



NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM Nos.1 & 2

Item No.1 - **CP(IB)/22(MP)2023**

Item No.2 - **IA/37(MP)2024**

IN

CP(IB)/22(MP)2023

Proceedings under Section 7 IBC

IN THE MATTER OF:

Small Industries Development Bank of India

V/s

Shri Ram Switchgears Ltd

.....Applicant

.....Respondent

Order delivered on 29/02/2024

Coram:

P. Mohan Raj, Hon'ble Member(J)

Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

CP(IB)/22(MP)2023 & IA/37(MP)2024

Both cases are fixed for pronouncement of the order.

The common order is pronounced in open Court *vide* separate sheet.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

A. Bhadauria

Sd/-

P. MOHAN RAJ
MEMBER (JUDICIAL)



THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

CP(IB)/22/MP/2023

(Application under section 7 of the Insolvency and Bankruptcy Code, 2016)

&

IA/37/MP/2024

In

CP(IB)/22/MP/2023

(An application under Rule 11 of the NCLT, Rules, 2016)

In the matter of:

Small Industries Development Bank of India

Having its registered address at:
SIDBI Tower, 15, Ashok Marg,
Lucknow,
Uttar Pradesh- 226001

.....Financial Creditor/Petitioner

Versus

Shri Ram Switchgears Limited

Having its registered address at:
Shri Ram Bhawan, Goushala Road,
Ratlam,
Madhya Pradesh- 457001

.....Corporate Debtor/Respondent

Order Pronounced On: 29.02.2024

Coram: P. Mohan. Raj, Member (J)

Kaushalendra Kumar Singh, Member (T)

Appearance:

For Petitioner: Ld. Adv. Dr. Ajay Kumar Pandey

For Respondent: Ld. Adv. Mr. Utkarsha Kumar Joshi



ORDER

1. This petition was filed on 15.02.2023, by Mr. Peri Rama Krishna, Authorized Representative of M/s Small Industries Development Bank of India (Financial Creditor), under section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiating Corporate Insolvency Resolution Process (CIRP) against M/s Shri Ram Switchgears Limited (Corporate Debtor). The default amount stated by the financial creditor is Rs 3,13,33,695/-. The date of default stated by the financial creditor is 11.05.2021, the date when the account turned NPA.

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

(i) The corporate debtor is engaged in the business of manufacturing electrical items such as distribution transformers, switchgear, meter boxes, feeder pillars, distribution boxes, and junction boxes used in the distribution of power and also undertakes erection, installation, and operation and maintenance of these items for its customers. Its manufacturing units are located in Ratlam, Madhya Pradesh.

(ii) The corporate debtor borrowed a loan of Rs 3 Crore from the financial creditor on 20.01.2016, secured by hypothecation of movable assets of the company and mortgage of the immovable properties.

(iii) A funded Interest Term Loan of Rs 19,46,753/- for relief in moratorium during COVID-19 pandemic was also provided towards overdue in Loan Account of Rs 3 Crore on 08.04.2020.

(iv) Section 10A of the Code provides that no application for initiation of CIRP shall be filed for any default arising on or after 25.03.2020 for a period of six months or such further period, not exceeding one year from such date as may be notified in this behalf. The Central Government by notification dated 24.12.2020 and 22.12.2020 extended the said period



till 24.03.2021. However, the default in case of the abovementioned two loans occurred on 11.05.2021, which is beyond the period notified under section 10A of the Code. Hence, the present petition is not barred by section 10A of the Code.

(v) Following loans availed by the corporate debtor from the financial creditor remain unpaid as of date:

S. No.	Date of Sanction	Nature of Loan	Sanction Amount	Outstanding Amount
1	20.01.2016	RCF-Subordinated Loan	3,00,00,000/-	3,08,89,315/-
2	08.04.2020	RCF-Subordinated Loan (Funded Interest Term Loan)	19,46,753/-	4,44,380/-
	Total		3,19,46,753/-	3,13,33,695/-

(vi) Till 10.02.2021, the corporate debtor paid the due instalments. However, most of the instalments were paid with delay. Thereafter, the corporate debtor continuously defaulted in repayment of overdue and did not pay any instalments nor any interest due thereon.

(vii) The account of the corporate debtor was then termed as NPA on 11.05.2021. Following that, a recall notice dated 22.04.2022 was issued to recall the outstanding loan amount. However, the company and the guarantors have failed to repay the debt within the stipulated time.

3. In this context, defense placed by the corporate debtor in its affidavit in reply and submission made thereon and as presented/argued by the learned counsel for the corporate debtor are summarized as under:



- (i) The corporate debtor is willing to settle the dispute by way of One Time Settlement (OTS) of financial facilities with the financial creditor and for the said purpose the corporate debtor is ready to settle the dispute with 10% of total amount as full and final settlement. For this the corporate debtor may be given a reasonable time to enter into the same; and therefore the matter between the parties may be listed before Lok Adalat.
- (ii) The said loan account had been classified as NPA on 11.05.2021 by the financial creditor, without any reference and in such period whereby great economic losses has been suffered by the corporate debtor due to business failure during the COVID period, whereby the banks should not treat an advance as NPA merely due to existence of some deficiencies.
- (iii) The nature of such transactions was purely a business and not for the purpose of personal usage. Since the Covid-19 Pandemic the business fallen out in losses and therefore the repayment got delayed till date. The corporate debtor is willing to pay the amount by way of settlement with the financial creditor with stipulated and reasonable time period on instalment basis.
- (iv) The earlier availed loan amount had been repaid by the corporate debtor in due course of time, but due to aforesaid situation, the account is not regularized.
- (v) The application is bad and liable to be withdrawn as the statement of accounts are wrong and non-justifiable as the same have not been maintained in the ordinary course of banking business. All alleged transactions including the balances pleaded in or otherwise, are vehemently denied individually and specifically. The ledgers have not been maintained correctly by the financial creditor.
- (vi) The financial creditor at the outset chose to initiate proceedings under the Code, however, after notice issued by this Adjudicating Authority, the financial creditor initiated proceedings under the



SARFAESI Act and sent a demand notice to the corporate debtor dated 24.03.2023.

(vii) The financial creditor has charged interest at exorbitant, excessive, and usurious rates. The financial creditor is not entitled to either charge or claim interest at the rates and rates as claimed in the present petition.

4. After hearing both side submissions matter was reserved for orders then the matter was de-reserved and sought clarification regarding the unpaid installments when became due and payable after the period specified under section 10A I.e. 24.03.2021. On the petitioner side filed clarification dated 05.02.2024 clarifying that the even though the account of the corporate debtor was termed as NPA as on 10.05.2021 on the basis of unpaid instalment that became due in the month of February 2021 and March 2021 during 10A period, the corporate debtor continued defaulting the payment of monthly installments which became due thereafter also. Petitioner side also attached annexure B1 showing the date of default and amount after the expiry of 10A period.

5. **I.A.No.37/MP/2024:** This is an application filed by the financial creditor to amend the Form 1 and take on record the amended form 1. This application is filed after the completion of both sides arguments, praying to amend the default amount and default date mentioned in part IV (2) Form 1. This is belated application, filed with an intention to fill up the lacuna, hence the application is dismissed in limine.

6. We have heard the learned counsel for the financial creditor as well as the learned counsel for the corporate debtor on the issue of admission of petition filed under section 7 of the Code and have perused the relevant records and documents. It is noted that a loan agreement dated 28.03.2016 was entered between the financial creditor and the corporate debtor for Rs 3,00,00,000/-. The same was to be repaid in monthly instalments after a moratorium of 36 months from the date of first disbursement. Further, a Funded Interest Term Loan of Rs 19,46,753/- for relief in moratorium during Covid-19 period was also provided by the financial creditor towards overdue



in loan account of Rs 3 Crore. A total of Rs 3,19,46,753/- was disbursed by the financial creditor to the account of the corporate debtor. The corporate debtor has provided securities in favour of the financial creditor for the said loan. The corporate debtor made regular payments until 10.01.2021. The account became irregular from 10.02.2021 and the corporate debtor failed to regularize the account within 90 days. Therefore, on 11.05.2021, the financial creditor declared the corporate debtor's account as a Non-Performing Asset (NPA). Subsequently, a loan recall notice dated 22.04.2022 was issued by the financial creditor to the corporate debtor calling for the payment of entire due principle amount along with interest. The financial creditor has also placed on record the National E-Governance Services Limited (NeSL) Certificate which shows total outstanding as Rs 2,95,78,179/-, default date 11.05.2021, and status of authentication as Deemed to be Authenticated.

In defence, the corporate debtor during the course of the hearing has admitted its debt and submitted that it has offered an OTS to the financial creditor. But it also took the stand that the actual default had occurred on 10.02.2021 (i.e. 90 days before the date of NPA) and that the default date falls within the period provided under section 10A of the code, and as such section 7 petition is not maintainable.

7. In the context the learned counsel appearing on behalf of the financial creditor clarified that account of the corporate debtor was declared as NPA on 11.05.2021 following the non-payment of the instalments that had fallen due in the month of February 2021. He also had drawn our attention to the terms and conditions as stated in the loan agreement and stated that the entire loan was to be repaid in monthly instalments and that the various instalments due from the month of February 2021 onwards were also defaulted. He submitted that the account of the corporate debtor was declared as NPA on 11.05.2021 as per the RBI guidelines on account of default of the corporate debtor in making payment of monthly instalment for the month of February 2021 and subsequently failed to regularize its account. He submitted that the corporate debtor continued its default on the monthly instalments that became due in the month April 2021 and onwards (i.e. after section 10A period) and in the



circumstances the financial creditor had issued a recall notice dated 22.04.2022 whereby the balance instalments were also recalled. The details as regard to such unpaid instalment and interest thereon, as submitted by the financial creditor are placed in the table below:

S. No.	Date when instalment was due	Instalment Amount Due but not paid	Interest Due but not paid	Penal Interest	Further Interest Due	Total amount due
1	10.04.2021	6,25,000	2,88,753	4,092	9,285	9,27,130
2	10.05.2021	6,25,000	2,74,649	4,442	9,821	9,13,912
3	10.06.2021	6,25,000	2,83,333	6,069	13,640	9,28,042
4	10.07.2021	6,25,000	2,73,817	7,337	16,727	9,22,881
5	10.08.2021	6,25,000	2,82,944	9,137	20,851	9,37,932
6	10.09.2021	6,25,000	2,82,944	10,714	24,578	9,43,236
7	10.10.2021	6,25,000	2,73,817	11,901	27,438	9,38,156
8	10.11.2021	6,25,000	2,82,944	13,872	32,050	9,53,866
9	10.12.2021	6,25,000	2,73,817	14,969	34,757	9,48,543
10	10.01.2022	6,25,000	2,82,944	17,054	39,703	9,64,701
11	10.02.2022	6,25,000	2,82,944	18,664	43,662	9,70,270
12	10.03.2022	6,25,000	2,55,563	18,317	43,058	9,41,938
13	10.04.2022	6,25,000	2,82,944	21,849	51,335	9,81,128
14	22.04.2022	1,37,50,000	-	-	-	-
15	10.05.2022	-	2,73,817	36,283	53,650	3,63,750
16	10.06.2022	-	2,82,944	47,391	59,457	3,89,792
17	10.07.2022	-	2,73,817	46,425	61,605	3,81,847
18	10.08.2022	-	2,82,944	48,543	67,775	3,99,262
19	10.09.2022	-	2,82,944	49,138	72,080	4,04,162
20	10.10.2022	-	2,73,817	48,137	73,971	3,95,925
21	10.11.2022	-	2,82,944	50,332	80,706	4,13,982
22	10.12.2022	-	2,73,817	49,307	82,421	4,05,545
	TOTAL	2,18,75,000	58,48,457	5,33,974	9,18,570	2,91,76,000



8. The contention of the respondent that since default occurred on 10.02.2021 the petition is hit by section 10A is not acceptable. It is neither mandatory nor necessary that the financial creditor should file the petition on initial default, there is no bar to file petition after occurrence of subsequent defaults. It is noticed that during 10A period the respondent committed default in payment of two installments much below the threshold limit. Further only after declaring the loan as NPA the petitioner is having right to claim entire balance loan amount. Here the petitioner issued recall notice dated 22.04.2022. As on the recall notice dated 22.04.2022 the respondent became liable to pay entire balance loan amount and interest. It cannot be said that the petitioner having chosen not to file petition or barred to file petition immediately after the default of two EMIS fell due in February and March 2021, the petitioner lost his right to file petition on the basis of subsequent defaults occurred after the section 10A period.

9. Having considered the facts of the case, we are of the view that the corporate debtor has defaulted in repayment of its debt that became due after section 10A period and the total amount defaulted exceeds the threshold limit of Rs 1 Crore as prescribed under section 4 of the Code. The petition was filed on 15.02.2023, and the same is well within the limitation period. As such the petition deserves to be admitted. Accordingly, we allow this petition and order as under:

(i) Corporate Debtor M/s Shri Ram Switchgears Limited is admitted in the Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.

(i) The moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of section 14(1) of the Code.

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 Securitisation 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.*

(ii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

(iii) As proposed by the Financial Creditor, we appoint Mr. Rakesh Kumar Jindal, having registration No. IBBI/IPA-002/IP-N01148/2021-2022/13963, having address at: H. No. 3656/6, Gali No. 6, Narang Colony Tri Nagar, New Delhi- 110035, email: iprakesh.jindal@gmail.com to act as an Interim Resolution Professional under section 13(1)(c) of the Code. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

(iv) The IRP so appointed shall make a public announcement of initiation of the Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by section 13(1) (b) of the Code.

(v) 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 the assets and management of the corporate debtor.

(vi) 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 Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under section 19 of the Code extending every assistance and co-operation 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.

(vii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by section 20 of the Insolvency & Bankruptcy Code, 2016.

(viii) The Financial Creditor is directed to pay an advance of Rs.1,00,000/- (Rupees One Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of the Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

(ix) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and the Interim Resolution Professional, and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

(x) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Trade Tax, and Provident



Fund etc. who are likely to have their claim against the Corporate Debtor as well as to the trade unions/employee's associations so that they are informed of the initiating of CIRP against the Corporate Debtor timely.

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

10. Accordingly, CP(IB)/22/MP/2023 stands **admitted**.

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KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

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P. MOHAN RAJ
MEMBER (JUDICIAL)

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