



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V**

C.P. (I.B) No. 142/MB/2023

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

IFCI Limited,

Regional Office at 9th Floor, Earnest House,
NCPA Marg, Nariman Point, Mumbai – 400021
(Maharashtra)

...Petitioner/Financial Creditor

Vs

M/s. Patil Construction & Infrastructure Ltd.,

Flat No. 2, Swadhin Sadan, C- Road, Churchgate,
Mumbai - 400021, (Maharashtra)

... Respondent/Corporate Debtor

Order Dated: 04.03.2025

Coram:

Ms. Reeta Kohli, Hon'ble Member (Judicial)

Ms. Madhu Sinha, Hon'ble Member (Technical)

Appearances:

For the Petitioner: Adv. Ayush Kothari (PH)

For the Respondent: Adv. Nausher Kohli (PH)



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ORDER

Per: Reeta Kohli, Member (Judicial)

- I. This Company Petition is filed by **IFCI Limited** (hereinafter referred as “**Petitioner/Financial Creditor**”) on 20.02.2023 seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **Patil Construction & Infrastructure Ltd.** (hereinafter called “**Respondent/Corporate Debtor**”) by invoking the provisions of **Section 7** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a Financial Debt of **Rs. 26,28,12,037/-**, with the date of default as **09.01.2018 (interest amount)** and **15.07.2019 (principal amount)**.

II. **Facts and submissions of the Financial Creditor-**

1. The case of the Petitioner is that the Corporate Debtor availed a Corporate Loan amounting to Rs. 50 Crores from the Petitioner. The Petitioner, vide Letter of Intent dated 02.03.2015, granted and sanctioned the Corporate Loan facility of Rs. 50 Crores to the Corporate Debtor, based on terms and conditions therein mentioned. As per the terms of the aforementioned sanction, the said loan facility was to be repaid in 14 equal quarterly installments after the initial moratorium period of 18 months. The Petitioner and the Corporate Debtor entered into a Corporate Loan Agreement dated 18.03.2015.
2. As stated by the Petitioner, at the request made by the Corporate Debtor, the Petitioner vide letter dated 16.03.2015 and 13.04.2015 conveyed modification of certain terms and conditions in the sanction letter dated 02.03.2015, and the said modifications were related to the security agreed to be offered to secure the repayment of the aforesaid loan facility. Further, the Financial Creditor and the Corporate Debtor executed various documents including Indenture of



Mortgage, Deed of Hypothecation, and Escrow Agreements along with Deed of Guarantee.

3. As stated by the Petitioner, pursuant to the execution of the aforementioned Corporate Loan Agreement, and securities created thereof, the Financial Creditor disbursed the amount of Rs. 50 Crores to the Corporate Debtor on 17.04.2015
4. As submitted, the Corporate Debtor failed to pay the amount due and in view of the default committed in repayment, the Financial Creditor issued a Recall Notice dated 09.08.2019 and proceeded to recall the entire loan facility given to the Corporate Debtor (Principal Borrower) and called upon the Corporate Debtor and its Guarantors to repay the then outstanding amount of Rs. 19,03,65,394/-. Further, the accounts of the Corporate Debtor were classified as NPA on 23.09.2019. Accordingly, the Financial Creditor, vide its notice dated 01.10.2019 invoked the guarantee obligation of the Guarantors of the Corporate Debtor.
5. Further, as stated, the Financial Creditor issued a notice dated 16.10.2019 under Section 13(2) of the SARFAESI Act, 2002 and called upon the Corporate Debtor and its Guarantors to pay the outstanding amount of Rs. 19,35,83,707/-. Subsequently, in furtherance of the 13(2) Notice, the Financial Creditor, in exercise of the measures under Section 13(4) of the SARFAESI Act, 2002, proceeded to take symbolic possession of the mortgaged secured assets on 14.01.2020.
6. As submitted by the Financial Creditor, the Corporate Debtor, vide letter dated 15.03.2022, admitted to the fact of availing a loan facility of Rs. 50 Crores from the Financial Creditor and also a loan facility from its group organization. Further, as stated, the Corporate Debtor admitted the outstanding amount of Rs. 14,29,00,000/- payable to the Financial Creditor and to close the said loan account the Corporate Debtor offered to pay upfront amount of 5% of the principal dues which was rounded at Rs. 1,43,80,000/- which the Corporate



Debtor agreed to pay immediately on sanction and balance to be paid in 15 months in each quarter. As contended by the Financial Creditor, the present Petition is not barred by the law of limitation as the Application was filed within 3 years from the settlement proposal of the Corporate Debtor.

7. As contended by the Applicant, the settlement proposal of the Corporate Debtor dated 15.03.2022 was considered by the Financial Creditor, however, the same was not accepted and the Financial Creditor, vide letter dated, 29.08.2022, conveyed the rejection to the Corporate Debtor. Therefore, in view of the aforementioned facts and circumstances, the present Petition was filed before this Hon'ble Tribunal.

III. Facts and submissions of the Corporate Debtor-

1. As contended by the Corporate Debtor, during the pendency of the Present Petition, the Corporate Debtor submitted an OTS proposal on 24.04.2023 amounting to Rs. 13,58,90,653/- to the Financial Creditor. The Corporate Debtor, as a gesture of commitment, deposited an amount of Rs. 2,00,00,000/- into the Financial Creditor's bank account. Further, as submitted, the Corporate Debtor deposited Rs. 25 Lakhs on 10.07.2023, Rs. 25 Lakhs on 11.07.2023, and Rs. 50 Lakhs on 21.07.2023 in the Financial Creditor's bank account towards settlement. Furthermore, the OTS Proposal dated 24.04.2023 was rejected by the Financial Creditor on 21.07.2023 by stating that the same did not include interest for the default period. However, as contended, till then a sum of Rs. 3 Crores had already been deposited by the Respondent in the Petitioner's bank account towards settlement of the said matter.
2. As submitted, the Corporate Debtor submitted a revised and final OTS offer dated 22.07.2023, which amounted to Rs. 16,03,57,149/-, including the prior payment of Rs. 3 Crores. The Corporate Debtor addressed a letter dated 31.08.2023 to the Financial Creditor pertaining to the payment details. As stated, in view of the final OTS dated 22.07.2023 and letter dated 31.08.2023, it was agreed that the Corporate Debtor would submit post-dated cheques



aggregating to Rs. 13,03,57,149/- in 5 installments starting from September 2023 and concluding in July 2024. As alleged, the aforesaid post-dated cheques were duly accepted by the Financial Creditor and the said final OTS proposal of the Corporate Debtor was never disputed and/or denied by the Financial Creditor.

3. As alleged by the Corporate Debtor, a sum of Rs. 13,11,69,517/- has already been paid to the Financial Creditor under the final OTS Proposal and the remaining balance of Rs. 2,91,87,631/- is due on 31.07.2024, thereby completing the Corporate Debtor's obligation under the said OTS.
4. As contended, during the pendency of the said matter, the Corporate Debtor and the Financial Creditor jointly sought time from this Hon'ble Tribunal and the same can be evidenced by Orders dated 16.05.2023, 21.08.2023, 27.09.2023, 13.10.2023, and 08.11.2023. As alleged, this voluntary action on part of the Financial Creditor demonstrates that there was a valid, subsisting, and binding OTS proposal between the parties. As further stated by the Corporate Debtor, the OTS process is nearing completion as only one final payment remains outstanding however, the Financial Creditor, allegedly, rejected the OTS proposal after a period of seven months on 20.02.2024. The said rejection of OTS is also recorded in the Order dated 20.02.2024 passed by this Hon'ble Tribunal. The Corporate Debtor further alleged that during the period when the Corporate Debtor was making payments in accordance with the proposal, the Financial Creditor would return post-dated cheques, upon receipt of the OTS amount of each tranche, back to the Corporate Debtor. However, despite rejecting the OTS proposal on 20.02.2024, the Financial Creditor did not return 2 of the post-dated cheques dated 30.04.2024 & 31.07.2024. The said post-dated cheque dated 30.04.2024 was returned on 10.05.2024 only after the Corporate Debtor deposited the corresponding amount of Rs. 2,91,87,631/- and the last post-dated cheque still remains in possession of the Financial Creditor. Thus, as contended by the Corporate



Debtor, the retention of these cheques by the Financial Creditor implies acceptance of the OTS proposal terms and this act on part of the Financial Creditor amounts to a valid, concluded and binding OTS.

5. As further stated by the Corporate Debtor, the limitation period as per the Limitation Act, 1963, has already lapsed as the date of default mentioned by the Financial Creditor is 09.01.2018 and the three-year limitation period got over on 09.01.2021. As per the Order of the Hon'ble Supreme Court dated 10.01.2022, if the limitation period is set to expire during the period between 15.03.2020 till 28.02.2022, then the balance of 90 days shall be provided from 01.03.2022. In view of the aforementioned Order of the Hon'ble Supreme Court, the said period of limitation was set to expire on 29.05.2022 and the present Petition has been filed on 28.11.2022 and thus, the present Petition is barred by limitation. Furthermore, as alleged, the Financial Creditor has relied upon an acknowledgement dated 15.03.2022 (***Exhibit- T of the Petition***) in order to extend limitation. However, the said acknowledgement is dated 4 years after the date of default, i.e. 09.01.2018. As stated, it is trite that for an acknowledgment to be valid, it must be made within the prescribed period of limitation and therefore, as alleged, the Financial Creditors reliance on the acknowledgment dated 15.03.2022 is misplaced.
6. Moreover, the Corporate Debtor alleged that the Financial Creditor cannot proceed with the present Petition in view of the doctrine of Legitimate Expectation, which grants a person the right to a fair procedure when a public authority makes a decision affecting their interests based on a reasonable expectation of a certain outcome from the authority, in the present case, as alleged, the Applicant has abused its power by failing to provide clear instructions which resulted in significant financial and legal hardships to the Corporate Debtor. In this regard, the Corporate Debtor placed reliance on the judgment of the Hon'ble High Court of Madhya Pradesh in the matter of ***Shri Mohanlal Patidar v. Bank of Maharashtra [W.P. No. 22127/2021]*** and



Pawan Agarwal v. Small Industries Development Bank of India [W.P. No. 8213/2022]. As contended, IFCI Ltd. Is a Government of India undertaking and bears significant responsibilities. The Financial Creditor has misused its position as a government undertaking by failing to comply with the established norms associated with OTS process.

7. As stated by the Corporate Debtor, the Financial Creditor currently holds a mortgaged property belonging to the Corporate Debtor and the said mortgaged property is sufficient to satisfy the outstanding loan amount owed by Corporate Debtor, making its financial obligations well-secured.
8. Therefore, in view of the aforementioned contentions, the Corporate Debtor submitted that the Petition filed by the Financial Creditor is not maintainable.

IV. Findings-

1. After having heard the Ld. Counsels for both the parties and perusing the documents placed on record, it is evident that the case of the Petitioner is that the Respondent/Corporate Debtor has failed to discharge its obligation of paying the due debt of Rs. 26,28,12,037/-, and the Petitioner, having been left with no other option, had approached this Hon'ble Tribunal for seeking initiation of CIRP of the Corporate Debtor. On the other hand, the case of the Corporate Debtor is that the present Petition is not maintainable as it is barred by limitation and there exists a valid and binding OTS arrangement between the parties.
2. After careful perusal of the facts of the present case, we are of the opinion that 2 issues emerge for consideration, which are as under-
 - Whether the present Petition is barred by limitation?
 - Whether the existence of an alleged binding OTS arrangement bars admission of the present Petition?



3. In order to adjudicate on the 1st issue, i.e., ***“Whether the present Petition is barred by limitation?”***, it is imperative to note that the date of default as mentioned by the Financial Creditor is 09.01.2018. In view of settled law, the 3-year limitation period with respect to the same expired on 09.01.2021. However, keeping in view the judgment of Hon’ble Supreme Court ***Suo Motu Writ Petition (C) No. 3 of 2020***, vide Order dated 10.01.2022, held as under-

“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.”

Thus, in view of the said finding, the limitation for the Financial Creditor was extended upto 01.06.2022, whereas the present Petition was filed on 20.02.2023. Further, the Financial Creditor, in order to justify that the present Petition is within the limitation period, placed reliance on the Corporate Debtor’s acknowledgment dated 15.03.2022. However, it is pertinent to note that as per Section 18 of the Limitation Act, 1963 such an acknowledgment must be made within / before the expiry of the prescribed time period, i.e. 3 years. Thus, in view of the aforementioned, since the acknowledgment dated 15.03.2022 is made within the extended limitation period (which was upto 01.06.2022). Thus, it is evident that present Petition filed by the Applicant is within the period of limitation. Hence, the issue of limitation is decided in favour of the Financial Creditor.

4. Moving to the 2nd issue, i.e., ***“Whether the existence of an alleged binding OTS arrangement bars admission of the present Petition?”***, in order to adjudicate on the present issue, it is pertinent to note that on perusal of the documents placed on record, it has come to light that the Respondent submitted its 1st OTS Proposal on 15.03.2022 which was rejected by the Applicant on



29.08.2022. The 2nd OTS Proposal was submitted by the Respondent on 24.04.2023, in furtherance of the same, the Respondent deposited an amount of Rs. 3 Crores in the Petitioner's Bank Account. However, the OTS Proposal dated 24.04.2023 was again rejected by the Applicant/ Financial Creditor. As contended by the Respondent, in terms of the advice of the Applicant's, the Respondent submitted a revised and final OTS Proposal dated 22.07.2023, aggregating to Rs. 16,03,57,149/-, inclusive of the aforementioned amount of Rs. 3 Crores. Pursuant to this revised proposal on the asking of the Applicant and the letter dated 31.08.2023, the Respondent submitted 5 post-dated cheques for the amount as per the OTS Proposal which was to be paid in 5 installments. In view of the Additional Affidavit by the Respondent, more particularly bank statements annexed by the Respondent, it becomes evident that the Respondent made payments amounting to Rs. 13,11,69,517/- under the final OTS Proposal dated 22.07.2023. However, the Final OTS Proposal was ultimately rejected by the Applicant/Financial Creditor vide letter dated 20.02.2024. It deserves to be taken note of that the Final OTS Proposal was rejected by the Applicant after a substantial period of 7 months and that too after receiving instalments from time to time. It deserves to be emphasised that the said rejection by the Financial Creditor was done when the OTS process was nearing completion, with only one final tranche (due on 31.07.2024) of payment remained outstanding.

5. In view of the aforementioned facts and circumstances, this Bench notes a series of actions on part of the Financial Creditor that clearly demonstrate deemed acceptance of the OTS arrangement. The said actions are as under-

- The Corporate Debtor submitted 5 post-dated cheques in favour of the Financial Creditor, the said cheques were duly accepted and retained by the Financial Creditor.



- The Corporate Debtor made regular payments according to the OTS payment schedule and the Financial Creditor returned each post-dated cheque upon receipt of the corresponding payment.
 - As alleged by the Corporate Debtor, the Financial Creditor, despite rejecting the OTS Proposal on 22.02.2024, still retained 2 posted-dated cheques for the last two tranches due on 30.04.2024 and 31.07.2024. The cheque dated 30.04.2024 was only returned after the Corporate Debtor deposited the amount for the second last tranche and the post-dated cheque for the last tranche of payment is still in possession of the Financial Creditor.
 - The Financial Creditor repeatedly joined the Corporate Debtor in seeking time from this Tribunal (as evidenced by Orders dated 16.05.2023, 21.08.2023, 27.09.2023, 13.10.2023, and 08.11.2023) to facilitate negotiations with respect to OTS arrangement.
 - Till date, Rs. 13,11,69,517/- out of the total amount of Rs. 16,03,57,149/- has been paid by the Corporate Debtor under this OTS Proposal, with only Rs. 2,91,87,631/- remaining due on 31.07.2024.
6. The aforementioned conduct on part of the Financial Creditor, i.e., accepting payments made by the Respondent as per the OTS proposal, retaining / managing post-dated cheques according to the OTS arrangement, and returning post-dated cheques upon receipt of the corresponding payment, creates a deemed acceptance of the OTS proposal on part of the Financial Creditor. Further, the OTS Proposal was rejected by the Applicant only after a substantial amount had already been paid by the Corporate Debtor, however, the Financial Creditor cannot now be permitted to abandon this re-payment arrangement (OTS) when substantial compliance has already been achieved. Furthermore, the conduct of the Financial Creditor in accepting substantial OTS payments while simultaneously pursuing CIRP proceedings and rejecting



the said OTS proposal at a later stage is clearly an attempt on part of the Financial Creditor to use the IBC as a recovery mechanism, which goes against the very spirit and objectives of the Code. Moreover, as evidenced by the facts of the present case, the Financial Creditor itself has been liberal in granting extension to the Corporate Debtor with respect to OTS Proposals and now the attempt of the Financial Creditor is simply to arm-twist the Corporate Debtor to extract more money and the same cannot be allowed.

7. The Hon'ble Supreme Court and Hon'ble NCLAT have consistently held that the IBC is not intended to be used as a mechanism for debt recovery but rather as a process for resolution of the Corporate Debtor. In the same regard, the Hon'ble Supreme Court in the matter of **GLAS Trust Company LLC v. BYJU Raveendran & Ors. [Civil Appeal No. 9986 of 2024]**, has held as under-

*“37. The objectives discernible from the long title and the Statement of Objects and Reasons of the IBC were discussed in a decision of a two-judge bench of this Court in **Swiss Ribbons (P) Ltd. v. Union of India**. This Court observed that the IBC is a beneficial legislation which attempts to put the Corporate Debtor back on its feet. According to this Court, this would involve considering the interests of all concerned stakeholders rather than viewing the IBC as a mere recovery legislation for individual creditors. This Court, speaking through Justice RF Nariman, observed as follows:*

“28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on



its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.”

(emphasis supplied)”

8. Therefore, considering the aforementioned judgment and the totality of circumstances, including the fact that the Financial Creditor seeks to proceed with CIRP when only the last tranche under the OTS remaining to be paid, while still retaining the last post-dated cheque, and the use of IBC as a recovery forum by the Financial Creditor, this Bench is of the considered opinion that this is not a fit case for admission.
9. Moreover, the doctrine of Legitimate Expectation, becomes particularly relevant here as the Financial Creditor is a Government of India undertaking. The judgments of the Hon'ble High Court of Madhya Pradesh in ***Shri Mohanlal Patidar v. Bank of Maharashtra [W.P. No. 22127/2021]***



and *Pawan Agarwal v. Small Industries Development Bank of India [W.P. No. 8213/2022]*, as relied upon by the Corporate Debtor, emphasize the higher standards of fair dealing expected from public sector institutions. However, in the present case, the Financial Creditor's conduct falls severely short of these standards.

10. Therefore, keeping in view the above stated facts and circumstances, we are of the considered view that this Petition deserves to be rejected. The conduct of the Financial Creditor in accepting substantial OTS payments while simultaneously pursuing CIRP proceedings represents an attempt to use the IBC as a recovery mechanism, which goes against the very spirit and purpose of the Code. The existence of a substantially performed OTS arrangement, evidenced by the Financial Creditor's own conduct and the significant payments already made, further renders this Petition unmaintainable. **Hence, CP No. 142 of 2023 is hereby dismissed.**

Sd/-

MADHU SINHA

Member (Technical)

/Jhanvi/

Sd/-

REETA KOHLI

Member (Judicial)