

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT V**

C.P.(IB) No. 1245 of 2022

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

**Omkara Assets Reconstruction
Private Limited,**

C/515, Kanakia Zillion Junction of L..B.S Road & CST Road, B.K.C Annexe, Near Equinox, Kurla (West), Mumbai — 400070.

...Financial Creditor/ Petitioner

Vs

**Mondo Culinary Private Limited,
(CIN: U55101MH2012PTC238548)**

Unit No. 4A, WICEL, Opp., SEEPZ, MIDC Marol, Andheri (East). Mumbai — 400093,

...Corporate Debtor/ Respondent

Order Pronounced on: 12.06.2023

Coram:

Hon'ble Sh. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via Video conferencing)

For the Financial Creditor: Adv. Nidhi Shah i/b Amir Arsiwala

For the Corporate Debtor: Adv. Mitika Agrawal

Per: Kuldip Kumar Kareer (Judicial)

ORDER

1. This Company Petition is filed by Petitioner, namely Omkara Assets Reconstruction Private Limited, (hereinafter called "**Financial Creditor**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Mondo Culinary Private Limited, (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor committed default in making payment to the Financial Creditors. This petition has been filed by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called "**Code**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of Financial Debt of **Rs. 7,48,93,841/-**.

FACTS OF THE CASE

2. The Financial Creditor is a company registered under Companies Act, 2013, and is authorized to carry on business in India in accordance with section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002, as an Asset Reconstruction Company.
3. The Corporate Debt was taken over by the Financial Creditor/Petitioner, from Bank of Baroda (hereinafter referred to as the "**Original Creditor**"). The Original Creditor transferred the Non-Performing Asset Account (NPA) of the Corporate Debtor to the Financial Creditor vide assignment agreement dated 14.06.2022.
4. The Original Creditor sanctioned a Term Loan facility of Rs. 5,63,15,000/- to the Corporate Debtor, vide Sanction letter dated 15.02.2014 bearing

account no. 04120600001157, for Kitchen Equipment and Civil Works for a period of 84 months, repayable in 71 monthly instalments of Rs. 7.82 Lakhs each and the 72nd instalment of Rs. 7.93 Lakhs. Additionally, a cash credit facility of Rs. 40,00,000/- bearing account no. 04120500000132, for the purposes of working capital requirement, was also sanctioned to the Corporate Debtor, on demand, subject to annual review. Therefore, the Total loan facilities availed by the Corporate Debtor is Rs. 6.03,15,000/-. At the time of advancement of loan, the following documents were executed.

- (i) A demand promissory note dated 2nd September, 2014.
- (ii) Hypothecation Agreement dated 2nd September, 2014.

5. It has been submitted that on 26.11.2018, the Corporate Debtor defaulted in making the payments to the Original Creditor to an extent of Rs. 3,77,30,823.75/- in the loan account bearing number 04120600001157. The Original Creditor classified the account of Corporate debtor as Non-performing assets (NPA) on 31.12.2018.
6. It has been submitted that on 25.08.2020, the Corporate Debtor approached the Original Creditor with a one-time settlement (hereinafter referred to as “**OTS**”) and offered for a full and final settlement of Rs. 5,10,00,000/-. However, the same was rejected by the Original Creditor.
7. It has further submitted that the Corporate Debtor again approached the Original Creditor on 23.01.2021, for another OTS of Rs. 5,30,00,000/- for closure of the loan account. The Original Creditor sanctioned the OTS proposal from the Corporate Debtor on a condition with respect to payment due on 15.03.2021. The Corporate Debtor, even after seeking an extension till 30.03.2021, defaulted in repayment of the outstanding loan amount. As a result, the Original Creditor revoked the OTS offer on 7.07.2021.
8. Thereafter, the Financial Creditor was approached by the Original Creditor to take over the debt of the Corporate Debtor vide an assignment agreement dated 14.06.2022 executed between them.

9. It has been submitted that the amount fell due on 31.09.2022 was Rs. 7.48,93,841/-.
10. As the Corporate Debtor date has not made the repayment of the outstanding loan amount till date, this necessitated the filing of the present petition under Section 7 of the Code.

REPLY FILED BY CORPORATE DEBTOR

11. At the outset, the Corporate Debtor denied all the averments made by the Financial Creditor and submitted that the present petition is misconceived, unsustainable and mala fide in nature and, therefore, deserves to be dismissed.
12. The Corporate Debtor has submitted that the present petition suffers from the infirmities in an absence of any valid Board Resolution authorising Mr. Piyush Jain and, therefore, the present petition is not maintainable for want of sufficient authority to the person claiming to be alleged authorised to initiate the CIRP under the provisions of the Code.
13. The Corporate Debtor has further submitted that the Petitioner cannot be considered under the definition of the 'Financial Creditor' as it has failed to produce the document that describes the disbursement of the amount to the Corporate Debtor vide Sanction Letter dated 15.02.2014 alleged to have been issued by Bank of Baroda.
14. The Corporate Debtor has submitted that the present petition is barred by the law of limitation as the date of default is mentioned in the petition as 26.11.2018 by the Financial Creditor and the limitation to file petition ended on 26.11.2021. It is further submitted that even after removing the exemption Covid-19 period from 15.03.2021 till 28.02.2023 and granting a period of 90 days from 01.03.2022, the limitation for filing the present

petition has been ended on 30.05.2022. The present petition is barred by the law of limitation since it is filed on 03.11.2022 i.e after 30.05.2022.

15. The Corporate Debtor has submitted that the Financial Creditor has failed to mention the date of disbursement of the alleged amounts as specified in the alleged Sanction Letter dated 15.02.2014.
16. With the above averments, the Corporate Debtor has prayed for the dismissal of the present petition.

FINDINGS

17. We have heard the Ld. Counsel appearing for the parties and perused the records.
18. The present Company Petition is filed by the Financial Creditor seeking to initiate the CIRP against Corporate Debtor alleging that the Corporate Debtor has made a default in repayment of Rs. 7,48,93,841/-. Since the Corporate Debtor has defaulted in repayment of the outstanding loan amount, its account was classified as NPA on 31.12.2018. The said NPA account has been transferred by the Original Creditor to the Financial Creditor vide assignment agreement dated 14.06.2022.
19. It has been submitted by the Financial Creditor that the Bank of Baroda ("The Original Creditor") has sanctioned a Term Loan facility vide letter dated 15.02.2014 of Rs. 5,63,15,000/- bearing no. 04120600001157 to the Corporate Debtor for Kitchen Equipment and Civil Works for a period of 84 months. It has further been submitted by the Financial Creditor that a cash credit facility of Rs. 40,00,000/- bearing account no. 04120500000132, for the purposes of working capital requirement was Sanction to the Corporate Debtor by the Original Creditor. Therefore, the Total loan facilities availed by the Corporate Debtor is Rs. 6,03,15,000/-. Since the Corporate Debtor

was unable to make the payment of the outstanding loan amount, the Financial Creditor has filed this present petition under Section 7 of the Code.

20. On the other hand, the Ld. Counsel appearing for the Corporate Debtor has raised a contention that the present petition is barred by the law of limitation. It has been contended that the date of default is mentioned in the petition as 26.11.2018 and the limitation to file petition ended on 26.11.2021. It has further been submitted that even after removing the exemption of Covid-19 period from 15.03.2021 till 28.02.2023 and even granting a period of 90 days from 01.03.2022, the limitation for filing the present petition has been ended on 30.05.2022. Since the present petition has been filed on 03.11.2022 which is beyond the period of limitation i.e. 30.05.2022, it will be hit by the law of limitation.
21. As against this, the Ld. Counsel appearing for the Financial Creditor has submitted that on 23.01.2021, the Corporate Debtor has approached the Original Creditor for a One-time settlement ("OTS") proposal of Rs. 5,30,00,000/- which has been approved by the Original Creditor. Pursuant to this, a new due date of repayment was set as 15.03.2021. The Corporate Debtor has further sought an extension to make the repayment of the loan till 30.03.2021. The Financial Creditor has submitted that as the Corporate Debtor was unable to make the repayment of the with respect to OTS proposal, the new date of default would be 30.03.2021 and the limitation period for the same would end on 30.03.2024. It was, therefore, submitted that the present petition is not barred by the law of limitation.
22. So far as the question of limitation is concerned, it is pertinent to note that the Corporate Debtor has acknowledged the debt to an extent of Rs. 3,77,30,823.75/- in the acknowledgement letter dated 09.02.2017. It is further pertinent to note that the Corporate Debtor approached the Original Creditor with a One-time settlement offer on 25.08.2020 offering to pay an amount of Rs. 5,10,00,000/- but the same was rejected by the Original Creditor. The Corporate Debtor again approached the Original Creditor with

another One-time settlement offer on 23.01.2021 offering to pay a sum of Rs. 5,30,00,000/- towards full and final settlement. In the OTS offer letter dated 23.01.2021, it has been admitted by the Corporate Debtor that the loan account turned NPA on 31.12.2018. The said OTS offer made by the Corporate Debtor was approved by the Original Creditor vide approval letter dated 04.03.2021. As per the said OTS proposal, the compromise amount was to be paid on or before 15.03.2021. However, the Corporate Debtor committed default in the repayment of the said OTS proposal even though an extension to pay till 30.03.2021 was granted by the Original Creditor. Resultantly, the OTS proposal was revoked by the Financial Creditor on 07.07.2021 and the Original Term Loan dated 15.02.2014 has been restored with all the rights attached to it. In the light of these facts, it is clear that the Corporate Debtor by submitting the aforesaid proposals for One Time Settlement clearly acknowledge its liability on 25.08.2020 and 23.01.2021. Therefore, it cannot be said that the present Petition is barred by time.

23. It has been argued on behalf of the Counsel for the Corporate Debtor that the admissions made in the OTS proposals letter cannot be relied upon to extend the period of limitation. However, considering the unequivocal acknowledgements made in the said OTS letters whereby the Corporate Debtor offered to pay and settle the claim for a sum of Rs. 5.30 Crores, it cannot be said that the admission cannot be treated as an acknowledgment of liability in terms of Section 18 of the Limitation Act.
24. It has also been argued by the Counsel for the Corporate Debtor that in this case, the date of disbursement of the loan has not been disclosed in the Petition and further that the Board Resolution authorizing the filing of the Petition has also not been annexed with the Petition and on these shortcomings also, the Petition deserves to be dismissed. Even these contentions are not tenable considering the fact that in the statement of account (Annexure 19) there are many entries showing disbursement of loan. As regards, the authorization to file the instant petition is concerned, this Petition has been filed by Assistant Vice President of the Petitioner who

was authorized by way of a Resolution passed by the Board of Directors on 29.06.2022 copy of which is attached with the written argumensts submitted by the Petitioner whereby Mr. Piyush Jain, through whom the instant Petition has been filed, has been authorized to file institute civil criminal suits and other proceedings on behalf of the Petitioner. Therefore, it cannot be said that the present Petition has not been filed by a duly authorized person or that the Petition is liable to be dismissed on this technical ground.

25. No other points have been raised on behalf of the Corporate Debtor.
26. As a corollary to the forgoing discussion, we come to a conclusion that 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. The Bench is also satisfied that present petition has been filed well within the period of limitation. Therefore, the Bench is of the considered view that the present Petition is a fit case for admission under Section 7 of the Code. Accordingly, the Petition is **admitted** in the following terms:

ORDER

- a. The above Company Petition No. (IB) 1245 of 2022 is hereby **admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Mondo Culinary Private Limited**.
- b. This Bench hereby appoints **Mr. Alok Kumar Murarka**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P-01934/2019-2020/13006 and having Email Id: ipalok.murarka@gmail.com as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of **Rs. Five Lakhs** towards the initial CIRP costs by way of a Demand Draft drawn in

favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

- d. This Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition no. 1245 of 2022 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)