

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

CP(IB) 223/ ALD/2018

(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:

STANDARD CHARTERED BANK

Registered Office in India at
Crescenzo 7th Floor, C 38/39,
G Block Bandra Kurla Complex (East)
Mumbai – 400051 Maharashtra, India.

..... Applicant/ Financial Creditor

Versus

JVL AGRO INDUSTRIES LTD.

Village Tilmapur Ghazipur Road, Ashapur
Varanasi, Uttar Pradesh 221007

..... Respondent / Corporate Debtor

Judgement delivered on 25.07.2018

**CORAM : SH. V.P SINGH, MEMBER (J)
MS. SAROJ RAJWARE, MEMBER (T)**

For the Applicant/ Financial Creditor: Shri Ashish Mukhi, Advocate

Shri Siddharth Singhal, Advocate

For the Corporate Debtor:

Shri R.P Agarwal, Advocate

JUDGEMENT

(Per se: Shri V P Singh, Member Judicial)

1. The applicant Standard Chartered Bank has filed the present petition U/s 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the

Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process in respect of the respondent corporate debtor company JVL Agro Industries Ltd.

2. Mr Arpit Singhal, employed as Account Manager of Standard Chartered Bank has been given the power and authority to sign and file the Section 7 Application vide a power of attorney dated 29th June 2017.
3. Total amount claimed to be in default is **INR 63,77,99,916/- (Indian National Rupees Sixty Three Crores Seventy Seven Lakhs, Ninety Nine Thousand and Nine Hundred and Sixteen** (“Outstanding Amount”) is the total outstanding due as on **31st May 2018**, along with further interest, under the Facility Letter. The account of the Corporate Debtor was classified as non-performing asset in compliance with RBI Guidelines on 8th April 2016. The default is continuing in nature.
4. The Brief facts of the present case are stated as under:
 - 4.1 The Corporate Debtor started its banking relationship with the Financial Creditor in the year 2007-2008. The Financial Creditor had made available to the Corporate Debtor various credit facilities (which were renewed, revised and amended from time to time under various facility letters) up to a total limit of INR 97,50,00,000/- (Indian Rupees Ninety-Seven Crores and Fifty Lakhs Only) under a facility letter dated 24th February 2015 ,which was accepted by the Corporate Debtor on 25th February 2015 . The credit facilities were further amended vide further facility letter Dt 4th May 2016, which was accepted by the Corporate Debtor on 24th May 2016. The Facility Letters were accompanied by Master Credit Terms, which contains standard terms and conditions for facilities being availed from the Financial Creditor.
 - 4.2 Under the Facility Letter, the Bank had sanctioned secured credit facilities of INR 70,00,00,000/- (Indian National Rupees Seventy Crores Only) for sums up to limits and sub-limits as provided under the Facility Letter to the Corporate Debtor. The Facility Letter amended and restated

all previous facility letters and the outstanding as on 31st March 2016 was recorded.

4.3 The credit facilities availed under the Facility Letters (mentioned above) was secured by the following securities (evidenced under the security documents mentioned hereunder):

- (i) A first, *pari passu*, charge on all current assets belonging to the Corporate Debtor including stocks lying at Haldia unit of the Corporate Debtor located at Mouza Debhog, J. L. No. 149, P.S Bhabanipur, Haldia, Midnapore, West Bengal (“**Haldia Unit**”) and second *pari passu* charge on all the moveable fixed assets of the Corporate Debtor including without limitation assets located at Haldia Unit, in favor of the Financial Creditor, under the Unattested Memorandum of Hypothecation dated 26th June 2014 (amended and supplemented from time to time) . A copy of the said Unattested Memorandum of Hypothecation along with all amendments to the same, the valuation report dated 12th December 2016 and stock statement for October 2017 and certificates of Registration of Charge dated 3rd March 2015 have been filed with the Section 7 Application;
- (ii) A second charge shared on a *pari passu* basis with certain other lenders of the Corporate Debtor by way of an equitable mortgage of land & factory located at Mouza Debhog, J L No. 149, P.S Bhabanipur, Haldia, Medinipur. The various *pari passu* letters from other lenders of the Corporate Debtor and minutes of the meeting of the lenders and the Financial Creditor reflect the charge being shared with it. The copy of the *pari passu* letters and the minutes of the meeting dated 18th March 2015 reflecting the charge being shared with the Financial Creditor has been filed;

- (iii) A deed of charge and irrevocable lien and set off dated 26th June 2016 over fixed deposits/cash deposits in favor of the Financial; and
- (iv) Demand Promissory Note and Letter of Continuity for Demand Promissory Note dated 25th February 2015.

4.4 The due repayment to the Financial Creditor of the amounts was also guaranteed by deeds of personal guarantee issued by Mr Satya Narayan Jhunjhunwala and Mr Adarsh Jhunjhunwala, both dated 30th June 2014 (as amended and supplemented from time to time).

4.5 The Corporate Debtor was time and again reminded of its payment obligations by the Financial Creditor vide e-mail dated 5th May 2017, 13th July 2017 and 5th January 2018.

4.6 The Corporate Debtor continued to be in default towards its payment obligations under the various facility letters owing to which the account of the Corporate Debtor maintained with the Applicant was declared as non-performing asset on 8th April 2016 by the relevant guidelines of the Reserve Bank of India.

5. In response to the above Company Petition, the Corporate Debtor (CD) has filed a Company Application, being CA- (IB) 164/2018, raising certain preliminary objections and sought Leave of the court to serve a copy of the application to the Reserve Bank of India. Counsel for the Corporate Debtor stated that instant Petition filed by Standard Chartered Bank under section 7 of IBC is premature and violative of statutory and binding provisions of Circular dated 12.02.2018 and stated as under:

- I. Circular of RBI dated 12.2.2018 applies to large accounts, i.e. accounts having aggregate exposure of over Rs. 1 billion.
- II. The large accounts have been placed under two categories – (a) accounts having exposure of above Rs. 20 billion and (b) accounts having exposure of less than Rs. 20 billion but above Rs. 1 billion [Clauses 8 and 12];

Account of JVL Agro Industries Ltd falls in second category since its exposure is less than Rs. 20 billion.

- III. In respect of first category of borrowers, it has been provided that banks shall implement a resolution plan within 180 days from the “reference date”. Reference date in respect of defaults committed before 1.3.2018 is “1.3.2018” and for defaults committed after that, the reference date is the date of default. The word “default” has the same meaning as given in IBC as mentioned in Explanation to newly inserted section 35AA of Banking Regulation Act. If resolution plan is not so implemented, then the banks shall initiate insolvency proceedings under IBC within 15 days after that.
- IV. However, by footnote no. 8 appended to Clause 9 of the circular, RBI has given liberty to banks to file insolvency petitions even before the expiry of above timelines or even without attempting a resolution plan outside IBC. Since the account of JVL Agro Industries Ltd does not fall in first category, the above directions including the footnote 8 are not applicable.
- V. The cases of second category of stressed accounts are dealt with in Clause 12. This Clause reads as under.
- i. *“12. For other accounts with aggregate exposure of the lenders below Rs. 20 billion and, at or below Rs. 1 billion, the Reserve Bank intends to announce, over a two-year period, reference dates for implementing the RP* to ensure calibrated, time-bound resolution of all such accounts in default.”*
 - ii. *The RBI has yet to announce “reference dates” under this Clause.*
 - iii. **RP means “resolution plan”.*
- VI. From the provisions contained in the above Circular read with newly inserted sections 35AA and 35AB, it is clear that in respect of stressed account of JVL Agro Industries Limited, the Applicant Bank has to first finalise and implement a resolution plan within the specified timelines to be counted from the reference date to be notified by RBI. It is only in the event of non-implementation of resolution plan within the specified timeline, that the bank will have the authority to file petition under section 7 of IBC.
- VII. Learned Counsel for Corporate Debtor relied upon the Judgement of Hon’ble apex court in the matter of **Sardar Associates and others V. Punjab, and Sind Bank reported in AIR 2010 SC 218** wherein it was held that the RBI Guidelines were binding on banks and can be enforced by the borrowers. Further, he prayed for RBI should be made a proper party and relied upon the Judgement of Hon’ble Apex Court **Canara Bank V. PRN Upadhyaya reported in AIR 1998 SC 3000** wherein Apex Court was

pleased to order impleadment of RBI as the question of interpretation of circular issued by RBI was involved.

6. In Reply to the Application filed by Corporate Debtor, counsel for Financial Creditor raised following arguments:

- I. It is submitted that the Press Release or the RBI Circular does not in any manner restrict any proceeding being filed by any financial creditor under the IB Code. It is submitted that the RBI Circular does not provide for any condition or restriction which may be read to mean that banks are required to finalise a resolution plan under the RBI Circular before initiating any proceeding under the IB Code. Such a reading of the circular is not only at odds with the intention with which this circular was issued but also leads to an inconsistency. It is submitted that the RBI Circular clearly states that *“given the enactment of the Insolvency and Bankruptcy Code, 2016, it has been decided to substitute the existing guidelines with a harmonised and simplified generic framework for resolution of stressed assets.”* The said extract of the RBI Circular makes it clear that the said circular has been passed to work in harmony with the IB Code and not make the IB Code subject to the process prescribed therein.
- II. It is further submitted that for borrowers with aggregate exposure of less than INR 20 Billion, no reference date has been provided yet. However the same does not mean that banks cannot initiate IB Code proceeding against the said borrowers. Once the reference date is provided for such accounts, proceeding under the IB Code if not already initiated would have to be initiated in a stipulated time frame.
- III. Section 238 of the IB Code provides for overriding effect of the IB Code over all other laws (including the RBI circulars) and relied upon Innoventive Industries Ltd Judgment passed by Hon’ble Apex Court and the Gujarat High Court Judgment in Essar Steel India Limited & Ors. v. Reserve Bank of India & Ors., [2017]143SCL580(Guj),

7. Having heard both the parties main issue for our consideration is

Whether as per Circular of RBI dated 12.2.2018 read with newly inserted sections 35AA and 35AB of Banking Regulation Act, 1949, the Applicant Bank before initiating insolvency proceedings, has to first finalise and implement a resolution plan within the specified timelines to be counted from the reference date to be notified by RBI?

Present proceedings are instituted under the Insolvency and Bankruptcy Code, 2016 and time is the essence of the Code, timelines are provided under the code for various actions in terms of days and same was held by Hon'ble Apex Court in its ***Judgment Mobilox Innovations Private Limited vs Kirusa Software Private Limited, CIVIL APPEAL NO. 9405 OF 2017***, which is reproduced herein under:

“The strict adherence of these timelines is of essence to both the triggering process and the insolvency resolution process. As we have seen, one of the principal reasons why the Code was enacted was because liquidation proceedings went on interminably, thereby damaging the interests of all stakeholders, except a recalcitrant management which would continue to hold on to the company without paying its debts. Both the Tribunal and the Appellate Tribunal will do well to keep in mind this principal objective sought to be achieved by the Code and will strictly adhere to the time frame within which they are to decide matters under the Code.”

As per objective of the code we are not expected to implead every regulatory authority for the interpretation of their circular. If we do so, the objective of the Code will itself get frustrated because observation of time line is essential in I B Code.

Impugned Circular is **addressed to banks**, it is in the nature of **“Guidelines”** and does not in any manner restrict any proceeding being filed by any financial creditor under the IB Code. Further section 238 of the IB Code provides for overriding effect of the IB Code over all other laws (including the RBI circulars).

Section 238 of the I& B Code will have overriding effect notwithstanding anything inconsistent therewith contained in any other law including the RBI circulars. *According to Counsel of Corporate Debtor impugned RBI Circular and sections 35AA and 35AB of Banking Regulation Act, 1949, restrict the Bank accounts having exposure of less than Rs. 20 billion but above Rs. 1 billion to*

file proceeding under the IB Code before a resolution plan outside the IB Code is finalized. If we go by the interpretation of Learned Counsel of Corporate Debtor, it will defeat the very purpose of the Insolvency and Bankruptcy Code. In IBC, time is essence of the code and resolution of stressed assets is to be done in time bound manner. RBI Circular is to be construed in such a manner so that it do not create inconsistency between RBI Circular and I& B Code moreover in case of any inconsistency IBC shall prevail. Further RBI Circular clearly states that *“in view of the enactment of the Insolvency and Bankruptcy Code, 2016, it has been decided to substitute the existing guidelines with a harmonized and simplified generic framework for resolution of stressed assets.”*

As per IBC, before admission, we are required to look into completeness of the application in terms of Section 7 and rules made thereunder and minimum default of one lakh rupees has occurred. Same has been held by the Supreme Court in the case of **Innoventive Industries Ltd. v. ICICI Bank & Ors.**,¹ It is relevant to state that the Hon'ble Supreme Court in the Innoventive Industries Judgment, in paragraph 30, state as follows:

“On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is due i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future dated. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

Thus in the light of above-mentioned discussion, contention for counsel for Corporate Debtor is answered in negative.

A perusal of the application filed by Financial creditor is in conformity with the provision of Section 7 of the Code and Rules applicable. Record of default for the Corporate Debtor, as on 11th July 2018, as available on the Credit Repository of Information on Large Credits (CRILC) (as set up by the Reserve

¹ AIR 2017 SC 4084

Bank of India) has been filed.; the letters and e-mail from the Corporate Debtor to the Financial Creditor admitting their debt and default constitute the other evidences of debt and default filed along with the Section 7 Application. Letter dated 8th January 2018 which is a letter of acknowledgement of debt and securities issued by the Corporate Debtor to the Financial Creditor and e-mail dated 10th January 2018 by the Corporate Debtor to the Financial Creditor (in reply to the e-mail of the Financial Creditor dated 5th January 2018), constitutes the admission of debt and default by the Corporate Debtor; The statement of bank accounts of the Corporate Debtor maintained with the Financial Creditor along with the certificate under Section 2 (A) of the Bankers Books of Evidence Act, 1891 have also been filed. Hence, default has occurred, which meets the requirement of Section 3(11) & (12) of I & B Code. Financial Creditor also filed the Written Communication given by the proposed Interim Insolvency Resolution in Form No. II and there is no disciplinary proceeding pending against the proposed IRP.

Thus, a total amount of default is stated as **INR 63,77,99,916/- (Indian National Rupees Sixty Three Crores Seventy Seven Lakhs, Ninety Nine Thousand and Nine Hundred and Sixteen)** which is more than Rs. 1,00,000/- (Rupees One Lac only). Hence, present application filed by the Financial Creditor for initiation of Corporate Insolvency Resolution Process as per the I & B Code, 2016 which is found complete therefore deserves admission.

ORDER

Present petition filed under Section 7 of the I & B Code and rules made thereunder is hereby admitted, with consequential directions given as under:

- I. Mr. Avishek Gupta, Email. ho@optimumresolution.net , Registration No. IBBI/IPA-003/IP-N000135/2017-2018/11499, Address: CK, 104, Sector 2, Salt Lake City, Kolkata, 700091 is appointed as Interim Resolution Professional to carry the functions as mentioned under the Code.
- II. That the order of moratorium u/s 14 shall have effect from the date of this order till the completion of corporate insolvency resolution process or until

this Bench approves the resolution plan under subsection (1) of Section 31 or passes an order for liquidation of corporate debtor under section 33 as the case may be.

- III.** That the Bench hereby prohibits the institution of suits or continuation of pending suit or proceedings against the corporate debtor including execution of any judgement, 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 the SARFESI Act, 2002; the recovery of any property by an owner or less or where such property is occupied by or in the possession of the corporate debtor.
- IV.** That the supply of essential goods or services to corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium period.
- V.** That the provisions of Section 14 sub – section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- VI.** That the public announcement of corporate insolvency resolution process be made immediately as specified under Section 13 of the code and calling for submissions of claim under Section 15 of the Code.
- VII.** The Interim Resolution Professional shall perform all his functions strictly which are contemplated, *interalia*, by Sections 17 18, 20,21 of the Code. It is further made clear that all the personnel connected with Corporate Debtor, its promoter or any other person associated with Management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and cooperation to the Interim Resolution Professional. IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The IRP shall be under duty to protect and preserve the

value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the I& B Code, 2016.

VIII. The Registry is at this moment directed to communicate this order to the Financial Creditor and the Corporate Debtor and IRP after the completion of necessary formalities.

IX. List the matter on 13.08.2018 for filing progress report by IRP.

MS. SAROJ RAJWARE,
(Member (T))

V P SINGH
MEMBER (J)

Date- 25.07.2018