



**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

COMPANY PETITION NO. (IB) 1/ALD/2024

IN THE MATTER OF:

[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]

IN THE MATTER OF:

M/S SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA

Registered Office:

Small Industries Development Bank of India (SIDBI), Tower 15,
Ashoka Marg, Lucknow, Uttar Pradesh -226001

Branch Office:

SIDBI, Swavalamban Bhawan, 2nd floor, C-11,
G- Block, Bandra Kurla Complex,
Bandra (E), Mumbai 51.

....APPLICANT/FINANCIAL CREDITOR

VERSUS

M/S BHARTIYA MICRO CREDIT

Registered Office:

645/A/57 Plot No-15,

Janak Vihar Sector-1,

Janakipuram, Lucknow-226021, Uttar Pradesh

...RESPONDENT/CORPORATE DEBTOR

Order delivered on: 14.6.2024



CORAM:

Shri Praveen Gupta : Member (Judicial)

Shri Ashish Verma : Member (Technical)

Present:-

For the Financial Creditor : Sh. Roshan Kumar, Adv.

Corporate Debtor : Ex-parte v.o.d 22.4.2024

ORDER

1. The present Application has been filed on 8.12.2023 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "I & B Code, 2016") by the Applicant/Financial Creditor namely, M/s Small Industries Development Bank of India (SIDBI) seeking initiation of the Corporate Insolvency Process (hereinafter referred as "CIRP") against the Respondent/Corporate Debtor i.e. M/s Bhartiya Micro Credit read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 in Form 1 containing all the information as required in Part I, II, III, IV and V of the Form.
2. M/s Bhartiya Micro Credit, (hereinafter referred as the "Respondent/Corporate Debtor") was incorporated on



17.01.2008 registered under Section 25 of the Companies Act, 1956 (Section 8 of the Companies Act, 2013), and registered with the ROC-Kanpur city with CIN U65992UP2008NPL034486, having registered office at 645/A/57 Plot No 15, Janak Vihar Sector 1, Jankipuram, Lucknow- 226021, Uttar Pradesh with the objective of running business of microfinance operations. The Corporate Debtor's operations are spread over multiple States and Union Territories with a total of 1.8 lakhs active borrowers and Asset under Management (AUM) of Rs. 269 Crores which are managed through a network of 102 branches. The Corporate Debtor follows the Joint Liability Group Model (JLG) for its operations wherein the borrowers are organized into groups of up to 8-20 members and 1 JLG forms a center. Corporate Debtor provides loans to individual members of the group (JLG) up to Rs. 20,000/-. Corporate Debtor target segment consists of rural and urban women from low-income families who come from poor/moderately poor income households. The Corporate Debtor has an authorized and paid-up capital of Rs. 20,00,00,000/-.



3. The Applicant is a registered Bank established on 2.4.1990 under an Act of Parliament which primarily acts as the Principal Financial Institution for Promotion, Financing and Development of the Micro, Small and Medium Enterprise (MSME) as well as for co-ordination of functions of institutions engaged in similar activities.

4. It is submitted that the Applicant sanctioned a term loan of Rs. 2 crore to the Respondent under Micro Credit Scheme vide Letter of Intent/Sanction Letter dated 23.5.2017, which is secured by the Primary Security of Exclusive first charge by way of hypothecation of book debts/ receivables created out of the assistance availed from SIDBI and other Collateral Securities. The borrower was required to pay interest on the principal amount of the loan outstanding on 10th day of each month of each year. The first of such payment of installment/interest fell due on 10.04.2018. The payment of installments/interest which have fallen due up to 10.06.2019, were paid by the borrower regularly, however, subsequent payments of instalments due on 10.07.2019 and on later dates, were paid either belatedly or appropriated



against the proceeds of FDR. From then onwards, the Respondent has continuously defaulted in payment of subsequent installments of principal/interest which have fallen due with effect from 10.10.2019 till 10.10.2020 which was to be the last installment. In view of above defaults in payments of instalment, the account of the Corporate Debtor was classified as NPA on 09.12.2019.

5. The Financial Creditor had filed an application against the Corporate Debtor under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 before the Hon'ble DRT, Lucknow for recovery of Rs. 1,11,82,009/- together with pendent lite and future interest, costs and other reliefs.
6. The Hon'ble DRT, Lucknow vide its final order dated 17.07.2023 allowed the application and passed an order for issuance of Recovery Certificate for an amount of Rs. 1,11,82,009/- together with pendent lite and future interest costs and other reliefs.
7. Under Article 137 of the Limitation Act, which is a residual provision, provides for a limitation period for any application for which no period of limitation is provided in any of the



Articles in the Schedule to the Limitation Act. It provides for a period of limitation of 3 years from the date when the right to apply accrues. The Hon'ble Supreme Court in the case of Kotak Mahindra Bank Limited v. A. Balakrishnan & anr. CIVIL APPEAL NO. 689 OF 2021 examined the question of limitation from the perspective of issue of recovery certificates in terms of provision of the Recovery of Debts and Bankruptcy Act, 1993 (1993 Act) and held that limitation will continue under Article 137 in case if there is a recovery certificate issued by the DRT under the RD&B Act, 1993. Therefore, pursuant to the recovery certificate which in this case has been issued on 17.07.2023, the present petition has been filed.

- 8.** Looking to the lack of inclination of the Corporate Debtor to repay the said amount along with interest, the Applicant thus, moved to this Tribunal for initiating insolvency proceedings against the Corporate Debtor by filing application u/s 7 of the I & B Code, 2016 mentioning Rs.1,43,54,298/- as amount claimed to be in default.



9. The above application filed by the Applicant has been considered in the hearing held on 09.01.2024 and the Respondent has been issued a notice vide order dated 09.01.2024 to file its reply within two weeks after the service of notice to explain the default on payment of the financial debt as alleged in the above-mentioned Application. Thereafter, on failure of the service of the notice, service by way of substituted mode of service was affected upon the Respondent for which publications were made in the newspapers i.e. 'Financial Express' in English and 'Jansatta' in Hindi on 21.2.2024. Despite giving several opportunities, neither any reply has been filed nor any one appeared on behalf of the Corporate Debtor to explain the alleged default in repaying the debt.

10. The Applicant has filed the affidavit of service vide Diary No. 779 dated 1.4.2024. The Applicant also filed the supplementary affidavit vide diary no. 1093 dated 22.5.2024 for giving details of the account for which the NPA was declared and on the basis of which the present petition under Section 7 is filed. Keeping in view all these facts, the



Respondent was set ex-parte vide order dated 22.04.2024 and the case has been finally heard on 04.06.2024.

- 11.** We have considered the submissions made by the Ld. Counsel appearing for the Applicant in the hearing and material available on record.

- 12.** The facts of the case as stated in the Application are that the Financial Creditor sanctioned a term loan of Rs. 2 crore to the Corporate Debtor under Micro Credit Scheme which was secured by Primary Security of Exclusive first charge by way of hypothecation of book debts/ receivables created out of the assistance availed from Financial Creditor and other Collateral Securities. While initially the installments were duly paid by the Corporate Debtor on stipulated date on monthly basis, however, the subsequent installments were paid with delay or appropriated against the proceeds of FDR. Thereafter, the Company continuously defaulted in payment of subsequent instalments of principal/interest and later the account of the Corporate Debtor was classified as NPA on 09.12.2019. In respect of the unpaid debt, the Hon'ble DRT, Lucknow issued a recovery certificate for an amount of Rs.



1,11,82,009/- together with pendent lite and future interest costs and other charges against the Corporate Debtor vide its order dated 17.07.2023. However, this debt is still not paid by the Corporate Debtor. On the date of filing of the Application u/s 7, the total outstanding debt is Rs. 1,43,54,298/-. These facts have not been controverted by the Corporate Debtor despite giving several opportunities by issuing of notice and making publication in newspaper for substituted service.

- 13.** In light of the findings discussed above, we are of the view that the loan extended to the Corporate Debtor by the Financial Creditor qualifies as a “Financial Debt” as per the definition given in Section 5 (8) of IBC, 2016. After examining the statement of loan account, letter of intent dated 23.05.2017, loan agreement dated 22.09.2017 executed by the Corporate Debtor and other related documents conferring obligation upon the Corporate Debtor to repay the Loan amount including interest, and subsequent events occurred in respect of non-repayment of outstanding loan amount including the interest and finally,



the recall notice dated 01.06.2021 issued by the Financial Creditor, we are of the considered view that the Financial Creditor has proved the “existence of debt” and “default”. We are further satisfied that the petition has been filed well within the period of limitation. Against the averments made in the Application, the Corporate Debtor did not appear despite of repeated notices and was therefore set ex-parte. Under the said circumstances, we find that the debt and default on the part of the Corporate Debtor are proved and the application filed u/s 7 is fit to be admitted.

- 14.** In the case of ***Innoventive Industries Limited vs. ICICI Bank & Anr (Civil Appeal Nos.8337-8338 of 2017) dated 31.08.2017***, it has been clearly held by the Hon’ble Supreme Court that if there is a debt and default in repayment of debt and application filed by the Applicant/Financial Creditor is complete in all respect, the application under Section 7 of I & B Code 2016, is to be admitted. In the present case, we have clearly found that there is an outstanding debt of Rs.1,43,54,298/- which is



more than the threshold limit of Rs.1 crore and default on payment of debt has also occurred.

- 15.** With respect to the limitation aspect, as noted in the foregoing paras that as per the finding of the Hon'ble Supreme Court in case of ***Kotak Mahindra (supra)***, the limitation continues for three years from the date of passing of order by DRT and issuance of RC. The said judgement of Kotak Mahindra has recently been relied upon in the matter of ***Tottempudi Salalith Vs. State Bank of India & Ors. CIVIL APPEAL NO.2348 OF 2021*** wherein the Hon'ble Supreme Court has held:

"...28. It could thus be seen that this Court in Dena Bank [Dena Bank v. C. Shivakumar Reddy, (2021) 10 SCC 330] in SCC paras 136 and 141, has in unequivocal terms held that once a claim fructifies into a final judgment and order/decre, upon adjudication, and a certificate of recovery is also issued authorising the creditor to realise its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decre and/or the amount specified in the recovery certificate. It



has further been held that issuance of a certificate of recovery in favour of the financial creditor would give rise to a fresh cause of action to the financial creditor, to initiate proceedings under Section 7 IBC for initiation of the CIRP, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the certificate of recovery, if the dues of the corporate debtor to the financial debtor, under the judgment and/or decree and/or in terms of the certificate of recovery, or any part thereof remained unpaid.”

*“...86. To conclude, we hold that **a liability in respect of a claim arising out of a recovery certificate would be a “financial debt” within the meaning of clause(8) of Section 5 IBC. Consequently, the holder of the recovery certificate would be a financial creditor within the meaning of clause (7) of Section 5 IBC. As such, the holder of such certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the recovery certificate.**”*

[Emphasis supplied]

- 16.** In Part III of Form 1, the Financial Creditor has proposed the name of Efficax Resolution Professionals Private Limited as



Interim Resolution Professional. The Registration number is IBBI/IPE-0153/IPA-3/2023-24/50063, and address provided is House No.3656/6, Gali No.6, Narang Colony, Tri Nagar, Near Rose Garden, New Delhi-110035; Email: md@efficaxindia.com. The consent has been given in Form-2 annexed as Annexure 13 Colly. with the Application. The Law Research Associate of this Tribunal, Mr. Sarim Husain, has checked the credentials of Efficax Resolution Professionals Private Limited, and found that there are no disciplinary proceedings pending against the proposed Resolution Professional and also there is nothing adverse against it. It is found that IRP holds valid authorization from 04.09.2023 till 03.09.2024. After considering these details, we appoint Efficax Resolution Professionals Private Limited, Registration No.IBBI/IPE-0153/IPA-3/2023-24/50063, as Interim Resolution Professional (IRP).

- 17.** In view of our above findings, we are satisfied that the present application under Section 7, has been found fit to be admitted as per Section 7(5) of the I & B Code, 2016 and hence, the application is admitted in terms of Section 7(5)(a)



of the I & B Code, 2016 against the Corporate Debtor, M/s Bhartiya Micro Credit, and accordingly, moratorium is declared in terms of Section 14 of the Code.

- 18.** The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it under Section 14, and also take necessary actions as per sections 17, 18, 20 and 21 of I & B Code, 2016.
- 19.** The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors (hereinafter referred as ‘CoC”) and shall file a report certifying the CoC 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 CoC within seven days of filing the report of CoC.
- 20.** As a necessary consequence of the moratorium in terms of Section 14, 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 corporate debtor including execution of any judgement, 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 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 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.

- f.** 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 financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- 21.** The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process (CIRP) 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.
- 22.** The CoC shall appoint a Resolution Professional as per section 22 of I & B Code, 2016. A monthly progress report shall be filled by the Resolution Professional providing the details of work done in respect of completing the CIRP within the timeline as prescribed under the provision of section 12 of the I & B Code, 2016.



23. We direct the Financial Creditor to deposit a sum of Rs. 1,00,000/- with the Interim Resolution Professional, 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 amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

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

25. List the matter on 19.7.2024.

-Sd-
(Ashish Verma)
Member (Technical)

-Sd-
(Praveen Gupta)
Member (Judicial)

Dated: 14.6.2024