



**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD**

COURT - II

CP (IB) 128/NCLT/AHM/2021

(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

**APPLICANT/
FINANCIAL CREDITOR**

Versus

KANDLA ENERGY AND CHEMICALS LTD.

**RESPONDENT/
CORPORATE DEBTOR**

Order Pronounced on: 21/10/2022

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (JUDICIAL)

AJAI DAS MEHROTRA

HON'BLE MEMBER (TECHNICAL)



MEMO OF PARTIES

State Bank of India

SAM (Stressed Asset Management)

Paramsiddhi Complex, 2nd Floor

Ellis Bridge

Ahmedabad 380 006

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Applicant/Financial Creditor

Versus

Kandla Energy and Chemicals Limited

11, Second Floor,

Shri Krishna Centre

Near Mithakali Six Roads

Navrangpura

Ahmedabad 380 009

Gujarat State

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Respondent/Corporate Debtor

Appearance:

For the Applicant : Ms. Aishwarya Reddy, Advocate

For the Respondent : Mr. Chaitanya Patel, Advocate



ORDER

1. The Present Application is filed on 03.08.2021 under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Nitin K. Chauhan, Assistant General Manager on behalf of **State Bank of India** (for brevity 'Applicant'), duly authorised vide authority letter dated 30.07.2021, with a prayer to initiate the Corporate Insolvency process against **Kandla Energy and Chemicals Limited** (for brevity 'Corporate Debtor').
2. The applicant is a body corporate constituted under the State Bank of India Act, 1955 incorporated on 01.07.1955 having identification No. AACCB5722H, having its corporate office at Madam Cama Marg, Mumbai and Local Head Office at Lal Darwaja, Ahmedabad 380 001. The branch that is presently handling the debt of the corporate debtor is known as Stressed Assets Management Branch situated at Second Floor, Paramsiddhi Complex, Opp. V.S. Hospital, Ellis Bridge, Ahmedabad 380 006. The applicant is in the Banking business providing various types of financial facilities including business loans,



personal loans, consumer loans, loan against property, home equity loans, term loan etc.

3. The corporate debtor is a limited company, incorporated under the provisions of The Companies Act, 1956 on 07.03.2005, duly registered with Registrar of Companies, Ahmedabad with CIN: U24230GJ2005PLC045642 and having registered office at 11, Second Floor, Shri Krishna Centre, Nr. Mithakali Six Road, Navrangpura, Ahmedabad 380 009, Gujarat State. The Authorized share capital of the Respondent is Rs. 35,00,00,000/- and paid up share capital of the company is Rs. 26,00,00,000/-. The corporate debtor is manufacturer, supplier and exporter of Hydrocarbon Fluids.
4. It is submitted that the applicant had granted financial assistance to the corporate debtor as per the details given below:

Facility	Limit (In crore)	Date
Cash Credit	55.00	22.01.2013
Term loan – I	2.69	22.01.2013
Term Loan - II	4.16	22.01.2013
Term Loan – III	18.00	22.01.2013
SLC (FB)	8.00	22.01.2013
Letter of Credit	70.00	22.01.2013
Bank Guarantee	7.00	22.01.2013
SLC (NFB)	5.00	22.01.2013
CEL	2.00	22.01.2013
TOTAL	171.85	22.01.2013



5. The applicant has further submitted that due to non-payment of the debt, the corporate debtor was classified as Non-Performing Asset on 22.07.2014 in the books of accounts of the applicant.
6. The applicant filed an Original Application before Debt Recovery Tribunal, Ahmedabad – I on 21.10.2015 for total amount of claim of Rs.125,95,46,082.83.
7. Thereafter, the applicant issued a notice dated 02.11.2015 under Section 13 (2) of the SARFAESI Act, 2002 calling upon the corporate debtor to pay of Rs. 376,58,18,941.54 as on 20.10.2015.
8. Report dated 30.06.2021 annexed to the application and issued by National E-Governance Services Limited (NeSL)/Information Utility clearly reflects record of default of the corporate debtor.
9. The applicant has further submitted that during pendency of the Original Application filed before Debt Recovery Tribunal, Ahmedabad, the corporate debtor by letter dated 01.12.2016 and 12.04.2017 proposed for one-time settlement which has made the present application fall under the period of limitation. The corporate debtor came up with another one-time settlement proposal on



28.06.2017. The amount offered in the one-time settlement proposal was of Rs. 71,00,00,000/-. The corporate debtor came up with revised one-time settlement proposal on 22.09.2017 and the amount offered in this proposal was of Rs. 80,00,00,000/-. The applicant issued sanction letter dated 07.12.2017 confirming sanction of one-time settlement valid till 08.06.2018. Thereafter, the corporate debtor again issued request letter dated 31.05.2018 for extending the validity of the one-time settlement for further period of three months from 08.06.2018 which was rejected by the applicant by letter dated 31.07.2018.

10. The respondent filed affidavit in reply inter alia stating that:

- The application is defective as the documents annexed to the application are not duly attested by Senior Officer of the Bank;
- The applicant has not filed power of attorney for filing the instant application;
- The application is time barred;
- The facilities were not granted as per terms and conditions and the corporate debtor is not liable to pay the dues of the applicant;
- The financial assistance granted by the applicant are not secured by mortgage of properties;



- The applicant has charged penal interest which is not legal;
 - The documents upon which the applicant is relying are not adequately stamped;
 - After issuance of Recovery Certificate by Debt Recovery Tribunal, Ahmedabad, the applicant as well as the Recovery Officer has sold all the assets and there are no assets left, therefore, no resolution process is possible;
 - Hon'ble High Court of Gujarat vide order dated 04.10.2018 admitted Company Petition No. 255 of 2015 filed by HDFC Bank. The said fact has not been disclosed in the application.
11. The applicant filed affidavit in rejoinder stating that the averments made in the reply filed by the corporate debtor are contrary and inconsistent with the record of the application. The corporate debtor has been evasive with the point that there is a debt overdue on their part to the financial creditor and no substantial ground shown that how the application filed for initiation of CIRP can be rejected. The present application is required to be admitted since it is filed as a result of a default in repayment of credit facility sanctioned and that default has been confirmed by an Information Utility. Further, the present application is filed within the period of limitation taking into consideration the one-time settlement offers extended by the corporate



debtor, the recovery certificate dated 25.06.2018 issued by DRT allowing the original application filed by the applicant and exclusion of Covid – 19 periods in view of directions of the Hon’ble Supreme Court.

The applicant while dealing with the contentions raised in the affidavit in reply has submitted that there has been no suppression of facts on the part of the applicant. Each page of the application has been duly signed and stamped by the authorised representative of the applicant. There is no necessity of filing of power of attorney along with the application since there is a specific regulation enacted for the financial creditor’s officers and by virtue of that regulation officers are allowed to sign necessary papers in terms of litigation arising in relation to operations of the financial creditor. The application is not time barred as it is filed well within the limitation period prescribed. The debt has been acknowledged by the corporate debtor from time to time by the one-time settlement offers extended. Moreover, the recovery certificate issued by DRT is giving rise to fresh cause of action. The financial creditor has secured the credit facilities granted by them since they have executed mortgage deed by virtue of deposit of the original title deeds with the financial creditor. The financial creditor has not charged any kind of penal interest on the return of the credit



facility. The assets of the corporate debtor are not entirely sold after the issuance of recovery certificate by DRT. The financial creditor was never aware about admission of winding up petition filed before the Hon'ble High Court of Gujarat. The winding up petition before Hon'ble High Court has been now transferred to NCLT vide order dated 21.10.2021 passed in company petition No. 255 of 2015 but the same has not come before NCLT since the petitioner i.e. HDFC Bank has yet not filed the application before NCLT.

12. The applicant filed written submissions inter alia stating that it had granted various credit facilities to the corporate debtor and for the purpose of availing such credit facilities, the corporate debtor had mortgaged several movable and immovable properties in favour of the financial creditor as per the details annexed to the application. As the corporate debtor had defaulted in making payment of the loan granted, in line with the RBI Master Circular dated 01.07.2014, account of the corporate debtor came to be classified as Non-Performing Asset on 22.07.2014. The corporate debtor has acknowledged the debt several times. The default has also been acknowledged in RoC search report dated 09.09.2014 annexed to the application. During pendency of Original Application before DRT, Ahmedabad, the corporate debtor issued various proposals for One-Time Settlement. Thereafter, on



25.06.2018, DRT, Ahmedabad passed an order allowing the application filed by this applicant with other banks against the corporate debtor. A decree was passed against the corporate debtor whereby this applicant was entitled to recover 149,12,18,382.83 from the corporate debtor. The applicant further submits that taking into consideration several One-Time Settlement proposals submitted by the corporate debtor as well as the order dated 25.06.2018 passed by DRT, Ahmedabad, the present application filed on 03.08.2021 is within limitation, by relying upon the orders passed by the Hon'ble Supreme Court in Suo Moto Writ Petition (Civil) No. 3 of 2020 whereby taking into consideration the unique circumstances caused by COVID-19, The Hon'ble Supreme Court extended the period of limitation for filing any kind of application or appeal by excluding the period from 15.03.2020 to 28.02.2022. Therefore, considering the above facts and the law, the application filed on 03.08.2021 is within limitation.

13. The applicant further submitted that the corporate debtor has been issuing several one-time settlement offers to the consortium where the financial creditor is a member, however, the offers issued by the corporate debtor being very low have been rejected by the consortium. The corporate debtor has been unable to make an offer that would be



acceptable to the consortium. Further, the plant of the corporate debtor has been shut down for many years and there is no scope for revival of the plant.

14. The corporate debtor filed written submissions inter alia stating that if there is a debt and default, it is not necessary to admit the application. The present application has not been filed timely. Insolvency and Bankruptcy Code was enacted in 2016, the factory and building, plant and machinery were auctioned by the bank in 2019 and then one by one all the properties of the corporate debtor company were auctioned and disposed of. The only property left out to be sold is worth not more than Rs. 1.00 crore. If the bank really wanted resolution of the corporate debtor, then they could have approached the Tribunal before auctioning of the land and building, plant and machinery and all other assets which was the sole chance for revival of the business. Intention of the bank is to liquidate the assets of the company and to recover its dues. Order of provisional liquidation has already been passed against the corporate debtor by Hon'ble High Court of Gujarat in company petition No. 255 of 2015 filed by HDFC Bank Ltd. Further, the applicant failed to show disbursement details of the loans sanctioned.



15. The corporate debtor filed further affidavit stating that there were multiple winding up proceeding pending against the corporate debtor since 2015 in Hon'ble High Court of Gujarat which were transferred to this Tribunal. The corporate debtor has filed copies of the case status sheets of three cases downloaded from the website of Hon'ble High Court of Gujarat.

16. In compliance of order dated 25.03.2022 the applicant has filed copy of order dated 21.10.2021 in J.M. Baxi & Co. v/s. Kandla Energy & Chemicals Limited issued by Hon'ble High Court of Gujarat whereby directives are given to transfer Company Petitions No. 342 of 2015, 255 of 2015 and 82 of 2016 observing that since these petitions are at the notice stage they are required to be transferred to NCLT in view of the order passed by Hon'ble Supreme Court.

17. During the course of hearing on 12.05.2022, having observed that the status of the winding up petition filed by the HDFC Bank is required to be obtained, directions were given to the applicant to coordinate with HDFC Bank which is one of the consortium banks and file details of the properties of the corporate debtor specifically mentioning the properties that are disposed of and which are as yet in the possession of the consortium of banks. Directions were also given to the



applicant to issue notice to HDFC Bank and serve copy of order dated 12.05.2022 to the said bank. In compliance of order dated 20.06.2022 the applicant filed additional affidavit furnishing the details of the properties of the corporate debtor which are still not dealt with and yet to be disposed.

18. Pursuant to order dated 21.07.2022, the applicant filed additional affidavit furnishing details of disbursement of loan to the corporate debtor and chronology of the dates for limitation.
19. Pursuant to order dated 23.08.2022, the applicant filed fresh authority letter authorising the current Assistant General Manager of the applicant bank to sign and execute all necessary documents in relation to the initiation of CIRP of the corporate debtor.
20. The corporate debtor has separately filed copy of the following judgements relied upon by it during the arguments.

Sr. No.	Authority	Relied upon the paragraph of judgement
1	Hon'ble Supreme Court of India in Civil Appeal No. 4633 of 2021 in Vidarbha Industries Power Limited vs. Axis Bank Ltd. dated 12.07.2022	61, 62, 63, 64, 77 & 99



2	Hon'ble Supreme Court of India in Civil Appeal No. 2176 of 2020 in Kotak Mahindra Bank Ltd. vs. Kew Precision Parts Pvt. Ltd. dated 05.08.2021	42
3	Hon'ble Supreme Court of India in Civil Appeal No. 84-85 of 2020 in Asset Reconstruction Company (I) Ltd. dated 01.08.2022	59, 60 & 61

21. As per Form 1, part IV, the corporate debtor is in default of total Rs. 291,18,98,757/- (Rupees two hundred ninety-one crore eighteen lacs ninety-eight thousand seven hundred fifty-seven only) and date of default is 24.04.2014. Considering several One-Time Settlement proposals submitted by the corporate debtor from time to time as well as the order dated 25.06.2018 passed by DRT, Ahmedabad and orders dated 23.03.2020, 08.03.2021 & 27.04.2021 passed by Hon'ble Supreme Court for extending the limitation period due to Covid - 19, the present application filed on 03.08.2021 is within limitation.
22. The registered office of the corporate debtor is situated in Ahmedabad, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.
23. Heard the submissions and perused the documents on record. The arguments of both sides are dealt with as under:



- (a) The first objection raised by the corporate debtor is that the application is defective as the documents annexed to the application are not duly attested by Senior Officer of the Bank.

On perusal of the records it is found that each page of the application is sealed and signed by a Senior Officer of the bank who is duly authorised by letter of authority dated 30.07.2021.

- (b) Second objection raised by the corporate debtor is that the applicant has not filed power of attorney for filing the instant application.

On perusal of the record it is found that the applicant has filed copy of authority letter dated 30.07.2021 authorising Mr. Nitin K. Chauhan, the then Assistant General Manager to file the application.

- c) Third objection raised is that the application is time barred.

On perusal of the record it is observed that the applicant had granted various credit facilities for a total amount of Rs. 171.85



crore on 22.01.2013 and for the purpose of availing such credit facilities, the corporate debtor had mortgaged several movable and immovable properties in favour of the financial creditor. Due to non-payment of the debt, in line with the RBI Master Circular dated 01.07.2014, the corporate debtor was classified as Non-Performing Asset on 22.07.2014 in the books of accounts of the financial creditor. Thereafter, the financial creditor filed Original Application before Debt Recovery Tribunal, Ahmedabad on 21.10.2015. During pendency of such application, the corporate debtor vide letters dated 01.12.2016 and 12.04.2017 proposed for one-time settlement which has made the present application fall under the period of limitation. Subsequently, the corporate debtor proposed another one-time settlement on 28.06.17, followed by another settlement proposal dated 22.09.2017. Considering several One-Time Settlement proposals submitted by the corporate debtor from time to time as well as the order dated 25.06.2018 passed by DRT, Ahmedabad and orders dated 23.03.2020, 08.03.2021 & 27.04.2021 passed by Hon'ble Supreme Court for extending the limitation period due to Covid - 19, the present application filed on 03.08.2021 is within limitation.



- (d) Other objections are that the facilities were not granted as per terms and conditions and hence the corporate debtor is not liable to pay the dues of the applicant. The financial assistance granted by the applicant are not secured by mortgage of properties. The applicant has charged penal interest which is not legal. The documents upon which the applicant is relying are not adequately stamped.

On perusal of the record it is seen that all the sanction letters were issued as per the standard format of the bank and secured by mortgage of properties. Penal interest is charged as per the stipulations made in the sanction letter. All the documents are adequately stamped.

24. In light of the above discussions, it is evident that the debt is due and payable and default has occurred. The present application is complete in terms of Section 7 (5) of the Code. The applicant is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. As a consequence to above discussion the present application is admitted and CIRP is ordered to be initiated against corporate debtor.



25. The applicant has proposed the name of Mr. Nimai Gautam Shah as Insolvency Resolution Professional, who is hereby appointed as IRP of corporate debtor having registration number IBBI/IPA-001/IP-P-00154/2017-18/10323 having office at 605-606-607, Silver Oaks, Near Mahalaxmi Char Rasta, Paldi, Ahmedabad 380 007, subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2 along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is filed, which is on record.
26. We direct the Financial Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Nimai Gautam Shah to meet the expenses for performing functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Financial Creditor.



27. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.
28. A copy of the order shall be communicated to the applicant, IRP and the corporate debtor. A copy of order along with complete copy of application be served to IRP by the applicant within 7 days of order. In addition, a copy of the order shall also be forwarded to IBBI for its records and taking steps for updating the Master Data of the corporate debtor in MCA portal and shall forward the compliance report to the Registrar, NCLT.

Sd/-

**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

Sd/-

**DR. DEEPTI MUKESH
MEMBER (JUDICIAL)**