

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.495/MB/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

Yes Bank Limited

[CIN: L65190MH2003PLC143249]

...Financial Creditor/Applicant

V/s

Privilege Industries Limited

[CIN: U15530MH1995PLC090556]

...Corporate Debtor/Respondent

Order Dated: 16.06.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. J P Sen, Sr. Advocate a/w
Ms. Jyoti A. Singh and Mr. Sakil
Ansari, Advocates, i/b AJA
Legal and Associates.

For the Respondent(s) : Mr. Mustafa Doctor, Sr.
Advocate a/w Mr. Shyam
Kapadia i/b Mr. Parikshit Desai,
Advocates.

ORDER

Per: Rajesh Sharma, Member (Technical)

1. This is an application being CP (IB) No.495/MB/2021 filed by Yes Bank Limited, the Financial Creditor/Applicant, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) against Privilege Industries Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP").
2. The Financial Creditor is a Public Limited Company having its Head Office at ONE International Centre, Tower II, 26th Floor, Senapati Bapat Marg, Elphinstone (W), Mumbai – 400013, Maharashtra. This application is filed by Mr. Kapil Thakkar, Senior Vice President – Asset Reconstruction & Management authorized vide a Power of Attorney dated 11.01.2021 (annexed as 'Annexure B' on Page.36 of the Petition), claiming a total amount of Debt Due of Rs.494,64,35,548/- (Rupees four hundred ninety-four crore sixty-four lakh thirty-five thousand five hundred forty-eight only) outstanding as on 05.04.2021.
3. The Date of Default as mentioned in the Petition is 01.01.2020. The Petition has been filed on 29.05.2021. On perusal of records, as observed by the bench the date of default is 01.10.2020.
4. The case of the Financial Creditor is as under:
 - a. The Financial Creditor submits that it had sanctioned and disbursed the following Credit facilities amounting to Rs.459,81,22,901/- (Rupees four hundred fifty-nine crore eighty-one lakh twenty-two thousand nine hundred one only) to the Corporate Debtor over a period of time:

- i. On 15.03.2017, the Financial Creditor issued a sanction letter and provided Term Loan 1, Term Loan 2 and Overdraft Facilities amounting to Rs. 420,00,00,000/- (Rupees four hundred twenty crore only) to the Corporate Debtor which the Corporate Debtor accepted and signed on 20.03.2017.
- ii. On 20.03.2017, the Financial Creditor and the Corporate Debtor entered into a Loan Agreement and vide this agreement the Financial Creditor provided Term Loan 1, Term Loan 2 and Overdraft Facilities amounting to Rs. 420,00,00,000/- (Rupees four hundred twenty crore only) to the Corporate Debtor.
- iii. On 22.03.2018, the Financial Creditor had provided Addendum to Facility Letter providing enhanced Overdraft Facility amounting to Rs.15,00,00,000/- (Rupees fifteen crore only) to the Corporate Debtor thereby enhancing the existing Overdraft Facility from Rs.25,00,00,000 to Rs.40,00,00,000.
- iv. In addition to the above facilities, the Financial Creditor had also provided – 1) Moratorium Funded Interest Term Loan (MFITL) on moratorium interest amounting to Rs.12,63,42,192/- (Rupees twelve crore sixty-three lakh forty-two thousand one hundred ninety-two only); and 2) Funded Interest Term Loan (FITL) on Term Loan 1, Term Loan 2 and Overdraft Facilities amounting to Rs.27,17,80,710/- (Rupees twenty-seven crore seventeen lakh eighty thousand seven hundred ten only)

- b. The Financial Creditor in its Company Petition submits (annexed as 'Annexure F' on Page 43 of the Petition) that the total amount outstanding as on 05.04.2021 was Rs.494,64,35,548/- (Rupees four hundred ninety-four crore sixty-four lakh thirty-five thousand five hundred forty-eight only) wherein Principal Amount stood at Rs.458,58,40,573/- (Rupees four hundred fifty eight crore fifty-eight lakh forty thousand five hundred seventy-three only) and Interest Amount stood at Rs.36,05,94,975/- (thirty-six crore five lakh ninety-four thousand nine hundred seventy five only).
- c. Vide Daily Order dated 28.02.2022, the bench had directed the Financial Creditor to provide a break-up of the outstanding interest claimed amounting to Rs. 36,05,94,975/- (thirty-six crore five lakh ninety-four thousand nine hundred seventy-five only) between the two dates i.e. prior to 23.03.2020 and 23.03.2020 onwards as the same was not readily available in the Company Petition. The Financial Creditor complied with the said directions and submitted via Affidavit in Reply dated 03.03.2022 that the total amount of interest due as on 01.03.2020 was Rs.11,40,59,863/- (Rupees eleven crore forty lakh fifty-nine thousand eight hundred sixty-three only)
- d. While highlighting the event of Default, the Financial Creditor submitted that the Corporate Debtor defaulted in payment of normal interest due on both Term Loans i.e. Term Loan 1 and Term Loan 2 amounting to Rs.11,40,59,863/- (Rupees eleven crore forty lakh fifty-nine thousand eight hundred sixty-three only) as on 01.03.2020 and therefore the same would be considered as a valid default above the threshold limit in terms

of Section 4 of the I&B Code for the purpose of admitting Financial Creditor's present Section 7 application.

- e. The Financial Creditor further submits that the Corporate Debtor had acknowledged its Recall Notice dated 12.04.2021 (annexed as 'Annexure GG' on Page 1177 of Volume IV (Part II) of the Petition) via Email dated 12.04.2021 (annexed as 'Annexure HH' on Page 1196 of Volume IV (Part II) of the Petition) whereby the Corporate Debtor had informed the Financial Creditor that it was under severe financial stress which had ultimately affected its ability to serve its debt obligations. This, according to the Financial Creditor clearly indicates that the Corporate Debtor had admitted its liability.
 - f. Lastly, the Financial Creditor in its Written Submissions dated 09.03.2022 submitted that the present Section 7 application was not barred by the provisions of Section 10A of the I&B Code as the initial date of default was on 01.01.2020, which was prior to the stipulated date of 25.03.2020.
 - g. The Financial Creditor in view of non-payment of dues by the Corporate Debtor has filed the present Application under Section 7 of the Insolvency and Bankruptcy Code, 2016, for initiating Corporate Insolvency Resolution Process against the Corporate Debtor.
5. The case of the Corporate Debtor is as under:
- a. The Corporate Debtor in its Affidavit in Reply dated 22.11.2021 submits that it is in denial of every statement, submission,

allegation and contention made by the Financial Creditor in the present Section 7 petition.

- b. While highlighting the various credit facilities availed from the Financial Creditor, the Corporate Debtor submits that although the Financial Creditor has mentioned 01.01.2020 as the 'Date of Default' on the pretext that there was an 'initial default' on the said date, no documentary evidence was made available which would prove that a default had indeed occurred.
- c. In the Written Submissions of the Corporate Debtor, it has mentioned that they have paid interest towards the abovementioned Credit Facilities to the tune of Rs.130,69,00,000 until December, 2019 which is at pp.26-30.
- d. The Corporate Debtor acknowledges that there were some delays in payments during December, 2019 and January, 2020 due to reduced cash flows which were exacerbated due to the outbreak of the Covid-19 pandemic, however, subsequent payments were made towards interest in February, 2020 and March, 2020 which can be seen from the Bank Statements on page 1066 (annexed as part of 'Annexure AA (Colly) Part III' on Page 1005 to 1069 of the Petition) made available by the Financial Creditor in its Company Petition.
- e. The Corporate Debtor submits that it was Housing Development of India (HDIL) who had executed Corporate Guarantees in favour of the Corporate Debtor. The Corporate Debtor further points out that a CIRP has been initiated against HDIL by an order of this Hon'ble Tribunal, Mumbai Bench dated 20.08.2019

and that the Financial Creditor had lodged a claim with the Resolution Professional of HDIL which has been admitted in its entirety. The Corporate Debtor submits that since the claim of the Financial Creditor is already admitted by the Resolution Professional of HDIL, the same debt cannot be the basis for initiation of a separate CIRP (of the Corporate Debtor) and therefore, the present application is liable to be rejected.

- f. Additionally, the Corporate Debtor in its Written Submission dated 10.03.2022 submits that the Financial Creditor had in fact funded the interest accrued during the period between 1st January, 2020 until 31st August, 2020 by opening 13 new loan accounts thereby routing money from the original loan accounts to these new loan accounts through 4 disbursement accounts. The Corporate Debtor, in continuation of the above, states that since the above-mentioned interest dues were further funded into new loan accounts, the said defaults (i.e. defaults occurring during the period January, 2020 to March, 2020) cannot be used as a trigger point for initiation of CIRP of the Corporate Debtor as no such default existed at that time.

Findings/Observations:

6. We have heard the submissions made by the counsel on both the sides and perused the records.
7. We have prudently gone through all the pleadings available on record.

8. It has been observed by the Bench that the Corporate Debtor nowhere in its various replies has disputed the claim amount nor denied the Loan Agreement entered between the parties.
9. The Corporate Debtor in its Affidavit in Reply dated 22.11.2021 stated that the Financial Creditor had not provided any documentary evidence which would prove that the initial default i.e. 'Date of Default' had occurred on 01.01.2020.
10. On perusal of the documents submitted by the Applicant Financial Creditor, it is clear that there exists a financial debt and the debt is in default. However, the Bench is of the view that the date of default is 01.10.2020 as mentioned in the NESL Report as annexed by the Financial Creditor himself at p.502 as Annexure N1- N8 of the petition to show the record of default available with the Information Utility as on 01.10.2020 and not 01.01.2020 as mentioned by the Financial Creditor in Part IV of the petition. This petition, therefore, falls within the period of enforceability of Sec. 10A of IBC, 2016. The proviso to the Section 10A of the IBC prescribes that no insolvency proceedings can ever be instituted against any entity whatsoever for the default caused/committed in the period between 25.03.2020 to 24.03.2021. This petition is therefore liable to be **dismissed**.
11. Further, the Corporate Debtor in its written submissions submitted as Annexure B at pp. 25-52 submitted the copies of a summary statement along with the ledger account and Bank Statement evidencing the opening of new loan accounts for refinancing the interest between 01.01.2020 to 31.08.2020. On pp. 26, 27, 29, 30 of the Written Submission of the Corporate Debtor, it is clearly reflected that the FITL provided by the Financial Creditor was from the period of January, 2020

to September, 2020. The default in the payment of interest on the Principal Amount is therefore from 01.10.2020 and not 01.01.2020 as the Financial Creditor himself had funded the interest on term loan to the Corporate Debtor from January, 2020 to September, 2020. The interest until the period of December, 2019 has already been paid by the Corporate Debtor and the same is also reflected in the Bank Statement annexed on the page numbers mentioned hereinabove.

12. Further, from the account statements of the 13 new loan accounts opened for the purpose of disbursing amounts under the FITL, amounts have been disbursed through 4 accounts, the details of which are at pp.32-52 of the Written Submission of the Corporate Debtor, it is abundantly clear that the loan for FITL was disbursed on 01.09.2020 and the default is outstanding from the period commencing from 01.10.2020.
13. Therefore, relying upon the facts of the case, arguments advanced by both parties and the documents mentioned hereinabove, this Bench is of the view that because of insertion of Sec 10A in IBC as mentioned above, this case is clearly attracted by the provisions of Sec 10A as the date of default in this case is 01/10/2020. As per Sec 10A, no IBC proceedings can be initiated against the Corporate Debtor for the default which has occurred between the period from 25/03/2020 till 24/03/2021, keeping in view of the extended period of Sec 10A, the application filed by the Operational Creditor against the Corporate Debtor cannot succeed and is hereby dismissed with a liberty granted to the Operational Creditor to pursue his case before the appropriate forum.

ORDER

14. This Application being **CP (IB) No.495/MB/2021** filed under Section 7 of I&B Code, 2016, presented by Yes Bank Limited, Financial Creditor/ Applicant against **Privilege Industries Limited**, Corporate Debtor for initiating corporate insolvency resolution process is **DISMISSED**.
15. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition as it barred by the law, in view of insertion of Sec 10A of IBC 2016.

Sd/-
Kishore Vemulapalli
Member (Judicial)
16.06.2022

Sd/-
Rajesh Sharma
Member (Technical)