



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 204
(IB)-33/ND/2024

IN THE MATTER OF:

Kaliber Associates Pvt. Ltd.

Office at:

**B-1/12, 2nd Floor, Safdarjung
Enclave, New Delhi - 110029**

... **Applicant/Financial
Creditor**

Versus

Laiba International Pvt. Ltd.

Office at:

**E-20 Lajpat Nagar-III, New Delhi,
Delhi India, 110024**

... **Respondent**

Under Section: 7 of (IBC), 2016

Order delivered on 20.03.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Appellant : Adv. Anirban Bhattacharya, with Adv. Rajeev
Chowdhary, Adv. Priyanka Bhatt

For the Respondent : Adv. Amit Aggarwal, Adv. Aman Singh,
Adv. Deepak Gupta

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

1. It is the case of the Petitioner that the Corporate Debtor has defaulted to pay back the amount of financial facilities extended to it by the Financial Creditor.

2. As can be seen from the factual development narrated in the brief synopsis and the list of dates and events, on 28.01.2021, the Applicant/Financial Creditor submitted the details of default committed by the Corporate Debtor to the Information Utility (IU) namely National E-governance Services Ltd. and the IU issued its report dated 05.01.2022 to the Financial Creditor authenticating the default committed by the Corporate



Debtor. Regarding the transaction, the Applicant has stated that the audited financial statements of the Corporate Debtor for the years 2019-20, 2020-21 and 2021-22 reflect that the Respondents/Corporate Debtor had availed the financial facilities from the Financial Creditor.

3. It is the case of the Applicant that in terms of the audited financial statement of the Corporate Debtor for the period ended on 31.03.2018, the Corporate Debtor is liable to pay the debt amounting to Rs. 9,69,89,700/- to the Applicant/financial creditor.

The relevant excerpts of the balance sheets (ibid) reads thus:

M/s LAIBA INTERNATIONAL PVT. LTD

Grouping of Balance Sheet as on 31st March, 2020

2.3 LONG TERM BORROWINGS

Particulars	2019-20	2018-19
(a) Loan & advances from related parties		
Lalit Modi	18,000	-
Rajul Modi	3,90,40,000	-
Sonia Modi	75,000	-
Kaliber Associates Pvt. Ltd.	10,77,20,700	-
Lotus Valley Projects Pvt. Ltd.	1,50,00,000	-
LV Universal Pvt. Ltd.	9,00,000	-
Carnival Developers Pvt. Ltd.	9,00,000	-
Total (A)	16,36,53,700	-
(b) Loan & advances from others		
Red Star Tradex Private Limited	2,90,00,000	-
Seven Heaven Hotel & Resorts Pvt Ltd	1,70,00,000	-
Total (B)	4,60,00,000	-
Total	20,96,53,700	-



2.4 SHORT TERM BORROWINGS

Particulars	2019-20	2018-19
(a) Loan & advances from related parties		
Lalit Modi	-	18,000
Rajul Modi	-	3,90,40,000
Sonia Modi	-	75,000
Kaliber Associates Pvt. Ltd.	-	10,77,20,700
Lotus Valley Projects Pvt. Ltd.	-	1,50,00,000
LV Universal Pvt. Ltd.	-	9,00,000
Carnival Developers Pvt. Ltd.	-	9,00,000
Total (A)	-	16,36,53,700
(b) Loan & advances from others		
Red Star Tradex Private Limited	-	2,90,00,000
Seven Heaven Hotel & Resorts Pvt Ltd	-	1,70,00,000
Total (B)	-	4,60,00,000
Total	-	20,96,53,700

11

M/s LAIBA INTERNATIONAL PVT. LTD

Grouping of Balance Sheet as on 31st March, 2021

2.3 LONG TERM BORROWINGS

Particulars	2020-21	2019-20
(a) Loan & advances from related parties		
Lalit Modi	18,000	18,000
Rajul Modi	3,90,40,000	3,90,40,000
Sonia Modi	1,12,500	75,000
Kaliber Associates Pvt. Ltd.	10,77,20,700	10,77,20,700
Lotus Valley Projects Pvt. Ltd.	1,50,00,000	1,50,00,000
LV Universal Pvt. Ltd.	9,00,000	9,00,000
Carnival Developers Pvt. Ltd.	9,00,000	9,00,000
Total (A)	16,36,91,200	16,36,53,700
(b) Loan & advances from others		
Red Star Tradex Private Limited	2,90,00,000	2,90,00,000
Seven Heaven Hotel & Resorts Pvt Ltd	1,70,00,000	1,70,00,000
Total (B)	4,60,00,000	4,60,00,000
Total	20,96,91,200	20,96,53,700



M/s LAIBA INTERNATIONAL PVT. LTD

Grouping of Balance Sheet as on 31st March, 2022

2.3 LONG TERM BORROWINGS

Particulars	2021-22	2020-21
(a) Loan & advances from related parties		
Lalit Modi	-	18,000
Rajul Modi	39,040,000	39,040,000
Sonia Modi	150,277	112,500
Fresherb International Private Limited	6,666	-
Kaliber Associates Pvt. Ltd.	107,720,700	107,720,700
Lotus Valley Projects Pvt. Ltd.	15,000,000	15,000,000
LV Universal Pvt. Ltd.	900,000	900,000
Carnival Developers Pvt. Ltd.	900,000	900,000
Total (A)	163,717,643	163,691,200
(b) Loan & advances from others		
Red Star Tradex Private Limited	29,000,000	29,000,000
Seven Heaven Hotel & Resorts Pvt Ltd	17,000,000	17,000,000
Total (B)	46,000,000	46,000,000
Total	209,717,643	209,691,200

4. To buttress the default, the Ld. Counsel appearing for the Applicant could also draw our attention to the Report of the Information Utility, available on record as Annexure A-13. The relevant excerpt of the report of date of default reads thus:

Default Information	
Date of default	31-01-2019
Total Outstanding	9,70,20,700.00
Default amount	9,70,20,700.00
Days past due	728
Part-C Remarks	Legal Notice Issued for recovery of outstanding amount

5. Relying upon the judgment of Hon'ble NCLAT in Vipul Himatlal Shah Vs. Teco Industries, Company Appeal(AT)(Ins.) No. 470 of 2022, Mr. Bhattacharya contended that the Report of IU is sufficient and conclusive evidence of default and may be relied upon by this Tribunal to conclude that the Corporate debtor has committed default.



6. Mr. Deepak Gupta, Ld. Counsel appearing for the Corporate Debtor submitted that the present petition is time barred and there is no financial debt due and payable by the Corporate Debtor. As far as the plea of limitation is concerned, it is seen from the balance sheets of Corporate Debtor for the year 2021-22, it admitted/acknowledged the amount of debt payable by it to the Financial Creditor. Thus, in the present case, the limitation would start from the year 2022. In the wake, the present petition preferred in January 2024 would be well within the period of limitation. Here it would not be out of context to refer to the judgment of Hon'ble Supreme Court in Civil Appeal No. 2085 of 2022 titled "**Axis Bank Limited Vs. Naren Sheth & Anr.**" wherein it was held that, the limitation would start from the date on which acknowledgement of the debt has been made. The basis of the judgment is that in terms of the provisions of Section 18 of the Limitation Act, if there is acknowledgement of debt before the expiry of period of limitation which is, three years, the period of limitation would run afresh.

7. In the present case, it is not disputed by the Corporate Debtor that date of default is 31.01.2019. It is also not in dispute that in all the balance sheet thereafter viz. for the years 2019-20 & 2020-21, 2021-22, the amount of debt has been shown by the Corporate Debtor as its liability viz. the financial creditor. In the backdrop the plea of limitation raised on behalf of the Corporate Debtor cannot be countenanced and is liable to be rejected. The relevant excerpt of the Judgment reads thus:

20. Further, learned Senior counsel for the appellant also expressed doubt and apprehension about the correctness and



genuineness of such acknowledgments but we are afraid to accept such a contention inasmuch as the same could be objected regarding its correctness by the Corporate Debtor and not by an unsecured creditor. It would be for the Adjudicating Authority to consider such a plea, if so raised by the Corporate Debtor.”

21. Reference may be made to a recent judgement of this Court in the case of Dena Bank (supra) where facts were similar. The documents relating to acknowledgement claiming benefit of Section 18 were introduced at appellate stage, and such documents being balance sheets and settlement offers. It was held that the same could be accepted even at the appellate stage and a settlement offer akin to an OTS proposal would be an acknowledgment of debt for the purpose of Section 18 of Limitation Act. The only caveat was that such acknowledgments should be before the expiry of limitation prescribed under law. Para 22 of the said judgement refers to the facts in brief which are similar to the facts of the present case where the balance sheet and one-time settlement proposal were introduced. The same is reproduced herein:

“22. In other words, the main question involved in this appeal is, whether a petition under Section 7 IBC would be barred by limitation, on the sole ground that it had been filed beyond a period of 3 years from the date of declaration of the loan account of the corporate debtor as NPA, even though the corporate debtor might subsequently have acknowledged its liability to the appellant Bank, within a period of three years prior to the date of filing of the petition under Section 7 IBC, by making a proposal for a one-time settlement, or by acknowledging the debt in its statutory balance sheets and books of accounts.”



8. Regarding, the plea of there being no financial debt espoused by the Corporate Debtor a reference may be made to the judgment of Hon'ble NCLAT in Vipul Himatlal Shah Vs. Teco Industries, [Company Appeal (AT)(Ins.) No. 470 of 2022]. In the said judgment Hon'ble NCLAT categorically ruled that the entry in information utility report is conclusive evidence to arrive at conclusion regarding the debt and the default. Para 16 of the Judgment reads thus:

*16. In the light of the detailed discussion as above, it is clear that in case the record of Information Utility shows that there is a debt which is in default, the Adjudicating Authority or the Appellate Authority are not required to further examine the record maintained by the Information Utility, more so when the record of the Information Utility is deemed authenticated and no dispute or refutation of said record has been done by the corporate debtor earlier. We also note that in the judgment of **Rushabh Civil Contractors Pvt. Ltd. vs. Centrio Lifespaces Ltd. (supra)**, which has been cited by the Learned Counsel for Appellant, the record that formed the basis for financial debt and default was found to be forged and fabricated, which is not the case in the present appeal. Therefore, this judgment does not come to the rescue of the Appellant.”*

9. In view of the aforementioned, we are bound to take a view that the Corporate Debtor is liable to repay the debt to the Financial Creditor, which has been defaulted to be repaid. Resultantly, **the application is admitted.**

10. **In the wake, moratorium provided under Section 14 of IBC, 2016 is declared qua the CD** and as a necessary consequence thereof the prohibitions are imposed qua:



- (a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Respondent.

11. As proposed by the Petitioner **Mr. Saurab Sharma**, having Registration **IBBI/IPA-001/IP-P-02550/2021-2022/13951** is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against him and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. It is further ordered that:

“Mr. Saurab Sharma shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.”



12. The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will 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.

13. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

14. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)