



**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(IB) No. 127(PB)/2023

In the matter of:

IndusInd Bank Limited

...Financial Creditor/Applicant

Registered Office At:

2401. Gen., Thimmayaa Road
Pune-411001

Corporate Office At:

8th Floor, Hyatt Regency Complex,
New Tower, Block A, Bhikaji Cama Place,
New Delhi-110066

Versus

**M/s Fidere Facilities Management
Pvt. Ltd.**

...Corporate Debtor

Having Registered Office At:

74, Hemkunt Colony,
New Delhi -110048

Order pronounced on: 05.10.2023

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

CORAM:

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**



Appearances

For the Applicant/Financial Creditor : Adv. Usha Singh
For the Corporate Debtor : Adv. Niharika Gupta

ORDER

1. This is an Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by Applicant (FC) IndusInd Bank Limited to initiate Corporate Insolvency Resolution Process against Corporate Debtor (CD) namely **M/s Fidere Facilities Management Private Limited**. The total amount of debt due is Rs. **4,82,39,119.30/-** (Rupees Four crores Eighty two lakhs Thirty Nine Thousand one Hundred and Nineteen and 30 paisa only/-) calculated as on **31.12.2022**.
2. The Corporate Debtor ('CD) was incorporated under the Companies Act, 1956 having CIN: **U74140DL2010PTC205766**. Its registered office is at Hemkunt Colony, New Delhi-110048. The Authorized Share capital of CD is Rs 55,00,000/- and its paid-up share capital is Rs. 49,87,470/- . The CD is engaged in the business of providing facilities management and operation of various aspects of building or property to ensure smooth functioning and maintenance. CD provides range of services including but not limited to building maintenance, housekeeping and janitorial services, security and safety management, vendor management etc. for commercial buildings, residential complexes, industrial properties and institutional buildings.



**BRIEF SUBMISSIONS OF LEARNED COUNSEL APPEARING FOR THE
APPLICANT/FC ARE AS FOLLOWS:**

3. Applicant/ FC submitted that the Corporate debtor i.e. **M/s Fidere Facilities Management Private Limited** made a request to the Applicant /FC for sanctioning of the credit facility as part of Sole banking arrangement on mutually agreeable terms and conditions for a sum of Rs. 4 Crores. Pursuant to the request, FC sanctioned the facilities to the Corporate Debtor vide sanction letter dated 09.09.2016 in the nature of Overdraft for a sum of Rs. 4 crores for the purpose to meet temporary cash flow mismatches.
4. A Master General Terms Agreement is executed between the FC and CD stating various terms & conditions which is agreed between the parties. An Agreement for Overdraft Facility is also executed between the FC and CD. A Letter of Guarantee was also executed and signed by the guarantors namely Mr. Jaideep Singh Johar and Sumeet Johar.. An irrevocable Undertaking for Post-dated Cheques towards repayment of amount due to FC was also executed by the Corporate Debtor dated 27.09.2016.
5. On various occasions, on the request of CD, FC revised/modified/renewed the existing facilities. Below given is the list of all dates when the facilities were revised/modified/renewed:

Date	Particulars
11.08.2017	revised/modified/renewed the existing facility
14.02.2020	CD requested for renewal of credit facility of Rs. 4 crores
03.09.2020	FC sanctioned facility in form of Funded Interest Term



	Loan for a sum of Rs. 30 lakhs
07.10.2020	CD approached for availing credit facility by way of Working Term Loan (WCTL) of Rs. 80 lacs under Emergency Credit Line Guarantee Scheme Line (ECLGS) of National Credit Guarantee Trustee Company Limited.
08.10.2020	FC accepted the request and offer the CD a Guaranteed Emergency Credit Line (GECL) by way of additional Working Capital Term Loan vide pre approval letter
03.08.2022	At request of CD for renewal cum modification of Credit Limit of Rs. 4.63 crore,
03.08.2022	Facilities were renewed cum modified by FC vide sanction Letter

6. A letter of Acknowledgement of Debt was also issued by the CD in favour of the Financial Creditor whereby CD acknowledged the due amount of ₹ 3,79,80,916.51/- as on **31.10.2020**. For the record of Default, CIBIL Report of the Corporate Debtor is enclosed as **Annexure VII**. Other documents like Bankers's Certificate as per Banker's Books Evidence Act, Notice of default/Recall Notice are annexed as **Annexure VIII and IX** respectively.
7. On Account of continuous defaults for more than 90 days in the payment of installments by the Corporate Debtor, the account of Corporate Debtor was classified as NPA on **27.09.2022**. FC further submitted that that in view of the defaults committed by the CD and guarantors leading to violation of the terms of the Agreement,



undertakings, guarantees etc. the FC was constrained to issue a Loan recall notice dated 14.10.2022 thereby calling upon the Defendants/CD to pay to the FC.

BRIEF SUBMISSIONS ON BEHALF OF THE CORPORATE DEBTOR ARE AS FOLLOWS:

- 8.** The Corporate Debtor submits that to meet temporary cashflow mismatches in the Company, the CD requested an overdraft facility of Rs. 4 crores by way of the Master General Terms Agreement between FC and CD and thereafter executed Overdraft Facilities Agreement which was revised/modified/renewed on 11.08.2017 by FC/Applicant.
- 9.** CD further submits that as a provider of facilities management and operations services, the CD faced unprecedented financial difficulties during the COVID- 19 pandemic. The prolonged impact of the Pandemic has created significant challenges for the business including reduced demand and revenues, disruption in supply chain, escalated operational costs and cash flow constraints. As a result of the detrimental impact of COVID-19 Pandemic, the CD sought financial assistance from the FC in form of a Funded Interest Term Loan (FITL) amounting to Rs. 30,00,00/- (Rupees Thirty Lakhs only/-) on 03.09.2020. Cd further submitted that to avail the benefits of the Government of India's Emergency Credit Line Guarantee Scheme (ECLGS), The CD obtained a Guaranteed Emergency Credit Line (GECL) in the form of an additional Working Capital Term Loan (WCTL) from the Financial Creditor.
- 10.** CD further submitted that Applicant/FC abruptly recalled the loan amount due by issuing a default/recall notice dated **14.10.2022**



despite being aware that the Company is still recovering from the adverse effects of the Pandemic. CD further submits that Applicant filed an Application before this Adjudicating Authority to initiate CIRP without making attempts to amicably settle the due amount with CD.

- 11.** CD relied on the judgement of **Vidarbha Industries Power Limited versus Axis Bank Limited wherein Hon'ble Supreme Court Held that** – *“in case of a financial debt, there is a little more flexibility. The AA(NCLT) has been conferred the discretion to admit the application of the FC. If facts and circumstances so warrant, the AA can keep the admission in abeyance or even reject the Application, the FC is not denuded of the right to apply fresh for initiation of CIRP, if its dues continue to remain unpaid.*

It is categorically affirmed that the CD unequivocally acknowledges its liability and expresses a bonafide willingness to promptly repay the amount availed through credit facilities by the CD. Vide this instant reply, the CD seeks due time to repay the outstanding amount in tranches of payments and to amicably resolve the issue of default and repayment with the Financial Creditor.

ANALYSIS AND FINDINGS

- 12.** We heard the learned Counsels appearing for the Applicant and the Corporate Debtor and perused the record and examined the judgements relied upon by the Parties. On perusal of Loan Agreements, various request and sanction letters, securities documents, CIBIL record for record of default, Loan Recall Notice annexed with the Application and on perusal of the Reply of the CD specifically the acknowledgement of debt on part of CD and admission of its liability, it can be fairly ascertained that there is a debt payable by CD to Applicant. The CD was classified as NPA on **27.09.2022** and the date of



Recall Notice of Loan is **14.10.2022**. This Application was filed on **06.03.2023**, hence the Application is within the limitation period. A CIBIL Record has been submitted by FC as an Evidence of default. Therefore, the requirements of ‘Debt and Default’ envisaged under the code has been fulfilled. The plea of the CD that it is willing to pay without substantive proof of ability to service the debt cannot be countenanced. A mere statement undertaking to pay is of no avail.

- 13.** The reliance of the judgement of the Hon’ble Supreme Court taken by CD supra will not enure to the benefit of the CD as no good ground is made to rule in favour of the defaulting CD.
- 14.** Hence, for the aforesaid reasons, this is a fit case to admit CD into CIRP.

ORDER

- 1.** In light of the above facts and circumstances, it is hereby ordered as follows: -
 - i.** The Application bearing (IB)-127(PB)/2023 filed by the applicant under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating CIRP against the Corporate debtor i.e. **M/s Fidere Facilities Management Private Limited** is **ADMITTED**.
 - ii.** As a consequence of the Application being admitted in terms of Section 7 of the Code, the moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
 - iii.** The Financial Creditor has proposed the name of **Mr. Amit Goel**, registration number IBBI/IPA-001/IP-P-01842/2019-2020/12950, as the Interim Resolution Professional of the



Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 which is annexed as **Annexure-A-IV (page no. 41)** of the paper book. Accordingly, **Mr. Amit Goel**, Registration number IBBI/IPA-001/IP-P-01842/2019-2020/12950; Address: HNo. 9, Near Patel Institute of Engg, Adarsh Colony, Opp Bhawna Place Lane Devpuram, Muzaffarnagar, Uttar Pradesh- 125001; Email id ip.amitgoel@gmail.com is appointed as the Interim Resolution Professional (“IRP”). The appointed IRP is directed to submit his Authorization for Assignment (AFA) to this Adjudicating Authority within 5 working days.

- iv.** In pursuance of Section 13(2) of the Code, we direct the IRP to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- v.** During the CIRP period, the management of the CD shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no further opportunity given in this regard.
- vi.** The IRP is expected to take full charge of the CD’s assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.



- vii.** 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 CD.
- viii.** The FC shall deposit a sum of Rs 5,00,000/- (Rupees Five Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (“CoC”).
- ix.** The Registry is hereby directed to communicate a copy of the order to the FC, the CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today, and upload the same on website immediately after pronouncement of the order. The Registrar of Companies shall update his website by updating the status of the CD and specific mention regarding admission of this petition must be notified.
- 2.** The Registry is further directed to send the copy of the order to the IBBI also for their record.
- 3.** Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

-sd/-

(RAMALINGAM SUDHAKAR)

PRESIDENT

-sd/-

(AVINASH K. SRIVASTAVA)

MEMBER (TECHNICAL)