

S.No.101

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
05-04-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

IA 1136/2020.s

CP(IB). 329/7/HDB/2020
U/s 7 of IBC, 2016

IN THE MATTER OF:

State Bank of India

...Financial Creditor

Vs

Dharti Dredging and Infrastructure Ltd

...Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Orders pronounced vide separate sheets. IA 1136/2020 also stands disposed of.


MEMBER (T)

Pavani


MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

CP (IB) No. 329/7/HDB/2020

Petition under Section 7 of IBC, 2016

In the matter of **M/s Dharti Dredging and Infrastructure Limited**

Filed by:

State Bank of India
Madam Cama Road
Nariman Point, Mumbai
Maharashtra-400021

...Petitioner

VERUS

M/s Dharti Dredging and Infrastructure Limited
Point of View, 1st Floor, BS Makhta
Begumpet, Hyderabad – 500016

...Respondent

Date of Order 05.04.2022

Coram

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For Petitioner:

Shri V.V.S.N. Raju, Advocate

For Respondent:

Shri DVAS Ravi Prasad, Advocate



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PER: BENCH

1. This Petition is filed by **State Bank of India** under Section 7 of Insolvency & Bankruptcy Code (hereinafter referred as Code), read with Rule 4 of Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016., inter-alia contending that the Respondent M/s Dharti Dredging and Infrastructure Limited (hereinafter referred as Respondent/ Corporate Debtor) defaulted in the payment of alleged debt of Rs. 91,76,44,448.33/- (Rupees Ninety One Crores Seventy Six Lakhs, Forty four Thousand Four Hundred Forty Eight and Thirty Three paise only) plus interest thereon.
2. The averments in brief are that the Corporate Debtor/ Dharti Dredging and Infrastructure Ltd is in the business of dredging, construction and other operations as per its Memorandum of Association. The Corporate Debtor availed credit facilities both fund based and non-fund based limits from the Industrial Finance Branch of the Bank since 2007. Subsequently, ICICI Bank and the Federal Bank have enhanced the credit facilities and formed a consortium of Bank which included SBI. The consortium of Banks has sanctioned credit facilities in the form of fund based and non-fund based limits, amounting to Rs. 399 crores, out of which the SBI's share is Rs. 181 crores, which included cash credit (hypothecation) Rs. 30 crores, Corporate



Loan Rs. 20 crores, Letter of Credit Facility of Rs. 46 crores and Bank Guarantee Facility of Rs. 85 crores.

3. The Corporate Debtor and four others executed necessary loan documentation in favour of the Consortium Banks on 09.06.2010 and created Hypothecation Charge (first) on paripasu basis in favour of the Consortium Banks on the Dredgers Dharti (I,II,III & IV) and second charge on paripasu basis in favour of the Consortium on Dredgers (V, VI, VII, X, XI and XII). The Corporate Debtor has also created mortgage charge of a plot admeasuring 559 sq. yards on 05.06.2014 in favour of the Consortium Banks on paripasu basis as security for the credit facilities availed.
4. It is averred that, at the request of the Corporate Debtor, the Consortium Banks renewed/modified/enhanced the said credit facilities from time to time during 2011 to 2017 which were confirmed by the Corporate Debtor from time to time. The Corporate Debtor has hypothecated all the Dredgers in favour of the Financial Creditor and further executed revival letters on 09.04.2013, 21.04.2015 and 24.04.2018 and balance confirmation letters in all the accounts as on 31.03.2016, 31.03.2017 & 31.03.2018.
5. Despite issuing several reminders by the Petitioner when the Corporate Debtor failed to repay the loans and no effort was forthcoming from the side of Corporate Debtor to regularise the





loan accounts, the Petitioner Bank classified the accounts as **Non-Performing Asset on 30.06.2018**. The Bank served noticed under Section 13 (2) of SARFAESI Act on 22.04.2019. A legal notice was also issued on 23.01.2020. As on the date of NPA i.e. 30.06.2018 an amount of Rs. 66,31,40,260.25 was due and payable by Corporate Debtor to the Petitioner Bank in addition to three Bank Guarantees amounting to (1) Rs. 19,16,56,200/- (2) Rs. 1,14,40,000/- (3) Rs. 1,31,94,047/- that were issued by the Bank at the request of the Corporate Debtor in favour of various beneficiaries.

6. It is averred that the Petitioner Bank filed O.A No. 146/2020 before the Debts Recovery Tribunal II Telangana at Hyderabad on 14.02.2020 against the Corporate Debtor and four other persons being Guarantors for the said credit facilities claiming an amount of Rs. 71,96,09,928.07 which was due as on date of filing the OA and future interest, costs etc, which is pending adjudication. Subsequent to filing of OA, one BG amounting to Rs. 19,16,56,200/- was invoked on 05.06.2020 by the beneficiary of the said BG. Failure on the part of the Corporate Debtor to pay, the Petitioner Bank paid the amount to the beneficiary. As such, Corporate Debtor is liable to this amount also with interest.



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7. The cause of action arose on 30.06.2018 and 23.01.2020 and it is still persisting. Hence, urged the Tribunal to admit the petition and order initiation of CIRP.
8. At the first instance, the Corporate Debtor instead of filing reply, has filed IA No. 1139/2020 wherein it has sought dismissal of the original petition on the ground of maintainability in view of insertion of new Section 10-A on 23.09.2020 in the notification issued by MCA that no CIRP proceedings can be initiated for a further period of 3 months w.e.f 25.09.2020 against a Company under Section 7, 9 or 10 of the Code for the default occurring during the said period. It is the contention of the Corporate Debtor that the default arose after 25.03.2020 and that continued up to 13.08.2020 and in view of the fact that the petition was filed on 14.08.2020, it is liable to be rejected. In response to this IA, the Petitioner/Respondent in IA No. 1139/2020 has vehemently opposed this IA stating it is only delay tactics on the part of the Corporate Debtor and submit that the new insertion of Section 10-A by MCA makes it clear that a blanket ban on filing of the Application under Section 7 of the Code exists only for defaults that occurred on or after 25.03.2020 and not applicable to defaults committed prior to or before 25.03.2020 and as such the objection raised by the Corporate Debtor is untenable as according to the Petitioner the default has occurred on



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30.06.2018, the date on which the accounts of Corporate Debtor was classified as NPA and Section 10-A of the IBC has no application. The Second default date is 22.04.2019 when the Accounts were recalled and 05.06.2020 when the BG amounts were invoked and were paid by the Bank. The limitation starts from 30.06.2018 when the accounts were classified as NPA. The Learned Counsel for Corporate Debtor relied on Hon'ble Apex Court judgement in Civil Appeal No. 6347/2019 in the matter of Babulal Vardharji Gurjar Vs Veer Gurjar Aluminium Industries Private Limited, wherein it is held that the date of NPA and first default is the starting point for triggering CIRP and the limitation period is three years from the said date.

9. Rejoinder is filed by the Corporate Debtor to this IA in the form of written submissions. It is reiterated that in Form-I of the main petition, the Petitioner has acknowledged the date of default as 05.06.2020, which admittedly falls under the bar of Section 10A of the Code. To buttress their contention, the Learned Counsel for the Corporate Debtor has relied on Hon'ble NCLAT order in the matter of Ramesh Kymal vs Siemens Gamesa Renewable Power Private Limited and Co-ordinate Bench, Chennai order in the same matter where in it was opined that the date of default mentioned in Form-1 plays a crucial role in determining the applicability of Section 10A of the Code to all petitions filed after 25.03.2020. The Corporate Debtor disagrees with the



interpretation of Section 10-A by the Financial creditor. Hence, prayed for dismissing the petition on the ground of maintainability.

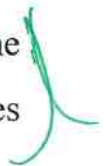
10. A preliminary reply is also filed by the Corporate Debtor on 09.02.2021 questioning the maintainability of the petition as stated in the preceding paragraphs.
11. In the above backdrop, the points that arise for consideration are:
 - (i) *Whether there is a financial debt due and payable by the Corporate Debtor, and if so, whether the Corporate Debtor has defaulted in payment of the same?*
 - (ii) *Whether the claim is barred by limitation?*
12. We have heard the Ld. Counsel Shri V.V.S.N. Raju for the Financial Creditor and Ld. Counsel Shri D.V.A.S. Ravi Prasad for the Corporate Debtor, perused the records and case laws.

POINT No.(1) :

Whether there is a financial debt due and payable by the Corporate Debtor, and if so, whether the Corporate Debtor has defaulted in payment of the same?

13. At the outset it may be stated that the debt the financial creditor has claimed was based on the credit facilities, both fund based and non-fund based availed by the Corporate Debtor from the applicant-Bank, which is not in dispute. The record discloses





that the account of the borrower has been declared as Non-Performing Asset (NPA) on 30.06.2018 for not complying with the terms and conditions of the sanction. Proceedings under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) were initiated on 22.04.2019 against the Corporate Debtor. It is also on record that the applicant/ Bank filed OA No.146 of 2020 against the Corporate Debtor and the guarantors before Debt Recovery Tribunal (DRT), Hyderabad, claiming outstanding amount of Rs.71,96,09,928.07 as on the date of filing the application. In support of the above plea, the financial creditor also placed necessary record which remain unrebutted by the Corporate Debtor. Therefore, the financial debt stands established. Since it is not the case of the Corporate Debtor that the amount has been paid, default in payment of financial debt by the Corporate Debtor also has been established.

POINT No.(2) :

Whether the claim is barred by limitation?

14. It may be stated that, the applicant shall establish the debt claimed as due and payable, is within the period of limitation as envisaged under section 137 of the Limitation Act, 1963. According to the respondent/ Corporate Debtor, the claim is barred by limitation.



However, refuting the said contention the learned counsel for the applicant had submitted that the present application having been filed within 3 years from the date of default, is well within the period of limitation.

15. The learned counsel for the financial creditor relied on decision of the Hon'ble Supreme Court in Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Private Limited rendered in Civil Appeal No.6347 of 2019, the relevant part of which is reproduced hereunder:

“14. Per contra, the learned senior counsel appearing for the financial creditor (respondent No. 2) has contended that this appeal is devoid of substance and is liable to be dismissed on merits as also on conduct of the appellant.

14.1. The learned senior counsel would maintain that the debt of the corporate debtor, payable to the respondent No. 2, has neither been disputed nor denied by the appellant; rather it is stated in ground P in the memo of appeal (page 36 of paper-book) that the corporate debtor is and has always been willing to settle the amount of outstanding loan in one time settlement with the respondent No. 2. The learned counsel would submit that the late attempt on the part of the appellant to dispute the OTS letter issued by the respondent No. 1 is baseless and fallacious because such a contention has been raised for the first time in this second round of appeal in this Court; and that the appellant is rather guilty of taking false pleadings and of perjury in his attempts to mislead.

14.2. While refuting the submissions made on behalf of the appellant, it has been strenuously argued by the learned senior counsel for the respondent No. 2 that the application under

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Section 7 of the Code is not barred by limitation only because of initial date of default being mentioned therein as 08.07.2011. The learned counsel would submit that the contentions on behalf of the appellant are unsustainable since the debt in question had been legally and unequivocally admitted to be due and payable in writing by the respondent No. 1 all throughout from the year 2011 until 2017 in its balance sheets filed along with annual returns before the Registrar of Companies; and the debt had been shown as the loan amount outstanding to Corporation Bank, who had assigned the same to the respondent No. 2.

14.3. While heavily relying on the observations in Jignesh Shah (supra), learned senior counsel has contended that as per the law declared by this Court, the provisions of Section 18 of the Limitation Act certainly extend the period of limitation under the Code on any acknowledgment of debt by the corporate debtor. The learned counsel has referred to the provisions of the Companies Act, 201326, particularly Section 95 thereof, as also to the observations of this Court in M/s. Mahabir Cold Storage v. CIT, Patna: 1991 Supp (1) SCC 402 to submit that the registers of a company are of prima facie evidence; and the balance sheet disclosing loans and borrowings and forming part of annual returns, indeed constitute the admission and acknowledgment of the corporate debtor of its indebtedness. Therefore, according to the learned counsel, the loan amount acknowledged to be due and payable by the corporate debtor in the balance sheets and annual reports, continuously from the year 2011 and until the year 2017, becomes an admitted fact of evidence and thereby, the period of limitation is extended by dint of applicability of Section 18 of the Limitation Act.

14.4. The learned senior counsel has re-emphasised on the submissions that the suggestions of the appellant, that no extension of limitation period under Section 18 of the Limitation Act is permissible in the Code because date of default is sacrosanct and only three years period from that date is



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permissible, remain untenable in law. The learned counsel has contended that at the time of filing such application by the respondent No. 2, there was no provision in the Code importing any defined period of limitation and neither there was any mandatory legal requirement of stating in the application format as to how the claim was within limitation nor there was any statutory requirement to furnish any specific evidence thereof and therefore, the Section 7 application as framed and filed by respondent No. 2 was well within the period of limitation.

14.5. As regards the requisite approach in applying the law of limitation to the application under Section 7 of the Code, the learned senior counsel has strenuously argued that the amendment applying the provisions of the Limitation Act to the Code came into force with effect from 06.06.2018 but only after filing of the application by respondent No. 2; and testing a post facto applicable statutory provision of retrospective nature in a watertight stringent manner would result in a fatal flaw in equity and the same may also prejudice scores of legal recourse by many other banks and financial institutions currently in Courts/Tribunals on mere technicality that was unforeseen and unconceived in past and hence, the documents making out a case for extension of limitation period could not be filed. Other way round, according to the learned counsel, the unrestrained applicability of Section 238-A of the Code in an anomalous manner suggested on behalf of the appellant would compel all the financial institutions to immediately proceed and file the application under Section 7 before the expiry of three years exactly from the date of default, in spite of the fact that any borrower, in order to overcome its financial constraints to repay might be ready and willing to comply with the requirements of Section 18 of the Limitation Act for extension of period of limitation. The learned counsel has relied on the decision of this Court in N.Balakrishnan v. Krishnamurthy : (1998) 7 SCC 123 to submit that the rules of limitation are not meant to destroy the rights of the parties.



14.6. The learned senior counsel has, therefore, submitted that the application filed by respondent No.2 under Section 7 of the Code as financial creditor is within the period of limitation as prescribed and as extended legally by application of the relevant provisions of the Limitation Act. Thus, according to the learned counsel, the application has rightly been admitted by NCLT and the present appeal deserves to be dismissed.”

16. It may be stated that insofar as the starting point of limitation in the matters where financial/ operational debt is defaulted by the Corporate Debtor is no longer *res integra*. The Hon’ble Supreme Court in the matter of Dena Bank (Now Bank of Baroda) Vs. Shivakumar Reddy & another rendered in Civil Appeal No.1650 of 2020, held that, “*judgement and/or decree for money in favour of the Financial Creditor, passed by the DRT or any other Tribunal or Court, or the issuance of a certificate of recovery in favour of Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of IBC*”.

Therefore, we find that the claim as made by the financial creditor is within the period of limitation. Point No.(2) is answered accordingly.

17. Therefore, in light of the discussion above, after careful consideration of the record and on perusal of the Written Submissions, the Tribunal is satisfied that there exists financial debt payable by the Corporate Debtor to the financial creditor

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and the same has been defaulted. Therefore, it is a fit case to order Corporate Insolvency Resolution Process (CIRP). We therefore, accordingly allow this Petition and order CIRP against the Corporate Debtor.

ORDER


- (1) The 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;
- (2) 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.
- (3) 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.



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- (4) That the order of moratorium shall have effect from date 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, whichever is earlier.
- (5) This Bench hereby appoints **Shri G. Madhusudhan Rao**, **Registration No. IBBI/IPA-001/IP-P0081/20172018/ 10360**, email id: madhucs1@gmail.com as Interim Resolution Professional, who has given his consent in Form-2 and AFA is valid up to 08-11-2022.
- (6) That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the Code.
- (7) The Financial Creditor is directed to communicate this order to the IRP appointed in this case.
- (8) Registry of this Tribunal is directed to send a copy of this order to RoC, Hyderabad for marking appropriate remarks against the Corporate Debtor on MCA site as being under CIRP.


(Veera Brahma Rao Arekapudi)
Member (Technical)


(Dr. N. Venkata Ramakrishna Badarinath)
Member (Judicial)

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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

IA No. 1136 of 2020

in

CP (IB) No. 329/7/HDB/2020

Application under Section 10-A of IBC, 2016

In the matter of **M/s Dharti Dredging and Infrastructure Limited**

Filed by:

M/s Dharti Dredging and Infrastructure Limited
Point of View, 1st Floor, BS Makhta
Begumpet, Hyderabad – 500016

...Applicant/
Corporate Debtor

VERUS

State Bank of India
Madam Cama Road
Nariman Point, Mumbai
Maharashtra-400021

...Respondent/
Financial Creditor

Date of Order 05.04.2022

Coram

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For Applicant:

Shri DVAS Ravi Prasad, Advocate

For Respondent:

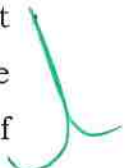
Shri V.V.S.N. Raju, Advocate



PER: BENCH


1. This Application is filed by Corporate Debtor in Company Petition CP (IB) No. 329/7/HDB/2020, inter-alia contending that the company petition filed by Financial Creditor / Respondent herein is not maintainable in view of insertion of new Section 10-A in the Insolvency & Bankruptcy Code, 2016.
2. It is averred that the Applicant is denying the outstanding amount stated by the Financial Creditor and that there is no default on its part. Further, it is contended that the Financial Creditor has not specified the date of default in column No.2 Part IV of Form-1.
3. It is stated that, newly inserted Section 10-A of IBC, 2016 vide notification dated 05.05.2020, bars initiation of CIRP of a Corporate Debtor for any default arising on or after 25.03.2020 for a period of six months, which was subsequently extended by another three months by a notification dated 24.09.2020. It is stated that in the instant case, default, if any, arose only after 25.03.2020 and that continued up to 13.08.2020. Thus submitting, prayed the Tribunal to dismiss the application filed by Financial Creditor/Respondent for initiation of CIRP against the Corporate Debtor/Applicant herein.
4. Per contra, the Financial Creditor contends that the instant application is filed only to delay the process and that it had approached the Bank for settlement. It is further contended that the Corporate Debtor is defying the orders of this Tribunal in not filing the counter. The plea of insertion of 10A of the IBC could have been raised in the counter also by the Corporate Debtor instead of filing this IA.

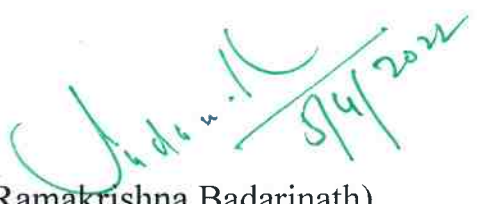




Thus submitting, prayed the Tribunal to dismiss the main petition for contravening Section 10A of IBC, 2016.

7. The Corporate Debtor has filed this application relying on section 10A of the Insolvency & Bankruptcy Code, 2016 and contended that the application having been filed on 31.08.2020, viz. during the COVID-19 lockdown period, is not maintainable. However, the financial creditor has refuted the said plea contending that section 10A of the I&B Code must be read in full, the same applies to the defaults that have occurred during the period on or after 25.03.2020, and not when default occurred prior to 25.03.2020. In this connection, the learned counsel referred to the application including the Demand Notice under SARFAESI Act and contended that the default has already occurred. Therefore, the present application even though filed on 13.08.2020, since the default in this case has occurred prior to 25.03.2020, the application is not hit by Section 10A of IBC.
8. Having heard the learned counsel for both the sides and on perusal of the documents produced before us, we are satisfied that the default in this case has occurred prior to 25.03.2020. As such protection under section 10A of the I&B Code does not apply. The petition has no merit. IA No.1136 of 2020 deserves dismissal.
9. The same is dismissed accordingly. No cost.


(Veera Brahma Rao Arekapudi)
Member (Technical)


(Dr. N. Venkata Ramakrishna Badarinath)
Member (Judicial)

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