

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.201
C.P.(IB)/8(MP)2022

Proceedings under Section 7 IBC

IN THE MATTER OF:

Canara Bank
V/s
Laxmi Engineering Industries (Bhopal) Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 28/07/2023

Coram:

Mahendra Khandelwal, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

C.P.(IB)/8(MP)2022

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

Sd/-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

Narendra S. Tomar / Stenographer

Sd/-

**MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)**

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
BENCH AT INDORE

CP (IB)08(MP)2022

In the Matter of:

[An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016]

Canara Bank

B-3 & B-4, Tilak Nagar, Bawadiya Kalan,
Bhopal, Madhya Pradesh-462026

.....Applicant/Financial Creditor

Versus

Laxmi Engineering Industries (Bhopal) Pvt. Ltd.

72-A, Sector-1, Govindpura, Industrial Area,
Bhopal-Madhya Pradesh-462023

.....Respondent/Corporate Debtor

Coram: Mahendra Khandelwal, Hon'ble Member (J)
Kaushalendra Kumar Singh, Hon'ble Member (T)

Appearance:

For Applicant : Ld. Adv. Mr. Abhishek Devgan

For Respondent : Ld. Adv. Mr. Rushil Shukla

Order Reserved On: 16.06.2023
Order Pronounced On: 28.07.2023

ORDER

1. The present application CP (IB)8/(MP)2022 is filed by the Canara Bank **(Financial Creditor)** against the Laxmi Engineering Industries (Bhopal) Pvt Ltd **(Corporate Debtor)** for initiating **Corporate Insolvency Resolution Process** for having defaulted payment of debt amounting Rs. 61,02,00,000/- approximately inclusive of interest on loan amount and other charges as on 30.11.2021 for the Loan Account No. 3457261000001, Loan Account No.

3457773000011 and various bill discounted. The date of default is stated to be as 04.06.2018.

Contention of the Financial Creditor:

2. The various averments made by the Financial Creditor in its application and as argued by the learned counsel for the applicant are summarized here as under: -

(i) The Financial Creditor vide sanction letter dated 22.12.2010 sanctioned loan to the Corporate Debtor for an amount of Rs. 10 Crore comprising of Open Cash Credit (OCC) limit amounting to Rs. 8 crores @ interest of 13% p.a. for a tenure of three months, Letter of Credit (LC) limit amounting to Rs. 1 Crore for a tenure of one month and bank guarantee (BG) amounting to Rs. 1 Crore for a tenure of two years in favour of the Corporate Debtor for meeting the working capital requirements and issuance of financial and performance guarantee in favour of Companies. Consequently, the members of the Board of Directors of the Corporate Debtor on 27.12.2010 passed a resolution for availing the credit facilities.

(ii) On 10.01.2011, Financial Creditor and the Corporate Debtor executed a master facility loan agreement for the aforesaid sanctioned amount along with a composite hypothecation agreement, creating a charge of various immovable and movable properties including the land and building and machineries of the Corporate Debtor to secure the Credit Facilities. Moreover, a deed of personal guarantee was executed by Mr. Kamal Kishore Gurjar, Pannalal Phulre, Radha Mohan Gurjar, Smt. Pushpa Gurjar, Mr. Ram Niwas Gurjar and Mr. Ram Vilas Gurjar to secure the Credit Facilities.

(iii) During the year 2013-2017 Credit Facilities as regards to the OCC limit and LC/BG were enhanced from time to time leading to total sanction of Rs. 17.5 Crores and 12.5 Crores respectively. Further in the year 2014, a term loan of Rs. 10.75 Crore was also sanctioned by the

Financial Creditor to the Corporate Debtor and as such the total amount so sanctioned amounted to Rs. 40.75 Crore.

(iv) Financial facilities were disbursed in the bank account of the Corporate Debtor i.e., Account No. 3457261000001 as regards OCC and Account No. 3457773000011 as regards term loan.

(v) In the year 2018, the Corporate Debtor started making irregular payments in the loan account due to which the account of the Corporate Debtor came under financial stress. Consequently, the account of corporate debtor was declared as Non-Performing Asset (NPA) on 04.06.2018 being the date of default as per the prudential norms.

(vi) Subsequently, the Financial Creditor issued a demand notice demanding a total amount of Rs. 39,66,22,273/- on 24.10.2018 under Section 13 (2) of SARFAESI Act depicting the date of NPA.

(vii) The Financial Creditor sent a legal notice to the Corporate Debtor on 19.09.2018 seeking repayment of debt. In response, the Corporate Debtor vide reply dated 29.10.2018 categorically admitted the debt and sought time to make the payment. (The copy of the letter attached at Annexure A-10, page No. 216-217 of the petition.)

(viii) Various One Time Settlement offers dated 07.09.2021, 20.01.2022, 27.01.2022, 31.01.2022 and 18.02.2022 have been made by the Corporate Debtor to the Financial Creditor which were rejected by the Financial Creditor in exercise of their commercial wisdom (Attached Annexure A-14, Page No. 251-254 of the petition and Annexure R-4 of the Reply, Page No. 30-36).

(ix) The Corporate Debtor has been making certain payments to the Financial Creditor up to 19.12.2020 i.e. within a period of three years from the date of default. Consequently, fresh period of limitation commenced from 19.12.2020 in terms of Section 19 of the Limitation Act 1963.

(x) Without prejudice to the above, the Hon'ble Supreme Court in *Suo Motu Writ Petition (C) No. 3/2020* vide order dated 10.01.2022 excluded the period from 15.03.2020 till 28.02.2022 for the purposes of limitation under any default or specific law in respect of judicial and quasi-judicial proceedings.

Contention of the Corporate Debtor:

3. In the context, the Corporate Debtor has filed its reply in defence objecting initiation of CIRP against it. The submission made in this regard and various issues raised thereof are summarized here as under:-

(i) The respondent/Corporate Debtor was formed in 1987 as Partnership Firm and thereafter converted to Private Limited Company in the year 2007.

(ii) It is a manufacturing concern specializing in rare engineering know-hour of complex heat exchangers which are critical for process plants such as Thermal Power Plants, Refineries, Chemical and Fertilizer plants etc. and has been in market for the past 34 years and due to its long presence has created a goodwill in the same and counts many PSU and large private organizations as its customers. It is presently operational and currently supporting more than 200 families; and a numerous suppliers are dependent on them.

(iii) In early August, 2010 the DGM of Financial Creditor Canara Bank made first contact with the respondent/Corporate Debtor for migrating its account from State Bank of India to Canara Bank; that in the process, the Financial Creditor took over the banking functions of the present debtor and had extended the various facilities such as OCC limit LC/BG and later of term loans.

(iv) However, the services promised by the Bank has not been fulfilled by the petitioner/Financial Creditor. The petitioner bank took security in phased manner over the years from promoter and their friends and family members with aggregating sanction limit to the tune of Rs. 51.70 Crores. However, even after repeated requests for

enhancement/issuance of LC-BG (In spite of portion of limits unutilized), bank under provided the limits; the Bank not only under-provided limits in 2017 but also did not release the property it charged in previous enhancement of Rs 51.70 Crore. The respondent/Corporate Debtor also did not release its some of the properties which the Corporate Debtor wanted to sold to inject funds and reduce the exposure. This lack in promise while taking charge of properties against banking facilities of INR 51.70 Crore, not only amounts to lack of service and commitment to the MSME debtor in context but also amounts to malice.

(v) The Corporate Debtor could not get any support from the Financial Creditor to sustain itself in such a defaults macro-economic situation and that triggered the second phase of losses incurred by the Corporate Debtor. The Financial Creditor without following the proper procedure and giving proper intimation to the Corporate Debtor declared the Corporate Debtor Account as NPA w.e.f. 04.06.2018, despite the present Corporate Debtor being in regular contact with the Financial Creditor. The Financial Creditor by its unreasoned and arbitrary acts have not only facilitated in the economic breakdown of the Corporate Debtor, but by their unsupportive and counterproductive act have threatened the closure of a running industry that has been supporting more than 200 families.

(vi) Despite the declaration of Corporate Debtor account status as NPA, the Corporate Debtor kept the factory running despite taking various damages in the forms of Covid-19 pandemic, drastic rise in metal prices and more importantly the lack of support/communication from the Financial Creditor during the Financial Year 2020-21, reversed the downward trend and began showing signs of recovery.

(vii) The Corporate Debtor whilst persisting through a forced economic breakdown has revived itself and at various instances has been presenting OTS offers to the Financial Creditor on multiple dates. The Financial Creditor for a reason best known to themselves have

simply been asking for improving the offers without giving counter offers acceptable to them and kept on insisting on deposit of an upfront amount although the upfront amount is to be deposited on sanction of the OTS proposal and also are not sanctioning the holding on operation which is a prime condition for many investors to invest money in the Corporate Debtor for mitigating financial hardships. The petitioner bank has not approached this Hon'ble Tribunal with a clean hand, as they have not disclosed in their present application regarding the litigation initiated by them before the DRT Jabalpur for recovery of their debt under the SARFAESI Act. The DRT Jabalpur has stayed the SARFAESI action against which the Financial Creditor has appealed in the Jabalpur High Court. Hence, in the light of the multiple litigation initiated by the petitioner/bank, the present application under Section 7 of IBC is not maintainable.

Rebuttal of the Financial Creditor:

4. In its rebuttal, the applicant/Financial Creditor has stated that the respondent Corporate Debtor has nowhere in the reply objected that it had obtained the financial facilities from the Financial Creditor. It is submitted that the baseless and frivolous allegations of the Corporate Debtor is an attempt to malign the reputation of one of the most trusted and reputed Bank in India; that such averments, being false and waggish are immaterial quo ad-hoc the case in hand and has no bearing whatsoever on the present proceedings; that it is settled law that the proceedings under Insolvency and Bankruptcy Code are summary in nature and the Tribunal may commence insolvency proceedings once it is satisfied that there is a debt and default on the part of the Corporate Debtor and the application filed is within the limitation period. In support, the Financial Creditor has relied on the decision of Hon'ble Supreme Court in **Innoventive Industries Limited Vs. ICICI Bank, (2018) 1 SCC 407**. The relevant extract of the judgment, as highlighted by the Financial Creditor in its rebuttal, is reproduced here as under: -

(i) “27. *The Scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3 (12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of “debt”, we have to go to Section 3 (11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor.....”*

It has been further submitted that multiple OTS submitted by the Corporate Debtor have been declined by the Financial Creditor as they did not meet the prescribed guidelines of the bank. It is also submitted that pendency of actions before the DRT Jabalpur in no manner whatsoever cause impediment in filing an application under the Insolvency and Bankruptcy Code. The Insolvency and Bankruptcy Code being a complete Code in itself, having overriding effect of any other law for the time being in force, nowhere restricts a party to file an application if a similar matter is pending adjudication before the Hon’ble DRT or other Adjudicating Authority; that Hon’ble NCLAT in catena of judgments has held that there is no bar on parallel proceedings being undertaken under the IBC and DRT or SARFAESI. It is stated that the Hon’ble NCLAT in **“M/s Unigreen Global Private Limited Vs. Punjab National Bank & Anr.” Company Appeal (AT) (Insolvency) No. 81 of 2017** has taken a similar view; and that the Hon’ble NCLAT in **Rakesh Kumar Gupta Vs. Mahesh Bansal & Ors. [Company Appeal (AT) (Insolvency) No. 1408/2019]** held that pendency of actions by Financial Creditor under SARFAESI Act and/or Recovery of Debts due to Financial Institutions Act, 1993 is not a bar to entertain insolvency application under the Code.

Our Observation/Finding:

5. We have heard the learned counsel for the Financial Creditor as well as the learned counsel for the Corporate Debtor on the issue of admission of petitioner filed under Section 7 of the IBC and have perused the relevant records and documents. The basic plea of the Corporate Debtor is that there is no default or evidence of default as the Financial Creditor has prematurely, wrongly, incorrectly, illegally and in contravention to RBI guidelines dated 01.07.2015 “Prudential norms on Income Recognition, Asset Classification and Provisions pertaining to Advances” have treated the account of the Corporate Debtor as NPA on 04.06.2018; and that Financial Creditor failed to provide complete statements and records for disbursement of funds/facilities in accordance of sanction letters; and the Financial Creditor has concealed the true debt profile of Corporate Debtor. It has been pleaded that Corporate Debtor on several occasions brought funds to bring down the outstanding regularly as seen in the OCC account; that Corporate Debtor has somewhat looked this year to revive the Company after 4 years of constrained working first due to Financial Creditor’s illegal act and subsequent Covid-19 crises and its after-effects; and that the initiation of CIRP against the Corporate Debtor will give a default blow to the Corporate Debtor because the customers of Corporate Debtor, both PSU and Private, will cancel work order as per their general contract conditions and jeopardized livelihood of so many families dependent on them.

6. Admittedly, there is no dispute as regards to the various facilities such as availed by the Corporate Debtor. We have perused the bank account of the Corporate Debtor i.e. A/c No. 3457261000001 as regards OCC which is for the period (01.01.2017 to 30.11.2021) and the A/c No. 3457773000011 as regards term loan which is for the period (01.01.2017 to 06.12.2021). From the OCC account, it is noted that no payments have been cleared by the bank after 31.05.2018 except honouring thereon Letter of Credits. Similarly, from the term loan account also it is noted that the Corporate Debtor had not made any payment towards due instalments after 04.05.2018. This confirms the plea of the Financial Creditor that the Corporate Debtor has defaulted in

payment of its outstanding debt. The Corporate Debtor vide its reply dated 29.10.2018 (Attached at Annexure A/10 Page No. 216-217 of the application) categorically admitted the due debt and had sought time to make the payment. The relevant part of reply as given in para 4 &5 thereof is reproduced here as under:-

(4) *“It is not denied that the cash credit and the term loan accounts were irregular at some point to time and the bank asked us to regularize. But the moot point is that we did not make the accounts deliberately. The irregularity was caused by circumstances which are not uncommon in a business environment. It is not denied that you been reminding for adjusting of the overdrawing but it is also equally true that the overdrawing primarily caused due to low operating level could not be adjusted since despite our constant requests LCs and BGs required to enhance the operating level could not be made available and the final blow was struck when an FLC issued after detailed discussion was withheld. This has caused irreparable damages in our relationship with Triveni Turbine Ltd our largest customer. And you as a banker can appreciate the immediate and immense impact of such a predicament. **We were therefore neither able to regularize the accounts nor were able to save them from becoming NPA as they are called in the banking parlance.***

5 ***Our liability to the bank on account of the term loan and cash credit as per the bank’s ledger is not denied. What we deny is the feasibility and the necessity of immediate full payment.”***

The various OTS offers dated 07.09.2021, 20.01.2022, 27.01.2022, 31.01.2022 and 18.02.2022 made by the Corporate Debtor would also bring the application within the limitation period. We are also of the considered view that the plea taken by the Corporate Debtor that declaration of its accounts as NPA was not in accordance with the RBI guidelines, would not come to its rescue in the matter of Section 7 petition under the IBC. The Financial Creditor can file the application under Section 7 if the Corporate Debtor has defaulted in repayment of the loan as per the agreed instalments. The RBI

guidelines as regard declaration of NPA are generally for taking recourse to the possible action/remedies by the scheduled banks and as such that would have no bearing on to the admissibility of Section 7 petition based upon the default in payment of due instalments.

The plea of the Corporate Debtor as regard multiple litigation also does not come to its rescue in the context of admissibility of Section 7 petitioner because the Insolvency and Bankruptcy Code is a complete Code in itself having overriding effect of any other law for the time being in force and pendency of any action initiated by the Financial Creditors under any other law would not be a bar to entertain insolvency application under the Code.

7. It is noted from the record that the present matter was reserved for order on earlier occasion on 25.11.2022 but thereafter it was noted that applicant/Financial Creditor had not complied with the Rule 4(3) of the insolvency and bankruptcy (application to Adjudicating Authority) Rule 2016, whereby it was required to serve a copy of the application to IBBI too before filing that with Adjudicating Authority. In view thereof the matter was released for further clarification. Following that, the Corporate Debtor made the compliance as required under Rule 4 (3) by submitting a copy of their application to the IBBI filed on 06.01.2023. Though the applicant is required to submit a copy of the application to IBBI also prior to filing it before the Adjudicating Authority. But the same being in the nature of a technical requirement, the filing of the copy of the application even during the course of proceedings would be considered as sufficient compliance.

8. In view of the material available on record, we are satisfied that the Corporate Debtor has committed default of the financial debt of 61,02,00,000/- including interest and other charges. The same is more than the threshold limit of Rs.1 crore as per Section 4 of the IBC. The Financial Creditor has established the existence of financial debt payable by the Corporate Debtor and its default in repayment. This application is filed within limitation and is defect free; and as such the same deserves to be admitted.

9. In view of the above, we pass the following order:

(i) The Corporate Debtor Laxmi Engineering Industries (Bhopal) Private Limited is admitted in Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.

(ii) The moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- 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 Securitisation 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.*

(iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

(iv) As proposed by the Financial Creditor, we appoint **Dr. Vichitra Narayan Pathak** having registration No. IBBI/IPA-001/IP-P01353/2018-2019/12063, having address at: 120, Jharneshwar

Colony, Madhuban Vihar, Near International Public School, Hoshangabad Road, Bhopal, Madhya Pradesh-462047(e-mail: drvnpathak@yahoo.co.in) to act as an Interim Resolution Professional under Section 13(1)(c) of the Code. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

(v) The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

(vi) 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. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

(vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(viii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

(ix) The Financial Creditor is directed to pay an advance of **Rs.1,00,000/-** (Rupees One Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct

of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

(x) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

(xi) **The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Trade Tax, and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employee's associations so that they are informed of the initiating of CIRP against the Corporate Debtor timely.**

(xii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

10. Accordingly, **CP(IB)/08/MP/2022** stands **admitted**.

Sd/-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

Narendra S. Tomar/Steno

Sd/-

**MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)**