



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI,
COURT- IV**

CP (IB)/581(MB)/2024

*[Under Section 7 of the Insolvency and
Bankruptcy Code, 2016]*

In the matter of

HDFC Bank Limited

...Financial Creditor

V/s.

Dhanlaxmi Electricals Private Limited

...Corporate Debtor

Pronounced: 26.08.2025

CORAM:

SHRI ANIL RAJ CHELLAN

SHRI K. R. SAJI KUMAR

HON'BLE MEMBER (TECHNICAL)

HON'BLE MEMBER (JUDICIAL)



Appearances:

Hybrid

For Financial Creditor:

Adv. Rohan Agarwal a/w Adv.
Prashant Phophale i/b PMH Law,
Adv. Devesh Dange.

For Corporate Debtor: Adv. Kaushal Parsekar a/w Adv. Pratik Dave i/b Desai
Desai Carrinjee & Mulla.

ORDER

[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

1.1 This Application has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC/Code) by HDFC Bank Limited, the Financial Creditor (FC), for initiation of Corporate Insolvency Resolution Process (CIRP) in respect of Dhanlaxmi Electricals Private Limited the Corporate Debtor (CD), for an alleged default of Rs.9,60,86,480.83/- (Nine Crore, Sixty Lakh Eighty-Six Thousand Four Hundred and Eighty Rupees and Eighty-Three Paise).

2. SUBMISSIONS OF FC

2.1 The FC submits that the CD approached them with a request for grant of number of vehicle loan facilities under various loan accounts and categories, which were sanctioned by the FC by Loan cum Hypothecation Agreements (Loan Agreements) dated 06.03.2021; 24.03.2021; 25.10.2021; and 04.12.2021. The CD also executed



Irrevocable Power of Attorney dated 06.03.2021; 24.03.2021; 27.10.2021; and 04.12.2021 and other documents in favour of the FC.

2.2 However, the CD failed to observe financial discipline, as per the terms of the Loan Agreements, but committed default in the category of 52 accounts on 05.10.2022; in the category of 13 accounts on 19.12.2022; and in the category of 3 accounts on 28.03.2023. Therefore, FC recalled all the sanctioned facilities, *vide* recall notice dated 11.06.2024. However, even after issuance of the recall notice, the CD failed, defaulted and neglected to regularise the accounts or to pay the outstanding dues. Hence, all the accounts of the CD were declared as Non-Performing Assets (NPA) on 03.01.2023. Further, post classification of the loan accounts as NPA also, the CD never got their accounts regularised. Therefore, as long as the loan accounts continue to remain NPA, the default by the CD continues. Hence, the present Application under Section 7 of the IBC.

3. CONTENTIONS OF CD

3.1 The Ld. Counsel for the CD submits that the Application is defective; filled with inconsistencies; and also suffers from wilful misstatement and concealment of true and correct facts, not maintainable, and as such liable to be dismissed.

3.2 In the hard copy of the Reply tendered by the CD, it is submitted that the Board Resolution dated 15.04.2023 passed by the FC does not have a specific resolution for initiation of insolvency proceedings against the CD and cannot be relied upon for institution of the present proceedings. Hence, in the absence of any specific resolution to file a Section 7 application, the Company Petition is not maintainable, defective and ought to be dismissed.



3.3 The FC has not disbursed the total Rs.13,11,20,731/- to the CD. The Loan Agreements dated 06.03.2021; 24.03.2021; 04.12.2021; and 25.10.2021, are all unstamped documents, and therefore, inadmissible in evidence. It is settled legal position that documents unstamped or insufficiently stamped cannot be relied upon by an applicant. Further, the FC has failed to enclose necessary proof of disbursements in respect of the amounts claimed to have been disbursed by them.

3.4 The date of default mentioned by the FC is wrong and cannot be relied upon. It is denied that the default occurred on 05.09.2022 or 05.10.2022 as alleged or on 03.01.2023. Upon a period of 90 days being granted, the date of NPA is 03.01.2023 and the default did not occur on that date. This is contrary to the documents on record as also documents in possession of the CD. Even after 05.10.2022, substantial payments have been made to the FC, such as in the months of December 2022 and March 2023, which have not been disclosed by the FC in the Application. It is also submitted that the amount claimed by the FC is largely different from the ledgers maintained by the CD .

3.5 The classification of accounts of the CD as NPA by the FC is wrong and contrary to applicable guidelines. The CD is an MSME but the FC failed to adhere to the 'Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises' (MSMEs) dated 29.05.2015, notified by the Ministry of Micro, Small and Medium Enterprises read with the 'Master Direction-Reserve Bank of India [Lending to Micro, Small & Medium Enterprises (MSME Sector) Directions, 2016'. Therefore, the declaration of NPA, allegedly on 03.01.2023, cannot be taken as the date of default, and it is contrary to the provisions of the above documents; and therefore, bad in law.



3.6 The FC has disclosed the date of default as 01.03.2023 in the filings made with the Information Utility (IU), but the alleged date of default as stated in Part-IV of the Application is 03.01.2023. Therefore, different and inconsistent dates of default are set out by the FC without any explanation. Further, there are inconsistencies and contradictions between the amounts claimed by the FC in Part-IV and as provided to IU. Hence, the Application is to be rejected.

4. ANALYSIS AND FINDINGS

4.1 We have heard both the Ld. Counsel for the FC and the CD and perused the documents and pleadings available on record and considered the arguments of both the sides.

4.2 The relationship between the parties as lender and borrower of the commercial vehicle loan facilities is not disputed. The parties have signed and executed the Loan Agreements and related documents on various dates. However, the CD challenges the deficiency of stamp duty in the Loan Agreements dated 06.03.2021; 24.03.2021; 25.10.2021; and 04.12.2021. According to the Ld. Counsel for the CD, the cause of action in this case arises on the basis of the documents, which are insufficiently stamped. He has further contended that no application under Section 7 of the Code can be filed on the basis of insufficiently stamped document, as they are inadmissible in evidence. According to him, no liability of the CD can be ascertained or quantified on the basis of these deficient documents. It is a settled position of law that no insufficiently stamped document can be admitted as evidence unless proper duty and penalty are paid to rectify the defect. However, we observe that in the case of a summary proceeding for



considering an application for initiation of CIRP by the Adjudicating Authority, there is no requirement to admit documents. We are only required to make determination of the existence of default under Section 7 of the IBC, based on the documents available on record. In the present case, the Applicant has produced disbursement memos as well as the record of default by the IU. Thus, the documents produced by the Applicant are sufficient to make a determination of default. Further, the objective of the IBC is to facilitate insolvency resolution of the corporate debtor, and improper or deficient stamping on any document cannot be a ground for rejection of the application, if existence of default is otherwise ascertainable in terms of Section 7(4) of the IBC.

4.3 Another contention raised by the CD is that no definite date of default is made out by the FC in the present matter. It is the case of the FC that the CD has availed different loans for the purchase of Chassis and Bodies of Commercial Vehicles under various Loan Agreements. The FC has produced copies of the loan applications submitted by the CD from 26.02.2021 to 04.12.2021, and also copies of Irrevocable Powers of Attorney by the directors of the CD from 06.03.2021 to 04.12.2021. The FC has given the list of loan accounts and the amount of finance, along with the details of various loan disbursements. In Part-IV of the Application, the FC has stated that there existed principal dues of Rs.9,60,86,480.83/- as on 07.06.2024. The date of default in the category of 52 accounts was stated as 05.10.2022, and in the category of 10 accounts as 05.09.2022, and also a further category of 3 accounts as 28.03.2023. It is also mentioned in Part-IV that the date of declaration of CD's accounts as NPA is 03.01.2023. According to the FC, the date of default occurred when the monthly instalments fell due on various dates under the Repayment Schedule to the Loan Agreements. The CD submitted that



the Application is incomplete as there are missing pages. However, the FC submitted in the Additional Affidavit that the missing pages pertain to ancillary and miscellaneous declarations related to forex exposure letter, priority sector advance declaration by the customer availing loan, etc., which are not so relevant to the present Application. On the basis of the documents on record, it is seen that the account of the CD was declared NPA on 03.01.2023. Although the date of default in the category of 52 accounts is mentioned as 05.10.2022; in the category of 13 accounts as 05.09.2022; and of 3 accounts as 28.03.2023, the date of NPA is mentioned as 03.01.2023. In the Record of Information dated 30.04.2024, the date of default is mentioned as 03.01.2023, but in the Record of Financial Information dated 31.12.2023, the date of default is 01.03.2023. However, we observe that IU record is not the only information available for us to determine the date of default. It is noted that the Reserve Bank Master Direction stipulates that, once the debt continues to be in default for 90 days, the loan account would be classified as NPA. That means, the accounts of the CD would have become NPA on 05.10.2022, which is 90 days prior to the NPA declaration date of 03.01.2023. The Ld. Counsel for the CD disputes both 05.09.2022 and 05.10.2022 as dates of default, as according to him, the CD had already made substantial payments to the FC in December, 2022 and in March, 2023. However, we find that no document has been produced by the CD to substantiate this claim. In view of the above, we determine 05.10.2022, i.e., 90 days prior to the declaration of accounts of the CD as NPA, as the date of default in the present matter. It is seen that the Application was filed on 16.07.2024, and hence, the same is filed within the period of limitation. The FC issued legal notice on 11.06.2024 to the CD, calling upon them to pay the defaulted amount with interest



and other charges amounting to Rs.9,61,81,826.83/- within 7 days from the date of the notice. Records reveal that the CD and its Directors have received the said loan recall notice. However, there is nothing to show that the CD has ever replied to the said notice or refuted the amount of claim by the FC, at the very first opportunity, if they had any dispute as regards default amount or the date of default. In view of the above, it is observed that, on the loan applications submitted by the CD, the FC granted various commercial loan facilities under different Loan Agreements. The CD availed the facility; however, it failed to repay the dues on time. Hence, we have come to a definite conclusion that the CD has committed default in repayment of the debt due to the FC.

4.4 When debt and default committed are found against the CD and the date of default is determined, we do not think it necessary to delve into other issues such as treatment of MSME loan; violation of RBI Mater Circular; solvency of the CD; sufficient security provided to the FC to proceed against them otherwise than under IBC, etc. It is a settled law that the pre-requisite for an application under Section 7 of the Code is existence of debt and default by the corporate debtor. The CD owes the financial debt in excess of the specified amount of One Crore Rupees under Section 4 of the Code. We determine the existence of 'financial debt' by the CD within the definition of Section 5(8) of the IBC. In view of the above, we are of the considered view that in such circumstances, it is imperative that CIRP be initiated in the matter of the CD. The Application is complete in all aspects under the law. All other contentions raised by the CD are insignificant and irrelevant, when we have already found that there is a debt and default by the CD to the FC above the threshold limit under Section 4 of the IBC. In view of the above, the present Application filed under Section 7 of the IBC to initiate CIRP in the matter of the CD deserves to be admitted.



ORDER

The **CP (IB)/ 581 (MB)/2024** filed under section 7 of the IBC by **HDFC Bank Limited** (FC) seeking initiation of CIRP in the matter of Dhanlaxmi Electricals Private Limited (CD) is **admitted**.

We further declare moratorium u/s 14 of the IBC, with consequential directions as follows:

- I. We prohibit-
 - a) institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.
- II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan



under Section 31(1) of the IBC or passes an order for the liquidation of the CD under Section 33 thereof, as the case may be.

- IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.
- V. This Bench hereby appoints **Mr. Dhaval Jitendrakumar Mistry** as the Interim **Resolution Professional having Registration No. IBBI/IPA-001/IP-P-01853/2019-2020/12849** and Email - **cadhavalmistry@yahoo.com** as the Interim Resolution Professional (IRP), having valid Authorisation for Assignment until 31.12.2025, to carry out the functions as mentioned under the Code. The fee payable to the IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.
- VI. That during the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of IBC. The officers and managers of the CD are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the CD. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the IBC. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.
- VII. In exercise of the powers under Rule 11 of the NCLT Rules, we order the OC to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on



issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the OC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- VIII. Registry shall send a copy of this order to the concerned Registrar of Companies, Mumbai for updating the Master Data of the CD.
- IX. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sanika, LRA

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)