



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

CP(IBC)/52/KOB/2022

*(Under Section 7 of IBC, 2016 read with Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016)*

In the matter of:

Dhanlaxmi Bank Limited Vs Excel Timbers Private Limited

MEMO OF PARTIES:

DHANLAXMI BANK LIMITED, Corporate Office, Punnamm, Thrissur,
Kerala-680002;

... Applicant/Financial Creditor

-Versus-

EXCEL TIMBERS PRIVATE LIMITEDFP 6/175, Kodampuzha Road, Petta,
Feroke P.O Kozhikode 673631

... Corporate Debtor

Coram:

Shri P. Mohan Raj	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)

Appearances (through video conferencing)

For Applicant/Financial Creditor	:	Ms. Uma Rani MN, Advocate
For Corporate Debtor	:	Mr. S Eswaran, Advocate

**Order reserved on: 05.01.2023
Order pronounced on:10.02.2023**

ORDER

1. The petitioner has filed this application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as IB Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as Adjudicating Authority Rules, 2016) for initiation of Corporate Insolvency Process against the Corporate Debtor, **EXCEL TIMBERS PRIVATE LIMITED**. The prayer made is to admit the



Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part I of the application, sets out the details of the Financial Creditor from which, it is evident that the Financial Creditor is a scheduled Bank and a public Limited Company with Corporate Identification Number L65191KL1927PLC000307. As per Part II of the application, the Corporate Debtor is a private Limited Company with Corporate Identification Number U20101KL2003PTC015870 and with registered office at Room No: FP 6/175 Kodampuzha Road, Petta, Feroke P.O, Kozhikode 673631. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. Jasin Jose, IBBI Registration Number: IBBI/IPA-001/IP-P00695/2017-2018/11225 as the Interim Resolution Professional.
3. Part IV of the application signifies the amount of debt to the tune of Rs. 1,44,34,076.14/- as on 05.09.2022. Part V of the application describes the particulars of Financial Debt; documents, records and evidence of default as described below:
 - a) Sanction communication dated 16-12-2011 duly acknowledged by the Corporate Debtor and its Directors and its Subsidiary
 - b) Demand Promissory Note dated 28-12-2011 executed by the Corporate Debtor and its Directors and its Subsidiary
 - c) DP Note Delivery cum continuity Letter dated 28-12-2011 executed by the Corporate Debtor and its Directors and its Subsidiary
 - d) Facility Agreement dated 28-12-2011 executed by the Corporate Debtor and its Directors and its Subsidiary
 - e) Acknowledgement of liability dated 27-11-2014 executed by Corporate Debtor



- f) Acknowledgement of liability dated 20-10-2017 executed by Corporate Debtor
- g) Nesl Report related to Loan account of CD
- h) CIBIL report dated 11-05-2022
- i) Auditors Report and Balance sheet as on 31.03.2021 of CD
- j) Statement of Loan Account with Dhanalaxmi Bank from 05.01.2012 to 05.09.2022 along with Certificate as to Bankers Book Evidence Act

4. Brief fact of the case are as under:

- i. The present application is filed by Dhanalaxmi Bank Limited, the Financial Creditor, under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process against the Corporate Debtor, Excel Timbers Private Limited.
- ii. The Financial Creditor sanctioned the loan facility for Rs. 1,50,0000/- by way of a communication dated 16.12.2011 which was duly acknowledged by the Corporate Debtor, its Directors and its Subsidiary. Pursuant to the sanction of the said credit facility, a Facility Agreement dated 28.12.2011 was executed by the Corporate Debtor agreeing to repay the loan in 120 equated monthly instalments of Rs. 2,37,430/- with floating interest at 14.50 % per annum with monthly rests. It was further agreed among other terms and conditions that in case of any default committed in making the regular repayments, bank can charge addition interest. As security for the loan, the Corporate Debtor had executed; (i) a Demand Promissory Note in favour of financial creditor for Rs. 1,50,00,000/- (Rupees One Crore and Fifty Lakhs only) on 28.12.2011 agreeing to repay the loan amount with interest at 14.50 % per annum on monthly rests or such other rates as may specify or fix by the bank in time to time, and (ii) a DP Note Delivery-cum-Continuity letter dated 28-12-2011 declaring that the said Demand Promissory Note is to be treated as continuing security for the balance and interest from time to time due to



the bank. A charge of equitable mortgage was also created in favour of the FC by certain individual as co borrowers. Accordingly, the loan amount was disbursed on 28.12.2011.

- iii. The Corporate Debtor has acknowledged the loan liability by way of a Letter of acknowledgement of Liability dated 27.11.2014 and 20.10.2017. Extracts of Board resolution authorising the Director of CD to borrow the said loan has also been submitted.
 - iv. SARFAESI proceedings were initiated against the CD by the FC in OA/318/2019 filed before DRT-1 Ernakulam which has been posted for hearing. The FC has also submitted the record of default with NESL, the information utility.
 - v. On failure of the Corporate Debtor to settle the debts on time, the loan account was classified as NPA on 05.12.2017. Hence, the FC proceeds under IBC to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.
 - vi. The application was filed by the FC on 19.09.2022 and has sought condonation for the delay in filing the petition in view of the order of the Supreme Court in MA 21/2021 in MA 665/2021 (*suo moto* WPC No.3/2020) granting an exclusion for a period of 15.03.2020 till 28.02.2022 for purpose of all limitation under the Act.
5. On the respondent side, it was argued that application is barred by limitation and stated that the SC *Suo Moto* order only grants a grace period of 90 days from 01.03.2022 for purpose of limitation which has expired during the period between 15.03.2020 till 28.02.2022, and accordingly the limitation expired as on 01.06.2022. Hence petition filed on 19.09.2022 is barred by limitation.

The Point for consideration is:

Whether the petition is barred by limitation?

6. Heard the Counsel for both sides, and perused the documents placed on record. As to the matter of limitation in the case, the date of default of debt by the CD was 05.12.2017 and the ordinary period of limitation ended on 05.12.2020.



However, in the light of the order of Supreme court in (suo moto WPC No.3/2020), the period from 15.03.2020 till 28.02.2022 has been excluded for all purposes of limitation under the law.

7. As per the Supreme Court Suo Moto order the period from 15.03.2020 to 28.02.2022 should be excluded. After excluding this period if the remaining period is less than 90 days the proceedings should be file within 90 days from 01.03.2020, if the remaining balance period is more than 90 days the longer period shall be taken
8. In this case Limitation started on the date of NPA from 05.12.2017 and halted on 14.03.2020 after two year and 100 days, the period from 15.03.2020 to 28.02.2022 is excluded in commuting the limitation period as per the Apex Court Suo Moto Judgement, limitation period revived on 01.03.2022 for remaining balance period of 264 days. The said remaining period of 264 days expires on 19.11.2022. This petition was filed on 19.09.2022 well within the period of limitation.

The Apex Court in **SUO MOTU WRIT PETITON (C) No. 3 OF 2020** by order dated 10.01.2022 observed as follows:

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

Thus, the point is answered that the petition is filed in time, and not barred by limitation.

9. Now, as per the Insolvency and Bankruptcy Code, 2016 the definition of Financial Creditor under Section 5 (7) means any person to whom a Financial Debt is owed and includes a person to whom such debt has been legally



assigned or transferred to; thereby, the applicant herein, is a Financial Creditor. From records produced before us it is evident that there exists a 'Debt' between the parties and the said debt qualifies to be a 'Financial Debt' as defined under 5(8) of IBC, 2016. Also, the Corporate Debtor has defaulted in repayment of the said 'Financial Debt' which is due and payable to the Financial Creditor. Under the aforementioned conditions, this Tribunal has no choice but to move forward with the current case and start the Corporate Insolvency Resolution Process with regards to the Corporate Debtor in light of any objections raised by the Corporate Debtor.

10. So, in light of the case's facts, circumstances, and legal situation, we believe that this application, as submitted by the Applicant—Financial Creditor, must be admitted under Section 7(5) of the IBC, 2016.
11. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders.
 - A. The petition bearing CP (IBC) No. 52/ KOB /2022, Dhanlaxmi Bank Limited, the financial creditor, under section 7 of Insolvency and Bankruptcy Code 2016 read with rule 4 (1) of Insolvency and Bankruptcy (Petition to Adjudicating Authority) Rules 2016 for initiating CIRP against **EXCEL TIMBERS PRIVATE LIMITED**, (CIN: U20101KL2003PTC015870), the corporate debtor is **ADMITTED**.
 - B. There will be a moratorium under section 14 of the Code.
 - C. The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of Corporate Debtor under section 33 of the Code, as the case may be.
 - D. Public announcement of the CIRP shall be made immediately as specified under section 13 of the code read with regulation 6 of the Insolvency and



Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.

- E. The Financial Creditor has proposed the name of one **Mr. Jasin Jose**, IBBI Registration Number: **IBBI/IPA-001/IP-P00695/2017-2018/11225**, as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The designated IRP must take any additional actions in this regard that are mandated by the law, more specifically Sections 15, 17, and 18 of the Code. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016. The fee payable to IRP or as the case may be, the RP shall comply with such Regulation, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by section 15, and to 21 of the Code.
- F. During the CIRP period the management of the Corporate Debtor shall vest with the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow.
- G. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.
- H. The financial creditor shall deposit a sum of Rs.2,00,000/- (Two Lakhs Only) with the IRP to meet the expenses arising out of issuing publication



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and inviting claims. These expenses are subject to approval by the Committee of Creditor (COC).

- I. In terms of section 7 (5)(a) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the corporate debtor and IRP by Speed Post & e-mail immediately, and in any case, not later than two days from the date of this order.
 - J. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kerala, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt a copy of this order.
12. CP (IBC) No.52/KOB/2022 to come up on 15.03.2023 for progress report.
 13. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
 14. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.02.10 15:58:18 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.02.10 14:31:56 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this the 10th day of February, 2023.

Rohit.