

**In the National Company Law Tribunal  
Kolkata Bench  
Kolkata**

**CP(IB)No.662/KB/2018**

**In the matter of:**

An application for initiation of Corporate Insolvency Resolution Process 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;

**-And-**

**In the Matter of:**

State Bank of India having its registered office at State Bank Bhawan, 14<sup>th</sup> Floor, Corporate Centre, Madam Cama Road, Nariman Point, Mumbai, Maharashtra-400021.

.....Financial Creditor

**In the Matter of:**

M/s Sri Balaji Logs Products Pvt. Ltd. having its registered office at 67/22 Strand Road, Kolkata-700006.

..... Corporate Debtor

**CORAM: Shri M.B. Gosavi, Member (Judicial)**

**Counsels appeared:**

For Corporate Debtor

1. Mr. Reetobroto Kr. Mitra, Advocate
2. Mr. Shaunak Mitra, Advocate
3. Mr. Sayantak Das, Advocate

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For Financial Creditor

1. Mr. Ajay Gaggar, Advocate
2. Ms. Rakhi Purnima Paul, Advocate
3. Mr. Ramanuj Ray Chaudhuri, Advocate

Date of pronouncement of order: 17<sup>th</sup> July, 2019.

**ORDER**

Per Shri M.B. Gosavi, Member (J):

1. **State Bank of India** - the Financial Creditor has filed this application under Section 7 of Insolvency and Bankruptcy Code, 2016 against **M/s Sri Balaji Logs Products Pvt. Ltd.** - the Corporate Debtor to start Corporate Insolvency Resolution Process (in short "CIRP") of the Corporate Debtor as the Corporate Debtor committed default in paying financial debt of Rs. 202,18,14,203.32/- (Rupees Two Hundred Two Crores Eighteen Lakhs Fourteen Thousand Two Hundred Three and Thirty Two Paise Only).
2. The following facts are not in dispute:-
  - 2.1 Initially in the year 2001 and thereafter from time to time, the Bank/Financial Creditor had granted and disburse the Corporate Debtor various term loans. Last loan sanction letter is on record dated 25.03.2014. Since the Corporate Debtor could not repay the loan as agreed, the Bank sent notice dated 09.02.2015 to the Corporate Debtor under Section 13(2) of SURFAESI Act, 2002 and initiated recovery proceeding against the Corporate Debtor and its



Directors in Debt Recovery Tribunal, Kolkata. That proceeding is still pending.

- 2.2 Upon coming in operation of Insolvency and Bankruptcy Code, 2016, (in short I & B Code, 2016) the Bank filed this proceeding under Section 7 of I & B Code, 2016, against the Corporate Debtor to start Corporate Insolvency Resolution Process (in short "CIRP") of the Corporate Debtor. This proceeding is filed on 03.05.2018.
- 2.3. It is not in dispute that Corporate Debtor received and enjoyed the loan amount for its benefit. It is also not in dispute that the Corporate Debtor committed default in paying the debt of more than Rs. 200 crores.
3. The Corporate Debtor served with the notice of this proceeding. One of its Directors, Mr. Om Prakash Pandey filed Affidavit-in-reply dated 04.12.2018. The Corporate Debtor raise two defenses, mainly:-
  - (i) The proceeding is filed beyond period of limitation.
  - (ii) The Bank having received One Time Settlement proposal from them, they could not file this proceeding in view of the principles of the estoppel, acquiescence etc.
4. It is seen from the pleadings of the parties that Corporate Debtor did not dispute the debt to be payable by them to the Bank more than sum of Rs. 200 crores. The Corporate Debtor did not dispute that there is default on their part in paying the debt. In normal course, since the debt and its default is admitted, this application required to be admitted but the Corporate Debtor raise objection that the proceeding is barred by limitation. It has to be considered.
5. Ld. Defense Counsel submitted that on 19.02.2015, the Bank issued Corporate Debtor notice under Section 13(2) of the SARFAESI Act, 2002. The right to sue accrued in favour of Bank on that day as per

Article 137 of the Law of Limitation. It was necessary by the Bank to initiate this proceeding within period of three years. However, the proceeding was filed on 03.05.2018. It is filed beyond the period of limitation. Hence, it is not maintainable.

4. As against this, Ld. Advocate for the Financial Creditor submitted that by way of supplementary affidavit, the Bank produced on record the number of letters written by the Corporate Debtor to the Bank admitting the debt. One of such letters dated 26.06.2018, he submitted that in view of such correspondence, the cause of action to file this proceeding was available to the Bank in the year 2018 and thereafter also.
5. Replying the above submission, Ld. Defense Counsel submitted that One Time Settlement proposal was submitted to the Bank by the Corporate Debtor. It was submitted as and by way of genuine attempt to settle the dispute. Such proposal cannot be considered as an admission of the debt. He relied on Ruling of Apex Court reported in (2006) 12 Supreme Court Cases 673 in case of Peacock Plywood (P) Ltd. Vs. Oriental Insurance Co. Ltd. . He also relied to orders of Hon'ble NCLAT explaining the applicability of the Law of Limitation to the proceeding under I & B Code, 2016.
6. I have gone through the Ruling of Apex Court and order of Hon'ble NCLAT. Hon'ble Supreme Court in case of Peacock Plywood (P) Ltd. (as referred above) held that

***"Correspondence will only be protected by without prejudice privilege if it is written for the purpose of a genuine attempt to compromise a dispute between the parties. It is not a precondition that the correspondence bears the heading without prejudice. If it is clear from the surrounding circumstances that***



***the parties were seeking to compromise the action, evidence of the consent of those negotiations will, as general rule, not be admissible."***

7. In this case, it appears from evidence on record that the Bank had never called upon the Corporate Debtor to enter into a correspondence of settlement of the debt. It is the Corporate Debtor went on giving offer to the Bank that it was ready to settle the debt for sum of Rs. 45 to 50 crores against their total outstanding. So the various letters written by the Corporate Debtor to the Bank giving offer to pay certain sum of money against their total outstanding cannot be said to be correspondence made with genuine effort to settle the dues but those letters are in form of admission of debt with further offer to pay certain sum of money towards total outstanding of the debt. All those letters issued by the Corporate Debtor to the Bank are required to be treated as the Acknowledgment of the debt. The evidence on record certainly shows that the Corporate Debtor acknowledged the debt even in the year 2018 immediately prior to filing of this proceeding. The proceeding is filed within the period of limitation as provided under Article 137 of Law of Limitation. From all the facts of the case, it cannot be said that Bank is not entitled to maintain this proceeding in view of the principles of the estopal acquiescence etc.
8. Apart from above, it is not in dispute that on 09.02.2015, the Bank sent Corporate Debtor notice under Section 13(2) of SARFAESI Act, 2002 and filed proceeding for recovery of debt in DRT, Kolkata. That proceeding is still pending. It shows that the Bank has asserted its right to recover its dues within three years from the date of the right to sue accrued to them and the cause of action is now continued by virtue of the pendency of the proceeding against the Corporate Debtor before Debt Recovery Tribunal, Kolkata. Hon'ble NCLAT in

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case of Shankar Vardharajan Vs. Dewachand Ramsaran Corporation Pvt. Ltd. and Ors. (Company Appeal (AT) (Insolvency) No. 735 of 2018) has aptly explained the scope applicability of the provisions of Law of Limitation to the proceeding filed under the I & B Code, 2016 in following words:-

***"It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application."***

9. In this case, the right to sue the Corporate Debtor accrued in favour of the Bank on 09.02.2015. The proceeding in DRT is filed within three years and such right to sue being continued thereafter. The Bank filed this proceeding within the period of limitation. In this case as noted above, the Corporate Debtor did not dispute the 'debt' and the 'default'.
10. The applicant Bank has suggested name of one Mr. Anup Kumar Singh as Interim Resolution Profession. It is nothing on record to show that any disciplinary enquiry is pending against him. This application is defect free. Hence, I admit the same by following order.

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## ORDER

- i) The application filed by the Financial Creditor under section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, M/s Sri Balaji Logs Products Pvt. Ltd., is hereby admitted.
- ii) I declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
  - 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 (54 of 2002);

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- 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.
- v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- vi) 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.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x) Mr. Anup Kumar Singh, IP Registration No. IBBI/IPA-001/IP-P00153/2017-2018/103221, residing at Trinity Towers, Suit No.: 3G, 226/1, A.J.C. Bose Road, Kolkata-700020, E-mail ID: **anup\_singh@sumedhamanagement.com** is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

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xi) The Financial Creditor to pay sum of Rs. 50,000/- (Rupees Fifty Thousand Only) to IRP as advance fees as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.

xii) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

xiii) Registry is hereby directed under section 7(7) of the I.B.Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

List the matter on **05.09.2019** for the filing of the progress report.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

  
**(M.B. Gosavi)**  
**Member (Judicial)**

Signed on this, the 17<sup>th</sup> day of July, 2019.

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