

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

Company Petition (IB)No.391/ALD/2019
(Under Section 7 of Insolvency and Bankruptcy Code,2016 read with Rule 4 of
the Insolvency and Bankruptcy (Application to Adjudicating Authority)
Rule,2016)

IN THE MATTER OF

Punjab National Bank

(Branch Office: Bank Road, Gorakhpur, Uttar Pradesh)

.....*Applicant/Financial Creditor*

VERSUS

M/s Renu Residency Private Limited

.....*Respondent/Corporate Debtor*

ORDER DELIVERED ON: 12.02.2021

CORAM:

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare; Member (Judicial)

For the Applicant/ Financial Creditor: Yash Tandon, Advocate

**For the Respondent/ Corporate Debtor: Jitendra Pratap Singh &
Nikhil Mishra, Advocates**

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare; Member (Judicial)

ORDER

The present petition has been filed under Section 7 of the Insolvency & Bankruptcy Code,2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Corporate debtor on grounds of its inability to liquidate its financial debt.

2. As per averments made in the Petition, the Respondent has been granted Term Loan of Rs. 15,00,00,000/- (Fifteen Crores) by the Applicants on 25.09.2010 and the total outstanding including interest and other charges as per bank books as

— Sd —



on 30.08.2019 is Rs. 36,24,65,947/- (Thirty Six Crores Twenty Four Lacs Sixty Five Thousand Nine Hundred Forty Seven Only) as at 31.08.2019.

3. It is stated that, the said amount was to be repaid in 24 quarterly instalments of Rs. 75 Lacs with interest commencing from 1st quarter of 2012 i.e. 01.04.2012. But the Respondent defaulted in even making the 1st instalment of repayment. Thereafter, a supplementary agreement was also entered into on 08.09.2011 by which the existing debt was acknowledged and the term of repayment was modified to 20 quarterly instalments commencing from October, 2013 and thus entire payment sought to have been made by 2018. However on 05.04.2014, amount of Rs. 10 Lacs had been paid by the Respondent towards the debt.

4. It is further stated that, on 31.03.2014, the account of Respondent was declared Non-Performing Assets (hereinafter referred to as NPA) due to continuous default in repayment of the bank loan as per the agreements executed between the Respondent and Petitioner on 25.09.2010 and 08.09.2011.

5. In contradiction to the averments stated in the Petition, the Respondent submitted that the loan agreement was entered into between the Respondent and Petitioner on 25.09.2010 for a term loan of Rs. 14,28,90,000/- (Fourteen Crores Twenty Eight Lakh Ninety Thousand Only), which was to be repaid in 24 quarterly instalments. Subsequently, an agreement for rescheduling the aforesaid loan was entered into between the parties which was termed as Supplementary Loan Agreement dated 08.09.2011.

6. Further stated by the Respondent that, the Petitioner proceeded under the Recovery of Debts due to Financial Institutions Act, 1993(RDDB Act) to recover



— sd —

the said loan amount. The said application dated 30.05.2016 was registered as OA No. 310 of 2016 in Debt Recovery Tribunal, Allahabad.

7. In addition to the above proceedings, the Petitioner filed an application before the Joint Director, Directorate of Enforcement under the Prevention of Money Laundering Act, 2002, wherein, the properties of the Respondent were attached vide Provisional Attachment Order No. 02/2012 dated 30.03.2013 which was subsequently confirmed in Original Complaint No. 195 of 2013 u/s 5(5) of Prevention of Money Laundering Act, 2002 by means of order dated 26.09.2013. Later, the Petitioner preferred an application before special court for release of the properties of Respondent attached by Directorate of Enforcement, Lucknow which then came to be dismissed by the Special Judge vide order dated 08.05.2019.

8. Further stated that, the date of pursuance of the aforesaid Loan Agreement & Supplementary Loan Agreement by own admission of the Petitioner is 01.04.2012. The said loan account of the Respondent was declared NPA on 31.03.2014. For the purposes of Section 7 IBC, Article 137 of the Limitation Act; 1963 is attracted which prescribes a period of 3 years. Therefore, the present application is barred by limitation as pleaded by the Respondent.

9. As regards to the above stated issue of Limitation, it is stated by the Petitioner in their Rejoinder, that, as per the modified schedule of payment in Supplementary Loan Agreement dated 08.09.2011, the last instalment of payment of Rs. 75 lacs with interest was to be made in 2018. It is also submitted that, the payment of Rs. 5581/- was received from the Respondent by way of transfer from their current account and then Rs. 4550/- were received from the

— sd —

Respondent by transfer on 31.10.2017. Thus, this also shows that as per Section 19 of Limitation Act, 1963 the period of limitation would be extended and the current period would be within limitation.

10. Further, in their Counter objections to the Rejoinder, the Respondent stated that, the Petitioner declared the account of the Respondent as NPA on 31.03.2014. The date on which the account was declared NPA, the extension of the agreement up till 2018 will not continue and the loan agreement cannot be said to be in existence as after declaration of the NPA the amount & transactions in the account are frozen. Thus, the period of limitation for the present cause of action would run from 31.03.2014 which will be the last date of the limitation available to the Petitioner. Further, as regards the payment of Rs. 5581/- & Rs. 4450/- it is denied that these payments were made against the loan amount. It is stated that they were not a normal banking transaction. Rs. 4550/- were paid towards the legal charges charged by the bank itself. Also, it is stated that, new facts cannot be introduced by means of a rejoinder reply as they will not form part of Form-1 of the application under Section 7 of IBC.



To the above stated Counter Objection, the Petitioner had filed Counter Rejoinder and submitted that the declaration of the account as NPA due to default does not distinguish the clauses of agreements itself, thus the supplementary agreement dated 08.09.2011 would subsist. It is also reiterated on behalf of Petitioner, that there is not a continuous default and continuous cause of action on part of Respondent. As the Respondent has made part payments on 05.04.2014, 18.06.2016, 31.10.2017 and 27.09.2018 which revives the limitation as per the Limitation Act, 1963 and has acknowledged debt in its balance sheet for years 2015-16 and 2016-17, and in letters dated 23.04.2012,

— sd —

28.10.2013, 01.06.2016, 02.04.2019 and also submitted OTS Proposals dated 16.01.2017, 04.09.2017, 11.09.2017, 27.09.2018 and 06.02.2019 it would also revive the limitation as per Section 19 of the Limitation Act, 1963, as well as the fact that the properties were mortgaged thus as per Article 62 of the Limitation Act would be 12 years from the document, hence the petition is within limitation. In reply to the contention of the Respondent regarding the introduction of new facts in the Rejoinder, the Petitioner has placed reliance upon the order dated 17.01.2019 of NCLT, Mumbai in the matter of "*Reliance Commercial Finance Limited vs. Fibertech Infracon Pvt Ltd.*" wherein it is stated that "*while admitting a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, the National Company Law Tribunal must only see whether debt is due and if there is any default on part of the Corporate Debtor. It is irrelevant that Petitioner did not disclose arbitration proceedings during filing.*" Thus it can be said that non-disclosure of any other proceedings is not fatal or material to Section 7 (IBC) proceedings.

12. I have heard the arguments raised by Ld. Counsels for both the parties and perused the application and the documents annexed therein.

13. Now, before considering the submissions, I would like to consider this aspect, whether the applicants have succeeded to establish that the amount which they have deposited, comes under the definition of "*Financial Debt*" as referred in Section 5 (8) of IB Code and the same is quoted below:

"financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes--

- (a) money borrowed against the payment of interest;***
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;***

— sd —

- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
- (e) receivables sold or discounted other than any receivables sold on non-recourse basis;
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

[Explanation. -- For the purposes of this sub-clause, --

- (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and
- (ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

14. Mere plain reading of the provision shows that in order to make an application under Section 7 (1) the financial creditor / petitioner is required to establish:
- i) Whether there is duly established financial debt.
- ii) Whether there is default in payment by the corporate debtor.
- iii) Whether the documents attached with the application shows that there is default in payment of debt and name of resolution professional is proposed to act as IRP

— sd —

and no disciplinary proceedings are pending against the proposed resolution professional.

15. As already been noted in the above mentioned paragraph that the Petitioner had granted the term loan to the Respondent which was to be paid along with the payment of interest and other charges as per bank books, this shows that the consideration was for the time value of money. Further, the Respondent had failed to make re-payment on time which can be verified through acknowledgement letters given by the Respondent itself on several occasions. Furthermore, Balance and Security confirmation letter dated 02.04.2019 reflects the acknowledgment of the Respondent for the outstanding dues of Rs. 14,31,85,119/- plus interest.

16. As regards the issue of limitation, I would like to refer Section 19 and Section 18 of the Limitation Act and the same is quoted below

“19. Effect of payment on account of debt or of interest on legacy. —Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made.”

18. Effect of acknowledgment in writing. —

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation. —For the purposes of this section,

— sd —



- (a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;
- (b) the word "signed" means signed either personally or by an agent duly authorised in this behalf; and
- (c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

17. In addition to the above, I would like to consider several decisions which were placed reliance upon by the Ld. Counsel for the Petitioner, as mentioned hereinbelow:

Yogesh Kumar Jashwant lal Thakkar vs. Indian Overseas Bank Company Appeal(AT)(Insolvency) No. 236 of 2020 decided on 14.10.2020----- "This tribunal, had perused the various confirmation letters as stated supra which are legally valid and binding documents between the interse parties and the same cannot be repudiated on one pretext or other. Therefore, this tribunal comes to an inevitable, inescapable and irresistible conclusion that the date of default i.e ~01.01.2016 gets extended by the debit confirmation letters secure by the 1st respondent/bank from the Corporate Debtor (for making a new period run from the date of debit confirmation letters) towards the outstanding debt in 'loan account' . Indeed, the application u/s 7 of IBC 2016 was filed by the first Respondent/Bank on 1.04.2019 before the Adjudicating Authority within the period of limitation. Furthermore, in view of the fact, that ingredients of section 18 of the Limitation Act, 1963 are quite applicable both for 'suit' and 'Application' and the debit confirmation letters in the instant case were duly acknowledged in accordance with law laid down on the subject"

— sd —

M.M Ramachandran vs. South Indian Bank (Civil Appeal No. 2951 of 2020), Supreme Court---- The Supreme Court also affirmed the above order passed by NCLAT, thus laying down the above as settled Law.

Bank of Baroda vs. Pithampur Poly Products, NCLT, Indore Bench at Ahmedabad, CP No.(IB) 421/07/NCLT/AHM/2018---"the submission of OTS proposals was held to be valid acknowledgment of debt and also extension of limitation of prescribed period"

Mr. Basab Biraja and anr. Vs. Edelwiss Asset Reconstruction Company Limited, Company Appeal(AT) (Ins) No. 772 of 2019, (Para 7&8)----"the limitation for enforcing payment of money secured by a mortgage or otherwise charge by the immovable property is 12 years at the time when money sued for becomes due. Thus for 12 years after becoming due, the debt would be payable in law (para 8)

18. In view of the above, it is clear that the liability of Respondent towards the dues of Petitioner cannot be denied as the Respondent had failed to prove that the claim of Petitioner does not fall under the purview of Section 7 IBC. Moreover, the documents and acknowledgement letters annexed by the Petitioner undoubtedly proves default on the part of Respondent. As regards the issue of limitation, based on the several confirmation letters annexed by the Petitioner it cannot be said that the petition can be thrown out on the ground of limitation.

19. Therefore, the application filed on behalf of Financial creditor/Applicant under Section 7 of IBC is found complete. The present petition being filed on 17.09.2019 is well within limitation, being within three years from the date of the cause of action. It is seen that the amount in default is in excess of Rs.

— sd —

1,00,000/- being the minimum threshold limit fixed under IBC to trigger off as providing under Section 7 of the IBC.

20. Further, the Applicant has annexed sufficient evidence to show the default on behalf of the Corporate debtor. Considering these circumstances this adjudicating Authority is inclined to admit this petition and initiate CIRP of the Respondent Company. Accordingly, this petition is admitted.

21. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith stating:-

(i) *Subject to provisions of sub-sections (2) and (3), on the insolvency Commencement date, the Adjudicating Authority shall by order declare a moratorium on prohibiting all of the following, namely: —*

(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. Further:*

(ii) *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.*

— Sd —



(iii) 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.

(iv) The order of moratorium shall have effect from the date of such order till the completion of the corporate Insolvency Resolution Process.

22. The Financial Creditor has proposed the name of **Mr. Shravan Kumar Vishnoi**, Registration Number **IBBI/IPA-002/IP-N00040/2016-2017/10079** for appointment as Interim Resolution Professional (IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. We accordingly confirm his appointment as the IRP. He shall take such other and further steps as are required under the statute, more specifically in terms of Sec 15,17 and 18 of the Code and file his report.

23. The Registry is directed to communicate this order to Financial Creditor, as well as to Corporate Debtor and to IRP.

24. Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.

25. Progress report to be filed before the registry of this Bench.



— sd —

FREE OF COST

JUSTICE RAJESH DAYAL KHARE
MEMBER (JUDICIAL)

Date: 12.02.2021

Shefali Vats (LRA)

Compared by Me
Mahesh Sahai
15/02/2021

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

15/2/21

P. P. PANDEY
ASSISTANT REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD-U.P.