

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 202
(IB)-510/ND/2023

IN THE MATTER OF:
BCL Interprises Ltd.

... **Applicant/Petitioner**

Versus

KLM Holdings Pvt. Ltd.

... **Respondent**

Under Section: 7 of IBC, 2016

Order delivered on 06.12.2023

CORAM:

SH. ASHOK KUMAR BHARDWAJ,
HON'BLE MEMBER (J)

SH. L. N. GUPTA,
HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Shaurya Bhatnagar

For the Respondent : Adv. Srishti Aggarwal, Adv. Mridul Thakur, Adv.
Ishann Dhingra

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

Heard the Ld. Counsels for the parties. The only defence espoused by the Ld. Counsel for the CD is that the original date of default was 04.06.2023, but the FC itself granted the opportunity to CD to repay the loan amount, thus, the date of default was shifted to 04.07.2023. According to her, the present proceedings could not be instituted till the declaration of the account of the CD as NPA, which in terms of the RBI guidelines could be declared only on expiry of three months from the date of default i.e., 04.10.2023 in the present matter.

Indubitably, the FC disbursed the loan to the extent of an amount of Rs. 1,10,00,000/- (Rupees One Crore Ten Lakhs) to the CD. Ld. Counsel could draw our attention to the statement of bank accounts of the FC in this regard which is placed on record as Annexure (page Nos. 81-82) to the application. The relevant excerpt of the statement reads thus:

Date	Reference Number	Narration	Withdrawal	Deposit	Closing Balance
21-02-2023	DIG2023022121012780700003	RTGS Dr-KVBL0003102-Panchratn Mercantile Pvt Ltd-HEAD OFFICE-ESFBR52023022153140852-1	20,00,000.00	*	87,081.23
23-02-2023	32822202302231000100468670	RTGS Cr-HDFC0000923-ZENITH PORTFOLIO PVT LTD-BCL ENTERPRISES LTD-HDFCR52023022385272330	*	25,00,000.00	25,87,081.23
23-02-2023	DIG2023022316161805600000	RTGS Dr-KVBL0003102-Panchratn Mercantile Pvt Ltd-HEAD OFFICE-ESFBR52023022353157774-1	22,00,000.00	*	3,87,081.23
27-02-2023	DIG2023022716261053400000	NEFT Dr-N058230017798812-kishore kargeti -DCBL0000046-HEAD OFFICE-1	719.00	*	3,86,362.23
27-02-2023	DIG2023022717305165100003	RTGS Dr-HDFC0000271-win over cancer-HEAD OFFICE-ESFBR52023022753196913-1	3,00,000.00	*	86,362.23
28-02-2023	DIG2023022812274007300000	NEFT Dr-N059230017828076-Modern Advertising-MAHB0000905-HEAD OFFICE-1	8,355.00	*	78,007.23
28-02-2023	DIG2023022812313512400003	NEFT Dr-N059230017828101-kishore kargeti -DCBL0000046-HEAD OFFICE-1	163.00	*	77,844.23
28-02-2023	32822202302281000100661243	RTGS Cr-HDFC0000923-ZENITH PORTFOLIO PVT LTD-bcl enterprises ltd-HDFCR52023022886584572	*	50,00,000.00	50,77,844.23
28-02-2023	DIG2023022818170996200000	RTGS Dr-IBKL0000163-K.L.M. Holdings Pvt Ltd-HEAD OFFICE-ESFBR52023022853209105-1	50,00,000.00	*	77,844.23
01-03-2023	32822202303011000600686667	RTGS Cr-HDFC0000923-ZENITH PORTFOLIO PVT LTD-BCL ENTERPRISES LTD-HDFCR52023030186717970	*	10,00,000.00	10,77,844.23
01-03-2023	DIG2023030112024364200001	RTGS Dr-ICIC0000911-MANGALAM EDU GATE-HEAD OFFICE-ESFBR52023030153214646-1	9,00,000.00	*	1,77,844.23

Date	Reference Number	Narration	Withdrawal	Deposit	Closing Balance
01-03-2023	32822202303011000600 691740	RTGS Cr-CNRB0002007- AIRCON ENGINEERS PVT . LTD.-BCL ENTERPRIS ES LTD- CNRBR52023030 150411429	-	20,15,000.00	21,92,844.23
01-03-2023	DIG20230301140830588 00000	RTGS Dr-IBKL0000163- K L M Holdings Pvt Ltd-HEAD OFFICE-ESFB R52023030153216407-1	20,00,000.00	-	1,92,844.23
01-03-2023	32822202303011000600 700867	RTGS Cr-HDFC0000923- ZENITH PORTFOLIO PVT LTD-bcl enterprises Ltd-HDFCR5202303018 6933497	-	40,00,000.00	41,92,844.23
01-03-2023	DIG20230301175724554 00003	RTGS Dr-KVBL0003102- Panchraton Mercantil e Pvt Ltd-HEAD OFFIC E-ESFBR5202303015321 8800-1	21,00,000.00	-	20,92,844.23
01-03-2023	DIG20230301175845290 00000	RTGS Dr-KVBL0003102- Panchraton Mercantil e Pvt Ltd-HEAD OFFIC E-ESFBR5202303015321 8807-1	14,00,000.00	-	6,92,844.23
01-03-2023	DIG20230301180016434 00000	RTGS Dr-IBKL0000163- K L M Holdings Pvt Ltd-HEAD OFFICE-ESFB R52023030153218843-1	6,00,000.00	-	92,844.23
03-03-2023	DIG20230302224024542 00004	NEFT Dr-N06223001788 2024-kishore kargeti -DCBL0000046-HEAD OF FICE-1	32,500.00	-	60,344.23
03-03-2023	DIG20230303141038626 00004	NEFT Dr-N06223001788 4665-rakesh-BARBONEW ROI-HEAD OFFICE-1	14,000.00	-	46,344.23
04-03-2023	DIG20230304115422705 00002	NEFT Dr-N06323001789 9568-grover ahuja an d associates-HDFC000 0134-HEAD OFFICE-1	2,000.00	-	44,344.23
04-03-2023	32822202303040005008 23342	RTGS Cr-HDFC0000923- ZENITH PORTFOLIO PVT LTD-BCL ENTERPRISES -HDFCR52023030487836 428	-	35,00,000.00	35,44,344.23
04-03-2023	DIG20230304171914842 00004	RTGS Dr-IBKL0000163- K L M Holdings Pvt Ltd-HEAD OFFICE-ESFB R52023030453251970-1	34,00,000.00	-	1,44,344.23
13-03-2023	DIG20230310183745601 00001	NEFT Dr-N07223001803 9358-kishore kargeti -DCBL0000046-HEAD OF FICE-1	611.80	-	1,43,732.43

From the aforementioned bank statement, it is clear that there is a disbursement of a loan by the FC to the CD. As can be seen from part IV of the petition, the CD committed default in repaying the loan on 04.06.2023. The Part-IV of the petition reads thus:

Part - IV

**PARTICULARS OF
FINANCIAL DEBT**

1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	<p>1. The Corporate Debtor is a Body Corporate, who has applied for Loan through loan form dated 27.02.2023 and the Financial Creditor i.e., BCL ENTERPRISES LIMITED has sanctioned Rs. 1,10,00,000/- (Rupees One Crore Ten Lakh Only). The sanctioned amount is disbursed on the following date mentioned below, with respect to the loan application of the Corporate Debtor.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">S.No</th> <th style="width: 20%;">Amount (In Rs)</th> <th style="width: 20%;">Date of Disbursal</th> <th style="width: 50%;">RTGS No</th> </tr> </thead> <tbody> <tr> <td align="center">1</td> <td align="center">50,00,000</td> <td align="center">28.02.2023</td> <td align="center">ESFBR520230 22853209105- 1</td> </tr> <tr> <td align="center">2</td> <td align="center">20,00,000</td> <td align="center">01.03.2023</td> <td align="center">ESFBR520230 30153216407- 1</td> </tr> <tr> <td align="center">3</td> <td align="center">6,00,000</td> <td align="center">01.03.2023</td> <td align="center">ESFBR520230 30153218843- 1</td> </tr> <tr> <td align="center">4</td> <td align="center">34,00,000</td> <td align="center">04.03.2023</td> <td align="center">ESFBR520230</td> </tr> </tbody> </table>	S.No	Amount (In Rs)	Date of Disbursal	RTGS No	1	50,00,000	28.02.2023	ESFBR520230 22853209105- 1	2	20,00,000	01.03.2023	ESFBR520230 30153216407- 1	3	6,00,000	01.03.2023	ESFBR520230 30153218843- 1	4	34,00,000	04.03.2023	ESFBR520230
S.No	Amount (In Rs)	Date of Disbursal	RTGS No																			
1	50,00,000	28.02.2023	ESFBR520230 22853209105- 1																			
2	20,00,000	01.03.2023	ESFBR520230 30153216407- 1																			
3	6,00,000	01.03.2023	ESFBR520230 30153218843- 1																			
4	34,00,000	04.03.2023	ESFBR520230																			

			30453251970- 1
	1,10,00,000	TOTAL	

2. The Financial Creditor has paid an amount of Rs. 1,10,00,000 /- (Rupees One Crore Ten Lakh Only) to the Corporate Debtor, as Loan repayable on Demand, on terms and conditions as contained in the Loan Agreement dated 04.03.2023 at an interest rate of 12 % p.a. and a penal interest of @ 0.5% per month, chargeable from the date of disbursement of loan to the Corporate Debtor.

3. The Corporate Debtor understands and agrees that he will be liable to pay interest on the Loan amount of Rs. 1,10,00,000/- (Rupees One Crore Ten Lakh Only) at the rate of 12 % p.a. and a penal interest of @ 0.5% per month on late payment, which will be charged by the Financial Creditor on the total loan amount.

4. The Corporate Debtor undertakes to pay back the loan amount along with interest at the rate mentioned hereinabove on expiry of 3 months from the date of credit of the entire loan amount to the borrower's account, i.e. on 04.06.2023.

5. It is been agreed and understood by the Corporate Debtor that Penal Interest @0.5% p.m will be charged in case of late repayment of loan along with interest.

6. That as there was a default in repayment of the said facilities, the amount of the Corporate Debtor has been declared as a Non-Performing Asset with the effect from 04.07.2023 in accordance with the directions or guidelines issued by the Reserve Bank of India. Accordingly, on 04.07.2023 the total amount due and payable by the Corporate Debtor to the

		<p>Financial Creditor was Rs. 1,14,52,840/- (Rupees One Crore Fourteen Lakhs Fifty-Two Thousand Eight Hundred Forty Only)</p> <p>7. That Corporate Debtor again approached the Financial Creditor and made a request to extend the loan repayment term by 1 month. The said request of Corporate Debtor has been accepted by the Financial Creditor on the representations and warranties of the Corporate Debtor that no further extension will be asked for by the Corporate Debtor or allowed by the Financial Creditor.</p> <p>8. To make the terms legally enforceable, Loan Extension Agreement Dated 08.06.2023 has been executed between Financial Creditor and Corporate Debtor wherein Financial Creditor made Corporate Debtor understood that this extension is a one-time extension and if the loan is not repaid in full within such extended period, the Corporate Debtor will have the right to use all remedies under law to recover the loan amount along with the interest thereof, at the sole cost of the Corporate Debtor.</p> <p>9. Therefore, on the basis of the above-mentioned understanding, Financial Creditor agreed to extend the maturity due date for repayment of loan by 1 month i.e., from 04.06.2023 to 04.07.2023.</p> <p>10. However, no payment was made by the corporate debtor, therefore as on 04.07.2023 the total amount due and payable by the Corporate Debtor to the Financial Creditor was Rs. 1,14,52,840/- (Rupees One Crore Fourteen Lakhs Fifty-Two Thousand Eight Hundred Forty Only).</p>
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2.	<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</p>	<p>The Default of Rs. 1,14,52,840/- (Rupees One Crore Fourteen Lakhs Fifty-Two Thousand Eight Hundred Forty Only) comprising of Financial Debt amounting to Rs. 1,10,00,000/- (Rupees One Crore Ten Lakhs Only) and interest of Rs.4,52,840/- calculated @ 12% per annum from the due date of payment of the financial debt upto 04.07.2023.</p> <p>Date on which the default occurred-04.07.2023</p> <p>That it is submitted that the present application is well within the limitation period.</p> <p>Working for computation of Amount and days of default in tabular form is enclosed as <u>ANNEXURE- D</u></p>
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Ld. Counsel appearing for the CD did not dispute the disbursement of the loan amount as also the date of default. These are two factors that we need to verify and satisfy us about while taking a decision regarding admission of a petition filed under Section 7 of the IBC, 2016. As has been noted above the only contention raised on behalf of the CD is that the date of default was originally 04.06.2023, but on account of the extension of the same by one month by the FC, it could shift to 04.07.2023 and before the expiry of three months, the account of the CD could not have been declared as NPA and when the account was not NPA till the date of filing of the present petition, the petition is not maintainable. As can be seen from Section 7 of the IBC, 2016, it does not take note of the date of NPA. What the Tribunal needs to satisfy itself about is that there was disbursement of loan and the same is defaulted to be paid by the CD. Two conditions are admittedly satisfied in the present case. In para 2 & 3 of the reply, the CD has categorically admitted the disbursement of the loan. The paras reads thus:

- “2. That the Corporate Debtor had availed loan facility from the Financial Creditor to utilize the funds for investment purposes. The Corporate Debtor, through loan from dated 27.02.2023, applied for the loan and the Financial Creditor sanctioned Rs. 1,10,00,000/- (Rupees One Crore Ten Lakh Only) as loan to the corporate debtor.*
- 3. That due to unforeseen circumstances, the investments on which the CD used the loan amount did not fructify and hence on 04.06.2023, the date when the loan repayment became due, the CD requested the FC to grant 1 month’s extension for repayment of the loan. The said request of the Corporate Debtor was accepted by the Financial Creditor.”*

In the wake of the above, we are left with no option but to admit the present petition and in view of the provisions of Section 7 (6) of IBC, 2016, the CIRP qua the CD stands commenced. **Ordered accordingly.**

In the wake, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD and as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

- (a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization 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 Respondent.

As proposed by the Petitioner, Mr. Kamal Ahuja, having Registration No. IBBI/IPA-002/IP-N01025/2020-2021/13389 (e-mail id: kamal.ahuja@corporateconsultant.in) Mobile No. 9811259140 is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against him and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. It is further ordered that Mr. Kamal Ahuja, IRP (Registration No. IBBI/IPA-002/IP-N01025/ 2020-2021/13389) shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.

The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

The Ld. Counsel for the parties categorically submitted that there is no relationship except that of the borrower and lender between them and the present petition is not a collusive petition. **The petition stands disposed of.**

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

