

**IN THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1**

CP (IB) No.249/7/NCLT/AHM/2018

In the matter of :

JM Financial Asset Reconstruction Company Limited
(Formerly known as JM Financial Asset Reconstruction
Company Private Limited)

7th Floor, Cnergy Appasaheb Marathe Marg,
Prabhadevi,

Mumbai-400025

... Financial Creditor

Versus

M/s Samay Electronics Private Limited

CIN:33309GJ1997PTC033333

Registered Office at:

M.R. Industrial Estate,

Morbi-Rajkot Highway,

Virpar Morbi

Rajkot-363641

.... Corporate Debtor

Date of Hearing: 13.07.2021

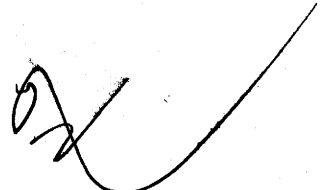
Date of Pronouncement of Order 27.07.2021

Coram: MADAN B. GOSAVI, MEMBER(J)

Appearance :

Learned Senior Counsel Mr. Navin Pahwa a.w Learned Counsel Mr.
Raju Kothari for the Financial Creditor.

Learned Counsel Mr. Vishwas Shah for the Corporate Debtor.



ORDER

(Under Reference 60(3) of NCLT Rules, 2016)

[Per: Madan B. Gosavi, Member (Judicial)]

1. This reference under Section 419(5) of the Companies Act, 2013 and r.w Reference 60(3) of NCLT Rules, 2016 by Hon'ble President (Acting) NCLT (HQ) New Delhi sent to me either to subscribe view of the Hon'ble Member Judicial or view of Hon'ble Member Technical, then on the bench No.1, Ahmedabad Bench (NCLT), who have expressed divergent views on the point, **“whether application filed by Financial Creditor JM Financial Asset Reconstruction Company under Section 7 of IBC, 2016 against the Corporate Debtor M/s. Samay Electronics Private Ltd. is barred by limitation under Article 137 of Limitation Act, 1963?”**
2. Following facts are not in dispute.
3. Initially in the year 1998 State Bank of Saurashtra, Morbi Branch had granted and disbursed the loan of Rs.14 Crores to the Corporate Debtor. The terms of the repayment of the loan were extended from time to time. Since the Corporate Debtor committee default persistently, in the year 2010, bank has filed recovery proceedings in DRT-II Mumbai after serving notice under Section 13(2) of the SARFAESI Act, 2002. On 26.10.2010, the bank and Corporate Debtor had arrived at settlement. Accordingly, on 26.10.2010, award was passed in




that proceeding on the basis of consent term. Thereby, the Corporate Debtor agreed to pay Rs.31 Crore towards loan outstanding.

4. It is also not in dispute that later on the promoters of the Corporate Debtor filed an appeal against the consent decree in DRAT-Mumbai (M.A. 98 of 2011). That appeal is still pending.
5. It is further not in dispute that pending appeal, the bank assigned the debt to the Financial Creditor JM Financial Asset Reconstruction Company by deed of assignment dated 26.02.2014. The Financial Creditor / Assignee of the debt continued with the appeal in DRAT, Ahmedabad. On 28.05.2018, the Financial Creditor filed this application under Section 7 of IBC, 2016 against the Corporate Debtor to initiate CIRP of the Corporate Debtor on the ground that Corporate Debtor committed default in paying the financial debt of Rs.44,72,65,054/-.
6. The Corporate Debtor contested the claim. One of the defence of the Corporate Debtor is that claim is time barred under Article 137 of Limitation Act, 1963.
7. Record reveals that on 26.02.2020, NCLT, Ahmedabad Bench passed the order on admission. However, while doing so, both members on the bench wrote separate orders. Member Technical was of the view that the Corporate Debtor required

to be admitted CIRP whereas the Member Judicial express view stating the claim itself is time barred. Hence this reference to me.

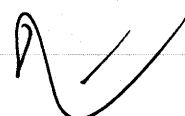
8. It would be apt to note views express by both Hon'ble Members in verbatim. Member Technical held that “*continuous proceeding for the same debt would going on from 2010 and appeal are still pending in DRAT, Mumbai*” on this reason, Member Technical admitted the Corporate Debtor in CIRP whereas, Member Judicial held that “*further in my humble opinion, the time spent in proceeding before DRT and DRAT (under SARFAESI Act) is not permitted to be excluded for the purpose of Limitation to file present proceedings because such proceedings cannot be termed as wrong proceeding persuaded bonafidely before the Court having no jurisdiction*”.
9. Upon receipt of this reference, I called upon both Learned Counsels appearing for the parties to make submissions on the point of limitation on which both members have expressed divergent views. I heard Learned Senior Counsel Mr. Navin Pahwa for Financial Creditor and Learned Counsel Mr. Vishwas Shah for the Corporate Debtor at length. Both Learned Counsels relied on recent Hon'ble Supreme Court ruling on this point in case of **Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Cooperative Bank Ltd. and Anr. (Civil Appeal No.9198 of 2019)**.



10. I have considered the controversy revolved on point of Limitation. There is no dispute to the fact that there is a debt more than Rs. 44 Crores due and payable by the Corporate Debtor to the Financial Creditor and Corporate Debtor has committed default in paying the same. The only issue is, since the default took place over the period of three years, i.e. In the year 2014, whether this application filed in 2018 under Section 7 of IBC, 2016 is maintainable as apparently barred by limitation under Section 137 of Limitation Act, 1963?
11. In fact, point in controversy as noted above is now not in res-integra. The Apex Court in the case of "*Sesh Nath Singh*" (**cited supra**) dealt with the same point extensively. The facts in proceedings before the Hon'ble Supreme Court were that Baidyabati Sheoraphuli Cooperative Bank Ltd. had given the Corporate Debtor loan of Rs.1 crore. In May, 2012, the Corporate Debtor committed default in paying the loan. On 18.01.2014, the bank initiated recovery proceeding against the Corporate Debtor in DRT Kolkata challenging the banks action. In the year 2017, the High Court restrained the bank from taking steps under SARFEASI Act, 2002 against the Corporate Debtor. That writ petition is still pending. Meantime the Financial Creditor / bank on 12.02.2018 initiated CIRP proceedings under Section 7 of IBC, 2016 against the Corporate Debtor. NCLT Kolkata Bench on 25.04.2019 admitted the Corporate Debtor in CIRP. The Suspended Management of the Corporate Debtor filed appeal against the order of NCLT. The Hon'ble NCLAT dismissed the

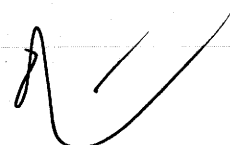
appeal holding that the Respondent / bank had bonafidely within limitation initiated proceeding against the Corporate Debtor under SARFEASI Act, 2002 and was thus entitled to exclusion of the time under Section 14(2) of the Limitation Act, 1963. The Suspended Management of the Corporate Debtor therein filed Second Appeal before the Hon'ble Apex Court. Considering that controversy relating to limitation viz.a.viz benefit to be accorded to party under Section 14(2) of the Limitation Act, 1963 to get certain period excluded from counting the time spent in other legal proceedings, the Hon'ble Supreme Court upheld the order of Hon'ble NCLAT.

12. In this case, the Corporate Debtor committed default in paying the debt in 2014. The Financial Creditor initiated CIRP against the Corporate Debtor in 2018. Meantime, DRT proceeding in between parties still going on. The Apex Court in *Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Cooperative Bank Ltd. and Anr.* held that *"being aggrieved by the order dated 25th April 2019 passed by the Kolkata Bench of NCLT, the Corporate Debtor filed an appeal before the NCLAT under Section 61 of the IBC, contending that the application filed by the Financial Creditor should not have been entertained, the same being barred by limitation"*.
13. The Apex Court further held that *"in our view, since the proceedings in the High Court were still pending on the date of filing of the application under Section 7 of the IBC in the NCLT, the entire period after the initiation of proceedings under the*



SARFAESI Act, 2002 could be excluded. If the period from the date of institution of the proceedings under the SARFAESI Act, 2002 till the date of filing of the application under Section 7 of the IBC in the NCLT is excluded, the application in the NCLT is well within the limitation of three years. Even if the period between the date of the notice under Section 13(2) and date of the interim order of the High Court staying the proceedings under the SARFAESI Act, 2002 on the prima facie ground of want of jurisdiction is excluded, the proceedings under Section 7 of IBC are still within limitation of three years”.


14. Learned Counsel Mr. Vishwas Shah for the Corporate Debtor tried to differentiate the Apex Court ruling on the facts. He would submit that in the proceeding before Hon'ble Supreme Court, the facts were that cooperative bank, which could not have initiated proceedings under SARFAESI Act, 2002 before DRT, had initiated such proceedings. It was proceeding before wrong forum hence, benefit of provision of Section 14(2) of Limitation Act, 1963 accorded. According to him, the ruling is not applicable.
15. I am unable to accept the submissions of Learned Counsel for the Corporate Debtor. The point in controversy before the Hon'ble Supreme Court was not that the cooperative bank filed recovery proceeding under SARFEASI Act, 2002 before DRT and whether DRT has jurisdiction or not but the controversy before the Hon'ble Supreme Court was whether the benefit under Section 14(2) of Limitation Act, 1963 for



exclusion of period of limitation can be given to the creditor who had initiated recovery proceeding against the debtor under SARFEASI Act, 2002 in the DRT and while it was being continued, the creditor filed CIRP proceedings before NCLT under IBC, 2016? Apex Court in uncertain terms held that *“as observed above, Section 238A of the IBC makes the provisions of the Limitation Act, as far as may be, applicable to proceedings before the NCLT and the NCLAT. The IBC does not exclude the application of Section 6 or 14 or 18 or any other provision of the Limitation Act to proceedings under the IBC in the NCLT/NCLAT. All the provisions of the Limitation Act are applicable to proceedings in the NCLT/NCLAT, to the extent feasible”*.

16. In view of this, I hold that application under Section 7 of IBC, 2016 filed by the Financial Creditor against the Corporate Debtor in the year 2018 for the default that has taken place in the year 2014 is maintainable because the Financial Creditor herein gets benefit of exclusion of time spent in recovery proceeding against the Corporate Debtor before DRT. I endorse the view of Hon'ble Member Technical who has held that this proceeding is not barred by limitation. I admit the Corporate Debtor in CIRP by following order and return the reference with my opinion to Hon'ble Acting President, NCLT, New Delhi.

17. The Financial Creditor suggested the name of one Mr. Chandra Prakash Jain, having Registration No. IBBI/IPA-



001-IP-P00147/2017-2018/10311,Email:

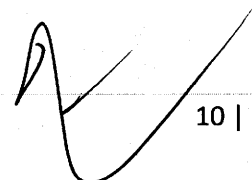
cpjain@cacpjain.com & jain_cp@yahoo.com for appointment as Interim Resolution Professional against whom, no disciplinary proceeding is pending. The applications are defect free. Hence, I admit the Corporate Debtors in CIRP by following order:

ORDER

1. Corporate Debtor M/s Samay Electronics Private Limited is admitted in Corporate Insolvency Resolution Process under Section 7 of Insolvency and Bankruptcy Code, 2016.
2. I appoint one Mr. Chandra Prakash Jain, having Registration No. IBBI/IPA-001-IP-P00147/2017-2018/10311,Email: cpjain@cacpjain.com & jain_cp@yahoo.com under Section 12(1)(c) of the IB Code as IRP.
3. That the Moratorium under Section 14 of the Code shall come to effect from 27.07.2021 till the completion of 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.

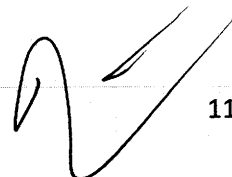


4. That the Bench hereby prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any Court of law. Tribunal, Arbitration Panel or other Authority(s), transferring, encumbering, alienating or 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 SARFAESI 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.
5. Further, litigation or any application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act, 2002 and RDB Act, prior to pronouncement of this order such proceedings are expected to be dealt with in accordance with law r.w. Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.
6. That the supply of essential goods or services to Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium, period. The Corporate Debtor to provide effective




assistance to the IRP as and when he takes charge of the Corporate Debtor.

7. The IRP so appointed shall make Public announcement of Corporate Insolvency Resolution Process (CIRP) be made immediately as specified under Section 13 of the Code and by calling for submissions of claim under Section 15 of the Code.
8. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
9. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation



imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

10. I direct the Financial Creditor / Applicant to pay the IRP a sum of Rs. 1,00,000/- (Rs. One Lakh) as fees & expenses till the COC decides about his fees / expenses.
11. The Registry is directed to communicate a copy of this order to the Petitioner-Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on website immediately after pronouncement of the order.
12. The commencement of Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.
13. CP(IB) No. 249/7/NCLT/AHM/2018 is allowed and stands disposed of.


(Madan Gosavi)
Member (Judicial)