BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. 5

CP No. 4666/IBC/NCLT/MB/MAH/2019

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of
Samata Nagari Sahkari Patsantha Maryadit, Kopargaon
Samata Marg, Khandaknal, Main road, Kopargaon, Dist. Ahmednagar – 423 601

…..Petitioner

V/s

Kalyani Education Private Limited
c/o. Ravi Communication, J. J. Hospital Complex, Byculla, Mumbai – 400 008

….. Corporate Debtor

Order pronounced on: 19.02.2021

Coram :
Hon'ble Smt. Suchitra Kanuparthi, Member (J)
Hon'ble Shri. Chandra Bhan Singh, Member (T)

For the Petitioner :
For the Respondent :

Per: Chandra Bhan Singh, Member (T)

ORDER

1. The Petitioners/Applicants viz. 'Samata Nagari Sahkari Patsanstha Maryadit, Kopargaon' (hereinafter as Petitioner) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against 'Kalyani Education Private Limited' (hereinafter as 'Corporate Debtor').

2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be Rs. 2,25,00,000/-, and the amount claimed to be in default is Rs. 1,67,82,786/- including interest. The date of default is stated to be 30.11.2013.

BRIEF HISTORY OF THE CASE

3. Samata Nagari Sahkari Patsanstha Maryadit, Kopargaon is a Cooperative Credit Society registered under the Maharashtra State Co-Operative Societies Act, 1912.

4. Kalyani Education Private Limited is a private limited company incorporated under the Companies Act, 1956, Registration no. U80100MH2003PTC141292 dated 11.07.2003.

5. The Corporate Debtor approached the Petitioner for credit facilities i.e. Working Capital Term Loan aggregating to Rs. 5,00,00,000/- for the Expansion of educational institutional building at Kalyani Hills, Anjaneri, Nashik.

6. The said credit facilities were sanctioned vide sanction letter dated 25.10.2013 for a period of 3 years from the registration of the Mortgage Deed. Out of the total amount mentioned above, an amount of Rs. 2,25,00,000/- were disbursed towards working capital term loan from the

Petitioner and the balance Rs. 1,75,00,000/- from Shivkrupa Sahakari Padpedhi, Nashik and Rs. 1,00,00,000/- from Janlaxmi Gramin Bigarsheti Patsanstha Maryadit, Akole.

7. The Corporate Debtor has defaulted an amount of Rs. 1,67,82,786/- as on 30.11.2013 in the repayment of the credit facilities and interests thereon.

8. The Petitioner initiated legal action by filing a case on 01.10.2014 under Section 101 of Maharashtra Co-operative Societies Act, 1960, for the recovery of an amount of Rs. 2,15,95,604/-.

9. Subsequently, Form 'R' Rule 85(5) Certificate u/s 100 of the Maharashtra Co-operative Societies Act, 1960 for Transfer of property was issued on 21.01.2015 against the Borrower/ Guarantors of M/s. Kalyani Education Private Limited. The order was passed by the office of Assistant Registrar, Co-operative Societies, Ahmednagar and Deputy Registrar, Co-operative Societies, Nashik to implement order for the recovery. Hence, the right title and interest of the Borrower in the mortgaged property stands transferred in the name of the Petitioner.

10. In spite of the certificate issued under Section 101 of Maharashtra Co-operative Societies Act, 1960, the Corporate Debtor has failed to deposit the said amounts within the stipulated period.

11. Therefore, the Petitioner has served Seizure notice dated 08.01.2016 to make the payment on an immediate basis. Otherwise the Petitioner on 16.01.2016 would take legal action on immovable and movable property.

12. On 28.04.2016 the Special Recovery and Sales Officer (appointed by Government of Maharashtra) issued a notice to the District Deputy

Registrar, Co-operative Society, Nashik to get off set price for recovery of the arrears by sale of the immovable property.

SUBMISSIONS BY THE CORPORATE DEBTOR:

13. It is true that the educational institution is run by the Corporate Debtor at Nashik District. It is true that the Corporate Debtor have obtained loan by mortgaging properties for introduction of various educational facilities in our institution, which step the Corporate Debtor have to take only because the aid provided by the Government could not get to the Corporate Debtor on time and whereas the institution has liability to take care of the more than 700 employees and maintenance of huge educational institution.

14. The Corporate Debtor have intentions to paying debts of the Petitioner, as even during pendency of Section 101 of Maharashtra Co-operative Societies Act, 1960 proceedings also the Corporate Debtor have paid much amount.

15. The Corporate Debtor for enhancing their business have obtained joint loan of Rs. 5,00,00,000/- from the Petitioner, Janalaxmi Gram. Bigarsheti Sahakari Patsanstha May, Akole and Shivkrupa Sahakari Patpedhi, Mumbai. The Corporate Debtor repaid the said loan amount, the Corporate Debtor had repaid till March 2016 deposited Rs. 3,92,40,000/-. Thereafter the Corporate Debtor had repaid till March 2016 deposited Rs. 36,00,000/- and Rs. 4,00,000/-. As on today the Corporate Debtor had paid Rs. 4,32,40,000/-.

16. The huge amount of grant in aid is due to grant amounting more than Rs. 15,00,00,000/- from government of Maharashtra, which was assured to be paid up to 30.09.2018. However, it was not paid to us by the Government and in such facts and circumstances, the loan amount is not paid. The Corporate Debtor also trying other sources for getting amount from Government aid. The Corporate Debtor mentions that as

soon as it is received, the Corporate Debtor is ready to pay the claimed amount.

FINDINGS

17. The Petitioner Samta Nagari Sahakari Patsanstha Maryadit, Kopargaon is a Financial Creditor who has filed this Application u/s 7 of the IBC 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, M/s Kalyani Education Pvt. Ltd.

18. The Bench notes that the Corporate Debtor had approached the Financial Creditor for a Working Capital Term Loan aggregating to Rs. 5,00,00,000/-. The Petitioner had granted a consortium loan to the Corporate Debtor vide sanction letter dated 25.10.2013 for a period of 3 years from the registration of the mortgage deed. Out of the total amount, Rs.2,25,00,000/- was disbursed by Samta Nagari Sahakari Patsanstha Maryadit, Kopargaon and the balance Rs.1,75,00,000/- was by Shivkrupa Sahakari Padpedhi, Nashikand Rs.1,00,00,000/-by Janalaxmi Gramin Bigarsheti Patsanstha Maryadit, Akole. As per Form 1 of the Petition the Corporate Debtor had defaulted in the payment of Rs.1,67,82,786.76 /- as on 25.10.2019 in the repayment of credit facilities.

19. The Bench notes that the Petitioner had initiated legal action against the Corporate Debtor by filing a case on 01.10.2014 u/s.101 of the Maharashtra State Co-operative Societies Act, 1960. The Bench also notes that in spite of the certificate issued u/s.101 of MSCS Act, 1960 the Corporate Debtor failed to deposit the recovery amount within the stipulated period. Subsequently, Form 'R' Rule 85(5) Certificate u/s.100 of Maharashtra State Co-operative Societies Act, 1960 for transfer of property was issued against the Borrower/Guarantors of M/s. Kalyani Education Private Limited. The Bench also notes that the Corporate Debtor in its reply dated 02.03.2020 has admitted the debt. The relevant

para from the reply filed by the Corporate Debtor on 02.03.2020 is as under:-

> *"6. I state that I have intentions to paying debts of the Petitioner, as even during pendency of Section 101 of Maharashtra Co-operative Societies Act proceedings also we have paid much amount.*
>
> *12. I state that huge amount of grant in aid is due to grant amounting more than Rs. 15 crores from government of Maharashtra, which was assured to be paid up to 30th September 2018, however, it was not paid to us by the Government and in such facts and circumstances, the loan amount is not paid. I am also trying other sources for getting amount from Government aid. I say that as soon as it is received to us I am ready to pay the claimed amounts."*

20. In view of the above it is clear to the Bench that there is a 'debt' and there is a 'default'. However, though not prayed by the Corporate Debtor, the only point to be seen by the Bench was whether the Petition is barred by Limitation Act. Here the Bench notes that this Petition was filed on 22.11.2019. The chronology of the date of default and the instalments paid by the Corporate Debtor as per the Bank statement submitted and which has been not denied by the Corporate Debtor is as under:-

PARTICULARS	DATE	AMOUNT IN Rs.
DATE OF DEFAULT	30/11/2013	-
DATES AND AMOUNT ON WHICH THE INSTALMNTS WAS PAID BY THE CORPORATE DEBTOR REFER PAGE (252-256) OF THE BANK STATEMENT	13/10/2014 31/12/2014 09/01/2015 28/02/2015 26/03/2015 11/06/2015 07/07/2015 30/07/2015 03/11/2015 29/01/2016 11/03/2016	8,10,000.00 8,10,000.00 8,10,000.00 8,10,000.00 8,10,000.00 8,10,000.00 8,10,000.00 8,10,000.00 8,10,000.00 16,20,000.00

	22/06/2016	8,10,000.00
		16,20,000.00
	08/06/2018	20,00,000.00

21. It is clear from the above that though the date of default was 13.11.2013 the Petitioner has received payment on various dates in the year 2014, 2015, 2016 and the last date of payment by the Corporate Debtor was on 08.06.2018. Therefore, in accordance with Section 19 of the Limitation Act, 1963, a fresh period of limitation commences from the time when the last payment was made within the prescribed period.

22. Therefore, it can be seen that right from the date of default on 13.11.2013 to filing the Petition on 22.11.2019, the petition is well within the period of limitation as prescribed u/s.19 of the Limitation Act, 1963.

23. The Bench here would also like to draw upon the Judgment of the Hon'ble NCLAT of 18.12.2020 passed in Company Appeal (AT) (Insolvency) No.621 of 2020 which *inter alia* held that :

> *"24. Section 18 applies to not merely suits but also applications and where before expiry of the prescribed period for an Application an acknowledgment is made, the Section provides for computing fresh period of Limitation from the time when acknowledgment was so signed. Perusal of Section 19 shows that where payment is made on account of a debt or interest before expiration of the prescribed period by the person liable to pay, a fresh period of Limitation shall be computed from the time when the payment was made. The date of NPA will not shift. It will remain the foundational date and Period of Limitation gets triggered from that date. But when prescribed period is computed in accordance with the Limitation Act and facts of this matter, Section 18 and 19 do appear to be attracted."*

24. On going through the submissions made by the Learned Counsel for the both the sides and on perusing the documents produced on record, it

is understood that the Corporate Debtor has defaulted in repayment of debt. The Corporate Debtor has acknowledged the disbursement of credit facilities and its liability to repay the same. However, the Corporate Debtor failed to pay. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be moved u/s 7 of the I&B Code.

25. The above facts clearly reveal that the Corporate Debtor is liable to pay the Petitioner and defaulted in making the payment to the Petitioner.

26. Considering the above facts, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e. existence of 'debt' and 'default', for admission of a petition under section 7 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation.

27. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves '**Admission**'.

28. Further that, we have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.

29. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Vinit Gangwal, having registration No. IBBI/IPA-002/IP-N00091/2017-

2018/10235, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

30. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

31. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

32. That the Interim Resolution Professional shall perform the duties as assigned under Section 18and Section 15 of the Code and inform the progress of the Resolution Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

33. The Petition is hereby **"Admitted"**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

34. Ordered Accordingly.

Sd/-	Sd/-
Chandra Bhan Singh	Suchitra Kanuparthi
Member (Technical)	Member (Judicial)