THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

IA No. 690/2020, 2138/2023
and
CP (IB) No. 76/Chd/Pb/2019

Under Section 7 & 60(5) of the Insolvency & Bankruptcy Code, 2016

<u>In the matter of IA No. 2138/2023 & CP (IB) No. 76/Chd/Pb/2019 :</u>

Jammu & Kashmir Bank Ltd.
having its registered office at:
M.A. Road, Srinagar,
Jammu & Kasmir-190001

having its Branch Office at
Phase-2, Sector-54, Mohali,
Punjab-160055
CIN No: L65110JK1938SGC000048 ….Petitioner-Financial Creditor

Vs.

BBF Industries Ltd.
having its Registered Office at
Village-Bhamian Kalan, Tajpur Road,
Ludhiana, Punjab-141008
CIN No: U74950PB1996PLC018439 …Respondent-Corporate Debtor

<u>In the matter of IA No. 690/2020</u>

BBF Industries Ltd.
having its Registered Office at
Village-Bhamian Kalan, Tajpur Road,
Ludhiana, Punjab-141008
CIN No: U74950PB1996PLC018439 …Applicant-Corporate Debtor

Vs.

Jammu & Kashmir Bank Ltd.
having its registered office at:
M.A. Road, Srinagar,
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having its Branch Office at

Phase-2, Sector-54, Mohali,
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CIN No: L65110JK1938SGC000048 ....Respondent-Financial Creditor

Judgment delivered on: 20.11.2023

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present:

For the Petitioner-Financial Creditor
and respondent in IA No. 690/2020 : Mr. Mayank Mathur, Advocate

For the Respondent-Corporate Debtor
and applicant in IA No. 690/2020 : Mr. Pulkit Sachdeva, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

IA No. 690/2020

The present application was filed by the applicant-corporate debtor against the operational creditor-respondent for dismissing the company petition on preliminary issue of limitation, having been filed beyond a period of three years from date of default, i.e. 31.03.2013.

2. The brief facts of the case are that the present petition is filed beyond the period of 3 years from the date of default i.e. 31.03.2013. Notice dated 15.11.2013 was issued under Section 13(2) of the SARFAESI Act, 2002. The CC limit, term loan 2 and FLC were sanctioned in the year 2005 and in the year 2008, the Cash Credit limit was renewed and enhanced from 5 crores to 9 crores. The Financial Creditor sent a recall notice dated 22.10.2013 and alleged that the last payment from the corporate Debtor was received on 06.09.2018 for Rs. 55,85,310/- through RTGS-EMD collection. However, no such payment was made. The bank received the payment from PNB against the sale of property which cannot be said

to be made by the Corporate Debtor. Further, this does not extend the limitation period. The present petition was filed on 16.01.2019.

3. An affidavit of service was filed vide Diary No. 00502/01 dated 17.11.2021. The reply was filed vide Diary No.01478/2 dated 07.12.2021, wherein it is stated that despite giving many opportunities to the Corporate Debtor for payment of the outstanding amount, the Corporate Debtor failed to do so. It is evident from the documents placed on record by learned counsel for the petitioner in its reply filed in the present IA that the loan has not been paid.

Name of the Bank/ Financial Institution	Nature of the Amount	Amount Involved (Rs. in Lakh)	Period of default of repayment
J&K Bank	TL installment interest on TL overdue against devolved LC's Cash Credit on CC	14.81 235.46 162.04 633.35 188.66	FY 2012-13 to FY 2013-14
J&K Bank	TL instalment interest on TL overdue against devolved LC's Cash Credit Interest on CC	1417.11 1050.17 334.27 577.16 646.30	FY 2012-13 to FY 2017-18
J&K Bank	TL instalment interest on TL overdue against devolved LC's Cash Credit on CC	1408.05 1298.66 334.27 521.31 830.38	FY 2012-13 to FY 2018-19
J&K Bank	TL instalment interest on TL overdue against devolved LC's Cash Credit on CC	1408.05 1547.15 334.27 521.31 1016.19	FY 2012-13 to 2019-20

The table clearly shows that in the financial statements of corporate debtor the default is admitted till the financial year of 2019-2020. The present petition is well within limitation as the bare pursual of financial statements of the Corporate Debtor along with the audit report accentuates and constitutes acknowledgment of liability in the various financial years as per Section 18 of the Limitation Act, 1963. The Section 7, IBC petition was filed on 23.01.2019 and was refiled on 12.02.2019 vide Diary No. 360. The admission of liability extends the limitation by 3 years from time to time. Therefore, the present petition is well within the limitation period of 3 years.

4. The short written submissions have been filed by petitioner vide Diary No.01478/3 dated 16.01.2023 and by respondent-corporate debtor vide Diary No. 482 dated 19.01.2023.

5. Therefore, in view of the above, IA No. 690/2020 is dismissed and stands disposed of accordingly.

JUDGMENT in CP (IB) No. 76/Chd/Pb/2019

6. The present petition has been filed by **Jammu and Kashmir Bank Ltd.,** (hereinafter referred to as 'Petitioner/Financial Creditor') through its authorised representative Sh. Mohd. Hanief Kirmani, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **BBF Industries Limited** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Sh. Mohd. Hanief Kirmani, with the affidavit verifying the contents of the application, appended thereto.

7. The Corporate Debtor is stated to be incorporated on 01.07.1996. The company has its registered address at Village-Bhamian Kalan, Tajpur Road, Ludhiana, Punjab-141008. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is attached as Annexure-P2 of the petition.

8. The brief facts of the case are that in 2002, the corporate debtor availed various credit facilities from the financial creditor for establishing/ setting up an industrial unit for the manufacturing of printing paper and paper board-based packaging at SIDCO Industrial Growth Capital, Samba and facilities was enhanced in 2005 at the request of the corporate debtor. The facilities were further enhanced in the year 2008 and were restructured vide master restructuring agreement dated 29.06.2011. However, the accounts became irregular and the financial creditor did not receive any payment. The account of the corporate debtor was declared NPA on 31.03.2013.

9. It is stated in Part-IV of Form No.1, the total amount claimed to be in default is Rs. 43,37,74,716 (Rupees Fourty Three Crore Thirty Seven Lakhs Seventy Four Thousand Seven Hundred and Sixteen Only) and date of default is 31.03.2013 i.e. when the corporate debtor account was classified as Non-Performing Asset. Copy of Sanction letter and loan agreement (Annexure-P3), letter of undertaking hypothecation agreement counter guarantee deed of personal guarantee (Annexure-P4,P7), Memorandum of deposit of title deed (Annexure-P5), Sanction Letter and loan agreement (Annexure-P6), loan agreement executed between the parties dated 03.06.2008 (Annexure-P8), letter bearing reference no. SIDCO/ROJ/Proj/04/48-VII/889-93 dated 27.12.2008 (Annexure-P9), Master Restructuring Agreement, Trust & Retention Agreement & Letter of approval (Annexure-P10),

Loan Recall Notice (Annexure-P11), statement of Accounts depicting outstanding balance as on 31.10.2018 (Annexure-P12) are attached with the main petition. Copy of the typed Balance Sheet for the years 2014-15,2017-18,2019-2020 have been filed vide Diary No. 00502/6 dated 08.09.2023.

10. The notice of this petition was issued to the respondent corporate debtor to show cause as to why this petition be not admitted. An affidavit of service was filed vide Diary No. 1687 dated 02.04.2019. The reply was filed vide Diary No.4729 dated 02.09.2019, wherein it is stated that the respondent has suffered huge financial losses and harassment due to non-fulfilment of obligations at behest of the financial creditor and other banks. The petition is based on the incorrect projection of facts and has been filed on false and frivolous ground. The financial creditor has suppressed material facts regarding the status of the assets of the corporate debtor. The efforts are been made respondent company to settle with the petitioner bank. The respondent company submitted a proposal dated 17.08.2019 and which is under consideration with the bank. The respondent seeks period of two weeks to settle the account with the bank to bring an amicable resolution to the disputes. The petition is filed based on an unauthorised authority letter dated 29.11.2018. The application fails to establish the existence of financial date. The amount claimed in notice dated 15.11.2013 under Section 13(2) of SARFAESI Act, 2002, the amount claimed in civil suit filed in District Court, Jammu a totally wrong and without any basis.

11. The rejoinder was filed vide diary No.6668 dated 28.11.2019, wherein it is stated that the financial creditor has placed on record the documents including statement of accounts which shows that default has occurred and amount is due from corporate debtor. Therefore, there is existence of admitted date and default.

The corporate debtor has failed to repay the credit facilities availed which has cost a great loss to financial creditor.

12. The short written submissions have been filed by petitioner vide Diary No. 00502/2 dated 16.01.2023 and by respondent-corporate debtor vide Diary No. 00502/5 dated 28.06.2023.

13. We have heard the learned counsel for the petitioner as well as respondent and have also perused the record carefully.

14. Section 7(5)(a) of the Code is as follows:-

> *"5) Where the Adjudicating Authority is satisfied that—*
> *(a) a default has occurred and the application under sub-section (2) is complete, and there are no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application."*

15. The first issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is 31.03.2013 i.e. when the corporate debtor account was classified as Non-Performing Asset. However, the date of default can also be taken as 31.03.2019 as the corporate debtor has acknowledged the debt in its Balance Sheet/Financial Statement for the year ending 2019-2020. The present petition is filed vide Diary No. 360 dated 23.01.2019 and was refiled on 12.02.2019.

As already discussed above while disposing of IA No. 690/2020, the present petition is well within the period of limitation of three years.

16. Another issue for consideration is whether there is a default in payment or not. It is observed from the record that in the present case, the default is. evidenced by Sanction letter and loan agreement (Annexure-P3), letter of undertaking hypothecation agreement counter guarantee deed of personal guarantee (Annexure-P4,P7), Memorandum of deposit of title deed

(Annexure-P5), Sanction Letter and loan agreement (Annexure-P6), loan agreement executed between the parties dated 03.06.2008 (Annexure-P8), letter bearing reference no. SIDCO/ROJ/ Proj/04/48-VII/889-93 dated 27.12.2008 (Annexure-P9), Master Restructuring Agreement, Trust & Retention Agreement & Letter of approval (Annexure-P10), Loan Recall Notice (Annexure-P11), statement of Accounts depicting outstanding balance as on 31.10.2018 (Annexure-P12) are attached with the main petition, the typed Balance Sheet for the years 2014-15,2017-18,2019-2020 have been filed vide Diary No. 00502/6 dated 08.09.2023. As per the financial records which amounts to admission by corporate debtor that an amount of Rs. 43,37,74,716 (Rupees Fourty Three Crore Thirty Seven Lakhs Seventy Four Thousand Seven Hundred and Sixteen Only) is still pending, when corporate debtor avoided and committed default in the payment of outstanding amount despite repeated requests by petitioner-financial creditor.

17. The petition under Section 7 of Insolvency and Bankruptcy Code,2016 filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, in Part III of Form 1, Mr Neeraj Bhatia , has been proposed as Interim Resolution Professional (IRP). However, vide **IA No. 2138/2023**, Mr. Inder Jeet Khattar has been proposed as new IRP. Form No.2 dated 25.10.2021, Form B dated 30.01.2023 wherein his AFA Certification is valid upto 29.01.2024 along with the certificate of IBBI issued in favour of the proposed Interim Resolution Professional is attached with the application. The Law Research Associate of this Tribunal has checked the credentials of Mr. Inder Jeet Khattar and there is nothing adverse against him. Therefore, IA No. 2138/2023 is allowed and stands disposed of accordingly. In

view of the above, we appoint Mr. Inder Jeet Khattar, Registration No.IBBI/IPA-003/IP-N000156/2018-19/12102, Email: khattartania@rediffmail.com, Mobile No. 8427402255, the Interim Resolution Professional with the following directions: -

i.) The term of appointment of Mr. Inder Jeet Khattar shall be in accordance with the provisions of Section 16(5) of the Code;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service

Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

18. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default

amount which is above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

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 Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002; and

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.

e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

f) The order of moratorium shall have effect from the date of this order till 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 the corporate debtor under Section 33 as the case may be.

19. We direct the Financial Creditor to deposit a sum of ₹2,00,000/- (Rupees Two Lakhs Only) with the Interim Resolution Professional, to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

20. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

21. The petition is admitted accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

November 20, 2023
VN/TBG