

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

I.A. No.90 of 2021 in  
C.P. (IB) No.342/BB/2019  
U/s 60(5) of IBC, 2016  
R/w Rule 11 of NCLT Rules, 2016

**In the matter of:**

**Hero Fincorp Limited**

Having its registered office at No.34,  
Community Centre, Basant Lok,  
New Delhi – 110 057.

- Applicant

Vs.

**Ontop General Trading LLC**

Shop No.3, Naif Building,  
Ayal Nasser,  
P.O Box No.29866,  
Deira, Dubai, UAE.

- Petitioner/Financial Creditor.

And

**Mr. R.S Doddabyregowda**

Resolution Professional  
Southern Batteries Pvt Ltd.  
No.350, 1<sup>st</sup> Cross, Canara Bank Layout,  
Kodegahalli, Vidyaranyapura (Post)  
Bengaluru – 560 097.

- Respondent/Corporate Debtor

AND

**In the matter of:**

**Ontop General Trading LLC**

Shop No.3, Naif Building,  
Ayal Nasser,  
P.O Box No.29866,  
Deira, Dubai, UAE.

- Petitioner/Financial Creditor

**M/s. Southern Batteries Pvt. Ltd.**  
Plot No.30, KIADB Industrial Area,  
Bommasandram,  
Bengaluru – 560 099.

- Respondent/Corporate Debtor

**Order Pronounced on: 13<sup>th</sup> May, 2021**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present:**

For the Applicant : Mr. K.S. Harish, Advocate

For the Respondent/RP : Mr. R.S. Doddabyregowda, RP

**ORDER**

***Per: Ashutosh Chandra, Member (Technical)***

1. I.A. No.90 of 2021 in C.P. (IB) No.342/BB/2019 is filed by Hero Fincorp Limited against the Financial Creditor 'Ontop General Trading LLC' and Mr. Ramanahalli S. Doddabyregowda, Resolution Professional of the Corporate Debtor, Southern Batteries Private Limited., u/s 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016.
2. The Applicant has filed this application seeking intervention of this Tribunal to set aside the communications dated 24.04.2020 and 14.06.2020 of the Resolution Professional rejecting the claim of financial debt filed by the Applicant with the Resolution professional.
3. Brief facts of the case, as mentioned in the Application which are relevant to the issue in question, are as follows:
  - (1) It is submitted that the application under section 7 of the Code, 2016 filed by the Financial Creditor, Allahabad Bank was allowed and the Corporate Debtor was admitted to the Corporate Insolvency Resolution Process vide Order dated 19.02.2020 of this Tribunal in C.P. (IB) No.357/BB/2019. Mr. R.S.



Doddabyregowda was appointed as the Interim Resolution Professional who was subsequently appointed as the Resolution Professional in the first meeting of Committee of Creditors dated 18.03.2020.

- (2) The Applicant is a company registered as NBFC registered with the RBI and has provided financial assistance vide sanction letter dated 06.04.2014 for Corporate Term Loan of Rs.10 Crore having term period of 84 months, a machinery term loan of Rs.1,80,00,000/- vide sanction letter dated 30.06.2016 for term period of 60 months and another machinery term loan for Rs.1,06,00,000/- vide sanction letter dated 24.03.2017 having a term period of 60 months.
- (3) It is submitted that the Corporate Debtor has executed several documents such as the individual loan documents in the form of master facility agreement, supplemental agreement, Deed of Guarantee (executed by the Corporate Debtor / its directors), Agreement of Hypothecation, Declaration cum Affidavit etc. The loans were payable along with interest in EMI as per the Sanction letters / facility agreements.
- (4) It is submitted that the Corporate Debtor defaulted in payment of several instalments and consequently, all the three loan accounts of Corporate Debtor came to be classified as Non-Performing Asset as on 06.11.2019.
- (5) The Applicant became aware of the order of admission dated 19.02.2020 through Public announcement dated 26.02.2020 in "Financial Express".
- (6) The Applicant herein filed its claim for a sum of Rs.3,15,02,310/- with interest in Form-C along with all the supportive documents including the loan agreements, hypothecation agreements, foreclosure statements, statement of accounts and repayment schedule etc. on 06.03.2020. Copies of the Claim form along with the sanction letter dated 06.04.2015, Master facility agreement dated 17.04.2015, Personal Guarantee dated 17.04.2015, Affidavit cum Declaration dated 21.04.2015. Sanction letter dated 30.06.2016 and respective master facility agreement, Hypothecation Agreement, Deed of



Guarantee, respective supplemental agreement, Sanction letter dated 24.03.2017 and respective loan agreements which were the annexures to the Claim form before the RP have been annexed to this Application.

- (7) On submission of the claim the Applicant received a communication on 14.03.2020 from the IRP stating that the claim of the Applicant is barred by limitation and sought for acknowledgement of debt issued by the Corporate Debtor. The email is extracted herein below:

*"We acknowledge the receipt of your claim, and the same is kept pending for admission for following:*

*1. Corporate Loan dtd.6.04.2015*

*a. Limit is time barred for admission - Any Acknowledge of Debt if obtained please furnish the same*

*2. Machinery Loan dtd.30.06.2016-*

*Any Acknowledge of Debt if obtained please furnish the same*

*3. Loan Amount- Rs.1.06 crore-*

*Mortgage Deed only furnished- Please submit Charge search Report property mortgaged - Pari passu charge etc.*

*Kindly clarify the above for further processing."*

- (8) In response to the said communication, the Applicant issued Reply dated 10.04.2020 clarifying the legal position that in the absence of acknowledgement of debt, the limitation is to be reckoned from 06.11.2019 being the date on which the accounts were classified as NPA or from the date on which the last payment was paid under each account. The email is extracted for ready reference:

*"As aspired by you for the admission of pending claims, kindly find the clarification beneath.*

*1. Corporate Loan- dtd.6.04.2015*

*a. Limit is time barred for admission – Any Acknowledge of Debt if obtained please furnish the same*

*Answer: - This is to inform you that the said limit is not barred by time because as per section 18 of the limitation act states acknowledgement of existing liability in lieu of which period of limitation is extended. In this said account the deposit of money demonstrate the acceptance of default on part of the corporate debtor and same can be checked from the statement of accounts as the last payment received from the corporate debtor was 10.07.2019.*

2. *Machinery Loan-dtd.30.06.2016-*

*Any Acknowledge of Debt if obtained please furnish the same*

*Answer: - This is to inform you that the said limit is not barred by time because as per section 18 of the limitation act states acknowledgement of existing liability in lieu of which period of limitation is extended. In this said account the deposit of money demonstrates the acceptance of default on part of the corporate debtor and the same can be checked from the statement of accounts as the last payment received from the corporate debtor was 01.08.2019.*

3. *Loan Amount- Rs.1.06 crore- Mortgage Deed only furnished- Please submit charge search Report property mortgaged- Pari Passu charge etc.*

*Answer: - We have already released the same to the borrower.*

*Kindly go through the same and for any further clarification feed free to contact the undersigned.”*

- (9) The IRP issued a communication on 24.04.2020 declining to admit the claim of Applicant as barred by limitation citing the decision of Hon'ble Supreme Court in B.K Educational Services. Copy of the email dated 24.04.2020 is annexed to the Application. The relevant part of the email is extracted for ready reference:

*“I draw your kind attention to Honourable Supreme court judgement, while setting aside NCLAT judgement i.r.o B.K. Educational Services. Article 137 of limitation act 1963, speaks about, any other application*

*for which no period of limitation is provided elsewhere. The period of limitation for such cases is 3 years from the date when the right to apply is accrues.*

*Further date of NPA/ any law came in to force is wholly irrelevant to trigger of any limitation period as per Article 141 of Constitution.*

*Please analyse the decisions of NCLT/NCLAT cases already quoted by us earlier. Further, you have not provided clarifications on satisfaction of EMT transactions. In view of the above we are declining to admit your claim.”*

- (10) The Applicant issued reply to the Resolution Professional on very same day, 24.04.2020 reiterating their stand acknowledgement of debt is not the sole criteria under law to determine the period of limitation. It is stated that it is undisputed position of law that the limitation has to be counted from the date of default, NPA and the last payment made by the Corporate Debtor. That the account of the Corporate Debtor has been classified as NPA on 06.11.2019. It is further stated in the email that it appears that the RP has counted limitation from the date of loan agreement which is not correct in the eyes of law. The statement of Accounts clearly removes all doubt with respect to the date of default and establishes the fact that the claim of Hero FinCorp Limited without any doubt is within limitation. The email dated 24.02.2020 by the Applicant is extracted herein below:

*“The Hon’ble NCLAT, New Delhi in the matter of ‘Harsukhbhai P. Lakkad v. Bank of Baroda & Ors.’ reported in MANU/NL/0191/2020 has clearly held that the for date of default/NPA is to considered for counting the period of limitation under Article 137 of the Limitation Act, 1963. Further, the same has been reiterated by you in your email dated April 10, 2020. It is an undisputed position of law that the limitation has to be counted from the date of default, NPA and the last payment made by the corporate debtor as explained to you in my earlier mail.*



*In the instant case, the account of the borrower/corporate debtor namely Southern Batteries has been classified by Hero FinCorp Limited as NPA on 06 November, 2019. Thus, by no stretch of imagination, it can be said that the claim of the Hero FinCorp Limited is barred by limitation. The acknowledgement of debt, as has been asked by you, is not required in the present case.*

*From your email dated 14.03.2020, it appears that you have counted the limitation from the date of loan agreement which is not correct in the eyes of law. The Statement of Accounts provided by us to you clearly removes all doubt with respect to the date of default and establishes the fact that the claim of Hero FinCorp Limited, without any doubt, is within limitation.*

*In light of submissions made above, we request you to kindly admit the claim of Hero FinCorp Limited which is, beyond any doubt, within the period of limitation. In case of any further query/ clarification, kindly revert.”*

- (11) However, the IRP issued a final communication on 14.06.2020 rejecting the claim of the Applicant as “*Rejected as liability is time barred for non-submission of Acknowledgement of debt*”. Copy of final communication dated 14.06.2020 of rejection of applicant’s claim is annexed to the Application.
- (12) It is submitted that the IRP has clearly exceeded in his jurisdiction in determining the claim of the Applicant in the matter of limitation and erroneously rejected the claim of the Applicant by assigning extraneous reasons. In view of law laid down by the Hon’ble Supreme Court in ‘*Swiss Ribbons Pvt. Ltd. & Anr v. Union of India & Ors. - Writ Petition (Civil) No.99 of 2019*’ decided on 25.01.2019, it has been held that the IRP has no adjudicatory powers. Further, in the case of *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Others (Civil Appeal No.8766-67/2019)* the Hon’ble Supreme Court has held that the role of the IRP is not adjudicatory but only administrative.

4. The Respondent, Mr. R.S. Doddabyregowda, RP of Southern Batteries Pvt. Ltd. filed Objections to the Application with the below stated contentions:

- (1) It is submitted that the IRP received claims from different stakeholders in response to paper publication dated 26.02.2020. The Applicant has also submitted its claim as a Secured Financial Creditor. Further, on scrutiny of claim submitted by the applicant, it is noted that the applicant had sanctioned, Corporate term loan on 06.04.2015, Machinery term loan on 30.06.2016 and Machinery term loan on 24.03.2017 to the Corporate Debtor on Hypothecation of Plant & Machinery along with mortgage of land properties. On 14.03.2020 it was communicated to the applicant with a request to furnish additional documents of Acknowledgement of debt and Security interest.
- (2) It is submitted that the Applicant failed to submit required additional documents called for by the respondent. i.e., acknowledgment of debt if any and charge creation for security interest on Mortgaged lands on or before the last date mentioned in the public announcement, as per the provisions of Regulation 12(3) of IBBI (CIRP) Regulations, 2016. Since the Respondent failed to produce the above said documents, its claim Application was declined by the Respondent on discussion in the Second CoC meeting held on 27.04.2020. The relevant paragraph of minutes of meeting is reproduced below:

*“RP informed the members that Claim of M/s. Hero Fincorp Ltd. for Rs.315.02 lac is declined for admission, as the said Financial Creditor failed to give clarification on EMT of land and under Limitation Act. And RP further informed the members the said FC may approach NCLT for a remedy in this regard.*

*In first CoC Mr. B. Radhakrishnan suspended Director of CD informed the house that said Financial Creditor's Dues under Corporate loan availed was cleared out of the sale proceeds of land mortgaged to the said creditor.”*



- (3) The Respondent submits that even though sufficient opportunity is granted, applicant fails to submit acknowledgement of debts and documents of Security interest as a secured creditor, respondent with no other alternate means to cure the deficiency in the claim, finally communicated his stand of rejection/ decline as per the provisions of IBC, 2016.
- (4) Memo dated 05.05.2020 filed by Resolution Professional also provides the reasoning declining the claim. The relevant extract from the memo is extracted herein below:

*"The Creditor failed to submit Acknowledgement for the loans sanctioned on 06.04.2015 & 30.06.2015 and search Reports for the security interest for the loan sanctioned on 24.03.2017. Further it is submitted by the said creditor that EMT properties are released to the Corporate Debtor. In view of their realization of security and failure on part of creditor to submit the proof of claims as per Regulation 10 & 12 of Insolvency and Bankruptcy Board of India (IBBI), 2016."*

5. Heard Mr. K.S. Harish, learned Counsel for the Applicant and Mr. R.S. Dodda Byregowda, Resolution Professional of the Corporate Debtor. We have carefully perused the pleadings of the Parties and also extant provisions of the Code, and the Rules made thereunder.
6. On perusal of the Application and the documents annexed thereto, it is seen that the Applicant has annexed all the necessary documents required to establish a debt, further, the Applicant has submitted his claim in Form-C within the stipulated period from the public announcement, as per the Code and the Regulations. It is well settled that the date of default / NPA has to be taken as date for ascertaining limitation. The Applicant has rightly taken support from the case decided by the Hon'ble NCLAT, New Delhi in the matter of '*Harsukhbhai P. Lakkad v. Bank of Baroda & Ors.*' reported in MANU/NL/0191/2020 where it was held that the date of default/NPA is to considered for counting the period of limitation under Article 137 of the Limitation Act, 1963. There has been no written acknowledgement of

debt, however, the date of NPA being 06.11.2019 has to be considered as the date of default. The claim is therefore well within period of limitation, and hence cannot be rejected for that reason.

7. Further, the annexures include Hypothecation Agreement, Deeds of Guarantee for each of the loans. Acknowledgement of debt is not a prerequisite for a claim to be accepted. What is to be seen is whether there are documents to show that there is a debt which has been defaulted.
8. It is clear from the perusal of the application, and the rejection communications that the Resolution Professional has erroneously rejected the claim of the Applicant.
9. In the result, the communications of the Resolution Professional, dated 24.04.2020 and 14.06.2020 rejecting the claim made by the Applicant by filing Form C with the relevant documents, are hereby set aside, as prayed for in this IA, and hence I.A. No. 90 of 2021 in C.P. (IB) No.342/BB/2019 is allowed.

**ASHUTOSH CHANDRA**  
**MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA**  
**MEMBER, JUDICIAL**

Aparna