

OK 26/8/2019

NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH

(IB) 672 (ND)/2019

In the matter of:

Kotak Mahindra Bank Ltd.

..... Petitioner

V/s

Kew Precision Parts Pvt. Ltd.

..... Respondent

SECTION: U/s 7 of IBC, 2016

Order delivered on 06.09.2019

Coram:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SMT. SUMITA PURKAYASTHA, HON' BLE MEMBER (T)

For the Petitioner: Mr. Rajiv R Raj, Advocate

For the Respondent: Mr. Rahul Sharma, Mr. Yash Patel, Advocate

**ORDER**

**PER SMT. SUMITA PURKAYASTHA, MEMBER (T)**

1. The present petition has been filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the

Respondent/Corporate Debtor on grounds of its inability to liquidate its financial debt.

2. As per averments made in the petition, the financial creditor and the corporate debtor have had a longstanding relationship of financial transactions and as in the year 2015 defaults occurred. On 30.09.2015 the account of the Corporate Debtor was declared NPA in accordance with the RBI guidelines. The financial creditor recalled the loan amount and invoked guarantees vide their written communication dated 09.10.2015.
3. The Financial Creditor on 19.11.2015 issued notice under section 13(2) of the SARFAESI Act, 2002 to the borrower, guarantors and mortgagors. An O.A. No. 576 of 2016 was filed in DRT-I, Delhi for recovery against the Corporate Debtor, wherein the applicant bank (herein referred to as the Financial creditor) vide order dated 03.10.2016 had been granted an interim relief at Para 7(a) & 7(b) of the plaint, that the defendant (herein referred as the Corporate Debtor) were restrained from dealing or selling the hypothecated goods/ stocks, book debts, stock of raw material, movable plant and machineries, equipments,

appliances, furniture and movable properties in course of transit, till further orders of the Debt Recovery Tribunal. Further the Orders were reserved vide order dated 05.12.2017, however the Debt Recovery Tribunal vide order dated 23.12.2017 observed "*that while dictating the final order, it has been found that applicant has enhanced limit on various occasions. But documents reveal that the applicant bank has not placed on record the sanction letter dated 07.04.2014. Further the applicant bank has placed on record the sanction letter dated 26.11.2012 however, the applicant has not mentioned about the sanction letter dated 26.11.2012 in the present O.A. Let Applicant bank clarify about both the sanction letters.*"

4. Subsequently a judgement dated 10.04.2017 was passed by the Hon`ble DRT Lucknow in a Securitization application No. 250 of 2016 filed by the Corporate debtor under Section 17 of the SARFAESI Act, 2002 praying that the entire SARFAESI proceeding initiated by the respondent bank (herein referred as the Financial Creditor) be set aside and the respondent bank be restrained from taking coercive measures against the Secured assets. The Hon`ble Tribunal observed that "*the respondent bank failed*

*to comply with the statutory provision of Section 13(3A) of the SARFEASI Act, 2002, Hence the Securitization application deserves to be allowed. All actions initiated by the Respondent bank under the provision of SARFAESI Act, 2002 are set aside. The respondent bank is directed to handover the possession of secured assets to the applicant within one month from the date of pronouncement of Judgement. However, in order to recover the dues the Respondent Financial Institution may proceed afresh under the provision of SARFEASI Act, 2002.”*

5. Oral arguments were also heard on 17.07.2019 by this Hon`ble Tribunal and the prayer made in this petition were impugned by the Corporate Debtor on various grounds viz. Attestation of the affidavit, pendency of alternate proceeding under SARFEASI and the claim of the Financial Creditor being barred by limitation. It is being confirmed by the Ld Counsel for the Financial Creditor that the account of the Corporate Debtor had been declared NPA in September 2015. The Financial Creditor relied upon the “One Time Settlement” dated 12.12.2018 given by the Corporate Debtor in acknowledgment of the interest liability. Ld Counsel for the Financial Creditor has relied

upon the provision of Article 62 of the Limitation Act. Both the parties were granted liberty to file citation in support of their arguments.

6. Given the facts and circumstances that the Corporate Debtor vide its letter dated 12.12.2018 approached the Financial Creditor for one time settlement of an amount of Rs. 15 Crore, thereby admitting its default, there is a finding that there is a continuous cause of action.
7. As per the averments of the petition no payment has been made by the Corporate Debtor after the default occurred in June, 2015 and as on date 27.11.2018, an amount of Rs. 46,63,35,337.31/- is due and outstanding. The present petition being filed in January 2019 is within limitation, being within three years from the date of the cause of action. Further even though an attempt was made on the part of the Corporate debtor to project certain inconsistencies in relation to claim amounts, however it is seen that the amount in default in excess of Rs 1,00,000/- being the minimum threshold limit fixed under IBC, 2016. Considering the circumstances this Tribunal is inclined to

50

admit this petition and initiate CIRP of the Respondent.  
Accordingly, this petition is Admitted.

8. A moratorium in terms of Section 14 of the Code is imposed forthwith in terms of the following:-

*“(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;*

*Scf*

*(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.*

*(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

*(3) 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.*

*(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”*

9. The financial creditor has proposed the name of Mr. Ashwani Kumar Gupta as the IRP. His details are as registration no. IBBI/IPA-001/IP-P00626/2017-18/11082, email akguptafca@gmail.com. The consent of the Mr. *Sci* ni Kumar Gupta is on record along with the copy of

his certificate. We accordingly confirm his appointment as the IRP. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15,17 and 18 of the Code and file his report.

10. Renotify this case for report of the IRP.



**(Sumita Purkayastha)**

**Member (T)**



**(Ina Malhotra)**

**Member (J)**