

NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH (COURT-II)

(IB)-66(ND)/2022

IN THE MATTER OF:

State Bank of India

Concerned Branch Office at:
SAMB-II, 11th Floor,
Jawahar Vyapar Bhavan,
1, Tolstoy Mary, New Delhi - 110001

...Applicant/Financial Creditor

VERSUS

M/s. Jssi Hydraulics Private Limited

Registered Office at:
C-1/B, Block-F, Mansarovar Garden,
New Delhi - 110015

...Respondent/Corporate Debtor

Section: 7 of IBC, 2016

Order Delivered on: 12.07.2022

CORAM:

SHRI. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Siddharth Sangal Advocate with
Ms. Vaidehi Kothari Advocate

For the Respondent : Mr. Ritin Kumar, Adv.



ORDER

PER: SHRI. DHARMINDER SINGH, MEMBER (J)

The present application is filed, under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC, 2016**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by State Bank of India (for brevity '**Applicant/Financial Creditor**') through its Authorized Representative Shri. Shiv Shekher Narayan, (Assistant General Manager) with a prayer to initiate the Corporate Insolvency process against M/s. JSSI Hydraulics Private Limited (for brevity '**Respondent/Corporate Debtor**').

2. The Corporate Debtor namely, M/s. JSSI Hydraulics Private Limited is a Company incorporated on 02.07.2007, under the provisions of erstwhile Companies Act, 1956 with CIN U74140DL2007PTC165420, having its registered office at C-1/B, Mansarovar Garden, New Delhi-110015, which is within the jurisdiction of this Tribunal.

3. The Authorized Share Capital of the Corporate Debtor Company is Rs. 22,50,00,000/- and Paid-up Share Capital is Rs. 22,19,60,000/- as per the master data annexed with the Application.

4. Briefly stated that the Financial Creditor provided Credit Facilities to the Corporate Debtor, the details of the same are summarized below :-







Sr. No.	Sanction Letter Date	Initial Limit in (Rs.)	Enhanced / Renewed Limit	Date of Loan Agreement
1.	06.08.2013	32 Crores	-----	23.09.2013
2.	24.09.2014	32 Crores	51 Crores	24.09.2014
3.	22.09.2015	51 Crores	61.50 Crores	24.09.2015
4.	26.02.2016	61.50 Crores	60.02 Crores	-----

5. The Applicant placed on record the balance confirmation Letter dated 11.04.2016 issued by the Corporate Debtor, giving details of the Credit facilities availed by it along with the outstanding amount as on 31.03.2016. The relevant extracts of the same is reproduced below :

*"The Deputy General Manager,
State Bank of India,
Commercial Branch, Nehru Place
New Delhi – 110019*

Date: 11.04.2016

*Dear Sir,
Balance Confirmation as on 31.03.2016
M/s. JSSI Hydraulics Private Limited*

We confirm that the balance as at the close of business on the 31.03.2016, of our following accounts was due by us to the Bank, as shown in your statement of account as on that date:

Amount in Rs.					
S. No.	Type of Account	Account No.	Dr/Cr	Currency	Bal. Outstanding
1.	Cash Credit	34368033923	Dr	INR	162,041,826.64
2	Term Loan	35430909812	Dr	INR	290,519,617.00
3	Term Loan	34242805236	Dr	INR	28,110,909.00
4	LC	33617983361	Dr	INR	41,718,995.00
5	LC	33888206609	Dr	USD	64,289.40
6	BG	34237931711	Dr	INR	53,893,077.00

Yours Faithfully

*(Authorised Signatory)
For JSSI Hydraulics Pvt. Ltd.*

[Signature]

[Signature]



6. It is stated by the Applicant that the Corporate Debtor, after some initial payments of servicing interest on loan amounts, it had failed to pay the Loan Amount, accordingly, the total amount claimed by the Applicant Bank in the Part IV of Application is amounting to Rs. 113,96,32,679.27/-, out of which Rs. 53,45,20,913.64/-, is the principal outstanding amount. Further 29.06.2016 i.e., the date on which the account of the Corporate Debtor was classified as NPA has been relied as the date of default.

7. The Applicant Bank has relied upon the following documents to establish existence of Financial Debt.:

- a) Copy of the Sanction Letter dated 06.08.2013, 24.09.2014, 22.09.2015, 26.02.2016.
- b) Copy of the Loan Documents dated 23.09.2013, 24.09.2014, 24.09.2015.
- c) Copy of letter dated 11.04.2016 issued by the Corporate Debtor.
- d) Copy of Balance Sheet of Corporate Debtor as on 31.03.2017
- e) Copy of the Legal Notice dated 27.07.2018 sent by the Financial Creditor recalling the entire loan.
- f) Copy of the Reply dated 11.08.2018 of the Corporate Debtor.
- g) Copy of the OTS Proposal dated 06.05.2019.
- h) Copy of the Board Resolution dated 19.08.2019 of the Corporate Debtor.
- i) Copy of the OTS Acceptance dated 27.08.2019.



- j) Copy of the Statements of Accounts of the Corporate Debtor along with Outstanding Amount.
- k) Copy of the Certificate of Registration of Charge dated 26.02.2016 issued by the Registrar of Companies & etc.

8. It is further submitted by the Applicant that it has filed one Original Application bearing no. 1178 of 2018 against the Corporate Debtor before the Debt Recovery Tribunal, New Delhi for recovering its outstanding dues. Further the Applicant Bank has also issued notice dated 19.12.2016, under Section 13(2) of SARFAESI Act, 2002. Accordingly, prayed for admitting the present application.

9. The Corporate Debtor has filed its detailed reply on 11.05.2022, submitting that the present application has been filed for recovery and not for resolution of the Corporate Debtor. It is added that the Financial Creditor has already initiated recovery proceedings before Hon'ble DRT. It is further added the aforesaid Act of the Financial Creditor attracts Section 65(1) of IBC, 2016. Further the initiation of CIRP would ultimately reduce the value of the assets of the Corporate Debtor which is definitely against the very object of the Code. It is added that the mortgaged property would be sold at a throw away price, below the marked value of the secured assets thereby not only causing huge loss to the Corporate Debtor but would also jeopardize the interest of the investors and buyers who have invested money in the said project.

10. Further, it is submitted that the present Application is barred by limitation, as the right to file the present application accrued on

-sd/-

-sd/-



29.06.2016, whereas the present Application has been filed on 16.11.2021.

11. It is also submitted that the statement of accounts furnished by the Financial Creditor is not in accordance with law, as the Financial Creditor nowhere in its Affidavit mentioned that from which computer, printer and the IP address, it has retrieved the Balance Sheet and Statement of Accounts of the Corporate Debtor. It is further submitted that the present Application has been filed without any authorization as no power of attorney or letter of authorization, has been placed on record, which establish that Shri. Shiv Shekher Narayan is the Authorized Person to file the present Application. Corporate Debtor has further objected towards the calculation provided by the Financial Creditor towards computation of the interest amount given in Annexure A-17, page no. 365 of the Application and Financial Creditor has not given any explanation about the said calculation.

12. After hearing submission of both the parties and going through documents placed on record, this Bench observes that the Corporate Debtor has raised issue with regard to limitation. Therefore, we would like to examine that whether the Application has been filed within the Limitation period or not. Apparently, the Financial Creditor has relied upon the date of NPA which is 29.06.2016, whereas, the present Application has been filed on 16.11.2021. In order to establish this fact that the present Application has been filed within the limitation period, the Financial Creditor placed on record the OTS Proposal dated



06.05.2019, which was duly accepted by the Financial Creditor vide its letter dated 27.08.2019, the scanned copy of the OTS Proposal is reproduced below :



ANNEXURE: A-13

JSSI HYDRAULICS PVT. LTD. 343

- Manufacturers of :**
- Precision CNC Generated Components
 - Hydraulic & Pneumatic Systems
 - Import Substitutions
 - Water Cooled Moulds
 - Casting Table & Machines

Corp Off: C-1/B, Mansarovar Garden, New Delhi -110011
Phone: +91 11 25458361
Works: Plot No. 39 Sector 4B, HSIIDC Industrial Estate, Bahadurgarh, District - Jhajjar 124507 Haryana
Fax: +91 11 25469094
E-mail: hardeep.singh@jssi.in ; jogindersingh@jssi.in
Website : www.jssi.in

Ref/JSSI/PS-1010/2018-19

Date: 06/05/2019

To,

Mr. Abhishek Kumar
 Assistant General Manager
 State Bank of India
 Stressed Assets Management Branch -2
 11th Floor, Jawahar Vyapar Bhawan
 1, Tolstoy Marg, New Delhi -1

Dear Sir,

Sub: Our OTS Proposal

This is further to our letter offering Rs.36 Crs. towards settlement of dues of JSSI under consortium and JSSHPL. In this respect and as discussed and negotiated, we hereby improve

Bank	Company	Outstanding (CR)	Compromise Offer (Cr.)
SBI	JSSI	54.43	35.00
SBI	JSHPL	09.74	05.00
Total SBI		64.17	40.00
Syndicate Bank	JSSI	12.94	04.00
Grand Total		77.11	44.00

our compromise settlement (OTS) offer as combined for consortium as as under:-

Sir, it is pertinent to note that total compromise offers for both of our companies i.e. JSSI/JSHPL for both SBI/Syndicate bank is Rs. 44.00 Cr. It is also pertinent to note that our offer in case of JSSI is combined consortium offer for both SBI & Syndicate Bank and we request to be processes in the same manner. The OTS offer for Rs.44 Cr. Shall be repaid within 4 months from sanction by banks.

Further, as communicate earlier, one of the investor (basically a cooperative bank) has issued sanction letter earlier for Rs. 33 Cr. (copy of the same was duly submitted to your office) which had validity till 31st March 2019. Expiry of the same has added to pressing situation however we are trying relentlessly to revive the same and we have been clearly conveyed that same can be extended till 30th April 2019. Considering the new financial year and matter being delayed the captioned bank has shown a concern of withdrawing the sanction if OTS sanctions by SBI/Syndicate is delayed further.

- Sdr

- Sdr



JSSI HYDRAULICS PVT. LTD. 344

- Manufacturers of :
- Precision CNC Generated Components
 - Hydraulic & Pneumatic Systems
 - Import Substitutions
 - Water Cooled Moulds
 - Casting Table & Machines

Corp Off: C-1/B, Mansarovar Garden, New Delhi -110015
 Phone: +91 11 25456355
 Works: Plot No. 39 Sector 4B, HSIDC Industrial Estate
 Bahadurgarh, District - Jhajjar 124507 Haryana
 Fax: +91 11 25469004
 E-mail: hardeep.singh@jssi.in ; jogindersingh@jssi.in
 Website : www.jssi.in

Therefore, in light of these facts as well as our bonafide intention wherein OTS offer now has been improved substantially, we request your goodself earnestly to expedite the process.

Should you require any further information/clarification, we shall glad to submit the same in the earliest possible time.

We request both the banks to consider our offer and request and expedite the sanction and oblige.

Yours Sincerely

For JSSI/JSSHPL
 For JSSI HYDRAULICS PVT. LTD.

Director

Authorised Signatory

13. At this juncture, we would like to refer to the Judgment of Hon'ble Supreme Court in the matter of **Dena Bank Vs. C. Shivakumar Reddy and Anr. in Civil Appeal No.1650 of 2020, dated 04.08.2021.**

*"141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act. In **Gaurav Hargovindbhai Dave** (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019...."*

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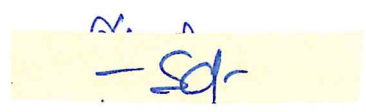
-sdr



14. From the aforesaid citation, it is apparent that the OTS Proposal made by the Corporate Debtor constitutes a valid acknowledgment in terms of Section 18 of Limitation Act. In the instant case, the OTS Proposal was made on 06.05.2019 by Corporate Debtor, which is within three years from the date of default i.e., 29.06.2016, therefore, the same would constitute a valid acknowledgement of the debt by the CD, accordingly the same further extends the period of limitation from the said date of acknowledgment. Hence, the period of limitation has to be counted from 06.05.2019 i.e., date of submission of OTS Proposal by Corporate Debtor with the Financial Creditor. Since the present Application has been filed on 16.11.2021, therefore, we are of the considered view the present application has been filed within the limitation period. Hence, this conclusion drawn by the Ld. Counsel for the Corporate Debtor stands discarded.

15. The Corporate Debtor further objected that the present application has been filed for recovery and not with a fair intent for resolution of the Corporate Debtor and argued that the instant application deserves to be dismissed in view of Section 65(1) of IBC, 2016. In our considered view the provision of Section 65(1) of IBC, 2016 can be attracted, only when, the application is filed by the Applicant either for malicious or fraudulent intent. The Corporate Debtor failed to bring anything on record, which could suggest that the present application has been filed with the malicious or fraudulent intent and not for the purpose of seeking its resolution. Rather, it is established on the record that the







loan facility was availed by the Respondent and by virtue of OTS, the said liability duly stands admitted.

16. Ld. Counsel for the Corporate Debtor further argued that the present Application has not been filed by the Authorized Person as no power of attorney or Authorization Letter has been issued in favor of Shri. Shiv Shekher Narayan. Per contra, the Ld. Counsel for the Financial Creditor has stated that Shri. Shiv Shekher Narayan (Assistant General Manager) is not required any SPA or Authorization Letter since he is Authorized by virtue of Gazette Notification dated 27.03.1987. The scanned copy of the same is reproduced below :

**STATE BANK OF INDIA
CENTRAL OFFICE
Bombay, the 27th March 1987
NOTICE**

No. ORG/17405—In pursuance of Regulations 76(1) of the State Bank of India General Regulations 1955, framed under Section 50 of the State Bank of India Act 1955, the Executive Committee of the Central Board hereby authorises the undernoted class of officers to exercise the Signing Power to the extent specified against each of the Officer(s) below —

- | | |
|---|---|
| A. All Officers in the Grades of SMGS — IV and above | To sign all documents, instruments, accounts, receipts, letter and advices, etc. connected with the current or authorised business of the Bank in respect of all matters coming in discharge of functions of the posts held for the time being. |
| B. All Branch Managers/ Managers of Divisions in the Grades of MMGS III/MMGS-II/JMG-I | To sign all documents, instruments, accounts, receipts, letters and advices, etc., connected with the current or authorised business of the Bank in respect of all matters coming in discharge of functions of the posts held for the time being. |
| C. All Managers (Accounts)/ Accountants, Heads of Cash Departments at branches [Managers (Cash), Dy. Managers (Cash) and Asst. Managers (Cash)] | Power to discharge bills of exchange, promissory notes, documents of title to goods which come to them in discharge of functions of the post held for the time being. |

All officers, employees of the Bank on whom above signing powers are conferred shall continue to exercise the powers conferred on them for the discharge of their function notwithstanding the place of their posting.

The existing notifications as to signing powers shall operate subject to the above modification and to the extent to which these are not in consistent with anything contained in this notification.

By the Order of the Executive Committee of the Central Board.

Sd/- ILLEGIBLE
Managing Director

- Sd -

- Sdr



17. In this context, it is established for Gazette notification, that All Branch Managers of divisions in the grade of MMGS III/MMGS-II/JMG-I are authorized to sign all documents, instruments, accounts, receipts, letters and advices etc. connected with the current or authorized business of the Bank in respect of all matters coming in discharge of functions of the posts held for the time being. During the course of final hearing on 04.07.2022, Ld. Counsel for the Financial Creditor stated that Shri. Shiv Shekher Narayan is squarely covered in clause B of the Gazette Notification. In the light of same, we are of the affirm view that Shri. Shiv Shekher Narayan (Assistant General Manager) is duly authorized to sign this application and no power of attorney was required.

18. The Corporate Debtor has further disputed the interest calculation relied by the Financial Creditor. Apparently, the principal amount claimed by the Financial Creditor is above Rs. 1 Crore and the same has been admitted by the Corporate Debtor in its OTS Proposal dated 06.05.2019. Therefore, we find no force in the contention of the Corporate Debtor.

19. In the given facts and circumstances, the present Application being complete and having established the default in payment of the Financial Debt for the default amount being committed above the threshold limit, **the present Application is admitted** in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium



in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(a) 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;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor 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 corporate debtor 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 corporate debtor.”
- (e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

20. As proposed by the Financial Creditor, this Bench appoints Mr. Debashis Nanda as IRP having Registration No. IBBI/IPA-003/IP-N00040/2017-18/10316 (Email:dnanda.cma@gmail.com), subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are

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made by him within a period of one week from this Order. This Adjudicating Authority orders that :

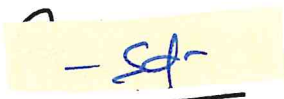
“Mr. Debashis Nanda as IRP having Registration No. IBBI/ IPA-003/IP-N00040/2017-18/10316, (E-mail ID: dnanda.cma@gmail.com) is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The Court Officer will inform the IRP so appointed by all modes.”

The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

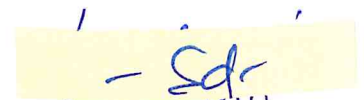
21. The Financial Creditor is directed to deposit Rs. 2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

22. A copy of this Order shall be communicated to the Financial Creditor, the Corporate Debtor and the IRP mentioned above by the Registry of this Tribunal.

23. In addition, a copy of the Order shall also be forwarded by the Registry to the IBBI and the ROC concerned for updating their records.



**(BINOD KUMAR SINHA)
MEMBER (T)**



**(DHARMINDER SINGH)
MEMBER (J)**