



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.635/MB-IV/2023

Under Section 7 of the IBC, 2016

In the matter of

THE SOUTH INDIAN BANK
LIMITED.

PAN: AABCT0022F

[CIN: L65191KL1929PLC001017]

...Financial Creditor

v/s.

INDOUNIQUE FLAME LTD.

[CIN: U23201MH1987PLC044597]

...Corporate Debtor

Order Delivered on: 11.01.2024.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor:

Mr. Shyam Kapadia a/w. Ms.
Malvika Sachin, Mr. Abdullah
Qureshi i/b Indian Law LLP, Ld.
Counsel.



For the Corporate Debtor:

Mr. Ashish Pyasi a/w Mr. Avinash
Khanolkar and Ms. Kavita Singh, Ld.
Counsel.

ORDER

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by The South Indian Bank Limited (“Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Indounique Flame Ltd., the Corporate Debtor.

1.1 The petition is filed on 14.07.2023 and the total outstanding amount of Rs. 11,70,97,492.35/- in default as on as on 03.07.2023. The date of default as specified in Part IV of the Petition is 14.05.2021 to which the Financial Creditor submits that the date of default in the present petition has been taken in accordance with the prevailing judgements passed by the Hon’ble NCLAT. That more recently in *Indiabulls Housing Finance Limited v. Revival Realty Private Limited (Company Appeal (AT) (Insolvency) No. 994 of 2022)* the Hon’ble NCLAT upheld the lender’s categorization of the date on which entire loan facilities fell due as per terms of loan recall notice to be a valid date of default, though the “first” default as per the repayment terms had taken place much earlier in time. The NESL certificate is placed on record which states that the details of default before the Information Utility (NeSL) with respect to the principal dues and the default submitted on 22.05.2023 was “AUTHENTICATED” in Colour Code: GREEN on 12.06.2023.



Submissions of the Financial Creditor:

2. The Financial Creditor submits that, the Cash Credit (CCOL) facility, taken-over from ICIC Bank, was sanctioned for working capital requirements of the Corporate Debtor by the Applicant/Financial Creditor, initially vide Sanction Letter 28.09.2017 and subsequently renewed vide Sanction Letters dated 05.01.2019 and 15.05.2020.

2.1. The Funded Interest Term Loan (FITL) facility was sanctioned vide Sanction Letter dated 03.09.2020 in terms of the 'COVID-19 Regulatory Package' under Circular dated 23.05.2020 (DOR.No.BP.BC.71/21.04.048/2019-20) floated by RBI in wake of COVID-19 Pandemic, for rescheduling of Working Capital limits by converting the accumulated interest into a FITL in terms and conditioned mentioned in the Sanction of Credit Facilities dated 03.09.2020.

2.2. Thereafter, the ECLGS facility was sanctioned vide Letter dated 07.12.2020 under the "Emergency Credit Line Guarantee Scheme" for MSMEs floated by the Government of India during the wake of COVID-19. However, the Corporate Debtor failed to maintain financial discipline since the instalments under the FITL facility was not paid as per agreed sanction terms, and since the CCOL facility remained continuously overdrawn for over ninety days, the Financial Creditor was constrained to classify the account of Corporate Debtor as NPA on 01.05.2021 in terms of the applicable RBI Master Circular - Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances.



2.3. The Financial Creditor sent Recall Notice dated 14.05.2021, whereby all the three sanctioned facilities were recalled. By virtue of the said Recall Notice, the Corporate Debtor and Guarantors thereof were required to immediately repay total outstanding amount of Rs.8,88,84,128.83/- due as on 13.05.2021 along with further applicable interest as specified in agreements thereon from 15.05.2021 till full and final payment. Thereby the date of the Recall Notice i.e., 14.05.2021, is the date on which the Financial Creditor demanded repayment of loans and interest thereof under the sanctioned facilities.

2.4. That subsequently the Financial Creditor issued Statutory Demand Notice dated 09.07.2021 under section 13(2) of SARFAESI Act to the Corporate Debtor demanding outstanding dues.

2.5. The Corporate Debtor has admitted its liability in respect of dues payable to the Financial Creditor in the One Time Settlement (OTS) proposal vide letter dated 20.10.2022, which was rejected by the Financial Creditor vide its reply dated 01.11.2022.

2.6. Since no payments were made by the Corporate Debtor despite repeated reminders, the Financial Creditor was constrained to approach this tribunal.

Submissions of the Corporate Debtor:

3. The Corporate Debtor submits that, the Petitioner has not explained as to how the date of default is 14.05.2021 when the date of NPA 01.05.2021 Further, the Petitioner has not explained as to how the date of default is 01.05.2021 in



the NESL report when it is insisting for date of default in petition is 14.05.2021.

3.1. Petition is hit by Sec 10A and there is change in date of default;

3.2. Specific Authority to initiate Insolvency proceedings against the Corporate Debtor;

That time and again through various Judgements/Orders passed by this Hon'ble Tribunal and/ or by the Appellate Authority and/or by the Apex Court, the position of Law is made clear that to initiate an Insolvency Proceedings against any Corporate Debtor there should be a specific authority to that effect. However, if we peruse the Power of Attorney claimed to be Authority for filing the present Petition then it can be seen that the said document provides for general powers to the signatory and nowhere provide any specific authority to initiate Insolvency Proceedings against the Respondent and therefore same deserves to be dismissed (NCLT coordinate bench in CP (IB) 2161/MB/2019 in the matter of *M/s. Rushabh Civil Contractors Private Limited versus Centrio Lifespaces Limited on specific issue of authority* this judgment was also later upheld by the Hon'ble NCLAT.

3.3. Fair chance of Revival;

3.4. ECLGS facility misappropriated;

The Petitioner granted the ECLGS facility provided by the Govt. and illegally utilized the same towards its own dues instead of business purpose. Further, the Bank Statements also reflects that the Respondent had over drawn the sanctioned limit on 30.09.2020. By considering this fact, the date of default should be 30.09.2020 and 90 days from this date

the Respondent's account held with the Petitioner would have been become NPA on 29.12.2020 which will be again fall under the provisions of S. 10A of the Code.

4. The Corporate Debtor further submits that, none of the settlement offers are considered by the Petitioner and the Respondent is not being granted a fair chance for revival. Further, it is submitted that the petition is incomplete and defective therefore same cannot be admitted.

Findings:

5. We have heard the arguments of Learned Counsel for Financial Creditor and the Corporate Debtor.

5.1. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a “debt” owed to the Financial Creditor and whether there is a “default” with respect to such debt.

5.2. Based on the documents placed on record it is clearly evident, that the Corporate Debtor acknowledged its liability in respect of dues payable to the Financial Creditor in the One Time Settlement (OTS) proposal vide letter dated 20.10.2022, and admittedly the Corporate Debtor has utilized the said facilities/loan and failed to repay the same despite of several demands. Further in the facts and circumstances as set out, it is clear that the Corporate Debtor is unable to pay off its debts arising in the usual and ordinary course of its business and is in default of the amount claimed in the petition. This tribunal is of the considered view that the OTS proposal falls within the definition of the ambit of ‘acknowledgement of debt’.



- 5.3. Further after going through the material on record we have considered the submissions of the Corporate Debtor wherein he has stated mainly 2 objections: that as he had over drawn the sanctioned limit on 30.09.2020, the date of default should be 30.09.2020 and the date of default as specified in Part IV of the Petition is 14.05.2021. We have found that the Financial Creditor has already clarified this point as stated *supra*. Secondly, the date of default (which the Corporate Debtor claims should have been 90 days prior) is to be decided as per terms of the Sanction/Renewal of CCOL. As per Sanction/Renewal of CCOL dated 28.09.2017 date of default will occur as per the repayment terms *on demand* and not on any fixed period. The Financial Creditor raised the demand on 14.05.2021 which is the recall notice date. The contentions/objections have no bearing as debt and default is established therefore, this bench finds no merits in the contentions of the Corporate Debtor.
- 5.4. As per the material on record, this bench finds that, it is not in dispute that the Applicant/Financial creditor has disbursed the loan to Corporate Debtor. As per the repayment terms the said loan was to be paid by the Corporate Debtor on demand by the Financial Creditor. On the basis of the facts, it is observed that, the Corporate Debtor was under an obligation to repay the outstanding amount on demand to the Financial Creditor. It is not in dispute that the Corporate Debtor has defaulted in payment of these loans.
6. The contentions/objections of the Corporate Debtor regarding the ECLGS facility misappropriated and Specific Authority to initiate Insolvency proceedings against the Corporate Debtor have no bearing as debt and default



is established as discussed *supra* therefore, this bench finds no merits in the contentions of the Corporate Debtor.

7. Considering the facts placed before us and the fact that, the Corporate Debtor owes the Financial Debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process to be initiated in the matter of the Corporate Debtor. The petition is complete in all aspect. Since, the debt and default exist, and the present petition is filed within limitation therefore this bench is of the view, that the present case deserves to be admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016.

ORDER

6. The Petition bearing CP (IB) No.635/MB-IV/2023 filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by The South Indian Bank Limited (“Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Indounique Flame Ltd., the Corporate Debtor is **Admitted**.

- a) There shall be a moratorium under section 14 of the IBC, in regard to the following:

- (i) 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;
- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(iii) 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 (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium, -

(v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

(vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



- (f) The bench hereby appoints **Mrs. Megha Agrawal**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-001/IP-P-01456/2018 - 2019/12272** and email- **ip.meghaagrwal@gmail.com**. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- (i) In view of the submission of the financial creditor that there are no assets left with the Corporate Debtor, the IRP is directed to satisfy himself about this assertion and proceed to take appropriate steps accordingly.



- (j) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (k) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
11.01.2024.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)