

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT -III
IB-594/ND/2023**

Order under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

BANK OF INDIA

Having its registered office at:

Star House, Plot No. C-5, G-Block, Bandra-Kurla Complex,
Bandra (East), Mumbai-400051.

.... Financial Creditor

Versus

M/s. JTPL PRIVATE LIMITED

Having its registered office at:

Room 203, 2-A/3, Kundan Mansion, Asif Ali Road,
Ajmeri Gate Extension, New Delhi-110002.

.... Corporate Debtor

Order Pronounced On: 15.04.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For Applicant : Mr. Ankur Mittal, Ms. Yashika Sharma, Advs.

For Respondent : Mr. Alok Dhir, Ms. Varsha Baneerjee, Ms.
Mahima Ahuja, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

IB-594/ND/2023

Date of Order: 15.04.2024

1. This Application has been filed by Bank of India, the Applicant/Financial Creditor before this Adjudicating Authority under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), against M/s. JTPL Private Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding principal amount of Rs. 190,37,24,748.52/- along with Interest amounting to Rs. 226,54,12,524.46/- totaling to Rs. 416,91,37,272.98/- as on 31.07.2023.

2. Submissions of the Applicant/Financial Creditor:

- i.** The Applicant/Bank of India sanctioned a working capital limit fund to the extent of Rs. 75,00,00,000/- to M/s. Kwality Limited [earlier known as M/s. Kwality Dairy (India) Ltd.] ("Principal Borrower") on 21.07.2010.
- ii.** The Applicant entered into an Agreement dated 30.03.2011, in view of the individual advances and facilities granted to the Principal Borrower, forming a consortium comprising of 8 Banks (Consortium-I). The Principal Borrower was extended aggregate credit limits of Rs. 390 Crores by the Consortium-I. The Principal Borrower and Bank of India Consortium entered into a Working Capital Consortium Agreement dated 30.03.2011 for extending working capital limits amounting to Rs. 390 Crore. Further, the Bank of India Consortium was reconstituted vide Inter se Agreement dated 05.03.2012 (Consortium-II). Credit facilities granted to the Principal Borrower were enhanced to Rs. 600 Crore.
- iii.** The Applicant on 14.09.2012 sanctioned an enhanced working capital limit to the tune of Rs. 60 Crores (55 Crores Cash Credit Limit + 5 Crores Bank Guarantee). The Applicant vide Credit Facility Agreement

dated 17.10.2012 sanctioned working capital limit fund based to the extent of Rs. 170 Crore to Principal Borrower.

- iv.** The Bank of India Consortium was again reconstituted vide Inter se Agreement dated 18.01.2013 (Consortium-III) and the Credit facilities granted to the Principal Borrower were enhanced to Rs. 850 Crore. The Principal Borrower and Bank of India Consortium entered into a Working Capital Consortium Agreement dated 18.01.2013 for extending working capital limits amounting to Rs. 850 Crore.
- v.** The Applicant on 30.10.2013 sanctioned an additional working capital limit to Rs. 75,29,00,000/- at the request of the Principal borrower. The Applicant vide Credit Facility Agreement dated 06.12.2013 sanctioned working capital limit fund based to the extent of Rs. 225.29 Crore to Principal Borrower.
- vi.** The Applicant on 20.03.2014 sanctioned WCDL and FCL amounting to Rs. 109,00,00,000/- to the Principal Borrower. The Bank of India Consortium was again reconstituted vide Inter se Agreement dated 13.06.2014 (Consortium-IV) and the Credit facilities extended to the Principal Borrower were enhanced to Rs. 1125 Crore. The Bank of India Consortium was again reconstituted vide Inter se Agreement dated 25.07.2014 (Consortium-V) and the Credit facilities granted to the Principal Borrower were enhanced to Rs. 1126.43 Crore.
- vii.** It is the case of the Applicant that M/s. JTPL Pvt. Ltd. (formerly known as M/s. JTPL Townships Pvt. Ltd.), the Corporate Debtor herein executed a deed of guarantee dated 19.07.2016 in favor of the Bank of India Consortium to secure the credit facilities extended to the Principal Borrower.
- viii.** It is submitted by the Applicant that the limitation period of 3 years computed from the date of default being 18.10.2018 would have expired on 18.10.2021 i.e. during the COVID period. The Hon'ble Supreme Court vide order dated 10.01.2022 passed in Suo Moto writ Petition (Civil) No. 3/20 in the matter of "RE: Cognizance of Extension

of Limitation" had suspended the period of limitation with effect from 15.03.2020 and the said suspension continued up to 28.02.2022. The Hon'ble Supreme Court in another MA No.21/2022 vide order dated 10.01.2022 was pleased to exclude the period from 15.03.2020 till 28.02.2022 in computing the period of limitation for filing any suit/petition/appeal etc.

- ix.** Accordingly, the period of limitation to file Section 7 application would have otherwise expired on 18.10.2021 but in view of orders passed by Hon'ble Supreme Court, the period from 15.03.2020 to 18.10.2021 would be excluded while calculating the limitation period and the aforesaid remaining period is made available from 01.03.2022. Therefore, the limitation will expire on 04.10.2023.
- x.** It is the case of the Applicant that M/s. KKR India Financial Services Private Limited on 16.10.2018 filed a Section 7 application bearing CP(IB) No.1440/2018 against Principal Borrower i.e. M/s. Kwaliti Limited before this Adjudicating Authority. This Adjudicating Authority vide order dated 11.12.2018 passed in CP(IB) No.1440/2018 initiated the Corporate Resolution Insolvency Process against the Principal Borrower. This Adjudicating Authority vide order dated 11.01.2021 passed in CP(IB) No.1440/2018 initiated liquidation proceedings against the Principal Borrower. Thereafter, the Principal Borrower was sold as a going concern to M/s. Sarda Mines Pvt. Ltd. in Liquidation proceedings.

Hence this Application.

3. Submissions of the Respondent/Corporate Debtor:

- i.** The Respondent has filed a reply affidavit denying the allegations made by the Applicant and stated that the Form-1 filed by the Applicant is incomplete as the record of default as required to be registered with the information utility at Part V of Form 1 has not been done so by the Applicant. The record of default registered with the information utility

as annexed by the Applicant does not pertain to the Corporate Debtor herein. The record of default submitted pertains to M/s Kwalitiy Ltd. i.e. the Principal Borrower and the Guarantor qua the said debt is registered to be Mr. Sidhant Gupta, which on the contrary is incorrect.

- ii.** The Financial Creditor itself has pleaded contradictory facts throughout the application. In the first instance, it has been admitted by the Financial Creditor that the account of the Principle borrower was declared as a Non-performing asset on 31.08.2018. Then, at the second instance and in the same breathe, the Financial Creditor states that the date of default stands to 18.10.2018 and not 31.08.2018 i.e. the date on which, notice under Section 13(2) of the SARFAESI Act was issued to the Principle borrower and the Corporate Debtor.
- iii.** It is submitted by the Respondent that the date of default is the date when the debt becomes due and payable and thus, it is the first date of default. The date of NPA is 3 months after the date of default and thus date of default in the present case is 31.05.2018.
- iv.** It is submitted by the Respondent that the present application is barred by the Law of Limitation. As per the case of the Financial Creditor, the account of the Principal Borrower was classified as a NPA on 31.08.2018 and thus, the period of 3 years in terms of Article 137 of the Limitation Act expired on 30.08.2021. Even in case the limitation period is computed w.e.f. 18.10.2018 i.e. the date of invocation of notice of the limitation expired on 17.10.2021. The present application is being filed on 09.09.2023 and is barred by limitation. However, it is reiterated that the date of default in the present case is 31.05.2018 and thus, the last date for filing Section 7 application is 30.05.2021. The period of 3 years consists of 1095 days and the present application is filed after 1210 days from the date of default and 1120 days from the date of NPA, which is barred by Limitation.

4. Analysis and Findings:

- i.** We have heard the submissions of Ld. Counsel appearing for the Applicant as well as Ld. Counsel appearing for the Respondent. We have also perused the records.
- ii.** The following issues arise for consideration:
 - (a) Whether the Applicant falls in the category of Financial Creditor as per Section 5(7) of the Code or not?
 - (b) Whether the amount claimed by the Applicant as per Part IV of the Application is a Financial Debt under Section 5(8)(f) of the Code or not?
 - (c) Whether the present application is within the Limitation period to initiate the CIRP against the Corporate Debtor or not?
- iii.** From the perusal of the records and the rival contentions raised by the Ld. Counsel appearing for the parties, it emerges that the M/s. Kwality Limited [earlier known as M/s. Kwality Dairy (India) Ltd., "Principal Borrower"] took a loan for an amount of Rs. 75 Crores from Bank of India, the Applicant/Financial Creditor herein as on 21.07.2010. Subsequently, the Financial Creditor entered into inter-se agreement with the consortium of banks including Bank of India and the loan amount was finally enhanced to Rs. 1126.43 Crores. It is an admitted fact that M/s. JTPL Pvt. Ltd. (formerly known as M/s. JTPL Townships Pvt. Ltd.), the Corporate Debtor herein executed a deed of guarantee dated 19.07.2016 in favor of the Bank of India Consortium to secure the credit facilities extended to the Principal Borrower. The Applicant issued a notice under Section 13(2) of the SARFAESI Act dated 18.10.2018 to the principal borrower to pay a sum of Rs. 210.05 Crores.
- iv.** The Principal Borrower and the Corporate Debtor failed to discharge the liability to pay a sum of Rs. 210.05 Crores. Accordingly, as on 31.07.2023, an amount of Rs. 416,91,37,272.98/- including penal interest and charges became due as on 31.07.2023 to be paid by the Corporate Debtor. The Applicant has relied upon a deed of equitable

mortgage of immovable property, the statement of account of the principal borrower, the copies of the various credit facilities agreement, inter-se agreement, working capital consortium agreement and copy of various sanction letters. The Applicant has also relied upon a deed of guarantee executed by the Corporate Debtor as well as the copy of the notice issued under Section 13(2) of the SARFAESI Act to the principal borrower and the Corporate Debtor in support of its case.

- v. At this stage, it is pertinent to refer to the definition of the expression “Financial Creditor” in sub-section 7 of Section 5 of the Code.

Section 5 of sub-section 7 reads as follows:

“Financial Creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;”

- vi. At this stage, it is also pertinent to refer to the definition of the expression “Financial Debt” in sub-section 8 of Section 5 of the Code.

Section 5 of sub-section 8 “Financial Debt” reads as follows:

“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) ******

*(c) ******

*(d) ******

*(e) ******

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

*(g) ******

*(h) ******

*(i) *****”*

- vii.** On perusal of the various clauses of the deed of guarantee dated 19.07.2016 makes it amply clear that there is an element of financial debt which has been extended to the Corporate Debtor as well as the transactions in question involved a commercial effect of borrowing.
- viii.** The Respondent has opposed the present application only on the ground that the application is barred by limitation. It is stated that as per Clause 26 of the Deed of Guarantee, the notice of demand was sent to the Guarantor vide letter dated 17.09.2018 and therefore, as per Article 137 of the Limitation Act, the limitation starts from 17.09.2018 for period of 3 years which was expired on 17.10.2021. However, the present application was filed on 09.09.2023, therefore, the application is barred by limitation. On the contrary, the Applicant had contended that the demand notice was issued on 18.10.2018 by the Applicant to the Corporate Debtor and therefore, the date of issue of demand notice should be treated as the date of default. Further, taking into consideration, the exemption granted by the Hon'ble Supreme Court of India in Suo Moto writ Petition (Civil) No. 3/20 in the matter of "RE: Cognizance of Extension of Limitation", the limitation stands extended and thus, the present application is within limitation.

Having considered the submissions of the Ld. Counsel appearing for the Applicant, we are of the considered view that the present application filed under Section 7 of the Code is within the Limitation Period.

- ix.** On the basis of the above analysis, we are of the considered view that the amount involved in the present case be considered as a Financial Debt within the definition of sub-section 8 of Section 5 of the Code. We are of the opinion that the Applicant is a Financial Creditor holding financial debt which is in default of payment by the Corporate Debtor. We are of the considered view that the present Application under Section 7 of the Code is within the limitation and is maintainable.

- x.** It is a settled law that the prerequisites for an application under Section 7 of the Code are the existence of 'financial debt' and a 'default'. In the light of the above facts and circumstances, the existence of debt and default is reasonably established by the Applicant as a major constituent for admission of the Application under Section 7 of the Code. Therefore, the Application under sub-section (2) of Section 7 is taken as Complete.

5. **Order**

In light of the above facts and circumstances, it is hereby ordered as follows: -

- i.** The Application bearing **IB-594(ND)/2023** filed by the Applicant/(FC), under section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Respondent/(CD) is **admitted**.
- ii.** We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14(1)(a), (b), (c) and (d) of the Code. Thus, the following prohibitions are imposed:
- “(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. [Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

- iii.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the Corporate Debtor in terms of Section 14(3)(b) of the Code.
- iv.** The Applicant/(FC) has proposed the name of Mr. Sandeep Goel as the Interim Resolution Professional (“IRP”) having address: 410, Pratap Bhawan, 5 Bahadur Shah Zafar Marg, New Delhi-110002. His Email id is cmasandeepgoel@gmail.com. His registration number is IBBI/IPA-003/IP-N00073/2017-18/10583. The Applicant filed a copy of the Consent Issued by Mr. Sandeep Goel in Form 2, Written Communication by proposed IRP, as per the requirement of Rule 9(l) of the Adjudicating Authority Rules along with the Certificate of Registration and Authorization for Assignment in Form B.

Accordingly, Mr. Sandeep Goel is appointed as IRP.

- v.** In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- vi.** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- vii.** The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- viii.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- ix.** The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakh Only) with the IRP to meet the expense to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by IRP and shall be paid back to the Financial Creditor.

- x.** In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today.
- xi.** The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- xii.** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.
- xiii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)