

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

**CP(IB)No.2671/NCLT/MB/2019**

Under Section 7 of the I&B Code, 2016

In the matter of

**Bank of Baroda**

...Financial Creditor/ Applicant

v/s

**Renaissance Education Private Limited**

...Corporate Debtor

**Order Dated 10.01.2020**

**Coram:**

**RAJESH SHARMA**

Member (Technical)

**BHASKARA PANTULA MOHAN**

Member (Judicial)

**For the Applicant:** Adv. Darshit Dave, Nishit Druva, Prakash Shinde,  
Rohan Agrawal;

**For the Respondent:** Adv. Aditya Thakkar, Deepak Shukla;

*Per: Rajesh Sharma, Member (Technical)*

**ORDER**

1. This is an Application being CP 2671(IB)/MB/2019 filed by **Bank of Baroda**, the Financial Creditor / Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Renaissance Education Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**) claiming ₹11,85,86,518/- (Rupees Eleven Crore Eighty Five Lakh Eighty Six Thousand Five Hundred and Eighteen only) as on 04.07.2019.
2. This Application is filed by Mr. Umesh Balaram Sonkar, the Chief Manager of the Applicant, duly authorised vide Letter of Authorisation dated 06.07.2019, which is annexed to the Application.
3. The Applicant extended financial assistance to the Corporate Debtor through various term loan totalling to a sum of ₹9,91,00,000/- details of the same are provided herein below:

Sl.No.	Particulars of Loan Facility	Loan Amount	Sanction Letter dated
1.	Term Loan -I	₹433 Lakh	22.08.2009
2.	Term Loan -II	₹283 Lakh	25.11.2010
3.	Term Loan -III	₹150 Lakh	02.06.2011
4.	Term Loan -IV	₹125 Lakh	31.03.2012
	Total	₹991 Lakh	

4. Copies of all the Sanction Letters are annexed to Application. The Applicant has also annexed copy of the Deed of Simple Mortgage dated 10.11.2009 and Composite Hypothecation Agreement dated 09.06.2011 executed in favour of the Applicant.
5. The Applicant submits that Corporate Debtor defaulted in repaying the loan amounts on 01.07.2013. In support of the claim of default, Statement of Accounts of the Corporate Debtor has been enclosed along with the workings for computation of Amount, which are annexed to the Application. The Corporate Debtor's account was classified as Non-Performing Asset on 22.09.2013.
6. The Applicant issued Loan Recall Notice dated 08.10.2013 under section 13(2) of SARFAESI Act, 2002 demanding payment of ₹6,11,42,097/- (Rupees Six Crore Eleven Lakh Forty Two Thousand Ninety Seven Only).
7. The Applicant has annexed Statement of Accounts of the Corporate Debtor for period 26.11.2009 to 05.07.2019, along with Certificate dated 05.07.2019 under the Bankers Book Evidence Act, 1891. On perusal of the same, the Loan disbursements are established. It is further submitted by the Counsel for the Applicant that Ld. Debt Recovery Tribunal allowed the Applicant to recover a sum of ₹50,00,000/- (Rupees Fifty Lakh Only) on 30.09.2016 and a sum of ₹20,00,000/- on

09.08.2018 which is adjusted towards recovery of unapplied interest.

8. The Applicant has annexed Commercial Credit Information Report dated 04.07.2019 issued by TransUnion CIBIL which classifies the Corporate Debtor's account as 'Doubtful'.
9. The Counsel for the Corporate Debtor filed its Affidavit in-Reply to the Application on 17.10.2019, para 15 of the Reply states that there was some delay caused in monthly repayment which resulted in classification of the Account of the Corporate Debtor as NPA, however, the counsel for the Corporate Debtor vehemently argues that the Application is not maintainable and has based his arguments on four prongs, the first being that the application is barred by the law of limitation. It is submitted by the Ld. Advocate for the Corporate Debtor that the Default Date as per the Application is 01.07.2013 and the Date of NPA is 22.09.2013. However, the present Application has been filed on 11.07.2019 and that there is no document relied by the Applicant to show that the Application fell within the period of limitation. In support of this argument, the Advocate for Corporate Debtor has drawn attention of this Bench to 3 decisions of the Hon'ble Supreme Court namely,
  1. *B.K Education Private Limited V/s Parag Gupta & Associates (2018) SCC Online SC 1921*
  2. *Sagar Sharma & Anr. V/s. Phoenix Arc Pvt. Ltd., & Anr. 2019 SCC OnLine SC 1332*
  3. *Gaurav Hargovindbhai Daven V/s. Asset Reconstruction Company (India) Ltd., & Anr 2019 SCC Online 1239*
10. It is submitted by the Corporate Debtor that, mere payment of amount to the Applicant would not be enough to show that the application is within limitation. For the purpose of extension of limitation, the payment must be shown to be within the original period of limitation whereby a fresh period of limitation would commence. Further, it is argued that such payment would have to be linked to each loan to extend the period of limitation. That,

no such submission or clarification or pleading has been made by the Applicant.

11. The Counsel for the Corporate Debtor submits that the Applicant has suppressed material facts such as proceedings before the District Magistrate, the Debts Recovery Tribunal, and the One Time Settlement that was executed between the parties. It is vehemently argued by the Counsel that section 75 of the I&B Code, 2016, requires the Applicant to disclose all material facts and in case of failure of which, penalty may be imposed for suppression.
12. It is submitted by the Counsel for the Corporate Debtor that, perusal of item 5 of form 1 filed by the Applicant shows that, no disclosure whatsoever of the OTS has been made anywhere in the Company Petition.
13. It is submitted by the Corporate Debtor that the OTS dated 27.03.2018 has changed the original bargain between the parties and has resulted into novation in terms of section 62 of the Indian Contract Act, 1872. Further, the counsel submits that the Corporate Debtor is discharged of the earlier terms and conditions.
14. The Corporate Debtor contends that whether or not the OTS was executed, whether it has been breached or whether the debt has revived are not questions raised in this proceeding as the same has been suppressed by the Applicant and there is no pleading in that regard.
15. The Corporate Debtor however has annexed copies of Recall Notice dated 08.10.2013 under section 13(2) of SARFAESI Act, 2002, copy of Order dated 15.08.2015 in Case No.40/2014, passed by District Magistrate, Raigad, Alibag allowing the Applicant to take possession of secured asset of the Corporate Debtor. The Corporate Debtor has also annexed Order dated 05.10.2016 in IA No.1156/2016 in SA No.173/2015 passed by the Ld. Debts Recovery Tribunal, Pune. The Corporate Debtor has also annexed to its Reply, copy of One Time Settlement Letter dated 27.03.2018 issued by the Applicant accepting the Corporate

Debtor's offer for settlement of accounts through Compromise. Further the Corporate Debtor has also annexed copy of One time settlement proposal dated 25.07.2019 issued by the Applicant providing opportunity of settlement under "Jiyo Swabhimaan Se". The documents so annexed by the Corporate Debtor in its Reply are contrary to the claims of the Corporate Debtor only establishing the fact that the Applicant has taken all steps to recover the due amounts. Although these documents ought to have been put on record by the Applicant in the Application, it does not take away from the fact that there is financial debt and there has been default and the SARFAESI proceedings have been initiated well within the period of limitation.

16. The Applicant has filed its Rejoinder wherein it is contended by the Applicant that the proceedings before Ld. DRT, Pune and District Magistrate, Alibag were filed as the Corporate Debtor defaulted in making payments of the Loan amount. That a sum of ₹50,00,000/- (Rupees Fifty Lakh Only) is recovered by the Applicant as per the Order of the Ld. Debts Recovery Tribunal, Pune.
17. The Applicant submits that an OTS proposal of Corporate Debtor was approved vide Letter dated 27.03.2018, however, the same was not adhered to by the Corporate Debtor, the question of novation of contract does not arise at all.
18. The Applicant submits that the Corporate Debtor has not denied the Loan amount is received, which is a financial debt.
19. The Applicant submits that it is by virtue of order passed by the Ld. DRT Pune, the Corporate Debtor has paid a sum of ₹50 Lakh. The statement of account of the Corporate Debtor has been annexed to the Application.
20. The Applicant contends that the Application is well within the period of limitation as the SARFAESI proceedings were initiated within the period of limitation and the Corporate Debtor has acknowledged its debt from time to time. The last payment being made by virtue of an order, this Application is within limitation.
21. We have heard the parties and perused the records.

22. On perusal of the records placed before us it is established that this Application has been filed by an authorised representative of the Applicant.
23. The Applicant has annexed the Sanction Letters and loan agreements for the Term Loans along with statement of accounts of the Corporate Debtor and the Certificate under the Bankers' Book Evidence Act, 1891 which establish that the Applicant has granted financial debt to the Corporate Debtor.
24. The Corporate Debtor in its Reply admits that there was delay in making payments and the account was classified NPA. on perusal of the Reply it is seen that at para 15 of the Reply, the Corporate Debtor has admitted its default by stating that there was some delay caused in monthly repayment which resulted in classification of the Account of the Corporate Debtor as NPA, para no.15 of the Reply is reproduced hereinbelow:

*"The Corporate Debtor was regular in repayment of the loan. However, due to some unavoidable circumstances and financial crunch, there was some delay caused in monthly repayment, which resulted in classification of the Account of the Corporate Debtor as Non-Performing Assets on 13.05.2013".*

25. The Corporate Debtor does not deny that there was a financial debt and that there was default. However, contends that there is no financial debt due and payable on the date of filing of application as the same is barred by limitation. The Corporate Debtor has also placed on record the OTS Agreement, dated 27.03.2018 whereby it says that the contract was novated. The contention of the Corporate Debtor, that the OTS was executed in entirety or defaulted need not be answered as the same has not been brought on record by the Applicant, is untenable. The Corporate Debtor cannot blow hot and cold at the same time.
26. It is to be borne in mind that One time Settlement Agreements are just an opportunity to settle the liabilities at once, however, if there is a default in adhering to the terms of the One time

settlement, the Corporate Debtor would be liable to repay the entire contractual dues.

27. The terms and conditions laid down in the OTS letter annexed to the Reply of the Corporate Debtor are produced herein below:

*"5. Consent Terms with default clause to be filed in DRT, Mumbai and consent decree to be obtained.*

*6.Recovery proceedings to be kept in abeyance till full and final settlement, including interest, under this settlement.*

*7. On acceptance of compromise sanction, the borrowers and the guarantors should withdraw all cases filed by them (if any) against the Bank and officials. They should also give an undertaking that they shall not file any case against the Bank or its official in future.*

*8.All the Relief/concession given under subject compromise shall be withdrawn and entire contractual dues shall become payable by the company, if the company fails to honour any of the terms and conditions of compromise whether fully or partially. The decision of the Bank in this regard shall be conclusive and binding on the company.*

*9.Any default in compliance of any of the terms and conditions stipulated herein above will be treated as default and which will result in termination of sanction automatically and Bank will proceed to recover the dues through appropriate legal/recovery action without any notice to the Company. Any amount deposited till the time will be adjusted towards the dues and shall not be refunded".*

28. On perusal of the terms and conditions of the OTS Letter relied by the Corporate Debtor, the OTS does not amount to novation. The intention of the parties that in case of default of OTS, the total amount payable under the term loan agreements shall be payable. Therefore it becomes imperative to ascertain whether the terms of the OTS have been honoured.

29. The Corporate Debtor has itself placed on record the orders passed by the Ld. District Magistrate under section 14 SARFAESI Act, and orders passed by the Debts Recovery Tribunal, Pune which allowed recovery of ₹50,00,000/- from the Corporate Debtor. The contention of Corporate Debtor that the Applicant has suppressed material facts, and these orders not being placed on record by the Applicant and the date of default as per the application being 2013 the application is barred by limitation is incorrect for the reason that the Corporate Debtor cannot be allowed to take benefit of an inadvertent and bonafide mistake of the Applicant, which does not cause prejudice to the proceeding. The material facts so not placed on record by the Applicant in fact, support the case of the Applicant. The Application is well within the period of limitation as the last payment made was by virtue of order passed by the Debts Recovery Tribunal, Pune.
30. It is seen that the Applicant has initiated proceedings before District Magistrate and The Debts Recovery Tribunal within the period of limitation and by virtue of orders passed in these proceedings, deposits have been made in the loan accounts in 2018. The Application is well within the period of limitation.
31. The Applicant has annexed the Commercial Credit Information Report of the Corporate Debtor issued by TransUnion CIBIL, showing that the Corporate Debtor's account is classified as 'doubtful'.
32. The Corporate Debtor's email dated 27.02.2018 providing the revised One time settlement proposal is in itself admission of its liability to repay amounts above Rupees One Lakh. The default of financial debt and its admission is found in the Reply, and the email annexed to the Reply in addition to the orders passed in various proceedings.
33. It is established that the Corporate Debtor owes financial debt above a sum of ₹1,00,000/- and the default is established on perusal of the Commercial Credit Information Report of the Corporate Debtor and the Balance Sheet.

34. In this regard, it is imperative to note that in *Sesh Nath Singh and anr v. Baidyabati Sheoraphuli Cooperative Bank Ltd and anr, in Company Appeal (Insolvency) No.672 of 2019*, it was held by the Hon'ble NCLAT that:

*"The respondent was quite vigilant in his rights and cannot be said that the respondent was negligent. He has bonafidely prosecuted his application under SARFAESI Act, 2002. Therefore, as per section 14(2) of Limitation Act in computing the period of limitation the time during which the respondent has been prosecuting with due diligence another civil proceedings against the corporate debtor for the same relief shall be excluded".*

35. In light of the above decision, and the facts of the instant Application, amount of default being above a sum of Rupees One Lakh and the Application having filed on proper form, this Application deserves to be admitted.

36. The Applicant has proposed the name of **Mr. Brijendra Kumar Mishra** a registered insolvency resolution professional having Registration Number **[IBBI/IPA-002/IP-N00109/2017-18/10257]** as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code 2016, along with his declaration in Form 2, that no disciplinary proceedings are pending against him.

37. The Application filed under Section 7 of I&B Code, 2016 is complete. The existence of financial debt of more than Rupees One Lakh against the Corporate Debtor and its default is also proved. Accordingly, the application filed under section 7 of the Insolvency and Bankruptcy Code for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor deserves to be admitted.

### **ORDER**

This Application filed under Section 7 of I&B Code, 2016, filed by **Bank of Baroda**, Financial Creditor /Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Renaissance Education Private Limited**, Corporate Debtor for

initiating corporate insolvency resolution process is admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
  - 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to –
  - (a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
  - (b) A surety in a contract of guarantee to a Corporate Debtor
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or

passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench appoints **Mr. Brijendra Kumar Mishra** a registered insolvency resolution professional having Registration Number **[IBBI/IPA-002/IP-N00109/2017-18/10257]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

38. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today**

**Sd/-**  
**RAJESH SHARMA**  
Member (Technical)  
**04.01.2020**

**Sd/-**  
**BHASKARA PANTULA MOHAN**  
Member (Judicial)