

In the National Company Law Tribunal
Mumbai Bench - (C-III)

C.P.(IB)-1864/MB/2019

Under Section 7 of Insolvency & Bankruptcy Code, 2016

In the matter of

Reliance Asset Reconstruction Company Ltd : Applicant/
Financial Creditor
V/s
M/s. Narendra Plastics Pvt. Ltd. : Respondent /
Financial Debtor

Order delivered on: 13.08.2021

Coram:

Hon'ble Member (Judicial) : Shri H V Subba Rao
Hon'ble Member (Technical) : Shri Chandra Bhan Singh.

For the Petitioner(s) : Mr. Akshay Puranik, Advocate

For the Respondent(s) : Mr. Dinyar Madan, Advocate

Per: Chandra Bhan Singh, Member (T).

ORDER

1. This Application has been filed by the Applicant M/s. Reliance Asset Reconstruction Company Ltd, u/s 7 of the Insolvency & Bankruptcy Code, 2016 in Form No.1 to initiate Corporate Insolvency Resolution Process against M/s. Narendra Plastics Pvt. Ltd., Mumbai (Corporate Debtor), for a debt amount of Rs.24,18,98,838.81 as on 28.02.2019. The loan amount was assigned by the Original Lender M/s. ING Vysya Bank Ltd vide a Registered Deed of Assignment dated 19.09.2014 to the Applicant herein, i.e., Reliance Asset Reconstruction Ltd.
2. A brief history of the matter is as follows:-

Submission by the Applicant:

- 2.1. On 03.09.2012, M/s. ING Vysya Bank Ltd. (Original Lender) sanctioned a loan of Rs.20 crores for working capital requirement of the Corporate Debtor which was subsequently reduced and revised on 04.06.2013.
- 2.2. On 02.11.2012 a sum of Rs.10 crore was disbursed by M/s. ING Vysya Bank (Original Lender) towards Cash Credit facility to the Corporate Debtor. Thereafter on 27.02.2014 Rs.50 lakh was also disbursed to the Corporate Debtor towards working capital demand loan (short term loan), thus a total of Rs.10.50 crore was disbursed to the Corporate Debtor. The Respondent Corporate Debtor has not disputed these disbursements.
- 2.3. As per PART-IV of the Application in Form 1, the particulars of financial debt is stated to be as follows:-

Sr. No.	Nature of facility	Date of Disbursement	Amount (Rs. in Crore)
1.	Cash Credit A/c. 500044010509	02.11.2012	10.00
2.	WCDL – Short Term Loan A/c. 500042069080	27.02.2014	0.50

The amount of debt along with the underlying security interest acquired under the Deed of Assignment and outstanding as on 31.08.2014 is as follows:-

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Sr. No.	Nature of facility	Principal O/s	Interest	Penal	Total Outstanding (Rs. In Crore)
1.	Cash Credit	11.46	0.27	0.04	11.77
2.	WCDL – Short Term Loan	0.51	0.02	0.00	0.53
					12.30

2.4 The amount claimed to be in default as on 28.02.2019 is as under:-

I. **Under Cash Credit Facility**

Principal O/s : Rs.11,45,92,211.65

Interest O/s : Rs.10,74,13,695.48

Penal : Rs. 1,06,99,459.10

Total : Rs.23,27,05,366.23

II. **Under Working Capital Demand Loan/ Short Term Loan**

Principal O/s : Rs.51,00,013.53

Interest O/s : Rs.36,17,114.84

Penal : Rs. 4,76,344.21

Total : Rs.91,93,472.58

Aggregate of I + II above = Rs.24,18,98,838.81 as on 28.02.2019.

2.5 According to the Applicant, the date of NPA is 30th June, 2014.

Submissions by the Respondent:-

3. The Corporate Debtor submitted that ING Vysya Bank (Original Lender) accorded sanction for a facility with a limit of Rs.10 crore which is inclusive of Cash Credit facility, a Working Capital demand Loan and One-time counter guarantee facility with certain sub limits. The Corporate Debtor further submitted that

the Original Lender (Vysya Bank) also had accorded sanction for an additional facility of Rs.10 crores for Inland Letter of Credit/ Foreign Letter of Credit facility including Bank Guarantee and Counter Bank Guarantee with certain sub limits. An additional facility of Rs.5 crores towards Financial Market Limits facility for the purpose of hedging of transactions was also sanctioned. These were sanctioned to meet the working capital requirement. The tenor was specified to be 180 days from the date of disbursement. The Facility Agreement was executed in terms of the Sanction Letter on 12.09.2012.

- 3.1. The Corporate Debtor submitted that an amount of Rs.10 crore was disbursed to the Corporate Debtor on 02.11.2012. The Respondent submitted that the limits and the facilities for which sanction was accorded by the Original Lender were modified/ reduced on 04.06.2013. Thereafter on 07.06.2013 the Respondent executed Supplemental Agreement which included certain terms for the disbursal of Rs.8 crore Working Capital Demand Loan/ Foreign Currency Loan sanctioned with a sub-limit under the Principal Facility.
- 3.2. On 07.10.2013, the Original Lender accorded sanction for an additional “ad hoc cash credit facility” with a limit of Rs.1 crore (Second Sanction Letter) @ 3% interest in addition to the rate of interest earlier prescribed by the Original Lender. Accordingly, the position of facilities extended by the Original Lender is stated to be as under:-

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No.	Nature of Facility	Limit (Rs.)
1	PCL/PSL/PCFC/ERBD	10,00,00,000/-
1.1	Cash Credit (sub limit to PCL/PCFC/PSL/EBRD/AACB)	(10,00,00,000/-)
1.2	WCD;/FCNR (SUB LIMIT TO PCL/PCFC/PSL/EBRD/AACB)	(10,00,00,000/-)
2	ILC/FLC/LUT (sub limit to PCL/PCFC/PSL/EBRD/AACB)	(10,00,00,000/-)
3	Ad-Hoc Cash Credit facility	Rs.1,00,00,000/-
TOTAL		11,00,00,000/-

- 3.3. The Corporate Debtor was classified as NPA on 30.06.2014. Therefore, the Corporate Debtor filed a reference with the BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) on 15.07.2014.
- 3.4. An Assignment Agreement was executed between the Original Lender (Vysya Bank) and the Financial Creditor on 19.09.2014 as per which, the cut off date was 31.08.2014 and all economic benefits pertaining to the loans availed by the Corporate Debtor including all realization and recoveries, if any, made on or after the 'cut-off date' were to be for the benefit of the Financial Creditor. The purchase consideration for such loans appeared to be Rs.168,70,00,000/-.
- 3.5. The Respondent further stated that the Original Lender was merged with Kotak Mahindra Bank Limited (Kotak) with effect from 01.04.2015.
4. The Petitioner issued notice under Sec. 13(2) of the SARFAESI Act, 2002 on 25.05.2015 and the Corporate Debtor also responded to these notices.
5. The Respondent submitted that on 02.12.2016, the Financial Creditor had filed Original Application with the DRT (OA 96

of 2017) in which the Financial Creditor pleaded that the fresh period of limitation began from the last date of sanction i.e. 7th Oct. 2013.

6. The Corporate Debtor/ Respondent vehemently pleaded that the 'limitation' is to be considered from the date of default and relied upon the Hon'ble Supreme Court Judgment in the case of *BK Educational Services Private Limited v Parag Gupta & Associates (CIVIL APPEAL No.23988 OF 2017)* which has categorically laid down the law in respect of applicability of Limitation Act, 1963 in relation to the Code.
 - 6.1. The Corporate Debtor has further submitted that Article 137 of the Limitation Act stipulated that the period of limitation is 3 years from the date of default and if the application was not preferred within such prescribed period of limitation, 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, the party pleaded for condonation of delay under Section 5 of the Limitation Act. Therefore, the Corporate Debtor stressed that the requirement of law is that the party who is pleading extension of limitation period or exclusion of time to compute period of limitation on any ground must specifically plead the same in their application.
 - 6.2. It is the contention of the Corporate Debtor is that it is well settled that a plea of limitation must be specifically pleaded by the parties in their pleadings and submitted that in the instant case, the Financial Creditor (Petitioner) has not specifically pleaded that its Application is within limitation and/ or sought

condonation of delay in respect of the alleged debt in its Application filed on 07.05.2019, which also did not mention any date of default or starting point of limitation. The Corporate Debtor also pleaded that the date of default would not correspond to the date of declaration of the NPA and has to be determined on the basis of terms on which the facility was extended. According to the Respondent the limitation date should commence on 07.10.2013 and the Petition was filed by the Petitioner after 5 years and 7 months thereafter and claimed that thus the same is barred by limitation. The Corporate Debtor also argued that in OA 96 of 2017 filed by the Petitioner before the Hon'ble DRT, Mumbai and assuming that the period between 15.07.2014 till 30.11.2016 is excluded for the purposes of calculating limitation, even then the present Company Petition filed on 07.05.2019 is filed 3 years 4 months and 13 days from the date of the last sanction i.e., 07.10.2013. Therefore, the claim in the Petition is barred by the law of Limitation.

- 6.3. The Corporate Debtor further submitted that the Original Lender merged with Kotak Mahindra Bank on 01.04.2015, i.e., much after the execution of the Assignment Agreement by which the debts stood transferred to the Financial Creditor and pleaded that such merger ought to have no effect on the alleged Assignment and the alleged debts ought to have been reflected in the books of the Financial Creditor. According to the Corporate Debtor, the alleged debt appeared to be recorded in the books of Kotak and not the Financial Creditor and claimed

that the present Company Petition did not include any documents to indicate whether the purported debt allegedly payable by the Corporate Debtor is due in the books of the Financial Creditor. Therefore, the Corporate Debtor strongly pleaded that in such an event that the alleged debts are owed to Kotak, the Company Petition ought to have been filed by Kotak and not the Financial Creditor. The Financial Creditor has not given any explanation in its pleadings as to why the debt is reflected in the books of account of Kotak. Finally, the Corporate Debtor pleaded that since there is no debt that appeared to be due from the Corporate Debtor to the Financial Creditor, the instant Company Petition is not maintainable and that the Financial Creditor has no locus to file the Company Petition as it did not fulfil the requirement of a Financial Creditor u/s 5(7) of the Code and requested to dismiss the Company Petition.

FINDINGS

7. This Petition has been filed by Reliance Asset Reconstruction Ltd (Financial Creditor) against Narendra Plastics Pvt. Ltd (Respondent/ Corporate Debtor) u/s.7 of the IBC for working capital loan of Rs.20 crore sanctioned by ING Vysya Bank Ltd. (original lender) on 03.09.2012. The sanctioned loan limit were subsequently reduced and revised by ING Vysya Bank Ltd (Original Lender) on 04.06.2013. It is on record before the bench that the Assignment Agreement was executed between the original lender ING Vysya Bank and the Financial

Creditor i.e., Reliance Asset Reconstruction Company Ltd. on 19.09.2014. The cut-off date under the Assignment Agreement was 31.08.2014. Under this agreement all benefits pertaining to the loans availed by the Corporate Debtor including all realization and recoveries made on and after the cut-off date were to be for the benefit of the Financial Creditor i.e., Reliance Asset Reconstruction Company Ltd. A copy of the Assignment Agreement has been annexed with the Company Petition. The bench here also notes that the original lender i.e., ING Vysya Bank subsequently merged with Kotak Mahindra Bank Ltd (Kotak) with effect from 01.04.2015. The bench notes that the merger of ING Vysya Bank into Kotak was after about 6 months after the Assignment Agreement was executed between ING Vysya and Reliance Asset Reconstruction Company Ltd. Therefore, it is abundantly clear that under no circumstances the debt could be transferred to Kotak by ING Vysya Bank.

8. In the Petition filed by the Financial Creditor, in Part IV, a Statement of Account which has been enclosed as Exhibit B and C in the Petition relates to account as maintained with Kotak Mahindra Bank and not as per the books of the Financial Creditor i.e., Reliance Asset Reconstruction Company Ltd. In fact, the amount if due and payable should only be reflected in the books and statement of account of the Financial Creditor i.e., Reliance Asset Reconstruction Company Ltd and not in the account of any other third party. The bench fails to understand how come a debt which is

assigned as on 19.09.2014 from the original lender i.e., ING Vysya Bank to the Financial Creditor i.e., Reliance Asset Reconstruction Company can appear in the books of accounts of Kotak Mahindra Bank which is not at all related to the whole matter.

9. As stated earlier, the debt due from the Corporate Debtor to the original lender were assigned by the original lender to the Financial Creditor vide Assignment Agreement with effect from 31.08.2014. In such event the bench would construe that, any debt which may be due from the Corporate Debtor to the Financial Creditor ought to be reflected in the books of the Financial Creditor. However, a perusal of Exhibit 'B' and 'C' of Company Petition shows that the amount outstanding and payable by the Corporate Debtor as on 31.08.2014 is reflected in the ledger account of a completely third party i.e., Kotak Mahindra Bank about which, the bench notes, no reference has been made by the Financial Creditor in the Company Petition. The Exhibit 'B' and 'C' in this regard produced in this Petition by the Financial Creditor is as under:-

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Exhibit B 16

kotak
Kotak Mahindra Bank

Narendra Plastic Pvt Ltd
Shadow Ledger A/C Number 500044010509

Date	Particulars	Dr.	Cr.	Balance
30-Jun-14	Opening Balance			11,45,92,211.65
31-Jul-14	Interest for July 2014	13,47,949.76	-	11,59,40,161.41
31-Jul-14	Penal Interest for July 2014	1,94,649.78	-	11,61,34,811.19
31-Aug-14	Interest for Aug 2014	13,63,805.71	-	11,74,98,616.90
31-Aug-14	Penal Interest for Aug 2014	1,94,649.78	-	11,76,93,266.68

Principal outstanding	11,45,92,211.65
Interest	27,11,755.46
Penal Interest	3,89,299.57
Total o/s as on 31-Aug-2014	11,76,93,266.68

Exhibit C 26

kotak
Kotak Mahindra Bank

Narendra Plastic Pvt Ltd
Shadow Ledger A/C Number 500042069080

Date	Particulars	Dr.	Cr.	Balance
31-May-14	Opening Balance			51,00,013.53
30-Jun-14	Interest for June 2014	46,109.71	-	51,46,123.24
31-Jul-14	Interest for July 2014	48,077.48	-	51,94,200.72
31-Jul-14	Penal Interest for July 2014	8,741.36	-	52,02,942.08
31-Aug-14	Interest for Aug 2014	48,526.64	-	52,51,468.72
31-Aug-14	Penal Interest for Aug 2014	8,741.36	-	52,60,210.08

Principal outstanding	51,00,013.53
Interest	1,42,713.83
Penal Interest	17,482.72
Total o/s as on 31-Aug-2014	52,60,210.08

10. It is very evident to this bench that this debt does not appear in the books of the Financial Creditor who has filed this Petition. The Bench also notes that the original lender i.e., ING Vysya Bank got merged with Kotak Mahindra Bank on 01.04.2015 i.e., much after the execution of the Assignment Agreement by which the debt stood transferred to the Financial Creditor. This bench notes that such merger between ING Vysya with Kotak would have no effect on the assignment of debt to the Financial Creditor and it ought to be

reflected in the books of the Financial Creditor . However, as per the document in support produced in the Petition by the Petitioner i.e., Financial Creditor, the debt appears in the books of Kotak and not of the Financial Creditor. Before this bench no document has been produced by the Financial Creditor to indicate that this debt payable by the Corporate Debtor is due in the books of Financial Creditor. An analogy, therefore, can be drawn that the debts of the Corporate Debtor are owned to Kotak and, therefore, the Company Petition ought to have been filed by Kotak and not by the Financial Creditor. The reliance of the Financial Creditor on the ledger account appearing in the books of Kotak would only lead this Bench to believe that the assignment is not an effective assignment at all and therefore, the bench concludes that in the given situation the Financial Creditor has no locus to file this Company Petition as a Financial Creditor.

11. Further, this Company Petition has been filed by the Financial Creditor u/s.7 on 08.05.2019. In Part-IV of the Petition the Financial Creditor has put the date of NPA as 30.06.2014. Therefore, the issue relating to limitation arises in the Petition as the Petition *prima facie* has been filed after more than 5 years. In the Petition no pleadings relating to extension/ exclusion of time to compute the period of limitation has been made. The bench notes that subsequently also no amendments in the Petition relating to extension of limitation or exclusion to compute the period of limitation has been made. It is well settled that the plea of limitation must be specifically pleaded

by the Petitioner in their pleadings. In the instant case, the Financial Creditor has not specifically pleaded in its Application that it is within limitation and/ or sought condonation of delay in any respect. The Company Petition which has been filed on 07.05.2019 mentions the date of NPA as 30.06.2014. In this regard the Financial Creditor has not pleaded in the Company Petition to exclude any period of time. In this regard the bench would like to refer to the case of Kattinokkula Murali Krishna Vs. Veeramalla Koteshwara Rao (2010)1 SCC 466 wherein at paragraph 24, the Hon'ble Supreme Court has held that *“it is a settled principle of law that evidence beyond pleadings can never be permitted to be adduced nor can such evidence be taken into consideration”*. In view of this, since there is no averment or seeking condonation of delay in the Company Petition, therefore, this bench is of the view that since there is no averment or pleading by the Petitioner explaining the issue of limitation seeking condonation of delay, this Petition is barred by limitation and the bench is inclined to “dismiss” it.

12. In view of the above two counts, the bench “**dismisses**” the Company Petition CP(IB)-1864/MB/2019.

M.A. 537/2020 IN CP 1864/2019

The above Misc. Application has been filed by respondent, Narendra Plastic Private Limited to allow and decide the issue of maintainability of the instant petition. Since the main Company

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Petition is dismissed, the above Misc. Application has become infructuous and is disposed of accordingly.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

Sd/-
H V SUBBA RAO
Member (Judicial)