

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 371/KB/2019

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process by Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016.

And

In the matter of:

Union Bank of India, a Banking Company incorporated under the banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, having their Registered Office at 239, Vidhan Bhavan Marg, Mumbai-400021 and carrying on business through its different branches including its branch office at Overseas Branch, 9, India Exchange Place, P.S-Hare Street, Kolkata-700001, W,B & ARB, 15 India Exchange Place, Kolkata- 700001.

...Applicant /Financial Creditor

Versus

In the matter of:

Raa International Limited, having its Registered Office at 'Sonargaon', Jugberia, Near Board Ghar, Sodepur-Barasat Road, Kolkata- 700110.

...Respondent/Corporate Debtor

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Coram:

Shri Jinan K.R., Hon'ble Member [Judicial] &

Shri Harish Chander Suri, Hon'ble Member [Technical]

For The Financial Creditor :

Mr. Pankaj Kumar Mukherjee, Advocate

Date of pronouncement of Order: 8th November, 2019

ORDER

Per Shri Jinan K.R., Member (Judicial):

1. Union Bank of India/ Financial Creditor has filed this application under Section 7 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating Corporate Insolvency Resolution Process as against the Raa International Limited/Corporate Debtor on the allegation that Corporate Debtor, who had availed various credit facilities from the Financial Creditor, committed default in repayment of debt to the tune of Rs.11,30,000,00/- (Rupees Eleven Crores, Thirty Lakhs). After restructuring of account duly accepted and acknowledged by the Corporate Debtor.

2. The relevant facts for consideration of the issues are the following:-

- a. The Financial Creditor has granted loan and various credit facilities to the Corporate Debtor from time to time which was lastly on 07.04.2014. The Corporate Debtor, however, failed to repay the principal amount along with interest to the Financial Creditor. The Financial Creditor sent a demand notice dated 02.06.2015 to the Corporate Debtor demanding repayment of the debt along with interest. The Corporate Debtor failed to repay the default amount due to the Financial Creditor despite demand.

- b. To add strength to the said contentions the Financial Creditor has produced specific Power of Attorney and a copy of of Board Resolution proving authorization in favour of the Chief Manager of Financial Creditor Mr. Hareesh Kumar Kolichala, statement of accounts and the other documents referred to in the application.
- c. On the strength of the above said documents the Financial Creditor contends that the account of the Corporate Debtor declared as NPA on 31.03.2015 and on the date of default an amount of Rs. 11,21,47,924.18 (Rupees Eleven Crores Twenty One Lakhs Forty Seven Thousand Nine Hundred Twenty Four and Eighteen Paisa) is payable by the Corporate Debtor. Upon the aforesaid contentions the Financial Creditor has prayed for passing an order of admission of the application filed under Section 7 of the Insolvency and Bankruptcy Code.
3. The Corporate Debtor did not appear in spite of service of notice to the Corporate Debtor. Thereby Corporate Debtor was called absent and declared ex parte.
4. Heard the Ld. Counsel for the Financial Creditor. Perused the records.
5. Union Bank of India has filed this application under Section 7 of the Insolvency Bankruptcy Code, 2016 alleging that the Corporate Debtor has committed default in repayment of the outstanding amount of Rs. 11,21,47,924.18 (Rupees Eleven Crores Twenty One Lakhs Forty Seven Thousand Nine Hundred Twenty Four and Eighteen Paisa only) as on the date of default and since the Corporate Debtor failed to repay the amount prays for allowing this application under Section 7 of the Insolvency and Bankruptcy Code. This application is seen filed meeting all the requirements to be meted out as per Section 7(3) of the Code. As per the Form No. 1 part 4 at Serial No. 2 the default occurred on 31.03.2015. This application being filed on 06.03.2018 beyond period of limitation, the learned Counsel appearing for the Financial Creditor was asked to address, as to how this application is maintainable Under Article 137 of the Limitation Act, 1963.

6. What is the limitation period prescribed under the Limitation Act, 1963, applicable with respect to the claim in a case of this nature, is at present settled by the Hon'ble Supreme Court in Gaurav Hargovindbhai Dave vs. Asset Reconstruction Co. and Another, (Civil Appeal 4952 of 2019) dated 18th September, 2019. The Hon'ble Supreme Court has held that Article 137 of the Limitation Act alone, would apply in the facts and circumstances of a case of this nature. It is good to read paragraph 6 of the above said judgment. It reads as follows:

"Having heard the learned counsel for both sides, what is apparent is that Article 62 is out of the way on the ground that it would only apply to suits. The present case being "an application" which is filed under Section 7, would fall only within the residuary Article 137. As rightly pointed out by learned counsel appearing on behalf of the appellant, time, therefore, begins to run on 21-07-2011, as a result of which the application filed under Section 7 would clearly be time barred. The B.K. Educational Services Private Limited (supra), suffice it to say that the Report of the Insolvency Law Committee itself stated that the intent of the Code could not have been to give a new lease of life to debts which are already time-barred."

7. The learned Counsel for the Financial Creditor submits that the last payment was made by the Corporate Debtor on 30.10.2018 and therefore, filing of this application is perfectly maintainable. He relied upon the statement of account for the period from 31.03.2015 to 27.02.2019 wherein the Rs.50,000/- was deposited in the account of the Corporate Debtor maintained by the Bank on 09.11.2018. As per the particulars of the statement of accounts shows that the amount was deposited as "recovery" whether it was paid by the Corporate Debtor as part payment of the debt as demanded by the Financial Creditor, there is no supporting document produced. Moreover, even according to the financial creditor the last payment was on 09.11.2018. That payment is after the expiry of the period of limitation. The said submission is found not helpful to prove that the filing of this application is within time.

8. At this juncture learned Counsel refers to a letter addressed to the Bank by the Corporate Debtor. The document annexed with the supplementary affidavit shows that the Financial Creditor has issued a show cause notice to the Corporate Debtor before declaring it as

a willful defaulter. It is understood that the Corporate Debtor objected to the show cause notice as it was not issued after constituting Committee headed by Executive Director of the bank. According to the Ld. Counsel the period of limitation would start from 13.01.2017 and therefore filing of this application on 06.03.2019 is with in the period of limitation. The letter relied upon by the financial creditor read as follows:-

"Date: 13.01.2017

The Executive Director & Head of the Committee

On Willful Defaulter

Union Bank of India, Head Office

Union Bank Bhavan

239 Vidhan Bhavan Marg

Nariman Point, Mumbai-400021

Dear Sir,

Sub:- Hearing on identification as Willfil Defaulter by the Committee on 05.01.17 at the Bank's Head Office

Kind reference is invited to the above wherein our company representative, Mr. Nirbhay Lodh attended the Hearing as fixed by your Bank on 5th Jan 2017.

During the said Hearing, after listening to the submissions made by our company representative, you directed for submission of a comprehensive strategic plan in regard to repayment of loan.

In this regard, we wish to submit that as our company personnel are still engaged actively in contacting the Debtors, to whom your Bank's local office has duly made written approaches, some more time will be needed to chalk out detail strategic plan and submit the same to your good office.

Hence we request you to kindly bear with us for some more time and allow us to submit detail strategic plan by the end of this month.

With regards.

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Yours faithfully,

For Raa International Ltd.

Director"

9. It is significant to note the observations of the Hon'ble Karnataka High Court in this regard in its judgment dated 25.06.2013 in **Sudarshan Cargo Pvt. Ltd. vs. Techvac Engineering Pvt. Ltd.** (C.O. P. No. 11/2013: MANU/KA/1605/2013) :-

"Section 18 does not provide that acknowledgement has to be in any particular form or to be express. Even a statement which, if literally construed, does amount to an acknowledgement, may be sufficient, if it implies an admission of liability. A narrow interpretation should not be put on what constitutes acknowledgement under Section 18. An acknowledgement is an admission by the debtor to the creditor indicating that he owes money to the creditor. The acknowledgement requires to be examined in the light of surrounding circumstances by an admission that the writer owes a debt. Generally speaking, a literal construction of the statement on which the acknowledgement is sought to be founded should be given. If there is an admission of fact of which the liability in question is a necessary consequence, it should be taken as an acknowledgement. The term 'acknowledgement' has to be construed in its plain literary sense."

10. Hon'ble Punjab and Haryana High Court in **Mosenthals Wool and Mohair Vs. M/s. C.L. Jain Woolens Mills Pvt.** (C.P.No.205 of 2002 : MANU/PH/0924/2013) held that:-

"It is equally well settled that the winding-up jurisdiction of a Company Court cannot be invoked for realizing debts due from the Company though a Company in debt can be ordered to be wound-up if it is incapable to repay the admitted debt. It would be wholly immaterial whether the substantial part of the petitioner's claim is time-barred and only a part thereof is legally recoverable. The acknowledgment of its debt by the respondent-Company in communications one after the other clearly establishes that the extensions

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were sought by the respondent-Company as it was in financial crisis and unable to pay the due amount."

11. The Corporate Debtor in its letter dated 13.01.2017 has clearly admitted that there was a direction upon the Corporate Debtor to submit a strategic plan for repayment of loan and in this regard, the Corporate Debtor had sought for some more time to submit the detailed strategic plan. Para 9 of the judgment by Karnataka High Court reads as *"Even a statement which, if literally construed, does amount to an acknowledgement, may be sufficient, if it implies an admission of liability... If there is an admission of fact of which the liability in question is a necessary consequence, it should be taken as an acknowledgement."*

12. In the light of the above judgments, we do find force in the argument put forward by the Ld. Counsel for the applicant/ Financial Creditor. The contents of the letter by the Corporate Debtor are sufficient to attract Section 18 of the Limitation Act, 1963 forming 'acknowledgment of liability' within the meaning of that provision and consequently, a fresh period of limitation will start from the date of the letter i.e. 13.01.2017 and therefore filing of this application on 06.03.2019 is within the period of limitation.

13. In view of the said we are of the considered opinion that the application filed is fit for admission under section 7 of the Code. We, therefore admit the petition with the following direction/orders:-

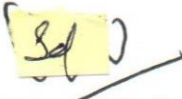
ORDERS

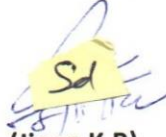
- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **Raa International Limited**, is hereby admitted.
- ii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15.

- iii) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-
- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 (54 of 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.
- iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- v) 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.
- vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- vii) 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 the 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.

- viii) **Mr. Sachin Gopal Jathar** an Interim Resolution Professional having **Registration No. IBBI/IPA-002/IP-N00640/2018-19/11968** Email: sgjathar@gmail.com , Telephone No. 9830933338 is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan. The Interim Resolution Professional is directed to produce Form 2 and written communication within one week from the date of the receipt of the order.
- ix) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date and follow Regulation 40A strictly.
- x) The Registry is hereby directed under section 7(4) of the Insolvency and Bankruptcy Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.
- xi) List the matter on ...10/12/19... for filing of the progress report.

8. Certified copy/ free copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


(Harish Chander Suri)
Member(T)


(Jinan K.R.)
Member(J)

Signed, this the, 8th day of November, 2019.

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