

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No.689/23
IN
CP(IB) No. 49/Chd/Pb/2019**

**Under Section 7 of the
Insolvency & Bankruptcy
Code, 2016**

In the matter of:

M/s Master Trust Limited

Through the Authorised Signatory, Mr. Ajit Baluni
SCO-19, Feroze Gandhi Market,
Ludhiana-141001

....Applicant

Versus

M/s Future Colonizers & Construction Limited

Rani Di Kothi, H.No.263
Ward No.12, Opposite PWD Rest House
Sangrur-148001, Punjab.
CIN No.U70102PB2008PLC031664

...Respondent

In the matter of :

IA 689/2023

M/s Libra Auto & General Finance Ltd.,
Through Sh. Bhupijnder Kumar S/o Sh Inder Nath (Manager)
Head Office: 1031, Gopal Nagar, Patel Chowk,
Jalandhar City,
Administrative Office: near Tempo Union,
Transport Nagar, Ludhiana

...Applicant

Versus

Rajeev Bhambri, Resolution Professional,
M/S Future Colonizers & Construction Limited,

...Respondent

Judgment delivered on: 12.01.2024

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Applicant: Mr. Nahush Jain, Advocate

For the Respondent: Mr. Shivam Grover, Advocate

Per: Subrata Kumar Dash, Member (Technical)
Per: Harnam Singh Thakur, Member (Judicial)

ORDER

This Application has been filed by HSIIDC Ltd, under 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (“**The Code**”) read with Rule 11 of National Company Law Tribunal Rules, 2016 (“**NCLT Rules**”) seeking directions for acceptance of the claim concerning the financial loan given by the Applicant to the Corporate Debtor via Loan Agreements dated 14.01.2013 and 27.02.2013 which were rejected by the Resolution Professional in his emails dated 25.01.2023, 14.01.2013 and 27.02.2013

2. The Brief facts as stated in the application are as follows;

2.1. M/s Libra Auto and General Finance Ltd, i.e., the Applicant is carrying on the business of providing finance on Automobiles on a higher purchase basis to various industries, institutions, etc. The Applicant was approached by the Directors of the corporate debtor for seeking financial assistance to the tune of Rs 1,45,000/- (“first loan amount”) and Rs 55,00,000/- (“second loan amount”) as a loan on interest @ 24% per annum w.e.f. Date of the advance payment till the repayment. The Applicant states that a total sum of RS 11,17,12,588/- is due from the corporate debtor as of 10.01.2023 for the transaction i.e., advancement of loan by the Applicant to the Corporate Debtor.

2.2. On 21.12.2017, the Managing Director of the corporate debtor issued cheque no 105301 for the first loan amount and cheque No. 105302 for the second loan amount, drawn on Punjab and Sindh Bank, Sunet Branch, Ludhiana, in favour of the Applicant towards the partial discharge of their legal liability towards the Applicant with respect to the first loan agreement dated 14.01.2013 and the second loan agreement dated 27.02.2013. However, when the Applicant presented cheque No. 105301 on 21.12.2017, and cheque No. 105302 on 22.12.2017, both the cheques were returned by the banker of the corporate debtor vide memo dated 22.12.2017 with remarks "*exceeds arrangement*".

2.3 The aforesaid cheques were again presented in January of 2018, however, these were again dishonored with the same remarks. Therefore after serving legal notice, complaints were instituted u/s 138 of the Negotiable Instruments Act against the corporate debtor and its directors in the District of Ludhiana which are pending adjudication.

2.4 The Applicant states that upon getting to know about the CIRP initiation of the Corporate debtor on 13.10.2022, they, as per the instructions of the IRP, submitted their claims through WhatsApp on 11.01.2023 and 12.01.2023 as well as through Form C along with necessary documents delivered by hand in the office of the RP as well as by e-mail at the IRP's email address, i.e. futurecirp@gmail.com in 18.01.2023.

2.5 However, the IRP vide his email dated 25.01.2023, informed the applicant that the claims of the applicant have been rejected. The Applicant

states that the act of the IRP of rejecting the claims of the Applicant should be set aside on the following grounds;

a. As per Section 18(1)(a)(iii) of the Code, the IRP is cast under a duty to collate the list of assets and liabilities on the initiation date, which in the current case, the IRP failed to do despite the submission of claims by the Applicant which were submitted via Whatsapp on 11.01.2023 as well as by the email ID provided on 18.01.2023, before the deadline.

b. The IRP as per the applicant, failed to take into account the documents submitted by the applicant for the admission of its claims and the IRP did not perform his duty as per regulations 13 and 14 as per which the IRP should have verified the claims and the call for additional information warranting he revision of the claims.

c. The Applicant states that the debts owed to it are duly reflected in the Balance Sheet of the corporate debtor for the relevant period and the same can be very well verified from those balance sheets, and thus, these debts are well within limitation. The IRP has not disclosed how he dealt with these while passing the impugned rejection claim.

d. The RP has wrongly rejected the claim as being beyond the limitation period.

3. In the Reply filed by the Respondent Resolution Professional, the following was stated;

3.1. The Respondent stated the three primary grounds for rejecting the claim of the Applicant;

a. The Claim was received beyond the 90th day of the Insolvency Commencement date and hence, was time-barred as per Regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016.

b. The alleged interest and penalty claims were not substantiated by any document that is not time-barred in terms of provisions of the Limitation Act, of 1963.

c. The copies of the alleged loan agreement were dated 14.01.2013 and 27.02.2013, but the same were notarized on 01.04.2013 and hence, the said discrepancy was not explained from the claim form.

3.2. The Respondent Resolution Professional states that he has no power under the code and its rules and regulations to condone the delay of submission of the claim beyond the period of 90 days from the date of initiation of the Insolvency Process, and given the CIRP began on 13/10.2022, the 90 day period accordingly expired on 11.01.2023, while the claim of the Applicant was submitted on the 18.01.2023 and therefore, beyond the limitation period prescribed.

3.3. The Respondent Resolution Professional further states that the alleged loan agreements dated 14.01.2013 and 27.02.2013, and the amount under such agreements have become due and payable on 13.01.2014 and 26.02.2014, respectively. It is further submitted that the said amounts due under such alleged agreements, as well as the interest claimed and the penalty charged by the Applicant, are all time-barred claims under the Limitation Act.

3.4. The Respondent placed reliance on the judicial decision in the Hon'ble Supreme court judgment ***B.K. Educational Services Private Limited V. Parag Gupta and Associates (2018 SCC Online 1921)*** expressly held that the expression “*debt due*” in the definition sections of the Code refers to debts that are “due and payable” in law, i.e, the debts that are not time-barred.

3.5. The Respondent states that he finds the above two loan agreements dated 14.01.2013 and 27.02.2013, ‘dubious’, given that the date of attestation by the notary public is 01.04.2013.

3.6. Respondent denies violating Regulations 13 and 14 of the IBBI, as the Respondent states that he cannot admit time-barred claims as only those claims have to be admitted which are substantiated as per the documents and are in compliance with the applicable laws. Respondent also states that he is not obligated to admit claims without reviewing any such claim. The Respondent further submits that the Interest and the Penalties claimed by the Petitioners appear to be an afterthought to cover two loopholes; firstly, that necessary disclosures were required to be made as per the RBI Guidelines which were not made in this regard, and secondly, that no such interest and penalty income was booked by the Petitioner in his financial statements.

3.7. Respondent states that the applicant has substantiated neither the amount of Rs 11,17,12,588/- nor the interest and penalty amount which as per the Respondent are barred by Limitation.

3.8. With regards to the WhatsApp and email communication, the Respondent states that the former can not be read as evidence and hence, cannot be relied upon. Further, the documents that were sent via email form

were sent after the expiry of the 90 days on 11.01.2023, and hence the RP had no power to condone the delay and admit the same.

3.9. Respondent Resolution Professional states that the Hon'ble Supreme Court in the case of **Swiss Ribbons** never stated that the IRP or RP has to admit time-barred claims as well based on dubious documents. Respondent states that the claim amount of Rs 11.17 Cr is not being reflected in the balance sheet of the corporate debtor.

4. In the rejoinder filed by the applicant vide Diary No. 00676/5 dated 06.09.23, the following submissions were made;

4.1. Applicant states that upon knowledge of the petition being admitted under the IBC against the CD, the applicant's official immediately contacted the IRP, and on the instructions of the IRP, the applicant submitted the claim along with necessary documents in support of their claims as per procedure on the WhatsApp no, of IRP dated 11.01.2023, thus the rejection of the claims on the ground of limitation as per the applicant, must be rejected. The claim was further submitted via email in Form-C along with necessary documents on 18.01.2023.

4.2. Applicant further states that the debts are duly reflected in the balance sheet of the Corporate Debtor for the relevant period and therefore the debts are thus, well within limitation. The Applicant's providing a financial loan to the corporate debtor through an agreement is further proved by the fact that the corporate debtor had deducted TDS on the loan amount repaid to the Applicant.

4.3. The applicant submits that the IRP is not a judicial authority nor vested with judicial power to adjudicate claims or determine the issue of limitation, unlike in the present case where the IRP rejected the claim sans evaluating the documents.

4.4. The Applicant placed reliance on the following judicial decisions;

a. The Hon'ble Supreme Court's decision in the ***Swiss Ribbons Pvt Ltd & Anr v. Union of India & Ors- writ petition (Civil) No. 99 of 2018*** to state that it was held that the Resolution Professional has no adjudicatory power and that he has to vet and verify the claims made and ultimately determine the amount of each claim.

b. The Hon'ble Punjab and Haryana High Court's decision in the ***Sumit Singla v. Kala Mandir Sarees and Jewellers, 2023(2) RCR (Criminal) 57***, which held that

"When the cheque was issued by the Petitioner for paying off the loan advanced, the same was issued in acknowledgment of a debt and upon its dishonor would make the drawer liable to be proceeded against under Section 138 of the Act."

The applicant also relied on the above case to state that dishonor of cheques is not barred by limitation

4.5. Applicant submits that it is the IRP's duty to verify claims and call for additional information warranting the revision of claims.

5. We have heard the Learned counsels and gone through the relevant documents.

6. In the present case, we note that the loan agreements between the parties were drawn on 14.01.2013 and 27.02.2013. On subsequent default by the respondents, the petitioner presented the cheques issued by the managing director of the respondent company, and the same bounced on 22.12.2017. The cheques were again presented and subsequently dishonoured by the banks sometime in January 2018.

7. With regard to the question of limitation, we make the following observations.

7.1. Section 238(A) of IBC makes the provisions of the Limitation Act applicable under the proceedings of IBC. This was inserted by way of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, and the said amendment has been held to be clarificatory by the Hon'ble Supreme Court. The Hon'ble Supreme Court in its earlier decisions had also clarified that the period of limitation for filing applications for initiation of insolvency proceedings would be three years from the date of default with Article 137 of the Limitation Act being applicable.

7.2. Furthermore, Section 18 provides that if a written acknowledgment of liability is given before the expiry of the prescribed period of limitation, a fresh period of limitation shall be computed from the time of signing of such acknowledgment. The effect and operation of Section 18 is not to revive a debt, the recovery of which is time-barred as per the Limitation Act, but only to extend an existing period of limitation.

7.3. In the present case, the extended period of limitation would be computed from January 2018 when the bank dishonoured the cheques presented by the

applicant, whereas the present claim made by the applicants is on 11.01.2023/
18.01.2023.

8. In view of such facts, this Bench of the considered view that the debts are time-barred and hence cannot be entertained by the Resolution Professional.
9. In the result, the present application IA No. 689/2023 is dismissed and disposed of accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

January 12, 2024
RHD