

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

CP No. 664/(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

International Coatings Company

**Flat No. E-14/G, Ground Floor, Priya Pushpa
Kunj Co-op. Hsg. Soc. Ltd, Plot No.15, Pandit
Nehru Road, Santacruz(East), Mumbai 400 055**

... Petitioner/Financial Creditor

V/s

Ab Agrotech India Private Limited

**919, Maker Chamber V, Nariman Point Mumbai
400 021**

... Respondent/Corporate Debtor

Order Pronounced on:15.05.2024

Coram:

Hon'ble Smt. Reeta Kohli, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner

: Adv. C.S. Nithish Bangera (PH)

For the Corporate Debtor : Adv.Mr. Manoj Kumar Mishra

ORDER

1. The Petitioners viz. 'International Coatings Company' (**hereinafter as Petitioner**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "**Financial Creditor**" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against 'Ab Agrotech India Private Limited' (hereinafter as '**Corporate Debtor**'). This Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the '**Code**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 4,60,30,116/- inclusive of contractual interest, penal interest, costs and expenses.
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 Loan Agreement dated 15.04.2016.
 - b. A copy of statements of A/c maintained in Kotak Mahindra Bank from 01.01.2016 to 31.03.2016 and 01.04.2016 to 30.06.2016.
 - c. A copy of loan recall notices dated 06.05.2023 and 26.05.2023.
 - d. A copy of record of default with NeSL.

Submission of Petitioner:

The Loan Agreement, initially effective from April 15, 2016, for a three-year term until April 15, 2019, allowed for a further extension of two years at the discretion of the Corporate Debtor. On April 14, 2019, the Corporate Debtor chose to exercise this option, extending the Loan Agreement by an additional two years in accordance with Clause 6 of the agreement. Clause 6 details the provisions for such extensions and can be referenced on page 53 of the original petition.

Brief Facts

3. The Petition reveals that the Financial Creditor is a Partnership firm duly incorporated on 15.04.2014 vide Deed of Partnership executed between its partners viz. Shwetal Bhupendra Sakaria and Yash Nimish Munim..
4. **Ab Agrotech India Private Limited** (hereinafter referred to as the “**Corporate Debtor**”) is a Company incorporated under the Companies Act, 1956. With a view of Business purpose, the Corporate Debtor approached the Financial Creditor for availing term loan of a sum not less than Rs.2,00,00,000/- (Rupees Two Crores Only). Furthermore, the Financial Creditor and the Corporate Debtor signed and executed the Loan Agreement dated 15.04.2016. Pursuant to the Loan Agreement, the Financial Creditor advanced credit facilities aggregating to Rs.2,02,70,000/- (Rupees Two Crores Two Lakh Seventy Thousand Only) with a simple interest of @18 %. The details of the Disbursements are as under:

| Sr. No | Date | Particulars/ Bank Ref No. | Disbursement(In INR) |
|--------|------------|---------------------------------|----------------------|
| 1. | 11.02.2016 | RTGS-KKBKR52016021100 | 1,45,00,000/- |
| 2. | 26.02.2016 | NEFT-KKBKH16057839564 | 35,00,000/- |
| 3. | 18.03.2016 | RTGS- KKBKR52016031800787160 | 5,00,000/- |
| 4. | 12.04.2016 | RTGS- KKBKR52016041200840935 | 17,70,000/- |
| | | TOTAL | 2,02,70,000/- |

5. The Loan Agreement signed on April 15, 2016, was initially set for a term of three years, ending on April 15, 2019. However, it contained a provision allowing for an extension of two additional years, which could be activated at the discretion of the Corporate Debtor. Consequently, on April 14, 2019, the Corporate Debtor chose to exercise this option for extending the Loan Agreement by an extra two years as per Clause 6 of the agreement.

6. Based on the provisions outlined in Clauses 7, 10, and 12 of the agreement, the corporate debtor made his first default on payment on April 14, 2021. These clauses likely specified the terms and conditions regarding the loan repayment, including the due date. Clause 7 detailed the repayment schedule, Clause 10 addressed events triggering default or maturity of the loan, and Clause 12 specified the consequences of non-compliance with the repayment terms.
7. The Corporate Debtor owes a total outstanding amount of Rs. 3,85,13,000 as of April 14, 2021, as per the terms outlined in the loan agreement. It specifies that no interest was levied from the disbursement date until the loan agreement date April 15, 2016. However, subsequent to the agreement, interest at a rate of 18% per annum, calculated on a simple interest basis, has been charged from April 15, 2016, onwards, as detailed in Clause 8 of the agreement.
8. The Petitioner submitted that After availing the loan facilities, the Corporate Debtor failed to fulfil its obligations under the loan agreement dated 15.04.2016 by not repaying the entire liabilities due as of 14.04.2021, constituting a default. Despite legitimate demands for repayment made by the Petitioner on 14.04.2021, the Respondent repeatedly cited the COVID-19 pandemic as a reason for its inability to pay and requested additional time, typically one or two months, to settle the outstanding dues.
9. The Petitioner further submitted that, having been disappointed by the Respondent's consistent vague excuses and false assurances, he felt compelled to issue a formal Notice to the Respondent via speed post on 06.05.2023. In this Notice, the Corporate Debtor (Respondent) was directed to repay the sum of Rs. 4,60,30,116/- (Rupees Four Crores Sixty Lakhs Thirty Thousand One Hundred Sixteen Only) within a 15-day period.

10. The Petitioner further issued a Notice on 26.05.2023 to the Corporate Debtor's registered address, giving the Respondent a final chance to settle its entire debt within 10 days of receiving the notice. The Corporate Debtor received the notice on 29.05.2023, but failed to repay the outstanding amount by 08.06.2023, as required within the specified timeframe.
11. Hence, due to non-payment of debts, the Petitioner filed this Petition u/s 7 of the IBC, as a Financial Creditor, for initiating the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

Respondent Submission

12. The Corporate Debtor contends that the petitioner's claim is time-barred due to the expiration of the limitation period outlined in clause 5 of the agreement (referenced on page 52). Which states as under:

“The parties agree that the Borrower shall repay the entire dues to the Lender along with the interest after a period of three years from the date of this agreement without fail. The Lender has agreed that it will not recall the borrowing prior to the expiry of three years. Further the Borrower shall enjoy the moratorium from repayment of loan at its discretion for a further period of two years from the expiry of three years from the date of this agreement.

The agreement specifies a validity period of three years, implying that any cause of action arises only after the lapse of this three-year period, which concluded on April 14, 2019. Hence, the Corporate Debtor argues that the petitioner's claim cannot be pursued due to the expiration of the applicable limitation period.

13. The limitation period for taking legal action based on a cause that expired on 14.04.2019 ended on 13.04.2022. However, the petition in question was filed on 12.07.2023, after this period had expired. Therefore, it deserves to be dismissed being, beyond the period of limitations.

14. The corporate debtor states that the petitioner has wrongly stated the date of default and failed to provide evidence of confirmation of the outstanding balance. Further the Corporate Debtor submitted that according to legal precedents, if a petition is filed after the expiration of the limitation period, it should not be heard or decided by the court.

Findings

15. We have heard the Counsels and perused the material available on record.
16. The case of the petitioner is that he had advanced loan of Rs. 2.02 Crore at the rate of 18% of interest which in today's date has become Rs. 4.60 Crore. The respondent/corporate debtor has failed to pay the amount. As per the petitioner/financial creditor date of default is 14 April 2021. The same is called out from the loan agreement dated 15 April 2016. On perusal of which shows that an amount of Rs. 2 Crore 2 Lacs 70 thousand was advanced as loan of the respondent/corporate debtor.
17. As per the Clause 5 of the loan agreement an amount was given for a period of three years from the date of agreement. The same interest is mentioned in Clause 8. The rate of interest is 18% per annum. After a period of three years the borrowers was given an extension for further period of two years for re-payment of the loan. Clause 10 of the loan agreement states that in case the borrowers sought an extension after a period of three years.
18. In that case, entire loan amount shall be re-payable along with the interest on the expiry of 5 years. The petitioner is a partnership firm who had advanced loan to the respondent/corporate debtor. It is the case of the petitioner that in view of the Clause 10 as the date of default is 14 April 2021. In view of the non-receipt of the loan amount the financial

creditor was constrained to issue legal notice dated 06.05.2023 and also 26.05.2023 to the respondent/corporate debtor.

19. The respondent fails to file any response to both legal notice further substantiate the extension of the loan amount. The petitioner placed on record the account statements showing the amount of loan disbursed to the respondent/corporate debtor.
20. Mr. Manoj Kumar Mishra, learned counsel representing the respondent, failed to file any response to the petition despite having been granted the opportunity to do so. However, it was stated that he was prepared to advance his arguments.
21. Counsel for the respondent admitted the fact of disbursement of the loan amount by the petitioner. The contention of the respondent is that firstly even though the loan agreement states that borrower had approached the lenders for agreement of the loan amount Rs. 2 Crore whereas the loan advanced and disbursed an amount of Rs. 2 crores 2 lacs 70 thousand. Thus, the loan agreement is self-contradictory.
22. In addition, counsel submitted that in view of the Clause 5 of the loan agreement stating that “borrower shall pay the entire dues to the lender. The borrower was ready to pay entire due to the lender along with the interest after a period of three years from the date of this agreement without fail.” As the present petition is barred by limitation as the three years’ period as per the loan agreement expired on 14.04.2019 whereas the petition has been filed in year 2023. Thus, petition being beyond the limitation deserves to be dismissed on this ground itself.
23. After having advanced above stated arguments counsel further submitted that we had instruction to state that the corporate debtor is ready to pay 25 % of the loan amount which the learned counsel for the petitioner declined the said offer of the respondent/corporate debtor and

submitted that the respondent has been making these offers which have already been declined by the corporate debtor.

24. In view of the submissions made by the counsel and in view of the fact that it is a clear case of amount advanced had been paid by the petitioner which was legally payable and pay back to the petitioner by the respondent and the fact that respondent is not only admitted receipt of the amount but has also admitted the fact that he has failed to re-pay the said amount. It is a clear case where there is a debt which is dully payable and there is also default.
25. Thus, in view of the same petition deserves to be admitted. The contention of the respondent/corporate debtor is that the present petition is barred by limitation had deserves to be appreciated that the complete reading of Clause 5 itself makes it abundantly clear that the lender that is respondent had agreed but will not recall the loan prior to expiry of 3 years and borrower was to enjoy moratorium from the repayment at the discretion for the petitioner for further period of 2 years from the expiry of 3 years from the date of loan agreement. The date of loan agreement is 15 April 2016 thus the period of 5 years expired on 14 April 2021. Clause 10 of the loan agreement also states that loan shall be re-payable along with the interest of expiry of 5 years. The petition having been filed in the year 2023 as thus very much within stipulated time period and not barred by limitation.
26. The essential ingredients required to initiate Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor such as Financial Debt as defined u/s 5(8) & Default as defined u/s 3(12) Of the Code are proved by the Financial Creditor beyond Reasonable doubt in the present case. The application made by the Financial Creditor is complete in all Respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable and the default is in Excess of minimum amount stipulated under section 4(1) of the IBC.

Besides, the Company Petition is well within the period of limitation. Therefore, the debt and default stand established and there is No reason to deny the admission of the Petition. The Petitioners have also suggested the name of proposed Interim Resolution Professional in Part-3 of the Petition along with his consent letter. In view thereof, This Adjudicating Authority admits this Petition and orders Initiation of CIRP against the Corporate Debtor.

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

- a. The above Company Petition No. 664/IBC/MB/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Ab Agrotech India Private Limited.
- b. The IRP proposed by the Financial Creditor, **Mr.Mukesh Kumar Jain**, having registration No. IBBI/IPA-001/IP-01236/2018-2019/11944, having address at C-203, EDGE Commercial, Opposite Maruti Suzuki Arena, Vidhansabha Road, Mova Raipur -492 007(Chhattisgarh), 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 declare 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. 664/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)

/Priyanka/

Sd/-

Reeta Kohli
Member (Judicial)