

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT NO. V**

**CP No. 508/(IB)-MB-V/2023**

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*

**Axis Bank Limited**

Trishul, 3<sup>rd</sup> Floor, Opposite Samartheshwar Temple, Near Law Garden, Ellis Bridge, Ahmedabad 380 006 and Structured Assets Group at 7<sup>th</sup> Floor, C-2, Axis House, Wadia International Centre, Pandurang Budhkar Marg, Worli, Mumbai – 400025

... Petitioner/Financial Creditor

V/s

**Chintamanis Jewellery Arcade Private Limited**

Suraj Vista, 3<sup>rd</sup> Floor, Kashinath Bhuru Marg, Prabhadevi, Dadar West, Mumbai -400028.

... Respondent/Corporate Debtor

**Order Dated: 23.02.2024**

**Coram:**

Hon'ble Reeta Kohli, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

***Appearances (Physically):***

For the Petitioner : Adv. Nikita Bangera  
For the Corporate Debtor : Adv. Baiju Vijay Pupala

**ORDER**

***Per: Madhu Sinha, Member (Technical)***

1. This Company Petition is filed by **Axis Bank Limited** (hereinafter called "**Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Chintamanis Jewellery Arcade Private Limited** (hereinafter called "**Corporate Debtor**") alleging that the Corporate Debtor committed default on 31.10.2019 to the extent of **Rs.10,67,29,632.50/-**. This Petition has been filed by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called "**IBC**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. List of documents attached to this Petition in order to prove the existence of Financial Debt, the amount and date of default are as follows:
  - a. A copy of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh and Twelfth Sanction Letters dated 14th July 2012, 24th August 2012, 13th December 2012, 22nd December 2012, 08th February 2013, 25th March 2015, 07th April 2015, 11<sup>th</sup> August 2016, 11<sup>th</sup> August 2017, 29<sup>th</sup> November 2018 and 06<sup>th</sup> March 2020 respectively.
  - b. A copy of the Overdraft/ Cash Credit Agreement dated 25th August 2012.
  - c. A copy of the Deed of Hypothecation dated 25th August 2012.
  - d. A copy of the Form 8 reflecting the creation of charge vide the Deed of Hypothecation dated 25th August 2012.

- e. A copy of the Deed of Guarantee dated 25th August 2012 executed by Mr. Chintamani Kaigaonkar.
- f. A copy of the Deed of Guarantee dated 27th August 2012 executed by Mr. Arun Kaigaonkar.
- g. A copy of the Demand Promissory Note along with a D.P. Note Delivery cum Waiver letter dated 25th August 2012.
- h. A copy of the Balance Confirmation dated 28th February 2015.
- i. A copy of the Letter of Arrangement: Cash Credit Advances dated 30th March 2015.
- j. A copy of the Term Loan Agreement dated 30th March 2015.
- k. A copy of the Deed of Guarantee dated 30th March 2015 executed independently by Mr. Arun Kaigaonkar, Mr. Chintamani Kaigaonkar, Mrs. Nirmala Kaigaonkar and the HUF.
- l. A copy of the Composite Hypothecation Deed dated 30th March 2015.
- m. A copy of the Acknowledgment of Debt dated 30th March 2015, 07th September 2016, 21st August 2019 and 14th December 2022.
- n. A copy of the CERSAI receipt dated 27th September 2015.
- o. A copy of the Recall Notice dated 17th August 2020.
- p. A copy of the Demand Notice dated 05th May 2021 and 26th September 2022.
- q. A copy of the Statement of Account maintained by the Financial Creditor reflecting entries of disbursement of amount to the Corporate Debtor
- r. A copy of the Record of Default maintained by NeSL.
- s. Copies of Certificates in terms of Section 2A of the Bankers' Book Evidence Act, 1891.

### **Brief Facts**

3. The Petition reveals that the Corporate Debtor approached the Financial Creditor to avail an Overdraft ("**OD**") facility amounting to Rs. 1,00,00,000/- for its general business purpose. The Financial Creditor

sanctioned the OD facility amounting to Rs. 1,00,00,000/- to the Corporate Debtor vide sanction letter dated 14th July 2012 bearing Ref. No.: *AXIS/SME/SEG/2012-13/085* ("**First Sanction Letter**") subject to the terms and conditions set out therein. Thereafter, vide sanction letter dated 24th August 2012 bearing Ref. No. *AXIS/SME/SEG/2012-13/130* ("**Second Sanction Letter**"), the Financial Creditor modified the conditions of the First Sanction Letter to include collateral of Fixed Deposit Receipt amounting to Rs. 20,00,000/- duly lien marked in favour of the Financial Creditor. The First and Second Sanction Letters were approved by the Board of Directors of the Corporate Debtor vide Board Resolution dated 24th August 2012.

4. Thereafter, various Credit Facilities were sanctioned to the Corporate Debtor and/or existing facilities were renewed, enhanced, amended and/or reduced by way of the Third sanction letter to Twelfth sanction letters dated 13<sup>th</sup> December 2012, 22<sup>nd</sup> December 2012, 08<sup>th</sup> February 2013, 25<sup>th</sup> March 2015, 07<sup>th</sup> April 2015, 15<sup>th</sup> June 2016, 11<sup>th</sup> August 2016, 11<sup>th</sup> August 2017, 29<sup>th</sup> November 2018 and 06<sup>th</sup> March 2020 respectively. However, after availing the above-mentioned credit facilities, there were several irregularities noted in the operation of its account and the Corporate Debtor failed to make timely payments. Consequently, the Corporate Debtor's account was classified as a Non-Performing Asset ("**NPA**") on 29th January 2020.
5. On 17<sup>th</sup> August 2020, the Financial Creditor issued a recall notice bearing *Ref. No. AXISB/CBB/PR/2020-21/340* to the Corporate Debtor to pay an amount of Rs. 18,76,76,230.87/- outstanding as on 31<sup>st</sup> July 2020 along with further interest with effect from 01<sup>st</sup> August 2020 at contractual rates. However, the Corporate Debtor failed to pay the amount.
6. Pursuant to the above, the Financial Creditor issued a Demand Notice dated 05<sup>th</sup> May 2021 bearing reference No. *AXIS/SA/PRK/2021-22/388*

under section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**") calling upon the Corporate Debtor to clear all the overdue payable to the Financial Creditor.

7. Thereafter, the Corporate Debtor vide letter dated 12<sup>th</sup> August 2021, requested the Financial Creditor to allow the Corporate Debtor to operate its current account and further requested for the extension of time to pay the outstanding dues till end of August 2021. The Financial Creditor vide letter dated 23<sup>rd</sup> August 2021, agreed to allow normal operations in the current account with a cut-back on all the deposits in the account with immediate effect for a limited period till 15<sup>th</sup> September 2021.
8. On 25<sup>th</sup> November 2021, the Financial Creditor through its Advocates issued a Recovery Notice dated 25<sup>th</sup> November 2021 bearing reference number *MDP/AP/TK/VJ/4819/4656/2021* to the Corporate Debtor, calling upon the Corporate Debtor to pay the outstanding amount of Rs. 22,55,24,055.10/- as on 31<sup>st</sup> October 2021 towards the various credit facilities sanctioned by the Financial Creditor.
9. Thereafter, the Corporate Debtor approached the Financial Creditor for a One Time Settlement ("**OTS**") of Rs. 20,05,00,000/- for its outstanding dues as full and final settlement. The Financial Creditor vide letter dated 24<sup>th</sup> February 2022 bearing reference no. *AXIS/SA/PRK/2021-22/805* accepted the OTS proposal of the Corporate Debtor for an amount of Rs. 20,05,00,000/- as full and final settlement of the outstanding dues of Rs.22,55,24,055.10/-. However, pursuant to the issuance of the OTS approval letter, the Corporate Debtor failed to honour its financial obligations and defaulted the OTS payment schedule. Out of the total settlement amount of Rs. 20,05,00,000/-, the Corporate Debtor paid only an amount of Rs. 13,00,00,000/- and an amount of Rs. 7,05,00,000/- remained outstanding along with the interest which accrued on account of delay in payment. Accordingly, the Financial Creditor issued Notice

dated 03<sup>rd</sup> August 2022 bearing Ref. No. *AXIS/SAG/PRK/2022-23/1015* upon the Corporate Debtor revoking the settlement granted to the Corporate Debtor. The Financial Creditor issued a Notice dated 06<sup>th</sup> September 2022 through their Advocates, seeking payment of Rs.10,27,03,427.34/- as on 31<sup>st</sup> August 2022 with further interest w.e.f. 01<sup>st</sup> September 2022. However, the Corporate Debtor failed to comply with the said notice.

10. Thereafter, the Financial Creditor issued a Demand Notice dated 26<sup>th</sup> September 2022 bearing Ref. No. *AXISB/SAG/PRK/2022-23/1092* under Section 13 (2) of the SARFAESI Act calling upon the Corporate Debtor to pay an amount of Rs. 10,27,03,427.34/-. However, the Corporate Debtor failed to pay the dues despite repeated requests and reminders by the Financial Creditor.

11. Hence this petition.

**Reply filed by the Corporate Debtor**

12. In response to this, the Corporate Debtor had filed its Affidavit in Reply (**‘Reply’**) and has submitted that prior to the twelfth sanction letter dated 06.03.2020, the Respondent was classified as a Non-Performing Asset (**NPA**) as on 29.01.2020 vide letter dated 15.02.2020 even when the credit facilities were overdue since October/November 2019.

13. It is submitted that the present petition is time barred as per the Article 137 of the Limitation act 1963. The outstanding amounts are overdue since October/November 2019 and the Respondent’s account was declared as Non-Performing Assets, more than three years prior to the filing of the present Petition.

14. It is further submitted that at the request of the Respondent, for the compromise settlement, the Applicant had sanctioned One-time

settlement (OTS) scheme for Rs. 20.05 Crores vide letter dated 24.02.2022 wherein the Corporate Debtor had paid an amount of Rs. 13.05 Crores and sought additional time for the balance outstanding dues and at the request of the Corporate Debtor the OTS scheme was modified from time to time vide letters dated 10.03.2022 and 12.05.2022. Hence, time is not the essence of the contract.

15. Thereafter the Applicant terminated the OTS scheme vide letter dated 03.08.2022 prior to the last date of the scheme thereby causing undue hardship and irreparable loss to the Corporate debtor by declining the Corporate Debtor's request for additional time for the balance payments under the OTS scheme vide letter dated 30.06.2022.
16. It is submitted that the Debt Acknowledgement dated 14.12.2022 is inappropriate, misrepresenting and inadmissible since the amount specified in the debt acknowledgement is inappropriate in view of the balance unpaid dues of Rs. 7.05 crores under the OTS scheme as on 31.08.2022 was admitted by the Financial Creditor.
17. It is further submitted that the sanctioned OTS Scheme as well as the revocation of the OTS scheme vide letter dated 03.08.2022 shows the balance payable therein of Rs. 7.05 crores. However the claim amount in the Part IV of the present Petition under the particular of the Financial Debt is of Rs. 10,67,29,632.50/- as on 10<sup>th</sup> April 2023 which includes a figure of Contractual claim/damages on failure/breach of OTS Scheme and the said amount on account of the said breach is not a Financial Debt under the definition of Section 5(8) of the Insolvency and Bankruptcy Code, 2016.
18. It is submitted that the Financial Creditor being aware of the overdue amounts in the October/November 2019, failed to offer a framework for revival and rehabilitation of Micro, Small and Medium Enterprises (MSME) as per its policy based on RBI circular of March 2016 and has caused undue hardship and irreparable loss to the Corporate Debtor.

19. Further, the Corporate Debtor was willing to arrive at the amicable settlement and has provided a repayment plan vide letter dated 31.07.2023 to the Financial Creditor. However the same was declined by the Financial Creditor.

**FINDINGS:**

20. We have heard the Counsels appearing for the Petitioner as well as Respondent and perused the material available on record.

21. It is an undisputed fact that several credit facilities have been sanctioned by the Axis Bank Limited to the Corporate Debtor vide sanction letters dated 14th July 2012, 24th August 2012, 13th December 2012, 22nd December 2012, 08th February 2013, 25th March 2015, 07th April 2015, 11<sup>th</sup> August 2016, 11<sup>th</sup> August 2017, 29<sup>th</sup> November 2018 and 06<sup>th</sup> March 2020 respectively. The first date of default as submitted by the Financial Creditor in Form 1 is 31.10.2019 and the account of the Corporate Debtor was declared as Non-Performing Asset (**NPA**) on 29.01.2020. However, the contention raised by the Corporate Debtor is that the present petition is time barred as per the Article 137 of the Limitation act 1963, since the Petition was filed on 28.04.2023 while the outstanding amounts was overdue since October/November 2019 which is beyond three years of filing of the present Petition.

22. In the light of above pleadings, the substantial issue that needs to be decided by this Bench, in the matter, is whether the Financial Debt is barred by the limitation?

23. The Bench in this regard notes that Section 18 of the Limitation Act 1963 mentions the following: -

*(18.1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such*

*property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*

Further, the explanation of this section mentions ....

*(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;*

*(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf; and*

*(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.*

24. This Bench relies on the Judgement of **Hon'ble Supreme Court in the case of Dena Bank V. C. Shivkumar Reddy (Civil Appeal No. 1650 of 2020) (2021) 10 Supreme Court Cases 330**, wherein it was held that the acknowledgement of liability gives a fresh cause of action and extends the Limitation Period. Para 113 and 118 of the Judgement are reproduced below:

*113. As per Section 18 of Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing a fresh period of limitation from the date on which the acknowledgement is signed. Such acknowledgement need not be accompanied by a promise to pay expressly or even by implication. However,*

*the acknowledgement must be made before the relevant period of limitation has expired.*

118. *It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. In **Asset Reconstruction Company (India) Limited v. Bishal Jaiswall and Anr.** (supra) authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of **Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff**, [**Bengal Silk Mills**] and in **Re Pandem Tea Co.19 Ltd.**, the judgment of the Delhi High Court in **South Asia Industries (P) Ltd. v. General Krishna Shamsheer Jung Bahadur Rana** and the judgment of Karnataka High Court in **Hegde Golay Ltd. v. State Bank of India** and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt.*

25. This Bench further relies on the Judgement of Hon'ble NCLAT in the case of Tejas Khandhar Vs. Bank of Baroda (2022) ibclaw.in 496 holding that proposal of OTS tantamount to acknowledge of debt under Section 18 of the Limitation Act. The relevant extract of the judgement is as under :-

*“14. Keeping in view the aforementioned ratio laid down by the Hon'ble Apex Court in 'Dena Bank (now Bank of Baroda)' (Supra), this Tribunal is of the considered view that the OTS proposal dated 01.08.2016 and the subsequent one on 27.03.2018 falls within the definition of the ambit of 'acknowledgement of debt' as envisaged under Section 18 of the Limitation Act, 1963 and is therefore squarely covered by the aforementioned Judgement.”*

26. On the strength of the Section 18 of the Limitation Act 1963 and the Judgements relied upon, this Bench has observed that the Corporate Debtor has acknowledged its debt on several occasions vide acknowledgement of debt dated 30<sup>th</sup> March 2015, 07<sup>th</sup> September 2016, 21<sup>st</sup> August 2019 and 14<sup>th</sup> December 2022 annexed as “Annexure 43, Annexure 57, Annexure 66 and Annexure 82” of the Company Petition and further acknowledged the debt through its Audited Financial Statements for the year ended 31<sup>st</sup> March 2019, 31<sup>st</sup> March 2020 & 31<sup>st</sup> March 2021 annexed as ‘Annexure 85’ to the Company Petition. Thereby, extending the period of limitation.
27. This Bench further observes that the Corporate Debtor had entered into a One Time Settlement (“**OTS**”) of Rs. 20,05,00,000/- for full and final settlement of its outstanding dues of Rs.22,55,24,055.10/- which was accepted by the Financial Creditor vide letter dated 24<sup>th</sup> February 2022 bearing reference no. *AXIS/SA/PRK/2021-22/805*. Hence, the Present Petition is well within the period of Limitation.
28. The Petitioner has also filed record of default by the Information Utility (NeSL) dated 21.04.2023 which clearly records the existence of debt which is in default and the date of default. The same has not been disputed or refuted by the Corporate Debtor. Therefore, the bench is of the considered view that the existence of occurrence of default as per Section 7(5) of the Insolvency and Bankruptcy Code, 2016 exists.
29. From the set of documents placed on record by the Petitioner, it is found that the Corporate Debtor has defaulted in repayment of debt. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case for admission u/s 7 of the I&B Code.
30. Considering the above discussion, this bench is of the considered view that the petitioner has been able to establish that there is a “**Financial Debt**” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the

Code on the part of the Debtor. The two essential qualifications, i.e., existence of '**debt**' and '**default**' for admission of a petition under section 7 of the I&B Code, have been, therefore, met in this case. Besides, the Company Petition is well within the period of limitation. The Petitioners have also suggested the name of proposed Interim Resolution Professional in Part-3 of the Petition along with his consent letter in Form-2

31. Consequently, the petition is ordered to be admitted in the following terms:

**ORDER**

- a. The above Company Petition No. 508/IBC/MB/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Chintamanis Jewellery Arcade Private Limited.**
- b. The IRP proposed by the Financial Creditor, **Mr. Prashant Jain**, having registration No. IBBI/IPA-001/IP-P01368/2018-2019/12131, having address at A501, Shanti Heights, Plot No. 2,3,9B/10, Sector 11, Koparkharine, Thane, Navi Mumbai, Maharashtra- 400709, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.

- d. That this Bench hereby declared moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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. That the order of moratorium shall have effect from the date of pronouncement of this order till the 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 corporate debtor under section 33, as the case may be.
- f. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- g. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P. No. 508/IBC/MB/2023 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

**Madhu Sinha**  
**Member (Technical)**  
/Abhay/

SD/-

**Reeta Kohli**  
**Member (Judicial)**