a query regarding limitation, it was contended that the writ petition was filed by the corporate debtor firstly in 2013 to quash the notice of demand issued under Sec.13(2) of SARFAESI Act, 2002 dated 30<sup>th</sup> September 2013 which was dismissed. Averments made therein confirmed the fact of loan availed by the corporate debtor, hence, such averments amounted to acknowledgment of debt. It was further pleaded that subsequently writ petition was filed in 2016 bearing WP No.9463(W) of 2016 wherein Hon'ble High Court took note of the fact of negotiations going on between the corporate debtor and respondent bank for

repayment including the proposal to sell the mortgaged property to liquidate the outstanding dues. Accordingly, it was pleaded that before the Hon'ble High Court the fact of outstanding debt had been admitted and it was also pleaded before the Hon'ble High Court that efforts were going on to pay the outstanding debt. Ld. Counsel, accordingly, contended that this averment also amounted to acknowledgment of debt within the meaning of provision of Sec.18 of Limitation Act, 1963.

4. Ld. Counsel for the corporate debtor initiated his argument by stating that writ petition was filed by the corporate debtor wherein issue of classification of its NPA was challenged along with validity of notice issued under Sec.13(2) of the SARFAESI Act, 2002. Against the order of dismissal, an appeal had been filed with Division Bench of the Hon'ble High Court which was pending. In the circumstances, according to the Ld. Counsel, no debt was due and payable and, therefore, at the threshold of law itself, the petition was liable to be dismissed.

5. Second plea was taken that except the averment made by the corporate debtor in the said writ petition which could not be considered as acknowledgment of debt, no other document was brought on record as regard to the acknowledgment of debt by the corporate debtor, hence, the debt was barred by limitation. It was also contended that the proposal for settlement and repayment of debt could not be considered as an acknowledgment of debt within the meaning of provisions of Sec.18 of the Limitation Act, 1963. Ld. Counsel accordingly contended that the debt of default happened on 29/3/2012, hence, in the absence of any acknowledgement of debt thereafter, the debt was barred by limitation and consequently, application was not maintainable.

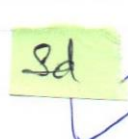
6. Ld. Counsel further contended that deed of assignment had been executed wherein requisite stamp duty had not been paid as per provisions of

Stamp Act applicable to West Bengal. Further, no consent of corporate debtor had been taken. The assignment deed contained multiple parties hence, again the issue of insufficient stamp duty was involved. For these reasons the deed of assignment was not enforceable and, therefore, applicant was not eligible to file this application.

7. Ld. Counsel for the financial creditor, in the rejoinder, submitted that if the averment made before a court of law could not constitute an acknowledgment of debt, then what could be? The credibility of such averments and application thereto in relation to other proceedings could not be disputed. Ld. Counsel placed reliance on the decision of Hon'ble National Company Law Appellate Tribunal in the case of Lalan Kunmar Singh, order dated 20/12/2018 wherein assignment of debt was held as legal which could not be challenged for the purpose of application filed under the Insolvency & Bankruptcy Code, 2016.

8. It is not in dispute that the account was declared NPA on 29/3/2012 and notice of recall has been issued/served on 30/9/2013. Proceedings under SARFAESI Act, 2002 have also been initiated thereafter.

9. This legal steps have been taken by the bank on account of default made by the corporate debtor in the payment of loans. The main plea taken before us that the debt was not due and payable as the corporate debtor has challenged the validity of such steps taken by the bank before the Hon'ble High Court. It is worthwhile to note that writ petition filed by the corporate debtor has been dismissed. Thus, at the first instance no merits have been found by the Hon'ble High Court in the claims made by the corporate debtor in such petition though such decision has been challenged in appeal. Be that as it may, we have to see the nature of facilities and terms and conditions related thereto to ascertain whether debt is due or payable or not. Original term loan had been repaid. Thereafter, fund based and non fund based credit facilities have been obtained.



The fund based credit facilities comprises of cash credit against hypothecation of stocks and book debts and working capital term loan. Non fund based facilities comprise of letter of guarantee both financial as well as performance guarantee. As per established commercial/legal convention, cash credit is payable on demand. Hence, irrespective of its classification as NPA and challenge to such action, there cannot be any dispute as regard to such debts becoming due and payable on demand. As far as working capital term loan is concerned, it was payable in quarterly instalment starting from 31/12/2009 and, thereafter, this amount is being due and payable. Thus, this aspect also cannot be disputed. Bank guarantee is given for a specified period and it is of irrevocable nature, hence, if encashed by the beneficiary, the corporate debtor becomes liable to repay the same or financial creditor can appropriate its assets lying with the financial creditor as security for issue of such guarantee.

10. In view of this long settled commercial/legal position and considering the legal status of its writ petition, we hold that there is no merit in the claim of the corporate debtor that debt is not due and payable. As regard to validity of deed of assignment on account of multiple parties being involved, insufficient stamp duty, consent of corporate debtor, we note that these issues have been raised earlier in different cases before us and after considering the scheme and objects of Insolvency & Bankruptcy Code, 2016 along with specific provisions of Sec.3(6) containing definition of term "claim" and Sec.238 of Insolvency & Bankruptcy Code, 2016, these aspects have not found favour with us. Accordingly, we hold that these aspects are not relevant for petition filed under Sec.7 of the Insolvency & Bankruptcy Code, 2016. Accordingly, this contention of the corporate debtor is also rejected.

11. Coming to the aspect of limitation, we are of the view if averment made before a court of law or any statutory authority cannot be constituted as an

acknowledgment of debt then that would render such averment meaningless. Legally such averment bind party making them. Doctrine of estoppel applies without any restriction in commercially and legally. Accordingly, we hold that such statement constitute acknowledgment. In this regard, we further take the assistance of the provision of explanation (a) of Sec.18(1) of Limitation Act, 1963 wherein scope of acknowledgment has been given in a widest possible manner. It is also to be noted that writ petition was filed within a period of 3 years from the date of issue of recall notice and, hence, for this reason also provisions of Sec.18 of the Limitation Act, 1963 are applicable. Even otherwise, in our considered view, such averments made before the Hon'ble High Court amount to promise within the meaning of provisions of Sec.25(3) of the Indian Contract Act, 1872 and, therefore, if such promise is made after expiry of original limitation period also, the limitation period gets extended as condition of acknowledgment before expiration exists only under Sec.18 of the Limitation Act, 1963.

12. It reveals from the record that the financial creditor has proposed the name of Shri Bimal Agarwal, Registration No.IBBI/IPA-001/IP-P00268/2017-18/10512 email address [bimal@dvaonline.in](mailto:bimal@dvaonline.in) as Interim Resolution Professional who has has given his consent in Form 2. It further appears that no disciplinary proceedings are pending against the IRP. Accordingly, we approve his appointment as IRP.

13. The petition is otherwise complete in all respects and defect free. Accordingly, we admit the same and order as under:-

**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, Silverton Spinners Limited is hereby admitted.

- ii. We declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii. Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv. Moratorium under Section 14 of the Insolvency & 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 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 (54 of 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.
- v. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- vi. The provisions of sub-section (1) 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 the date of admission till the completion of the corporate insolvency resolution process.
- viii. Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix. Necessary public announcement as per Sec.15 of the IBC, 2016 may be made.
- x. Shri Bimal Agarwal, Registration No.IBBI/IPA-001/IP-P00268/2017-18/10512 email address [bimal@dvaonline.in](mailto:bimal@dvaonline.in) is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- xi. The Financial Creditor to pay a sum of Rs.2,00,000/- (Rupees Two lakh only) to IRP as advance fee as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation

2016 which shall be adjusted from final bill. In case further funds are required during Corporate Insolvency Resolution Process and if not provided by Committee of Creditors then IRP/RP can approach this Tribunal for that purpose.

- xii. The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xiii. Registry is hereby directed under section 7(7) of the I.B.Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.
14. List the matter on 2/1/2020 for filing of the progress report.
15. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

  
(Virendra Kumar Gupta)  
Member (T)

  
(Madan B Gosavi)  
Member (J)

Signed on 20<sup>th</sup> November 2019