

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.543/MB-IV/2022

Under Section 7 of the I&B Code, 2016

In the matter of:

State Bank of India

[IN: TAN MUMB14834B]

...Financial Creditor/Applicant

V/s

**Rajmal Lakhichand Jewelers Private
Limited**

[CIN: U24230MH1997PTC110243]

...Corporate Debtor/Respondent

Order Dated: 09.02.2023

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Ms. Fatema Kachwala a/w
Mr. Akhil Nene, Advocates.

For the Respondent(s) : Mr. Ashish Pyasi, Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being C.P. (IB) No. 543/MB-IV/2022 filed on 08.02.2022 by State Bank of India, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code)

against Rajmal Lakhichand Jewelers Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Application is filed by Mr. Girish Sangalgikar, Chief Manager & CLO of the Financial Creditor, claiming total default of Rs.5,35,91,74,316.23/- (Rupees five hundred thirty-five crore ninety-one lakh seventy-four thousand three hundred sixteen and twenty-three paise only) which includes:

Principal outstanding of Rs.2,04,04,76,539.76; and

Unapplied Interest of Rs.3,31,86,97,776.47; from 27.11.2014 to 31.12.2021 and

3. The Date of Default as mentioned in the Petition is 29.03.2013. The Petition is filed on 08.02.2022.
4. The case of the Financial Creditor is as under:
 - a) The Corporate Debtor is one of the six companies and firm of Rajmal Lakhichand Group, approached the Financial Creditor for grant of various loan facilities vide its Application dated 11.11.2005. Upon appraisal of the Application and representation made by the Corporate Debtor, the Financial Creditor sanctioned the loan facilities to the tune of Rs.50 crore, inclusive of Working Capital of Rs.10 crore and the Term Loan of Rs.15 crore vide its sanction letter dated 28.01.2006.
 - b) Thereafter, vide various Applications, the Corporate Debtor approached the Financial Creditor to renew and for further sanction its Credit Facilities. Accordingly, from time to time, upon appraisal

of the appraisal of the Applications, the Financial Creditor enhanced and sanctioned the loan facilities vide various Sanction Letters and the Letter of Agreement. The Facilities were renewed and enhanced up to the tune of Rs.243.88 crore.

- c) To avail the aforesaid Facilities the Corporate Debtor executed various Agreements with the Financial Creditor, finally resting with the following;
- i. Supplemental Agreement of Loan dated 30.03.2013 for Rs.243.88 crore, at pp 73-123 of the Petition; and
 - ii. Supplemental Deed of Hypothecation dated 30.03.2013 for Rs.236.54 crore, at pp 124-140 of the Petition.
- d) The aforesaid Facilities were secured by various Security Documents executed by the Corporate Debtor in favour of the Financial Creditor, the last of which are stated as under:
- i. Promoters of the Corporate Debtor executed a Deed of Guarantee dated 30.03.2013 for Rs.243.88 crore, at pp 141-159 and pp 159 A-159 AA of the Petition;
 - ii. R.L. Gold Pvt. Ltd. (Corporate Guarantor), Sister Company of the Corporate Debtor executed a Deed of Guarantee dated 30.03.2013 for Rs.243.88 crore at pp 160-174 and pp 174 A-174 AA of the Petition;
 - iii. M/s Rajmal Lakhichand, a Partnership Firm and one of the Firm from R.L. Group executed a Deed of Guarantee dated

30.03.2013 for Rs.243.88 crore at pp 175-188 and pp 188A-188 BB of the Petition.

- iv. Further to secure the credit Facilities sanctioned in favour of the Corporate Debtor, the Promoters of the Corporate Debtor executed an Agreement for Pledge of Shares dated 07.02.2014 and created Pledge charge in favour of Financial Creditor, over 32,50,000 Shares of the Corporate Debtor. The said Agreement for Pledge of Shares is at pp 189-194 of the Petition.
- e) The Financial Creditor submitted that the Corporate Debtor has time and again executed following Balance Confirmation Letters dated 28.04.2009, 10.04.2010, 10.04.2011, 10.04.2012, 31.05.2013 and 23.04.2014, thereby acknowledging the amounts due, and its outstanding liabilities being due and payable to the Financial Creditor against the Credit Facilities availed by it. The said Balance Confirmation Letters are at pp 195-200 of the Petition.
- f) The Financial Creditor submitted that the after availing various Credit Facilities by the Corporate Debtor, for reasons best known to the Corporate Debtor, it failed to regularly maintain the accounts despite numerous letters and reminders by the Financial Creditor and an event of default occurred on 29.03.2013.
- g) In pursuance to Enabling Resolution dated 24.01.2014, the Corporate Debtor executed Revival Letter dated 24.01.2014 for the purpose of Section 18 of Limitation Act, 1963 and any like limitation law on the documents executed in respect of sanctioned

Credit Facilities as stated above. The said Revival Letter dated 24.01.2014 is at pp 201 & 202 of the Petition.

- h) The Corporate Debtor in its Audited Balance Sheet dated 31.03.2015 has also acknowledged its liabilities of Rs.2,29,52,67,033/- (Rupees two hundred twenty-nine crore fifty-two lakh sixty-seven thousand thirty-three only) towards the outstanding payable to the Financial Creditor against the Credit Facilities availed by it. The copy of Audited Balance Sheet for the F.Y. 2014-15 is at pp 203-369 of the Petition.
- i) The Corporate Debtor in its Audited Balance Sheet dated 31.03.2016 has also acknowledged its liabilities of Rs.262.50 crore towards the outstanding payable to the Financial Creditor against the Credit Facilities availed by it. The copy of Audited Balance Sheet for the F.Y. 2015-16 is at pp 370-550 of the Petition.
- j) Accordingly, Financial Creditor issued a Letter dated 20.05.2016 through its Advocate to the Corporate Debtor under Section 13 (2) of the SARFAESI Act, 2002. In the same Letter, the Financial Creditor also informed the Corporate Debtor that its account has been declared as NPA with effect from 29.03.2013. The copy of the said Letter is at pp 551-566 of the Petition.
- k) Subsequently, the Financial Creditor filed an Original Application bein 'O.A. No. 197' of 2016 before the Debt Recovery Tribunal, Aurangabad Bench inter alia seeking repayment of Facilities granted by Financial Creditor in favour of Corporate Debtor.

- l) The R.L. Group issued an OTS offer vide a Letter dated 23.06.2016, wherein it acknowledged the liability of Corporate Debtor against the loan facilities availed by it. In view of OTS, the limitation to file an Application under section 7 of the Code was extended up to 23.06.2019. The copy of the said OTS Letter dated 23.06.2016 is pp 567-571 of the Petition.
- m) The Corporate Debtor has acknowledged its outstanding liabilities of Rs.261.50 crore in its Annual Reports for the F.Y. 2016-17, Rs.209.54 crore in its Annual Report for the F.Y. 2017-18 and Rs.211.16 crore (excluding interest of Rs.198.45 crore) in its Annual Report for the F.Y. 2018-19. The copy of the above Annual Reports is attached at pp 572-775, pp 776-971 and pp 972-1144 of the Petition respectively.
- n) On 06.05.2019, R. L. Group again issued an OTS, wherein it acknowledged debts of its group companies and firm, including the liabilities owed by Corporate Debtor against the Loan Facilities availed by it.
- o) Further, the Corporate Debtor has acknowledged its outstanding liability of Rs.209.54 (excluding interest of Rs.270.60 crore) in its Annual Report for the F.Y. 2019-2020 which is at pp 1150-1313 of the Petition.
- p) R. L. Group once again issued a Letter dated 22.04.2020 wherein it once again acknowledged the liabilities of its group companies and firm, including the debts of the Corporate Debtor against the Loan Facilities availed by the it. The said OTS proposal dated 22.04.2020 is at pp 1314-1318 of the Petition.

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- q) The Financial Creditor submitted that in *Dena Bank (now Bank of Baroda) Vs. Shivkumar Reddy* has held that an Application under Section 7 of the Code would not be barred by limitation, if there were an acknowledgment of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years. In present case the Corporate Debtor has duly acknowledged its debt owed its outstanding liabilities in its Annual Reports of R.Y. 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20.
- r) Further, due to onset of Covid-19 pandemic in India in around March, 2020, the Hon'ble Supreme court in *RE: Cognizance for Extension of Limitation [SMW(C) No. 3 of 2020]* vide its Order dated 10.01.2022, excluded the period of limitation from 15.03.2020 till 28.02.2022 for the purpose of limitation as may be prescribed under any general or special laws in respect of all Judicial or Quasi-Judicial Proceedings.
5. The Financial Creditor has submitted the Certificate under Section 2A (a) of the Banker's Book of Evidence Act, 1891 which at pp 1380 & 1381 of the Petition.
6. The Corporate Debtor has filed its Affidavit in Reply dated 15.11.2022 and submits as under:
- a) The Corporate Debtor has raised following objections/issues;
- i. The Petition is barred by Limitation;

- ii. Fraudulent Proceedings initiated by alleged Financial Creditor;
 - iii. The Petition is not maintainable as non-compliant with provisions of the Code and filed by unauthorised signatory; and
 - iv. The documents are forged and fabricated and a fraud has been played by the Financial Creditor and the same has to be looked into by an appropriate forum having jurisdiction.
- b) The Petition is barred by limitation:
- i. The Petition is not within Limitation and is time barred by the limitation. The Financial Creditor submitted in its Application that various Loan Facilities were granted to the Corporate Debtor vide Application dated 11.11.2005 and Corporate Debtor failed to maintain its accounts and repay the said loans and thus, the account of the Corporate Debtor was classified as NPA on 29.03.2013.
 - ii. For the purpose of computing the limitation under the Limitation Act, the first date of default is to be considered and the same cannot be shifted. The date of default mentioned in the Petition is 29.03.2013 when the Account of the Corporate Debtor was classified as NPA by the Financial Creditor.
 - iii. It is to be noted that before an account can be declared as NPA there has to be a default which must have taken place at least 90 days before the account being declared as NPA. In

the present case the limitation would start from the date when first default was occurred i.e. date when the default occurred which has to be 90 days prior and if the NPA date 29.03.2013 then the date of default must be 29.12.2012 which is clearly barred by limitation.

- c) A bare perusal of the documents submitted by the Financial Creditor makes it clear that none of them bear any acknowledgment as the same have not been executed by any of the Corporate Debtor's duly authorised officials and are fraudulently and unilaterally executed by the Financial Creditor's officers.
- d) All these documents have also been produced by the Financial Creditor before the DRT and the issue of their existence and validity is pending before the DRT and the DRT is the jurisdictional forum which will be deciding on these documents too.
- e) The Petition is not maintainable as the provisions of the code have not complied with and the same is filed by unauthorised signatory of the Financial Creditor. The authorisation given at page no. 20 of the Petition itself is not as per requirement of the Code and thus the Petition itself is not maintainable.
- f) It is trite law that the maintainability issue is to be decided first, before going into the merit of the Company Petition. The Hon'ble NCLAT and the Hon'ble Apex court have in a plethora of Judgment held that whenever the preliminary issues are raised, the Hon'ble Tribunal has to decide such preliminary issue first and the same cannot be decided later.

- g) The Corporate Debtor has filed its counter claim to the tune of Rs.329.09 crore as on 31.08.2016 and same is pending adjudication before the DRT. It is submitted that the counter claim is comprised of several claims like overcharging of the octroi, interest, non-compliance with the terms of the Sanction terms etc and the Corporate Debtor shall be relying upon the Written Statement filed by it before the DRT in support of the above. The issue of counter claim is pending before DRT and in the event the Corporate Debtor succeeds in that then the Corporate Debtor will have a recovery against the Financial Creditor.
- h) It is submitted that the Financial Creditor has not even mentioned the date as to when the amounts were disbursed and when the same became due and payable. The Financial Creditor simply chose not to state the same as the Petition is barred by limitation and by not stating this information the Petition becomes incomplete and deserves to be rejected.
- i) The entire case of the Financial Creditor is based on the loan transaction and the annexures which support their case however, the entire set of documents are fabricated and unilaterally executed to defraud the Corporate Debtor.
- j) The Computation Table at Annexure-C of the Petition makes it clear that it is not as per the requisites of the Code as details of the disbursements, interest if any, as the date for same and the detailed calculations has not been provided. The dates of disbursement as required under Part-IV has not been provided in the Petition.

k) The Financial Creditor has failed to comply to produce the latest and up to date Statement of Account and Banker's Certificate as required under the Banker's Books of Evidence Act, 1981. The same are forged and fabricated as Old Statement of Accounts has been annexed and the Certificate produced are neither dated nor in compliance with the law.

Findings:

7. We have heard the arguments of the Learned Counsel for both the parties and perused the records.
8. It is observed by the Bench that the Financial Creditor has provided the Loan Facility to the Corporate Debtor. The Facilities were renewed and enhanced up to the tune of Rs.243.88 crore. For the purpose of the said facility, the Financial Creditor and the Corporate Debtor entered into Supplemental Agreement of Loan dated 30.03.2013 for Rs.243.88 crore and Supplemental Deed of Hypothecation dated 30.03.2013 for Rs.236.54 crore.
9. The Corporate Debtor has raised issue with respect to the limitation in the matter. The Corporate Debtor has contended that the account of the Corporate Debtor was classified as NPA on 29.03.2013. Hence, the Petition which is filed on 08.02.2022 is barred by limitation. It is observed by the Bench that the Corporate Debtor has time and again acknowledged its debt in Annual Balance Sheets for the F.Y. 2014-15, F.Y. 2015-16, F.Y. 2016-17, F.Y. 2017-18, F.Y. 2018-19 and F.Y. 2019-20.
10. The Corporate Debtor has contended that the Financial Creditor has mentioned the Date of Default as 29.03.2013 which is Date of NPA

and the actual default as occurred on 29.12.2012 i.e. 90 days prior to the date of declaring the Account of the Corporate Debtor as NPA. This Bench has observed that even if we considered the Date of Default as 29.03.2012, even then the Petition filed by the Financial Creditor is within limitation as the Corporate Debtor has acknowledged its liability in its Annual Balance Sheet for F.Y. 2014-15 which is before competition of period of three years from the date of default.

11. Hence, this Bench is of considered view that the Corporate Debtor is taking lame excuses that the Petition is barred by the limitation. Further, the Corporate Debtor has also failed to prove that the Petition filed by the Financial Creditor is not complete and not filed in proper manner.
12. After perusal of the material on record, this Bench is of considered view that there is no reason to deny the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor as the Corporate Debtor himself has admitted its liability.
13. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, it is the fit case for initiation of CIRP against the Corporate Debtor. Hence, the Application filed by the Financial Creditor is liable to be admitted.
14. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established.

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15. The Applicant has proposed the name of Mr. Harish Kant Kaushik, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P-01469/2018-2019/12340] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being C.P. (IB) No. 543/NCLT/MB-IV/2022 filed under Section 7 of I&B Code, 2016, filed by State Bank of India, Financial Creditor/ Applicant against Rajmal Lakhichand Jewelers Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
- 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 possession of the corporate debtor.

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

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date of this order 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 I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench appoints Mr. Harish Kant Kaushik, a registered insolvency resolution professional having Registration Number

[IBBI/IPA-001/IP-P-01469/2018-2019/12340], as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

- e) 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).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or Whats App. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Manoj Kumar Dubey
Member (Technical)
09.02.2023

Sd/-

Kishore Vemulapalli
Member (Judicial)