

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.1446/MB-IV/2020

Under Section 7 of the I&B Code, 2016

In the matter of:

State Bank of India

[IN: AAACS8577K]

...Financial Creditor/Applicant

V/s

Kosas Industries Private Limited

[CIN: U71300MH2009PTC197548]

...Corporate Debtor/Respondent

Order Dated: 09.02.2023

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Anup Khaitan, Advocate.

For the Respondent(s) : None.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being C.P. (IB) No. 1446/MB-IV/2020 filed by State Bank of India, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Kosas Industries Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Application is filed by Mr. Viveka Nand, Assistant General Manager of the Financial Creditor vide its Board Resolution dated 27.11.2020, claiming total default of Rs.98,19,09,715.15 (Rupees ninety-eight crore nineteen lakh nine thousand seven hundred fifteen and fifteen paise only) as on 30.10.2020.
3. The Date of Default as mentioned in the Petition is 30.10.2020. The Petition is filed on 27.11.2020. The Account of the Corporate Debtor was classified NPA on 28.12.2015.
4. The case of the Financial Creditor is as under:
 - a) The Financial Creditor has sanctioned Fund Based Working Facility (FBWC) to the Corporate Debtor vide Sanction Letter dated 07.05.2011 to the tune of Rs.20,00,00,000/- (Rupees twenty crore only).
 - b) The said facility was renewed and enhanced from time to time vide following documents:
 - i. Arrangement Letter dated 05.11.2012; at pp 61-74, as Annexure '10' of the Petition;
 - ii. Sanction/Renewal of Credit Facility Letter dated 10.01.2014; at pp 75-92, as Annexure '11' of the Petition;
 - iii. Sanction/Renewal of Credit Facility Letter dated 07.02.2015; at pp 93-109, as Annexure '12' of the Petition;
 - iv. Sanction of Stand-by Lone of Credit Letter dated 06.04.2015; at pp 118-119, as Annexure '14' of the Petition;

- c) The said facility was lastly renewed and enhanced by the Financial Creditor vide Sanction/Renewal of Credit Facility Letter dated 07.02.2015.
- d) The Corporate Debtor has sent the OTS proposal vide its letter dated 06.12.2021 where the Corporate Debtor proposed to settle the accounts for Rs.8,00,00,000/- (Rupees eight crore only). In the said OTS the Corporate Debtor stated that once the proposal is accepted by the Financial Creditor, the Corporate Debtor will arrange the payment from the ARC/NBFC which is taking the assignment within 30 working days.
- e) The details of the total sanctioned limit are as under:

(Amount in Crore)

Sr. No.	Limits	Existing
1.	Cash Credit	35.00
2.	EPC	(10.00)
3.	SLC	4.00
4.	Term Loan	14.32
Total Fund Based		53.32
Non-Fund Based		
5.	BG	1.50
6.	Credit Exposure Limit	0.92
Total Non-Fund Based		2.42
Total FB+NFG		55.74

5. The Financial Creditor has issued the Loan Recall Notice dated 10.05.2019 to the Corporate Debtor claiming total amount of Rs.81,22,40,826/- (Rupees eighty-one crore twenty-two lakh forty thousand eight hundred twenty-six only) due as on 09.05.2019.

6. The Financial Creditor has submitted the NeSL Report dated 31.07.2020 showing the amount total outstanding of Rs.11,92,91,014/- (Rupees eleven crore ninety-two lakh ninety-one thousand fourteen only) and the date of default as 30.09.2015.
7. The Corporate Debtor has filed the Affidavit in reply and submits as under:
 - a) The Application filed by the Financial Creditor under section 7 is not maintainable and not filed by authorised person. Further, no Board Resolution or letter of authority has been annexed to the Application.
 - b) The Application filed by the Financial Creditor is not in the form prescribed under the Code.
 - c) The Application is filed beyond the period of 3 years from the date when the default occurs. In Form 1 Part IV, the date mentioned against the date of default is the date on which the Account of Corporate Debtor was classified as NPA i.e. 28.12.2015. In the present case, the Application was filed under section 7 is well beyond 3 years from the date of default i.e. filed in 2020.
 - d) The Financial Creditor has clubbed several and distinct Financial Debts arising under different heads and agreements into a single application which is also not permissible under law. The Applicant has clubbed together debts arising out of Stand-by Line of Credit, FBWC, Term Loan, Bank Guarantee, Credit Exposure, etc into one single Application.
 - e) The Financial Creditor has already filed proceedings before the Debt Recovery Tribunal.

Findings:

8. We have heard the arguments of the Learned Counsel for Financial Creditor and perused the records.
9. It is observed that the Corporate Debtor have filed its Affidavit-in-reply in the matter. However, when the matter was listed for final hearing on 03.11.2022, the Corporate Debtor did not appear and the matter was finally heard and Reserved for Orders.
10. It is seen from the material on records that the Financial Creditor sanctioned Fund Based Working Facility (FBWC) to the Corporate Debtor vide Sanction Letter dated 07.02.2011. For this purpose, various Sanction Letters/Renewal Letters were issued by the Financial Creditor. The said facility was sanctioned/renewed from time to time. The said facility was lastly renewed and enhanced by the Financial Creditor vide Sanction/Renewal of Credit Facility Letter dated 07.02.2015.
11. After perusal of the material on record, this Bench is of considered view that the date of default as mentioned in Part IV is 30.10.2020. However, the Financial Creditor has failed prove how the date of mentioned in the Petition has been calculated.
12. It also observed that the Account of the Corporate Debtor was classified NPA on 28.12.2015. Further, in the NeSL Report filed by the Financial Creditor at pp 38-46 of Petition, the date of default is mentioned as 30.09.2015. Even if we considered the date of NPA as the date of default i.e. 28.12.2015, the limitation to file Petition would end on 28.12.2018. Which means the Financial Creditor should have filed the Petition on or before 27.12.2018. The Corporate Debtor did not even acknowledge the debt within the said period of three.

13. It is pertinent to note that the Financial Creditor has not even filed any Application to condone the delay. This Bench finds inordinate delay in filing the Section 7 Application by the Financial Creditor. Hence, the Application filed by the Financial Creditor deserves to be rejected.
14. Therefore, the contentions of the Financial Creditor that the Corporate Debtor has acknowledged its liability vide OTS proposal dated 06.12.2021 does not lie owing to the fact that the debt was already time barred on 28.12.2018.
15. The petition bearing CP(IB) 1446/MB-IV/2020 filed by State Bank of India, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Kosas Industries Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) is hereby **Rejected**.
16. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

Manoj Kumar Dubey
Member (Technical)
09.02.2023

Sd/-

Kishore Vemulapalli
Member (Judicial)