

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.301

TP 123 of 2019 [CP(IB) 137 of 2019]

Proceedings under Section 7 IBC

IN THE MATTER OF:

Indian Bank
(earlier known as Allahabad Bank)
V/s
Indison Agro Foods Ltd

.....Applicant

.....Respondent

Order delivered on 03/03/2023

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

A. Bhadauria

Sd/-

DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

TP/123/MP/2019
CP(IB)/137/2019

*[An application filed under Section 7 of the Insolvency and Bankruptcy
Code, 2016]*

In the Matter of:

Indian Bank

(Earlier known as Allahbad Bank)
Having its registered address at:
Embassy Tower, New Palasia,
Indore,
Madhya Pradesh- 452001

.....Applicant/Financial Creditor

Versus

Indison Agro Foods Limited

CIN: U01111MP2003PLC016196
Having its registered office at:
310, Pathar Mulda Road, Palda,
Indore,
Madhya Pradesh- 452010

.....Respondent/Corporate Debtor

Order Reserved On: 16.02.2023

Order Pronounced On: 03.03.2023

Coram: Dr. Madan B. Gosavi, Member (J)
Kaushalendra Kumar Singh, Member (T)

Appearance:

For Applicant: Ld. Adv. Mr. Sandeep Pandey
For Respondent: Ld. Adv. Mr. Nipun Singhvi a.w.
Ld. Adv. Mr. Mayur Jugtawat

ORDER

1. This application is filed on 28.01.2019 by Mr. Rajesh Kumar, Assistant General Manager of Allahabad Bank (Financial Creditor) under section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AA Rules) to initiate Corporate Insolvency Resolution Process (CIRP) against M/s Indison Agro Foods Limited (Corporate Debtor). The default amount stated by the financial creditor is Rs 98,76,78,524/- (Principal amount Rs 68,21,00,000/- and interest amount of Rs 30,55,78,524/-). The default date as stated by the financial creditor is 28.02.2016.

2. The corporate debtor is a public limited company incorporated under the provisions of the Companies Act, 1956, having CIN No. U01111MP2003PLC016196, its registered address is at 310, Pathar Mulda Road, Palda, Indore, Madhya Pradesh- 452010. The authorized share capital of the corporate debtor is Rs 35,00,00,000/-, and paid up capital is of Rs 34,86,00,000/-.

3. The financial creditor filed a pursis dated 01.07.2022 to change the name of the applicant from Allahabad Bank to Indian Bank, as the Allahabad Bank was amalgamated with the Indian Bank. This Adjudicating Authority vide order dated 15.07.2022 allowed to change the name of the applicant from Allahabad Bank to Indian Bank.

4. The averments made by the financial creditor in its application and presented/argued by the learned counsel for the financial creditor are summarized hereunder:

- (i) On 23.12.2014, the corporate debtor entered into a master restructuring loan agreement apart from other loan-related documents with the Allahabad Bank (Financial Creditor), State

Bank of India, and ICICI Bank. The financial creditor issued various financial facilities including a term loan and cash credit limit of Rs 68,21,00,000/-.

(ii) Details of the outstanding amount are as follows:

(a) Cash Credit- Account No. 20028099500

Sanction Amount- Rs 34,89,00,000/-

Principal outstanding as on 31.12.2018- Rs
37,39,01,608/-

Unapplied interest- Rs 13,06,33,222/-

Total- Rs 50,45,34,830/-

(b) Term Loan- Account No. 50255529236

Sanction Amount- Rs 33,32,00,000/-

Principal outstanding as 31.12.2018- Rs
35,70,78,749/-

Unapplied interest- Rs 12,21,68,228/-

Arrears Penalty- Rs 38,96,717/-

Total- Rs 48,31,43,694/-

(iii) The corporate debtor's account become a Non-Performing Asset (NPA) on 28.02.2016 as per norms of RBI. Thereafter, the financial creditor sent a recall notice dated 07.05.2016 to the corporate debtor recalling the facilities granted by the financial creditor.

(iv) The corporate debtor failed to pay the unpaid due towards the financial creditor. Hence the present petition is filed before this Adjudicating Authority.

5. In reply submissions made by the corporate debtor before this Adjudicating Authority are summarized hereunder:

(i) The financial creditor has been providing financial assistance since 2004 after that ICICI joined in the year of 2010, then State Bank of India and State Bank of Patiala joined in the year 2013. The consortium led by these banks from the year 2004 to 2013.

(ii) Present petition is for time-barred debt as the default occurred on 28.10.2015 as per the notice under section 13(2) of the SARFAESI Act, 2002. In the present case, the claims of the financial creditor is barred by the limitation as the right to file application is closed on 28.10.2018.

(iii) The corporate debtor is a going concern company and the remedy of the Code is inappropriate and against the very objective of the Code. The financial creditor has several options to provide the framework to resolve the assets of the corporate debtor, therefore, the financial creditor in the present case should take positive steps in taking any proactive steps by any medium or means, for revival or restructuring or one-time settlement of the corporate debtor without resorting to the Code.

(iv) The financial creditor has wrongly declared the corporate debtor and its directors as “wilful defaulters” as per the norms of RBI. The financial creditor never raised any demand therefore no question as to payment can be raised by the financial creditor. Also, the show cause notice sent by the financial creditor is arbitrary in accordance with the provisions of law.

(v) The corporate debtor offered a one-time settlement to the financial creditor on 24.06.2019, to the tune of Rs 55 Crore. The same was taken into consideration by the banks. However, the

financial creditor has rejected the same without giving any reason on letter dated 14.08.2019.

6. The financial creditor has proposed to appoint Ms. Teena Saraswat Pandey having registration no. IBBI/IPA-001/IP-P00652/2017-18/11126 as interim resolution professional.

7. We have heard the learned counsels appearing for both sides and perused the material available on record. It is noted that the financial creditor has provided several credit facilities under a master restructuring loan agreement to the corporate debtor and sanctioned an amount of Rs 68,21,00,000/-. The bank statement furnished by the financial creditor reveals the amount has been disbursed by the financial creditor to the corporate debtor. The account of the corporate debtor was declared as NPA on 28.02.2016 and a recall notice was sent by the financial creditor on 07.05.2016 recalling the entire amount provided under the credit facilities. The corporate debtor has admitted the amount in default and stated that it has offered a one-time settlement amount to the financial creditor, however, the settlement failed. The corporate debtor, however, has also taken a plea that the present petition is barred by limitation as the date of default as per the notice under section 13(2) of the SARFAESI Act, 2002 is 28.10.2015.

In this context, from the record, we note that the notice under section 13(2) of the SARFAESI Act, 2002 was issued by SBI declaring the corporate debtor as NPA on 28.10.2015 for SBI and on subsequent dates for other members of the Consortium. The corporate debtor was declared as NPA by the financial creditor on 28.02.2016 and thereafter a recall notice was sent by the financial creditor on 07.05.2016 to the corporate debtor to pay the default amount within 15 days. It is noted that the date of default is to be calculated based on the date of the recall notice, which in the present case falls well within the limitation period. Even if we have to calculate the limitation period from the date when the

account was declared as NPA i.e. 28.02.2016, the present application would still be within the limitation period, since the present petition was filed on 28.01.2019. Accordingly, it can be concluded that the defence put forth by the corporate debtor regarding the limitation period is misplaced.

As per the above observations, it is clear that the corporate debtor has taken financial assistance from the financial creditor and defaulted in repayment of the same. The present petition is well within the limitation period, the amount stated to be in default meets the threshold limit as prescribed under the Code. Accordingly, we allow this petition and order as under:

ORDER

- I. Corporate Debtor M/s Indison Agro Foods Limited is admitted in Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.
- II. We appoint Ms. Teena Saraswat Pandey, having registration no. IBBI/IPA-001/IP-P00652/2017-18/11126 under section 13(1) (c) of the IB Code as IRP.
- III. The Moratorium under section 14 of the Code shall come to effect from the date 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 the corporate debtor under Section 33, as the case may be.
- IV. The Adjudicating Authority hereby prohibits 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, and further prohibits Tribunals, Arbitration Panels, or other Authority(s), transferring, encumbering, alienating or disposing of any of the corporate debtor 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 SARFAESI 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.

V. Further, litigation or any application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to the pronouncement of this order such proceedings are expected to be dealt with in accordance with law i.e. section 14 and section 238 of the Insolvency & Bankruptcy Code, 2016.

VI. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of assets and management of the corporate debtor.

VII. The IRP so appointed shall make a Public announcement of the Corporate Insolvency Resolution Process (CIRP) be made immediately as specified under section 13 of the Code and by calling for submissions of claim under section 15 of the Code.

VIII. The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its Promoter or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional. Where any personnel of the corporate debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

IX. The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Insolvency & Bankruptcy Code, 2016

X. We direct the financial creditor/applicant to pay the IRP a sum of Rs. 1,00,000/- as fees & expenses till the COC decides about his fees /expenses.

XI. The Registry is directed to communicate this order to the financial creditor, corporate debtor, and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order.

XII. The commencement of the Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.

XIII. This Application TP/123/MP/2019, CP(IB) 137 of 2019 is allowed and disposed of.

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Kaushalendra Kumar Singh
Member (Technical)

Dr. Madan B. Gosavi
Member (Judicial)

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