

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

C.P. (IB) 1031/MB/2021

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority, Rules 2016)

In the matter of

Omkara Assets Reconstruction Pvt. Ltd.

Having its registered office address at No.9, M. P. Nagar First Street, Kongu Nagar Extension, Tirupur, Coimbatore, Tamil Nadu — 641607

and its corporate office at C-515, Kanakia Zillion Junction of LBS Marg & CST Road, BKC Annexe Near Equinox, Kalina, Kurla (West), Mumbai — 400070

..... Petitioner/ Financial Creditor

Versus

C & M Farming Ltd.

Having its address at C & M House,
N.D. Patel Road, Nashik- 422001

..... Respondent/Corporate Debtor

Order Delivered on :- 21/03/2024

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Financial Creditor : Sr. Adv. Prateek Seksaria a/w Adv.
Supriya Majumdar, Adv. Ibrahim Shaikh

For the Corporate Debtor : Adv. Ashish Pyasi a/w Adv. Anjali Shahi

ORDER

Per: Kuldip Kumar Kareer, Member (Judicial)

1. The present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by **Omkara Assets Reconstruction Pvt. Ltd.** (hereinafter called Financial Creditor) praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s C & M Farming Ltd.** (hereinafter called Corporate Debtor) by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter called " the Code") for resolution of an unresolved Financial Debt of Rs. 6,42,56,279/- as on 31.07.2021.

The submissions of the Financial Creditor are as follows:

2. It is submitted that Term Loan of Rs. 30 lakhs and Cash Credit Limit of Rs. 65 lakhs was granted to the Corporate Debtor by the Business Co-operative

Bank hereinafter referred to as Assignor Bank vide sanction letter dated 01.10.2002 and 31.03.2003 respectively.

3. In consideration thereof and as by way of security, the Corporate Debtor executed the loan and mortgage documents in favour of the Assignor Bank on various dates viz. 16th October, 2002 and 31st March, 2005.
4. In the year 2006, a reference was filed before BIRR. On 17th April, 2007, the Corporate Debtor was declared sick before BIFR and hence IDBI was appointed as an operating agency. The reference was finally disposed in the year 2014.
5. The Financial creditor is also claiming mortgage in respect of immovable properties owned by Corporate Debtor, more particularly described in the above mortgaged documents as security for repayment of the loan amount. The mortgage was created vide Registered Mortgage Deed dated 31st March, 2005 executed by Corporate Debtor. The said mortgage is valid and subsisting till date.
6. After availing the credit limits, the Corporate Debtor has committed default in repayment of the loan account. Consequently, both the Term Loan account and cash credit account was classified as NPA on 15th April, 2003.
7. After issuance of 13(2) demand notice on 10th January, 2018, the Corporate Debtor and its guarantors have acknowledged the debt in OTS proposals both dated 28th February, 2018 and 17th September, 2020 respectively.

8. The Corporate Debtor continued to deposit amounts and last of which was done on 2nd March, 2019 in the loan accounts. The Corporate Debtor has admitted the liability in the balance sheets lastly in the year 2019-2020. The admission is unconditional and unequivocal.
9. That in pursuance of declaration of the loan accounts as NPA, an appropriate action under Section 13(2) and 13(4) of the SARFAESI Act, 2002 was initiated. This action was initiated on January, 2018. The action till date continues and same is ongoing. The Corporate Debtor has filed Securitisation Application No. 110 of 2020 against the Assignor Bank before the Hon'ble DRT-III at Vashi, Mumbai which is also pending.
10. Vide Assignment Agreement dated 5th December, 2020, the loan account of Corporate Debtor was assigned by the Assignor Bank viz. The Business Co-op Bank Ltd. in favour of the Applicant.
11. The Corporate Debtor has failed to pay and, therefore, the Financial Creditor herein also filed Original Application No. 274 of 2021 for recovery of an aggregate sum of Rs.5,95,80,555.00/- along with further interest thereon etc. against the Corporate Debtor and its guarantors before the Hon'ble Debts Recovery Tribunal-III at Vashi, Navi Mumbai. This Original Application is also pending before the Hon'ble Tribunal and the Financial creditor is pursuing the said Original Application. Since the Corporate Debtor has failed to pay the outstanding dues, this necessitated the filing of the instant Petition.

Reply filed on behalf of the Corporate Debtor:-

12. In reply, the Corporate Debtor has denied all allegations and/ or contentions and/or submissions made by the Petitioner in the Petition which are inconsistent with and/or contrary to what has been stated herein. Further, nothing shall be deemed to have been admitted for the reasons of non-traverse.
13. It is further submitted that the present Petition filed by the Financial Creditor is not maintainable under Section 7 of the IB Code, 2016 as the same is incomplete, defective and not maintainable in law.
14. The Corporate Debtor further submits that the Board Resolution relied upon by the Petitioner does not give any authority to Ms. Yasmeen Nachan to file the Petition against the Corporate Debtor under the Insolvency and Bankruptcy Code, 2016. There is neither a specific power of attorney or board resolution issued by the Applicant/alleged Financial Creditor authorizing Ms. Yasmeen Nachan to file such Application/Petition and the Petition is liable to be dismissed on this ground alone.
15. It is submitted that the Petition is barred by limitation and it is Petitioner's own case that the NPA date is as old as 15th April, 2003 when the loan account of the Corporate Debtor was classified as Non-Performing Asset in view of the default in making payments by the Corporate Debtor.
16. It is further submitted that for the purpose of computing limitation under the Limitation Act, the first date of default is to be considered and the same cannot be shifted. Interestingly, if the Petitioner's purported claim is put to the limitation test, it becomes abundantly clear that the date of default in the instant case is prior to 15th April 2003 (when the default took place) or at the

best 15th April 2003 when the allegedly the account of the Corporate Debtor was declared as NPA by the said Bank. Needless to say, that the said date cannot be shifted by the Petitioner according to his own convenience. That being so, it is clear that the alleged claim of the Petitioner is barred by limitation and hence the Petitioner is not entitled in law to claim the said amount by way of a Petition under Section 7 of IB Code, 2016.

17. It is further submitted that the Financial Creditor has approached this Tribunal with unclean hands and suppressed material facts and, therefore, guilty of *suppressio veri suggestio falsi*. The Applicant has suppressed the material fact/documents and even the applicant knows that a fraud has been played upon the Corporate Debtor by the applicant along with other persons.
18. It is submitted that the conduct of the Applicant/ Financial Creditor so far, as briefly narrated hereinabove, clearly displays the mala fide intentions of harassing the Corporate Debtor by initiating corporate insolvency resolution process against the Corporate Debtor by filing the present Company Petition under Section 7 of the IB Code, 2016. The Applicant/ Financial Creditor is using the insolvency proceedings under Code as an arm-twisting mechanism to put pressure on the Corporate Debtor into adducing more security and make preferential payments to the Applicant/ Financial Creditor.
19. In the end, the Corporate Debtor has prayed for the dismissal of the Petition.

Analysis and Findings:

20. We have heard the Counsel for the parties and gone through the record.

21. During the course of arguments, Counsel for the Petitioner has argued that the present Petition deserved to be admitted as the Corporate Debtor has committed a default of Rs. 6,42,56,279/- as on 31.07.2021 in respect of the term loan and cash credit facility. Counsel for the Petitioner has further pointed out that the existence of a financial debt has not been disputed by the Corporate Debtor. He has further contended that the Petition is within the time as the reference period before the BIFR is liable to be excluded while calculating the period of limitation. Apart from that, the Corporate Debtor has been making payments from time to time after the account was declared NPA on 15.04.2003. Counsel for the Petitioner has further argued that in addition to this, the Corporate Debtor has been acknowledging the existence of the debt in its balance sheets right from 2015-2016 till 2019-2020.
22. Counsel for the Petitioner has further argued that the Petition is not barred under Section 10A of the IB Code, 2016 as the original default in this case occurred in the year 2003 when the account was declared NPA, more particularly, on 15.04.2003. Therefore, according to the Counsel for the Petitioner, it is a fit case for admission under Section 7 of the IB Code, 2016.
23. On the other hand, Counsel for the Corporate Debtor has argued that the Petition is liable to be dismissed primarily on the ground that the assignment deed dated 05.12.2020 is illegal and null and void which could not have been executed by the original lender i.e. Business Co-operative Bank Limited. In this regard, it has been pointed out by the Counsel for the Corporate Debtor that as per the Reserve Bank of India circular dated 24.09.2021, the necessary authority to assign loans to ARCs was granted to the co-operative banks with effect from 24.09.2021 only and, therefore, the assignment deed, which was

executed prior to the said circular of Reserve Bank of India, is illegal, null and void.

24. Counsel for the Respondent has further argued that the present Petition is barred under Section 10A of the Code, 2016 as in part IV of the Petition itself the date of default has been claimed to be 09.12.2020 which is covered under Section 10A period and, therefore, the Petition is liable to be dismissed on this ground also.
25. Counsel for the Respondent has further argued that the present Petition is barred by time. In this regard, Counsel for the Respondent has argued that though the period during which the Corporate Debtor remained in resolution with BIFR is liable to be excluded but as per the own case of the Petitioner, the account of the Corporate Debtor turned NPA on 15.04.2003. Therefore, even if the BIFR moratorium period is excluded, even then the Petition is barred by time.
26. Counsel for the Respondent has further argued that the Corporate Debtor has challenged the assignment deed dated 05.12.2020 executed by the original lender in favour of the Financial Creditor by way of filing a civil suit which is yet to be decided and till the very validity of the assignment deed is decided, the present Petition should not be proceeded with and be kept in abeyance.
27. We have weighed the contentions raised by the Counsel for the parties and carefully gone through the record.
28. So far as the question of the validity of the assignment deed dated 05.12.2020 is concerned, even if the Corporate Debtor has challenged the same by way

of filing a civil suit, the matter cannot be kept in abeyance. Moreover, it has also been pointed out by the Counsel for the Petitioner that the said suit has already been dismissed. Be that as it may, in our considered view, on account of mere pendency of a suit, if any, the proceedings under the IB Code cannot be stayed or kept in abeyance. Therefore, this contention raised by the Counsel for the Corporate Debtor is rejected.

29. As regards the contentions as to whether the original lender i.e. Co-operative Bank could have assigned the loan in favour of the Financial Creditor/ ARCs or not, in this regard the Counsel for the Financial Creditor has rightly pointed out that the provisions of SARFESI Act, 2002, more particularly, Section 5 (1) provides that notwithstanding anything contained in any agreement or any other law for the time being in force, any Asset Reconstruction Companies may acquire financial assets of any bank or financial institution. For Asset Reconstruction Companies, Section 5 (1) was amended with effect from 01.09.2016 to enable Asset Reconstruction Companies to acquire loans from the Bank or Banking Companies. Counsel for the Petitioner has further pointed out that all co-operative banks are covered under the definition of Banking Company given under Section 2 (c) of SARFESI Act read with Section 5 of the Banking Regulation Act, 1949. In this regard, a reference can further be made to the law laid down by the *Hon'ble Supreme Court in the matter of Pandurang Ganpati Chaugule vs. Vishwasrao Patil Murgud Sahakari Bank Limited, (2020) 9 SCC, 215* whereby it has been unequivocally held by the Hon'ble Supreme that all Co-operative Banks under the State Legislation and Multi State Co-operative Banks are banks under Section 2 (1) (c) of SARFESI Act, 2002. Therefore, it cannot be successfully argued that prior to the issuing of the circular dated 24.09.2021, the original lender, who was a district co-operative bank, was not entitled to

assign the debt to the Asset Reconstruction Companies i.e. the Financial Creditor.

30. As regards the point of limitation, it has been rightly pointed out that the account of the Corporate Debtor was declared NPA on 15.04.2003 which is also reflected in the NeSL report. In this regard, Counsel for the Petitioner has referred to the statement of account of the Corporate Debtor at Exhibit (J) which shows that the Corporate Debtor has been making part payments right from 31.03.2004 to 24.02.2006. It is well settled that part-payments made from time to time amount to acknowledgements on the part of the Corporate Debtor and the same has the effect of renewing /extending the period of limitation by another three years. If the last payment made on 24.02.2006 and the period of reference before BIFR from 15.09.2006 till 13.06.2016 is excluded, which is otherwise liable to be excluded as per the law, the present Petition shall be deemed to have been filed within the period of limitation. In this regard, a further reference can also be made to the audited balance sheets of the Corporate Debtor from the year 2015-2016 to 2019-2020 which has been produced on record by the Financial Creditor and in all the balance sheets, the financial debt has been acknowledged by the Corporate Debtor. Therefore, it can be safely held that the Petition has been filed within the period of limitation.
31. As regards the contentions that the petition is barred under Section 10A of the IB Code, 2016 raised by the Counsel for the Corporate Debtor, even the said contention is not tenable. Admittedly, in this case, the default took place in the year 2003 when the account of the Corporate Debtor was declared as NPA. In part (IV) of the Petition, no doubt, the date of default is mentioned as 09.12.2020 but it has also been stated that there has been a continuing

default in the account commencing from 15.04.2003, when the loan of the Corporate Debtor was classified as NPA in view of the default committed by the Corporate Debtor. In our considered view, the pleadings are to be read in their entirety and a single line cannot be read in isolation. In this regard, a reference can also be made to the law laid down by the Hon'ble NCLAT *in the matter of Mr. Aseem Srivastav vs. ICICI Bank Limited and Ors., Company Appeal (AT) Insolvency No. 147 of 2021* whereby it has been held by the Hon'ble NCLAT that if the account of the Corporate Debtor was classified as NPA prior to the insertion of Section 10A of the Code, the provisions of Section 10A would not get attracted to the Petition under Section 7 of the IB Code, 2016. Therefore, the Petition cannot be held to be barred under Section 10A of the IB Code, 2016.

32. No other points have been raised on behalf of the Corporate Debtor.
33. As a result of above discussion, we hold that the Petitioner has been able to establish the existence of financial debt and its default having been committed by the Corporate Debtor and further that the Petition is filed within the period of limitation. Therefore, the Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 deserves to be admitted and it is ordered accordingly in following terms:-

ORDER

- a. **The above Company Petition No. (IB) 1031/(MB)/2021 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s C & M Farming Ltd.**

- b. This Bench hereby **appoints Mr. Kamal Rajkumar Sharma Registration No: IBBI/IPA-001/IP/P-01850/2019-2020/12870 as the Interim Resolution Professional having his address at Office No. 29-32, 3rd Floor, Rajabahadur Mansion/New Bansilal Building, 9/15, Homi Modi Street, Fort, Mumbai, Maharashtra-400023; Email id:- kamal.sharma@ajallp.com, Mobile No:- 9322595106** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of **Rs. 3,00,000/-** (Rupees Three Lakhs Only) towards the **initial CIRP cost** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; 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 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

34. **Accordingly, this Petition is admitted.**

35. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)
Sushil

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)