



**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT-III**

Item No.07

IB-761(ND)/2022

IN THE MATTER OF:

STATE BANK OF INDIA

..... Applicant/Financial Creditor

Versus

M/s. KOTSONS PVT. LTD.

..... Respondent/Corporate Debtor

Order Pronounced On: 09.06.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Siddharth Sangal, Ms. Richa Mishra, Mr.
Chirag Sharma, Advs.

For the Respondent : Mr. G Aniruth Purusothaman, Adv.

ORDER

Order pronounced in open court vide separate sheets. **(IB)-761(ND)/2022** is
admitted

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III
(IB) – 761(ND)/2022**

Order under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

STATE BANK OF INDIA

Having Its Registered Office at:

11th Floor, STC Building,
1 Tolstoy Marg, Janpath,
New Delhi-110001.

..... Applicant/Financial Creditor

VERSUS

M/s. KOTSONS PVT. LTD.

Having Its Registered Office at:

A-208, 2nd Floor, R.G. City Centre,
Plot No.4, DDA Community Centre,
Motia Khan, Paharganj,
New Delhi-110055.

..... Respondent/ Corporate Debtor

Order Pronounced On: 09.06.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Siddharth Sangal, Ms. Richa Mishra, Mr.
Chirag Sharma, Advs.

For the Respondent : Mr. G Aniruth Purusothaman, Adv.

State Bank of India vs. M/s. Kotsons Pvt. Ltd.
(IB) – 761(ND)/2022
Date of Order : 09.06.2023



ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

Description of the Parties:

1. This Application has been filed by STATE BANK OF INDIA, the Financial Creditor (FC)/Applicant on 21.09.2022, before this Adjudicating Authority, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “the Code”) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), declaring moratorium and for appointment of Interim Resolution Professional (“IRP”), against the Corporate Debtor (CD)/Respondent viz., M/s. KOTSONS PVT. LTD., on the ground that the Corporate Debtor has defaulted to make a Payment of a sum of Rs. 109,33,71,603.87/- [(Rupees One Hundred Nine Crore Thirty Three Lakh Seventy One Thousand Six Hundred Three and Eighty Seven Paise Only), Rs. 87,60,91,332.43/- of principal amount along with Rs. 21,72,80,271.44/- of Interest amount] as on 31.08.2022.
2. The Applicant is a Public Sector Bank established under the State Bank of India, Act, 1955. The State Bank of Indore got merged with the State Bank of India in the year 2010. The State Bank of Hyderabad, the State Bank of Patiala, the State Bank of Mysore, the State Bank of Bikaner and Jaipur and the State Bank of Travancore were associated banks of the State Bank of India and with effect from 01.04.2017, the aforesaid associated bank got merged with the State Bank of India. Therefore, all the rights and liabilities of the aforesaid banks got vested with the State Bank of India.
3. The Respondent Company was incorporated on 22.04.1978, as a Company Limited by Shares (Non- govt. Company) having CIN: U31101DL1978PTC191934, under the erstwhile Companies Act, 1956 with the Registrar of Companies, NCT of Delhi and Haryana. The Authorised Share Capital of the Respondent Company is Rs. 12,00,00,000/- (Rupees Twelve Crore Only) and the Paid-up Share

State Bank of India vs. M/s. Kotsons Pvt. Ltd.

(IB) – 761(ND)/2022

Date of Order : 09.06.2023



Capital of the Respondent Company is Rs. 6,96,72,112/- (Rupees Six Crore Ninety Six Lakh Seventy Two Thousand One Hundred and Twelve Only). The Registered Office Address of the Respondent Company is A-208, 2nd Floor, R.G. City Centre, Plot No.4, DDA Community Centre, Motia Khan, Paharganj, New Delhi-110055. Therefore, this Bench has jurisdiction to deal with this application. A true copy of the Company Details/Master Data of the Respondent Company obtained from the website of the Ministry of Corporate Affairs is filed along with the application.

4. **Submissions of the Financial Creditor:**

- a) The Corporate Debtor is having loan account bearing Account Nos. 39727433179 (Cash Credit-Stocks), 62018503232 (Cash Credit-Stocks), 51026094763 (Cash Credit-Stocks), 37775314149 (Cash Credit-SLC), 37775314514 (Cash Credit-SLC), 37775314853 (Cash Credit-SLC), 39608310095 (FITL), 39607143839 (FITL), 39607465201 (FITL), 39607465234 (FITL) and 39607465278 (FITL), apart from Bank Guarantees A/c Nos. 61007663031, 62092324732 37085035055 in the Financial Creditor's Bank.
- b) Initially, the Corporate Debtor enjoyed credit facilities from a multi-banking system comprising of State Bank of Bikaner & Jaipur, State Bank of Hyderabad and Punjab National Bank. With effect from 01.04.2017, the State Bank of Bikaner & Jaipur and State Bank of Hyderabad merged into the State Bank of India.
- c) The Credit facilities as advanced by the State Bank of Bikaner & Jaipur and State Bank of Hyderabad were continuing, now under one roof of the State Bank of India. Subsequently, the Corporate Debtor approached the Financial Creditor in December 2019 requesting for sanction/re-working of various credit facilities. The Financial Creditor, after following the due procedure, vide its Sanction/Arrangement Letter dated



08.09.2020 sanctioned various credit facilities to the Corporate Debtor with credit limits of Rs. 98.15 Crores (total consortium/multi-banking credit limits sanctioned were Rs. 108.50 Crores with Punjab National Bank) against primary and collateral security as well as personal guarantees, apart from the creation of equitable mortgage of immovable properties in favour of the Financial Creditor, resultant, various loan documents dated 08.09.2020 were executed between the Financial Creditor and Corporate Debtor.

- d) Thereafter, the Corporate Debtor, did not adhere to the financial discipline, resultant, the loan accounts of the Corporate Debtor were classified as NPA (“Non-performing Asset”) on 11.11.2020 in accordance with the RBI Circulars and Guidelines. The Corporate Debtor assured the Financial Creditor that it shall make payments of the outstanding amounts, however, despite several assurances, the Corporate Debtor did not make the payments of the outstanding amounts, resultant, the Financial Creditor/Applicant issued Letter/Notice dated 21.05.2021 to the Corporate Debtor informing about the factum of NPA and calling upon the Corporate Debtor to make payment of the outstanding amounts plus unapplied interest. The Financial Creditor/Applicant also issued a Demand Notice dated 18.06.2021 to the Corporate Debtor/Respondent under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) demanding Rs. 96,36,96,693/- as on 17.06.2021 along with interest. The Corporate Debtor responded to the Demand Notice dated 18.06.2021 through its objections dated 16.08.2021, received on 19.08.2021, which were duly responded to/disposed of by the Applicant by its Letter dated 31.08.2021.
- e) Despite the above, the Corporate Debtor did not make payment of the outstanding dues. The Corporate Debtor has not disputed



the position of the outstanding dues and has rather acknowledged the 'Borrowings' from the Financial Creditor in its Balance Sheet as on 31.03.2021. Moreover, the Corporate Debtor offered a 'One time settlement' ("OTS") proposal dated 25.10.2021 to the Financial Creditor, which was not acceptable to the Financial Creditor, however, the said fact is a clear acknowledgment of the outstanding dues on the part of the Corporate Debtor.

- f) The present application is within the limitation period since the loan accounts were classified as NPA w.e.f. 11.11.2020 and the Demand Notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 18.06.2021 calling upon the Corporate Debtor to make payment of the outstanding amounts within 60 days from the receipt of the said Notice.
- g) In the meantime, the Financial Creditor has already undertaken recovery proceedings being O.A. No. 754 of 2021 filed in September 2021 before the Debts Recovery Tribunal at Allahabad, claiming an amount of Rs. 103,53,95,410.62/- as on 31.08.2021 plus further interest.

5. **Submissions of the Corporate Debtor:**

- a) It is submitted that the Ministry of Law and Justice, in the wake of the Nation-wide Lockdown announced on 25.03.2020 in response to the COVID-19 pandemic, had published in the Gazette of India on 05.06.2020, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 which inserted Section 10A in the Insolvency Bankruptcy Code, 2016 by way of an amendment. The said section provides for suspension of Sections 7, 9, 10 of the Code in respect of defaults occurring post 25.03.2020 until six months from the said date. The Ordinance dated 05.06.2020 is filed along with the application.
- b) It is submitted that the said suspension period of six months mentioned in Section 10A of the Code was further extended vide



Notification F. No. 30/33/2020- Insolvency, dated 24.09.2020, for a further period of three months from the date of this notification viz. in effect extending the abovementioned suspension of Sections 7,9, 10 of the Code until 24.12.2020. The notification is filed along with the application.

- c) As mentioned above, the Respondent was classified as NPA (Non-Performing Asset), in accordance with the guidelines of the Reserve Bank of India, only on 11.11.2020 is well within the boundaries of extension of the suspension as provided by the abovementioned notification under Section 10A of the Code. It is submitted that in accordance with Section 10A of the Code r/w Notification F. No. 30/33/2020-Insolvency, dated 24.09.2020, the said Petition is untenable in law, and admissibility of the same will be in Contravention of Section 10A of the Code.
- d) It is submitted that on 08.09.2020 several loan agreements were executed between the Petitioner and Respondent in respect of credit facilities availed by the Respondent. Following are the documents executed in respect of the credit facilities in concern:-
1. Sanction/Arrangement Letter
 2. Inter se Agreement between Petitioner, Respondent and Punjab National Bank
 3. Deed of Hypothecation.
- e) It is further submitted that the present petition has been filed under the authority of Mr. Shiv Shekher Narayan, such delegation of the authority having its source in the Notification in the Gazette of India dated 02.05.1987. It is submitted that Mr. Shiv Shekher Narayan was not the sanctioning authority in respect of the abovementioned credit facilities and the execution of the abovementioned agreements are executed under the authority of one Mr. Vipin Kumar.
- f) It is submitted that even as per the Master Circular of the RBI on prudential norms relied on by the Petitioner, the entire principal and interest amount becomes due and payable once



the account is declared as NPA. In the present case, the entire principal and interest amount have not been paid. Thus, the account of the Respondent still remains as an NPA account. Moreover, if an account is declared as an NPA, the entire principal and interest amount has to be paid on the date of declaration of NPA, which in the present case is 11.11.2020. Thus, there cannot be any subsequent date of default of 17.08.2021 as contended by the Petitioner.

- g) It is further submitted that the Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi in the matter of **Mr. Aseem Srivastav vs ICICI Bank & Anr.** Company Appeal (AT) (Insolvency) No. 147 of 2021, judgment dated 29.11.2021 wherein it is held that:

“26. Now, we have considered whether in the present Application under Section 7 of the IBC different causes of actions have been clubbed. The Hon'ble Supreme Court in the Case of Gaurav Hargovind Bhai Dave Vs Asset Reconstruction Company (India) Limited & Anr. (2019) 10 SCC 572 held that the date on which the bank declared the account of Corporate Debtor NPA is the date of default. In the present case, the account of the Corporate Debtor was classified as NPA on 31.03.2019. We can say that the cause of action accrued on 31.03.2019, the date of NPA. In such circumstances, we are unable to convince with the argument of Ld. Sr. Counsel for the Appellant that there is a misjoinder of cause of action in the Application under Section 7 of the IBC.”

From the above, it is crystal clear that the date when the account of the Respondent was declared NPA i.e. on 11.11.2020 shall be considered as the date of default.



6. Analysis and Findings

- i. We have heard the Ld. Counsels appearing for both parties from time to time. We have also perused the documents on record.
- ii. On perusal of the record of default of the Corporate Debtor maintained by the Information Utility namely National E-Governance Services Limited (NESL) dated 26.08.2022, we find that this is the record w.r.t. the status of authentication by the debtor is shown as “Deemed to be Authenticated” (yellow colour code) along with the date of default as 14.08.2020. Therefore, we are satisfied that there exist debt and default and the same is corroborated by the IU certificate filed along with the application. We would now refer to the Regulation 21 and Table-1 & 2 of the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2022 dated 14th June, 2022 which read as follows:

Regulation 21

“(3) On completion of the process under sub-regulation (2), the information utility shall record the status of authentication of information of default as indicated in the following Tables”:

Table-1

<i>S. No</i>	<i>Response of the Debtor</i>	<i>Status of Authentication</i>	<i>Colour of the Status</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
1	<i>Debtor confirms the information of default</i>	<i>Authenticated</i>	<i>Green</i>
2	<i>Debtor disputes the information of default</i>	<i>Disputed</i>	<i>Red</i>
3	<i>Debtor does not respond even after three reminders</i>	<i>Deemed to be Authenticated</i>	<i>Yellow</i>

“Provided that in case of Financial Creditors which are banks included in the second schedule of the Reserve Bank of India Act, 1934, the information utilities will record the status of



authentication of information default as indicated in the Table 2 Below”:

TABLE-2

S. No.	Response of the debtor	Status of authentication	Colour of the Status
(1)	(2)	(3)	(4)
1	(a) Debtor Confirms the information of default. or (b) Debtor does not respond even after three reminders	Authenticated	Green
2	Debtor disputes the information of default	Disputed	Red

It is therefore clear that once the Applicant/FC has proved that the Respondent/CD is in default in respect of the debts due and payable, the application is required to be admitted.

- iii.** It is submitted by the Applicant that the loan accounts of the Corporate Debtor were classified as NPA on 11.11.2020 under the RBI Guidelines (Master Circular for Income Recognition) issued every year. In other words, the classification of the accounts as NPA is an automatic procedure, if the interest is not serviced for a particular period. Once the account of the Corporate Debtor was classified as NPA, the Corporate Debtor has the option of making the payment of the interest outstanding and regularizing its accounts, which in this case was not done by the Corporate Debtor. Further, Section 10A of the Code talks about the 'Date of Default' and not the date of NPA in reference to Section 7 Application. The Section 10A also does not mention anything about the 'First Date of Default' or 'NPA Date', thus, the objection of the Corporate Debtor that since the date of NPA falls within the Section 10A period, the Section 7 Application could not have been filed is preposterous and wrong.

Here, we would also like to refer to the judgment of the Hon'ble Supreme Court in **Laxmi Pat Surana v. Union Bank of India**



& Anr., Civil Appeal No. 2734/2020 dated 26.03.2021, wherein the Hon'ble Supreme Court clearly held, as under:

"37. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the Financial Creditor to initiate action under Section 7 of the Code. However, Section 7 comes into play when the Corporate Debtor commits "default". Section 7, consciously uses the expression "default" - not the date of notifying the loan account of the Corporate Person as NPA. Further, the expression "default" has been defined in Section 3(12) to mean non-payment of "debt" when the whole or any part or installment of the amount of debt has become due and payable and is not paid by the debtor or the Corporate Debtor, as the case may be....."

In view of the above, the date of NPA is relevant only for the purposes of limitation as the right to apply first accrues, however, in this case, the trigger to file the Section 7 Application arose when the CD failed to make payment of the entire loan plus interest by 17.08.2021. Thus, the effective 'Date of Default' in this case is 17.08.2021. The cases relied upon by the CD are of no consequence to the facts at hand and are not attracted in view of the judgment of the Hon'ble Supreme Court in Laxmi Pat Surana (supra).

- iv.** In view of the facts and circumstances mentioned hereinabove, it is clear that financial debt was disbursed by the Applicant to the Corporate Debtor against consideration of the time value of money and thereafter the same has remained due and payable. Admittedly, the failure to adhere to the term by the Corporate Debtor for repayment of the interest and the principal amount, establishes the default in repayment of the said financial debt. This position in the instant case is a fit case for the



commencement of CIRP of the Corporate Debtor in terms of Section 7(5)(a) of the Code.

- v. A certificate under Section 2-A of the Bankers Book Evidence Act, 1891 has been filed by the Financial Creditor along with the account statements relating to the Corporate Debtor in which financial debt was transferred by the Financial Creditor and the entries therein are made in the ordinary and usual course of business. The said certificate further disclosed sufficient compliance with the provisions of the Banker's Book Evidence Act of 1891 and the same has been taken on record.
- vi. It is clear from the reading of the above paragraphs and the perusal of records and documents annexed by the Financial Creditor in its application, that the debt of the Respondent/CD is due and payable to the Applicant/FC and there is a default in payment of the debt of the Respondent/CD, within the meaning of provisions of section 7 of the IBC, 2016 and the default is more than the minimum amount stipulated under Section 4(1) of the IBC, 2016. The present Application made by the Applicant/FC is complete in all respects as required by law. It is noted that the amount of liability is appearing continuously in the financial statements of the Applicant/FC. On this basis, it is claimed that the application filed U/s 7 of IBC, 2016 is well within the period of limitation.

These Records prima facie established a case of admitted debt and default. Hence, we are inclined to **admit** this application.

7. **Order**

In light of the above facts and circumstances, it is, **hereby ordered** as follows: -

- i. The Application bearing **IB-761(ND)/2022** filed by the Applicant/(FC), under section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Respondent/(CD), is hereby **admitted**.



ii. We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- “(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 Securitization 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.*

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]”



- iii.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.
- iv.** The Applicant/(FC) has proposed the name of Mr. Alok Kaushik as the Interim Resolution Professional (“IRP”) having address: G-105, Sai Baba Apartments, Rohini, Sector-9, Delhi-110085. His Email id is fidemcorp@gmail.com and alokkaush@yahoo.com. His Contact No. is +919811470267. His registration number is IBBI/IPA-002/IP-N00253/2017-18/10767.
- The Applicant filed a copy of the Consent Issued by Mr. Alok Kaushik in Form 2, Written Communication by proposed IRP, as per the requirement of Rule 9(l) of the Adjudicating Authority Rules along with the Certificate of Registration and Authorization for Assignment in Form B.
- Accordingly, Mr. Alok Kaushik is appointed as IRP.
- v.** In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- vi.** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/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. There shall be no future opportunity given in this regard.

- vii.** The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- viii.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- ix.** The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors ("CoC").
- x.** In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today.
- The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- xi.** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.
- xii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

-SD-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)