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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL


ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 08.07.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 221/2019 & Ind No. 5265/2019 in CP(IB) No.651/7/HDB/2018
NAME OF THE COMPANY	Sainath Estates Pvt Ltd
NAME OF THE PETITIONER(S)	Bank of India
NAME OF THE RESPONDENT(S)	Sainath Estates Pvt Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

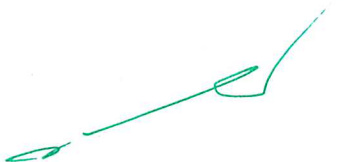
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
D.V.A.S. Rao Prasad P Prateep Goud	Advocate	9440234094	

ORDER

Counsel for Applicant / Corporate Debtor is present. This un-numbered Application is filed in the Registry on 02.07.2019. Actually matter is listed for orders to this date. This Application is filed in the Registry on 02.07.2019. Again in this un-numbered Application, the Corporate Debtor is seeking time on the ground that NBFC agreed to lend Rs.150 crores and that the Corporate Debtor is going to settle the claims of the Financial Creditors including the Financial Creditor who filed the main petition viz. Bank of India. This matter was heard long time on both sides and it is reserved for orders.


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The present Application is again filed seeking for re-opening of the matter on the ground that Corporate Debtor may likely to settle the claims of the Financial Creditors including the Financial Creditor/Petitioner in this case i.e Bank of India. But till date no response from the Financial Creditor that any such proposal is pending with it.

On the other hand, this matter was heard and sufficient time was given to the Corporate Debtor and finally matter is listed for orders. In the present Application also the limitation point is raised. The same point was also raised in the main petition as well in IA 221/2019. Today Counsel for Corporate Debtor is making some allegations against proposed IRP. Nowhere in the present Application the Corporate Debtor made any allegation against the proposed IRP. This Application is devoid of merits. Hence, the Application deserves no consideration. It is filed only to just prolong the matter. Therefore, this Application is to be rejected.

In the result, the un-numbered Application stands rejected.

The main petition is admitted vide separate orders.

Orders passed in IA 221/2019 vide separate orders.



Member (Judicial)

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

I.A.No. 221 of 2019

IN

CP (IB) No. 651/7/HDB/2018

U/s 7 of IBC, 2016

R/w Rule 4 of I & B (AAA) Rules, 2016

IN THE MATTER OF M/S. SAINATH ESTATES PRIVATE LIMITED

M/s. Sainath Estates Private Limited,

Registered Office:

1-8-333,334, A- Wane, Opp: Policelines,
Begumpet, Hyderabad- 500016.

... Applicant/Corporate Debtor

VERSUS

M/s. Bank of India

Represented By Asst. General Manager,

Mid Corporate Branch,

Hyderabad.

... Respondent/Financial Creditor

Date of order: 08.07.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties / counsels present:

For the Applicant : Mr. D.V.A.S.Ravi Prasad, Advocate.

For the Respondent: Mr. Ananda Rao Nadipally, Advocate.

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heard on:

20.03.2019, 27.03.2019, 23.04.2019, 09.05.2019, 03.06.2019,
06.06.2019.

ORDER

1. The Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 for dismissal of the Company Petition as barred by limitation.
2. The brief averments made in the Application are as follows:
 - a) It is averred that the Petition is barred by limitation and liable to be dismissed.
 - b) It is averred that the Corporate Debtor never confirmed the existence of debt at any point of time.
 - c) It is averred that the Acknowledgement of debt on 18.03.2018 was obtained after the expiry of limitation. Section 18 of Limitation Act mandates that the confirmation must be before the expiry of limitation.
 - d) It is averred that the Company Petition is silent about the prolonged delay caused in invoking the jurisdiction of this tribunal.
 - e) It is averred that Law of Limitation shall be taken as a guide in dealing with the petitions filed for recovery of the time barred debts.
3. Heard both sides.
4. This Application is filed on behalf of Applicant / Corporate Debtor. The point in this Application that main petition is barred by limitation and hence main petition is to be rejected. The same point is also raised in the main petition. I have discussed at length in the main petition about limitation and I held that the claim of financial creditor is not barred by limitation. The Application therefore is liable to be dismissed in view of finding given in the main petition. There is no need to give any fresh findings on this

Application since the issue in this Application was already dealt with in the main petition. This Application deserves to be dismissed.

5. In the result, Application is dismissed.

8.7.19
RATAKONDA MURALI
MEMBER (JUDICIAL)

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

CP (IB) No. 651/7/HDB/2018
U/s 7 of IBC, 2016
R/w Rule 4 of I & B (AAA) Rules, 2016

IN THE MATTER OF M/S. SAINATH ESTATES PRIVATE LIMITED

M/s. Bank of India

Registered Office:

Star House, C 5, G Block,
Bandra- Kurla Complex, Bandra (E),
Mumbai- 400051.

... Petitioner/Financial Creditor

VERSUS

M/s. Sainath Estates Private Limited,
Registered Office:
1-8-333,334, A- Wane, Opp: Policelines,
Begumpet, Hyderabad- 500016.

... Respondent /Corporate Debtor

Date of order: 08.07.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties / counsels present:

For the Petitioner: Mr. Ananda Rao Nadipally, Advocate.

For the Respondent: Mr. D.V.A.S.Ravi Prasad, Advocate.

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heard on: 14.11.2018, 06.12.2018, 20.12.2018, 08.01.2019,
23.01.2019, 28.01.2019, 04.02.2019, 13.02.2019, 12.03.2019,
20.03.2019, 27.03.2019, 23.04.2019, 09.05.2019, 03.06.2019,
06.06.2019.

ORDER

1. This petition is filed by M/s. Bank of India, which is the Financial Creditor stating that M/s Sainath Estates Private Limited, Corporate Debtor herein had defaulted in repaying a sum of **Rs. 87,74,33,325.55** Plus interest till the date of application .This petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016, R/w Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.
2. The brief averments made in the petition are as follows:
 - a) It is averred that the Corporate Debtor is engaged in the business of Builders, contractors, designers, architects, decorators, furniture consultants, contractors etc.,
 - b) It is averred that in pursuance with the said businesses, the Corporate Debtor had availed term loan, working capital limit and other Non-Fund based limits from the Financial Creditor and other Banks and Financial Institutions.
 - c) It is averred that The Financial Creditor had, on request of the Corporate Debtor, vide its sanction letter dated 11.08.2010, granted the following financial facilities:

Limit	Sanctioned Limits (Rs In Crores)	
	Existing	Enhanced
i. Term Loan	-	0.00
ii. Cash Credit	-	15.00
NFB Limits	-	35.00
TOTAL		50.00

d) It is averred on the request of the Corporate Debtor, the Credit Facilities were reviewed and vide sanction letter dated 22.03.2012, the Credit facilities were renewed as under:

Limit	Sanctioned Limits (Rs In Crores)	
	Existing	Enhanced
i. Term Loan	0.00	0.00
ii. Cash Credit	15.00	25.00
NFB Limits	35.00	70.00
TOTAL	50.00	95.00

e) It is averred that the Corporate Debtor furnished security by way of hypothecation of movable properties and mortgage of immovable properties as security for due repayment of the dues on account of such loans and other credit facilities. The properties so mortgaged

include not only the properties of the Corporate Debtor but also those of its subsidiaries and other guarantors.

f) It is averred that Financial Creditor giving a long rope to the Corporate Debtor to recover from the Financial difficulties. There has been no improvement in the financial position of the Corporate Debtor. It has been defaulting in the payment of interest and installments of principal on loans, to the Applicant and other consortium banks. Consequently, the accounts of the Corporate Debtor have become Non Performing Assets (NPA) as per RBI guidelines. The Corporate Debtor had also defaulted in complying with several terms and conditions of the Agreement.

g) It is averred that as on 12-09-2018, the amount in default works out to Rs. **87,74,33,325.55/-** (Rupees Eighty Seven Crores Seventy Four Lakhs Thirty Three Thousand Three Hundred and Twenty Five and Paise Fifty Five Only) plus applicable penal interest and Penalties from there on till the repayment of the outstanding amounts.

3. The brief averments made in the interim Counter are as follows:

a) It is averred that the account of the Corporate Debtor was declared NPA on October, 2013. The petition is barred by limitation as more than 5 years lapsed from the date of declaring Corporate Debtor account as NPA.

b) It is averred that the Financial Creditor has not filed required documents along with the petition which are said to have been executed by the Corporate Debtor. The Financial Creditor failed to furnish the statement of account, rate of interest debited form time to time, rate of penal interest, date when account has been categorized

as non-performing asset, Authorization letter for filing the petition.

- c) It is averred that the amounts paid by the Corporate Debtor to the loan account have not been credited properly and the Corporate Debtor is not liable to pay any amount to the Financial Creditor.
- d) It is averred that the Financial Creditor got signatures of the Corporate Debtor on blank printed forms and later caused material alterations in the said papers.
- e) It is averred that in the absence of the information in the petition the Corporate Debtor cannot reply to each averments made in the Petition.
- f) It is averred that the Acknowledgement of Debt dated 05.03.2018 is not in accordance with the Indian Stamp Act and also the Acknowledgement is not adequately stamped, therefore the same deserves to be ignored as void document.
- g) It is averred that the Acknowledgement of Debt dated 05.03.2018 only states about the confirmation of debt due as on 28.10.2013. The debt is already barred by limitation by the date Acknowledgement. As per Section 18 of Limitation Act, the debt has to be Acknowledged before the date of expiration. So the Acknowledgment of debt on 05.03.2018 does not save the limitation as it is beyond 3 years from the date of declaring corporate debtor account as NPA
- h) It is averred that the Acknowledgement of debt dated 20-03-2015 is not supported by any documentary proof.

4. The brief averments made in the Final Counter are as follows:-

- a) It is averred that the Financial Creditor after filing of instant Company Petition before this Tribunal, has also filed O.A. No. 902/2018 in Debts Recovery Tribunal-2, Hyderabad

against the Corporate Debtor in respect of the very same debt.

- b) It is averred that the debt was disbursed by the Secunderabad Branch of Bank of India and not the Hyderabad Asset Recovery Branch. So, the Hyderabad Asset Recovery Branch does not come under the purview of Financial Creditor.
- c) It is averred the loan contract was entered with Secunderabad Branch, Bank of India not with the Hyderabad Asset Recovery branch and the transfer from Secunderabad Branch to Hyderabad Asset Recovery branch is illegal. Therefore the Hyderabad Asset Recovery branch has no locus to initiate Corporate Insolvency Resolution Process against Corporate Debtor.

5. The brief averments made in the Rejoinder are as follows:

- a) It is averred that the Corporate Debtor in its interim reply admitted the acknowledgment of debt dated 05.03.2018.
- b) It is averred that the Financial Statement for the period 01.04.2017 to 31.03.2018 which is filed before the Registrar of Companies in e-form AOC-4, the Corporate Debtor admitted the debt due to the Financial Creditor and it amounts Acknowledgement of the Debt by the Corporate Debtor.
- c) It is averred that the Corporate Debtor has not denied the borrowing of the loan and default committed by it.

6. I have heard the Counsel for Financial Creditor and also the Counsel for Corporate Debtor. I have pursued the material on record.

7. The present petition is filed by the financial creditor claiming that the Corporate Debtor defaulted a sum of Rs. **87,74,33,325.55/-**. The Financial Creditor filed this petition under

Section 7 of the Code to trigger CIRP against the Corporate Debtor. In order to prove its claim the Financial Creditor has relied on Page Nos. 79 to 149 filed along with the Petition.

8. The Corporate Debtor has raised following objections:

- a) The Financial Creditor has not filed required documents along with the petition which are said to have been executed by the Corporate Debtor.
- b) The Petitioner will not come under the ambit of Financial Creditor as per Section 5(7) of the Code.
- c) The claim of the Financial Creditor is barred by limitation.


9. With regard to contention of the Corporate Debtor that the financial creditor has not filed all the requisite documents along with the Application, The Contention of the Corporate Debtor cannot be taken into account while considering the Petition for admission under section 7 of the code, in view of the decision of the **Hon'ble Supreme Court of India in the case "Innoventive Industries Ltd. Vs. ICICI Bank and Ors., - (2018) 1 SCC 407"** wherein it was observed as below:

"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part

III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under subsection (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

10. The Financial Creditor filed voluminous documents along with the Application.

The documents filed by the financial creditor to prove its claim are as follows:

- a) Copies of Sanction letters dated 11.08.2010 and 22.03.2012.
 - b) Copies of Loan Documents consisting of Mortgaged deed, Deed of Hypothecation.
 - c) Certificate under bankers book of evidence Act issued by the Financial Creditor.
 - d) Copy of Acknowledgment letter dated 05.03.2018.
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e) Copy of demand notice dated 04.12.2013.

The documents filed by the Financial Creditor are sufficient to prove its claim. The Corporate Debtor nowhere in the Counters disputed about the disbursement of loan by the Financial Creditor and about default committed by the Corporate Debtor. I am of the view that the documents filed along with application are sufficient to prove that there is a debt and default as per Section 7 of the Code.

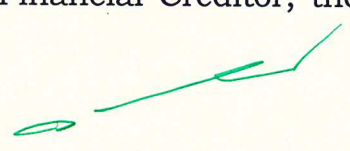
11. The Corporate Debtor further contended that the Applicant/Petitioner will not come under the ambit of Financial Creditor. The Contention of the Corporate Debtor is that the debt was disbursed by the Secunderabad Branch of Bank of India and not by the Hyderabad Asset Recovery Branch. So, the Hyderabad Asset Recovery Branch does not come under the category of Financial Creditor. The Application is filed by the M/s. Bank of India which disbursed the loan to the Corporate Debtor, it's not correct to say that Bank of India will not come under the ambit of definition of Financial Creditor. As per Section 5(7) of the Code Financial Creditor is the person to whom a financial debt is owed, it is admitted fact that Corporate Debtor has taken loan from Bank of India for time value of money that itself sufficient to treat Bank of India as Financial Creditor.

12. The Corporate Debtor further contended that, the claim of the Petitioner is barred by limitation under Article 137 of the Limitation Act and to support the contention the Ld. Counsel for the Corporate Debtor relied on the decision of the Hon'ble Supreme Court in "B. K. Educational Services Pvt. Ltd. vs Parag Gupta & Associates (2018 SCC OnLine SC 1921)". The Contention of the Corporate Debtor is that, the date of alleged default was on 30.09.2013 i.e. the date on which the account was declared as Non Performing Asset (NPA). Hence, the period of limitation would run from 30.09.2013 and since this Petition was filed on 04.10.2018 this Petition is barred by limitation.

13. For the above contention of the Corporate Debtor, the Financial Creditor submitted that the loan was acknowledged by the Corporate Debtor under Section 18 of Limitation Act, 1963 on 05.03.2018 which is an acknowledgement of liability and hence the debt is not barred by limitation. However, the Corporate Debtor has not disputed the fact that the debt was acknowledged by him on 05.03.2018, but the contention of the Corporate Debtor is Acknowledgment is not properly stamped and not in accordance with law. I have seen the document with regard to Acknowledgment of debt dated 05.03.2018, in which the Corporate Debtor clearly acknowledged the debt and the Petition is well within the Limitation. On the other hand the Petitioner submitted that the loan was shown in the balance sheet of the Corporate Debtor which is an acknowledgement of liability and hence the debt is not barred by limitation. However, the Corporate Debtor has not disputed the fact that the loan was shown as a liability in the balance sheet of the Corporate Debtor. When the liability is shown in the balance sheet then it is a clear acknowledgement of debt by the Corporate Debtor. In view of this, the contention of the Corporate Debtor that the debt is barred by limitation will not suffice. It is the case of Financial Creditor that debt is secured by mortgage. Therefore, the limitation is 12 years. The claim is not barred by limitation in view of mortgage in favour of Financial Creditor / Petitioner.

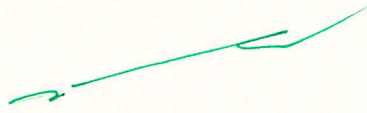
14. Pending proceedings before DRT against Corporate Debtor initiated by Financial Creditor is not a bar to initiate proceedings under I&B Code. Proceedings under IBC has over riding effect over the provisions of Debt Due to Banks and Financial Institutions Act, 1993 by virtue of Section 238 of IBC. Therefore, the objections filed by Corporate Debtor are not sustainable and petition is liable to be admitted.

15. I am satisfied with the fact that the Corporate Debtor defaulted in making payment towards the liability to the Financial Creditor, the petition deserves to be admitted.



16. The Financial Creditor has suggested the name of IRP who has given consent in Form-2 and there is no disciplinary action pending against present IRP. The account of Corporate Debtor is treated as NPA and there are grounds to admit the petition.

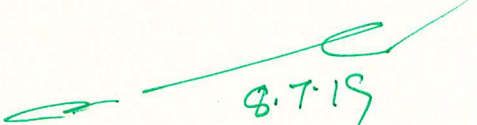
17. Hence, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:

- a) The Bench hereby prohibits 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; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor.
 - b) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
 - c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - d) That the order of moratorium shall have effect from 08.07.2019 till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of
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Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

- e) That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.
- f) That this Bench hereby appoints Mr. Dr.K.V.Srinivas as IRP bearing Registration Number: IBBI/IPA-001/IP-P00520/2017-18/10945 resident of #3-4-756/1, Flat No:402, 4th Floor, Sai Ragahvendra Residency, Barkatpura, Hyderabad- 500027 with effect from 08.07.2019.

Accordingly, this Petition is admitted.



8.7.19

RATAKONDA MURALI
MEMBER (JUDICIAL)

VISWARAJ
(Law Research Associate)