

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 420/Chd/Pb/2019
Under Section 7 of the Insolvency &
Bankruptcy Code, 2016**

In the matter of:

Indian Overseas Bank

having its Central Office at:
762, Anna Salai, Chennai 2

having its Branch Office at:
ARM Branch, SCO No.26
2nd floor, Sector 7-C, Chandigarh.

....Petitioner-Financial Creditor

Vs.

M/S Shivam Continental Pvt. Ltd.

having its Registered Office at
Shed No.116-117, Leather Complex,
Kapurthala Road, Jalandhar.
CIN No: U16009PB2011PTC035792

...Respondent-Corporate Debtor

Judgment delivered on: 23.02.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Petitioner-Financial Creditor : Mr. Rakshit Gupta, Advocate

For the Respondent-Corporate Debtor : 1. Mr. Alok Jagga
2. Mr. APS Madaan

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed by **Indian Overseas Bank, Chandigarh** (hereinafter referred to as 'Petitioner/Financial Creditor') through its Chief Manager, Mr. Bir Chand Thakur, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **M/S Shivam Continental Pvt. Ltd.** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Bir Chand Thakur, with the affidavit verifying the contents of the application appended thereto.

2. The Corporate Debtor is stated to be incorporated on 28.12.2011. The company has its registered address at Shed No.116-117, Leather Complex, Kapurthala Road, Jalandhar (Punjab). Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is attached as Annexure 1/2 of the petition.

3. Brief facts of the case are that the corporate debtor was availing certain financial facilities from Financial Creditor. The Corporate Debtor was in need of further financial facilities, so he approached Financial Creditor. The facility was provided as below:-

Nature of Facility	Amount (in lacs)	Rate of Interest	Prime Security
Cash Credit	350.00	Base Rate (10.25%-floating)+ 2.50%	Stocks
Packing credit/FBP	350.00	Base Rate (10.25%-floating)+0.75%	Stocks
Term Loan (Existing)	162.07	Base Rate (10.25%-floating)+2.75%	Hypothecation of plant and machineries at present and future
Term Loan (fresh)	50.00	Base Rate (10.25%-floating)+1.25%	Stocks/Hypothecation of plant and machineries at present and future
Bank Guarantee(Fresh)	150.00	---	Counter Guarantee
Letter of Credit	100.00	---	Documents to title of goods

The terms and conditions were accepted by Corporate Debtor and signed the credit sanction advice dated 05.05.2014 in token of its acceptance (to the tune of Rs.1162.07 lakhs), and necessary documents were executed by Corporate Debtor

in favour of the Financial Creditor. The financial facilities were renewed on 30.09.2015.

Account Type	Amount	Date of Execution
Cash Credit Limit	Rs.3,50,00,000	09.05.2014
Packing Credit	Rs.3,50,00,000	09.05.2014
Term Loan (Existing)	Rs. 1,62,07,000	09.05.2014
Term Loan (Fresh)	Rs. 50,00,000	09.05.2014
Bank Guarantee	Rs.1,50,00,000	09.05.2014
Letter of Credit	Rs.1,00,00,000	09.05.2014
Vehicle Loan	Rs.5,85,000	30.05.2014

The confirmation letter regarding deposit of title deed was executed by Corporate Debtor in favour of the Financial Creditor. The Corporate Debtor executed balance confirmation letters acknowledging its liability. Therefore, Corporate Debtor failed to comply with the same and legal notice dated 03.03.2016 was sent to Corporate Debtor. The account of Corporate Debtor was classified as Non-Performing Asset on 31.03.2016. The Financial Creditor initiated SARFAESI action against Corporate Debtor and sent demand notice dated 30.05.2016. An original application was filed before Debt Recovery Tribunal-I for Rs.16,35,36,246/- as on 28.04.2017. The total outstanding of Corporate Debtor towards Financial Creditor is Rs.22,21,13,462.89/- as on 06.07.2019 with pendente lite and future interest and with cost till realization.

4. It is stated in Part-IV of Form No.1, the total amount claimed to be in default is Rs. 22,21,13,462.89 (Rupees Twenty Two Crore Twenty One Lakhs Thirteen Thousand Four Hundred and Sixty Two Paise Eighty Nine Only) and date of default is 31.03.2016 i.e. when the corporate debtor account was classified as Non-Performing Asset. Copy of Statement of Account (Annexure-I/5), Sale Deed

along with translation and confirmation letters (Annexure-I/6), Registration of Charge (Annexure-I/7), Sanction Letter (Annexure I/10), Hypothecation of book debt (Annexure-I/12), letter of guarantee (Annexure I/14), DP Note (Annexure I/15, I/17, I/21, I/23), term loan agreement (Annexure I/16, I/20), letter of hypothecation (Annexure I/24), deed of hypothecation (annexure I/25), Registration Certificate (Annexure-I/26), credit sanction advise (Annexure I/27), balance confirmation (Annexure I/28), possession notice (Annexure I/30), valuation report (Annexure I/31) are attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor to show cause as to why this petition be not admitted. An affidavit of service were filed vide Diary No. 5326 dated 03.10.2019, Diary No.6575 dated 25.11.2019 and Diary No.00538/1 dated 18.05.2022. The reply was filed vide Diary No.00590/2 dated 23.09.2022, wherein it is stated that there is no debt due to the petitioner. The account was treated as NPA without following the RBI guidelines, account was of MSME category. The date of default in the petition is not mentioned, as the petitioner is solely relying on filing of matter before DRT which is separate forum and does not entitle the petitioner to be covered under aspect of limitation under IBC, 2016. The present petition is outside the purview of limitation and time barred. The document attached at Annexure I/28 shows acknowledgement of debt as on 20.05.2016, thereafter, the filing of the petition was in July 2019, the filing of petition is after the period of limitation. The corporate debtor had a turnover over 16 crores which were reduced in 2014, in FY 2014-15 the respondent corporate debtor showed a loss for the first time which was attributed due to the wrongful banking practices adopted by Indian Overseas Bank (hereinafter referred to as '**IOB**') officials and non-cooperative attitude of IOB officials. The corporate debtor had to pay Rs.18 lakhs towards the period of delay caused by IOB in sanctioning

the limits and without operating the accounts. Huge processing fees and insurance premium charges were levied. Despite the promise of additional credit facility to tune of Rs.3.50 crores, only additional credit facility to tune of Rs.2 crore was given. There was deficiency of Rs.1.50 crores due to which the corporate debtor faced a liquidity crunch. The Corporate Debtor was not allowed to operate the account from 05.05.2014 to 22.06.2014 without any reasonable cause. The L/C opening charges and payment charges charged by the Bank were unjustified.

6. The rejoinder was filed vide diary No.00590/3 dated 02.11.2022, wherein it is stated that the present petition has been filed by the Bank based on security documents placed on record. The date of default is also evident from the documents placed on record. The debt is acknowledged by Corporate Debtor by giving a proposal for OTS dated 29.06.2021 (Annexure A-I/36). The present petition is well within the limitation. The corporate debtor himself executed the acknowledgement of debt as on 20.05.2016 (Annexure I/28). The financial creditor has placed on record the balance sheet of corporate debtor for the years 2015-2016, 2016-17, 2017-18 and further OTS proposal dated 29.06.2021 vide IA 506/2021 before this adjudicating authority, It becomes evident that the present application is within limitation. The corporate debtor submitted documents on 26.04.2016 which were incomplete. The corporate debtor also submitted restricted proposal but for the account availing credit facility of Rs.2 crores and above, it is mandatory to conduct TEC study by bank to know the actual position of the firm. The corporate debtor did not file a financial statement after FY ending 31.03.2014 with ROC. The corporate debtor did not submit a proper complete restructuring proposal and the bank waived of their right to restructure. The Short written submissions were filed by petitioner vide diary No.00590/6 dated 02.11.2022 and by respondent vide diary No.00590/7 dated 07.11.2022.

7. We have heard the learned counsel for the petitioner as well as respondent and have also perused the record carefully.

8. Section 7(5)(a) of the Code is as follows:-

“5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there are no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”

9. The first issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is mentioned as 31.03.2016 i.e. when the corporate debtor account was classified as Non-Performing Asset. The present petition is filed vide Diary No. 3383 dated 12.07.2019 and was refiled vide diary No. 3616 dated 24.07.2019. It is contended by the respondent that the present petition is outside the limitation and time barred. However, the debt was acknowledged by Corporate Debtor in the Balance Sheet for the financial year ended on 2016-17 and OTS proposal dated 29.06.2021 from which it is evident that the corporate debtor had acknowledged its liability to pay the debt. Reliance can be placed upon the decision of Hon'ble **National Company Law Appellate Tribunal, New Delhi, Mr. Abhay Narendra Lodha v. Bank of Baroda and Ors. Company Appeal (AT)(Insolvency) No. 997 of 2022** wherein the court has further relied on the judgment of the Hon'ble Supreme Court in **Swiss Ribbons Pvt. Ltd. Vs. Union of India MANU/SC/0079/2019 : (2019) 4 SCC 17 para 55** held that:

"55. Apart from the record maintained by such utility, From I appended to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, makes it clear that the following are other sources which evidence a financial debt:

(a) Particulars of security held, if any, the date of its creation, its estimated value as per the creditor;

(b) Certificate of registration of charge issued by the Registrar of Companies (if the corporate debtor is a company);

(c) Order of a court, tribunal or arbitral panel adjudicating on the default;

- (d) Record of default with information utility;
- (e) Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925;
- (f) The latest and complete copy of the financial contract reflecting all amendments and waivers to date;
- (g) A record of default as available with any credit information company;
- (h) Copies of entries in a bankers book in accordance with the Bankers Books Evidence Act, 1891.

25. The Hon'ble Supreme Court (*supra*) clearly held that the other source of evidence can be taken into consideration for the purpose of existence of financial debt includes the copies of entries in a Bankers Book in accordance with the Bankers Book Evidence Act, 1891. The Bank has in its application clearly mentioned in Part-V, Column-7 regarding the reliance of copies of entries in Bankers Book. Further the Bank also relied upon the other documents such as recall notice dated 01.02.2016 and Annual Report for the Financial Year 2015-16. Sub-section (2) of Section 7, provides the form and manner an application under Sub-section (1) can be filed duly accompanied with such fee as may be prescribed. Further Sub-section (3) of Section 7 provides the Financial Creditor shall along with the application furnish (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified. As stated *supra* the Bank has filed the said documents for the purpose of establishing the debt and default.

26. Further the aforesaid documents also can be relied upon for the purpose of acknowledgement of debt in the eye of law. Therefore, this Tribunal affirms the view taken by the Adjudicating Authority that the Appeal is within the limitation”.

Laxmipat Surana Vs. Union Bank of India MANU/SC/0221/2021 para 42, 43, 49 whereby the Hon'ble Supreme Court held that the date of default is to be reckoned for the purpose of Initiation of CIRP and not the date of NPA.

"42. There is no reason to exclude the effect of Section 18 of the Limitation Act to the proceedings initiated under the Code. Section 18 of the Limitation Act reads thus:

43. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 IBC. However, Section 7 comes into play when the corporate debtor commits "default". Section 7, consciously uses the expression "default" - not the date of notifying the loan account of the corporate person as NPA. Further, the expression "default" has been defined in Section 3(12) to mean non-payment of "debt" when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non- payment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgements, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the

Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 of the Code enures. 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 acknowledgement, 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 IBC. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 IBC.

49. Section 18 of the Limitation Act, however, posits that a fresh period of limitation shall be computed from the time when the party against whom the right is claimed acknowledges its liability. The financial creditor has not only the right to recover the outstanding dues by filing a suit, but also has a right to initiate resolution process against the corporate person (being a corporate debtor) whose liability is coextensive with that of the principal borrower and more so when it activates from the written acknowledgment of liability and failure of both to discharge that liability.

30. In view of the decision of the Hon'ble Supreme Court (supra), Section 18 of the Limitation Act, 1963 applicable to Section 7 Applications under I&B Code and held that the acknowledgment of debt by a borrower initiates a fresh period of limitation from the date of acknowledgement of debt”.

In the present petition the document which can be considered for the acknowledgement of debt by the corporate debtor is the Balance Sheet of the year 2016-17 in which under the head Long Term Borrowings- Secured Term Loans From Banks- Indian Overseas Bank (Adhoc PC)- Rs. 14,35,01,231.51 and Indian Overseas Bank 0406- Rs. 1,35,18,313.55 is mentioned. Moreover, in the OTS proposal dated 29.06.2021 it is stated that *“the IOB sanctioned the credit facilities to the tune of Rs. 11.87 crores vide sanction letter dated 11.08.2014. We would like to opt for one time settlement in order to close our all credit facilities. We could make the payment in two instalments”*. Therefore, in both the documents on record the debt and default is being acknowledged by the corporate debtor from where the fresh period of limitation will begin. Thus, it can be safely said that the present petition is well within the period of limitation of three years.

10. Another issue for consideration is whether there is a default in payment or not. It is observed from the record that in the present case, the default is evidenced by Statement of Account (Annexure-I/5), Sale Deed along with translation and confirmation letters (Annexure-I/6), Registration of Charge (Annexure-I/7), Sanction Letter (Annexure I/10), Hypothecation of book debt (Annexure-I/12), letter of guarantee (Annexure I/14), DP Note (Annexure I/15, I/17, I/21, I/23), term loan agreement (Annexure I/16, I/20), letter of hypothecation (Annexure I/24), deed of hypothecation (annexure I/25), Registration Certificate (Annexure-I/26), credit sanction advise (Annexure I/27), balance confirmation (Annexure I/28), possession notice (Annexure I/30), valuation report (Annexure I/31) attached with the main petition. As per the financial records it is evident that an amount of Rs. 22,21,13,462.89 (Rupees Twenty Two Crore Twenty One Lakhs Thirteen Thousand Four Hundred and Sixty Two Paise Eighty Nine Only) is still pending which amounts to default, when corporate debtor avoided the payment of outstanding amount despite repeated requests by petitioner-financial creditor.

11. The application filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, in Part III of Form 1, Mrs. Shalu Khanna, has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 02.07.2019 along with the certificate of IBBI issued in favour of the proposed Interim Resolution Professional i.e. Mrs. Shalu Khanna is attached at Annexure-II of the petition. The Law Research Associate of this Tribunal has checked the credentials of Mrs. Shalu Khanna, her AFA Certification is valid up to 11.12.2013 and there is nothing adverse against her. In view of the above, we appoint Mrs. Shalu Khanna, Registration No.IBBI/IPA-001/IP-P00917/2017-18/11523, Email:skhanna@llca.net,

Mobile No.9810193715, the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mrs. Shalu Khanna shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;
- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6

of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

- vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated

24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which

would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

- viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and
- ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

12. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

- a) 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;

- b) transferring, encumbering, alienating, or disposing of by the corporate debtor 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 corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002; and
- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- f) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

13. We direct the Financial Creditor to deposit a sum of ₹1,00,000/- (Rupees One Lakh Only) with the Interim Resolution Professional, to meet out the expense 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 amount, however, is subject to

adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

14. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

15. The petition is admitted accordingly.

SD/-

(Subrata Kumar Dash)
Member (Technical)

February , 2023

DS/TB

SD/-

(Harnam Singh Thakur)
Member (Judicial)