

**THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH-IV**

**Company Petition No. (IB)- 3 (ND)/2020**

**Under Section 7 of the Insolvency and Bankruptcy Code, 2016**

In the matter of:

IDBI BANK LIMITED

... FINANCIAL CREDITOR

VERSUS

AMZEN TRANSPORTATION INDUSTRIES LIMITED & ANR

...RESPONDENTS

**Order delivered on: 04.05.2022.**

**CORAM:**

**SHRI DHARMINDER SINGH, HON'BLE MEMBER (J)**

**SMT. SUMITA PURKAYASTHA, HON'BLE MEMBER (T)**

**ORDER**

**Per: Shri DHARMINDER SINGH, MEMBER-JUDICIAL**

1. The IDBI Bank Limited has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s. Amzen Transportation Industries Private Limited, referred to as the corporate debtor.
2. As succinctly put, the facts of the present case are that the applicant IDBI Bank Limited, is a company incorporated under

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the Companies Act, 1956 and a banking company within the meaning Section 5 (c) of the Banking Regulation Act, 1949 (10 of 1949) having its registered office at IDBI Tower, W.T.C Complex, Cuffe Parade, Mumbai-400005. Mr. Suneel babu G, general Manager, NPA Management Group, has been duly authorized on behalf of applicant vide Authorization letter dated 27.11.2019, has preferred the present application on behalf of the applicant for initiation of insolvency resolution process against the respondent under the Code.

3. The Respondent Company M/s. Amzen Transportation Industries Private Limited (CIN No. U 35200 DL 2008 PTC 180534) against whom, the initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 07.07.2007 having its registered office situated at 3, Local Shopping Centre, Pamposh Enclave, Greater Kailash Part-I, New Delhi-110048. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
4. The case of the applicant precisely is that a term loan facility was sanctioned to corporate debtor vide sanction letter dated 04.02.2010 alongwith modification letter dated 16.03.2010. Amount of terms loan was Rs. 130 Crore, loan agreement dated

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17.03.2010 was also executed between the parties. Thereafter, the corporate debtor committed default in repayment of loan and the account was classified as NPA on 29.06.2016 and loan recall notice was also issued on 28.09.2016. The applicant then initiated proceeding under Section 13(2) of the SARFAESI Act, 2002 by issuing notice dated 27.02.2017. Original Application dated 17.02.2017 was filed by applicant before Debt Recovery Tribunal for recovery of Rs. 105,99,74,991.70/-.

5. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Deepak Maini, for appointment as Interim Resolution Professional having registration number IBBI / IPA-001 / IP-P00676/ 2017-18 / 11149 resident of C-100, Sector 2, Noida 201301 with email – id Deepak.maini@insolvencyservices.in. Mr. Deepak Maini has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Deepak Maini as per the requirement of the IBBI Regulations. Accordingly, it is

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seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

6. As per part-IV of the application principle amount of Rs. 97,94,68,708.66, is due and payable by corporate debtor to the applicant alongwith other interest and penalties.

7. The applicant has placed following documents on record to prove its claim:

- i. Deed of Hypothecation dated 17.03.2010.
- ii. Declaration & Undertaking dated 29.06.2011 for mortgage of property at Village Sadhugarh District Fatehgarh.
- iii. Memorandum of Entry recorded on 30.06.2011.
- iv. Deed of Indemnity dated 29.06.2011.
- v. Accepted Balance Confirmation letter as on 31.03.2015.
- vi. Copy of Sanction letter dated 04.02.2010.
- vii. Copy of Modification Letter dated 16.03.2010.
- viii. Copy of Loan Agreement.
- ix. Copy of Recall Notice.
- x. Copy of Notice under Section 13(2) of SARFAESI Act.

8. The respondent corporate debtor has filed its reply raising following objections:

- a) It is submitted that the date of default of loan is 29.06.2016, when the accounts of Corporate Debtor was declared NPA. Whereas the present application is being filed on 05.12.2019, therefore, the present application is barred by limitation.

b) It is submitted that the applicant has failed to file record of default with Information Utility is required to be annexed at part-V of the Form-1 as mandated under Section 215 of the Code. The applicant has not Information Utility i.e. NeSL is fully operational and functional and thus the applicant's Form-1 is incomplete. The applicant being a financial creditor has violated terms of Section 215 of the code and notification dated 19.12.2019 issued by Reserve Bank of India.

9. The applicant in its rejoinder has submitted as follows;

(a) The Corporate Debtor has made payments towards the outstanding dues on several occasions after the account of the Corporate Debtor was classified as NPA on 29.06.2016. In view of the same, it is submitted that the limitation stands extended in view of operation of sections 18 of the Limitation Act, 1963 and Section 238A of the Code, which extends the applicability of the Limitation Act to the proceedings initiated under the Code. Further, while making such payments, the Corporate Debtor has issued letters dated 05.11.2018, 26.11.2018, 29.11.2018, 07.01.2019, 08.01.2019, 10.01.2019, 19.08.2019 and 02.09.2019 acknowledging the debt owed to the Applicant, which again has the effect of extending the

limitation period by virtue of operation of Section 19 of the Code. In view of the fact that the last repayment made by the Corporate Debtor to the Applicant was given effect in September, 2019, the limitation period for filing the present Applicant shall be reckoned from the said date. Since the present Application was filed on 06.12.2019, the same is clearly within limitation.

10. The applicant has also placed on record a copy of record of default filed with NeSL (information utility) in respect of default on the part of the Corporate Debtor in its repayment owed to the Financial Creditor.
11. Heard Ld. Counsel for the Petitioner and respondent thoroughly and perused the case records. The applicant has declared loan account of corporate debtor NPA on 29.06.2016 and first time recalled the entire loan amount vide Loan Recall Notice dated 28.09.2016, accordingly, the proceedings under SARFAESI Act were initiated by applicant bank.
12. On behalf of respondent, it is being vehemently contended that Section 18 and 19 of Limitation Act is not applicable in the present matter, because there was no pleading in the main application itself and rejoinder cannot be taken as part of pleading. In this regard, the reliance has been placed on citation ***Vijay Sitaram Dandnaik Vs. Punjab National Bank & Anr.***  
***In Company Appeal (AT) (Insolvency) No. 90 of 2020:***

*“Keeping in view the ratio laid down by the Hon’ble Supreme Court in the aforementioned catena of Judgements, we are of the considered view that this Application under Section 7 is barred by limitation as it is filed beyond three years of the date of NPA. Further, as we observe that there is nothing on record to suggest that the Appellant has acknowledged the debt ‘within three years’ and has agreed to pay the debt. As the scope and objective of the Code was not to give a fresh lease of life to time barred debts, we are of the considered opinion that the ratio of ‘Babulal Vardharji Gurjar’ (Supra) is squarely applicable to the facts of the instant case.”*

13. Further the reliance has been placed on citation of ***Assets Reconstruction Company (India) Ltd. Vs. Bishal Jaiswal & Anr. Civil Appeal No. 323 of 2021*** and contended that there was requirement to plead the acknowledgement debt in the application and the same has to be supplicated as a part of pleading and mere submission made by applicant in its rejoinder and written submissions cannot be relied upon. Further, it is argued that rejoinder does not part of the application, accordingly, the same could not be treated as a part of pleadings. Hence, prayed for dismissal of the application on that ground as the application is hopelessly time barred.
14. On the other hand, Learned Counsel for applicant stressed upon arguments that the once the rejoinder has been filed, it is part of the pleadings. Accordingly, Section 18 and 19 need not to be pleaded specifically in the application and if such objection

has been raised in the written statement that has to be rebutted by the rejoinder or replication. Replication/rejoinder are to be treated as part & partial of the pleadings, once the petitioner allowed to place the same on record. The reliance has been placed on citation **Laxmi Pat Surana (Supra) & Assets Reconstruction Company (India) Ltd. (supra)**, accordingly, it is contended that in present matter, Section 18 is very much applicable as there is acknowledgement of the debt by the respondent, therefore, the limitation period is to be counted from 02<sup>nd</sup> September 2019, when the last payment was made.

15. No doubt, the account was declared NPA on 29.06.2016, but the payment was lastly made by the Corporate Debtor on 02.09.2019 as it was continued since 05<sup>th</sup> November 2018 as well as on 26.11.2018, 29.11.2018, 07.01.2019, 08.01.2019, 10.01.2019, 19.08.2019 and 02.09.2019. The Hon'ble Supreme Court of India has clearly laid down in the matter of **K. Laxmanan Vs. Thekkayil Padmini & Ors. in SLP (C) No. 21251 of 2006 decided on 03<sup>rd</sup> December 2008** that once the replication /rejoinder has been placed on record with the permission of the Court, it has to be considered as part or partial of the pleadings of the applicant/petitioner. Therefore, citation referred on behalf of respondent is not helpful.

16. Even, **in the matter of Laxmi Pat Surana Vs. Union Bank of India & Anr. Civil Appeal No. 2734 of 2020**

**decided on 26.03.2021**, the Hon'ble Supreme Court of India held as under:

*"Section 18 of the Limitation Act gets attracted the moment the acknowledgment in writing signed by the party against whom such right to initiate resolution process under section 7 of the Code ensures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor, as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under section 7 of the Code. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under section 7 of the Code".*

17. Similarly, in the matter of **Assets Reconstruction Company (India) Ltd. Vs. Bishal Jaiswal & Anr. 323 of 2021** reiterated that **Section 18 and 19** of the Limitation Act is applicable to the proceedings initiated under Section 7 of the Code. In the present matter in hand, though the account of the Corporate Debtor was classified as NPA on 29<sup>th</sup> June 2016, but multiple payments were made by the Corporate Debtor starting from 05<sup>th</sup> November 2018 to 03<sup>rd</sup> September, 2019 i.e. within the prescribed period of three years. Once there is a specific acknowledgement of debt from time to time, the period of limitation stands extended, accordingly, the said acknowledgement of the debt given a new lease of life to the

claim from the date when the last payment was made. On 02.09.2019, the last payment was made and the present petition has been filed on 06.12.2019. Thus, the present petition has been filed within the prescribed period of limitation of three years. Accordingly, the same is not barred by period of limitation.

18. On behalf of the applicant, it is proved on the record that the applicant bank sanctioned an amount of Rs. 130 Crores on loan on 04<sup>th</sup> February 2010. The said sanction letter was modified vide letter dated 16<sup>th</sup> March 2010, accordingly, loan and security documents were executed on 17<sup>th</sup> March 2010. Admittedly, the account was declared non-performing assets on 29.06.2016. Subsequently, as stated above, part payments were made till 02.09.2019 by the Corporate Debtor to the Financial Creditor, but the entire loan amount was not repaid. The deliberate default has been committed on the part of the Corporate Debtor in repayment of the loan amount. Hence, it is established on the record that there was default in repayment of loan by the respondent/Corporate Debtor.

19. In sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is hereby, admitted.

20. Mr. Deepak Maini, having registration number IBBI / IPA-001 / IP-P00676/ 2017-18 / 11149 resident of C-100, Sector 2, Noida 201301 with email - id

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Deepak.maini@insolvencyservices.in is appointed as Interim Resolution Professional for Corporate Debtor.

21. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

22. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Deepak Maini to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount however is subject to adjustment towards Resolution Process cost as per applicable rules.

23. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

24. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to

the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

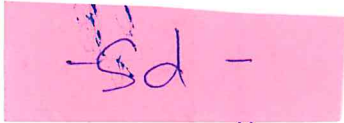
25. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor'

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as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

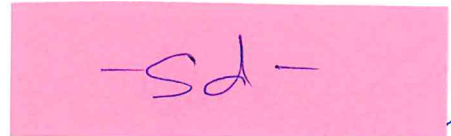
26. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

File be consigned to records.



**(SUMITA PURKAYASTHA)**

**MEMBER (T)**



**(DHARMINDER SINGH)**

**MEMBER (J)**