



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.782/MB-IV/2022

Under Section 7 of the IBC, 2016

In the matter of

Bank of India Limited

(CIN: U99999MH1906PLC000243)

(PAN: AAACB0472C)

...Financial Creditor

v/s.

Liberty Oil Mills Limited

[CIN: U15140MH1978PLC020274]

...Corporate Debtor

Order Delivered on: 24.02.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mr. Umar F Azam i/b M V Kini Law
Firm, Ld. Counsel.

For the Corporate Debtor:

Mr. Shyam Kapadia a/w Mr. Jay
Zaveri and Ms. Rhea Prakash i/b
Crawford Bayley & Co., Ld. Counsel.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)



1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Bank of India (“the Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Liberty Oil Mills Limited against the Corporate Debtor.
 - 1.1. The Company Petition is filed on 28.06.2022 claiming an amount of Rs.180,22,17,050 in default. The Part IV of Form 1 specify the date of default as 18.08.2020, which is also reflected in the NESL report. The date of NPA is 31.03.2021.
2. The Corporate Debtor had availed credit facilities by way of financial assistance under the Consortium Arrangement, in which the Financial Creditor was the leader of the Consortium. The Corporate Debtor was sanctioned with various working capital and Non-fund-based facilities amounting to INR 400.17 crores (WCFD-Rs.60.00 Crores, NFB-335.97 Crores and Fund Interest Term Loan (FITL) Covid-19 relief package 4.17 Crores).
 - 2.1. It is stated that the Corporate Debtor had started facing cash flow mismatches subsequent to the withdrawal of Buyer's credit as per RBI guidelines effective 13.03.2018 coupled with high custom duty payments, as a result of which LCs were devolved and the account was classified as NPA on 31.03.2021. Even though, there was continuous follow up from the Financial Creditor, the Corporate Debtor failed to regularize the account.
 - 2.2. Subsequently, a Legal Notice was issued on behalf of the Financial Creditor to the Corporate Debtor as well as the guarantors on 25.09.2021 recalling the entire outstanding.
 - 2.3. The total amount in default and payable by the Corporate Debtor to the Financial Creditor as on 23.05.2022 is INR 180,22,17,050/- together with



further interest at 14.6% thereon compounded with monthly rests from 01.04.2021 along with penal interest at 2% p.a. and other costs and expenses incurred and to be incurred for preservation and enforcement of the securities till the date of full and final payment and/or recovery. In addition to the above there is a contingent liability to the extent of Rs. 2,37,47,149 Crore in respect of Bank Guarantee issued by the Financial Creditor on behalf of the Corporate Debtor which are yet to be invoked by the beneficiary.

3. The Corporate Debtor in its affidavit-in-reply dated 16.01.2023 has stated as under;

3.1. The Corporate debtor has made exhaustive attempts to resolve the default and settle the entire outstanding amount as on 31.03.2020;

3.2. the date of default as captioned in Part IV of present company petition is 18.08.2020 comes under the virtue of Section 10 A, of the Code.

3.3. faulty Banking Practices of the Financial Creditor & Non-Adherence to Statutory Procedure;

3.4. The paragraph 7 in the legal notice does not represent the true facts of the present scenario;

3.5. The Financial Creditor has failed to disclose the fact that since 31.03.2021, the Corporate Debtor has made payments to the Financial Creditor;

3.6. The financial creditor has charged excess interest; and

3.7. The signatory to the captioned petition has failed to establish any valid authority initiate and file the same on behalf of the Financial Creditor.

3.8. The application is not maintainable u/s Section 7 of the Code in view of concurrent SARFAESI proceedings initiated by the Financial Creditor for the same debt.



4. We have heard the arguments of Learned Counsel for Operational Creditor and Corporate Debtor and perused the records.

4.1. The date of filing of present application i.e. 28.06.2022 is well within the Limitation. This Bench has jurisdiction to deal with this Company Petition.

4.2. This bench of the considered view that there is unequivocal admission of liability on the part of the Corporate Debtor, as the Corporate Debtor has proposed the OTS and the same is still under negotiation with the Financial Creditor and other Lenders, accordingly existence of debt as well as default in payment thereof is not in dispute.

4.3. As per Part IV as well as NESL record of default, the default is stated to have occurred on 18.08.2020. The Bench notices that this date falls under the period prescribed u/s 10A of the Insolvency and Bankruptcy Code, which reads as follows:

“Section 10A: Notwithstanding anything contained in sections 7, 9 and 10, no application for Initiation of Corporate Insolvency Resolution Process of a Corporate Debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for Initiation of Corporate Insolvency Resolution Process of a Corporate Debtor for the said default occurring during the said period. Explanation. — For the removal of doubts, it is hereby clarified that the provisions



of this section shall not apply to any default committed under the said sections before 25th March, 2020.”

4.4. In the view of insertion of Sec 10A in IBC as mentioned above, this petition is clearly hit by the provisions of Sec 10A, as the date of default in this case is 18.08.2020. As per Sec 10A, no IBC proceedings can be initiated against the Corporate Debtor for the default which has occurred between the period from 25.03.2020 till 24.03.2021. In view of the bar imposed by Sec 10A of the Code, the application filed by the Financial Creditor against the Corporate Debtor cannot succeed and deserve to be dismissed.

ORDER

5. The petition bearing CP(IB) 782/MB-IV/2022 filed by Bank of India Limited, (“the Financial Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Liberty Oil Mills Limited (“the Corporate Debtor”), is **Dismissed**.
6. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition as it barred by the law, in view of insertion of Sec 10A of IBC 2016.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
24.02.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)



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