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IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT - II)

Item No. 201
IB-263/ND/2023
RA-06/2024

IN THE MATTER OF:

Aar Kay Industries (Prop. Indian Securities Ltd.)
Post Box No. 90, Talwara Road,
G.T. Road, Sirhind Side,
Mandi Gobindgarh, Tehsil-Amloh,
Distt. Fatehgarh Sahib, Punjab-140407

**... Applicant/
Financial Creditor**

Versus

Jatalia Global Venture Ltd.
500, 5th Floor, ITL Twin Tower,
Netaji Subhash Place, Pitampura, Delhi-110034

**...Respondent/
Corporate Debtor**

Under Section: 7 of IBC, 2016

Order delivered on 07.03.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Mateen Ahmad, Adv. RM Asif a/w Adv. Garima Kwatra
For the Respondent : Adv. Rishabh Jain

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

RA-06/2024: It is the case of the Petitioner that in the year 2017, the financial creditor and the corporate debtor had good and cordial relations with each other and on request made by the corporate debtor, the financial creditor extended him the financial assistance to the extent of Rs. 1 crore for business. The clause (d) of Part-IV of the application which contained such factual details reads thus:-



[Handwritten signature]
07/04/2024



D. That in the year 2017, The Financial Creditor and Corporate Debtor had a good and cordial relations with each other and the Corporate Debtor approached and requested the Financial Creditor for financial help for business /assistance for business for an amount of Rs.1,00,00,000/- (Rupees One Crore Only) @15% rate of interest. At the request of Corporate Debtor, Financial Creditor after considering the request agreed to pay a sum of Rs. 1,00,00,000/-. And accordingly transferred a sum of Rs.50,00,000/- through Cheque/RTGS on 01.09.2017 and further a sum of Rs,50,00,000/- was transferred on 19.09.2017 in the bank account by the Corporate Debtor maintained @ 15% interest per annum. A copy of Bank Account statement of the Corporate Debtor is Annexed herewith as **ANNEXURE-A3**

2. The further portion of Part-IV of the application (ibid) reveals that the amount of debt is Rs. 1 crore and the amount was defaulted to be paid on 09.02.2022. The Part-IV of the application reads thus:-

PART IV PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED	<p>The amount of debt as advanced Loan by the Financial Creditor to the Corporate Debtor is Rs. 1,00,000,00/-</p> <p><u>BRIEF FACTS OF THE CASE</u></p> <p>A. That the Financial Creditor is Limited Company having its registered office at Post Box No.90, Talwara Road,G.T. Road, Sirhind Side, Mandi Gobindgarh, Tehsil-Amloh, Distt. Fatehgarh Sahib.</p> <p>B. That the Financial Creditor has empowered Sh. Ramesh Kumar Goyal, Director to sign, verify and file the legal proceedings on behalf of the Financial Creditor. The present Application has been signed, verified and filed by the Director of the Financial Creditor is duly authorized vide Board Resolution dated and is also well acquainted with the facts of the present case on the basis of record maintained by the Financial Creditor is due course of business. A true copy of Board Resolution of Financial Creditor dated 20.12.2022 marked and annexed as ANNEXURE-A2.</p>



	<p>C. That Corporate Debtor is a Limited Company having CIN: L74110DL1957PLC350280 and engaged in the business of Commodities. Sh. Anil Kumar Jain, Sh. Ajay and Sh. Yogender are the Directors.</p> <p>D. That in the year 2017, The Financial Creditor and Corporate Debtor had a good and cordial relations with each other and the Corporate Debtor approached and requested the Financial Creditor for financial help for business /assistance for business for an amount of Rs.1,00,00,000/- (Rupees One Crore Only) @15% rate of interest. At the request of Corporate Debtor, Financial Creditor after considering the request agreed to pay a sum of Rs.1,00,00,000/-. And accordingly transferred a sum of Rs.50,00,000/- through Cheque/RTGS on 01.09.2017 and further a sum of Rs.50,00,000/- was transferred on 19.09.2017 in the bank account by the Corporate Debtor maintained @ 15% Interest per annum. A copy of Bank Account statement of the Corporate Debtor is annexed herewith as ANNEXURE-A3</p>
<p>DATE(S) OF DISBURSEMENT</p>	<p>E. That the Financial Creditor time & again called upon the advanced loan from the Corporate Debtor and when the Corporate Debtor failed to pay the advanced loan to Financial Creditor.</p> <p>F. The Financial Creditor issued a legal notice dated 09.02.2022 to the Corporate Debtor for payment of Rs.1,13,50,000/- alongwith agreed rate of interest i.e.15% per annum. A copy of Legal Notice dated 09.02.2022 is annexed herewith as ANNEXURE-A4</p> <p>G. Total outstanding of Rs.1,13,50,000/- as on 09.02.2022</p> <p>Rs.50,00,000 dated 01.09.2017 Rs.50,00,000 dated 19.09.2017 In Total Rs.1,00,00,000/-</p>
<p>2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE</p>	<p>Amount claimed to be in default is Rs.1,13,50,000/- accounts as on 09.02.2022</p>
<p>DATE ON WHICH THE DEFAULT OCCURRED</p>	





3. Initially when the petition came up for consideration before this Adjudicating Authority, an order dated 10.08.2023 was passed, dismissing the application as time barred. The order reads thus:-

“RA-114/2023: In view of the averments made in the application and the submissions put forth by the Ld. Counsel for the Applicant, the RA-114/2023 is allowed.

IB-263/ND/2023: It is the case of the Petitioner that the amount of the loan was disbursed on 01.09.2017 and 19.09.2017. In the list of dates filed along with the petition, it has been categorically submitted that the Petitioner had been demanding the loan amount from time to time. If such stand of the Petitioner is relied upon, the demand might have reasonably started at least on expiry of one year i.e., from 19.09.2018. If the limitation is counted with reference to said date, the petition should have been preferred by 19th September 2021. However, to explain the delay, the Ld. Counsel for the Petitioner produced Form-16A submitted by the Respondent herein. We are satisfied that the petition is not filed within the prescribed period of limitation. Besides, when at this stage the Petitioner sought to refer the certain documents such as Form-16A qua the CD as well as confirmation of account, the documents are not found enclosed with the petition. As has been clearly stipulated in Section 7 of IBC 2016, the application found not completed in all respects cannot be considered. As per the stand taken by the Petitioner himself, certain documents which he seeks to rely upon could not be enclosed with the petition. Thus, the petition is incomplete.

We may also be not be oblivious of the fact that on the first date of hearing, the Petitioner was not present and the petition had to be rejected for want of prosecution. Indubitably, as per the statutory provision, the decision regarding admission of a petition filed under Section 7 of IBC, 2016 needs to be taken within 14 days. Maybe in exceptional circumstances, the Adjudicating Authority may extend the period but the attitude and approach of the Petitioner do not appear to be for pursuing the petition, and then while appearing to pursue the same stating that the application is not complete and certain fresh documents, should be taken on record across the bar cannot be justification to defer the hearing from time to time. It is also quite weird and bizarre that, after the restoration of the petition, the petitioner sought a pass over to espouse the petition, but when he appeared in the afternoon, he again sought to refer to papers that were not enclosed with the petition.



In the wake, the petition IB-263/ND/2023 is rejected.”

4. The Applicant assailed the aforementioned order before Hon’ble NCLAT by filing Company Appeal (AT) (Ins) No. 1428/2023. In terms of the order dated 21.12.2023, passed in the appeal, Hon’ble NCLAT could reverse the aforementioned order dated 10.08.2023 passed by this Tribunal and directed revival of CP-(IB)-263(ND)2023. The relevant excerpt of the order viz. para 5 to 7 reads thus:-

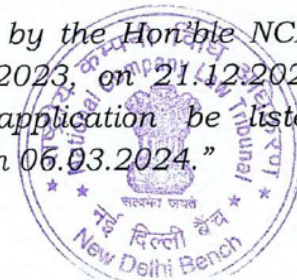
“5. Learned Counsel for the appellant has relied on the Judgment of Hon’ble Supreme Court in Dena Bank vs. C. Shivakumar Reddy (2021) 10 SCC. 330 which has clearly held that in Section 7 the applicant is fully entitled to amend the application or filed additional documents. It is true that those documents which have been now filed were not filed before the Adjudicating Authority but we in the appeal also, there is no prohibition in accepting those documents. We take these documents on the record.

6. In facts of the present case we are of the view that ends of justice be served in remitting the matter before the Adjudicating Authority for passing a fresh order, after considering the materials which are brought by both the parties on record.

7. In result, the order dated 10.08.2023 is set aside, Section 7 application being CP (IB) No. 263/ND/2023 is revived before the Adjudicating Authority. Appellant is allowed two weeks’ time to file an additional affidavit brining relevant materials on record for consideration of Adjudicating Authority. Respondent shall have also right two weeks’ time to file Reply to the said additional affidavit and thereafter Adjudicating Authority may hear the parties and decide in accordance with law.”

5. In the backdrop, the Applicant referred the RA-06/2024, which could be allowed in terms of the order dated 02.02.2024, which reads thus:-

“RA-06/2024: *In view of the order passed by the Hon’ble NCLAT in Company Appeal (AT) (Ins.) No. 1428 of 2023, on 21.12.2023, IB-263/ND/2023 stands revived. Let the application be listed for consideration and disposal. List the matter on 06.03.2024.”*





6. The corporate debtor filed its reply to the restoration application, also raising the plea on merits. In para 2 of para wise reply to the application, the corporate debtor categorically conceded that it had taken business loan of Rs. 1 crore from the financial creditor in two tranches. The para reads thus:-

*“2. That the contents of Part IV are wrong and denied until specifically admitted. It is admitted that the Corporate Debtor/Respondent has taken a business loan of **Rs. 1,00,00,000/-** in two tranches of **Rs.50,00,000/-** each @15% per annum from the **Financial Creditor/Appellant in September, 2017.**”*

7. The Ld. Counsel for the Financial Creditor could also draw our attention to the balance sheet qua the corporate debtor, placed on record at Page-26 of the petition. It is apparent from the balance sheet for the period ended on 31.03.2018, that the corporate debtor has acknowledged the liability to pay the aforementioned amount of Rs. 1 crore to the financial creditor. The relevant excerpt of the balance sheet reads thus:-

AAR KAY INDUSTRIES
(Prop. Indian Securities Limited)
G T Road, Sirhind Side, Mandi Gobindgarh
COPY OF ACCOUNT

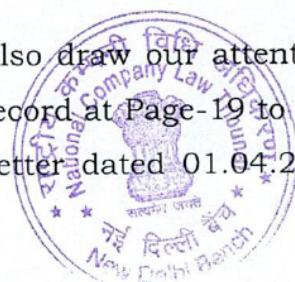
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For: Jatalia Global Ventures Ltd. From 01-04-2017
Upto 31-03-2018
Page 1

Titre: P.A :

Date	Narration	Debit	Credit	Balance	D/C
01-09-2017	To CH NO 34130	5000000.00		5000000.00	Dr
19-09-2017	To CH NO 1904	5000000.00		10000000.00	Dr
31-03-2018	To Interest @15%	834246.00		10834246.00	Dr
31-03-2018	By Ids		83425.00	10750821.00	Dr
	Total	10834246.00	83425.00	10750821.00	Dr

8. The Ld. Counsel for the Applicant could also draw our attention to the confirmation letter dated 01.04.2021 placed on record at Page-19 to the revival application (ibid) filed by it. The confirmation letter dated 01.04.2021 reads thus:-





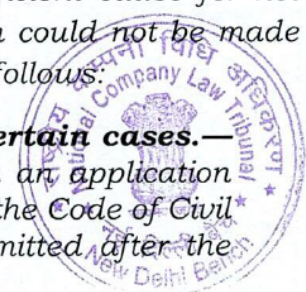
the corporate debtor is willing to repay the amount of debt to the Petitioner in instalments. The Applicant/FC has filed an affidavit dated 06.03.2024 in the Registry vide Diary No. 0710102000542024/2. Along with the affidavit, the financial creditor has enclosed the consent given by Mr. Mohd Nazim Khan RP, who is enrolled as a professional with ICSI Institute of Insolvency Professionals. In the consent given by RP in Form-2, it has been categorically stated that there are no disciplinary proceedings pending against him. The relevant excerpt of the Form/Declaration reads thus:-

“(iv) certify that there are no disciplinary proceedings pending against me with the Board or ICSI Institute of Insolvency Professionals”

12. Besides, as can be seen from Regulation 8 (2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, what RP can refer to as proof/evidence are:- (i) financial contract supported by financial statement as evidence of debt; (ii) a record of evidence that the amount committed by the financial creditor to the CD under a facility has been drawn by the CD; (iii) financial statement showing that the debt has not been paid; (iv) an order of Court or Tribunal that has adjudicated upon non-payment of debt. In the present case, our attention could be drawn to the balance sheet maintained by the corporate debtor acknowledging its liability to pay Rs. 1 crore to the Petitioner. The confirmation letter issued by CD is sufficient proof of its liability. In **Axis Bank Limited vs. Naren Sheth and Anr. (CA-2085/2022)**, Hon’ble Supreme Court ruled that the period of limitation starts from the date of acknowledgement of debt. The relevant excerpt of the Judgment reads thus:-

“10. Section 5 of the Limitation Act provides for an extension for the prescribed period in certain cases where sufficient cause for not preferring the appeal or where the application could not be made within the prescribed time. Section 5 reads as follows:

“5. Extension of prescribed period in certain cases.—
Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the





prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

11. Section 18 of the Limitation Act provides that where acknowledgment in writing of the liability is made by a party against whom any right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgment is so signed. The said Section is reproduced hereunder:

“18. Effect of acknowledgment in writing.—

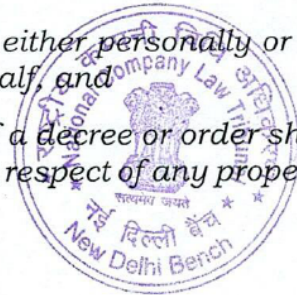
- (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person 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,—

(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,

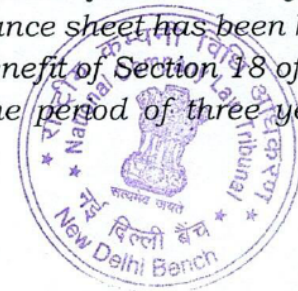
(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf, and

(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.”





12. *The question in the present case is primarily whether Respondent No.2 would be entitled to the benefit of Section 18 of the Limitation Act and whether Section 5 of the Limitation Act thereof would also be applicable. Although Section 14 of the Limitation Act has also been referred to, but in our opinion, Section 14 will have no application inasmuch as the proceedings under the SARFAESI Act before the DRT cannot be said to be before a Court or Tribunal having no jurisdiction. Respondent No.2, being a Secured Creditor, would definitely have a right to invoke the power under the SARFAESI Act and the said proceedings cannot be said to be without jurisdiction. Therefore, no benefit under Section 14 would be admissible to Respondent No.2 in the present case.*
13. *Coming back to the benefit available under Section 18 of the Limitation Act, the following sequence of events and the law thereon would be relevant. The State Bank of India declared the Corporate Debtor as an NPA on 28.06.2013. Therefore, the limitation period would be three years from the last date of the financial year previous to the declaration of NPA, which would be 31.03.2013, and would run up to 31.03.2016. If there were no further intervening circumstances or developments relating to acknowledgment, the contention raised by the appellant that the petition under Section 7 of IBC having been filed much beyond 31.03.2016, in 2020 to be specific on 22.01.2020, the petition would be clearly barred by limitation.*
14. *However, there are four major acknowledgments made by the Corporate Debtor after the declaration of the NPA and within the expiry of three years from the said date, details of which have already been mentioned in the previous paragraphs. However, briefly the same are being referred to again.*
- a) *The Corporate Debtor, in its balance sheet for the financial year 2014-15, which came to an end on 31.03.2015, had acknowledged the debt in its balance sheet for the said year. This acknowledgment of debt in the balance sheet has been held to be a valid acknowledgment for the benefit of Section 18 of the Limitation Act. From the above date the period of three years would run up to 31 March, 2018.*





- b) *The first OTS proposal is dated 16 March, 2017, within a period of three years of the date of acknowledgment of debt in the balance sheet.*
- c) *The second OTS proposal is dated 1st January, 2018, again within a period of three years from the date of the first OTS proposal.*
- d) *The third OTS proposal is dated 16th May, 2019, once again within a period of three years from the date of the second OTS proposal.*
15. *The petition under Section 7 was filed on 22nd January, 2020 within three years from the date of the first, second and the third OTS proposals.*
16. *The question for consideration would be whether the debt acknowledged in the balance sheet of the financial year would end on 31st March, 2015 and whether the three OTS proposals would give a fresh life of limitation of three years from each of the respective dates. Section 18 of the Limitation Act is the provision on which strong reliance has been placed upon by the Respondent No.2 for seeking such extension of limitation.*
17. *A plain reading of Section 18(1) of the Limitation Act would reflect that where any acknowledgment of a liability has been made in writing by the party against whom any right is claimed, a fresh period of limitation would be computed from the time when the acknowledgment was so signed, subject to such acknowledgment being made before expiry of the prescribed period for filing a suit or application in that respect.*
18. *Section 18(2) of the Limitation Act may not be applicable in the present case inasmuch as all the acknowledgements in the present case have a date and, therefore, there would be no question of leading any oral evidence to establish the date of the acknowledgement.*
19. *Learned Senior counsel for the appellant has strongly contended that all the acknowledgments were firstly, not filed along with the petition under Section 7 of the IBC but were subsequently filed one at the stage of appeal before the NCLAT and two of such acknowledgements have been filed before this Court, as such the same should not be entertained. This argument of the appellant may*



not have much force to disentitle a financial creditor from claiming its right to recover the dues and initiate proceedings under the IBC.”

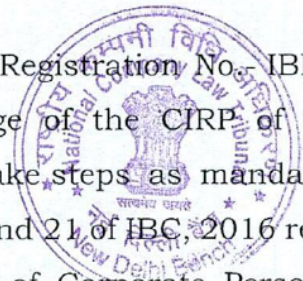
13. In view of the aforementioned, **we have no option but to admit the present petition. Ordered accordingly.**

14. **In the wake, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD and** as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

- (a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.

15. As proposed by the Petitioner, Mr. Tanveer Ilahi, having Registration No. IBBI/IPA-001/1P-P-02553/2021-22/13874, Email: ip.tanveerilahi@gmail.com is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against him and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order.

16. It is further ordered that Mr. Tanveer Ilahi, IRP (Registration No. IBBI/IPA-001/1P-P-02553/2021-22/13874) shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.





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17. The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

18. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

19. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)



Shukla
02/04/2024

Prashant Kumar
02.04.2024
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003