

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

ITEM No.302
C.P.(IB)/295(AHM)2022

Order under Section 7 IBC

IN THE MATTER OF:

IDBI Bank Ltd

.....Applicant

V/s

West Coast Frozen Foods Pvt Ltd

.....Respondent

Order delivered on: 18/09/2023

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 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)

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

ITEM No.303

IA/728(AHM)2023 in C.P.(IB)/295(AHM)2022

Order under Section 60(5) IBC, 2016 r.w Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

West Coast Frozen Food Pvt. Ltd.

.....Applicant

Vs.

IDBI Bank Limited

.....Respondent

Order delivered on: 18/09/2023

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SHAMMI KHAN
MEMBER (JUDICIAL)

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

**CP(IB)/295/NCLT/AHM/2022
Along with
IA No. 728 of 2023 in CP(IB) No. 295 of 2022**

In the matter of:

CP(IB)/295/NCLT/AHM/2022

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

IDBI BANK LTD

Having its address at;
IDBI Tower, 7th Floor NMG,
WTC Complex, Cuffe Parde,
Colaba, Mumbai-400005.

...APPLICANT/FINANCIAL CREDITOR

VERSUS

WEST COAST FROZEN FOODS PVT. LTD.

Having its address at:
322, 323, Orma, Olpad Saras Road,
Olpad, Surat, Gujarat-394540.

...RESPONDENT/CORPORATE DEBTOR

Along with

IA No. 728 of 2023 in CP(IB) No. 295 of 2022

[An application filed 60(5) of IBC, 2016 r.w. Section 424 of the Companies Act, 2013 and Rule 11 of the NCLT Rules, 2016]

In the matter between:

WEST COAST FROZEN FOOD PVT. LTD.

Having its Registered Office at:
322, 323, Orma, Olpad Saras Road,
Olpad, Surat GJ-394540
Branch Office at:

C/95, 9th Floor, C Wing,
Mittal Tower, Nariman Point,
Mumbai-400021.

....Applicant/Original Respondent

VERSUS

IDBI BANK LIMITED

Having its Registered Office at:
IDBI Tower, 7th Floor, NMG,
WTC Complex, Cuffe Parade,
Colaba, Mumbai-400005

....Respondent/Original Applicant

Order Pronounced On: 18.09.2023

Coram:

SHAMMI KHAN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance

For the Applicant : Mr. Baiju Bhagat, FCA.
For the Respondent : Mr. Nipun Singhvi, Adv. a.w Mr. Vishal Dave,
Adv.

COMMON ORDER
(PER: BENCH)

CP(IB) 295 of 2022

1. This is an application filed on 18.10.2022 by IDBI Bank Limited (Financial Creditor) to initiate the Corporate Insolvency Resolution Process ("CIRP") in the matter of West Coast Frozen Foods Pvt. Ltd., (Corporate Debtor) under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as a Financial Creditor for

initiation of Corporate Insolvency Resolution Process (CIRP) against the Respondent/Corporate Debtor for having defaulted payment of its outstanding dues.

2. From Part-I of the application, it is seen that the Applicant herein is a Bank having its registered office at IDBI Tower, WTC Complex, Cuffe Parade, Colaba, Mumbai-400005.
3. The affidavit in support of the application is affirmed by Shri Durga Prasad Chanapati, Deputy General Manager, IDBI Bank Ltd. The Board Resolution dated 29.09.2022 authorizing Shri Durga Prasad Chanapati is annexed as Exhibit M.
4. Part II of the application reveals that the Corporate Debtor is West Coast Frozen Foods Pvt. Ltd. The Corporate Debtor was incorporated on 31.03.2005 with CIN: U15120GJ2005PTC095804. The registered office of the Corporate Debtor is situated at 322, 323, Orma, Olpad Saras Road, Olpad, Surat-394540.
5. The Applicant – Financial Creditor has named Mr. Ramchandra Dallaram Choudhary, Chartered Accountant having Registration No. IBBI/IPA/-001/P-00157/2017-18/10326 to act as Interim Resolution Professional (IRP). Form 2 has been filed along with Authorisation For Assignment (AFA). The AFA is valid til 15.11.2023.

6. Perusal of Part-IV indicates that Rs.24.48 Crores was granted to the Corporate Debtor in its capacity as a principal borrower. The sanction letter dated 29.08.2017 is placed as Exhibit-G-1.
7. The amount claimed to be in default is Rs. 36,22,62,899/- (Rupees Thirty-Six Crores Twenty-Two Lacs Sixty-Two Thousand, Eight Hundred and Eighty-Nine Only) as on 31.08.2022.
8. It is stated that the Corporate Debtor defaulted on 30.04.2019 for which Demand Notice was issued on 05.08.2019. The date of NPA is stated as 29.07.2019. Copy of statements of account as per Banker's Book Evidence Act is annexed at Exhibit-K.
9. The Financial Creditor is relying on the following documents:
 - i. *Deed of hypothecation executed on 22nd June, 2016 for the financial assistance given to WEST COAST FROZEN FOODS PVT. LTD*
 - ii. *Deed of Mortgage executed on 3rd October, 2016 for the financial assistance given to WEST COAST FROZEN FOODS PVT. LTD*
 - iii. *Index of Charges for registration charges.*
 - iv. *Deed of Index of Charges for registration of charges. Exh.F. Security owned by Corporate Debtor Estimated value of security Rs.82.31 Crores as on 20.10.2020.*
 - v. *NSEL Report*
 - vi. *Sanction letter 11th May, 2016*
 - vii. *Sanction Letter dated 29th August, 2017 and Letter of Intent dated 4th September, 2018.*
 - viii. *Letter dated 5th September*
 - ix. *Letter Acknowledging the Debt by the Respondent cum revival letter.*
 - x. *Demand Notice 5th August, 2019*

- xi. Balance Confirmation letter dated 29th April, 2019*
- xii. Deed of Hypothecation dated 22nd June, 2016*
- xiii. Company Master Data*
- xiv. Memorandum of Entry dated 3rd October, 2016*
- xv. Index of Charges for Registration of Mortgage Charges before the ROC*
- xvi. Revival Letter cum Loan Acknowledging the Debt by the Respondent dated 22/03/2019*
- xvii. Term Loan Agreement.*

- 10.** It is stated that the Corporate Debtor approached the Applicant-Bank for sanction of a Term Loan Facility of Rs.34.50 Crore. The Financial Creditor vide sanction letter dated 11.05.2016 sanctioned to the Corporate Debtor Term Loan Facility of Rs.34.50 Crores with a sub-limit of Rs.20 Crore of Letter of Credit facility.
- 11.** Based upon the representation of the Corporate Debtor modifications to the Term Loan were carried out vide sanction letter dated 09.08.216 whereby the last date of drawal and commercial operation date was shifted to 30.04.2017.
- 12.** It is stated that in order to secure the loan, the Corporate Debtor vide Registered Memorandum of Entry dated 03.10.2016 created the mortgage upon the immovable properties. Annexed at Exhibit-F are the copies of the Memorandum of Deposit of Title Deeds dated 03.10.2016.
- 13.** It is stated that at the request of the Corporate Debtor, the Applicant revised the last date of drawal to 30.09.2017 and the

commercial operation date to 31.12.2017 vide revised sanction letter dated 29.08.2017. The terms of the sanction were again revised on 04.09.2018.

- 14.** It is stated that the Term Loan Credit Facilities were availed by the Corporate Debtor and the same was disbursed by the Applicant, but the Corporate Debtor failed to service interest and instalment repayment in a timely manner and also failed to comply with the terms and conditions of the loan. The non-compliance was brought to the notice of the Corporate Debtor vide letter dated 04.09.2018.
- 15.** It is stated that the Corporate Debtor on 29.04.2019 executed a Balance Confirmation Letter in favour of the Applicant - Bank admitting its liability of Rs.22,26,32,149.95 which was as on 31.03.2019. The Balance Confirmation is annexed at Exhibit-H.
- 16.** The Applicant has attached the Balance Confirmation of the Corporate Debtor dated 31.03.2021 at Exhibit-I.
- 17.** The Financial Creditor submits that the Corporate Debtor has committed default and despite numerous demands has failed to honour its commitments so as to repay the interest payment and principal repayment, therefore, the account of the Corporate Debtor was classified as NPA on 29.07.2019 and Recall Notice dated 05.08.2019 was issued.

- 18.** The Applicant states that in spite of receipt of the legal notice dated 05.08.2019, the Corporate Debtor failed to repay the dues and, hence, the present application was filed.
- 19.** Reply was filed by the Corporate Debtor. It is stated that the Corporate Debtor is a Micro, Small and Medium Enterprise (MSME). It is stated that the Applicant has not extended the benefit of restructuring under the “Framework for Revival and Rehabilitation of MSME” to which guideline provided by the Reserve Bank of India.
- 20.** It is stated that the Corporate Debtor has various other lenders in the consortium to whom a proposal was made for restructuring which was never accepted by the Applicant.
- 21.** It is stated that the Corporate Debtor is in the business of frozen foods and has suffered one time loss by way of deterioration of inventory which remained in cold storage and the public sector insurer has forced the Corporate Debtor to approach the Consumer Redressal Forum. The application made to the Consumer Redressal Forum in this regard is still pending. Throughout the recovery of the claim, the entire dues of the Applicant and another company can be paid.
- 22.** It is stated that the Corporate Debtor is a solvent and running company and ultimately the Corporate Debtor has requested for restructuring of the dues in place of CIRP.

IA/728(AHM)2023

23. This application has been filed by West Coast Frozen Food Pvt. Ltd. under Section 60(5) of the IBC, 2016 r.w. Section 424 of the Companies Act, 2013 and Rule 11 of NCLT Rules, 2016 seeking the following reliefs:

- i. *Your Lordship may be pleased to allow the present Application;*
- ii. *Your Lordship may be pleased to dismiss CP(IB) No. 295 of 2022 considering overall financial health and viability of the Corporate Debtor to meet the ends of justice;*

OR

- iii. *Your Lordship may be pleased to keep CP(IB) No. 295 of 2022 in abeyance for twelve months or till the disposal of Consumer Complaint of 91 of 2020 and Consumer Complaint of 103 of 2020 pending before the District Consumer Disputes Redressal Commission, Mumbai, in the interest of justice*
- iv. *Your Lordship may be pleased to grant any other/ further relief(s) as may be deemed fit in the interest of justice.*

24. The main contention as stated in the application is that the Company is a running Company, the livelihood of several families is based out of the operations of the Company, the Company is paying several taxes etc. It is the contention of the Applicant that Consumer Complaints No. 91 of 2020 and 103 of 2020 are pending before the District Consumer Disputes Redressal Commission, Mumbai filed by the Corporate Debtor for an amount of Rs.1.83 Crores and Rs.61 Crores respectively

against National Insurance Company Ltd., Prudent Insurance Brokers Private Limited and Bank of Baroda and the same are pending for adjudication.

- 25.** It is the contention of the Applicant that the judgment of Hon'ble Supreme Court in the matter of *Vidarbha Industries Power Limited vs. Axis Bank Limited (Civil Appeal No. 4633 of 2021) dated 12.07.2022* to be considered especially para no. 88 which is reproduced below:

“88. The Adjudicating Authority (NCLT) has to consider the grounds made out by the Corporate Debtor against admission, on its own merits. For example when admission is opposed on the ground of existence of an award or a decree in favour of the Corporate Debtor, and the Awarded/decretal amount exceeds the amount of the debt, the Adjudicating Authority would have to exercise its discretion under Section 7(5)(a) of the IBC to keep the admission of the application of the Financial Creditor in abeyance, unless there is good reason not to do so.”

- 26.** The next contention of the Applicant is that a Resolution Plan/Reconstruction Plan with three lenders, being Bank of Baroda, Punjab National Bank, and the Applicant was presented on 26.07.2019. Thereafter, Joint Lenders Meeting (JLM) was conducted on various occasions, however, no decision was taken by JLM and the lenders.

27. It is stated that the Corporate Debtor is generating good revenue in the livelihood of the nearby villages etc., is based on the factory of the Corporate Debtor. The following judgments have been relied on by the Applicant:

- i. M/s. Agarwal Veneers V/s Fundtonic Service Pvt. Ltd.*
- ii. M/s. Symbol Vinimay Pvt. Ltd. V/s. Champa Impex Pvt. Ltd.*
- iii. Kotak Mahindra Bank Limited V/s. Kunal Structure (India) Pvt. Ltd.*
- iv. HDFC Bank Limited V/s. John Energy Limited*
- v. State Bank of India V/s Krishdhan Seeds Pvt. Ltd.*

28. Learned Counsel for the Respondent in IA No. 728 of 2023 & Applicant in CP(IB) No. 295 of 2022 has filed the compilation of various judgments of the Hon'ble Supreme Court and also Hon'ble NCLAT. Learned Counsel stressed upon the order of Hon'ble NCLAT in Company Appeal (AT)(Insolvency) No. 1526 & 1527 of 2022 decided by the Hon'ble NCLAT vide order dated 31.05.2023, more particularly, para 28 of the said order which records as under:

"..28. The Hon'ble Supreme Court in the case of M. Suresh Kumar Reddy Vs. Canara Bank & Ors. Civil Appeal No. 7121 of 2022 decided on 11.05.2023 has held that :

"13. Thus, it was clarified by the order in review that the decision in the case of Vidarbha Industries was in the setting of facts of the case before this court. Hence, the decision in the case of Vidarbha

Industries cannot be read and understood as taking a view which is contrary to the view taken in the cases of Innovative Industries and E.S. Krishnamurthy. The view taken in the case of Innovative Industries still holds good.”

29. Thus, in view of the aforesaid discussion, there is hardly any merit in these two appeals which do not require any interference and therefore, the present appeals are hereby dismissed, however, without any order as to costs.”

- 29.** We have heard the Learned Counsels for the Applicant in CP(IB) 295 of 2022 and Respondent in IA No. 728 of 2023 and also Learned Counsel for the Respondent in CP(IB) 295 of 2022 and Applicant in IA No. 728 of 2023. A perusal of the application reveals that the Applicant herein has sanctioned and disbursed Term Loan Facility to the Corporate Debtor and that debt is proved by the Statement of Accounts filed by the Applicant and the existence of charge on the site of the Ministry of Corporate Affairs. Nowhere the existence of debt is denied by the Corporate Debtor. So as to the existence of default, it is seen that the default occurred somewhere in the year 2019 when the account of the Corporate Debtor was declared as NPA on 29.07.2019. Immediately, thereafter, the Financial Creditor issued a Loan Recall Letter on 05.08.2019. The record of default with

Information Utility is on record and is placed at page no. 124 of the application.

- 30.** The Applicant has filed the balance sheet of the Corporate Debtor for the year ended on 31.03.2021. Note no. 8 of the said balance sheet which is at page no. 97 and 98 deal with other current liabilities. At page no. 97 it is recorded as under:

“Note: In view of the continuing default in payment of dues, certain lenders have sent notices/letters recalling their loans given and called upon the Company to pay entire dues and other liabilities.”

At page no. 98, there is an acknowledgement by the Corporate Debtor that *“Term Loan from IDBI Bank of Rs. 22,25,92,795/- (previous year 22,25,92,795/-) are secured by....”*.

A plain and simple reading of the same reveals that the Corporate Debtor has acknowledged the debt of the Financial Creditor in the balance sheet as late as 31.03.2021. Nowhere in said note no. 8, it is stated that there exists any dispute between the Financial Creditor and the Corporate Debtor. Learned Counsel for the Respondent could not establish that there exists any dispute between the parties so as to the loan disbursed by the Financial Creditor.

- 31.** As such, in our view, the Applicant herein has established that there is a debt which is more than Rs. One Crore and that there is a default relating to the said debt which is more than Rs. One Crore.

- 32.** The Counsel for the Respondent has placed a purshish dated 22.07.2023 filed under Dairy No. 2764 dated 24.07.2023. Along with purshish Learned Counsel has attached the e-mail dated 03.07.2023. A perusal of the e-mail reveals that a sum of Rs.46,00,000/- (Rupees Forty-Six Lakh Only) was remitted by the Respondent to Applicant through RTGS on 03.07.2023 towards upfront payment of 5% towards the One Time Settlement (“OTS”). This e-mail and payment conclusively establish the debt and default.
- 33.** As regards the contention of the Respondent that they are running a Company, we are of the view that IRP/RP can keep the Corporate Debtor as a going concern.
- 34.** As regards the averments made in reply and the IA No. 728 of 2023 regarding the pending Complaint No. 91 of 2020 and 103 of 2020, we observed that the claim of the Applicant was rejected by the Insurance Company. Against such rejection, complaint has been filed before the Consumer Disputes Redressal Form which is presently pending. The outcome of the complaint is contingent whereas the default is existing as on the date of this order. We are of the view that contingent receipt cannot be considered as a means to satisfy the present default.
- 35.** As regards the applicability of the judgment of Vidarbha Industries Power Limited vs. Axis Bank Limited (supra), we do

agree with the submissions made by the Counsel for the Applicant in the main CP i.e., CP(IB) 295 of 2022 who relied on observation in Company Appeal (AT) (Insolvency) No. 1526 & 1527 of 2022 decided by Hon'ble NCLAT (Supra) as such we do not agree with the contention of the Applicant in IA No. 728 of 2023. Accordingly, IA No. 728 of 2023 **is hereby dismissed with no order as to costs.**

36. A pursish was filed by the Respondent which is dated 13.09.2023 with a request to defer the pronouncement of order in CP(IB) No. 295 of 2022 till 27.09.2023. Along with said pursish Respondent has attached interim order of Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 1184 of 2023 dated 12.09.2023. The order is reproduced below:-

“As prayed by Learned Counsel for the Applicant, list the Appeal on 27.09.2023.”

From the above, it is clear to us that no stay has been granted by the Hon'ble NCLAT on the pronouncement of order in CP(IB) No. 295 of 2022.

37. In view of the above, we are of the view that there is a debt and default of more than Rs.1.00 Crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 7(2) of the Insolvency and

Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

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

- (i) The Corporate Debtor- **M/s. West Coast Frozen Foods Pvt. Ltd.** is admitted in CIRP under section 7 of the IBC, 2016.
- (ii) As a consequence thereof, the moratorium under Section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the IBC, 2016.
 - a. *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;*
 - 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
 - d. *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. 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 Debtor.*
- (iii) The order of moratorium shall have 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 Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.
- (iv) It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-sections (2) and (2A) of Section 14 of IBC, 2016.
- (v) The Financial Creditor has proposed the name of **Mr. Ramchandra Dallaram Choudhary**, Chartered Accountant having **Registration No. IBBI/IPA/-001/P-00157/2017-18/10326**, who is hereby appointed as IRP of Corporate Debtor, subject to the condition that no disciplinary proceedings are pending against him. Specific consent of

the IRP in Form 2 along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is filed, which is on record.

- (vi) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter or any other person associated with the management of the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (vii) This Adjudicating Authority directs the IRP to make a public announcement of the initiation of CIRP and call for the submission of claims under section 15 as required by section 13(1)(b) of the IBC, 2016.
- (viii) The IRP is expected to take full charge of the Corporate Debtor 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 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 Debtor.
- (x) The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the IBC, 2016
- (xi) The Financial Creditor is directed to pay an advance of **Rs.2,00,000/-** (Rupees Two Lac Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of CIRP and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per the Rules.

(xii) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order.

39. Accordingly, CP (IB) No. 295 of 2022 stands admitted and IA No. 728 of 2023 is dismissed accordingly. 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)**

Rajeev Kr. Sen/PS