

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

**C.P.(IB)-1833/(MB)/2017**

**Under Section 7 of I&BC, 2016**

**In the matter of:**

**JM Financial Asset Reconstruction  
Company Ltd.**

**.... Financial Creditor**

**vs.**

**Jejani Pulp and Paper Mills  
Private Limited**

**... Corporate Debtor**

Order delivered on: 22.6.2018

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)  
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

**For the Petitioner: Mr. Shyam Kapadia, a/w Ms. Rubina Khan  
i/b Fortis India Law**

**For the Respondents: Radhe Agarwal, Adv.  
M. P. Jain, Adv.  
K. C. Prusty, Adv.**

*Per B.S.V. PRAKASH KUMAR, Member (Judicial)*

**ORDER**

*Oral Order dictated in the open Court on 21.6.2018*

It is a Company Petition filed under Section 7 of Insolvency & Bankruptcy Code, 2016, by the Financial Creditor namely JM Financial Asset Reconstruction Co. Ltd. against the Corporate Debtor namely Jejani Pulp and Paper Mills Pvt. Ltd. for having this Corporate Debtor as on 14.12.2017, defaulted in making

repayment of ₹14,77,02,137.79 in pursuance thereof, the Petitioner herein has sought initiation of Corporate Insolvency Resolution process (CIRP) against this Corporate Debtor.

**The summary of the case**

In October, 2006 the Corporate Debtor was consented and granted a loan of ₹9,00,00,000 against the Security being first security charge in favour of the UCO Bank on hypothecated assets and mortgaged property i.e. Factory land, Building and structures owned by the Corporate Debtor. The said loan was enhanced /restructured vide sanction letter dated 4.11.2011 aggregating the sanctioned limit to ₹9.5 crores. This loan was again restructured on 31.3.2012 granting 18 months' moratorium period to the Corporate Debtor. Again on 1.9.2012, loans of the Corporate Debtor were restructured for the third and last time whereby the existing loans/credit limits aggregating to ₹6.93 crores was restructured and fresh Bank Guarantee of ₹2 crores was sanctioned by UCO Bank aggregating to ₹8.93 crores. To further secure the loan, Corporate Debtor extended the exclusive charge, in favour of UCO Bank on the hypothecated assets mortgaged the property. To prove the Registration of charge, it was registered with Registrar of Charges, creating charge with ID No.10057668 over the asset of the company. Since the Corporate Debtor failed to repay the aforesaid loan and committed default in repaying the due outstanding, the loan account was classified as NPA on 31.3.2013 as per the guidelines of the RBI, for the loan was classified as NPA, the UCO Bank initiated steps under SARFAESI Act against the Corporate Debtor by issuing demand notice, under section 13(2) of SARFAESI Act on 24.5.2013. Since the payment has not been paid by this Corporate Debtor, while SARFAESI proceedings pending, UCO Bank, vide registered Assignment Agreement dated 26.3.2014,

assigned this asset to this Petitioner in its capacity as the Trustee of JMFARC—UCO Bank March 2014-Trust for the outstanding dues ₹9,69,19,000 owed by the Corporate Debtor together with the underlying security interest and all rights, title and interest thereto as envisaged under Section 5 of the SARFAESI Act. By virtue of this assignment, the Applicant stepped into the shoes of UCO Bank and became sole entity to initiate legal proceedings against this Corporate Debtor. In addition to it, on 9.2.2015 this Petitioner filed an Application before DRT, Nagpur against the Corporate Debtor for a claim of ₹10,87,24,988. While those proceedings were pending, the Corporate Debtor approached the Petitioner, with the settlement proposal for ₹7 crore vide its letter dated 9.7.2015 offering to pay ₹1.75 crore as upfront payment within 15 days, and the balance of ₹5.25 crores before 25.3.2016. The said settlement proposal was accepted by this Petitioner vide its letter dated 12.8.2015, but again this Corporate Debtor failed to make repayment as agreed in between the parties in the Settlement proposal given by the Corporate Debtor. For no payment being made, the Petitioner revoked the Settlement by a letter dated 11.12.2015. In view of continuous default, the Petitioner as on 29.12.2017 filed this Company Petition under Section 7 of the Code for initiation of CIRP stating that the Corporate Debtor defaulted in repaying the claim amount of ₹14,77,02,137.79.

On this Company Petition filed by the Petitioner Counsel herein, the Counsel on behalf of the Corporate Debtor sought for dismissal of this Company Petition on the ground that this Petitioner has already availed remedy through SARFAESI proceedings as well as decree from Debt Recovery Tribunal, Nagpur, besides this, he has also mentioned that the Petition filed by the Corporate Debtor under MSME Act for rehabilitation is still pending before Ministry MSME.



On the perusal of the defense raised by the Corporate Debtor, we have not found any merit in this, because Section 238 of I&BC, 2016 will have overriding effect against all other proceedings pending under SARFAESI and MSME Act.

On looking at the Company Petition filed by the Petitioner and the material annexed thereto, it is evident that this Corporate Debtor availed loan in the year 2005, again it has been re-structured on 4.11.2011, 31.3.2012 and on 1.9.2012, and this loan was first time classified as NPA on 31.3.2013, thereafter SARFAESI proceedings was initiated, subsequent thereto on 9.7.2015, this Corporate Debtor has come up with the Settlement Proposal. For there being acknowledgements from time to time from the Corporate Debtor within the limitation period, this Bench hereby holds that this Debt is within the limitation period as envisaged under Limitation Act read with Section 238 of I&BC, 2016. For this Petitioner has filed Loan Agreement, Mortgage Deeds, Hypothecation Deeds and other Guarantee Deeds, reflecting the existence of debt and default as envisaged under Section 7 of this I&BC, this Bench admits this Company Petition with following reliefs :

- i) 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 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

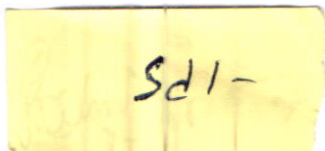
THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

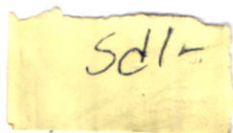
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- ii) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- iii) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- iv) That the order of moratorium shall have effect from 22.6.2018 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.
- v) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- vi) That this Bench hereby appoints Mr. Prasad Dharap, having address at 47, Prasad, New Ramdaspath, Nagpur - 440010, Email ID : [Prasad.dharap@jjkandco.com](mailto:Prasad.dharap@jjkandco.com) having Registration No. IBBI/IPA-001/IP-P00702/2017-18/11228 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

7. Accordingly, this Petition is admitted.

8. The Registry is hereby directed to communicate this order immediately to the Financial Creditor, the Corporate Debtor and to the IRP through email.

  
RAVIKUMAR DURAISAMY  
Member (Technical)

  
B.S.V. PRAKASH KUMAR  
Member (Judicial)