IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH - I
KOLKATA

C.P (IB) No. 409/KB/2021

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.

In the matter of:

State Bank of India

...Financial Creditor

Versus

Hardrock Attachments Private Limited (CINU50103JH2008PTC013126), a Company incorporated under the Companies Act, 1956 having its registered office at 17, Circuit House Area, [East] Near S.B.I. Bistupur, Jamshedpur – 831001..

...Corporate Debtor

Date of Hearing: 06.05.2022
Date of pronouncing the order : 18.05.2022

Coram:

Shri Rajasekhar V.K.	:	***Member (Judicial)***
Shri Balraj Joshi	:	***Member (Technical)***

Appearances (through Video Conferencing/physical)

1. Mr. Soumya Roy Advocate } For Financial Creditor

1. Ms. Manju Bhuteria, Advocate } For Corporate Debtor
2. Mr. Urmila Chakraborty, Advocate }
3. Mr. Arnab Dutta, Advocate }

ORDER

Rajasekhar V.K., Member (Judicial)

1. The Court 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. Dilip Kumar Pathak, Chief Manager, State Bank of India ***('Financial Creditor')***, duly authorised*vide*Letter of Authority dated 16 June, 2017[1]for initiation of Corporate Insolvency Resolution Process ('***CIRP***') against Hardrock Attachments Private Limited ***('Corporate Debtor').***

3. The present Petition was filed on 05 December, 2021 before this Adjudicating Authority on the ground that the Financial Creditor has disbursed a sum of Rs.34,76,00,000/- (Rupees Thirty Four Crore Seventy Six Lakh only) to the Corporate Debtor under various facilities ***('facilities')***. However, the Corporate Debtor has defaulted in payment of the principle amount including interest i.e., Rs.64,55,80,125.70 (Rupees Sixty Four Crore Fifty Five Lakh Eighty Thousand One Hundred Twenty Five and Seventy Paisa only) as on 31 October, 2021, to the Financial Creditor. The date of default is stated to be ***28 December, 2013***.

4. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is Rs.5,00,00,000/- (Rupees Five Crores only) with paid up Capital as Rs.4,81,90,000/- (Rupees Four Crore Eighty One Lakh Ninety Thousand only).

5. Submissions by the Ld. Counsel Mr.Soumya Royappearing on behalf of the Financial Creditor

5.1 The Financial Creditor was approached by the Corporate Debtor for several credit facilities. Thereafter, upon consideration, the Financial Creditor sanctioned a loan of Rs.36,25,00,000/-.

[1]Annexure – B of the Petition.

5.2 To avail the facilities, the Corporate Debtor mortgaged an immoveable property and also executed several security documents (briefly described in Part – V, point No. 05 of the Application). The details of the immovable properties are as follows;

Schedule	***Description***
'A'	All piece and parcel of land known as Plat Nos. 557-(A) in Sy No. 340, 341, 342, 344 & 349 in the Belur Industrial Area within the limits of village Belur Hobli Garg Taluk, Dharwad, District : Dharwad containing by admeasurement 16100.00 sq. meter or thereabouts and bounded as follows that is to say: On or towards the North by : Plot No.557-(B) & 558-(B), on or towards the South by : PlotNo.559 & 560-(B), on or towards the East by : Proposed Road No.18 (24M wide), On ortowards the West by : Road No.24 (18M wide)
'B'	This mortgaged property belongs to M/s Tools and Fixture MFG Co. Vide lease deed No.3541 dated 10.10.1980 being all the piece of land situated in Village :Dindli, Thana No.128, thana Seraikella, District : Singhbhum, corresponding to Plot No.C/30, 2nd Phase, Industrial Area, Adityapur, Survey Plot No.99(P), Khata No.306, admeasuring 15,000 sq. ft. which is bounded as follows: *According to Survey Map:* North : Survey Plot No.99(P), South : Survey Plot No.99(P), East : Survey Plot No.99(P), West :Survey Plot No.99(P).
'C'	This mortgaged property belongs to Sri Dharamvir Singh, S/o Ajit Singh Vide Sale deed No.6635 dated 26.08.2010 being all the piece and parcel of land measuring 1421 sq. ft. or 3.26 decimals, now used as residential purpose, being in Portion of Plot No.1217(P), under Kata No.265, situated in the premises of Aastha Twin City,

	corresponding to Colony, Sub- Plot No.6, Block-Red Bud, within Mouza: Hurlung, P.S. Birsanagar, Thana No.1201, District Sub Registry Office at Jamshedpur, District : Singhbhum East, within the State of Jharkhand, which is bounded as follows: North : Alley, South : Road, East: Red bud No.5, West : Passage.
'D'	This mortgaged property belongs to Sri Dharamvir Singh, S/o Ajit Singh Vide Conveyance deed No.26 dated 01.01.2013 being all the piece and parcel of Flat No.0301 on the 3rd Floor at Tower No.3 containing by admeasurement 956 sq, ft. super built up area in the building on the said premises comprising of two bedrooms, two toilets, one kitchen, two balconies and living dining room, together with 1 open parking space No.88 of the said tower situated at Unworld City Complex known as Vistas having Plot No.AA HI/BLK-2/3(part) in Action Area III, New Town, Mouza: Patharghata, Grampanchyat-Patharghata, Rajarhat, District - 24 Parganas (N).

5.3 However, upon failure of the Corporate Debtor to make repayments of the principle debt and interest, the account of the Corporate Debtor was identified as Non-Performing Asset (***'NPA')*** as on 28 December, 2013.

6. Submissions by the Ld. Counsel, Ms. Manju Bhuteria appearing on behalf of the Corporate Debtor

6.1 This Petition has been filed on the basis of a recovery certificate issued by the Ld. Debt Recovery Tribunal, Ranchi. The Financial Creditor has already filed a recovery proceedings being RP No. 138 of 2018 for execution of the recovery certificate issued on 23 February, 2018 in respect of the O.A. No. 14 of 2017. By filing this Petition, the Financial Creditor has in effect sought for execution of the recovery certificate.

6.2 A decree holder and/or a certificate holder and/or award holder is a class of its own and it cannot be treated at par with the Financial Creditor. The mandate of the legislature is also evident from the fact that recovery of alleged debt is not the objective of the Code.

6.3 The right of a decree holder in the contest of a decree is at best a right to execute the decree in accordance in law. Even in a case where a decree has been passed in a suit is subject to the appellate process and attains finality, the only recourse available to the decree holder is to execute the decree in accordance with the relevant provisions of the Code of Civil Procedure, 1908. Further, the Petition is also barred by limitation; the Financial Creditor has stated the date of default to be on 28 December, 2013.

6.4 With respect to the recovery certificate issued by the Ld. Debt Recovery Tribunal, Ranchi on 23 February, 2018 in O.A. No. 14 of 2017, the recovery proceeding was started by the Financial Creditor on 18 March, 2018 by issuing a demand notice for payment of the outstanding dues. On 23 July, 2018 an attachment order was also issued by the Ld. Debt Recovery Tribunal.[2]

6.5 The Financial Creditor has already sold one of the attached properties. Further, the Financial Creditor had published a sale notice dated 06 January, 2022 in the local newspaper '*The Times of India'* (English) and *'Prabhat Khabar'* (Hindi) for sale of the immovable property in schedule – D through public e-auction on 14 February, 2022. However, on the grounds of unwarranted and unjustifiable exercise by the Authorised Officer/Nodal Officer of the certificate holder bank i.e., the Financial Creditor, the Ld Recovery Officer, DRT, Ranchi *vide* order dated 10 January, 2022 restrained from the sale or transfer of such property.

6.6 However, an Appeal No. 03 of 2022 has been preferred by the Financial Creditor against the said order dated 10 January, 2022 of Ld. Recovery Officer and the

[2] Annexure – A of the Reply

same is still pending.The Corporate debtor has filed an application being S.A. No.38 of 2022 before the Ld. Presiding Officer, DRT, Ranchi, praying for quashing the sale notice dated 06 October, 2021 and possession notice 08 October, 2021 and to set aside the alleged sale of property at Serai kella Kharswan.

6.7 From the aforesaid fact and circumstances it is evident that the Financial Creditor is indulging in multiplicity of proceedings against the Corporate Debtor and the present petition has been filed as a recovery mechanism. The Corporate Debtor out of *bona fide* intention had given OTS proposal on 22 February, 2022 to which the Financial Creditor replied that till the Appeal is pending they before the Ld. Presiding Officer, DRT, Ranchi they cannot do anything.

Analysis and Findings

7. We have heard the Ld. Counsel appearing on behalf of the Financial Creditor and the Ld. Counsel appearing on behalf of the Corporate Debtor and perused the record.

8. The Insolvency and Bankruptcy Code, 2016 was enforced on 01 December, 2016. The Financial Creditor had filed its Original Application No.14 of 2017 before the Ld. DRT, Ranchi in 2017 and a Recovery Petition in 2018, which is still pending adjudication. However, this instant petition was filed on 05 December, 2021 i.e., almost 4.5 years after the enactment of the Code. The said act of the Financial Creditor clearly depicts that they were vehemently pursuing their rights before a different forum till they realized that they would be unable to recovery their money in a fast-track mode.

9. It is a well settled that the objective of the Code is the revival of the Corporate Debtor by resolving insolvency in a prescribed manner, and not as a recovery mechanism for the Financial Creditor. Further, as submitted by the Financial Creditor, the date of Default is 28 December, 2013 and the Balance Sheet relied upon for the purpose of extending the limitation by taking recourse to section 18 of the Limitation Act, is for the Financial Year ending on 31 March, 2018. So, even if the Balance Sheet is taken to acknowledge the debt by the Corporate Debtor, the limitation would end on 31 March, 2021 whereas, this instant petition was filed on 05 December, 2021. Hence, in light of the above, the Petition is barred by limitation and is ***dismissed.***

10. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

BALRAJ JOSHI
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Date: 2022.05.18 17:21:14 +05'30'

Balraj Joshi
Member (Technical)

Rajasekhar V K
Digitally signed by Rajasekhar V K
Date: 2022.05.18 18:53:29 +05'30'

Rajasekhar V.K.
Member (Judicial)

The Order is pronounced on 18th day of May, 2022

Safura A., LRA