



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB)/757 (MB)/2023

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Bank of Baroda

[PAN:MUMB23844C]

...Financial Creditor/Applicant

Versus

M/s C. Mahendra Exports Limited

[CIN:L27205MH2007PLC166717]

...Corporate Debtor/Respondent

Order Pronounced on 04.10.2024

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)
Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Financial Creditor : Mr. Harish K. Raman i/b
Rathina Maravarman,
Advocates
For the Corporate Debtor : Mr. Ashish Pyasi, Advocate
a/w Mr. Avinash
Khanolkar, Advocates.



ORDER

Per: Prabhat Kumar, Member (Technical)

Brief Facts:

1. This Company Petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Bank of Baroda** ("hereinafter referred to as the Financial Creditor/Applicant"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **M/s C. Mahendra Exports Limited** ("hereinafter referred to as the Corporate Debtor/Respondent/CMEL").
2. The Applicant is a body corporate constituted under Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 incorporated on 20.07.1908 having PAN MUMB23844C with its registered office at Bank of Baroda, Baroda House, Mandvi, Baroda - 390001.
3. The Respondent is constituted under the Companies Act, 1956 incorporated on 04.01.2007 having Company Identification no. L27205MH2007PLC166717 with its registered office at M/s C. Mahendra Exports limited, Tower 'C' Office No. CC-6011 Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (East), Mumbai - 400051 and amongst its other branches, a branch office at Zonal Stressed Asset Recovery Branch, Meher Chambers, Ground Floor, Dr. Sunderlal Behl Marg, Opp. Petrol Pump, Ballard Estate, Mumbai - 400 001. It is a Limited Company and a Constituent of the Applicant Bank since the year 2010. Its authorized share capital is Rs. 75.00 Crores and Paid up share Capital is Rs. 73.07 Crores. The Corporate Debtor is carrying on business of manufacturing and trading of diamonds, precious stones and jewellery.
4. The Corporate Debtor was banking with Financial Creditor since year 2010, Corporate Debtor was granted credit facilities vide Sanction Letters including Sanction letter dated 03.04.2013.



5. To secure the facilities sanctioned, Corporate Debtor has executed a set of various documents including Working Capital Consortium Agreement dated 31.08.2010, Memorandum of Creation of Equitable Mortgage dated 31.08.2010, Deed of Mortgage dated 29.10.2013, Indenture of Mortgage dated 16.11.2013, Rectification Deed of Mortgage dated 04.12.2013.
6. To secure the facilities sanctioned, Guarantee Deed dated 28.01.2013 was executed by the Directors / Guarantors of the Corporate Debtor.
7. The Account of the Corporate Debtor was declared as NPA on 25.08.2014 due to non-payment of outstanding dues. SARFAESI Notice under Section 13(2) dated 30.12.2014 was issued to the Corporate Debtor.
8. Original Application (OA) no. 760 of 2015 was filed in DRT-II, Ahmedabad on 02.11.2015 against Corporate Debtor by the Financial Creditor.
9. Since the debt still stands due, present petition has been filed under Section 7 of the IBC Code for recovery of outstanding amount of Rs.607,54,59,740.74/-. The date of default as mentioned in Part III of the Petition is 07.05.2014.
10. Following documents were executed by the Corporate Debtor inter alia in order to secure the facilities:
 - i. First Supplemental Working Capital Consortium Agreement dated 05.07.2012.
 - ii. Second Supplemental Working Capital Consortium Agreement dated 28.01.2013.
 - iii. Second Supplemental Joint Deed of Hypothecation dated 28.01.2013.
 - iv. Deed of Guarantee dated 28.01.2013 (4 in numbers)
 - v. Deed of Mortgage dated 29.10.2013 and indenture of Mortgage dated 16.11.2013.

vi. Rectification Deed of Mortgage dated 04.12.2013.

Submissions of the Applicant:

11. The Financial Creditor submitted that the Corporate Debtor was ordered to be liquidated by the Hon'ble High Court of Bombay on 19.07.2017 in a Company Petition No. 304 of 2016 filed by HDFC Bank Limited against the Corporate Debtor under Sec. 433 (e) 434 read with 439 of the Companies Act, 1956 praying for Winding up of the Respondent Company herein namely C. Mahendra on the basis that they have provided credit facility to the tune of Rs.23,91,44,082/- and a sum of Rs.6,70,95,548/- remains as outstanding to be paid by the CD as on 20.12.2015; however, by that time the IB Code came into force, and no final order of Liquidation came to be passed by the Hon'ble High Court. Accordingly, the Hon'ble High Court issued Transfer Order on 17.11.2021, in pursuance of the notification issued by the Ministry of Corporate Affairs, where, such kind of Petitions are to be prosecuted before the National Company Law Tribunal under Section 7 & 9 of the Insolvency and Bankruptcy Code, 2016. The following Orders have been passed in the said matter:

Sr. no.	Date	Particulars
1.	19.07.2017	The Company Petition was admitted and the direction was issued for advertisement/publication.
2.	13.07.2018	Petition was allowed and direction was issued for winding up of CD under the provision of Companies Act, 1956 - Official Liquidator was appointed to take control of all the



		affairs/business/assets/accounts of the CD.
3.	7.11.2021	I.A. filed by one Flawless Trading FZE for seeking transfer of the Company Petition to NCLT under the provision of 434(1)(c) of the Companies Act 2013 read with Companies (transfer of pending proceeding) Rules 2016. The transfer was allowed as no irreversible steps have been taken which would preclude the Court from transferring the Company Petition to NCLT (as per the Apex Court Judgment in the matter of Action Ispat Power Pvt. Ltd. V/s Shyam Metalics and Energy Limited (2012 2 SCC 641) and A. Navinchandra Steels Pvt. Ltd. v/s Srei Equipment Finance Limited (2021 SCC Online 149)

12. Moreover, the corporate Debtor submitted an OTS proposal to settle account for Rs.100 crores in the month of August, 2018. Also, the period during 2015-2021 when the winding up petition was filed needs to be excluded for calculating the limitation.

**Submissions of the Respondent:**

13. The Respondent has contested the present Petition on the following grounds:

A. The present petition is barred by limitation –

- i. Since the date of default as mentioned in Part IV at page 3 of the petition is 07.05.2014 and date of NPA is 25.08.2014, the present petition is barred by limitation as the date of filing is 05.05.2023 and refiling date is 26.07.2023.
- ii. The respondent has relied upon the decisions given by Supreme Court in *B.K Educational Services Pvt. Ltd. v. Paras Gupta & Associates*, which was followed in the cases titled *K Sashidhar v. Indian Overseas Bank*, *Jignesh Shah and Anr. v. Union of India and Anr*, *Vashdeo R. Bhojwani v. Abhyudaya Co-operative Bank Ltd. & Anr.*, *Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Ltd. & Anr. and Sagar Sharma & Anr. v. Phoenix Arc Pvt. Ltd. & Anr.*, *Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr.*, *Civil Appeal No. 6347/2019* and decision given by the Hon'ble NCLAT in *Jagdish Prasad Sarada v. Allahabad Bank, Company Appeal (AT) (Insolvency) no. 183 of 2020*.

B. Claim not being genuine.

C. Technical defects/infirmities in the Petition.

D. Conduct of the Bank.

E. Isolated action by the Petitioner without taking any consent from the consortium of banks.

F. Authority of the person signing the Petition – document conferring power attached to the Petition provides only for general powers to the signatory and nowhere provides any specific authority to initiate Insolvency Proceedings against the Respondent. The respondent has

relied upon the decision given by this Bench in *M/s. Rushabh Civil Contractors Private Limited versus Centrio Lifespaces Limited*.

- G. The burden is on the Petitioner to plead and prove the debt & default and the same cannot be shifted as held by the Hon'ble Supreme Court in the case of *Rajendra Narottamdas Sheth and Anr. Vs. Chandra Prakash Jain & Anr. (2022 5 SCC 600)*.
- H. Arguments without pleading and improvisation of the case by the Petitioner in oral arguments – Proceedings in the winding up petition filed by HDFC before the Hon'ble Bombay HC were transferred and the Petitioner was sleeping over its rights since inception of IBC i.e. 2016-2023. The Petitioner filed the present petition after years under IBC. The Petitioner has relied upon the decisions given in the case of *SBI vs. India Power Corporation Limited* by the Hon'ble NCLAT, *Rajendra Narottamdas Sheth and Anr. vs. Chandra Prakash Jain and Anr. (2022 5 SCC 600)* by the Hon'ble Supreme Court.
- I. Winding up proceedings in Bombay High Court – though proceedings of winding up were initiated under the old Companies Act, 1956, proceedings under IBC could have been initiated as it has overriding effect. The respondent has relied upon the decisions given by the Hon'ble Bombay High Court in *Jindal Arya Impex Pvt. Ltd. v. Shri Saikrupa Sugar & Allied Industries Ltd. (Company Petition No. 366 of 2015)*, *Jotun (India) Pvt. Ltd. v. PSL Limited (2018 SCC Online Bom 36)*, and decisions given by the Hon'ble Supreme Court in *Forech India Limited vs. Edelweiss Asset Reconstruction Company Limited and Anr. (2019 18 SCC 549)*.
- J. The financial statements do not extend limitation – the Respondent has relied upon the decision given by the Hon'ble Bombay High Court in *SBI v. Dileep Balkrishna Nevatia & ors (Writ Petition no.2506 of 2009)* and *Sanjay Kumar Agarwal v. Central Bank of India 2016 SCC OnLine Bom 10368*.



Findings-

14. Heard learned counsel for both the parties and perused the material produced on record.
15. Primarily, the Corporate Debtor has contested this Petition on the ground of limitation stating that the petition having been filed on 5.5.2023 for a default date of 7.5.2014 is beyond the limitation period of 3 years; the financial statements of Corporate Debtor placed by Petitioner cannot be taken in evidence to decide on limitation aspect; and OTS proposal, submitted without prejudice, cannot extend the limitation period. We note that, in the present case, on a petition filed by another financial creditor HDFC Bank under Companies Act, 1956, the Hon'ble Bombay High Court admitted the Petition on 19.7.2017 and had passed a Liquidation Order on 13.7.2018 and appointed a Liquidator to take control of assets of the Corporate Debtor. These proceedings came to be transferred to this Tribunal on 17.11.2021 in accordance with the provision of 434(1)(c) of the Companies Act 2013 read with Companies (transfer of pending proceeding) Rules 2016 for appropriate proceedings in terms of IB Code, 2016. Section 446 of the Companies Act, 1956 provides that *“(1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the Court may impose.”* In terms of Section 441(2), the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up. Accordingly, the petitioner was barred from taking any action in terms of Section 7 of I B Code against the Corporate Debtor after 19.7.2017. This bar came to be lifted when the proceedings pending before Hon'ble Bombay High Court in terms of Company Petition filed by HDFC Bank was transferred to this Tribunal on 17.11.2021. IB Code, 2016 came into force w.e.f. 1.12.2016. We note that the Petitioner has placed on record




an unaudited financial statement for the year ended 2015-16, wherein the amounts due to the Corporate Debtor are acknowledged as debt. The Respondent has contested this document on the ground that the said financial statement is an unaudited document and cannot constitute acknowledgement. We do not find any force in this contention, as the financial statement, even if an unaudited one, is made up of extract of balances acknowledged in the books of accounts maintained by the Corporate Debtor, which undisputedly indicates that the books of account of Corporate Debtor reflects a liability due to the petitioner as on date of drawl of financial statements. Further, the corporate Debtor submitted an OTS proposal to settle account for Rs.100 crores in the month of August, 2018. The Corporate Debtor has submitted that this proposal was submitted 'without prejudice', hence can not constitute a valid acknowledgement, however, we find that the decisions cited by the Respondent in this relation are distinguishable and have no application to the present case. On the contrary, the Hon'ble Bombay High Court in the matter of Sanjay Kumar Agarwal v. Central Bank of India 2016 SCC OnLine Bom 10368 has quoted from the exposition of definition of "without prejudice" contained in the judgment of Lindley, L Jin Walker v. Wilsher (1889) 23 OBD 335, which reads as under –

"What is the meaning of the words "without prejudice"? I think they mean without prejudice to the position of the writer of the letter if the terms he proposes are not accepted. If the terms proposed in the letter are accepted a complete contract is established and the latter, although written without prejudice, operates to alter the old stage of things and to establish a new one."

16. Accordingly, an OTS proposal, made without prejudice, can be said to bind the maker of proposal for a sum stated therein and can tantamount to maker's acknowledgement for that sum. Hence, we do not find any substance in the submission of Respondent in this regard.




17. The contention of the Respondent that the present petition is barred by limitation is untenable since the Respondent had submitted an OTS dated 19.11.2020. Whereas, the present petition is filed on 05.05.2023 and refiled on 26.07.2023. Hence, the petition has been filed well within the period of limitation.
18. As far as the contention of consent of the Consortium is concerned, it has been categorically held by Hon'ble NCLAT in *Oriental Bank of Commerce v. Ruchi Global Ltd.* [Company Appeal (AT) (Insolvency) No. 387 of 2019] that Agreement of Consortium is Agreement between the Banks and the Inter-se Agreement between Financial Creditors will not override Section 7.
19. Upon perusal of the CIBIL report placed on record, it is clear that the Corporate Debtor is in default of a debt due and payable and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. In view of this, we do not find any merit in the contention with regard to ingenuine claim, inflated rate of interest, conduct of bank in initiation of proceedings under SARFAESI Act etc.
20. The application made by the Financial Creditor is complete in all respects as required by law. Therefore, the debt and default stand established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
21. The Financial Creditor has proposed the name of **Mr. Ram Ratan Kanoongo**, Registration No. **IBBI/IPA-001/IP-P00070/2017-2018/10156**, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
22. It is, accordingly, hereby ordered as follows: -

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- I. The Petition bearing **CP (IB)/757(MB)/2023** filed by **Bank of Baroda**[PAN:MUMB23844C], the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **M/s C. Mahendra Exports Limited** [CIN:L27205MH2007PLC166717], the Corporate Debtor, is **admitted**.

 - II. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - i. 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;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

Notwithstanding the above, during the period of moratorium: -

- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

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- ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- III. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- IV. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- V. **Mr. Ram Ratan Kanoongo**, Registration No. **IBBI/IPA-001/IP-P00070/2017-2018/10156**, having registered address at 708, Raheja Centre, 7th Floor, Nariman Point, Mumbai-400021. **Email ID: rrkanoongo@gmail.com**, **Mobile: 9821031996/9920631996/022-66107432/33** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- VI. During the CIRP Period, the management of the Corporate Debtor shall vest in 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 a period of one

week from the date of receipt of this Order, in default of which coercive steps will follow.

- VII. The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- VIII. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- IX. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, 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 Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

Prabhat Kumar
Member (Technical)
MK

Sd/-

Justice V. G. Bisht (Retd.)
Member (Judicial)