

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH-II, CHENNAI**

IBA/45/2020 filed under Section 7 of the
IBC, 2016 read with Rule 4 of the
Insolvency and Bankruptcy (Application
to Adjudicating Authority) Rules, 2016

In the matter of M/s. Kiran Global Chem Limited

State Bank of India

---Financial Creditor

V/s

M/s. Kiran Global Chem Limited

(U24299PY2002PLC000618)

R.S No. 37, Nagore Road,

T.R Pattinam, Karaikal

Pondicherry-611002

---Corporate Debtor

Coram:

R. SUCHARITHA, MEMBER (JUDICIAL)

B. ANIL KUMAR, MEMBER (TECHNICAL)

For the Applicant : *Shri.K. Chandrasekaran, Advocate*
Shri. R. Ezhilarasan, Advocate
Shri. R. Vigneshwaran, Advocate

For the Respondent : *Shri. P.H. Aravind Pandian, Senior Counsel*
Shri. K. Gaurav Kumar, PCS
Ms. Alpa Jain, PCS

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Order Pronounced on: 27.04.2021

IBA/45/2020

In the matter of M/s. Kiran Global Chem Limited

Under adjudication is an application filed under Section 7 of the Insolvency and Bankruptcy Code read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. State Bank of India (hereinafter referred to as “Financial Creditor”) for initiation of Corporate Insolvency Resolution Process (in short “CIRP”) against M/s.Kiran Global Chems Limited (hereinafter to referred to as “Corporate Debtor”) on the ground that it has defaulted in repaying an amount of Rs.52,28,93,796/- (Rupees Fifty two Crores Twenty Eight Lakhs Ninety Three Thousand Seven Hundred and Ninety Six only) as on 30.11.2019 along with interest and further charges, less recoveries if any.

2. The averments made in the Application are as follows:

(i) The Applicant/Financial Creditor extended various credit facilities to the Corporate Debtor. On 16.02.2007, credit facilities were enhanced to the limit of Rs.18 crore by this financial creditor and further enhanced to Rs.57.97 crore on 26.09.2009.



(ii) The Corporate Debtor had approached for sanction of credit facilities for their business purpose including for meeting a part of the working capital needs and AXIS Bank vide sanction letter dated 02.11.2009 had sanctioned Working Capital of Rs.45 crores and a term loan of Rs.10 crore. At the request of the Corporate Debtor, the Financial Creditor herein and Axis Bank formed a consortium and renewed/modified the existing credit facilities.

(iii) The Financial Creditor as leader of the Consortium, issued a sanction letter dated 02.02.2010 for modification of existing credit facilities which was acknowledged by the Corporate Debtor as per the terms and conditions therein. Details of modification of the credit facilities sanctioned by the consortium banks are as follows:

Limits	SBI (Rs. in Crore)	Axis (Rs. in Crore)	Total (Rs. in Crore)
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Total FBWC	20.00	15.00	35.00
Total Term Loan	9.47	20.00	29.47
Total Fund-Based	26.50	20.00	46.50
Total (FB + NFB)	55.97	55.00	110.97
Forward Contract indebtedness	0.40	-	0.40
Stand By Line of Credit	2.00	-	2.00
Total Indebtedness	58.37	55.00	113.37

(iv) In consideration of the working capital facility of Rs.83.90 crore, a consortium agreement was executed by the Corporate Debtor and Join Deed of Hypothecation on 05.02.2010 as well. The Corporate Debtor approached IDBI Bank for sanction of credit facilities for their business purpose. A consortium of Banks consisting of financial creditor granted renewed/enhanced credit facilities (SBI-Rs.56 crore, AXIS Bank-Rs.57.42 crore and IDBI Bank-Rs.32.50 crore) to the Corporate Debtor. Again, the credit facility was enhanced by the consortium of Banks to an amount of Rs.160.50 crore. The Corporate Debtor has also availed credit facilities from Karur

Vysya Bank to the tune of Rs.205.50 crore on 11.10.2013. An inter-se agreement was entered into between this financial creditor, AXIS Bank, IDBI Bank and Karur Vysya Bank for the purpose of sharing the securities and also executed Letter of Authority to this financial creditor. The consortium of Banks renewed/modified the credit facilities from 205.50 crore to 205.52 crore at the request of the Corporate Debtor.

(v) The Financial Creditor states that the Board of Directors of the Corporate Debtor in the meeting held on 23.08.2016 passed a resolution confirming that all the security documents executed by the Corporate Debtor in favour of the Financial Creditor (SBI Consortium) shall continue to be valid and fully enforceable against the Corporate Debtor and also acknowledged their liability.

(vi) The Corporate Debtor have agreed to pay the Applicant Banks interest at the rates as per the loan documents and the sanction letters as given hereunder:



Name of the Bank	Interest
State Bank of India	17.10% per annum
Axis Bank	CC (sub-limit of LC)- A/C.3MCLR+4.45% (i.e.13% LC Development- A/c.3MCLR+6.45% (14.85%)
IDBI Bank	16.90% per annum
Karur Vysya Bank	17.15 per annum

3. Since the Corporate Debtor defaulted repayment of Rs.52,28,93,796/- in violation of the agreed terms and account became Non-Performing Asset (NPA) on 28.11.2018 as per Section 13(2) of the SARFAESI Act, 2002. The Corporate Debtor failed to take steps to regularize the same. The Financial Creditor had issued legal notice recalling the advances on 21.05.2019 to the Corporate Debtor but evoked no response. The Corporate Debtor and Guarantors are jointly and severally due and liable to pay a sum of Rs.52,28,93,796/- as on 30.11.2019 with interest.

4. The Respondent/Corporate Debtor in its counter filed on 21.01.2021 has stated that as per Section 137 of the Limitation Act, 1963, the limitation period for application under Section 7 of the IBC

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is 3 years which commences from the date of default. The Financial Creditor in the application has mentioned different date i.e. in Page 531 of Volume-III, NPA is shown as "27.11.2018" whereas in the application NPA is cited as 28.11.2018 . It is pertinent to mention here that the "**date of default**" is crucial to determine the date when the cause of action accrued as held by the Hon'ble Supreme Court in K.D.Sharma Vs. Steel Authority of India Ltd and Others, 2008(10)SCALE227. The date of default has not been mentioned in the present application.

5. The Petitioner who is a lead banker in the consortium has suppressed the default of Axis Bank which is on 10.02.2017 and 90 days prior to this date is the **date of actual default** which is **12.11.2016** and the date of **filing the petition is 19.12.2019**. The limitation will start from the date "when the right to apply 'first accrues' which in the present case started on 12.11.2016. Hence, the limitation period for application under Section 7 lapsed on November 2019 i.e. 3 years from the date of default whereas the present application was filed with NCLT on 19.12.2019. Hence, the

present petition is not maintainable at all under any provisions of law.

6. We have heard both the parties and perused documents and citations submitted. The respondent has accepted the debt and default. However, the respondent relies on two grounds – one on technical ground that the Corporate Debtor's date of default was not mentioned by the Financial Creditor which amounts to defect in the application. The learned counsel for the Applicant in his oral submission admittedly stated that the correction shall be carried out. However, the learned counsel for the applicant states that in the pleadings in para-49 has categorically mentioned that the Corporate Debtor's account had slipped into NPA on 28.11.2018. The learned counsel for the respondent states that in the notice issued under SARFAESI, the date of default was mentioned as 27.11.2018. The learned counsel for the applicant states that there has been typographical error in the application and that the date of default is only 27.11.2018.



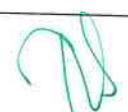
7. On a perusal of Part-IV of the Application submitted by the Financial Creditor at serial no.2 pertaining to date of default etc., the following sentence appears

“Amount defaulted by Corporate Debtor is Rs.52,28,93,796/- (Rupees Fifty Two Crore Twenty Eight Lakh Ninety Three Thousand Seven Hundred and Ninety Six only) as on 30.11.2019 with further interest and other charges less recoveries, if any”

8. It appears that the said date 30.11.2019 is not the date of default but it is the date in which the said sum is due to the Financial Creditor. Except this description, date of default is not mentioned and some correction is seen to have made which has not been authenticated. Therefore, we hold that date of default is omitted from the relevant Column. On a query, the learned counsel for the Financial Creditor has stated that the date of default is date of NPA i.e. 27.11.2018. The learned counsel for the Corporate Debtor, however maintained that the date of default is 12.11.2016. While reserving the order, this Adjudicating Authority had given opportunity for filing their respective written submissions in order



to substantiate their arguments. In the above application, the “date of default” in the relevant column has not been deliberately typed by the applicant. It is also brought to the notice of this Adjudicating Authority, which the counsel for the Applicant has not mentioned even in the written submission. However, the “date of default” has been mentioned in the pleadings of the application. It is important that “date of default” ought to be mentioned in the column Part-IV of the application as per the NCLT Rules, 2016. It is clearly in violation of the same. It is very unfortunate to know that a nationalised banker with a huge outstanding Rs.52,28,93,796/- due and payable and the respondent admitted debt and default, the applicant-bank ought to take bare minimum requirement of filling up the application in the proper format. In spite of bringing this to the notice of the applicant and the counsel for applicant, we do not find ^{any reason} as to why the applicant does not want to rectify the mistake in this column regarding “date of default”. This raises a question in the mind, whether are there any collusion between the applicant and the respondent?. Be that as it may, since the “date of default”



mentioned in the pleadings and also in the documents enclosed along with this application, this Adjudicating Authority inspite of the above observation, *allows* this application.

9. The learned counsel for the respondent further states that the “date of default” was long before NPA and thereby multiple default has occurred. Hence, counsel for the respondent states that the right to file this application is in the first date of default i.e. on 12th November 2016 wherein Axis Bank, one of consortium banker has declared NPA. However, the respondent also states that the petitioner is a lead banker in the consortium of other bankers and the loan was sanctioned as the consortium and the amount due to the Axis Bank declared as NPA on 10th February 2017 and therefore this application is hopelessly barred by limitation.

10. It is pertinent to cite here para 86 to 92 of the Hon’ble Supreme Court (Civil Appellate Jurisdiction) judgement in Civil Appeal No.9198 of 2019 – Sesh Nath Singh & Another –Vs- Baidyabati Sheoraphuli Co-operative Bank Ltd. & Another which is as follows:



“86. In the instant case, even if it is assumed that the right to sue accrued on 31.3.2013 when the account of Corporate Debtor was declared NPA, the financial creditor initiated proceedings under SARFAESI Act on 18th January 2014, that is the date on which notice under Section 13(2) was issued, proceeded with the same, and even took possession of the assets, until the entire proceedings were stayed by the High Court by its order dated 24th July 2017. The proceedings under Section 7 of the IBC were initiated on 10th July 2018.

87. In our view, since the proceedings in the High Court were still pending on the date of filing of the application under Section 7 of the IBC in the NCLT, the entire period after the initiation of proceedings under the SARFAESI Act could be excluded. If the period from the date of institution of the proceedings under the SARFAESI Act till the date of filing of the application under Section 7 of the IBC in the NCLT is excluded, the application in the NCLT is well within the limitation of three years. Even if the period between the date of the notice under Section 13(2) and date of the interim order of the High



Court staying the proceedings under the SARFAESI Act, on the prima facie ground of want of jurisdiction is excluded, the proceedings under Section 7 of IBC are still within limitation of three years.

88. An Adjudicating Authority under the IBC is not a substitute forum for a collection of debt in the sense it cannot reopen debts which are barred by law, or debts, recovery whereof have become time barred. The Adjudicating Authority does not resolve disputes, in 38 the manner of suits, arbitrations and similar proceedings. However, the ultimate object of an application under Section 7 or 9 of the IBC is the realization of a 'debt' by invocation of the Insolvency Resolution Process. In any case, since the cause of action for initiation of an application, whether under Section 7 or under Section 9 of the IBC, is default on the part of the Corporate Debtor, and the provisions of the Limitation Act 1963, as far as may be, have been applied to proceedings under the IBC, there is no reason why Section 14 or 18 of the Limitation Act would not apply for the purpose of computation of the period of limitation.



89. To quote V. Sudhish Pai from his book 'Constitutional Supremacy - A Revisit' "Judgments and observations in judgments are not to be read as Euclid's theorems or as provisions of statute. Judicial utterances/ pronouncements are in the setting of the facts of a particular case. To interpret words and provisions of a statute it may become necessary for judges to embark upon lengthy discussions, but such discussion is meant to explain not define. Judges interpret statutes, their words are not to be interpreted as statutes."

90. As observed above, unlike statutes like the Arbitration Act, 1940 and the Arbitration and Conciliation Act 1996, which make the provisions of the Limitation Act, as they apply to Court proceedings, also applicable to arbitration proceedings, Section 238A of the IBC39 makes the Limitation Act applicable to proceedings in NCLT/NCLAT 'as far as may be' and/or in other words, to the extent they may be applied.

91. Legislature has in its wisdom chosen not to make the provisions of the Limitation Act verbatim applicable to proceedings in

NCLT/NCLAT, but consciously used the words 'as far as may be'. The words 'as far as may be' are not meant to be otiose. Those words are to be understood in the sense in which they best harmonize with the subject matter of the legislation and the object which the Legislature has in view. The Courts would not give an interpretation to those words which would frustrate the purposes of making the Limitation Act applicable to proceedings in the NCLT/NCLAT 'as far as may be'.

92. In other words, the provisions of the Limitation Act would apply *mutatis mutandis* to proceedings under the IBC in the NCLT/NCLAT. To quote Shah J. in *New India Sugar Mill Limited v. Commissioner of Sales Tax, Bihar 20* , "It is a recognised rule of interpretation of statutes that expression used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature".



10. We have carefully examined the said order of the Hon'ble Supreme Court and in deference to the clearly articulated ratio therein, this application stands **admitted**.

(I) Since the Financial Creditor filed consent letter dated 18.12.2019 (Vol.III, Page.584 of the application) of the proposed Interim Resolution Professional in Form-2, this Bench hereby appoints Mr.Tharuvai Ramachandran Ravichandran (Regn. No.IBBI/IPA-002/IP-N00241/2017-18/10692) as Interim Resolution Professional and the IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

(II) This Bench declare moratorium which shall have effect from the date of this order till the completion of corporate insolvency resolution process for the purposes referred to in



Section 14 of the I&B Code, 2016. We order to prohibit all of the following, namely,

(a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

(d) *the recovery of any property by a owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

(III) That supply of essential goods or services of the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) of Section 14 of IBC shall not



apply to such transactions as may be notified by the Central Government in consultation with any financial regulator.

(IV) That the order of moratorium shall have effect from the date of issue of order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the resolution plan under sub-section (1) of Section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.

(VI) The Petitioner/Financial Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

(VII) That this Bench hereby appoints **Mr. Tharuvai Ramachandran Ravichandran** having **Regn. No. IBBI/IPA-002/IP-N00241/2017-18/10692** as **Interim Resolution Professional, G.3 Block-II, Shivani Apartments, 40, East**

Coast Road, Thiruvanmiyur, Chennai-600041 as proposed by the Financial Creditor, to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

(VIII) The Registry is also directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP.

5. Accordingly, this IBA/45/2020 is hereby **admitted**.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

knp

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(R. SUCHARITHA)
MEMBER (JUDICIAL)