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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP/1264/IB/2018 filed 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 ***M/s. SLO Industries Limited***

Corporation Bank

Mid Corporate Branch,
Rep by its Assistant General Manager,
Having its Branch Office at
No.12, Ormes Road, P.O.Box No.113,
Kelly's Corner, Kilpauk,
Chennai – 600 010.

... Financial Creditor

-Vs-

M/s. SLO Industries Limited,

No.447/265, 2nd Floor,
P.H. Road, Aminjikarai,
Chennai – 600 029.

...Corporate Debtor

Order delivered on 4th November, 2019

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Financial Creditor : Mr. N. Sivabalan, Counsel

For Corporate Debtor : Mr. K. Manoj Menon, Counsel

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. Under Adjudication is CP/1264/IB/2018 that has been filed on 10.10.2018 by ***Corporation Bank*** (hereinafter referred to as '***Financial Creditor***') under Section 7 of the



Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. SLO Industries Limited** (hereinafter referred to as '**Corporate Debtor**'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Heard the Counsels for the Financial Creditor and Corporate Debtor and perused the pleadings including the documents placed on file.

3. The Financial Creditor has claimed an amount of ₹236,35,93,324.86/- (Rupees Two Hundred and Thirty Six Crores Thirty Five Lakhs Ninety Three Thousand Three Hundred Twenty Four and eighty six paisa only) as outstanding against the Corporate Debtor as on 29.05.2016, which the Corporate Debtor has failed to pay.

4. The brief facts of the case are that the Corporate Debtor is a Company in the business of manufacturing M.S. Ingots having its factory at GNT Thurai Nallur Village, Ponneri, Taluk. The Corporate Debtor approached the Financial Creditor



for sanction of various credit facilities for setting up of Rolling Mill and procuring raw materials etc. In the year 2013, the Financial Creditor has sanctioned i) Cash Credit facility of Rs.130 Crores, ii) Term Loan of Rs.6.34 Crores iii) Inland/Import Letter of Credit of Rs.65 Crores and Bank Guarantees of Rs.6 Crores which were availed by the Corporate Debtor.

5. The Corporate Debtor vide its Board Resolution dated 27.11.2013 had accepted the terms of sanction of the credit limits authorising its Directors to execute the documents. In order to secure the above loan facilities, the Corporate Debtor on 29.11.2013 executed *inter alia* the following documents as security in favour of the Financial Creditor:-

- a) Demand promissory Note,
- b) Common Deed of Hypothecation hypothecating the stock in trade which is morefully described under *clause 1 (1) of Part-V of the Application*;
- c) General Power of Attorney to recover the Book Debts;
- d) A Counter Guarantee for the Bank Guarantee;
- e) Memorandum of charge over the deposit of ₹7,10,02,655.55/-.

Besides above, the Corporate Debtor has deposited the title deeds in respect of the immovable properties described under *clause 1 (2) of Part-V of the Application* as collateral security



by way of mortgage for the credit limits availed by it, with the Financial Creditor on various dates. In addition, the Corporate Debtor executed Acknowledgement of Debt on various dates acknowledging the liability upto, 30.11.2014.

6. During March, 2016, at the request of Corporate Debtor, the Financial Creditor issued Inland Letter of Credit for ₹15.75 Crores for the urgent requirement of the Corporate Debtor over and above the sanctioned limits.

7. The Corporate Debtor, after availing all the above facilities, did not adhere to the terms of sanction and the operation of account was not regular. Hence, the accounts have been classified as Non-Performing Assets (NPA) on 30.05.2016 by the Financial Creditor. Thereafter, the Financial Creditor has initiated proceedings under SARFAESI Act, 2002 and on 14.07.2016 issued a Demand Notice under Section 13(2) of the SARFAESI Act demanding the balance outstanding amount from the Corporate Debtor and followed by the Possession Notice under Section 13(4) of the SARFAESI Act on 20/21.03.2017 by taking physical possession of the property. Simultaneously, the Financial Creditor filed Original Application under Section 19 of the RDDB&FI Act, 1993, before DRT-III, Chennai. Thereafter, the Corporate Debtor



filed three SAs before DRT-I, Chennai and except SA No. 30 of 2017, other two SAs were dismissed by the DRT.

8. Besides above, the Counsel for the Financial Creditor has referred to the Annual Report of the Corporate Debtor for the year 31st March, 2015, which is placed at pages 237 to 264 of the typed set filed with the Application wherein the amount due to the Financial Creditor is acknowledged by the Corporate Debtor.

9. The Financial Creditor has also placed on record the Statement of Account in respect of each facility at page Nos.75 and 76 of the typed set filed with the Application. Further, the Financial Creditor has filed the Certificate under Section 2 (A) (b) of the Banker's Books Evidence Act, 1891 at page No.81 of the typed set filed with the Application.

10. It has been submitted by the Counsel for the Financial Creditor that on 10.04.2019, the Corporate Debtor has given proposal for One time Settlement (OTS) of Rs.50 Crores and the same has been rejected by the Financial Creditor vide letter dated 08.07.2019. Copy of the rejection letter is placed on file.



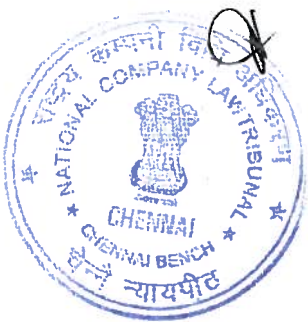
11. In relation to the above Application as preferred by the Financial Creditor / Applicant Bank, initially an MA/212/2018 has been filed by the Corporate Debtor seeking to challenge the initiation of the proceedings before this Tribunal under Section 60 (5) read with Sections 7 and 65 (1) of I&B Code, 2016. Further, the Corporate Debtor has also chosen, in view of the direction issued by this Tribunal, in the above MA/212/2018 so as to treat the same as counter to the main CP by the order of this Tribunal dated 01.01.2019 and based on the additional typed set of document filed by the Petitioner the Corporate Debtor has chosen to file a reply on 22.02.2019, wherein the above fact has been brought forth by the Corporate Debtor itself in the said reply. Going by the reply as filed by the Corporate Debtor dated 22.02.2019 and the earlier MA/212/2018 being treated as counter, it is seen that the Corporate Debtor has predominantly taken the following pleas to contest the Application viz.,

- i) that the person who initiated the proceedings before this Tribunal on behalf of the Applicant Bank has not filed the authorization letter as the same has not been enclosed and in the circumstances the Application is contrary to Rule (4) of I&B (Application to Adjudicating Authority Rules, 2016) and the same is required to be rejected.



- ii) that the claim as made in the Petition is barred by limitation and in the circumstances, the claim is not maintainable and for the said reason also the Application is liable to be rejected.
- iii) The Applicant Bank has initiated the petition malafide as against the Corporate Debtor and in this connection it is pointed out that in addition to the present proceedings initiated under IBC, 2016, earlier the Applicant Bank has initiated proceedings before the DRT arising out of recovery of debts and bankruptcy as well as initiated action under SARFAESI Act, 2016 and filed complaint with SFIO as alleged against SLO Industries Ltd. and in the circumstances this Petition is only a continuation of the abuse of process of Law.
- iv) It is also contended that in relation to the proceedings before the DRT based on the claim as filed by the Applicant Bank, a counter claim had been made as against the Applicant Bank by the Corporate Debtor for an amount Rs.308.04 Crore, which is ⁱⁿ ~~an~~ excess of the claim amount as made before this Tribunal by the Applicant Bank against the Corporate Debtor in a sum of ₹236,35,93,324.86. In the circumstances, taking into consideration the claim being in excess of the amount claimed, this Petition is liable to be dismissed by this Tribunal.

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In relation to each of the contention taken by the Corporate Debtor, it is necessary for this Tribunal to analyse the facts, which have been stated in the reply as well as the Application which has been filed by the Corporate Debtor and which under the direction of this Tribunal needs to be treated as a reply to the main Company Petition.

12. In relation to contention No.1, it is contended by the Corporate Debtor that the Application has been filed based on the Power of Attorney dated 15.05.1997 and that no authorization letter dated 08.10.2018 has been enclosed along with the Application nor the said authorization letter had been enclosed along with copy of the Application and documents which were sent by the Applicant Bank to the Corporate Debtor, as required under Section Rule 4 (3) of I&B (AAA) Rules, 2016 and since the Application served upon the Corporate Debtor is incomplete and in violation of the said Rules, the Application is liable to be rejected. Further it was contended that the Power of Attorney was issued much prior to coming into force of I&B Code, 2016 and the Applicant Bank cannot rely on the same for the purpose of this Application. Further the Corporate Debtor seeks to rely on the judgment of Hon'ble NCLAT in **Palogix Infrastructure Pvt. Ltd. -Vs- ICICI Bank Limited** in CA (AT) (Insolvency) Nos.30 and 37



of 2017, that a Power of Attorney Holder is not empowered to file an Application under Section 7 of IBC, 2016. However, a careful perusal of the said judgment relied on by the Corporate Debtor, the Hon'ble NCLAT at Paragraph No.38 has stated as follows:-

"38. This apart, if an officer, such as Senior Manager of a Bank has been authorized to grant loan, for recovery of loan or to initiate a proceeding for 'Corporate Insolvency Resolution Process' against the person who have taken loan, in such case the 'Corporate Debtor' cannot plead that the officer has power to sanction loan, but such officer has no power to recover the loan amount or to initiate 'Corporate Insolvency Resolution Process', in spite of default of debt".

In the instant case, it is seen that in Part I of the Application as against the name of the authorized person, the name of one Mr. S.T. Nadarajan, Assistant General Manager of the Applicant Bank is reflected who has also signed at the end of the Application, affixing his signature along with seal disclosing his designation. Further an authorization letter in his favour has also been enclosed dated 06.10.2018 and has also been again furnished along with additional typed set and in the circumstances we do not find much credence factually or legally in relation to the said objection and hence overruled.

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13. In relation to the contention the claim as being barred by limitation, it is pointed out on the part of the Corporate Debtor that the balance sheet of the Company has been filed only for the year ended 2015, which is beyond the period of 3 years from the date on which the default is said to have been arisen as disclosed in the Application filed by the Bank. Further, in any case, it is also contended by the Corporate Debtor that mentioning of any amount in the balance sheet cannot be considered as an admission on the part of the Corporate Debtor in relation to the amount claimed by the Applicant Bank.

14. In addition, it is also contended that the Statement of Account filed along with the Application is not complete and the same stands for the period from 25.02.2017 to 01.09.2018 only, and also pertains only to the period after the alleged date of default. It is pointed in this regard that the revival letters, if at all which have been signed is three years prior to the date of filing of this Company Petition. It is also projected that in relation to each of the proceedings initiated by the Applicant Bank be it before DRT or under I&B Code, 2016, the period of limitation is to be reckoned in relation to each of the proceedings and hence the proceedings under DRT may be within limitation, however, in relation to I&B Code,



2016 and the above Application, it is not within the period of limitation. A plethora of judgments have been relied on including *inter alia* the decision of the Hon'ble Supreme Court as rendered in;

(i) B.K. Educational Services Private Limited – Vs- Parag Gupta and Associates (2018) SCC Online SC 1921;

(ii) Jignesh Shah and another –Vs- Union of India and another (2019) SCC Online SC 1254;

(iii) Gaurar Hargovindbhai Dave –Vs- Asset Reconstruction Company (I) Ltd. & Another in Civil Appeal No.4952 of 2019.

Further in relation to the proposition canvassed that amount disclosed in the Balance Sheet or the Auditors Report cannot be construed as an Acknowledgment of debt for the purpose of limitation, the following judgments have been relied on, viz;

(i). Taipack Limited & Ors. –Vs- Ram Kishore Nagar Mal (2007) SCC Online Del 804;

(ii). Smt. Vijayalakshmi –Vs- Hari Hara Ginning & Pressing (1999) SCC Online AP 1115; and



(iii). Walnut Packing P. Ltd -Vs- Sirpur Paper Mills Ltd & Another (2008) SCC online AP 840.

15. In opposition, the Applicant Bank seeks to establish based on facts that the claim is within the period of limitation and also seeks to rely on judgment rendered by Hon'ble High Court of Delhi namely **Shahi Exports Pvt. Ltd. & anr. - Vs- CMD Builders (2013) SCC Online Del 3739; Bhahajan Singh Sarma -Vs- Wimphy International Ltd. 185 (2011) DLT 428;** as well as that of Hon'ble Supreme Court and that of different Benches of this Tribunal.

16. From the pleadings as filed by the Applicant Bank on facts as well as documents the following position emerges:-

- (i) At the request of the Corporate Debtor Inland letter of Credit for Rs.15.75 Crore over and above the sanctioned limits in March, 2016 and the bills drawn under the letters of credits were not paid on due dates and the liabilities have devolved and debited to the protest bill account;
- (ii) Additional set of documents dated 10.08.2019 enclosing the stand alone financial statements of Corporate Debtor for the year ended 31.03.2018 as filed with RoC being a public authority shows



the indebtedness in the nature of secured loan to the extent of ₹2,07,10,04,479.23/- correlating with the details of security offered to the Financial Creditor by the Corporate Debtor.

(iii) Statement of Accounts furnished by the Financial Creditor in relation to the Corporate Debtor along with the additional typed set filed on 30.01.2019 disclosing a credit of ₹14,85,00,000/- to the account of the Corporate Debtor on 28.03.2018 prior to the filing of the instant Application in the month of October 2018 and which fact had also been taken note off in the judgment dated 09.10.2018 in W.P.No.7185 of 2018 at the time of disposal of the Writ Petition more particularly at Paragraph 28 of the said judgment.

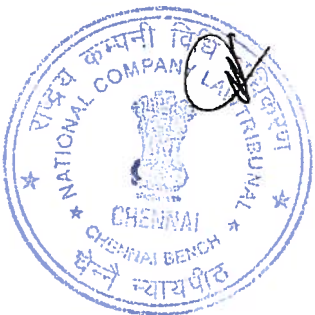
(iv) Offer by the Corporate Debtor dated 10.04.2019 to an One Time Settlement (OTS), while the instant petition was pending before this Tribunal in a sum of Rs.50 Crore which stood rejected by the Financial Creditor vide letter dated 08.07.2019.

Clauses (i) to (iv) above clearly points out to an existence of a financial debt owed to the Financial Creditor, as



defined under Section 5 (8) of I&B Code, 2016, by the Corporate Debtor in excess of Rs.1,00,000/- and the repayment of which there is a default as envisaged under Section 3 (12) of I&B Code, 2016.

17. Even though across the bar judgments in relation as to whether amounts disclosed in the balance sheet / financial statements can be considered as an acknowledgment of debt or not in relation to the earlier dispensation of establishing a 'debt' in relation to winding up proceedings to canvass their respective contentions by the Learned Counsel for the opposing parties, this Tribunal is persuaded by the decision rendered by the Hon'ble Delhi High Court in the matter of **Bhajan Singh Sarma (Supra)** wherein after consideration of several authorities on the issue has held that admission of a debt either in a balance sheet or in the form of a letter duly signed by the Respondent in a winding up Petition under Section 433 of the Companies Act, 1956, where the provision does not state that the debt must be precisely a definite sum, would amount to an acknowledgment of debt extending the period of limitation under Section 18(1) of the Limitation Act, 1963.



18. Thus in view of Section 238 A of IBC, 2016 mandating the application of the Limitation Act to the proceedings before ~~the~~ ^{the} Tribunal and there being an acknowledgment of debt on the part of the Corporate Debtor in excess of Rs.1,00,000/- in its financial Statement for the year ended 31.03.2018 thereby holding out to all the stakeholders as to the 'true and fair' financial status of the corporate Debtor as on the said date, the claim is *not* barred by limitation. ①

19. In relation to the malafide or abuse of the proceedings of the IBC, 2016 by the Applicant Bank in initiating proceedings before this Tribunal, it is stated that the Applicant Bank has initiated proceedings before the DRT-III, Chennai in OA No.105/2017 for recovery of the alleged debt owed by the Corporate Debtor to the Applicant Bank. Subsequently, notice under Section 13 (2) of SARFAESI Act, 2016 followed up with another notice dated 17.12.2016 and thereafter a possession notice under Section 13 (4) of the said Act dated 18.03.2017 have been invoked and that the same is challenged by the Corporate Debtor in SA No.30/2017 before the Debt Recovery Tribunal - 1, Chennai. Thereafter, the order of the DRT-1 was challenged before the DRAT, Chennai wherein the DRAT directed to pre-deposit Rs.70 Crores to entertain the appeal, to which the Corporate Debtor has filed a Writ Petition



No.718/2018, and the said amount has been reduced to Rs.57 Crores to be deposited in two instalments.

20. In relation to the above contention put forth by the Corporate Debtor about multiplicity of proceedings, it is by now trite that despite proceedings pending before the Debt Recovery Tribunals, this Tribunal designated as an Adjudicating Authority in relation to Corporate persons under I&B Code, 2016 can entertain an Application filed by a Financial Creditor in case of a "financial debt" and "default in existence" and in the circumstances we are unable to consider the said ground having any force.

21. It is also highlighted in the Application /Reply as filed by the Corporate Debtor that a counter claim as stated above has also been filed by the Corporate Debtor by virtue of Application Nos.325 and 326/2018 before the Hon'ble High Court of Judicature at Madras and the order passed thereunder dated 07.08.2018 and the counter claim has been taken on file to be considered by the DRT and taking into consideration the above counter claim by the Respondent / Corporate Debtor the Application as filed by the Applicant Bank is likely to be rejected. However, we are also not convinced by the above ground, namely, that of a counter claim of the Corporate Debtor as against the Financial Creditor



Creditor is pending adjudication and hence thereby to negate the proceedings. As rightly pointed out by the Learned Counsel for the Financial Creditor, no where, has the Corporate Debtor denied the existence of a 'debt' and its 'default'. Further as consistently held by the Hon'ble Supreme Court both in ***Innoventive Industries Ltd. -Vs- ICICI Bank and another (2018) 1 SCC 407*** as well as ***Mobilox Innovations Pvt. Ltd.. -Vs- Kirusa Software Pvt. Ltd. (2018) 1 SCC 353*** after going through the Scheme of I&B Code, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor as compared to the one filed under Section 9 by an Operational Creditor, in relation to a Section 7 Application where there is an existence of a 'financial debt' and its default in excess of Rs.1,00,000/-, this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP) and in relation to a Section 7 Application defence of set off or counter claim put forth by the Corporate Debtor cannot be considered as a dispute in relation to the Financial debt and default in relation to it.

22. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Application as filed by the Applicant -



Financial Creditor is required to be admitted under Section 7 (5) of the I&B Code, 2016.

23. The Financial Creditor has proposed the name of **Mr. Chandramouli Ramasubramaniam**, having Registration Number IBBI/IPA-002/IP-N00052/2016 - 2017/10096, as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

24. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged



under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- (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 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."

25. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

- (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."



26. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub - section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

27. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the Respondent above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order forthwith by the Registry.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

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Certified to be True Copy



[Signature]
N. SRIRAMASUBRAMANIAN
ASSISTANT REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
CHENNAI BENCH
CORPORATE BHAVAN, 3rd FLOOR
29, RAJAJI SALAI, CHENNAI-600001.