

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V

CP(IB) 43 (IB) 2023

Under section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF

Axis Bank Limited

Registered Office at Trishul, 3rd Floor, Opp. Samartheshwar Temple, Near Law Garden, Ellisbridge, Ahmedabad, Gujrat 380006 and having corporate office at Axis House, 7th Floor, C-2, Wadia International Centre, Pandurang Budhkar Marg, Worli, Mumbai 400025.

... Petitioner/ Financial Creditor

V/s.

Tapi Prestressed Products Limited

Registered Office at Siddhi Towers, Survey No. 5A/IA, Office No. 5 & 4, 2nd Floor, Kondhwa Main Road, Pune, Maharashtra-411048

... Respondent/Corporate Debtor

Order delivered on: 02.11.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances:

For the Financial Creditor : Adv. Ms. Neha Naik
For the Corporate Debtor : Sr. Adv. Mr. Gaurav Joshi

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. This Company petition is filed by **Axis Bank Limited** (hereinafter called "**the Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Tapi Prestressed Products Limited** (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor committed default in making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 7 Insolvency and bankruptcy code, 2016 (hereinafter called "**Code**") on the ground that the Corporate Debtor has failed to make payment of a sum of Rs.18,06,27,832/- (Rupees Eighteen Crore Six Lakh Twenty-Seven Thousand Eight Hundred and Thirty-Two) as on 30.11.2022.

The submissions by the Financial Creditor: -

2. The Petitioner vide sanction letter dated 04.12.2009 sanctioned facilities in favour of the Corporate Debtor having a total limit of Rs. 25 Crores. The facilities were subsequently renewed vide a series of as many as ten sanction letters. The final modification of the sanction letter happened on 16.07.2019, whereby the final limit for the Bank Guarantee Facility (BGF) was set at Rs.17 crores having sub-limits of

(i) Cash Credit facility having a limit of Rs.15 crores and (ii) Letter of Credit having a limit of Rs. 5 crores.

3. From March 2010 onwards, the Cash Credit Facility (being a sub-limit of BGF) (Facility 1) amounts in parts were disbursed by the Petitioner to the Corporate Debtor on a monthly basis amounting to Rs.15,00,00,000/-. The Corporate Debtor had defaulted multiple time in the payment of the amounts under this Facility 1.

4. Subsequently, in the year 2020, Working Capital Term Loan (WCTL) Facility under Emergency Credit Line Guarantee Scheme amounting to Rs. 2.87 crores (Facility 2) was sanctioned by the Petitioner vide a letter dated 20.10.2020 (Exhibit-0). Under the WCTL. Facility, amounts were disbursed in tranches by the Petitioner to the Corporate Debtor and the same amounted to a total of Rs.2.67.

5. Due to the Corporate Debtor's continuous defaults in the payment obligations to the Petitioner, the Corporate Debtor was classified by the Petitioner as a Non-Performing Asset (NPA) with effect from 30.07.2021. The Corporate Debtor was accordingly intimated about it being classified as a NPA on 09.11.2021.

6. Due to the continuous defaults in the payment obligations to the Petitioner and despite receiving no response to the multiple requests and notices sent by the Petitioner to the Corporate Debtor, the Petitioner issued upon the Corporate Debtor a Loan Recall Notice dated 30.11.2021, recalling the credit facilities availed by the Corporate Debtor.

7. Despite acknowledging receipt of the Recall Notices, the Corporate Debtor failed to repay the outstanding amounts owed to

the Petitioner. Notice under Section 13(2) of the SARFAESI Act were also issued upon the Corporate Debtor by the Petitioner on 18.01.2022 seeking repayment of the outstanding amount owed by the Corporate Debtor to the Petitioner.

8. For the both the Facility 1 and Facility 2, extended to the Corporate Debtor, security inter alia in the form of guarantees were also taken by the Petitioner.

9. The Corporate Debtor vide letters dated 23.04.2012, 10.12.2012, 03.05.2018, and 12.12.2020 have provided the acknowledgment of the debts owed to the Petitioner.

10. The record of default in the re-payments by the Corporate Debtor is also recorded with the Information Utility. The NPA date is shown as 30 July 2021.

11. The statement of the defaults by the Corporate Debtor in the books of the Petitioner is set out at Exhibit WW. The outstanding under the WCTL facility (Rs.1.67 crores) and the cash credit facilities (Rs.16.90 crores) are provided in a tabulated form.

12. Owing to non-payments of the aforesaid Facility 1 and Facility 2 advanced by the Petitioner to the Corporate Debtor, the total debt outstanding as on 30.11.2022 stood at Rs.18.06 crores.

13. Thus, the continuous defaults by the Corporate Debtor and its acknowledgement on the dues (more than Rs. 1 crore) owed to the Petitioner, makes the instant case a fit for admission. It is amply clear that the Corporate Debtor is in clear default of the financial debt owed to the Petitioner and that the Corporate Debtor is liable to be admitted into Corporate Insolvency Resolution Process (CIRP).

14. No reply was filed on behalf of the Corporate Debtor despite ample opportunity granted for the purpose. Vide order dated 21.06.2023 last opportunity was granted to the Corporate Debtor to file reply subject to payment of cost of Rs. 10,000/- which was also not paid, nor any reply was filed. The Learned Counsel for the Corporate Debtor argued the matter without any reply saying that his only defence was that the Petition was barred under section 10-A of the Code.

Findings:

15. During the course of arguments, it was contended by the counsel for the Corporate Debtor that in this case default took place between 25.03.2020 and 24.03.2021 and, therefore, the present petition is barred under section 10A of the Code. The counsel for the Respondent has further argued that the Petitioner has placed on record working outstanding statement which shows that the cash credit facility of Rs. 14,04,15,221/- was disbursed on 11.03.2010 which was outstanding. The Corporate Debtor paid a sum of Rs. 1 Lakh on 08.12.2020 and, thereafter, no payment was made. Therefore, according to the learned counsel for the Respondent, the default, if any, took place during the 10A period and on this ground alone, the petition is liable to be dismissed.

16. On the other hand, the counsel for the Petitioner has referred to NeSL Report which shows the date of default as 30.07.2021 which is after the 10A period. The counsel for the Petitioner has further referred to statement of working capital limit Ex-WW which also shows that no default took place during the 10A period. The counsel for the Petitioner has further contended that the petition cannot be said to be barred under section 10A of the Code.

17. We have weighed the contentions raised by the counsel for the parties and gone through the records.
18. In this case, the loan facilities were granted to the Corporate Debtor originally in December 2009 which was renewed from time to time and the final modification of the sanction letter took place on 16.07.2019 whereby the final bank guarantee facility was set at Rs.17 Crore having sub limit of cash credit facilities of Rs.15 Crore and letter of creditor of Rs. 5 Crore. It is further on record that in the year 2020, working capital term loan (WCTL) facility of Rs.2.87 Crore was sanctioned vide letter date 20.10.2020. As the default was committed by the Corporate Debtor, its account was declared as Non-Performing Asset (NPA) w.e.f. 30.07.2021 and in this regard, intimation also sent to the Corporate Debtor vide letter dated 09.11.2021. Subsequent to this, recall notice dated 30.11.2021 and notice under SARFEASI Act dated 18.01.2022 were also issued calling upon the Corporate Debtor to pay the outstanding dues. The NPA certificate EX- S is also placed on record.
19. Since no reply has been filed on behalf of the Corporate Debtor, the averment made in the Petition have gone uncontroverted. It has also not been established as to how the date of default is 08.12.2020 or any other date covered under section 10A of the Code. Even if the NPA date i.e. 30.07.2021, which is also mentioned as date of default in NeSL Report, is not considered as the date of default, as usually the account is declared NPA after a period of 90 days of the default, even then the date of default does not fall within Section 10A period. Therefore, it cannot be said that the Petition is barred under Section 10-A of the Code.

20. No other defence has been raised on behalf of the Corporate Debtor. Even otherwise, the Petitioner in this case has been able to establish the factum of existence of financial debt and its default having been committed by the Corporate Debtor. Therefore, we consider it to be a fit case for admission under section 7 of the Code. It is ordered accordingly in the following terms.

ORDER

- a. The above **Company Petition No. (IB)43(MB)/ 2023** is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Tapi Prestressed Product Limited, the Corporate Debtor.**
- b. This Bench hereby appoints **Mr. Mangesh Vitthal Kekre**, Registration No: IBBI/IPA-001/IP-P00539/2017-2018/10964 as the Interim Resolution Professional having address at 607, Chetak Centre, RNT Marg, Nr. Hotel Shreemaya Indore, Madhya Pradesh – 452001 email: - ca.mangesh@gmail.com to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANURADHA SANJAY BHATIA
Member (Technical)

Sd/-

KULDIP KUMAR KAREER
Member (Judicial)