NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-II

(IB)-1887(ND)2019

IN THE MATTER OF:

Corporation Bank
Stressed Asset Management Vertical
M-93, Connaught Circus
New Delhi-110001 **...Financial Creditor**

VERSUS

M/s. Sharma Kalypso Pvt. Ltd., Formerly RausInfras Ltd.
16C Basant Lok, Vasant Vihar
New Delhi-110057 **...Corporate Debtor**

Section: 7 of IBC, 2016

Order Delivered on: 02.01.2020

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)
SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner	:	Ms. Rama Ahluwalia, Advocate
For the Respondent	:	Mr. Sidharth Chopra, Advocate

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Corporation Bank (for brevity 'Financial Creditor') through its authorized representative Mr. P.Y. Jakkareddy, who is duly authorized vide GPA dated 01.03.2001, with a prayer to initiate the Corporate Insolvency process against M/s Sharma Kalypso Pvt. Ltd. (for brevity 'Corporate Debtor').

2. The Corporate Debtor namely, M/s Sharma Kalypso Pvt. Ltd. is a Company incorporated on 09.04.2009 under the provisions of Companies Act, 1956 with CIN No. U45400DL2009PTC189270, having its registered office at 16-C Basant Lok, Vasant Vihar, New Delhi-110057, as per the averments made by the Petitioner.

3. The Authorised Share Capital of the Respondent Company is Rs.10,00,00,000 and Paid-up Share Capital of the Company is Rs.9,99,79,000 as per the averments made by the Petitioner.

4. It is submitted by the Financial Creditor that it had sanctioned total Loan of Rs.71,62,70,000/- (Seventy one crore sixty two lakhs seventy thousand) only to the Corporate Debtor.

5. As regards the amount involved in Default and the Date of Default, it is mentioned by the Financial Creditor in the Part IV of their Application that :

> *"2. The grand total of all the claims as on 16.02.2018 of Financial Creditor is Rs.79,14,95,288.26/-, total claim including interest up to 01.06.2019 is Rs.88,25,77,012.26/-, also future interest to be included.*
>
> *(Rupees eighty eight crores, twenty five lakhs seventy seven thousand and twelve and twenty six paise only.)*
>
> *The Account was classified as NPA on 31.03.2017......"*

6. That the Financial Creditor has annexed various documents like Agreement regarding Term Loan, Guarantee Agreement, Mortgage Deed, Hypothecation Agreement etc. as proof of existence of the Financial Debt.

7. That the Financial Creditor has also annexed the Report of Central Repository of Information on Large Credits (CRILC) dated 23.02.2018 indicating the Record of Default with the Information Company.

8. On entering appearance, the Respondent Company has filed its reply on 11.10.2019 and has raised the following issues :

> *"A. APPLICATION NOT FILED IN COMPLIANCE WITH SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE OF INDIA READ WITH FORM 1 OF THE INSOLVENCY AND BANKRUPTCY (APPLICATION TO ADJUDICATING AUTHORITY RULES 2016)*

iii) That it may be further noted that in the present case the Application has been filed on the basis of an alleged power of Attorney dated 01.03.2011 that is much prior to the enactment of IBC, 2016 so therefore even assuming without admitting the fact that a Power of Attorney holder can file an Application under Section 7 of the IBC, 2016 then also the present application is not maintainable in the absence of their being any specific authorization to the person which is one of the pre requisites under the I&B code and the same being mandatory in nature".

"B. NO FINANCIAL DEBT IS DUE HENCE THE APPLICANT IS NOT THE FINANCIAL CREDITOR

iii) That a bare perusal of the aforesaid report notes that the date of the default by the Corporate Debtor to be 29.11.2014 so therefore even assuming without admitting that there is a default on the part of the Corporate Debtor then also the present application is not maintainable by virtue of Section 238-A as the claim of the Financial Creditor is barred by the limitation since the present application has been filed after more than 3 years then the prescribed period.

v) That even assuming without admitting that the date of default is 31.03.2017 i.e., the date of NPA, then also the present application is not maintainable because admittedly the account of the applicant was never declared as a Non-Performing Asset by the Financial Creditor."

9. It is further submitted by the Corporate Debtor that the Financial Creditor has concealed the fact about litigation pending before the Ld. DRT filed vide SA No. 332/2018 titled as Sharma Kalypso Pvt. Ltd. Vs. Corporation Bank.

10. That on opportunity granted by this Bench vide Order dated 05.11.2019, the Financial Creditor has filed additional documents vide the additional affidavit dated 04.11.2019, wherein the Letter of Authority dated 14.10.2019 in favour of Sh. P.Y. Jakkareddy, DGM for filing application under Section 7 of IBC 2016 against the Corporate Debtor is annexed.

11. That the Financial Creditor, in its written submissions, has submitted that at the request of the Corporate Debtor, the Loan Account of the Corporate Debtor was restructured on 31.03.2015. Further, the Financial Creditor has placed reliance on the Letter of Undertaking/Declaration from the Borrowers/ Corporate Debtor dated 31.03.2015 as an Acknowledgement of Debt by the Corporate Debtor. Further, the Financial Creditor has submitted that in terms of the RBI Guidelines on Income Recognition and Prudential Accounting Norms, the account of the Corporate Debtor was declared as Non-Performing Asset (NPA) on 31.03.2017.

12. That further, the Financial Creditor has drawn attention of this Bench towards the Letters (Page 346 to 362 of the Petition Volume-II) dated 13.02.2018 confirming 'acknowledgement of debt/liability' by the Corporate Debtor about the balance outstanding in different loan accounts.

13. It has been further submitted by the Financial Creditor that it had informed the Corporate Debtor and its guarantors vide their Notice dated 16.02.2018 issued under Section 13(2) of SARFAESI Act 2002 stating that:

> *'In view of your failure to pay the dues/operate the accounts satisfactorily as is required, we have, in terms of the RBI guidelines as to the Income Recognition and Prudential Accounting Norms, classified your account Non-Performing Asset as on 31.03.2017".*

14. After hearing submissions of both the parties, this Bench is of the view that the objections raised by the Corporate Debtor as regards to the authority for filing the petition under Section 7 of IBC and the Financial Debt being barred by limitation are not tenable. The Financial Creditor has placed on record the Letter of Authority issued in favour of Sh. P.Y. Jakkareddy, DGM, Corporation Bank and also the Letters dated 31.03.2015 and 13.02.2018 clearly showing acknowledgement of debt by the Corporate Debtor within the Limitation period, even if the date of default is considered as 29.11.2014 as pointed out by the Corporate Debtor.

15. In the given facts and circumstances, the Financial Creditor has established a default on the part of the Corporate Debtor in payment of their Financial Debt and succeeded in establishing a case for triggering Corporate Insolvency Resolution (CIR) Process. The present petition being complete and having established the default in payment of the Financial debt for the default amount being above Rs.1,00,000, the Petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

"(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 Securitisation 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 the possession of the corporate debtor."

16. As proposed by the Financial Creditor, this Bench appoints Mr. Navjit Singh as an IRP having Registration No. IBBI-/IPA-001/IP-P00314/2017-18/10578 (Email: navjit92ca@gmail.com, Mobile No. 9311162970), subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

17. The Financial Creditor is directed to deposit Rs.2,00,000 (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

18. In terms of the above, the Application stands admitted in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of this Order shall be communicated to the Applicant, the Respondent and the IRP mentioned above by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.

-Sd-

(L. N. Gupta)
Member (T)

-Sd-

(Ina Malhotra)
Member (J)