

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP/988/IB/2018 and MA/133/2019
filed 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 *M/s. Vijai Spinners (RJPM) Pvt. Limited*

CP/988/IB/2018

Syndicate Bank

... Financial Creditor

-vs-

M/s. Vijai Spinners (RJPM) Pvt. Limited

... Corporate Debtor

MA/133/2019

M/s. Vijai Spinners (RJPM) Pvt. Limited

... Applicant/Corporate Debtor

-vs-

Syndicate Bank

... Respondent/Financial Creditor

Coram:

**R. VARADHARAJAN,
Hon'ble Member (Judicial)**

**ANIL KUMAR B,
Hon'ble Member (Technical)**

*Advocates for FC/Respondent : Mr. T. Ravichandran,
Mrs. Elavarasi and
Mr. Srivathsa Subrahmaniam*

Advocate for CD/Applicant : Mr. D.R.Raghnath

COMMON ORDER

Per: Mr. R. VARADHARAJAN, MEMBER (JUDICIAL)

Order pronounced on 9th of December, 2019

1. This Application has been filed by **Syndicate Bank** (hereinafter referred to as 'Financial Creditor') 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, against **M/s. Vijai Spinners (RJPM) Pvt. Limited** (hereinafter referred to as 'Corporate Debtor').

The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

X

Heard the Learned Counsel for the Financial Creditor, Learned Counsel for the Corporate Debtor and perused the pleadings and Counter.

2. The Financial Creditor has claimed the total amount of Rs.59,99,70,106.37p as outstanding against the Corporate Debtor as on 31.05.2018. The statement which is placed at page 23 of Volume-I of the typed set filed with the Application discloses the details of various loans advanced by the Financial Creditor to the Corporate Debtor including the date of default as 30.08.2014.

3. The case of the Financial Creditor is that M/s. Vijai Spinners, a Partnership Firm, had approached the Financial Creditor in the year 1982 for availing various credit facilities for their business purpose. Accordingly, the Financial Creditor sanctioned various credit facilities namely Term Loan-I, Term Loan-II, Term Loan-III, Term Loan-IV, Term Loan V, Over Draft Facility, Letter of Credit and Bank Guarantee, to the Corporate Debtor.



4. In consideration of the above said facilities, M/s. Vijai Spinners executed Common Composite Hypothecation Agreements on 25.04.2005, 07.07.2006, 10.09.2008, 20.08.2009, 26.05.2012, 04.02.2004, 26.03.3004, 13.12.2007, 20.08.2009, 14.03.2011, 26.05.2012 and 18.02.2013 respectively, in favour of the Financial Creditor, copies which are placed at pages 46 to 173 of Volume -I and pages 192 to 210, 219 to 237, 245 to 262, 268 to 297 and 304 to 334 respectively of Volume-II of the types set filed with Application by hypothecating the goods and machineries as security for repayment of the said loans with interest.

5. Besides above, the Corporate Debtor executed the following documents in favour of the Financial Creditor on various dates for due repayment of loans :-

- i) Agreement of Charge and Hypothecation of Book Debts,



ii) Power of Attorney for Collection of Bills, Book Debts and other Receivables and

iii) Omnibus Counter Guarantee

6. In addition, the Corporate Debtor executed mortgage deed by deposit of title deeds in respect of the property belonging to one Mr. G.A. Abimanyu Raja and Agreement Relating to Deposit of Title Deeds in favour of Financial Creditor on 07.02.2011, 04.10.2012 and 18.02.2013, copies of which are placed at pages 459 to 482 of the typed set filed with the Application.

7. Subsequently, M/s. Vijai Spinners, Partnership Firm was reconstituted and converted as M/s. Vijai Spinners (RJPM) Private Limited on 15.07.2013. Copies of Certificate of Incorporation, Memorandum of Association and Articles of Association are placed at pages 362 to 385 of Volume-II of the typed set filed with the Application.

8. The Corporate Debtor after conversion from Partnership Firm into Private Limited Company executed Common Composite Hypothecation Agreement in respect of Term Loan-I to Term Loan-V, on 03.08.2013, copy of which is placed at pages 385 to 403 of Volume-I of the typed set filed with the Application. In addition, on 03.08.2013, the Corporate Debtor executed i) Common Composite Hypothecation Agreement ii) Agreement of Charge and Hypothecation of Book Debts and iii) Agreement of Omnibus Counter Guarantee besides executing Power of Attorney for Collection of Bills, Book Debts and other Receivables in favour of Financial Creditor on 04.02.2014 in respect of Overdraft Facility and Letter of Credit availed by the Corporate Debtor. Copies of which are placed at pages 404 to 430 of Volume-III of the typed set filed with the Application. In addition, the Corporate Debtor executed mortgage deed by deposit of title deeds of the property belonging to one Mr. G.A. Abimanyu Raja and Agreement Relating to Deposit of Title Deeds in favour of Financial Creditor on

18.03.2014, copy of which is placed at pages 492 to 509 of Volume-III, of the typed set filed with the Application.

9. It is further contended that by virtue of request made by the Corporate Debtor, the Financial Creditor vide its Letter of Sanction dated 28.03.2014, had sanctioned the following facilities to the Corporate Debtor;

- i) SOD,
- ii) LC and
- iii) BG facilities.

Copy of Sanction Letter is placed at pages 1 to 6 of the additional Index to typed set of documents filed by the Financial Creditor. In consideration of the above facilities sanctioned by the Financial Creditor, the Corporate Debtor executed the following documents in favour of the Financial Creditor, on 29.03.2014:-



- i) Composite Hypothecation Agreement,
- ii) Agreement of Charge and Hypothecation of Book Debts,
- iii) Power of Attorney for Collection of Debts, Book Debts and other Receivables, and
- iv) Agreement of Omnibus Counter Guarantee.

10. The Corporate Debtor after availing the above facilities, executing necessary loan documents and creating security in favour of the Financial Creditor has committed default in repayment, and therefore, the Financial Creditor was constrained to classify the loan accounts of the Corporate Debtor as Non-Performing Asset (NPA) on 30.08.2014.

11. Thereafter, the Financial Creditor has ~~the~~ initiated proceedings under SARFAESI Act, 2002 against the Corporate Debtor and issued the Demand Notice dated 11.09.2014 under Section 13(2) of the SARFAESI Act,

2002, the copy of which is placed at pages 510 to 513 of Volume-III of the typed set filed with the Application. At the same time, the Financial Creditor has also issued Lawyer's Notice dated 15.10.2014 calling upon the Corporate Debtor to repay the outstanding amount with interest, copy of which is placed at pages 514 to 517 of Volume-III of the typed set filed with the Application.

12. Simultaneously, the Financial Creditor has filed an Original Application in OA No.475/2015 under RDDB&FI Act, 1993, against the Corporate Debtor and others, for issuance of Recovery Certificate for the outstanding debt due to it, the copy of OA is placed at pages 1052 to 1087 of Volume – VI of the typed set filed with the Application.

13. The Financial Creditor has also placed on record the certified copy of Statement of Accounts maintained by it separately for the accounts Term Loan –I to Term Loan-V, Overdraft Facility, Letter of Credit at pages 516 to 627 of Volume-III of the typed set filed with the Application.

The Financial Creditor has further placed on record the certified copy of Statement of Accounts in relation to Letter of Credit maintained by it at pages 627 to 1015 of Volume-IV and Volume-V respectively of the typed set filed with the Application.

14. Besides above, the Financial Creditor in support of its claim has filed the copy of RBI CRILC data at page 1018 of Volume-VI of the typed set filed with the Application and also copy of Form No. CHG-I filed by the Corporate Debtor before the Registrar of Companies at page 1019 of Volume-VI of the typed set filed with the Application.

15. The Corporate Debtor has filed Counter Affidavit on 12.11.2018 wherein it is stated that the Application is neither maintainable in law nor on facts. The Corporate Debtor further stated that in view of Section 238 A of the I&B Code, 2016 and the Judgement dated 11.10.2018 passed by Hon'ble Supreme Court in Civil Appeal

No.23988/2017, **B.K. Educational Services Private Limited vs. Parag Gupta and Associates**, the Application filed by the Financial Creditor is barred by limitation, and even as per their own statement, the transactions between the Financial Creditor and the Corporate Debtor ceased to exist since July, 2014. The Corporate Debtor contended that the Financial Creditor had already exercised its right in filing an Original Application in OA-475/2015 before DRT, Madurai against the Corporate Debtor under Section 19(1) of the RDDB&FI Act, 1993, and in the said OA, has also obtained an Order of Attachment in relation to the Guarantor's property.

16. However, the Corporate Debtor admits that during the course of its business, the Corporate Debtor has availed credit /financial facilities from the Financial Creditor for the purpose of its business. The relationship with the Financial Creditor is for more than 30 years and the Corporate Debtor is one of the reputed customers of

the Financial Creditor. It is stated that due to Government policies, severe power cut, labour shortage, abnormal/fluctuation in yarn prices and slackness in the Industry, the business of Corporate Debtor has been severely affected and accordingly, the cotton industries including the Corporate Debtor were put to severe stress, whereby the Corporate Debtor was facing stress/difficulty in repaying the loan amount.

17. The Corporate Debtor has contended in its Counter that the credit facility availed by the Corporate Debtor from the Financial Creditor was restricted in terms of a contract bearing Letter of Sanction dated 28.07.2014 in Ref. No.026/FGMOCH/6048/ADV/2014 and since the Financial Creditor has failed to enforce the said contract, the Corporate Debtor has filed a Suit in OS No.360/2015 before the Principal District Munsif Court, Srivilliputhur against the Financial Creditor seeking for a direction to enforce the said contract, along with Interim Applications seeking other directions. According to the Corporate

Debtor, before adjudicating that whether the credit facility availed by the Corporate Debtor has been restructured by the Financial Creditor, it cannot be alleged that the Corporate Debtor has committed default since the Suit along with Interim Applications are pending before the Principal District Munsif Court, Srivilliputhur, and therefore, the present Application is not maintainable and prayed to dismiss the Application with exemplary costs.

18. We have considered the rival submissions of the contesting parties. It is to be noted that from pleadings of the parties, it is evident that an existence of a financial debt owed to the Financial Creditor, as defined under Section 5 (8) of I&B Code, 2016, by the Corporate Debtor in excess of Rs.1,00,000/- and in the repayment of which there is a default as envisaged under Section 3 (12) of I&B Code, 2016.



19. The main issue that has been raised by the Corporate Debtor is that due to the slackness in the cotton industry, the Corporate Debtor had requested for additional facilities cum restructuring to the Financial Creditor on 25.04.2014. The Financial Creditor after showing their willingness for restructuring vide its letter dated 30.05.2014, failed to pursue the same and in this regard, the Corporate Debtor filed Writ Petition before Hon'ble High Court of Madras at Madurai Bench and the Hon'ble High Court had also made an observation to consider the representation made by the Corporate Debtor. Thereafter subsequent to inspection of the Unit and obtaining the signature in the loan document with the facility of 3 years moratorium, and 7 years repayment structure, had issued a letter dated 07.08.2014 stating that restructuring the facilities could not be processed without assigning any valid reasons.

20. Repudiating the contentions made by the Corporate Debtor, the Financial Creditor has submitted that the



request for restructure of the liabilities of the Corporate Debtor was not consistent and acceptable for consideration. The Corporate Debtor has failed to submit the Stock Statements from February 2014 onwards, which is the basis for arriving at the Drawing Power. In the absence of Stock Statements and Books of Accounts for comparison, the Financial Creditor could not come to the conclusion that there were sufficient current assets to cover the Working Capital Finance. It has been explained by the Counsel for the Financial Creditor that the copies of the documents placed on record along with the Counter have no relevance with the subject matter of the Application as the Corporate Debtor disputed questions of fact which cannot be adjudicated in view of the limited jurisdiction, as the proceedings before this Authority are summary in nature.

21. In this connection the Financial Creditor has made reliance on the Judgement of Hon'ble Supreme Court rendered in ***M/s. Innoventive Industries Ltd. Vs. ICICI***

Bank and Anr., reported in 2018 1 SCC 407, wherein it is held that “the moment the Adjudicating Authority is satisfied that a default has occurred then, the Application must be admitted unless it is incomplete”.

Relying upon the above citation, the Financial Creditor submitted that in the instant Application filed by the Financial Creditor contains the following ingredient such as:-

- i) Financial Debt due to the Financial Creditor
- ii) a default by the Corporate Debtor and which is proved by the statement of actions and
- iii) The Application is complete in all respects.

22. Therefore, the Learned Counsel for the Financial Creditor has submitted that the contention of the Corporate Debtor that it had requested for additional

facilities cum restructuring and the Financial Creditor has failed to consider the same and thereby it cannot be alleged to be committed default, does not hold water and is liable to be rejected. This Authority finds force in the submission of the Counsel for the Financial Creditor and therefore, this issue stands decided in favour of the Financial Creditor and against the Corporate Debtor.

23. The other objection that has been taken by the Corporate Debtor in its Counter Affidavit is the Application filed by the Financial Creditor is barred by limitation and as the Financial Creditor had already exercised its right in filing the Original Application before DRT against the Corporate Debtor and obtained an Order of Attachment of Guarantor's property, this Application is not maintainable.

24. In reply to the said contention, the Counsel for the Financial Creditor has submitted that the defence that has been taken by the Counsel for the Corporate Debtor

is spurious and that after the accounts of the Corporate Debtor were classified as NPA on 30.08.2014, the Financial Creditor has initiated proceedings under SARFAESI Act, 2002 and issued Demand Notice dated 11.09.2014 to the Corporate Debtor and others, demanding the balance outstanding amount as evident from the Demand Notice placed at pages 510 to 513 of Volume-III of the typed set filed with the Application and immediately thereafter issued a Lawyer's Notice dated 15.10.2014 thereby calling upon the Corporate Debtor to repay the balance outstanding amount along with interest, copy of Lawyer's Notice is placed at pages 514 to 517 of Volume-III of the typed set filed with the Application and since the amount was not forthcoming, the Financial Creditor chose to file the Original Application in OA-475/2015 on 15.04.2015, which is being a *bona fide* prosecution by the Financial Creditor before DRT, Madurai, copy of OA is placed at pages 1054 to 1087 of the typed set filed with the Application.



25. The Learned Counsel for the Financial Creditor has drawn the attention of this Authority to the statement of Balance Sheet of the Corporate Debtor as on 31.03.2018 filed during the course of arguments by the Corporate Debtor on 20.11.2019, and submitted that the particulars of amount disclosed under “Non-current liabilities” as “Long Term Borrowings” in the said statement of Balance Sheets by the Corporate Debtor, can be construed as an Acknowledgment of Debt for the purpose of limitation.

26. In this connection, Learned Counsel for the Financial Creditor has relied upon the judgment of NCLT, Mumbai Bench rendered in the matter of **TJSB Sahakari Bank vs. Unimetal Castings Limited**, wherein it is held as under:-

“For the above contention of the Corporate Debtor, the Petitioner submitted that the loan was shown in the balance sheet of the Corporate Debtor which is an acknowledgement of liability and hence the debt is not barred by limitation. However, the Corporate Debtor has not disputed the fact that the loan was



shown as a liability in the balance sheet of the Corporate Debtor. When the liability is shown in the balance sheet that is a clear acknowledgement of debt by the Corporate Debtor. There are umpteen numbers of judgements to say that the debt shown in the balance sheet is an acknowledgement of liability. Some of them are (i) Bajan singh Samra v. Wimpy International Ltd., 185(2011) DLT 428, (ii) Shreeram Durgaprasad v. Sail Soap Stone Factory & Ors. 1982, MhLJ 912, (iii) J.G. Glass Ltd. v. Indian Bank and Anr. 2002 (104(1)) Bom LR 234, and (iv) Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, AIR 1962 Cal. 115. In view of this, the contention of the Corporate Debtor that the debt is barred by limitation will not hold water”

It is further submitted by the Learned Counsel for the Financial Creditor that it is the settled legal position that the pendency of the DRT proceedings is no bar for triggering insolvency proceedings under I&B Code, 2016. Based on the above, the Learned Counsel for the Financial Creditor seeks to establish that the claim is within the period of limitation.



27. *Per contra*, the Corporate Debtor has submitted that the principles laid down by NCLT, Mumbai Bench shall not be applicable to the case on hand, since as per Section 18 of the Limitation Act, 1963, the acknowledgement in writing has to be made before the expiry of the limitation period and in this case the Annual Report/Balance sheet of the Corporate Debtor for the financial year 2017-18 is signed and executed by the Managing Director of the Corporate Debtor only on 07.09.2018, which is more than one year from the expiry of limitation period. In this regard, the Corporate Debtor has placed reliance on the following Judgement viz;

- (i). *Standing Conference of Public Enterprises vs. BSES Rajdhani Power Limited & Ors.,- 2013(198) DLT 186 (DB);*
- (ii). *Smt. Vijayalakshmi -Vs- Hari Hara Ginning & Pressing (1999) 96 Comp Cas 723; and*
- (iii). *Walnut Packing P. Ltd -Vs- Sirpur Paper Mills Ltd & Another (2008) SCC online AP 840.*



28. As regards the amount disclosed in the statement of Balance Sheet of the Corporate Debtor as to whether the said amount can be construed as an acknowledgment of debt or not, this Tribunal is persuaded by the decision rendered by the Hon'ble Delhi High Court in the matter of **Bhajan Singh Sarma (Supra)** wherein after consideration of several authorities on the issue has held that admission of a debt either in a balance sheet or in the form of a letter duly signed by the Respondent in a winding up Petition under Section 433 of the Companies Act, 1956, where the provision does not state that the debt must be precisely a definite sum, would amount to an acknowledgment of debt extending the period of limitation under Section 18(1) of the Limitation Act, 1963.

29. Even otherwise, as per the recent decision of the Hon'ble NCLAT in **Sesh Nath Singh -Vs- Baidyabati Sheoraphuli Co-operative Bank Ltd.**, in *Company Appeal(At) (Insolvency) No.672 Of 2019, dated 22.11.2019*, in computing the period of limitation, the time during

which the Financial Creditor has been prosecuting with due diligence in another civil proceedings against the Corporate Debtor for the same relief shall be excluded as per Section 14(2) of the Limitation Act, 1963. Upon perusal of the documents filed by the Financial Creditor, the following facts emerge:-

Date of NPA	30.08.2014
Sec 13(2) SARFAESI Notice	11.09.2014
Filing of OA. 475/2015 – DRT Madurai	15.04.2015
Filing of present CP/988/IB/2018	02.07.2018

On calculation from the date of NPA till the filing of CP/988/IB/2018, there are **3 years and 10 months**. Therefore, the time period to be excluded under Section 14(2) of Limitation Act as per Hon'ble NCLAT Judgment is from the date of filing of O.A. i.e. 15.04.2015 till filing of CP/988/IB/2018 i.e. 02.07.2018– **3 years 2 months**. Thus, after exclusion of 3 years 2 months, the present Application filed by the Applicant under Section 7 of the IB& Code, 2016 falls well within the period of Limitation.



30. Thus in view of Section 238 A of IBC, 2016 mandating the application of the Limitation Act to the proceedings before this Authority and there being an acknowledgment of debt on the part of the Corporate Debtor in excess of Rs.1,00,000/- in its Financial Statement for the year ended 31.03.2018, the claim is *not* barred by limitation. Further, the Corporate Debtor has not disputed the fact that the loan as shown as a liability in the Balance Sheet of the Corporate Debtor.

31. As seen from the records, nowhere has the Corporate Debtor denied the existence of a 'debt' and its 'default'. Further as consistently held by the Hon'ble Supreme Court both in ***Innoventive Industries Ltd. -Vs- ICICI Bank and another (2018) 1 SCC 407*** as well as ***Mobilox Innovations Pvt. Ltd.. -Vs- Kirusa Software Pvt. Ltd. (2018) 1 SCC 353*** after going through the Scheme of I&B Code, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor where there is an existence of a 'financial debt' and its

default in excess of Rs.1,00,000/-, this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP).

32. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Application, as filed by the Financial Creditor is required to be admitted under Section 7 (5) of the I&B Code, 2016.

33. In relation to MA/133/2019 filed by the Corporate Debtor wherein certain documents were sought to be produced by the Financial Creditor, it has been time and again reiterated that the proceedings before this Tribunal is summary in nature and in view of admission of CP/988/IB/2018, the prayer as sought for by the Corporate Debtor in MA/133/2019 has become redundant, and hence, the same stands dismissed.

34. The Financial Creditor has proposed the name of **Mr. B. Sathrukkanan**, having Registration Number

IBBI/IPA-001/IP-P00301/2017 – 2018/1054, as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 15,17,18 of the I&B Code, 2016 and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

35. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as



extracted hereunder shall follow in relation to the Corporate Debtor;

- (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 the possession of the Corporate Debtor.”

36. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;



- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) 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.”

37. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process

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.”

38. Based on the above terms, the Application stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Applicant as well as to the Respondent above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order forthwith by the Registry.

-SD-

(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Mrs. P. ATHISTAMANI