



NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I)

CP (IB) 108/CHD/PB/2019 & IA No. 846/2023

IN THE MATTER OF:

CORPORATION BANK (Now Union Bank of India)
Through its Assistant General Manager,

Sh K. N. Narasimha
Mangladevi Temple Road, Pandeshwar,
Mangalore- 575001

...Applicant/Financial Creditor

Versus

JINDAL SPECIALITY TEXTILE LTD.

Mandiala Kalan, P.O. Bija, Tehsil Khanna,
Ludhiana, Punjab- 141412

...Respondent

And in the matter of IA No. 846/2023

JM Financial Asset Reconstuction Company Ltd

(Acting in its capacity as a Trustee of JMFARC –
PNB March 2017- Trust & JMFARC- Allahabad
Bank Textile June 2017 Trust)
7th Floor, Cnergy, Appasaheb Marathe Marg,
Prabhadevi, Mumbai- 400025

...Applicant/ Intervenor

Versus

1. Corporation Bank, (Now Union Bank of India)

Premises #5, New Lajpat Nagar,
Pakhawal Road, Ludhiana- 141001

2. Jindal Specialty Textile Ltd.

Mandiala Kalan, P.O. Bija, Tehsil Khanna,
Ludhiana, Punjab- 141412

Order Delivered on : 07.05.2024

SECTION: Section 7 & 60 (5) of IBC 2016



CORAM:

SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (J)

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

PRESENT:

For the Applicant : Mr. Yashpal Gupta, Advocate

For the Respondent : Mr. Aalok Jagga & Mr. APS Madaan, Advocates

For the Intervener in : Mr. Manish Jain & Ms. Divya Sharma, Advocates
IA No. 846/2023

ORDER

PER: SH. L. N. GUPTA, M(T) & SH. HARNAM SINGH THAKUR, M(J)

Corporation Bank, now Union Bank of India (for brevity, the “**Applicant**”) has filed the present application 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 with a prayer to initiate the Corporate Insolvency process against Jindal Specialty Textile Limited (for brevity, the “**Respondent**”).

2. The Respondent namely, Jindal Specialty Textile Limited is a Company incorporated on 27.05.2008 under the provisions of the Companies Act, 1956 with CIN U17100PB2008PLC031968 having its registered office at Mandiala Kalan, P.O. Bija, Tehsil Khanna, Ludhiana, Punjab- 141412, which is within the territorial jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs. 5,00,00,000/-, and the Paid-up Share Capital is Rs.4,95,00,000/-, as per the Master Data annexed with the application.



3. It is averred by the Applicant in the application that the total debt granted/ disbursed to the Respondent amounts to Rs. 28,10,00,000/-, the details of which are mentioned below:

- i. Initially, overall financial facilities to the tune of Rs. 20,00,00,000/- were sanctioned 03-01-2010 and disbursed on 14-01-2010 in the form of Term Loan;
- ii. Subsequently, the account was restructured on 27-09-2012 and another account was created as FITL (Funded Interest Term Loan) of Rs. 2,06,00,000 and thereby, it became Rs. 22,06,00,000/-. Overdraft facility against Bill Discounting of Rs 4.50 Crore.
- iii. As the account was not performing, the same was again restructured on the request of the Respondent on 28-12-2013 and thereby the FITL was reduced to 1,85,00,000/-from earlier of Rs. 2,06,00,000/- and a Cash Credit Limit was added to the tune of Rs. 2,00,00,000/-, and also Inland/Import Letter of Credit of Rs. 2,00,00,000/-. Thereby, as on 28-12-2013, the total amount disbursed came to Rs. 25,85,00,000/ -.
- iv. Again on 30-06-2014, a fresh Letter of Credit (LC) was given and Rs. 2,25,00,000/- were credited.

4. The detailed particulars of the unpaid Financial Debt including the total amount of default and the date of default as claimed by the applicant are mentioned in Part IV of the application, which reads thus:



Part - IV

PARTICULARS OF FINANCIAL DEBT

1. TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	
	<ul style="list-style-type: none"> - Rs. 28,10,00,000/- (Rupees Twenty Eight Crores and Ten Lakhs only).
<p>(Term loan) → CSI ———</p>	<ul style="list-style-type: none"> - Initially overall financial facilities to the tune of Rs. 20,00,00,000 (Rupees Twenty Crores) were sanctioned 03-01-2010 and disbursed on 14-01-2010 in the form of Term Loan.
<p>FITL ———</p>	<ul style="list-style-type: none"> - Subsequently it was <u>restructured</u> on 27-09-2012 therefore another account was created as FITL (Funded Interest Term Loan) of Rs. 2,06,00,000 (Rupees Two Crores and Six Lakhs) and thereby it became Rs. 22,06,00,000 (Rupees Twenty Two Crores and Six Lakhs).
<p>CCL ———</p>	<ul style="list-style-type: none"> - Again the account ^{was} not performing and the same was once again <u>restructured</u> on the request of the Corporate Debtor on 28-12-2013 and thereby the FITL was reduced to 1,85,00,000/- (Rupees One Crore Eighty Five Lakhs) from earlier of Rs. 2,06,00,000 (Rupees Two Crores and Six Lakhs) and a <u>Cash Credit Limit</u> was added to the tune of Rs. 2,00,00,000/-



<p>LC → (4)</p> <p>LC → (5)</p>	<p>(Rupees Two Crores) and also Inland/Import Letter of Credit of Rs. 2,00,00,000/- (Rupees Two Crores). Thereby as on 28-12-2013, the total amount disbursed came to Rs. 25,85,00,000/- (Rupees Twenty Five Crores and Eighty Five Lakhs).</p> <p>- Again on 30-06-2014, afresh Letter of Credit (LC) was given and credited of Rupees 2,25,00,000/- (Rupees Two Crores and Twenty Five Lakhs).</p> <p>- Therefore, the amount of debt granted and disbursed to the Corporate Debtor in total is Rupees 28,10,00,000/- (Rupees Twenty Eight Crores and Ten Lakhs only).</p>
<p>2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED</p> <p>(ATTACHED THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</p>	<p>- Total amount claimed to be in default is Rs. 52,21,54,637/- (Rupees Fifty Two Crores Twenty One Lakhs Fifty Four Thousand Six Hundred and Thirty Seven);</p> <p>- which includes Rs. 28,10,00,000/- (Rupees Twenty Eight Crores and Ten Lakhs only) of the Principal Amount and Rs. 24,11,54,637/- (Rupees Twenty Four Crores Eleven Lakhs Fifty Four Thousand Six Hundred and Thirty Seven only) Interest as on 17-02-</p>



	<p>2019.</p> <p>Date of default is 29-04-2012 and thereafter the loan was restructured on 27-09-2012 NPA date is 30-09-2014.</p> <p>Workings for computation are attached in tabular form as <u>Annexure A-4</u> at Page- 37-39</p>
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5. Thus, as per Part IV of the application (ibid), the Applicant has claimed an outstanding “financial debt” of Rs. 52,21,54,637/- and relied on 29.04.2012 as the “date of default”. The Applicant has also stated that thereafter, the loan was restructured on 27.09.2012. Further, on account of default, the Account of the Respondent Company was classified as NPA on 30.09.2014, and thereafter, on 14.11.2014, the Applicant Bank issued the notice under Section 13(2) of SARFAESI Act, calling upon the respondent and other obligors to pay the defaulted amount.

6. To buttress its plea, the Applicant has relied on the following documents:

(i) Credit Sanction Letters dated 03.01.2010, 27.09.2012, 28.12.2013, 30.06.2014;

(ii) Agreement for Term Loan dated 14.01.2010 and 27.09.2012;

(iii) Copy of Demand Promissory Note dated 14.01.2010 and 31.12.2013 (page 143-144);

(iv) Notice under Section 13(2) SARFAESI dated 14.11.2014;

(vii) Acknowledgment of Debt by the Respondent dated 23.02.2015.

(v) Recovery Certificate issued by the DRT-III, Chandigarh in OA No. 2629 of 2017;

(vi) CIBIL report of the Respondent (page 536-672);

7. Based on abovesaid facts and the documents (ibid), the Applicant has prayed for the initiation of CIRP against the Respondent company.

8. On issuance of the notice, the Respondent filed its reply dated 29.11.2019 and subsequently, Written Submissions dated 16.04.2024 contending mainly the following:



8.1 The present CP is barred by limitation. The applicant has placed on record, a recovery certificate of DRT dated 24.10.2017 and the date of filing is stated to be 11.03.2019. Therefore, correct date of default is required to be determined to examine the argument regarding limitation. There cannot be two dates of default. On Page 12, the date of default is 29.04.2012, whereas on page 39, the date of default is 01.07.2014 and NPA date is 30.09.2014. The petition does not disclose which is the correct date of default.

8.2 The Power of Attorney dated 01.03.2001 attached with the petition, with which the Bank contends that the signatory has the power to act on behalf of the Bank, was prepared in 2001 whereas the IBC into existence in Dec. 2016.

8.3 The Bank has not taken consent of the other members of the Consortium. Vide Email dated 25.09.2018, sent by Head Office-IBC of Corporation Bank to their Branch, it is mentioned that the competent authority in the Credit Approval Committee of the Board meeting held on 20.09.2018, has sanctioned the proposal to initiate CIRP in the account of the Respondent, after taking into confidence the other consortium members. However, the other Creditor M/s JM Financial ARC, has not been taken into consideration. The consent of the other Creditors, which is holding 83.33 % of the total credit exposure, has not been availed by the applicant. The present petition could not have been filed without the consent of the majority Creditors.

8.4 Perusal of the certificate of Bankers' Books Evidence Act reveals that there is no date attached to the same. Therefore, certificate attached to the statement of account cannot be said to be in statutory compliance of Section 2(8) or Regulation 2-A of the CIRP Regulations, 2016.



9. In rebuttal, the applicant Bank has filed a Rejoinder dated 02.03.2021 to the reply filed by the Respondent and also, written submissions dated 15.03.2023 stating mainly the following:

9.1 Since the cause of action is continuing in nature and hence, the present Application is not time barred at all. Further, the Corporate Debtor had acknowledged the debt on 23-02-2015 and thereafter, Original Application (OA) No. 2629 of 2017 (Old OA No. 649/16), for which the Recovery Certificate was issued on 16.10.2017. In a recent judgment in **Vashedo R. Bhojwani Vs. Abhuudaya Co-operative Bank Ltd. & Anr**, the Hon'ble Supreme Court held that once the Recovery Certificate is issued, the period of limitation triggers from the issuance of Recovery Certificate. Therefore, it is vehemently stated that the present case is not time barred as the Recovery Certificate was issued in the year 2017 on the acknowledged debt and in the OA filed based on the actual debt due. The proceedings before the Recovery Officer are continuing.

9.2 As per section 6 of the code, we being the Financial Creditor of the company can initiate the CIRP. Since the amount that is due against the respondent stands at Rs. 52,21,54,637/-, the initiation of CIRP is well within the ambit of law. It is most relevant to state that a huge amount of public money is on stake since the Corporate Debtor is constantly running away from his liability of paying off the dues to the Financial Creditor.

9.3 Whereas, the date of default is 29-04-2012 and the NPA date is 30-09-2014. It is most pertinent to mention here that the cause of action is continuing in nature and hence, the Application cannot be time barred.



10. We heard the submissions of both parties and perused the pleadings on record, including the Written Submissions filed by both parties. The Respondent in its defence has mainly contended that a) the present petition is barred by limitation; (b) the petition does not disclose the correct date of default as at Page 12, the date of default is 29.04.2012, whereas at page 39, the date of default is 01.07.2014 and NPA date is 30.09.2014; (c) there is no specific authorisation to file the present petition as the Power of Attorney attached with the petition is dated 01.03.2001; and (d) the Applicant Bank has not taken consent of the other members of the Consortium. The present petition could not have been filed without the consent of the majority Creditors.

Per Contra, the Applicant has annexed various documents to prove the existence of debt and default as mentioned in Para 6 of this order. During the hearing, the Ld. Counsel for the Applicant referred to the Applicant Bank's Credit sanction letters, notice under Section 13(2) SARFAESI dated 14.11.2014, Acknowledgment of Debt by the Respondent dated 23.02.2015; and Recovery Certificate issued by the DRT-III, Chandigarh in OA No. 2629 of 2017.

11. At the outset, we would like to examine the respondent's first contention that the present Application is barred limitation. As we have noted above, in Part IV of the Application, the Applicant has relied on 29.04.2012 as the "date of default". The Applicant has also stated that thereafter, the loan was restructured on 27.09.2012. Further, on account of default, the Account of the Respondent Company was classified as NPA on 30.09.2014, and thereafter, on 14.11.2014, the Applicant Bank issued the notice under Section



13(2) of SARFAESI Act, calling upon the respondent and other obligors to pay the defaulted amount.

During the arguments, the Applicant also referred to the Acknowledgment of Debt by the Respondent dated 23.02.2015 for the specific purpose of limitation. The same is reproduced below for the sake of immediate reference:



ਪੰਜਾਬ ਪੰਜਾਬ PUNJAB

W 406815

ACKNOWLEDGEMENT OF DEBT / LIABILITY BY THE BORROWER/S

From,
 ...JINDAL SPECIALITY TEXTILES LTD.
 ...M.P.O. JALANDHAR C.T. ROAD
 ...LUDHIANA (C.B.)

To,
 The Branch Manager,
 Corporation Bank,
 Ludhiana Branch

Sub: My/Our TL SA FILL A/c No. 1000014 120001

Dear Sir,

I / We, hereby, confirm and acknowledge for the purpose of section 18 of the Limitation Act, 1953 my/our joint and several liability under the above facility availed by me / us in respect of which the balance outstanding as on 16-02-2015 is Rs. 15,00,000/- inclusive of interest / charges debited up to 21-02-2015 which shall remain in full force and virtue along with all other documents, securities and agreements including Mortgage.

Yours faithfully,

[Signature]
 Place: Ludhiana
 Date: - 23-02-2015





Further, during the course of arguments, the Applicant also referred to the “Recovery Certificate” dated 24.10.2017 issued by the DRT-III, Chandigarh vide order dated 16.10.2017 in OA No. 2629 of 2017 (page 04-15 of Compliance Affidavit dated 15.04.2024). The relevant extracts of the said Recovery Certificate No. 2265 of 2017 (which was taken on record vide order dated 16.04.2024) are reproduced below for an immediate reference:

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ऋण वसूली अधिकरण-III, चंडीगढ़
DEBTS RECOVERY TRIBUNAL-III, CHANDIGARH
IN THE DEBTS RECOVERY TRIBUNAL-III, CHANDIGARH
PRESIDING OFFICER: SHRI SANJEEV MAGO

Recovery Certificate No. 2265/17
DT-14/10/17

(Certificate under the Sub Section 22 of Section 19 of the Recovery of Debts Due to Banks and Financial Act 1993 (Act 51 of 1993))

OA NO.2629/2017
(Old OA No.649/16)

Corporation Bank, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act 1980, (Act No.40 of 1980) carrying on Banking business and having Its Head Office Mangaladevi Temple Road, Pandeshwar, Mangalore-575001, Kolkata and one of its Branch at Pakhowal Road, Ludhiana, through its Branch Head Sh. Adabala Seshagiri Rao /Authorized Officer.
.....Applicant Bank

Vs.

1. M/s Jindal Specialty Textiles Ltd., VPO Jugiana, G.T. Road, Ludhiana through Its Director Sandeep Jindal, S/o Yashpal Jindal.
2nd Address: 1-B-1-980/2A, Opp. Police Lines, Civil Lines, Ludhiana.
2. Sh. Sandeep Jindal, S/o Yashpal Jindal, Director of M/s Jindal Specialty Textiles Ltd., R/o 1-B-1-980/2A, Opp. Police Lines, Civil Lines, Ludhiana.
3. Sh. Yashpal Jindal, S/o Jagdish Rai Jindal, director of M/s Jindal Specialty Textiles Ltd., R/o 1-B-1-980/2A, Opp. Police Lines, Civil Lines, Ludhiana.
4. Sh. Rajinder Jindal S/o Jagdish Rai Jindal, director of M/s Jindal Specialty Textiles Ltd., R/o 1-B-1-980/2A, Opp.

प्रमाणित प्रतिलिपि
CERTIFIED COPY

S.O. S.
Deputy Recovery Tribunal-III
Chandigarh

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On perusal of the aforesaid documents and pleadings, we find that the present application filed by the Applicant Bank is well within the limitation period in the following manner:

S. No.	Documents	Dated	Period of Limitation till
1.	“Date of default” relied by the Applicant	29.04.2012	28.03.2015
2.	Date of classification of account of CD as NPA	30.09.2014	29.09.2017
3.	Acknowledgement of Debt by the Respondent (page 426 of petition-Vol. 2)	23.02.2015	22.02.2018
4.	Recovery Certificate No. 2265 of 2017 issued by the DRT-III, Chandigarh vide order dated 16.10.2017 in OA No. 2629 of 2017	24.10.2017	23.10.2020
4.	Date of Filing of Present Application	11.03.2019	

In view of the aforesaid discussion, **we find that the present application filed by the Applicant Bank is well within the limitation period and maintainable.**

12. Now, we examine the second contention of the Respondent that the Application does not disclose the correct date of default as on Page 12, the date of default is 29.04.2012, whereas on page 39, the date of default is 01.07.2014 and date of NPA is 30.09.2014. As we have noted above in para 5, in Part IV of the Application, though the Applicant has clearly relied on 29.04.2012 as the “date of default”, we are aware that in terms of the recent judgement dated 25.04.2024 of Hon’ble NCLAT’s in **Company Appeal (AT) (Ins) No. 1589 of 2023 Milind Kashiram Jadhav vs State Bank of India &**



Anr., the date of NPA classification too can be taken as the valid "Date of Default" for initiating insolvency proceedings. The conclusions of judgement of Hon'ble NCLAT (Supra) reads thus:

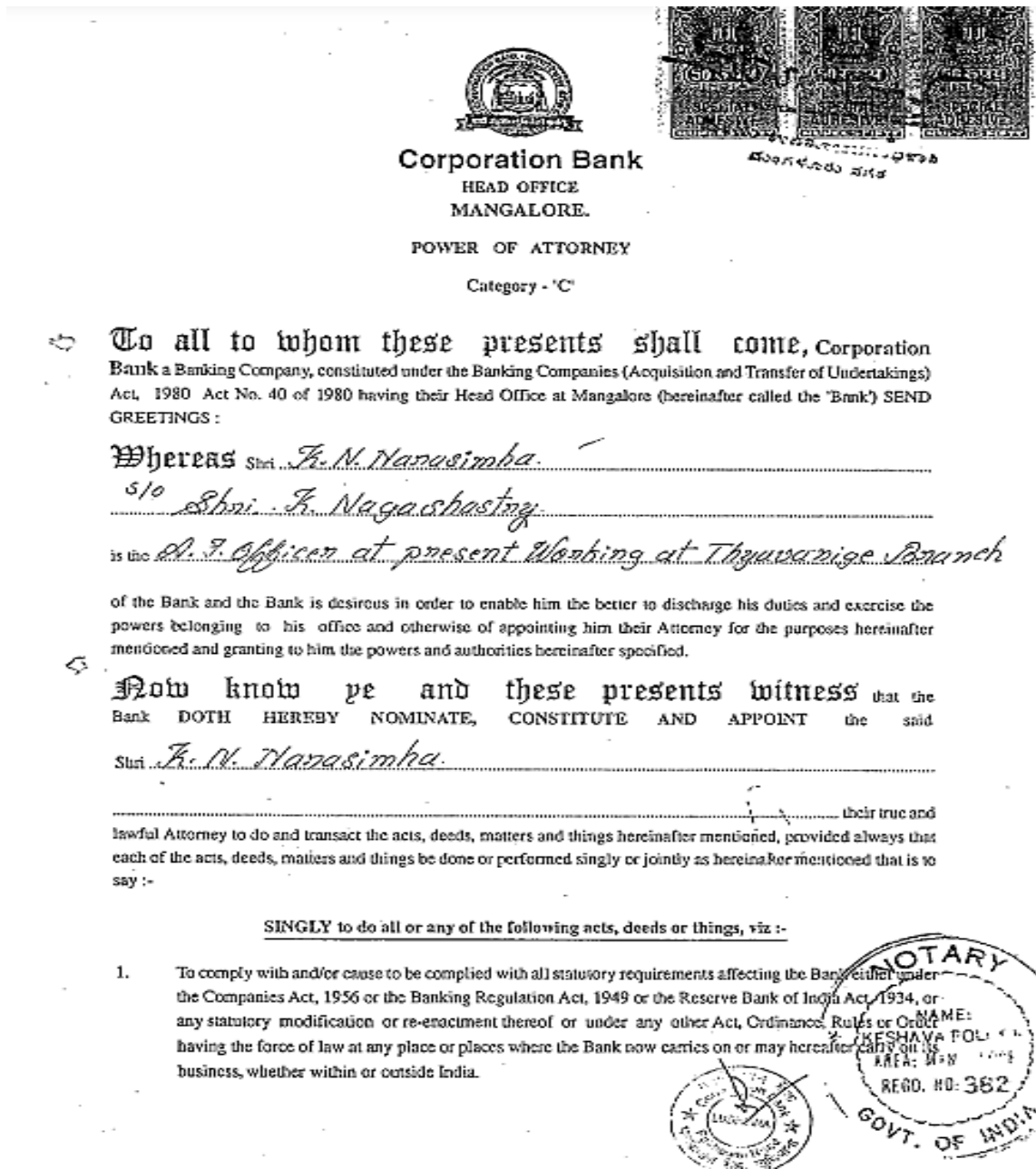
“Conclusions:

*74. The loan accounts of the Corporate Debtor were officially classified as Non-Performing Assets (NPA) on September 27, 2019, following 90 days of non-payment, thereby triggering a default event. Despite subsequent partial payments made by the borrower, the NPA status and default persisted, indicating a continuous state of default. **Consistent with established judicial precedents and the specific circumstances of the case, the date of NPA classification serves as the valid "Date of Default" for initiating insolvency proceedings.** Even after the NPA classification, the borrower remained in default. **Consequently, September 27, 2019, the date of NPA classification, stands as the "date of default" under the Insolvency and Bankruptcy Code (IBC), superseding any subsequent events, such as the loan recall notice issued on August 18, 2020.** The Adjudicating Authority's decision to admit the Bank's application for initiating Corporate Insolvency Resolution Process (CIRP) against the Company was apt and in accordance with the provisions of the IBC. There are no discernible flaws in the orders issued by the Adjudicating Authority; hence, they are upheld without any alteration. Appeal is dismissed. No costs are imposed in this matter.”*

Thus, in terms of the judgement (supra), **the date of NPA classification serves as the valid "Date of Default" for initiating insolvency proceedings**, and therefore, the Respondent's contention that the petition itself does not disclose the correct date of default stands negated.



13. Now, we would like to examine the respondent's third contention that the Petition is not maintainable because it has not been filed by the duly authorised person i.e. there is no specific authorisation to file the present petition as the Power of Attorney attached with the petition is dated 01.03.2001. In this backdrop, we refer to the document placed by the Applicant Bank i.e. "Power of Attorney" dated 01.03.2001, which reads thus:



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Further, the Applicant Bank has also placed on record the Circular Resolution dated 12.12.2017, which reads as follows:

Annexure – B

CORPORATION BANK
CIRCULAR RESOLUTION

Subject: Insolvency and Bankruptcy Resolution Process under Insolvency and Bankruptcy Code 2016- Authorising officers in Scale IV and above to represent the Bank before National Company Law Tribunal (NCLT).

(Office Note Ref. No. PAD/IR/BN/100/2017-18 dated 11.12.2017)

"RESOLVED THAT the proposal for authorizing all the Officer(s) in the Rank of Scale IV and above to severally sign, seal and file any application before the National Company Law Tribunal (NCLT) and also to represent before NCLT on behalf of the Bank as part of the provisions of Insolvency Resolution process or Liquidation of any Borrower Company or any other matter connected thereto and to take any steps required under the provisions of the Insolvency and Bankruptcy Code 2016 read with the powers conferred under Clause No. 26 & 29 of the General Power of Attorney issued to them by the Bank be and is hereby approved."

Sd/-
(JAI KUMAR GARG)
MANAGING DIRECTOR &
CEO
DATE: 11.12.2017

Sd/-
(GOPAL MURLI BHAGAT)
EXECUTIVE DIRECTOR
DATE: 11.12.2017

Sd/-
(MANISH GUPTA)
DIRECTOR
DATE: 12.12.2017

Sd/-
(PRADYUMNA K.JENA)
DIRECTOR
DATE: 12.12.2017

Sd/-
(DEVERAKONDA
BIRIVILASA)
DIRECTOR
DATE: 12.12.2017

Sd/-
(PRADEEP KUMAR JAIN)
DIRECTOR
DATE: 12.12.2017

Sd/-
(CHITRA GOURI LAL)
DIRECTOR
DATE: 12.12.2017



12 DEC 2017

Thus, on perusal of the Power of Attorney read with the Circular Resolution dated 12.12.2017 of the Applicant Bank, this Bench finds no merit in the contention raised by the respondent in this regard.



14. The fourth objection raised by the Respondent is that the Bank has not taken consent of the other members of the Consortium, and therefore, the present petition could not have been filed without the consent of the majority Creditors in the Consortium. Whereas the Applicant Bank has argued that as per the code, a Financial Creditor can initiate the CIRP against a Corporate Debtor/Respondent, which has defaulted in paying a debt that has become due and payable but not repaid. Here, we refer to Section 7 (1) of the IBC, 2016 which reads as follows:

“A financial creditor either by itself or jointly with ¹other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.”

(Emphasis placed)

In this context, we refer to the judgment in ***Ferro Alloys Corporation Ltd. V. Rural Electrification Corporation Ltd. Company Appeal (AT) (Insolvency) No. 92 of 2017***, in which the Hon’ble NCLAT has held that Consortium of Banks have no role to play at the time of the admission of the application under Section 7 of the Code. The relevant para of the judgement reads thus:

“14. Therefore, it is clear that if the Adjudicating Authority is satisfied that there is a 'debt' and 'default' and otherwise if the application is in order is bound to admit the application. It is a 'corporate debtor' who can only point out that it does not owe any debt either in law or in fact, which is not the case of the 'corporate debtor'. 'Corporate



*debtor' can also take a plea that the application has been filed by a person who is not a 'financial creditor' but such issue having not raised, **the consortium of banks have no role to play at the time of admission of application under Section 7 of the I&B Code. The role of banks comes if they file claim after the admission of an application and when they are accepted as a 'financial creditors' and made members of the 'Committee of Creditors' in terms of Sections 27 and 28 of the I&B Code.** Such claims are looked into by the 'Resolution Professional' only after admission of the application under Section 7 or 9 or 10 and the order of moratorium was passed by the Adjudicating Authority."*

(Emphasis placed)

Thus, from a bare perusal of the provision under Section 7 of IBC, 2016 read with the judgement (supra) of Hon'ble NCLAT, it can be inferred that a Financial Creditor either by itself or jointly, with other financial creditors can file a Section 7 application. Moreover, admittedly the corporate debtor has offered one-time settlement to the Applicant Bank and also made a part-payment towards the OTS scheme (which failed as per the Applicant Bank), therefore, the Corporate Debtor is estopped by its own act and conduct to take this plea. **Thus, we find no force in the contention of the Respondent that the Applicant Bank could not have filed the present petition without the consent of the other consortium members and hence, rejected.**

15. Furthermore, from the pleadings and record of proceedings, we notice that the Respondent Company itself had proposed to the Applicant Bank for a one-time settlement of its dues. Even on the last date of hearing, the Ld.



Counsel for the Respondent submitted that part-payment of Rs. 04 Crore approximately, as per the OTS has been paid to the Bank, however, the Bank maintained that OTS has failed. We are aware that an offer of OTS itself in terms of the judgment of the **Hon'ble Supreme Court in "Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy and Anr."** is an acknowledgment of debt. The relevant para of the judgment (supra) dated 04.08.2021 reads thus:

*"141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. **This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act.** In Gaurav Hargovindbhai Dave (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016 2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019".*

(Emphasis placed)

16. Thus, in terms of the abovementioned discussion, we find that the petitioner Bank has been able to successfully establish the debt and default



beyond doubt on the part of the Respondent in repayment of its financial debt.

17. In the sequel to the above and the given facts and circumstances, the present Application being complete and the Applicant having established the default on the part of the Respondent in payment of the Financial Debt for an amount being above the minimum threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, the Moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the Moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:

“(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.”

18. As proposed by the Applicant, this Bench appoints Mr. Ashish Agarwal as IRP having Registration No. IBBI/IPA-001/IP-P00688/2017-18/11165 Email ID: ashishagarwalca@gmail.com subject to the condition that no disciplinary proceedings is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week of this Order. This Adjudicating Authority further orders that:

Mr. Ashish Agarwal, as an IRP having Registration No. IBBI/IPA-001/IP-P00688/2017-18/11165, Email ID: ashishagarwalca@gmail.com is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is further directed to take the steps as mandated under the IBC specifically under Sections 15, 17, 18, 20, and 21 of IBC, 2016.

19. The Applicant is directed to deposit Rs.5,00,000/- (Five Lakhs) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Applicant.

20. A copy of this Order shall immediately be communicated to the Applicant Bank, the Respondent Company, IBBI, the IRP named above by the Court Officer/Registry of this Tribunal.

21. Accordingly, the present petition stands admitted and disposed of accordingly.



IA No. 846/2023

22. Now, we deal with IA No. 846/2023. This application has been filed by the Applicant - JM Financial Asset Reconstruction Company Ltd Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 praying to intervene in CP (IB) No.108/Chd/Pb/2019 and permit to assist the Tribunal. As in the instant case the rights of the Applicant being adversely impacted. Per contra, the Petitioner in CP (IB) No.108/Chd/Pb/2019 has opposed the application on the ground that the Applicant herein has no locus standi to file the present application, merely by submitting an offer of Rs. 4 Crore only against the outstanding payment of Rs. 52,21,54,637/- against the Corporate Debtor.

23. In this context, we refer to the judgment of the Hon'ble Principal Bench NCLT, New Delhi in Company Petition No. (IB)-264/(PB)/2023 **Go Airlines (India) Limited**, in which the issue of third party intervention has been discussed at length. The relevant para of the judgment (supra) reads thus:

“23. Undisputedly, before the commencement of CIRP, an Application under Sections 7 and 9 are in personam i.e., a litigation between two parties, where notice to the Respondent/Corporate Debtor is a matter of right. Usually, there are no other parties as Respondent other than the Corporate Debtor in Section 7 and 9 applications. There are various instances, where the Hon'ble NCLAT and this Adjudicating Authority prohibited the intervention of other parties/Creditors in Section 7 or Section 9 Application on the ground that they are not necessary parties to the Application. The instances of such Judgements are given below:



(i) Hon'ble NCLAT in its Judgement dated 18.02.2021 in the matter of **“Vekas Kumar Garg vs. DMI Finance Pvt. Ltd. & Anr.”** in Company Appeal (AT) (Insolvency) No. 113 of 2021 with respect to the right of a third party to intervene in a Section 7 Application at a pre-admission stage, held as reproduced overleaf:

“3. After hearing learned counsel for the Appellant and going through the record, we are of the view that the ground projected by the Appellant in his capacity as Resolution Professional of NDL for seeking impleadment in CP IB2115/ND/2019 pending consideration before the Adjudicating Authority does not warrant impleadment of Appellant as party Respondent. In an application under Section 7, the Financial Creditor and the Corporate Debtor alone are the necessary party and the Adjudicating Authority is, at the pre-admission stage, only required to satisfy itself that there is a financial debt in respect whereof the Corporate Debtor has committed a default warranting triggering of CIRP. **The Adjudicating Authority is required to satisfy itself in regard to there being a financial debt and default thereof on the part of the Corporate Debtor besides the application being complete as mandated under Section 7(5) of the ‘I&B Code’ and then pass an order of admission or rejection on merit as mandated under sub-section (4) of Section 7 within 14 days. No third party intervention is contemplated at that stage.**

(Emphasis added)

(ii) NCLT Delhi Court-II, in the matter of **“SREI Infrastructure Finance Limited Vs M/s. Alstrong Enterprises India Private Limited”**, while deciding an Application IA-1615/2021 filed by Punjab National Bank opposing a Section 7 Application, observed vide order dated 02.07.2021 that:



“10. We further notice that under the scope of Section 7 of IBC, 2016, **the third person is not a necessary party. Only the Financial Creditor and the Corporate Debtor are the necessary party in these proceedings.**

11. We further notice that the applicant has filed this application under Section 60(5) of IBC, 2016. Admittedly, the IB/913/2020 has not been admitted as yet. **Therefore, in our considered view, the applicant is not a necessary party and even their prayer, which has been made under Section 60(5) of the IBC, 2016, cannot be allowed.”**

(Emphasis added)

24. In view of the aforesaid discussion, we find that the Applicant has no locus to intervene in the CP (IB) No.108/Chd/Pb/2019.

25. **Accordingly, the IA No. 846/2023 is dismissed.**

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

Sd/-
(HARNAM SINGH THAKUR)
MEMBER (J)