

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD

SPECIAL BENCH - COURT 1 (VEDIO CONFERENCE)

PRESENT: HON'BLE SHRI BHASKARA PANTULA MOHAN – MEMBER JUDICIAL

HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 26.04.2021 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No. 747/7/HDB/2019
NAME OF THE COMPANY	Rajvir industries Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Rajvir industries Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Orders passed in CP(IB)No. 747/7/HDB/2019, vide separate orders.

Member(Technical)

Member(Judicial)

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**THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.747/7/HDB/2019

U/s 7 of I&B Code, 2016 read with Rule
4 of I & B (AAA) Rules, 2016.

In the matter between :

State Bank of India
Stressed Assets Management Branch
Secunderabad
Door No.6-2-015, 5th Floor
Hyderabad- 500004.

**.. Petitioner
Financial Creditor**

VERSUS

M/s Rajvir Industries Limited
1st Floor, Surya Tower, 105, SP Road
Secunderabad – 500003.

**.. Respondent
Corporate Debtor**

Date of order : 26.04.2021

Coram:

**HON'BLE SHRI BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)**

and

**HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)**

Parties / counsels present:

For the Petitioner : S/ Shri G.P. Yash Vardhan, Grishma Acharya
S. Keshava Rao.

For the Respondent: Shri Sripathi Rajagopalan
Shri Sumanth Krishna

**Per: SHRI VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)**

Heard on: 16.12.2019, 08.01.2020, 28.01.2020, 18.02.2020,



17.03.2020, 03.03.2021 and 24.03.2021.

ORDER

The petitioner was incorporated as State Bank of India on 01.07.1955 vide State Bank of India Act, 1955. Its Identification Number is AAACS8577K. The Financial Creditor has its registered at Mumbai and branch office at Secunderabad as described in Column-4, Part-I of the petition.

2. The petitioner-SBI, by way of consolidation, has merged its associate banks, viz. State Bank of Hyderabad (SBH), State Bank of Mysore (SBM), State Bank of Travancore (SBT), State Bank of Bikaner & Jaipur (SBBJ) and State Bank of Patiala (SBP). The accounts of the aforesaid Banks stood transferred and merged with the Financial Creditor with all rights as available under law. It is submitted that presently the accounts of the Corporate Debtor are maintained with the Stressed Asset Management Branch, Khairatabad, Hyderabad.

3. The respondent is incorporated on 01.09.2004 and it has CIN: L17116TG2004PLC044053. It has registered office as mentioned in column-5, Part-II of the petition.

4. The present application is filed by the Financial Creditor against the respondent/ Corporate Debtor claiming the amount to be in default amounting to Rs.123,87,82,134.80 (Rupees one hundred twenty three crores eighty seven lacs eighty two thousand one hundred thirty four and paise eighty only) **as on 31.08.2019**, as detailed in Statement of Accounts (Annexure-3, page 4A-595). The date of default is stated to be **29.06.2014**, due to failed restructuring.

5. It is submitted by the Financial Creditor that the Corporate Debtor has irrevocably acknowledged, confirmed, admitted and declared existence of the amount of loan outstanding to the Financial Creditor in its Financial Statements for 2013-14, 2015-16, 2018-19, and Revival Letter dated 08.08.2017. As such fresh period of limitation shall be computed from the time when such debt was acknowledged.



6. It is submitted that the Corporate Debtor had executed **Revival Letter dated 08.08.2017** (Page no.596, Volume III of the Company Petition) in favour of Consortium Lenders including the Financial Creditor under section 18 of the Limitation Act, 1963.

7. Date of disbursement is stated to be **26.08.2014**, which is reckoned from the date on which the debt of the Corporate Debtor has been restructured by entering into Master Restructuring Agreement dated 26.08.2014 entered into between the respondent, the petitioner and other Banks.

COUNTER DATED 16.12.2019 FILED BY THE CORPORATE DEBTOR.

8. The Corporate Debtor has admitted that the Corporate Debtor has availed loans from the Financial Creditor to the tune of Rs.97.75 crores in paras 9 and 16 of its Counter dated 16.12.2019.

9. The respondent/ Corporate Debtor has raised contention that the petitioner has not issued any notice claiming the amount in default of Rs.123,87,82,134.80 to the respondent as on 31.08.2019. The respondent has submitted that since date of default is claimed to be 29.06.2014, it is time-barred and it would attract provisions of Article 137 of the Limitation Act. (paras 4 and 5)

10. The respondent has submitted that the petition is liable to be dismissed because the petitioner has failed to provide details of debt and default and the petition has not been filed under section 27 of the SBI General Regulations. (para 7)

11. The respondent is primarily engaged in production of various types of yarns. The respondent had suffered major fire break outs at its Tandur factory once on 28.12.2012 and again on 05.08.2015 causing huge loss of Rs.3.56 crores and Rs.4.20 crores respectively. The Corporate Debtor had approached Corporate Debt Restructuring Cell and Master Restructuring Agreement (MRA) dated 26.08.2014 has been entered into between the respondent, the petitioner and other Banks. The petitioner was appointed as Monitoring Institution of the CDR Package. It is alleged that despite being Monitoring Institution the petitioner has disrupted the

banking and business operations of the respondent and has failed to comply with the terms stipulated in Inter-Creditor Agreement. Resultantly the whole CDR Package was rendered futile. (paras 11-15)

12. SUBMISSIONS/ ALLEGATIONS MADE BY THE RESPONDENT:

- (i) The petitioner withdrew itself from the Master Restructuring Agreement (MRA) without notice to the respondent.
- (ii) The Corporate Debtor has not defaulted in the loan granted to it. The petitioner had unilaterally walked out of various Agreements, such as, Inter Creditor Agreement, Security Trustee Agreement, Trust and Retention Agreement and claimed that the account of respondent became a Non Performing Asset effective from 29.06.2014.
- (iii) The present petition is time-barred under Article 137 of the Limitation Act and hence it is time-barred.
- (iv) Neither the respondent nor its promoters have acknowledged the debt and they have not promised to repay the debt to the petitioner post 12.12.2014.
- (v) That the date of sanction of financial assistance as mentioned in Part-IV of Form-1 and date of default as mentioned in Form-1 are contradictory to each other.

13. GROUNDS ADVANCED BY THE RESPONDENT AGAINST THE PETITIONER:

- (a) Classification of account of respondent as Non-performing Asset is wrong.
- (b) Unilateral withdrawal from Restructuring Agreement.
- (c) Time-barred debt.
- (d) Gross undervaluation of properties of respondent, its promoters and guarantors.
- (e) Gross violation of Inter-Creditor Agreement.
- (f) The petitioner does not have absolute title, ownership or interest in any of the assets of the respondent or its promoters inasmuch as the assets of the Corporate Debtor are mortgaged in favour of Security Trustee, viz. SBICAP Trustee Company Ltd., Mumbai.



14. It is averred that the respondent has approached the Debt Recovery Tribunal (DRT) challenging the orders obtained under section 14 of SARFAESI Act. The DRT issued notice to SBIPCAP Trustee Company Ltd.

15. As regards e-auctions the respondent submitted that the petitioner has never approached the Tribunal for third round of auction of the respondent's properties. The respondent is not aware of outcome of third e-auction.

REJOINDER DATED 06.02.2020 FILED ON BEHALF OF THE PETITIONER:

16. The petitioner has answered the contentions raised by the respondent in its counter as under:

- Dismissing the contention of the respondent raised in para 4 of the Counter that the petitioner has not issued notice of default of Rs.123,87,82,134.80 as on 31.08.2018, the petitioner submitted that the Financial Creditor did issue notice dated 30.08.2018 under section 13(2) of SARFAESI Act (page 1535, Volume VIII of the Company Petition). (Para 6 of the Rejoinder)
- As regards acknowledgement of debt by the Corporate Debtor, the petitioner submitted that the Corporate Debt Restructuring (CDR) Empowered Group has approved restructuring package and CDR was given effect to. All the stakeholders have entered into Master Restructuring Agreement (MRA) on 26.08.2014. In MRA, the Corporate Debtor has irrevocably acknowledge the debt. (para 7 of the Rejoinder)
- As regards applicability of Limitation Act the petitioner relied on section 238A and section 18(1) of the Limitation Act, 1963. Section 18(1) is reproduced hereunder:

"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."

17. In the present case, the Corporate Debtor has irrevocably acknowledged, confirmed, admitted and declared existence of the amount of loan outstanding to the Financial Creditor in its Financial Statements for 2013-14, 2015-16, 2018-19, and Revival Letter dated 08.08.2017. As such fresh period of limitation shall be computed from the time when such debt was acknowledged. (para 10)

WRITTEN SUBMISSIONS DATED 24.03.2021 FILED ON BEHALF OF THE CORPORATE DEBTOR.

18. It is contended that though the Financial Creditor has claimed that the present petition is not barred by limitation by virtue of Revival Letter dated 08.08.2017 (Page no.596, Volume III of the Company Petition) in favour of Consortium Lenders including the Financial Creditor, the said Revival Letter was issued after expiry of the prescribed period of three years from the date of default. Hence section 18 of the Limitation Act does apply in the present case. Thus, the respondent/ Corporate Debtor claims that section 137 of the Limitation Act applies in the present case inasmuch as the present petition is filed on 31.10.2019, five years after the alleged date of default, viz. 29.06.2014. In this context the respondent/ Corporate Debtor relies on the following decisions:

- (i) Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt Ltd & others, rendered on 14.08.2020 in Civil Appeal No.6347 of 2019 by the Hon'ble Supreme Court of India. [paras 37, 38 and 42],
- (ii) P.H. Combines Vs. MDA Agrocot (P) Ltd., (2021) 123 taxmann.com 103 (NCLT- Mum.),
- (iii) V. Padmakumar Vs. Stressed Assets Stabilisation Fund (SASF) & another, 2020 SCC OnLine NCLAT 417, [para 22],
- (iv) Sampuran Singh & others Vs. Niranjana Kaur & others, Manu/ SC/ 0134/ 1999 : AIR 1999 SC 1047 [para 9].

WRITTEN SUBMISSIONS DATED 26.03.2021 FILED ON BEHALF OF THE FINANCIAL CREDITOR.

19. The Financial Creditor has contended that the Corporate Debtor having admitted that the Corporate Debtor has availed loans from the Financial Creditor to the tune of Rs.97.75 crores in paras 9 and 16 of its

Counter dated 16.12.2019, it amounts admission of debt and default and hence the petition deserves admission. (para 8)

20. The Financial Creditor relies on subsections (5) and (7) of section 7 of the I&B Code, 2016, to contend that where the Adjudicating Authority is satisfied that a default has occurred the petition is required to be admitted unless the application under sub-section (2) is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days. (para 7)

21. The Financial Creditor has answered the main contentions raised by the Corporate Debtor as under:

Contention raised by the Corporate Debtor	Rebuttal by the Financial Creditor
Financial Creditor has not issued any notice to the Corporate Debtor.	Section 7 of the I&B Code does not provide requirement of issuance of notice to the Corporate Debtor prior to filing an application to initiate CIRP. However, the Financial Creditor has issued (i) Recall Notice dated 07.08.2018, and (ii) notice under section 13(2) of SARFAESI Act dated 30.08.2018.
The petition is barred by limitation.	<p>At the request of the Corporate Debtor, the CDR Empowered Group has approved restructuring package. Master Restructuring Agreement (MRA) dated 26.08.2014 was entered into. Even thereafter, the Corporate Debtor committed default from 31.12.2017. Consequently, the Corporate Debtor has failed and the account of the Corporate Debtor was declared as NPA effecting from 29.06.2014.</p> <p>Provisions of Limitation Act, 1963 are made applicable to the cases filed under the I&B Code depending on facts and</p>

	<p>circumstances of each case. The petitioner relied on decision in the case of (i) J.C. Budhraja Vs. Chairman, Orissa Mining Corporation Ltd & others (AIR 2008 SC 1363); (ii) Rajendra Narottamdas Sheth & others Vs.Chandra Prakash Jain & others, Company Appeal (AT) (Insolvency) No.621 of 2020, decided on 18.12.2020, (iii) MM Ramachandran Vs. South Indian Bank & others, Company Appeal (AT) (Insolvency) No.1509 of 2019, decided on 22.01.2020 NCLAT, (iv) MM Ramachandran Vs. South Indian Bank & others, Company Appeal No.2951 of 2020 (Supreme Court), decided on 22.11.2020, (v) Yogeshkumar Jashwantlal Thakkar Vs. Indian Overseas Bank and others, Company Appeal (AT) (Insolvency) No.236 of 2020, decided on 14.09.2020, NCLAT, (vi) RR Gopaljee Vs. Indian Overseas Bank and others, Company Appeal (AT) (Ins) No.748 of 2019, decided on 24.06.2020, NCLAT, (vii) Anubhav Anil Kumar Agarwal Vs. Bank of India and others, Company Appeal (AT) (Insolvency) No.1504 of 2019, decided on 07.02.202, NCLAT, (viii) Vivek Jha Vs. Daimler Financial Services Pvt Ltd & others, Company Appeal (AT) Insolvency No.856 of 2018, decided on 13.01.2020, (ix) KRV Uday Charan Rao Vs. Bank of India and others, Company Appeal (AT) (Ins) No.731 of 2019, decided on 13.11.2019.</p>
Financial Creditor has not provided details of debt and default under section	As the account of the Corporate Debtor was technically written off, the Financial Creditor is not able to furnish record of default with the Information Utility.

7(3)(a) of the I&B Code, 2016.	However, the Financial Creditor has filed voluminous documentary evidence evidencing and establishing debt and default committed by the Corporate Debtor.
The petition is filed without proper authorisation.	Shri J. Vijaya Kumar, AGM of the Financial Creditor is authorised to file the Company Petition in terms of General Regulations no.76 and 77 of SBI General Regulations, 1955 issued by the RBI. The Financial Creditor has cited decisions in the case of (i) United Bank of India Vs. Naresh Kumar and others, AIR 1997 SC 3, (ii) Gouri Prasad Goenka Vs. PNB and others, Company Appeal (AT) (Ins) No.28 of 2019, decided on 08.11.2019, NCLAT, and (iii) Rajendra Narottamdas Sheth & others Vs. Chandra Prakash Jain & others, Company Appeal (AT) (Ins) No.621 of 2020, decided on 18.12.2020, NCLAT.

OBSERVATIONS:

22. We have heard the learned counsel for the Financial Creditor and the Corporate Debtor, perused the record of the case, and have also gone through the judgments/ decisions cited before us. In an application filed under section 7 of the I&B Code, the Tribunal has to see whether debt and default exist. It is admitted by the Corporate Debtor that they have availed loans from Consortium Lenders including the Financial Creditor as has been admitted by the Corporate Debtor in their Counter.

23. As regards the contention of the Corporate Debtor that the present petition is time-barred, we observe that at the request of the Corporate Debtor, the CDR Empowered Group has approved restructuring package and Master Restructuring Agreement (MRA) dated 26.08.2014 was entered into. Even thereafter, the Corporate Debtor committed default from 31.12.2017. Consequently, the Corporate Debtor has failed and the account of the Corporate Debtor was declared as NPA. It was due to




defaults committed by the Corporate Debtor, and at the request of the Corporate Debtor, restructuring package was to be required to be evolved and MRA was required to be entered into. Therefore, the Corporate Debtor cannot take refuge under the provisions of the Law of Limitation. The decisions cited by the Financial Creditor as well as by the Corporate Debtor on the law of limitation and submissions made thereon by both the parties have been considered. Besides we have also taken into consideration section 18(1) of the Limitation Act, which provides that a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

24. Taking into consideration all the relevant factors we are of the view that the Financial Creditor is able to establish the debt and default. The delay occurred was due to the defaults committed by the Corporate Debtor and the measures taken at the request of the Corporate Debtor to salvage the Corporate Debtor out of crisis. Therefore, the petition is required to be admitted against the Corporate Debtor. After going through the documents filed by the petitioner we are of the view that the petition is liable to be admitted against the Corporate Debtor. The petition is accordingly admitted.

25. Hence, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-

(A) The 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;



(B) 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.

(C) 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.

(D) 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 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

(E) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

(F) That this Bench hereby appoints Shri Sivanagaraja Taduvai having Registration No. IBBI/ IPA-003/IP N00065/ 2017-18/ 10551, as Interim Resolution Professional, whose contact details are:

e-mail ID : tsnrja@gmail.com
Address : Plot No.16, Shop-cum-flat
HUDA Complex, Kothapet
Hyderabad – 500035.

as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

(G) Proposed IRP has filed Form-2 issued by the Institute of Insolvency Professionals. Authorisation for Assignment is valid till 15.12.2021. This information is also available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

26. Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.



26. Accordingly, this Petition is admitted.



VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)



BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

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