

IN THE NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH

COURT NO. 1

ITEM No.301

TP 82 of 2019 [CP(IB) 500 of 2018]

Proceedings under Section 7 IBC

IN THE MATTER OF:

State Bank of India

.....Applicant

V/s

Krishidhan Seeds Pvt Ltd

.....Respondent

Order delivered on 25/08/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)

Kaushalendra Kumar Singh Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-SD-

**MADAN B. GOSAVI
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

TP 82 of 2019 [CP(IB) 500 of 2018]

[An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016]

In the matter between:

State Bank of India
Registered Office at:
Central Office at State Bank
Bhawan,
Madame Cama Road,
Nariman Point,
Mumbai

.....Financial Creditor

Versus

M/s. Krishidhan Seeds Pvt Ltd
Registered Office at:
302, Royal House,
11/3, Ushaganj,
Indore (M.P).

.....Corporate Debtor

Order Reserved on : 05.08.2022

Order Pronounced on: 25.08.2022

**Coram: MADAN B. GOSAVI-MEMBER (J)
KAUSHALENDRA KUMAR SINGH-MEMBER (T)**

Appearance:

For Financial Creditor: Ld. Sr. Adv. Mr. Niranjana Reddy
a.w. Ld. Adv. Ms. Fatema Kachwalla

For Corporate Debtor: Ld. Sr. Adv. Mr. Saurabh Soparkar
a.w. Ld. Adv. Mr. Kunal Vaishnav (R-1)

ORDER

[Per: MADAN B. GOSAVI-MEMBER(J)]

1. This application has been filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC, 2016) by the Financial Creditor namely State Bank of India for initiation of the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor namely, M/s. Krishidhan Seeds Pvt. Ltd. on the ground that the Corporate Debtor committed default in paying the financial debt of Rs.1,89,41,55,485/-(Rupees One Eighty-Nine Crore Forty-One Lakh Fifty-Five Thousand Four Hundred and Eighty-Five only).
2. The Following facts are not in dispute.
 - (i) By various sanction letters dated 01.12.2006, the financial creditor granted and disbursed in favour of the corporate debtor, term loan and cash credit facilities. Terms of repayment of the loan had been extended from time to time. The corporate debtor committed default, and on 10.06.2014, its loan account has declared to be a Non-Performing Asset ("NPA") (Para 2, Part IV of the financial creditor's application filed under Rule 4 of IBBI (Application to Adjudicating Authority) Rules 2016).
 - (ii) The financial creditor filed this application to start the Corporate Insolvency Resolution Process of the corporate debtor on 19.09.2018.
 - (iii) Initially by order dated 16.09.2020, this Adjudicating Authority had rejected above application holding that the claim of the financial creditor is time barred.

- (iv) That order was challenged before Hon'ble NCLAT, in Company Appeal (AT) (Insolvency) No. 972 of 2020. Hon'ble NCLAT by order dated 17.11.2020 had dismissed the Appeal.
- (v) Thereafter, the Bank has filed second Appeal in Hon'ble Supreme Court. Hon'ble Supreme Court by order dated 18.04.2022 set aside both the orders directing this Adjudicating Authority to adjudicate afresh, the dispute, giving both parties the opportunity of being heard.

3. We called upon both parties to make submissions. Accordingly, Learned Senior Counsel Mr. S Niranjan Reddy made submissions on behalf of the financial creditor whereas, Learned Senior Counsel Mr. Saurabh Soparkar appearing for the corporate debtor defended the claim.

4. At the outset, it is to be noted that this Adjudicating Authority had rejected this application at earlier point of time, in view of the order of Hon'ble NCLAT in case of **V Padamdumar Vs. Stressed Assets Stabilisation Fund and Another (2020 SCC Online NCLAT 417)** whereby and where under, the Hon'ble NCLAT had held that:

“As filing of balance sheet/annual returns is mandatory under section 19(4) of the Co. Act. 2013, failing which attracts penal action under section 92(5) and (6), the balance sheet of the corporate debtor cannot be treated as acknowledgment under section 18 of Limitation Act, 1963. While rejecting the application it was noted that the date of NPA of the corporate debtor’s account was 10.06.2014 whereas, the corporate debtor gave the first OTS proposal to

the Bank on 18.09.2017; and as such it was beyond the period of three years and in view thereof it was held that the said OTS proposal will not extend the period of Limitation under section 18.”

5. On above back drop, we now heard learned Sr. counsels for both sides.

6. As on today, the law relating to whether admission of the debt in the corporate debtor's balance sheet extends the period of limitation under section 18 of the Limitation Act is not a question in res Integra. The Hon'ble Apex Court in case of **Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal and Another reported in MANU/SC/0279/2021** has held that:

33. “It is, therefore, clear that the majority decision of the full Bench in V Padamdumar (Supra) is contrary to aforesaid catena of judgments. The minority judgment of Justice (Ret.) A.I.S Cheema, Member (Judicial), after considering most of these judgments, has reached the correct conclusion. We, therefore, set aside the majority judgment of the full Bench of the NCLAT dated 12.03.2020.”

7. Hon'ble Supreme Court, thereafter, in the case of **Sesh Nath Singh Vs. Baidyabati Sheoraphuli Coop. Bank Ltd. (2021, 7 SCC 313)** and also in the case of **Laxmi Pat Surana Vs. Union Bank of India (2021, 8 SCC 481)** clearly held that:

“A perusal of the aforesaid sections would show that there is no doubt that the filing of a balance sheet in accordance with the provisions of the Companies Act is mandatory, any transgression of the same being punishable by law. However, what is of importance is that notes that are annexed to or forming part of such financial statements are expressly recognised by section 134(7). Equally, the auditor's report may also enter caveats with regard to acknowledgments made in

the books of accounts including the balance sheet. A perusal of the aforesaid would show that the statement of law contained in Bengal Silk Mills, that there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an acknowledgement of liability has, in fact, been made, thereby extending limitation under section 18 of the Limitation Act.”

8. So, the Law as it stands today, in respect of acknowledgment of the debt in balance sheet of the corporate debtor is that if there is a clear acknowledgement of the debt in the balance sheet of the corporate debtor, it would extend the period of limitation under section 18 provided that there is no caveat thereto.

9. In view of the above, we examined the balance sheet of the corporate debtor relied on by the financial creditor in this case.

10. It is to be noted that the balance sheets of the corporate debtor, in this case, are not approved and accepted in AGM at any point of time. Learned Senior Counsel for the corporate debtor also brought to our notice that there is no clear acknowledgment of the debt with specific mention of the name of the Bank and debt amount. Moreover, the balance sheets of the corporate debtor do not show that they were approved in AGM of the corporate debtor as AGM could not be held due to dispute in between the Directors of the corporate debtor was pending and proceeding under Sections 397 and 398 of the Co. Act 1956 for operation and mismanagement were filed. Learned Senior Counsel Mr. Saurabh Soparkar submitted that

those balance sheet cannot be taken into account for the admission of the debt. For this, he relied on ruling of Hon'ble **M.P. High Court reported in 1949 SCC Online MP 123** wherein, it has been held that:

“In the circumstances the impugned balance-sheets were rightly rejected. They do not prove themselves, and, so far as the record goes, it would appear that they were validly rejected by the shareholders on 17-11-1941 (Ex. P-91) and have never been validly passed since. For these, reasons we hold that these balance sheets do not operate as acknowledgments within the meaning of Section 19 of the Limitation Act. The other balance sheets of 1941/1942 and 1942/1943 have not been filed. We hold, therefore, that the claim is barred by limitation.”

11. As mentioned earlier, in this case the balance sheets of the corporate debtor were not approved and accepted in AGM at any point of time. There appears no clear acknowledgment of the debt with specific mention of the name of creditors and debt amount. Section 129(2) of the Co. Act, 2013 mandates that the financial statement of the Company has to be laid before the AGM. In this case the balance sheets of the corporate debtor are not approved in the AGM. For these reasons, it is difficult for us to rely on the balance sheets of the corporate debtor to hold that the corporate debtor acknowledged the debt herein for purpose of extension of period of limitation under section 18 of Limitation Act, 1963.

12. However, we see some more evidence in this proceeding whereby the corporate debtor has acknowledged the debt within three years from the date of default. Learned Senior Counsel for the financial creditor brought to our notice the balance confirmation letter dated 31.03.2015 (Page No. 386 of rejoinder of the financial creditor) whereby, the corporate debtor acknowledged the debt.

Learned Senior Counsel for the corporate debtor submitted that the document of which there is no reference in the application under Section 7 of IBC cannot be looked into. According to him, financial creditor produced on record some documents which are not referred in the pleading of the application, and therefore, they cannot be looked into. To this proposition, he relied on Hon'ble Supreme Court's ruling in the case of **Rajendra Narottamdas Sheth and Another Vs. Chandra Prakash Jain and Another (2021 SCC OnLine SC 843)**. Learned Senior Counsel for the financial creditor also relied on same ruling and submitted that the financial creditor can produce more material pending the hearing of an application under Section 7 of the IBC and there is no bar thereto.

13. Before we consider the above controversy, we noted that the balance confirmation letter dated 31.03.2015 (Page No. 386 of rejoinder of the financial creditor) has been produced by the financial creditor along with its rejoinder. It is forming part of the original pleading as per liberty given under Rule 55 of NCLT Rules, 2016. Be that as it may the Hon'ble Supreme Court in the case of **Rajendra Narottamdas Sheth and Another Vs. Chandra Prakash Jain and Another reported in 2021 SCC OnLine SC 843**) as held:

21. "In Dena Bank Vs. C. Shivkumar Reddy, this Court had occasion to deal with the pleadings and the documents required to be filed at the time of making of an application under section 7 of the Code. It was observed therein that the financial creditor can only fill in the particulars as mentioned in Form 1 and there is no scope for elaborate pleadings. This Court was of the view that an application under section 7 cannot be compared with a plaint in a suit. It was further held in the said judgment that there is no bar for filing of documents as required under section 7, until a final order either admitting or dismissing the application has been passed. While concluding, this Court had opined that in case of inordinate delay, the adjudicating authority,

at its discretion, may allow or decline the request of the applicant to file additional pleadings and/or documents before passing the final order.”

14. In view of above ruling, we hold that the financial creditor was within its right to file some additional but relevant documents till the order of admission/rejection of CIRP of the corporate debtor is being passed by this Adjudicating Authority.

15. Coming back to the factual aspect of this case, the date of default is stated to be 10.06.2014. Within three years there from, the corporate debtor signed letter of acknowledgment of the debt on 31.03.2015. Thereafter, on 18.09.2017, the corporate debtor gave OTS proposal to the Bank again thereby admitting the debt and within three years there from the financial creditor filed this application under section 7 of IBC on 23.10.2018. Since this application is filed within three years from the extended period as per section 18 of the Limitation Act, 1963, the application is well within limitation period.

16. There is no dispute to the fact that the financial debt more than rupees 1 Cr. is due and payable by the corporate debtor to the financial creditor and the corporate debtor has committed default in paying the same. We hold that this application under section 7 of IBC is filed within the period of limitation.

17. For the reasons mentioned above, we have to admit the Corporate Debtor in CIRP. However, Ld. Sr. Counsel, Mr. Soparkar, for the Corporate Debtor brought to our notice very recent Hon'ble

Supreme Court's ruling in case of ***Vidarbha Industries Power Limited vs. Axis Bank Limited (Civil Appeal No.4633 of 2021)***.

He submitted that the Hon'ble Supreme Court held that to admit the Corporate Debtor in CIRP on an application under Section 7 IBC by the Financial Creditor is a matter of discretion. If the Corporate Debtor makes out grounds to show that it is solvent company and in position to repay the debt, then generally, the Adjudicating Authority may reject the application or keep the proceedings in abeyance for sometimes. Ld. Sr. Counsel pointed out some documents to show that the corporate debtor has paid the debts of some of its creditors, one of them is M/s. Mahyco Monsanto Biotech (India) Pvt. Ltd. The OTS of the corporate debtor is accepted by that creditor for a sum of Rs.35 crores. As a part payment, the corporate debtor deposited Rs.6 crores in its account. That company has renewed the corporate debtor's licence. There are chances for the corporate debtor to get business at the international level. The directors of the corporate debtor have also paid the debts of Nishant Multi-State Co-Operative Credit Society Limited which they had taken in an individual capacity to infuse funds to the corporate debtor. As far as the settlement with the Financial Creditor herein, i.e., State Bank of India, is concerned, it is submitted that OTS is still pending at the level of SBI. He pointed out that the corporate debtor has the capacity of producing and packaging three lacs quintals seeds every year. It has 25,000 dealers across sixteen States and about two million consumers being maintained for the last thirty years successfully. It has 350 employees and 1000 labours working with it. According to Ld. Sr. Counsel, the corporate debtor did not pay the debt because of an internal dispute between two groups of directors. That dispute is now resolved and since then the corporate debtor is growing fast. In this background, the Ld. Sr. Counsel requested that the corporate debtor

being a solvent company and dealing in the agriculture sector, may not be admitted to CIRP at once.

18. As against this, Ld. Sr. Counsel Mr. Niranjan Reddy for the Financial Creditor submitted that in fact the CIRP is being used for the welfare and benefit of the corporate debtor. The present management of the corporate debtor has failed to keep its status as a going concern. They have to be replaced by appointing expert Resolution Professionals, the order of admission of the corporate debtor in CIRP cannot be said to be an adversial order. He further submitted that the corporate debtor has not committed default only in regard to the debt of SBI but there are other bankers whose debts are not been paid. Only because the corporate debtor deposited Rs.6 crores in OTS of one of the creditors is not sufficient to hold that the company started reviving back. SBI's claim itself is more than Rs.189 crores how the corporate debtor would pay back. Its OTS proposal is rejected by the bank. According to the Ld.Sr. Counsel, it is a fit case that the corporate debtor has to be admitted in CIRP. He also relied on the same ruling of the Hon'ble Supreme Court in case of **Vidarbha Industries Power Limited vs. Axis Bank Limited**.

19. We have already noted that in view of the proved facts, the corporate debtor has to be admitted in CIRP. However, we have to examine other facts to decide whether this case falls in exception as indicated by the Hon'ble Supreme Court. The Hon'ble Supreme Court in case of Vidarbha Industries Power Limited (cited above) held that:

87. *Ordinarily, the Adjudicating Authority (NCLT) would have to exercise its discretion to admit an application under Section 7*

of the IBC and initiate CIRP on satisfaction of the existence of a financial debt and default on the part of the Corporate Debtor in payment of the debt, unless there are good reasons not to admit the petition.

88. *The Adjudicating Authority (NCLT) has to consider the grounds made out by the Corporate Debtor against admission, on its own merits. For example when admission is opposed on the ground of existence of an award or a decree in favour of the Corporate Debtor, and the Awarded / decretal amount exceeds the amount of the debt, the Adjudicating Authority would have to exercise its discretion under Section 7(5)(a) of the IBC to keep the admission of the application of the Financial Creditor in abeyance, unless there is good reason not to do so. The Adjudicating Authority may, for example, admit the application of the Financial Creditor, notwithstanding any award or decree, if the Award/Decretal amount is incapable of realisation. The example is only illustrative.*

20. In view of the above, we considered the submissions of the Ld.Sr. Counsel for the corporate debtor. The additional written submissions filed by the corporate debtor are supported by some documents. They show that very recently the corporate debtor has paid a debt of Rs.2 crore to ICICI Bank (the last payment of Rs.21,50,000/- made on 30.06.2022). It has deposited a sum of Rs.6 crore in the loan account of M/s. Mahyco Monsanto Biotech (India) Pvt. Ltd. towards the part payment of the settlement. There are thousands of employees and workmen working with the corporate debtor. The corporate debtor has generated Revenue of Rs.175 crores by the sale of krishidhan seeds in the last year. No doubt, the debt payable to the SBI itself is huge. But the facts which are placed before us by the corporate debtor make us think that it is not proper for us to admit the corporate debtor in CIRP at once. We do not wish to reject this application also. In our considered opinion, the management of the corporate debtor is trying hard to take the company out of the debt trap. We must give them some

time. We believe their intention to settle the dues with other creditors. Hence, instead of admitting the corporate debtor in CIRP or rejecting this application, we think it proper to keep this proceeding in abeyance for six months from today. We make it clear that if the corporate debtor fails to settle the due debts, we will pass further orders. We further direct the Corporate Debtor not to sale the mortgaged assets of the Corporate Debtor to SBI without consent of the State Bank of India.

21. With this, we direct the Registry to put the proceedings of this case on the cause list after six months from today.

-SD-
(KAUSHALENDRA KUMAR SINGH)
MEMBER (TECHNICAL)

-SD-
(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Braj Mohan/Stenographer