

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
COURT-III, MUMBAI BENCH**

**C.P.(IB) 387/MB/2022**

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of **Axis Bank Limited** having its head office at “Sakar” Building Adalat Road, Near Kranti Chowk, Aurangabad 431001

**.....Financial Creditor/Petitioner**  
V/s

**M/s Khadkeshwar Hatcheries Limited** having its registered office at Office no 106, Siddharth Arcade, Opp. MTDC Resort, Station Road, Aurangabad 431005.

**.....Corporate Debtor/Respondent**

**Order Reserved On: 15.05.2023**

**Order Pronounced On: 20.06.2023**

**Coram:**

Hon’ble Shri H.V. Subba Rao, Member (Judicial)

Hon’ble Smt. Madhu Sinha, Member (Technical)

*Appearances (via video conferencing)*

**For the Petitioner:** Ms. Abha Patel i/b MDP and Partners, Advocate.

**For the Respondent:** Mr. Annirudh Purusothaman, Advocate.

**Per: Madhu Sinha, Member (Technical)**

**ORDER**

The above Company Petition is filed by **Axis bank Limited** (hereinafter called as “**Petitioner/Financial Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **M/s Khadkeshwar Hatcheries Limited** (hereinafter called as “**Corporate Debtor**”) by invoking the provisions of Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter called “**Code**” read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a resolution of an unresolved financial debt of **Rs. 16,41,70,796/-** (together with Principal and Interest Amount as on 21.12.2021).

**A. Brief Submissions on behalf of the Financial Creditor:**

1. The Financial Creditor states that the Corporate Debtor on several occasions between 2004 to 2016 had approached the Financial Creditor for various cash credit facilities and term loans from May 2005 onwards whereby the Financial Creditor approved the same through their respective sanction letters. The last credit facility was sanctioned vide Financial Creditor’s sanction letter dated

30th June 2016 for Rs 7,00,00,000/- (Rupees Seven Crore only) to the Corporate Debtor/Respondent.

2. The Financial Creditor further states that in order to secure the cash credit facilities, the Corporate Debtor executed (1) Composite Hypothecation Deed subsequently various Supplementary Hypothecation Deeds, (2) Records of Mortgage by deposit of Title Deeds, (3) Memoranda of Entry (Extension of Equitable Mortgage), (4) Memorandum of Deposit of creation of further charge in favour of the Financial Creditor. Moreover, various (1) Deeds of Personal Guarantee were executed by the Director of the Respondent, Mr. Raghvendra Joshi and one Mr. Shashikant Shastri; (2) Deeds of Corporate Guarantee (3) Record of Mortgages executed by Navjeevan Hatcheries Pvt. Ltd., Nageshwar Farms Pvt. Ltd, Harshwardhan Farms Pvt. Ltd., Shashikant Shastri, Maruti Breeders Put Ltd, and Sanjay Breeders Pvt. Ltd in favour of the Financial Creditor.
3. The Financial Creditor states that the Corporate Debtor started defaulting in its repayment of the outstanding amount about in 2010. Despite giving various opportunities to the Corporate Debtor to return outstanding amount, vide Letter of Acknowledgment of debt dated 23rd February 2015, the Corporate Debtor inter alia confirmed and acknowledged their indebtedness of Rs 6,99,87,643.21 (Rupees Six Crore Ninety Nine

Lakh Eighty Seven Thousand Six Hundred Forty Three and Twenty One Paise only) as on 13th December 2014.

4. Consequently, on 23rd November 2016, the Financial Creditor addressed a letter to the Corporate Debtor stating that the accounts of the Corporate Debtor were classified as Non-Performing Asset (NPA). As the defaults continued, the Financial Creditor issued a Recall Notice dated 15th December 2016 seeking recall of an outstanding amount of Rs.8,65,76,698/- (Rupees Eight Crore Sixty Five Lakh Seventy Six Thousand Six Hundred and Ninety Eight only). On account of continued defaults, the Financial Creditor issued a Statutory Demand Notice dated 28th February 2017 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") calling upon the Corporate Debtor to repay outstanding amount of Rs.8,90,14,216/- (Rupees Eight Crore Ninety Lakh Eighty Fourteen Thousand Forty-Two Hundred and Sixteen) as on 26th February 2017.
5. The Financial Creditor vide a Letter dated 14<sup>th</sup> February 2020, sanctioned an OTS to the Corporate Debtor with respect to the outstanding dues payable by the Corporate Debtor. However, immediately after, the Corporate Debtor vide its letter dated 13<sup>th</sup> March 2020 stated that it was facing financial distress caused due to the Pandemic and thus proposed a modified repayment

schedule with a modified OTS of Rs. 5 crores which would be payable by 31<sup>st</sup> December 2020. The modified OTS was approved by the Financial Creditor vide its email dated 24<sup>th</sup> March 2020. However, shortly after, the Corporate Debtor failed to honor the same and the underpaid the installments for April, May and June. The aggregate amount paid by the Corporate Debtor under the first three installments (for April, may and June) was Rs.20,00,000/- out of the total Rs. Rs. 60,00,000/- payable towards the first three installments of the said modified OTS and basis which the outstanding balance under the said modified OTS stood reduced to Rs. 4,80,00,000/-

6. In view of the above, the Corporate Debtor vide its letter dated 7<sup>th</sup> July 2020 sought a further revision in the schedule of payment of the OTS amount whereby the last date for payment of the same was sought to be extended to 31<sup>st</sup> March 2022. However, the same was rejected by the Financial Creditor vide its email dated 18<sup>th</sup> July 2020. Consequently, the Financial Creditor withdrew the OTS vide it letter dated 5<sup>th</sup> January 2021 and in response whereof, the Corporate Debtor vide it letter dated 25<sup>th</sup> January 2021 admitted its inability to pay the outstanding amounts/balance OTS amount and expressed its inability to honor the OTS.
7. The Corporate Debtor vide its letter dated 25<sup>th</sup> January 2021, withdrew the OTS proposal for payment of Rs.4,20,00,000/- to be

paid till March 2022 and further requested for a revised proposal for one time settlement with the Financial Creditor.

8. On 8th February 2021, the Financial Creditor once again denied all the allegations made by the Corporate Debtor in its letter dated 25th January 2021 and further requested for the payment of the outstanding dues. Vide Intimation Notice dated 5<sup>th</sup> July 2021, the Financial Creditor gave a final opportunity to the Corporate Debtor, before initiating a legal action under Section 7 of IBC, to repay the outstanding amount of Rs. 15,55,87,365/- (Rupees Fifteen Crore) Fifty Five Lakh Eighty Seven Thousand Three Hundred and Sixty Five only) as of 30th June 2021 with further interest thereon. However, no response was received to the Intimation Notice dated 5th July 2021 nor have any amounts been received from the Corporate Debtor. Hence, this Petition.

**B. Brief Submissions on behalf of the Corporate Debtor:**

1. The Corporate Debtor has filed a detailed reply dated 31.05.2022, denying and opposing the averments raised in the present Petition.
2. The Corporate Debtor has raised the contention on the following grounds:

i. PERIOD OF DEFAULT FALLS IN THE PERIOD WHEN THERE WAS A BAR UNDER SECTION 10A OF THE IBC 2016.

a) The Government of India (GoI), in order to mitigate the impact of COVID 19, enforced certain pertinent measures with an intent to reduce the impact on businesses, suspended initiation of insolvency proceedings under Sections 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016 and hence Section 10A of the IBC 2016 came into force on 25th March 2020 which was in force up to 24th March 2021.

b) The Financial Creditor in the captioned petition has submitted that a one-time settlement dated 24.03.2020 was entered into with the Corporate Debtor.

c) The Financial Creditor has admittedly stated that the Corporate Debtor has failed to pay the outstanding dues from 31.03.2020 to 31.12.2020. Further, the Financial Creditor withdrew the said One Time Settlement dated 24.03.2020 on 05.01.2021 which also falls within the period covered under Section 10A of the code,

thus the default is clearly within the period covered under Section 10A of the Code.)

- d) The Corporate Debtor states that from the above, it is crystal clear that the Financial Creditor has filed the captioned petition for the purported default occurred during the period between 31st March 2020 till 31st December 2020 when there was specific bar under Section 10A for initiating CIRP.
- e) The Corporate Debtor submits that it is in the business of Poultry and the COVID 19 Pandemic had affected the Corporate Debtor to a larger extent as certain rumors were circulated that eating poultry items will lead to Covid. As a result, the poultry industry faced a huge backlash in terms of demand and price which in turn has affected the business of the Corporate Debtor.
- f) It is submitted that the Corporate Debtor had also proposed a One Time Settlement of Rs. 5 Crores vide letter dated 13.03.2020 to the Financial Creditor which was accepted by the Financial Creditor vide its email dated 24.03.2020.

g) It is pertinent to note that the Corporate Debtor has not once denied to repay its debts and has made willing upfront payments as and when the occasion has permitted and the Petitioner has also failed to establish the onus of proof as to the fact that the Corporate Debtor has failed to or is unwilling to make payments. Even during the hardship period of Covid, the Corporate Debtor has paid an amount of over Rs. 80 lakhs to the Financial Creditor.

ii. DEFECTIVE DOCUMENTS ANNEXED BY THE FINANCIAL CREDITOR

a. It is the case of the Petitioner that the loans were defaulted on /the date of default was on 26.09.2019 and 23.11.2016 was the date when the Corporate Debtor's account was classified as a non performing asset ("NPA"). Thus it is crystal clear that the financial creditor has taken a random date of default, however the date of default can only be during the 31st March 2020 till 31st December 2020 as the earlier agreement for repayment of loan has been novated by virtue of OTS dated 24th March 2020 accepting the

payment schedule proposed vide letter dated 13th March 2020 sent by the financial creditor.

- b. The Corporate Debtor submits that the record of Information Utility is not a conclusive proof of any default. They have cited Hon'ble NCLAT judgement dated 06.03.2022 in the matter of RKW Developers Private Limited to substantiate this point.
- c. It is also submitted by Corporate Debtor that the Financial Creditor has not paid requisite stamp duty on various documents and thus, the said documents are liable to be impounded as the same is in non-compliance of the provisions of the Maharashtra Stamp Act 1958.
- d. The Corporate Debtor submits that the said documents therefore cannot be admitted as evidence for any purpose as contained in Section 34 of the Maharashtra Stamp Act 1958.

**FINDINGS AND OBSERVATIONS (DRAFT)**

1. Heard the Ld. Counsel appearing for the Financial Creditor and the Ld. Counsel appearing for the Corporate Debtor at length. The

Bench has gone through the evidence and the materials placed on record via Additional Affidavit and Written Submission by both the parties. The Corporate Debtor has raised the contention challenging the maintainability of the present Company Petition on the grounds of Limitation and Section 10 A of the Code.

2. The first issue involved in the present case with regards to Limitation Act. the Corporate Debtor contended that the date of default as per Information Utility's record is 26.09.2019 and the Corporate Debtor's account was classified as NPA on 23.11.2016. Further, the present Petition is filed on 07.01.2022 which is 6 years after the date of the NPA classification. Advancing the argument, the Corporate Debtor stated that even if the loan recall notice dated 28.02.2017 issued by the Financial Creditor under section 13(2) of the SARFAESI Act is taken into consideration the limitation would stand expired on 26.02.2020.
3. Upon the perusal of the documents, it is observed that the parties attempted to settle the debts vide One Time Settlement dated 14.02.2020. However, the Corporate Debtor failed to execute the payment obligation of the One Time Settlement and yet again defaulted. Further the Corporate Debtor vide its letter dated 25.01.2021, withdrew the OTS proposal for payment of Rs.4,20,00,000/- to be paid till March 2022 and further requested for a revised OTS proposal with the Financial Creditor.

Consequently, the amicable settlement could not attain finality due to the continuous defaults by the Corporate Debtor. In order to deal with the issue of the Limitation, it is worthwhile to mention Section 18 of the Limitation Act which is reproduced as follows:

*18. Effect of acknowledgment in writing.—*

*(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*

*(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received. Explanation.—For the purposes of this section,—*

*(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a*

*refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;*

*(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf; and*

*(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.*

4. Therefore, in the present case as per the above legal provision, the Financial Creditor is covered by the Section 18 of the Limitation Act, 1963, whereby a written acknowledgement vide the One time Settlement was given by the Corporate Debtor leading to a fresh period of limitation commencing from the OTS proposal of 2020 and 2021. Further, the Hon'ble Supreme Court in **Asset Reconstruction Company (India) Ltd. Vs. Bishal Jaiswal & Anr. [Civil Appeal No. 323 of 2021 with other appeals]** held that, the date of default is extendable within the ambit of Section 18 of the Limitation Act, 1963 based on an acknowledgement in writing made by the Corporate Debtor before expiry of period of limitation.
5. The said principle was further elucidated by the Hon'ble Supreme Court in **Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy and Anr. [Civil Appeal No. 1650 of 2020]** wherein it was held that an application under Section 7 of the Code would not be

barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgment of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.

6. The Financial Creditor has also drawn the attention of this Bench to the fact that the dues payable by the Corporate Debtor are reflected in the Balance Sheets of the Corporate Debtor filed for the Financial Year 2018-2019, 2019-2020 and 2020 -2021. To substantiate the argument, the Financial Creditor has relied on the case Hon'ble NCLT, Mumbai in ***Syndicate Bank Vs. Bothra Metals and Alloys Ltd. [CP (IB) No. 2579/MB.IV/ 2019]*** wherein it was held that an acknowledgment of debt in the balance sheet of the Company satisfies the requirements of Section 18 of the Limitation Act,1963, leading to a fresh period of limitation commencing from each such acknowledgment, would extend the period of limitation. Therefore, the balance sheets of the Respondent [*Additional Affidavit, Exhibit B-D @Pg No. 17-92*] for the period of 2018-2019, 2019-2020 and 2020 to 2021, whereunder the outstanding dues payable to the Financial Creditor are reflected, would extend the period of limitation to 2024 and therefore by no stretch of imagination can the captioned Petition said to be barred by limitation.

7. Further the Financial Creditor has relied in the matter of ***Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]*** wherein the Hon'ble Supreme Court held that; it is relevant to note that 'default' is defined under Section 3 (12) of the Code, in very wide terms as non-payment of a 'debt' once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. Therefore, there is an undeniable and apparent existence of a debt and default of the Corporate Debtor which has been admitted vide the various letters of acknowledgment issued by the Corporate Debtor and vide the letter dated 25<sup>th</sup> January 2021 *annexed at Exhibit 58 @Pg No. 496-498* wherein the Corporate Debtor had admitted its inability to pay the outstanding amounts/ balance OTS amount and expressed its inability to honour the OTS.
8. While contending the second issue, the Corporate Debtor has vehemently argued that the present Petition falls under the purview of Section 10 A of IBC, 2016. It is worthwhile to mention that by virtue of Section 10A of the Code and the subsequent Central Government Notifications dated 24<sup>th</sup> September 2020 and 22<sup>nd</sup> December 2020, a bar on the initiation of proceedings under the Code for any defaults occurring during a period of one year beginning from 25<sup>th</sup> March 2020. Upon the bare perusal of Information Utility Report *[Additional Affidavit filed by the Financial Creditor annexed as Exhibit E @Pg No. 93-101]*, the date of default is 26.09.2019, which is prior to the 25.03.2020 and thus not attracting Section 10A of the Code.

Therefore the contention raised on the ground of 10 A period cannot be availed by the Corporate Debtor as the original date of default does not change owing to a continued default or owing to a continued subsequent default.

9. Further, we observe that the other dispute raised by the Corporate Debtor pertaining to the sanction letters and documents of the loan that the Financial Creditors have not paid requisite stamp duty on various documents and thus, the said documents are liable to be impounded as the same is in non-compliance of the provisions of the Maharashtra Stamp Act, 1958. The issue has no bearing on the present matter and this Bench is not adjudicating on the same because the Corporate Debtor has already admitted its debt and default to the Financial Creditor. In light of the foregoing, the *mala fide* intent of the Corporate Debtor is crystal clear from the fact that it has sought to evade making payments and has entered into OTS despite being aware of the fact that it was in no position to honour the same merely with the intent to defraud the Financial Creditor and evade making repayments of the amounts advanced to it. It is observed that admittedly the amount claimed by the Financial Creditor are disbursed by them. Also the Corporate Debtor has raised no dispute or question pertaining to the amount disbursed and received. The Corporate Debtor further has failed to convince this Bench that the Loan Documents/Sanction Letters are invalid. Furthermore, the Corporate Debtor itself at various stages admitted

its debt and default by further exploring the option of Settlement and was unable to pay its debts due to severe financial crunch. Thus, looking from any angle, we do not find any substance in the argument of Counsel for Corporate Debtor on the issue of the Limitation or on Section 10 A period. Therefore, there is a clear '**debt**' and '**default**' of non-payment of monies. As a consequence, keeping the aforesaid facts in mind, it is found that the Financial Creditor has not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Financial Creditor, we are of the conscientious view that this Petition deserves '**Admission**' by passing the following:

**ORDER**

- a. The above Company Petition No. (IB) /387 / (MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Khadkeshwar Hatcheries Limited.**
- b. The Petitioner has proposed the name of **Mr. Amit Chandrashekar Poddar** Insolvency Professional, Registration No: IBBI /IPA- 001 /IP-P0049/2017-18/10792, residing at "Akshat" 7 Vijay Nagar , Katol Road, near Durga Mata Mandir , OPP NCC Office, Nagpur : 440 013 as the Interim Resolution

Professional Insolvency Professional. The IRP proposed by the Petitioner, is hereby appointed as Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee.
  
- d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any

property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their

possession and furnish every information in their knowledge to the IRP/RP.

- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P.(IB)/387/MB/2022 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**SD/-**

**MADHU SINHA  
MEMBER (TECHNICAL)**

**SD/-**

**H.V. SUBBA RAO  
MEMBER (JUDICIAL)**

//Renuka//LRA//