

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KOCHI**

CP(IBC)/22/KOB/2023

*(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:

M/s. Anakkara Food Processing and Exports
Pvt. Ltd.

Memo of parties: -

Dhanalaxmi Bank Limited, Corporate Office,
Poonkunnam P.O., Thrissur-2, Kerala,
Represented by Mr. Jerry Thanangadan, the
Chief Manager at the Regional Office,
Kozhikode. Having Branch Office address: -
Dhanalaxmi Bank Ltd., Edappal Branch,
Govinda Buildings, Palakkad Road, Edappal,
Malappuram, Dt. Pin- 679 576. Email: -
dlb.edappal@dhanbank.co.in.

... Financial Creditor.

-Versus-

M/s. Anakkara Food Processing and Exports
Pvt. Ltd., Door No. X/232A, Anakkara P.O.,
Palakkad Dist., Pincode- 679 551. Email: -
anakkarafood_park@yahoo.in.

... Corporate Debtor.

Order delivered on: 25.04.2024

Coram:

Hon'ble Member (Technical)

Shyam Babu Gautam

Hon'ble Member (Judicial)

TMT. Justice (Retd.) T. Krishna Valli

Appearances:

For the Financial Creditor : Ms. Umarani M.N., Adv.

For the Corporate Debtor : Mr. Girish Kumar V.C., Adv.

ORDER

Per: Coram

- 1.** Under consideration is Petition No. CP(IBC)/22/KOB/2023 filed by the Financial Creditor, Dhanalaxmi Bank Limited against the Corporate Debtor M/s. Anakkara Food Processing and Exports Pvt. Ltd., invoking Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate Corporate Insolvency Resolution Process for the total default amount of **Rs. 1,93,80,517.11/- (Rupees One Crore Ninety Three Lakh Eighty Thousand Five Hundred Seventeen Rupees and Eleven Paise Only)** in respect of credit facility availed by them from the Financial Creditor. The date of default is 24.12.2019.

- 2.** The facts as narrated in the petition and explained by the Financial Creditor are summarized hereunder:

- i. The Financial Creditor sanctioned the Cash Credit Loan Facility of Rs. 1,50,00,000/- for working capital requirements and term loan facility of Rs. 50,00,000/- for the purchase of new machinery on 17.03.2015 and the sanction terms were duly communicated to the Corporate Debtor on 21.03.2015.
- ii. Subsequently the Financial Creditor sanctioned the Short-Term Loan facility of Rs. 14,00,000.00 for the purchase of new machinery on 23.10.2018 and the sanction terms were duly communicated to the Corporate Debtor on 23.10.2018. After that, the Financial Creditor sanctioned the restructuring of the existing Term Loan with the balance as on that date amounting to Rs. 14,66,000/- Further, the Cash Credit Facility was also re-scheduled and granted an FITL facility for service of interest amounting to Rs. 13,00,000/- on 22.03.2019 and the sanction terms were duly communicated to the Corporate Debtor on 23.03.2019.
- iii. The Financial Creditor stated further towards security for the aforesaid loan facilities for the Corporate Debtor created an equitable mortgage of immovable property in the name of the Corporate Debtor by depositing the Sale Deed No. 620/2004 of SRO, Kumaranellur by which it had mortgaged all that part and parcel of the immovable properties admeasuring 250 cents in Sy.

No.265/1A in Anakkara Village, Pattambi Taluk (Old Ottappalam Taluk), Palakkad District together with office building and factory building therein and all other improvements therein. The creation of a mortgage was also confirmed by the Corporate Debtor by execution of a confirmation letter from the mortgagor on 25.03.2015.

- iv. It is stated that the mortgage extension letters dated 24.10.2018 and 30.03.2019 were executed by the Corporate Debtor in favour of the Financial Creditor. It is further stated that the Corporate Debtor acknowledged the liability by the execution of an acknowledgment of liability on 22.02.2018, 30.11.2020, and 30.09.2022.
 - v. Hence, the present application has been filed by the Financial Creditor to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor under Section 7(4) of the Insolvency and Bankruptcy Code, 2016.
3. On 06.11.2023, the Corporate Debtor filed its reply statement and stated that Annexure V (a) and Annexure V (b) documents were created by the Financial Creditor for the claim of the Financial Creditor and those have no evidentiary value for the various reasons. It is also stated that the date and place and the branch name are written with the same handwriting and the nature of ink and writing are very same

and will show that the above documents are created by the Financial Creditor for the case.

4. It is stated that the common seal of the Corporate Debtor is not seen affixed in the documents as per law. Moreover, only the managing director of the Corporate Debtor's signature is affixed in the documents even the other borrowers have to sign such documents for alleged acknowledgment of liability. The Financial Creditor is not able to prove that the alleged loan was availed as per the board resolution of the Corporate Debtor.
5. It is stated that the Financial Creditor alleging a default in the repayment of the loan amount, declared the account as NPA of 24.12.2019 and thereafter issued a demand notice under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act. However, the Financial Creditor issued another demand notice dated 10.03.2020 under Section 13(2) of the SARFEASI Act demanding to pay the amount of Rs. 1,49,33,353 .07/- within 60 days of the notice.
6. The Corporate Debtor approached the Financial Creditor and requested to abstain from proceedings with SARFAESI measures because of the difficult situations faced by the defendant/corporate debtor and also submitted a request for settlement. The Financial Creditor initially was not prepared to consider any of such requests

and finally sanctioned OTS, but on strict terms, though which are not acceptable to the Corporate Debtor for the reason of terms, the Financial Creditor remitted the amounts thereon. The Corporate Debtor as bonafide party paid Rs. 30 Lakhs on approval of the OTS as early as on 30.03.2021. Due to the financial stringency, the corporate debtor herein could not pay the balance amounts in time granted in OTS and again approached the bank for an extension of the OTS period. Later the Financial Creditor bank issued a letter dated 02.06.2023 communicating the cancellation of the OTS.

7. It is stated that the agreements and the acknowledgments in the petition. are made with the blank forms collected from the Corporate Debtor during the time of sanctioning of the said loans. It is also stated that the acknowledgment of liability on three different dates seems to be made with the same handwriting. Therefore, this Company Petition is not maintainable.
8. On 11.12.2023, the Financial Creditor filed a rejoinder and stated that the contractual liability was duly acknowledged by the Corporate Debtor by execution of an acknowledgment of liability document lastly on 30.09.2022. Moreover, the account was classified as NPA on 24.12.2019. Also, as per the order dated 10.01.2022 passed by the Hon'ble Supreme Court of India in M.A. No. 21/2021 in M. A. No.665/2021, Suo Motu W.P.(C) NO. 3/2020, the period w.e.f 1503-2020 till 28.02.2022 has been directed to be excluded for limitation.

Thus, the claim is not barred by limitation and the Petition filed by the Financial Creditor is well within the time prescribed by the Code.

9. It is stated that the Financial Creditor has no reason to create a forged document because of a clear admission of liability by them by approaching for settlement on 06.07.2021 and requesting thereafter for an extension of time for payment on the settled terms. Also, it is submitted that as per The Companies (Amendment) Act, 2013, the common seal is no longer mandatory.

10. It is stated that after the classification of the account as NPA, the financial creditor has also initiated recovery actions against the corporate debtor by issuing a demand notice under the SARFAESI Act on 10.03.2020. But the same was kept in abeyance at the request of the Corporate Debtor and sanctioned an OTS of Rs. 150.00 lakhs on 06.07.2021 with a cut-off period to clear the liability by 30.09.2021. But they had not remitted the amounts as agreed upon. They later approached the Financial Creditor on 31.12.2021 and on 30.03.2022 requesting further time to remit the amounts as per the settled terms. Considering their request the bank granted time and they remitted only Rs. 23 lakhs (Rs. 10.00 lakhs on 31.12.2021, Rs. 8.00 lakhs on 30.05.2022 and Rs. 5.00 lakhs on 30.09.2022). Since the terms were not complied with, the OTS was cancelled and a letter regarding the same was also issued to them on 02.06.2023. Thereafter the Corporate

Debtor has not approached the Financial Creditor for any settlement to date.

11. It is stated that the Financial Creditor continued with the SARFAESI proceedings by taking possession of the property symbolically and filing of the Securitisation application consequently has no way affecting filing of the present petition by the Financial Creditor under Section 7 of the IBC, 2016. As per Section 14 of the Code even if there is a pending suit or SARFAESI action against the corporate debtor the same shall be kept under a moratorium on commencement of CIRP proceedings.

FINDINGS: -

12. We have heard the learned counsel for both parties and perused the entire case records/documents. We have also gone through the evidence on record. On hearing both sides and with an appreciation of the documents produced, it is seen that the Corporate Debtor had sought probabilities to settle the debt due to the Financial Creditor. Hence, it is clear that a substantial amount is due to the Financial Creditor from the Corporate Debtor.
13. A reading of the above facts, makes it clear that nothing on record to show that the Corporate Debtor entered into a compromise agreement and repayment of the entire outstanding amount has been made.

However, by agreeing to repay the amount the Corporate Debtor accepted the debt due to the Financial Creditor. The Corporate Debtor is required to honour the commitments made to the Financial Creditor.

14. As there is a default in the payment of the financial debt, which has been confirmed by them in the counter affidavit that the Financial Creditor paid the money to the Corporate Debtor, we are of the view that the present application filed by the Financial Creditor satisfies all the definitions of “Financial Creditor”, “Default” and “Financial Debt” and qualifies for applying for Insolvency and Bankruptcy Code. By mentioning various procedural hurdles, the Corporate Debtor cannot wash off its hands in repaying the amount borrowed, which is a financial debt owed by them. Hence, there is a Creditor-Debtor relationship with them. So, we are of the considered opinion that the present application of the Petitioner/ Financial Creditor may be admitted under Section 7 of the IBC, 2016 and CIRP initiated against the Corporate Debtor.

15. Thereafter we have gone through Section 238A of the IBC, 2016 which defines “Limitation”:-

Section 238A: Limitation.

238A. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate

Tribunal, the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal, as the case may be.

16. We have also gone through Article 137 of the Limitation Act, 1963 which reads as under:

PART II—OTHER APPLICATION

<i>137. Any other application for which no period of limitation is provided elsewhere in this Division.</i>	<i>Three years</i>	<i>When the right to apply accrues.</i>
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17. It is settled law as decided by the Hon'ble NCLAT in its order in ***Neelkanth Township and Construction Pvt. Ltd. vs. Urban Infrastructure Trustee Ltd. (Company Appeal (AT) (Insolvency) No. 44 of 2017)*** that, those provisions of the IBC cannot be shackled by the Limitation Act. It was observed that: *“There is nothing on record that Limitation Act, 2013 is applicable to I&B Code. Learned Counsel for the appellant also failed to lay a hand on any of the provisions of I&B Code to suggest that the Law of Limitation Act, 1963 is applicable. The I&B Code, 2016 is not an Act for recovery of money claim, it relates to the initiation of the Corporate Insolvency Resolution Process. **If there is a debt which includes interest and there is default of debt and having a continuous cause of action, the argument that the claim of money by Respondent is barred by Limitation cannot be accepted.**”* We, therefore, are not agreeable with the submissions

made by the Corporate Debtor regarding the limitation in filing this application.

18. As far as the issue before us, on perusal of the records, we found that the Financial Creditor filed this Company Petition on 20.06.2023. We also found that there is an *Acknowledgment of Liability* by the Corporate Debtor on 30.09.2022. Therefore, there is a continuous cause of action and we could conclude that the Company Petition has been filed within the prescribed period of limitation. In the aforementioned circumstances, we are of the considered opinion that the IBC cannot be rejected due to technical snags arisen by the Corporate Debtor.

19. In view of the aforesaid observations, we hereby pass the following Orders.

- i. The petition bearing CP(IBC)/22/KOB/2023, filed by the Dhanalaxmi Bank Ltd., the Financial Creditor, 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 for initiating CIRP against the Corporate Debtor M/s. Anakkara Food Processing and Exports Pvt. Ltd., is **ADMITTED**.
- ii. There shall be a moratorium under Section 14 of the Code.

- iii. The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority approves the Resolution Plan under Sub-Section (1) of Section 31 of IBC or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.
- iv. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.
- v. The Financial Creditor has proposed the name of one **Mr. Jasin Jose** having Registration Number: **IBBI/IPA-001/IP-P00695/2017-2018/11225** as Interim Resolution Professional (IRP) and written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, who is appointed as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP is also directed to file the valid Form B, Authorization for Assignment before this Adjudicating Authority within 2 days from the receipt of this order. The designated IRP must take any additional actions in this regard that are mandated by the law, more specifically specified in Sections 15, 17, and 18 of the Code. The powers of the

Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016. The fee payable to IRP or as the case may be, the RP shall comply with such Regulations, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out its functions as contemplated by Sections 15 and 21 of the Code.

- vi. During the CIRP period the management of the Corporate Debtor shall vest with the IRP or, as the case may be the 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.
- vii. The IRP/RP shall submit to this Adjudicating Authority periodical reports as per Regulations/Rules concerning the progress of the CIRP in respect of the Corporate Debtor.
- viii. The Financial Creditor shall deposit a sum of Rs.2,00,000/- (Two Lakhs Only) with the IRP to meet the expenses arising out of issuing publication and inviting claims, etc. These expenses are subject to approval by the Committee of Creditors (CoC).

- ix. In terms of Section 7 (5)(a) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the Corporate Guarantor and IRP by Speed Post & e-mail immediately, and in any case, not later than two days from the date of this order.
- x. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and the Registrar of Companies, Kerala, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt of a copy of this order.
- xi. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- xii. A Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

T KRISHNA VALLI
(MEMBER JUDICIAL)

Signed on this the 25th day of April, 2024.

Rajasree R. Nair/LRA