

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301

C.P.(IB)/141(AHM)2023

Order under Section 7 of IBC, 2016

IN THE MATTER OF:

Indian bank
(Erstwhile Allahabad Bank)

.....Applicant

v/s

.....Respondent

DCOM Systems Ltd.

Order delivered on: 17/01/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

CP (IB) No.141/AHM/2023

(An application 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:

INDIAN BANK

(Erstwhile Allahabad Bank)
Head Office At 254-260,
Avvai Shanmugam Salai,
Royapettha, Chennai-600014

And

It's Branch Office At
Indian Bank, Stressed Asset Management (Sam) Branch,
2nd Floor, Deshna Chambers,
B/H. Kadva Patidar Vadi,
Usmanpura Cross Road,
Opp. Amc Water Tank,
Ashram Road, Ahmedabad,
Gujarat-380014.

...Applicant/Financial Creditor

VERSUS

DCOM Systems Limited

(CIN: U72200GJ2000PLC037595)
Having Registered office at
311, 3rd Floor,
Venus Atlantis Corporate Park
Nr Prahladnagar AUDA Garden,
Satellite, Ahmedabad, GJ 380015

...Respondent/Corporate Guarantor

Order Pronounced On: 17.01.2024

CORAM:

SH. SHAMMI KHAN, MEMBER (JUDICIAL)

SH. SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance:

For the Applicant/Financial Creditor: Mr. Sumit Parikh, Adv.

For the Respondent/Corporate Guarantor: Ex-Parte

O R D E R

1. The Present Application is filed on **09.03.2023** by the Applicant **INDIAN BANK** (Erstwhile Allahabad Bank) (hereinafter referred to as “**the Applicant/Financial Creditor**”) against the Respondent **DCOM Systems Limited** (hereinafter referred to as “**the Respondent/ Corporate Guarantor**”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Guarantor, to appoint Interim Resolution Professional (hereinafter referred to as “**IRP**”) and declare the moratorium for having defaulted payment of its outstanding dues **Rs.157,23,42,010.29ps.**

including interest. The date of default as stated to be 28.03.2013.

2. This application is filed by the Applicant Bank through its Chief Manager, Stressed Asset Management Branch, Ahmedabad by one Mr. Bhoopendra Singh who has been authorised vide Power of Attorney dated 20.06.2022 which is annexed at Annexure-A.
3. On perusal of Part-II of the Form-1 reveals that the Respondent/Corporate Guarantor is one **DCOM Systems Limited** having CIN No. U72200GJ2000PLC037595. The Respondent/ Corporate Guarantor was incorporated on 21.03.2000 and having registered office at 311, 3rd Floor, Venus Atlantis Corporate Park, Nr. Prahladnagar AUDA Garden, Satellite, Ahmedabad, Gujarat-Pin 380015 as per Master Data which is annexed at Annexure-B.
4. Part-III of the Form-1 reveals that the Applicant/Financial Creditor has proposed the name of the Interim Resolution Professional (**IRP**) **Mr. Iqbal Singh Gandhi**, having registration No. IBBI/IPA-001/IP-P-02365/2021-2022/13524, E-mail ID iqbalsingh2659@yahoo.co.in. He has filed his written communication annexed with the Application as Annexure-C as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings

pending against him with the Board or in Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by him as per the requirement of the IBBI Regulations.

5. Part-IV of the Form-1 reveals that total dues as claimed by the Applicant/Financial Creditor against the Respondent/Corporate Guarantor is **Rs.157,23,42,010.29ps** consisting of Rs.64,35,82,087.29ps. being principle and amount of Rs.91,22,66,635/- and penal interest Rs.1,64,93,288/- as interest up-to 31.01.2023.
6. It is pleaded by the Applicant Bank that one **M/s Jaihind Projects Ltd.**, a Public Limited Co. was engaged in the business activity of providing comprehensive engineering, procurement and construction services in the Oil and Gas sector, had approached Banks for sanction of various credit facilities to carry out its business activities.
7. In the year 2007 under a consortium led by IDBI Bank, various banks, including the applicant bank sanctioned various Credit Facilities to **M/s Jaihind Projects Ltd** (Principal Borrower). Borrower Company and its guarantors accepted terms of sanction and had executed necessary documents to avail the credit facilities.
8. The credit limits sanctioned to the Borrower Company were reviewed from time to time and at the request of the

company additional limits were sanctioned by consortium in 2009, 2010 and 2012. Borrower Company and its guarantors had accepted terms of sanction and had executed necessary documents to avail the credit facilities.

9. The Borrower Company defaulted in complying terms and conditions of sanction and did not maintain the financial discipline and failed to repay its dues in time.
10. The Applicant Bank states that at the request of the Borrower Company, the consortium of banks restructured the loan accounts of the company under Corporate Debt Restructuring Scheme (CDR) in the year 2013.
11. As a part of CDR package sanctioned by all the banks, Borrower Company was sanctioned additional credit facilities and to secure the credit facilities of the banks, Banks had stipulated as collateral security, pledge of shares of Jaihind Projects Limited held by its associate companies i.e. Jaihind Infratech Pvt. Ltd., Jaihind Green Energy Ltd. And DCOM Systems Ltd. and also providing Corporate. Guarantee by all the three companies alongwith personal guarantee as existing.
12. Borrower Company and all its personal guarantors and proposed corporate guarantors had accepted terms of sanction and had executed loan documents alongwith guarantee documents.

13. The company availed the credit facilities sanctioned by the Applicant Bank but despite numerous follow up, failed to repay the dues of the Applicant Bank as per agreed terms. The guarantors also failed to honour their commitments given in the guarantee agreements.
14. The loan accounts of the borrower company became irregular and were classified as NPA on 28.03.2013. The applicant bank requested the company and guarantors from time to time to regularise the account but they failed.
15. On 08.02.2017 the applicant bank had Initiated Recovery Proceeding against the Principal Borrower i.e. Jaihind Projects Ltd and guarantors by issuing demand notice under Sec 13(2) of SARFAESI Act 2002.
16. In the meantime, the National Company Law Tribunal, Ahmedabad Bench had passed an order for the Initiation of Corporate Insolvency Resolution Process against the Principal Borrower i.e. Jaihind Projects Ltd vide its order dated 02.11.2018 and order for approving Resolution Plan was passed on 19.03.2020.
17. Thereafter, the Applicant Bank Initiated Recovery Proceeding against the Respondent/Corporate Gauarantor and other guarantors, before The Debt Recovery Tribunal-1, Ahmedabad Bench on 29.11.2018 by filing Original Application (OA) No. 794/2018 and the same has been

decided by The Debt Recovery Tribunal-1, Ahmedabad in favour of Applicant Bank vide order dated 13.11.2019.

18. The Applicant Bank claims that the present application is well within limitation in view of Hon'ble Supreme Court vide its suo moto order dated 10.01.2022 has allowed exclusion of the lockdown for the period (from 15.03.2020 to 28.02.2022) for calculation of limitation calculation due to Covid. The Applicant Bank states that present application is within the Limitation.
19. The Applicant Bank has relied upon the following documents which are as under:-

| Sr. | Particulars | Annexures | Page No. |
|-----|--|-----------|----------|
| 1. | Power of Attorney dated 20.06.2022 | A | 15-18 |
| 2. | Master data of the Corporate Debtor obtained from the website of MCA | B | 19-20 |
| 3. | A Copy of Written Communication Mr. Iqbal Singh Gandhi in Form-2 dated 07.03.2023 | C | 21-24 |
| 4. | Copies of the Sanction Letters dated 13.07.2007, 04.10.2010, 15.03.2012, and 28.03.2013. | D | 25-47 |
| 5. | Working of Computation of the amount claimed to be in default | E | 48-49 |
| 6. | Recovery Certificate issued by the Hon'ble Debt Recovery Tribunal on 13.11.2019 | F | 50-68 |
| 7. | A copy of the Initiation of Corporate Insolvency Resolution Process against the Jaihind Projects Ltd passed by the Hon'ble National Company Law Tribunal vide its order dated 02.11.2018 | G | 69-77 |
| 8. | A copy of order passed by the Hon'ble Tribunal for the approval of Resolution Plan on 19.03.2020 | H | 78-104 |

| | | | |
|-----|---|---|---------|
| | A copy of the Supported documents i.e. Board Resolution, Consent Clause, Guarantee Deed | I | 105-128 |
| | A Copy of Statement of Account maintained by the Applicant for the period from 01.01.2022 to 31.01.2023 in accordance with the Bankers Book Evidence Act, 1891. | J | 129-134 |
| 9. | A copy of the Demand Notice issued under Section 13(2) of the SARFESAI Act 2002 dated 08.02.2017. | K | 154-156 |
| 10. | A copy of Certificate under Banker Book Evidence Act 1891. | L | 129-134 |

20. In Compliance of order dated 19.06.2023 the Applicant/Financial Creditor has also filed Form-D by way of additional affidavit on 25.07.2023 issued by National E-Governance Services Limited (“**NeSL**”) being record debt and default with status “Authenticated”

21. Initially, the notice was issued to the Respondent/Corporate Guarantor through registered post which was returned with remarks as addressee left without instruction. Thereafter the Applicant attempted to serve the Respondent/Corporate Guarantor through hand –delivery but the Respondent/Corporate Guarantor was not found at the given address. The Applicant therefore requested for service through substitute mode i.e. Paper Publication in Two Newspapers one of English and other of Vernacular language which was allowed by Order dated 30.10.2023.

22. In compliance of Order dated 30.10.2023, the Applicant filed publication report dated 23.11.2023, on perusal of which it was observed that in Vernacular paper the notice was published in English language, therefore the Applicant vide order dated 05.12.2023 was directed to carry out the fresh publication of Notice in vernacular paper with Vernacular script. The Applicant again filed an Affidavit dated 08.12.2023 wherein copy of paper publication in Financial Express (Vernacular Language) is Annexed. Hence it can be considered that the Respondent/Corporate Guarantor has been duly served.
23. However, despite due service by way paper publication neither the Respondent/Corporate Guarantor appeared nor filed any reply till date. Therefore, this Adjudicating Authority vide its order dated 15.12.2023 proceeded **Ex-Parte** against the Respondent/Corporate Guarantor.
24. It is observed that the credit facilities availed by Principal Borrower were renewed/extended/enhanced/revived from time to time by executing revival letters on 04.10.2010, 15.03.2012, 28.03.2013 and the last revival letter is of 04.12.2015 at the request of the borrower and on the strength of the security documents executed not only by the borrower but also by the Guarantors, including the present Respondent/Corporate Guarantor. Guarantee for payment of debt of original borrower continued vide corporate

guarantees executed for various limits by Respondent/Corporate Guarantor.

25. Admittedly, Principal Borrower i.e. Jaihind Projects Ltd and the Respondent/Corporate Guarantor committed defaulted in repayment and loan accounts were classified NPA. The date of default stated in the Application is 28.03.2013. On failure of making payment by Principal Borrower as well as the Guarantors the Applicant issued Demand Notice under section 13(2) of SARFESI Act on 08.02.2017 which was served on the Respondent/Corporate Guarantor.

26. Subsequently, Corporate Insolvency Resolution Process was initiated against the Principal Borrower on 02.11.2018 in C.P. No. 172 of 2018 filed by one Operational Creditor. Thereafter, the Applicant filed an application bearing O.A. No. 794 of 2018 before Hon'ble DRT, Ahmedabad on 29.11.2018, the decision in the said application was given on 13.11.2019 wherein Recovery Certificate was issued against the Respondent/Corporate Guarantor in present Application. This also confirms the debt and default against the Respondent/Corporate Guarantor and as on 31.01.2023, an outstanding amount of **Rs.157,23,42,010.29ps** remained payable to the Applicant/Financial Creditor.

27. The financial debt as claimed by the Applicant Bank is based on the Judgment/Recovery Certificate dated 13.11.2019 issued by the DRT, Ahmedabad, vide OA.No.794 of 2018 filed by the Applicant Bank against the Respondent/Corporate Guarantor and others.
28. **Hon'ble Supreme Court** in its order dated 30.05.2022 in Civil Appeal No. 689 of 2021 in re: **Kotak Mahindra Bank Limited versus A. Balakrishnan & Anr** held that a recovery certificate issued under the RDDBFI Act would qualify as a "financial debt" under the Code and give rise to a fresh cause of action U/S 7 of the IBC. The judgment also approved an earlier decision of a two-judge bench of the Hon'ble Supreme Court in the case of **Dena Bank (now Bank of Baroda) vs. C Shivakumar Reddy & Anr, 2021 SCC online SC 543**, which inter alia held that a fresh period of limitation period would accrue for an application U/S 7 from the date of a recovery certificate. Extract of the Order are as below:-

Para 84. To conclude, we hold that a liability in respect of a claim arising out of a Recovery Certificate would be a "financial debt" within the meaning of clause (8) of Section 5 of the IBC. Consequently, the holder of the Recovery Certificate would be a financial creditor within the meaning of clause (7) of Section 5 of the IBC. As such, the holder of such certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate.

Para 85. We further find that the view taken by the two-Judge Bench of this Court in the case of Dena Bank (supra) is correct in law and we affirm the same. We further find that in the facts of the present case, the application under Section 7 of the IBC was filed within a period of three years from the date on which the Recovery Certificate was issued. As such, the application under Section 7 of the IBC was within limitation and the learned NCLAT has erred in holding that it is barred by limitation.

29. Since, the Recovery Certificate in this case has been issued on 13.11.2019 and the present Application having been filed on 09.03.2023, is within 3 years from the date of issuance of the Recovery Certificate, the present Application is within the period of limitation. Even if the limitation is reckoned from the date of the order passed by the DRT, Ahmedabad, yet by virtue of the order of **Hon'ble Supreme Court of India** in suo-moto matter, supra, the Application is within the period of time.
30. The financial debt claimed as due and payable by the Respondent/Corporate Guarantor which has been crystallized under the Recovery Certificate issued by the DRT, has not been discharged by the Respondent/Corporate Guarantor. Therefore, existence of financial debt of a sum over rupees one crore and its default by the Respondent/Corporate Guarantor stands established unequivocally.

31. The present Application was filed before this Tribunal on 09.03.2023. The date of default as stated to be 28.03.2013. The Respondent/ Corporate Guarantor also executed Revival letter 04.12.2015. Recovery Suit was filed in DRT, Ahmedabad on 29.11.2018 against the Respondent/ Corporate Guarantor which was allowed and Recovery Certificate was issued on 13.11.2019. As per the Judgment/Recovery Certificate dated on 13.11.2019 (as per **Annexure-F** at Pg.50 to Pg.68) the prescribed limitation period of 3 three years would have ended on 12.11.2022. However, Hon'ble Supreme Court ***in Suo Moto WP (Civil) No. 3 of 2022 in Re: Cognizance for Extension of Limitation*** held that the period i.e. 15.03.2020 to 28.02.2022 is excluded for calculating the period of limitation. In the present case the limitation period for filing the Application U/s section 7 of the IBC extends till 29.10.2024. Therefore, we find that the present Application is well within the limitation period.

32. In view of above, the present application is complete in terms of Section 7 (5) of the Code. The Applicant/Financial Creditor is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. The outstanding financial debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Moreover, the said default is not covered under the period exempted under Section 10A of IBC, 2016.

33. Hence, the Application filed under section 7(2) of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Guarantor deserves to be admitted.

34. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

(i) The Respondent/Corporate Guarantor **DCOM Systems Limited** is **admitted** in Corporate Insolvency Resolution Process (**CIRP**) under section 7 of the Code.

(ii) As a consequence thereof, moratorium under Section 14 of Insolvency and 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 Guarantor 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 Guarantor 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 Guarantor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2022;*
 - d. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Guarantor.*
 - e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Guarantor.*
- (iii) The order of moratorium under section 14 of the Code shall come to 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 section 31 or passes an order for liquidation of the Corporate Guarantor under Section 33 of the IBC 2016, as the case may be.

- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the Corporate Guarantor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The Corporate Guarantor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the Corporate Guarantor.
- (v) As proposed by the Applicant/Financial Creditor, we appoint **Mr. Iqbal Singh Gandhi**, having registration No. IBBI/IPA-001/IP-P-02365/2021-2022/13524, (E-mail ID iqbalsingh2659@yahoo.co.in, having AFA valid till 01.03.2024) under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21

of the Code. It is further made clear that all personnel connected with the Corporate Guarantor, its promoters, or any other person associated with the management of the Corporate Guarantor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the Corporate Guarantor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (viii) The IRP is expected to take full charge of the Corporate Guarantor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Guarantor company' and manage the operations of the Corporate Guarantor company as a going concern as a part of obligation imposed by section 20 of the Code.

- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Guarantor.
- (xi) We direct the financial creditor to pay IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the financial creditor, Corporate Guarantor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Guarantor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

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

36. Accordingly, this Application **CP(IB)/141/AHM/2023** is allowed and disposed of. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-Sd-

**SAMEER KAKAR
MEMBER (TECHNICAL)**

-Sd-

**SHAMMI KHAN
MEMBER (JUDICIAL)**

Anish keshari/LRA