



NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.1
CP(IB)/48(MP)2023

Proceedings under Section 7 IBC

IN THE MATTER OF:

Bank of India Ltd

.....Applicant

V/s

Shree Geeta Textile Mills Pvt Ltd

.....Respondent

Order delivered on 13/11/2024

Coram:

Chitra Ram Hankare, Hon'ble Member(J)

Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

This case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

A. Bhadauria

Sd/-

**CHITRA RAM HANKARE
MEMBER (JUDICIAL)**



**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

CP(IB) 48 of 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:

Bank of India

CIN: U99999MH1906PLC000243
Having its Branch Address at:
Burhanpur Branch Shanwara Road
Burhanpur
Madhya Pradesh - 450331

**Financial Creditor/
Applicant**

Versus

Shree Geeta Textile Mills Private Limited

CIN: U17309MP2008PTC020987
Having its registered address at:
295/2, Gram Amagird, Alamganj
Ganpati Naka Burhanpur
Madhya Pradesh - 450331

**Corporate Debtor/
Respondent**

Order pronounced on: 13.11.2024

Coram:

Hon'ble Mrs. Chitra Hankare, Member (J)

Hon'ble Kaushalendra Kumar Singh, Member (T)

Present:

For the Applicant: Ms. Darshana Baghel, Advocate

For the Respondent: Mr. Rajat Lohia, Advocate a.w.
Mr. Akshat Agrawal, Advocate



JUDGMENT

1. The instant application was filed on 07.06.2023 by Bank of India (Applicant) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (CODE) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) against Shree Geeta Textile Mills Private Limited (Respondent) for the default amount of Rs. 56.38 crores (Principal Amount of Rs. 38.74 crores + Interest of Rs. 17.64 crores). The date of default as stated in Part IV of the application is 31.03.2019.

2. The applicant is a Bank duly incorporated under the provisions of Companies Act, 1956 on 07.09.1906. Mr. Sunil Premchandani, Deputy Zonal Manager, Khandwa is an authorized representative of the applicant vide Authorization Letter dated 26.04.2023 to file the present application. The respondent is a private limited company (CIN: U17309MP2008PTC020987) incorporated under the provisions of the Companies Act, 1956 on 30.07.2008.

3. The averments made by the financial creditor/applicant in its petition and as presented/argued by the learned counsel for the applicant are summarized hereunder:

i. The Consortium of Banks comprising of Applicant as the Lead Bank and Bank of Baroda as the Member Bank granted the respondent with various credit facilities aggregating to an amount of Rs. 56,96,00,000/- and Bank Guarantee limit of Rs. 1,75,00,000/-. Furthermore, the applicant's share of Rs. 50,25,00,000/- accounts for 80.59% of the total credit facilities granted. The amount was disbursed by the applicant under



various heads, namely Rs. 13.50 crores as Cash Credit, Rs. 35 crores as Term Loan and Rs. 1.75 crores as Bank Guarantee.

ii. The Respondent failed to perform its repayment obligations towards the applicant and the Term Loan Account of the respondent was classified as a Non-Performing Asset on 31.03.2019.

iii. The said loan account was never regularised and continued to remain NPA implying that the date of NPA is to be treated as the date of default. The counsel also relied on the judgment of Hon'ble NCLAT in *Milind Kashiram Jadhav Suspended Director of Jabalpur MSW Pvt. Ltd v. State Bank of India* [Company Appeal(AT)(Insolvency)No. 1589 of 2023].

iv. The Applicant Bank issued Notices dated 09.04.2019 (which was filed vide IA No. 270 of 2024 and taken on record) and 11.09.2020 under section 13(2) of the SARFAESI Act, 2002 to the Respondent demanding to discharge its liabilities along with interest.

v. The Respondent had offered various One-time Settlement(OTS) Proposals vide letters dated 30.07.2021, 17.01.2022 and 23.08.2022. However, all the OTS proposals were rejected by the applicant.

vi. The Applicant has proposed the name of Ms. Chaya Gupta having Registration No. IBBI/IPA-002/IP-N00984/2020-2021/13133 as the Interim Resolution Professional.

4. The defense placed by the corporate debtor/respondent in its reply dated 02.03.2024 and as presented/argued by the learned counsel for the respondent are summarised as under:



- i. The cause of action does not exist as the respondent has fulfilled its financial obligations as per the terms of the applicant.
 - ii. The applicant has erroneously categorised the account as an NPA to institute the insolvency proceedings against the respondent.
 - iii. The applicant has not exhausted alternative mechanisms such as restructuring or settlement negotiations before approaching the Adjudicating Authority.
 - iv. There is no default committed by the respondent as the documents advancing loan are not valid documents containing details of grant of various advance facilities to the Borrower. Further, the applicant has also not produced certified copies of the statement of accounts as required under the Banker's Books Evidence Act, 1891.
 - v. The present application is not maintainable as it is barred by limitation. The alleged loan was granted on 07.01.2015 and the said loan was recalled on 31.03.2019. However, the present application has been filed on 07.06.2023 which is beyond the time period of three years.
 - vi. The respondent has been interested in one-time settlement and requests were made to the applicant time and again vide letters dated 30.07.2021, 17.01.2022 and 23.08.2022 but were not accepted by the applicant.
 - vii. The counsel has placed reliance on the judgments of *Vidarbha Industries Power Limited v. Axis Bank Limited* 2022 SCC OnLine SC 841 and *Swiss Ribbons v Union of India* 2019 (4) SCC 17.
5. We have heard the learned counsel for the applicant as well as for the respondent and perused the material available on record. It is noted



that the applicant advanced credit facilities to the respondent for Rs. 50,25,00,000/-. In view of the default, the term loan account was classified as Non-Performing Assets (NPA) on 31.03.2019. It is also noted that the applicant issued notices dated 09.04.2019 and 11.09.2020 under section 13(2) of the SARFAESI Act demanding the outstanding payment. Furthermore, the Respondent submitted its latest OTS proposal on 23.08.2022 to the Applicant Bank for Rs. 24.92/- Crores and the said OTS proposal was rejected by the applicant bank vide letter dated 12.09.2022 for the OTS amount being on the lower side as per Bank norms. Further, the applicant has placed on record the NeSL certificate which shows the status of authentication of default as 'Authenticated'.

6. This Adjudicating Authority vide order dated 31.05.2024 allowed the IA 270 of 2024 filed with the prayer to make amendments in Part V of the application and to place on record a demand notice by the Applicant. An Amended Petition was uploaded by the Applicant on the DMS portal on 16.08.2024 and necessary amendments were made.

7. It is also noted that the term loan and security documents were executed on 27.03.2015. The account was classified as NPA on 31.03.2019. It has been observed by the Hon'ble NCLAT in *Milind Kashiram Jadhav Suspended Director of Jabalpur MSW Pvt. Ltd v. State Bank of India Company Appeal(AT)(Insolvency)No. 1589 of 2023* that the NPA classification date is to be treated as the 'date of default' within the ambit of the Code. The relevant paragraphs are reproduced hereunder for ready reference—

“74. The loan accounts of the Corporate Debtor were officially classified as Non-Performing Assets (NPA) on September 27, 2019, following 90 days of non-payment, thereby triggering a



default event. Despite subsequent partial payments made by the borrower, the NPA status and default persisted, indicating a continuous state of default. Consistent with established judicial precedents and the specific circumstances of the case, the date of NPA classification serves as the valid "Date of Default" for initiating insolvency proceedings. Even after the NPA classification, the borrower remained in default. Consequently, September 27, 2019, the date of NPA classification, stands as the "date of default" under the Insolvency and Bankruptcy Code (IBC), superseding any subsequent events, such as the loan recall notice issued on August 18, 2020....."

Thus, the date of default would be 31.03.2019 as also stated by the applicant.

8. As regards the limitation period, it is noted that the Hon'ble Supreme Court vide its order dated 10.01.2022 in the *In Re: Cognizance for Extension of Limitation* WP(C) No. 3 of 2020 excluded the period of limitation from 15.03.2020 till 28.02.2022 for all judicial and quasi-judicial proceedings. In cases where the limitation expired during the period between 15.03.2020 till 28.02.2022, further uniform extension in limitation period of 90 days from 01.03.2022 was granted. However, the unexpired period of limitation (from original cause of action) up to 15.03.2020 shall be further available to a party from 01.03.2022 in cases where the unexpired period is greater than 90 days. In the present case, the date of default would be 31.03.2019 and the present application is filed by the applicant on 07.06.2023. Taking note of the said decision of the Hon'ble Supreme Court, we find that the present petition is filed well within the limitation period. Even otherwise, the OTS proposal submitted by the respondent as on 30.07.2021,



17.01.2022 and 23.08.2022 would lead to renewal of the limitation period and the application filed by the applicant would be well within the limitation period.

We also note that as regards the term loan, the monthly instalment payable was Rs. 0.56 crore. The instalment due was first defaulted on 31.12.2018 and the same was also not paid within 90 days. For that reason, as per the RBI Guidelines, the account of the Respondent was classified as NPA on 31.03.2019. In between, the two instalments that got due on 31.01.2019 and 28.02.2019 were also defaulted. Thus, as on the date of NPA, the debt in default was more than the threshold limit of 1 crore [0.56 crore x 3 months = 1.68 crores]. Following that, the applicant had issued a demand notice dated 09.04.2019 under section 13(2) of the SARFAESI Act asking the respondent to pay the entire liabilities of 39.17 crores along with the interest within a period of 60 days. Therefore, we note that the balance instalments also became due by the end of 60 days from the date of that notice.

9. In view of the above, we are of the considered opinion that there exists financial debt which is payable and defaulted by the respondent. The debt is more than the threshold limit of Rs. 1 crore as per Section 4 of the IBC. This application is filed within limitation and is defect-free; and as such it is a fit case to be admitted under section 7 of the Code.

10. Accordingly, we admit this application and order as under:

ORDER

(i) Corporate Debtor – Shree Geeta Textile Mills Private Limited is admitted in the Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016.

(ii) The moratorium under section 14 of the Insolvency &



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 the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the IBC, 2016, as the case may be.

(iv) As proposed by the financial creditor, we appoint **Ms. Chaya Gupta having registration No. IBBI/IPA-002/N-00984/2020-2021/13133**; to act as an IRP under Section 13(1)(c) of the IBC, 2016 in respect of the CIRP of the corporate debtor. IRP shall conduct the Corporate Insolvency Resolution Process of the corporate debtor as per the provisions of the Insolvency & Bankruptcy Code, 2016 read with 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 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 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, is 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 Company' and manage the operations of the Corporate Debtor Company 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 as regards the CIRP of each of the corporate debtor within two weeks from the date of



receipt of this order for 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, the 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, 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 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 timely informed about the initiation of CIRP against the corporate debtor.

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

Sd/-

Kaushalendra Kumar Singh
Member (Technical)

RR (LRA)

Sd/-

Chitra Hankare
Member (Judicial)