



**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**  
**Company Petition No. (IB)-25(ND)/2023**

**IN THE MATTER OF:**

**HDFC Bank Limited**

Having its registered office at:  
HDFC Bank House, Senapati  
Bapat Marg, Lower Parel (West),  
Mumbai-400013

**... Applicant**

**VERSUS**

**Madhuvan Tieup Private Limited (Borrower)**

Having its registered office at:  
House No. 28, Pocket-1,  
Paschim Purl, Delhi- 110063

**... Respondent**

**Section: 7 of IBC, 2016**

**Order Delivered on: 05.07.2023**

**CORAM**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Bheem Sain Jain

**For the Respondent** : Adv. Mohit Chaudhary, Adv. Prakhar Mithal



## ORDER

**PER: SH. L. N. GUPTA, MEMBER (T)**

HDFC Bank Limited (for brevity, the “**Applicant**”/“**Applicant Bank**”) has filed the present petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the “**IBC, 2016**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Madhuvan Tieup Private Limited (for brevity, the “**Respondent**”).

2. The Respondent namely, M/s Madhuvan Tieup Private Limited is a Company incorporated on 28.03.1996 with CIN U51909DL1996PTC264255 under the provisions of the Companies Act, 1956 having its registered office at House No. 28, Pocket-1, Paschim Purl, Delhi- 110063, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs.12,00,00,000/- and the Paid-up Share Capital of the Company is Rs.2,84,26,700/- as per Master Data.

3. It is stated by the Applicant that the Respondent furnished requisite Board Resolutions dated 01.06.2017 and 12.05.2018 and on the request of Respondent, the Applicant Bank granted the following credit/loan facilities to Respondent vide Sanction Letters dated 31.05.2017 and 11.05.2018:

<b>Sr. No.</b>	<b>Nature of the Facility</b>	<b>Amount (Rs. in crores)</b>
1.	Term Loan-1	56.50
2.	Term Loan-2	05.00
3.	Term Loan- 3	25.00
<b>Total</b>		<b>86.50</b>



4. The particulars of the unpaid financial debt claimed and the date of default are mentioned in Part IV of the application, which is reproduced below:

**PART-IV**

<b>PARTICULARS OF FINANCIAL DEBT</b>		
<b>1.</b>	<b>TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT</b>	<b>DATE OF SANCTIONS ALONGWITH AMOUNTS: -</b>  1) 31.05.2017: RS. 61.50 CRORES  2) 11.05.2018: RS. 25.00 CRORES
<b>2.</b>	<b>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</b>	<b>AMOUNT: RS.</b> 80,78,16,596.11/- (RUPEES EIGHTY CRORES SEVENTY EIGHT LAKHS SIXTEEN THOUSAND FIVE HUNDRED NINETY SIX AND PAISE ELEVEN ONLY) AS ON 19.12.2022 BESIDES ACCRUED INTEREST FROM 20.12.2022.  <b>DATE OF DEFAULT:</b> ➤ 27.12.2019: THE ACCOUNT OF THE CORPORATE DEBTOR STOOD CLASSIFIED AS NPA.  (DETAILED STATEMENT OF ACCOUNT ALONGWITH INTEREST CALCULATION SHEET IS ANNEXED ALONGWITH THE PRESENT APPLICATION).



5. Evidently, as per Part IV of the Application, the Applicant has claimed the debt of Rs. 80,78,16,596.11/- as of 19.12.2022, besides accrued interest since 20.12.2022. Further, the Applicant has relied on 27.12.2019 as the date on which the default occurred and the account of CD became NPA.

6. The Applicant has relied upon the following documents to prove the existence of financial debt -

- i) Copy of the duly Audited Balance Sheet of the Corporate Debtor for the year ending on 31.03.2018;
- ii) Copy of the notice dated 28.07.2020 issued under Section 13(2) Of the SARFAESI Act, 2002 along with the Reply given by Mr. Gurmeet Singh Matharoo and the response of Applicant Bank and Postal Receipts;
- iii) Copy of Loan Recall cum Demand Notice dated 01.08.2020 along with postal receipts and tracking report; and
- iv) Copy of Board Resolution in favour of Mr. Anirudh Bhargav.

7. Based on the aforesaid facts and documents, the Applicant has prayed for the initiation of CIRP against the Respondent.

8. On issuance of the notice, the Respondent filed its reply stating that -

8.1 The present application has been filed for the purpose of recovery and not for seeking a Resolution of the Corporate Debtor/Respondent. The Applicant Bank has already initiated action under SARFAESI proceedings which are under challenge before DRT, which has ordered status quo in respect of the properties of the borrower.



8.2 There is no record of Information Utility annexed and therefore, the application is barred by Section 215 of IBC, 2016.

8.3 The present application is barred by Section 10A of IBC, 2016 and the date of default relied upon by the Applicant is erroneous.

8.4 The Applicant Bank has clubbed more than one loan account, which is not permissible.

9. We heard the submissions of both sides and perused the documents placed on record including the written submissions filed by the parties. The respondent has raised certain objections opposing the present Application.

10. It is contended by the respondent that the present application has been filed for the purpose of recovery and not for seeking resolution of the respondent. It is further stated that the Applicant Bank had also initiated the SARFAESI proceedings against the respondent attempting to sell its properties. It is stated that the sale notice dated 26.12.2022 was stayed by the Hon'ble Debt Recovery Tribunal vide its order dated 12.04.2023, the relevant extracts of which reads thus :

8. In the above facts and circumstances of the case, this Tribunal is of the view that there is prima illegality or irregularity in the measures taken by the respondent bank while auctioning the properties in question vide sale notice dated 26.12.2022 as the respondent bank has failed to serve the said sale notice dated 26.12.2022 as per Rules 8 of the Security Interest (Enforcement) Rules, 2002. Thus, prima facie case exists in favour of the applicant for granting interim relief, accordingly, the status quo be maintained qua the properties in question till further order. All other issues shall be decided by this Tribunal at the time of final disposal after filing the evidences by the parties.

List this case on 30.05.2023 before the Ld. Registrar for completion of pleadings.

Sd/- 30/5/2023  
(GOVIND BALLABH SHARMA)  
PRESIDING OFFICER,  
DRT-I, Delhi



11. Per contra, the Applicant Bank has contended in its written submissions that the properties of the respondent/Corporate Debtor were not mortgaged and were not the subject matter of the SARFAESI proceedings. The properties, which are the subject matter of the SARFAESI proceedings, are of the Corporate Guarantors namely, Bezel Motors Pvt. Ltd., Morning Maidens Pvt. Ltd and Mountain Meadows Holidays Pvt. Ltd.

12. In view of the clarification (ibid) given by the Applicant Bank, it becomes clear that the properties of the respondent/Corporate Debtor are not the subject matter of the SARFAESI proceedings, whose sale notice has been stayed by DRT. **In our view, even otherwise, there is no bar on the Applicant Bank to initiate action under IBC, 2016 besides invoking SARFAESI proceedings.** Hence, we do not find any merit in this objection of the Respondent.

13. The next objection taken by the Respondent is that there is no record of Information Utility filed with the present application, which is mandatory as per Section 215 (2) of IBC, 2016. In response to the aforesaid contention, it is stated by the Applicant Bank in its written submissions that debt and default have not been denied by the Applicant.

14. At this juncture, we refer to the judgment of the Hon'ble High Court of Calcutta passed in the matter of "**Univalu Projects Pvt. Ltd. Versus The Union of India & Ors.**" W. P. No. 5595 (W) of 2020, dated 18.08.2020, the relevant extracts of which reads thus –

*"b) I am of the view that financial creditors can rely on either of the modes of evidences at hand to showcase a financial debt, that is, either a record*



*of default from the IU OR any other document as specified which showcases the existence of a financial debt. Such other documents may belong to any of the four classes of documents stated in sub-regulation 2(b) of Regulation 8 of the CIRP, 2016 or as the Supreme Court has observed in Swiss Ribbons (P) Ltd. (supra), all the eight classes of documents stated in Part-V to Form-1 appended with the AA Rules, 2016.*

*c) Based on sub-paragraph (b) above, it may therefore be inferred that Section 215 of the IBC, 2016 is not mandatory in nature.”*

**Thus, in terms of the Judgment (supra), Section 215 of IBC 2016 is not mandatory in nature and therefore, we do not find any merit in the objection on this account raised by the respondent.**

15. The next objection taken by the Respondent is that the present application is barred under Section 10A of IBC, 2016. It is contended that the major chunk of default was committed by the Respondent from 25.03.2020 to 25.03.2021. Further, the date of default is also faulty. It is contended by the Respondent that the date of default has to be taken from the date when the debt actually became due and payable and not from the date of NPA.

16. Per contra, the Applicant Bank has stated that it classified the account of the Respondent as NPA on 27.12.2019 and reckons this date as the date of default. In this regard, it has relied on the judgment of the Hon'ble Supreme Court passed in the matter of "**Laxmi Pat Surana vs. Union Bank of India and Others**" [AIR 2021 SC 1707], wherein the following was held-

*“37. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 of the Code.....”*



17. In terms of the aforesaid Judgment (supra), **we do not find any illegality in the Applicant Bank relying on the date of NPA i.e., 27.12.2019 as the date of default.** Further, since this date of default is not falling within the Section 10A period, therefore, we are unable to accept the plea of the respondent that the application is barred by Section 10A of IBC 2016.

18. The Respondent has raised another objection that the present application is not maintainable since it has clubbed three different term loans and the same cannot be adjudicated under Section 7 Application. In support of its submission, it has relied on the Judgment of Hon'ble NCLAT passed in the matter of **“International Road Dynamics South Asia Pvt. Ltd. vs. Reliance Infrastructure Limited”**; Comp (At) (Ins) 72/ 2017, the relevant contents of which reads thus:

*"10. We are of the view that different claim(s) arising out of different agreements or work Order; having different dates of default, cannot be clubbed together for alleged default of debt, the cause of action is being separate. For the said reasons, we hold that the joint application preferred by appellant under Section 9 is defective, as distinct from incomplete; and, was not maintainable.*

19. Evidently, the above-referred Judgment is not applicable to the facts of the present case as those observations were made in the context of the different claim(s) arising out of different agreements, being the subject matter of Section 9 Application, whereas the present application has been filed under Section 7 of IBC, 2016.



20. Accordingly, we find no tenable objections raised by the Respondent as to why the CIR Process shall not be initiated against it.

21. In the given facts and circumstances, the present Application being complete and the Applicant/Financial Creditor having established the default on the part of the respondent in making payment of its financial debt for an amount being above the minimum threshold limit, **the present Application is Admitted in terms of Section 7(5) of the IBC and accordingly, the Moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:

- “(a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization 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 Respondent.”



22. As proposed by the Applicant, this Bench appoints Mr. Umesh Gupta as IRP having Registration No. IBBI/IPA-001/IP-P00848/2017-2018/11431, subject to the condition that no disciplinary proceeding is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. This Adjudicating Authority further orders that:

*“Mr. Umesh Gupta, as IRP having Registration No. IBBI/IPA-001/IP-P00848/2017-2018/11431 is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is directed to take the steps as mandated under the IBC specifically under Sections 15, 17, 18, 20, and 21 of IBC, 2016.*

23. The Applicant is directed to deposit Rs.5,00,000/- (Five Lakhs) only with the IRP to meet the immediate expenses. The amount, however, will 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.

24. A copy of this Order shall immediately be communicated by all modes including e-mail by the Registry/Court Officer of this Tribunal to the Financial Creditor, the Respondent, and the IRP mentioned above.

25. In addition, a copy of the Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

Sd/-  
**(L. N. GUPTA)**  
**MEMBER (T)**

Sd/-  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**