

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP 3080 (IB)/MB/2018

Under Section 7 of the I&B Code, 2016

In the matter of

Punjab National Bank

...Financial Creditor/ Petitioner

v/s

Unijules Life Sciences Private Limited

...Corporate Debtor

Order dated 08.03.2019

Coram: Hon'ble Mr. V.P. Singh, Member (Judicial)

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

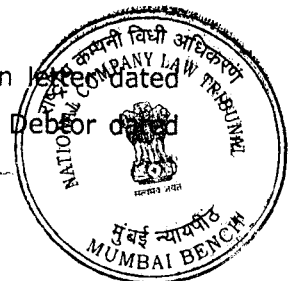
For the Petitioner: Adv. Fraser M. Alexander

For the Respondent: Adv. Sikha Sethia

Per V.P. Singh, Member (Judicial)

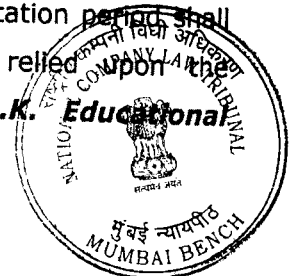
ORDER

1. This is a petition being CP 3080/2018 filed by Punjab National Bank, Financial Creditor or Petitioner, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against Unijules Life Sciences Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**) for default in repayment of ₹93,95,84,706/- including interest against various loan facilities sanctioned by the Petitioner.
2. The facts of the case are that the Petitioner has sanctioned various loan facilities viz. Cash Credit, Documentary Inland Letter of Credit/Foreign Letter of Credit, Inland Letter of Guarantee/Foreign Letter of Guarantee and Capex Loan aggregating to ₹48,00,00,00/- sanctioned vide sanction letter dated 15.03.2013.
3. The Petitioner has annexed a copy of the sanction letter dated 15.03.2013, copy of undertaking by the Corporate Debtor dated



26.03.2013 accepting the terms and conditions in sanction letter and confirming the total commitment of the Corporate Debtor up to ₹48,00,00,000/-, copy of the General Counter Indemnity executed by Corporate Debtor in favour of the Petitioner on 26.03.2013, copy of Four deeds of Hypothecation executed by Corporate Debtor in favour of Petitioner dated 26.03.2013, copy of certificate of registration for modification of charge dated 17.05.2014, copy of Balance and Security Confirmation Letter dated 28.10.2014 to show the existence of unpaid debt.

4. The Petitioner has sent a notice dated 15.10.2015 under section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI**) informing that due to default in payment of Instalment/interest/principal debt, the account of the Corporate Debtor was classified as Non-Performing Asset (**NPA**) on 30.09.2014. Vide the said notice, the Petitioner discontinued and recalled the facilities approved by it to the Corporate Debtor.
5. The Petitioner has annexed audited Standalone Financial Statements of the Corporate Debtor for the period 01.04.2016 to 31.03.2017 wherein the auditor has specifically mentioned that it has audited the financial statements of the Corporate Debtor company for the year ended 31.03.2017 and according to the information and explanations are given to the auditor, the Company has defaulted in repayment of dues to banks including Inter alia, the Petitioner-Bank. The said report of Auditor is dated 01.09.2017.
6. The Petitioner in its general affidavit verifying the application has stated that it had withdrawn an earlier petition filed by it on the same cause of action being CP 503/2018.
7. The Respondent has filed its Affidavit in Reply raising preliminary objections to the maintainability of the Petition. The Respondent has contended that the petition is time-barred as its account has been declared as NPA on 30.09.2014, which is submitted, to be considered as the date of default and the limitation period shall run from this date. The Respondent has relied upon the judgment of Hon'ble Supreme Court in **B.K. Educational**



Services Pvt. Ltd. vs Parag Gupta and Associates in Civil Appeal No. 23988 of 2017 to contend that Article 137 of Limitation Act is applicable to petition filed by Financial Creditor, and the proceeding under section 7 of I&B Code must be initiated within three years from the date of cause of action, i.e. 30.09.2014. The present petition is filed beyond three years from the date of declaration of the account of the Corporate Debtor as NPA is, therefore, time-barred.

8. The Respondent has relied upon section 3 of Limitation Act, 1963 to submit that the remedy under I&B Code is available to the Petitioner before the expiry of prescribed statutory period, i.e. on or before 30.09.2017. As the Petitioner has not exercised its right before 30.09.2017, hence the remedy under the I&B Code is extinguished, and after statutory limitation expired, the Petitioner is not entitled to file the proceeding under I&B Code. Reliance is placed upon the judgment of the Hon'ble Supreme Court in **Punjab National Bank and Ors. vs Surendra Prasad Sinha 1992 AIR 1815** to submit that the remedy of filing section 7 petition is no more available to the petitioner as on the date of filing of this petition.
9. The Respondent in its written submission has stated that even if the debt has been stated as losses in the Company's balance sheets, it does not stipulate acknowledgement of the debt for limitation under section 18 of the Limitation Act. The Respondent has placed reliance upon the judgment of Hon'ble Calcutta High Court in **Jiwanram Sheodutrai vs Commissioner of Income Tax dated 2005 SCC OnLine Cal 731**.
10. It is further contended that the previous petition filed by the Petitioner being CP 503/2018 was withdrawn by the Petitioner as the Bench had observed that the petition is time-barred. The present petition is filed without seeking leave of this Tribunal.
11. The Respondent has also submitted that, before admitting the petition, it may be allowed at least six week time to peruse the proceedings for assignment of debt from the petitioner to an assets reconstruction company that is ready to take over all the debt of the present petitioner.



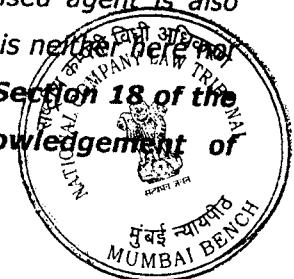
12. The Petitioner has filed its rejoinder stating that the petition is not barred by limitation as it is filed by the admission made by the Corporate Debtor of the debt owed to the Financial Creditor in the audited balance sheet. The Petitioner submits that the judgments cited by the respondent are not applicable in the present case as the claim in the present petition is based upon the admission of liability in the audited balance sheet of the Corporate Debtor which has extended the period of limitation and hence the petition is not barred by limitation.
13. Concerning the withdrawal of the previous petition filed by the Petitioner, it is submitted that the CP 503/2018 was filed on 26.03.2018 which was before the amendment of June 2018 in I&B Code and the petition was withdrawn as it was not in compliance with the amended I&B Code. Hence, no inference shall be drawn from the withdrawal of the previous petition.
14. We have heard arguments for both the sides and perused the records.
15. The Petition is signed by Mr YashwantNimkhedkar, Manager of Punjab National Bank, Assets Recovery Management Branch, Nagpur. He is **authorised** to file the present petition by board resolution dated 29.03.2011 and a general power of attorney executed on the same date. The Petitioner has submitted banker's certificate under Banker's Book Evidence Act, 1891 to certify the statement of account as annexed to the petition.
16. The sanction letter dated 15.03.2013, undertaking by the Corporate Debtor dated 26.03.2013 accepting the terms and conditions in sanction letter and confirming the total commitment of the Corporate Debtor up to ₹48,00,00,000/-, Balance and Security Confirmation Letter dated 28.10.2014 along with other documents evidencing creation of security are annexed to the petition. The Petitioner has also annexed a statement showing disbursement of the loan amount. Further, the Corporate Debtor has not raised any objections upon the existence of these documents. All this sufficiently prove the existence of Debt.
17. The notice under section 13(2) of SARFAESI dated 15.10.2014 mentions the fact of default in the payment of



instalment/interest/principal debt and the classification of account of the Corporate Debtor as NPA on 30.09.2014. The Petitioner discontinued and recalled the facilities approved by it to the Corporate Debtor. The Corporate Debtor has not replied to the said notice neither has it raised any objection to the notice. This proves the default in repayment of Debt.

18. The Petitioner has annexed audited Standalone Financial Statements of the Corporate Debtor for the period 01.04.2016 to 31.03.2017 wherein the auditor has specifically mentioned that it has audited the financial statements of the Corporate Debtor company for the year ended 31.03.2017 and according to the information and explanations are given to the auditor, the Company has defaulted in repayment of dues to banks including inter alia, the Petitioner-Bank. The said report of Auditor is dated 01.09.2017.
19. The argument of the Respondent that even if the debt has been stated as losses in the Company's balance sheets, it does not stipulate acknowledgement of the debt for limitation under section 18 of the Limitation Act is not tenable. In the present case, the audited balance sheet and report of the Independent Auditor explicitly mention that the Corporate Debtor has defaulted in making repayment to the Petitioner. The reliance placed by the respondent upon the judgment of Hon'ble Calcutta High Court in *Jiwanram Sheoduttrai vs Commissioner of Income Tax dated 2005 SCC OnLine Cal 731* do not help the respondents case as the proceedings before the Hon'ble High Court was in respect to the admission of liability and not an acknowledgement of liability as contemplated under section 18 of Limitation Act. This has been clearly stated in the judgment in the relevant para as reproduced below:

"Mr Khaitan refers to a decision in Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, AIR 1962 Cal 115 and submits that a liability reflected in the accounts and shown in the balance-sheet signed by the party or by his authorised agent is also construed to be an admission. However, that is not the case here. We need not go into such a question. Section 18 of the Limitation Act contemplates an acknowledgement of



liability, whereas we are concerned with the admission of liability. That acknowledgement has a different connotation for the purpose of recoverability of the amount and enforcement of the liability against the person acknowledging. In case the ingredients of section 18 of the Limitation Act are not satisfied, then the liability ceases and there is no scope of recoverability of the liability or enforcement of the liability from or against the debtor-assessee. Whereas an admission entitling the assessee to reflect the loss in the accounts is for the purpose of income-tax where the scope of recoverability is immaterial. If ultimately the amount is recovered, the loss is affirmed. If it ceases to be recoverable or the liability ceases, the amount becomes chargeable to tax in the year of cessation of liability in terms of section 41 of the Income-tax Act. Under the Income-tax Act, no limitation operates in relation to the chargeability of such a loss entry till the loss ceases on any subsequent assessment year as a whole or in part even spreading over to different assessment years as the case may be."

20. In the present case, the fact of the existence of debt and default is mentioned in the Auditor's report on the standalone financial statements of the Corporate Debtor for the F.Y. 2016-2017 and the same is based upon the information and explanations given to the Auditor by the Corporate Debtor. This in our considered view would constitute as 'acknowledgement of liability' under section 18 of the Limitation Act, 1963. Since the acknowledgement of liability is within the limitation period, a fresh period of limitation would start from the date of such acknowledgement.
21. The objections of the Respondent solely rely on the debt being barred by limitation. The Respondent has not raised any objection on the existence of debt or default. As per the discussions above, we do not find any merit in the objections raised by the Respondent.
22. The Petitioner has proposed the name of Mr. Amit Chandrashekhar Poddar, a registered insolvency professional, having Registration Number [IBBI/IPA-001/IP-00049/2017-



18/10792] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code, and given his declaration; no disciplinary proceedings are pending against him.

23. The Application under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the petition filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This petition filed under Section 7 of I&B Code, 2016, against the Corporate Debtor for initiating corporate insolvency resolution process is at this moment admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
- 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;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.



- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from 08.03.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench at this moment appoints Mr Amit Chandrashekhar Poddar, a registered insolvency professional is having Registration Number [IBBI/IPA-001/IP-P00449/2017-18/10792] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. Fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
24. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of para 24 of the order by Designated registrar is to be submitted today.**

sd/-


RAVIKUMAR DURAISAMY
Member (Technical)

sd/-

V.P. SINGH
Member (Judicial)



Certified True Copy
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On 01-4-2019


Assistant Registrar
National Company Law Tribunal Mumbai Bench