

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI**

**C.P. No. IB- 925 (PB)/2020,
I.A. 1437/2021**

*SECTION: 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 (for brevity 'the Rules')*

IN THE MATTER OF:

M/s. STATE BANK OF INDIA

...Financial Creditor/Applicant

VERSUS

M/s. INDO ALUSYS INDUSTRIES PVT. LTD.

...Corporate Debtor/Respondent

Order delivered on: 03.05.2021

CORAM:

**SH. B.S.V. PRAKASH KUMAR
HON'BLE ACTG. PRESIDENT
SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :Mr. Neeraj Malhotra, Sr. Adv. with Mr. Vibhor Mathur,
Mr. Arun Pratap Singh, Mr. Khem Chand Jagirdar, Mr.
Ujjaval Kumar, Advocates

For the Respondent : Mr. Ramji Srinivasan, Sr. Adv. Mr. Narendra M.Sharma,
Mr. Vikas Mehta, Mr. Ankur Sood, Mr.
Siddhartha Jain, Mr. Aditha Nair, Advocates

MEMO OF PARTIES:

M/s. STATE BANK OF INDIA

Having its corporate office at:

Madame Cama Road,

Nariman Point, Maharashtra- 400021

ONE OF ITS BRANCH AT:

Stressed Asset Management Branch-II

11th Floor, Jawahar Vyapar Bhawan,

S.T.C Building, Janpath, 1 Tolstoy Marg,

New Delhi-110001

...FINANCIAL CREDITOR/APPLICANT

Versus

M/s. INDO ALUSYS INDUSTRIES LIMITED

Having its registered office at:

B-292, Office No. 303, 3rd Floor,

Chandra Kanta Complex,

New Ashok Nagar, Delhi-110096

...CORPORATE DEBTOR/RESPONDENT

ORDER

PER- SH. HEMANT K. SARANGI, MEMBER (T)

1. The present application is filed 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 (for brevity 'the Rules') by M/s. State

Bank of India, claiming to be 'Financial Creditor' (FC) (for brevity 'Applicant') has filed this application, through its authorised representative Mr. Shambhu Kumar Singh authorized by the Applicant in terms of General Resolutions No. 76 & 77 of State Bank of India in exercise of the powers conferred by Sub-Section (3) of Section 50 of the State Bank of India Act, 1955 with a prayer for initiation of Corporate Insolvency Resolution Process ("CIRP"), in respect of respondent company, M/s. Indo Alusys Industries Ltd. (for brevity 'Respondent').

2. The Respondent, Corporate Debtor ("CD"), namely M/s. Indo Alusys Industries Limited (CIN U74999DL1979PLC009937) was incorporated on 17.10.1979 under the provisions of the Companies Act, 1956. The registered office of the respondent company is situated at B-292, Office No. 303, Chandra Kanta Complex, New Ashok Nagar, Delhi 110096. Its authorized share capital is Rs. 15,00,00,000/- and paid up capital is Rs.8,50,79,000/- which is based on the details given in master data as reflected on the official website of Registrar of Companies.

3. The registered office of the CD is in Delhi, therefore, this Tribunal being the Adjudicating Authority (“AA”), has territorial jurisdiction in respect of CD as per the provisions of sub-section (1) of Section 60 of the Code.
4. The FC states that the CD had been availing various credit facilities (Working Capital and Term Loan), from the Applicant Bank and other Consortium Member Banks under leadership of the Applicant Bank. That at the request and the subsequent correspondence of CD with the Applicant Bank, i.e., the then State Bank of Mysore (SBM) & State Bank of Bikaner & Jaipur (SBBJ) had sanctioned Working Capital Limits on terms and conditions as set out in the Letters of Sanction of the SBM Consortium/ Arrangement Letters of SBM No. ADV/AK/233/198 dated 07.07.2005 and ADV/AK/233/283 dated 18.08.2005 and of SBBJ letter dated 02.09.2005 and further amendment letter dated 12.09.2005, which was duly acknowledged by the CD and accepted all the terms and conditions mentioned therein the sanction letters by putting signatures thereon. The said facilities sanctioned to the CD were enhanced and revised from time to time as per requests of the CD.

5. The total amount of debt granted and the date of disbursement as stated by the Applicant is as follows:

LOAN ACCOUNT No.	DATE OF DISBURSEMENT	LOAN AMOUNT (IN Rs.)
00000054015804936	13.09.2005	30,36,00,000
00000064202708359	12.08.2016	7,00,00,000
00000061329072616	19.09.2016	4,69,00,000
00000062483209965	22.09.2016	94,00,000

TOTAL LOAN AMOUNT- Rs.42,99,00,000/-

6. The amount claimed to be in default and the date of default as stated by the applicant is as follows:

LOAN ACCOUNT No.	DEFAULT DATE	DEFAULT AMOUNT (IN Rs.)
00000054015804936	26.06.2019	90,34,98,733
00000064202708359	13.07.2019	2,64,00,215
00000061329072616	13.07.2019	1,78,45,955
00000062483209965	05.08.2019	28,89,729

TOTAL DEFAULT AMOUNT- Rs.35,22,49,204/-

7. The CD executed several documents for availing the aforesaid credit facilities from the FC. True Copies of each one of those documents namely, Working Capital Consortium Agreement, Inter-se Agreement, Deed of Hypothecation, Deed of Guarantee, Security Trustee

Agreement, Supplemental Agreements, Deed of Personal Guarantee, have been placed on record. The details of the securities held, or charge created, for the benefit of Banks which fulfils the requirements of Section 77 & 78 of Companies Act, 2013 have been given in Part V of the application. The FC has also placed on record the list of all financial facilities granted by the FC to the CD along with the copies of the said Financial Contracts.

8. It is further submitted by the FC that the CD failed to adhere to the repayment schedule of credit facilities and defaulted in the repayment of the loan.
9. In its reply the respondent raised the following objections:
 - a. The Petition has not been filed with due authorization from the State Bank of India (SBI), Section 7 of the IBC has not been instituted with valid and proper authorization. Form 1 attached at Serial No. 5 of Part I, provides for the disclosure of the person authorized to submit the application on behalf of the Financial Creditor. Under Rule 10 of the IBC Rules, the filing of the application is governed by Rules 20, 21, 22, 23, 24 and*

26 of the National Company Law Tribunal Rules, 2016 (NCLT Rules).

i. It has been consistently held and recognised that the decision to initiate proceedings under the IBC by a person or agency duly authorized for that purpose by the Financial Creditor has to be clearly established for a petition to be entertained. In this context reference may be made to following judgements

“Paralogix v. ICICI” 2017 SSC OnLine NCLAT 266

b. The petition is barred by law since based on the Petitioner’s own demand notice, the correct date of alleged default is 03.06.2020 which falls squarely in the moratorium period provided by law. The petition is barred under law by virtue of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 (Ordinance).

c. The insolvency application is not as per format prescribed under IBC. The Applicant has not followed the format prescribed in Form 1. The Applicant has

twisted and modified the statutory format as per its whims and fancies, which is impermissible under law.

- i. The affidavit accompanying the petition has neither been notarized nor does it bear the stamp of SBI.*
- ii. Under Rule 4(2) of the IBC rules, where the applicant is an assignee or transferee of the debt, the copy of the document pursuant to which the assignment or transfer took place has to mandatorily be filed. The purported loans based on which the petition has been filed were extended by: (i) State Bank of Mysore, (ii) State Bank of Bikaner and Jaipur, (iii) State Bank of Hyderabad.*
- iii. Paras 1 to 4 of the petition are wholly beyond the prescribed form. The Petitioner has not enclosed or submitted any authorization in favour of Mr. Shambhu Kumar Singh to accept service of process on its behalf, which is a mandatory requirement under Form 1, Paragraph 6. The first paragraph below the table on page 24 goes beyond Form 1.*
- d. The present petition has been filed without the approval of the Joint Lenders Forum (JLF). The Petitioner,*

therefore, has acted in violation of the binding provisions of the JLF Agreement. The OTS offer has already been accepted and approved by the lenders. Pursuant to the agreement on video call dated 06.11.2020 a revised OTS offer was submitted. As per JLM Minutes dated 14.12.2020, the lenders agreed that the current OTS offer is substantial and approved the same subject to due diligence and other formalities. Pursuant thereto Tripartite, escrow agreement dated 08.02.2021 has been executed.

- e. The alleged default based on which the present petition has been filed is a self-created situation arising out of the breach by the banks forming part of the consortium. At the current juncture, the existing management of the Respondent is very capable and is best placed to revive its fortunes. Hence, the present petition seeking to initiate insolvency and oust the management is detrimental to the interests of the Respondent as well as the creditors.

f. The management of the Respondent is fully committed to its revival and is already in discussions with the Petitioner as well as other banks for this purpose.

10. The FC in Response to the objections raised by the CD states that:

a. One of the exceptions as laid down by the Paralogix Judgement which is reproduced as hereunder:

“43. This part, if an officer, such as Senior Manager of a Bank has been authorised to grant loan, for recovery of loan or to initiate a proceeding for ‘Corporate Insolvency Resolution Process’ against the person who has taken loan, in such case the ‘Corporate Debtor’ cannot plead that the officer has power to sanction loan, but such officer has no power to recover the loan amount or to initiate ‘Corporate Insolvency Resolution Process’, in spite of default of debt.”

Attention of this Hon’ble Tribunal is further drawn to the Regulations 76 & 77 of the State Bank of India Regulations which read as hereunder:

“76. Accounts receipts and documents of State Bank by whom to be signed- 3[(1) 4[The managing directors,]5(the deputy managing directors), the 6(chief general managers) and such other officers and employees of the State Bank as the Central Board or the Executive Committee may authorize in this behalf by notification in the Gazette of India, to such extent and subject to such limitation if any, as the Central Board or the Executive Committee may specify or impose in so authorising, are hereby severally empowered, for and on behalf of the State Bank, to sign all documents, instruments, accounts, receipts, letters and advices connected with the current or authorised business of the State Bank and, in particular and without prejudice to the generality of the foregoing powers, to endorse and transfer promissory notes, stock receipts, stock debentures, shares, securities and documents of title to goods, standing in the name of or held by or on behalf of the State Bank or, in the absence of any agreement

to the contrary, standing in the name of or held by or on behalf of which person, firm, company or corporation the State Bank has been constituted as attorneys, to draw, accept and endorses bills of exchange and cheques, to issue, confirm and transfer letters of credit and to sign guarantees and indemnities.]

(2) Without prejudice to the provisions of sub-regulation

(1) all powers of attorney and other authorisations issued by the Imperial Bank in favour of any officer or other employee who becomes an officer or other employee of the State Bank by virtue of Section 7 of the Act shall continue to be in full force and effect as if instead of the Imperial Bank, the State Bank had been a party to such powers of attorney or authorisations, and, accordingly, any such officer or other employee may exercise on behalf of the State Bank such powers as he was exercising before the appointed day on behalf of the Imperial Bank.

(3) The provisions of this regulation shall not be deemed in any way to affect the provisions of the Imperial Bank of India Act, 1920, nor the authority which any person has under that Act in relation to the Imperial Bank of India Act, 1920, may act on behalf of the State Bank as well as the Imperial Bank to the extent so authorised.

77. *Plaints, etc., by whom to be signed.*- *Plaints, written statements, petitions, and applications may be signed and verified, affidavits may be sworn or affirmed, bonds may be signed, sealed and delivered, and generally all other documents connected with legal proceedings whether contentious or non-contentious may be made and completed on behalf of the State Bank by the Chairman or by any officer or employee empowered by or under regulation 76 to sign documents for and on behalf of the State Bank.;*

Attention is further drawn to Gazette Notification dated 29 October, 2005 in which the JMGS- 1 and above Ranked officers of the Financial Creditor have been authorized (Annexure A-1)

The Present Petition has been initiated by a Senior Officer of the Bank namely, Mr. Shambhu Kumar Singh, who holds a senior rank and is a Manager and therefore, is well entitled to initiate

present CIRP proceedings. As such, there is no irregularity in the present petition.

b. The submission of CD that; *“date of default is 03.06.2020 and therefore present petition is barred under IBC”*. The said submission of the CD is wrong, the date of default has to be derived from the Record of default published by NESL. The FC has filed *four* records of defaults that have been issued by the NESL. In all the *four* defaulted accounts, the respective dates of defaults have been duly mentioned in Point 2, Part IV of the Application and the same can be cross checked from the records of Default issued by the Information Utility NESL.

i. The Legal Demand Notice is only a letter of demand and cannot be cited for calculating the limitation. Further, even in the said Legal Notice, the date of NPA is mentioned as 23.09.2019 and therefore the present petition is very much maintainable under law.

- ii. The factum of his account being declared as NPA is well within the knowledge of CD as in the Writ petition filed by CD before Hon'ble Delhi High Court, they have admitted the NPA date as 23.09.2019.
 - iii. The NPA date was also duly informed to Respondent and is recorded in Minutes of Meeting held on 24.09.2019.
- c. Further the CD has raised an objection that; *“Application fails to comply with the mandatory requirements of IBC”*. It is a wrong submission and there is no discrepancy as alleged or otherwise.

i. Unattested/ Not Authorized Affidavit

There is no requirement of any supporting affidavit in support of the Form 1 as per the Statute & Rules made thereunder.

Even otherwise, in view of Covid-19 outbreak, the registry of the Hon'ble Tribunal was accepting the Petition without insisting for attestation as attestation was not possible due to Covid-19 outbreak and unavailability of Oath

Commissioners. Therefore, this cannot be a valid ground for non-admission of the present Petition.

ii. Assignee or Transferee of debt required to file copy of document reflecting such assignment under Ruler 4(2) of IBC Rules

The FC is neither an Assignee nor a transferee of the debt as is being claimed by the CD. It is a matter of record that the State Bank of India and other group banks have been merged to create the present entity. Therefore, no document reflecting any transfer or assignment is required to be filed by the Applicant FC.

Even otherwise, the factum that the CD owes dues to the present FC has been duly acknowledged by the CD and the same can easily be established through various communications exchanged between the parties especially the Confirmation of Balance Letter issued by the CD to the present FC.

iii Petition is beyond the prescribed form

To say that the Petition is beyond prescribed form is a wrong statement on part of the CD. The proper format as prescribed under the Act and the applicable rules has been followed. The Form and Format prescribed under the Rules start at Page 7 and ends at Page 25 of the Petition. Whatever extra information has been provided either before or after the Form, have been provided in order to ensure that all relevant facts are duly presented before the Hon'ble Tribunal. The same are therefore not a part of the approved Format but only supplements the information mentioned in the said Form.

In view of the above, there are no technical or jurisdictional errors in the present Petition and same is thus liable to be allowed.

d. The CD raised an objection that; *“Action not approved by JLF”*. The FC states that it is a wrong submission. The CD is well aware about the approval of JLF to present proceedings. On 27.01.2020 JLF approved NCLT proceeding. This approval also finds mention in the JLF meeting held on 24.08.2020 & 26.08.2020 but has not been objected therein by the CD. Even if the

JLF had not approved, the FC is very well entitled to initiate CIRP proceedings on his volition since being the FC.

e. The CD further objects that; “*Losses caused due to action of bank*”. The CD is at liberty to initiate appropriate remedies available under the Law in case it has any such grievances from the FC but the said allegations cannot be adjudicated in the present proceedings.

11. The CD states in its pleadings that it expressed its willingness to pay off the debt and settle the matter with the applicant. The same is clear from the communications dated 09.11.2020, 10.12.2020 and 14.12.2020. However, as per the submissions made by the FC no such settlement could be finalised.

12. Having heard learned counsels for the parties we are of the considered view that the FC has succeeded to make out a case for triggering the CIRP. The material on record clearly goes to show that the CD had availed the loan facility and has committed default in the payment of the said debt amount. The FC has placed on record evidence in support of

the claim as well as to prove the default. The CD by its own admission in reply acknowledges the existence of financial debt. Merely because the CD has stated that it is willing to settle the debt and in spite of being given various opportunities for repayment, the CD failed to reach an OTS with the JLF members. There is no bar for FC from proceedings under the provisions of Code. All the more so when the CD has failed till date in making efforts of settling the debt. There is no document placed on record by CD to show that payment of debt, as claimed by the FC, is made or is not due and payable.

13. Under sub-section (5)(a) of section 7 of the code, the application filed by the Applicant, Financial Creditor (“FC”) has to be admitted on satisfaction that:

- (i) Default has occurred;
- (ii) Application is complete, and
- (iii) No disciplinary proceeding against the proposed IRP is pending.

14. It is evident from the record that the application has been filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating

Authority) Rules, 2016 read with Section 7 of the Code. We are satisfied that a default has occurred and debt has remained unpaid. Thus, the application warrants admission as it is complete in all respects and is admitted initiating CIRP as prescribed under the Code.

15. The 'Financial Creditor'- applicant has proposed the name of Insolvency Resolution Professional, Mr. Vikram Bajaj, address at 308, 3 Floor, Pearls Business Park, Netaji Subhash Place, Pitampura, New Delhi-110034 and having registration No. IBBI/IPA-002/IP- N00003/2016-17/10003, mobile No. 9999989408 and email id bajaj.vikram@gmail.com. A written communication sent by him in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record. There is a declaration made by him that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India or ICSI. In addition, further necessary disclosures have been made by Mr. Vikram Bajaj as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

16. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make a public announcement immediately with regard to admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
17. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.
18. It has been observed from the records that the CD had filed an I.A. 1437/2021, for placing on record some additional documents which need to be considered before passing the order in (IB)-925(PB)/ 2020. However, this bench is of the view that the documents required to ascertain the default committed by the CD and debt being due have already been filed and the same has been

established by the FC. Therefore, the said application I.A. 1437/2021 has no bearing on the present order. Hence, the application would be taken up by the bench at a later date.

19. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional Mr. Vikram Bajaj to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.
20. The registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of 'Corporate Debtor' and

specific mention regarding admission of this petition must be notified.

SD/-

(B.S.V. PRAKASH KUMAR)

ACTG. PRESIDENT

SD/-

(HEMANT KUMAR SARANGI)

MEMBER (Technical)

03.05.2021