



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

CP (IB) No. 383/MB/2022

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

AXIS BANK LIMITED

[CIN: L65110GJ1993PLC020769]

Registered Office: 3rd Floor

Trishul, Opposite Samartheswar Temple

Near Law Garden, Ellisbridge

Ahmedabad-380006, Gujarat.

Corporate Office: 7th Floor

Axis House, C-2, Wadi International Centre

Pandurang Budhkar Marg, Worli

Mumbai — 400025, Maharashtra.

...Financial Creditor

V/s

BEST IT WORLD (INDIA) PRIVATE LIMITED

[CIN: U30000MH1996PTC104553]

Registered Office: 87, Mistry Industrial Complex

MIDC Cross Road 'A', Andheri

Mumbai-400093, Maharashtra.

...Corporate Debtor

Pronounced: 22.05.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Hearing: Hybrid



Appearances:

Financial Creditor: Adv. Abha Patel i/b MDP & Partners


Corporate Debtor: Adv. Gopal Machiraju a/w Adv. Krusha Maheshwari, i/b
Adv. Sriram Sridharan

ORDER

[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

- 1.1 This Company Petition bearing C.P. (IB) No. 383/MB/2022 (Application) was filed on 27.12.2021 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AA Rules) by Axis Bank Limited, the Financial Creditor (FC), through Mr. Prakash U. Prabhakar Rao, Representative of the FC, authorised *vide* Power of Attorney/Board Resolution dated 04.05.2017, for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Best IT World (India) Private Limited, the Corporate Debtor (CD).
- 1.2 The total amount of default alleged is Rs.36,80,69,066.83/- (Thirty-Six Crore Eighty Lakh Sixty-Nine Thousand and Sixty-Six Rupees and Eighty-Three Paise) including the principal amount of Rs. 29,22,00,870.11/- along with interest of Rs.6,94,40,228.82/-, calculated at the rate of 3.25 per cent. per annum and penal interest of Rs.64,27,967.91/-, at the rate of one per cent. per annum.
- 1.3 The date of default is not clearly mentioned in Part IV of the Application. The CD's account was classified as Non-Performing Asset (NPA) by the FC on



10.05.2020. Due to the fact that the CD defaulted in payment of its outstanding dues, the FC prays that CIRP may be initiated in respect of the CD under Section 7 of the IBC.

2. CONTENTIONS OF FC

2.1 It is submitted that the CD is a private company, engaged in the business of assembling and trading of computer parts and other accessories. In the year 2010, for business purposes, the CD sought credit facilities from the FC. The FC, *vide* its Sanction Letter No. AXISB/CO/MCII/RD/O557/09-10 dated 25.01.2010, granted credit facilities for Rs.28,50,00,000/- (Twenty-Eight Crores Fifty Lakhs Rupees), which comprises of the Working Capital Facility of Rs. 25,00,00,000/- and Cash Management Services Facility of Rs. 3,50,00,000/- in favour of the CD.

2.2 For securing the amounts disbursed, the directors and other individuals / entities, on behalf of the CD, executed separate personal guarantees dated 01.02.2010 and 14.12.2011, in favour of the FC.

2.3 The FC, along with IDBI Bank Limited and Cosmos Co-Operative Bank formed a Consortium for advancing credit facilities to the CD, *vide* inter se agreement dated 12.01.2013, in which the IDBI Bank Limited was designated as the lead bank and the credit facility for Rs.164,00,00,000/- (One Hundred Sixty-Four Crore Rupees) was sanctioned in favour of the CD by the Consortium. This was followed by the execution of Joint Deed of Hypothecation dated 12.01.2013, of its current and future assets by the CD as well as separate Declaration and Undertaking by Mr. Sunil B. Kedia, Mrs. Bharti S. Kedia and Vijay Dalmia HUF dated 19.01.2013, for mortgaging of

certain immovable properties in favour of the Consortium on *pari-passu* first charge basis.

2.4 Later, HDFC Bank Limited and Ratnakar Bank Limited were also inducted as members of the Consortium *vide* inter-se agreements dated 10.02.2014 and 07.01.2015 respectively. Similarly, Supplemental Working Capital Consortium Agreement dated 10.02.2014 as well as Second Supplemental Working Capital Consortium Agreement dated 07.01.2015, were executed among the Consortium and the CD. For securing the amount disbursed through the First and Second Supplemental Working Capital Consortium Agreements, the CD executed Hypothecation Deed, the personal guarantees and Pledge of Equity Shares Agreement of its directors and other individuals as also Indenture of Mortgage dated 30.03.2015, in favour of the Consortium.

2.5 It is submitted that the credit facilities were sanctioned to the CD, from time to time, as follows:

Date	Sanction Letter No.	Details
29.01.2010	AXISB/CO/MCII/RD/O563/09-10	The Credit facilities of Rs. 28,50,00,000/- were reduced to Rs. 23,50,00,000/-
09.12.2011	AXISB/CO/MCII/RD/O468/11-12	The Credit facilities were enhanced to Rs. 53,50,00,000/-
25.11.2014	AXISB/CO/CCG/O719/14-15	The Credit facilities were enhanced to Rs. 73,50,00,000/-
25.05.2016	AXISB/CO/CCG/2016-17/PJ/102	The Credit facilities were reduced to Rs. 70,00,00,000/-




08.11.2017	AXISB/CO/NEG/2017-18/DJ/26009	The Credit facility was reduced to Rs. 63,00,00,000/-
27.12.2018	AXISB/CO/NEG/2018-19/DT/27219	The Credit facility was renewed at Rs. 63,00,00,000/-
28.12.2018	AXISB/CO/NEG/2018-19/DT/27225	The Credit facility was reduced to Rs. 50,00,00,000/-

2.6 However, due to default in repayment of the aforesaid credit facilities by the CD, its loan account was declared as NPA on 10.05.2020. Thereafter, the FC issued loan recall-cum guarantee invocation notice dated 10.08.2021 to the CD, as well as the guarantors which was followed by demand notice dated 20.08.2021, under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) seeking repayment of Rs. 35,37,39,020.45/- along with interest.

2.7 It is further submitted that pursuant to the guarantee invocation notice dated 10.08.2021 and SARFAESI notice dated 20.08.2021, the CD replied *vide* Advocate's notice dated 08.10.2021, wherein it denied outstanding liabilities towards the FC, citing grounds of absence of valid documents for justifying loan; lack of evidence over grant of credit facilities; and the notices being vague, illegal, etc.

2.8 The FC submits that it gave the mandate of initiating action under SARFAESI Act to the IDBI Bank Limited, which is the lead bank of the Consortium, as per the Joint Lenders Meeting dated 07.12.2021. However, till date, no action has been taken against the CD under the SARFAESI Act, which compelled



the FC to file the Section 7 Application for initiating CIRP in respect of the CD.

3. CONTENTIONS OF CD

3.1 It is submitted that the present Application is barred by Section 10A of the IBC, and therefore, the FC deliberately did not mention in clear terms, the date of default in Part IV of the Application.

3.2 The CD further submits that the Working Capital Consortium Agreement dated 12.01.2013; Supplemental Working Capital Consortium Agreement dated 12.02.2014; and the Second Supplemental Working Capital Consortium Agreement dated 07.01.2015, do not allow a single member of the Consortium to unilaterally commence proceedings against the CD. Since the FC is part of Consortium, it cannot unilaterally proceed against the CD without consent and concurrence of other members. Further, all the documents produced by the FC are insufficiently stamped as per the Maharashtra Stamp Act, 1958 and, therefore, they cannot be relied upon by the FC as proof of the alleged debt or default.

3.3 The CD further submits that the Application is defective in the sense that there is no valid and specific power of attorney or board resolution by the alleged FC, authorising its officers for filing application under Section 7 of the IBC. The Application contains merely a General Power of Attorney (GPA) which neither has the clear details about the person executing the said GPA nor any proof of the committee having authority of the Board of Directors to pass any Circular Resolution for the purpose of filing the Application.



- 3.4 It is submitted that the FC has failed to provide proof of debt or default by the CD as to extending any credit facilities to it. The FC has also not provided valid Authorisation for Assignment (AFA) of the Insolvency Professional (IP) proposed as Interim Resolution Professional (IRP).
- 3.5 The CD, *vide* its Additional Affidavit dated 06.09.2023, contended that the lender banks including the FC, agreed to One Time Settlement (OTS) for Rs.29,00,00,000/- (Twenty-Nine Crores Rupees) as full and final settlement, pursuant to the JLM dated 14.12.2022. As per the said meeting, it was decided that the OTS amount would be divided amongst the lender banks and that upon deposit of ten per cent. amount in a no-lien account by the CD, formal respective approvals would be given to the OTS by each individual bank.
- 3.6 As part of compliance of the OTS, the CD, *vide* its letter dated 05.01.2023 to the IDBI Bank Limited, i.e., the lead bank of the Consortium, enclosed seven demand drafts given by various individuals / entities on behalf of the CD, aggregating to Rs.2,90,00,000/- to be kept in no-lien account. Following this, the lead bank issued formal OTS letter dated 08.05.2023 to the CD, mentioning that an upfront payment of Rs.1,34,00,000/- had been received by the lead bank while the balance payment shall be made by the CD within ninety days from the date of formal approval of all the Consortium members. On account of complying with the terms of the OTS, the CD is, thus, discharged from its liabilities and it is incumbent upon the Consortium, including the FC, to fulfil their obligations by issuance of respective OTS letters. Therefore, the amount due to the FC is solely based on the OTS and not on the documents relied upon by the FC in the present Application.




4. REJOINDER OF FC

4.1 The FC submitted that the Application is not barred by Section 10A of the IBC since there was continuous default on the CD's part and that the CD was aware of the date of NPA being 10.05.2020, *vide* loan recall notice dated 20.08.2021, followed by SARFAESI notice dated 20.08.2021.

4.2 There is no violation of the Working Capital Consortium Agreements by the FC in the absence of any action taken by the lead bank under Section 13(4) of the SARFAESI Act. The Ld. Counsel for the FC relied upon the decision of the Hon'ble NCLAT in *Oriental Bank of Commerce Vs. Ruchi Global Ltd*, [Company Appeal (AT) (Insolvency) No. 387 of 2019] and in *Asian Natural Resources (India) Limited and Anr. Vs. IDBI Bank Limited*, [Company Appeal (AT) (Insolvency) No. 60 of 2017] for substantiating her contention, wherein it was held that inter se agreements between banks in a consortium do not bar any member of the consortium from filing an application under Section 7 of the IBC.

4.3 The CD had already admitted its liability in its reply dated 29.07.2022, wherein it referred to its discussion with the lead bank of the Consortium for an amicable resolution of its liabilities. In fact, the CD never disputed the fact of receiving credit facilities under the Consortium Agreements and the proof of debt and default can be seen from various documents executed by the CD for securing the credit facilities which are annexed by the FC to the Application.

4.4 The Ld. Counsel for the FC submitted that valid AFA of the proposed IRP has been provided. Since the default is continuing one, as evident from the declaration of the CD's account as NPA on 10.05.2020, followed by the loan




recall notice dated 10.08.2021 and SARFAESI notice dated 20.08.2021, CIRP of the CD is only to be kicked in.

5. ANALYSIS AND FINDINGS

5.1 We have perused all the documents and pleadings and heard both the Ld. Counsel for the FC and the CD.


5.2 The FC has mentioned 20.12.2021 as the date of default in Part IV of the Application. The CD has been defaulting in repayment of the loan facilities and it was in continuing default, which finally resulted in declaring its account as NPA. The account of the CD was declared NPA on 10.05.2020. The Ld. Counsel for the FC submitted that although date of default was referred to as 20.12.2021 in Part IV of the Application, the date 10.02.2020 was to be taken as the default date, since that date is ninety days prior to the declaration of NPA date, being 10.05.2020, in terms of RBI Circular dated 01.04.2022. The FC issued loan recall notice against the CD on 10.08.2021. Further, SARFAESI notice was issued to the CD on 28.08.2021, as the CD did not make repayments. We are inclined to accept the submissions of the Ld. Counsel for the FC that all these indicate occurrence of default continuing before 10.05.2020 and thereafter. The present Application is filed on 27.12.2021. Therefore, the plea of the CD that the default occurred during COVID-period is not acceptable, as default occurred ninety days prior to 10.05.2020, i.e., 10.02.2020. The Hon'ble NCLAT Chennai Bench in *Mr. Manmohan Singh Jain Vs. SBI and Anr.* [CA (AT) (CH) (INS)97/2021] held that mere non-mentioning of the date of default in Part-IV of an application under Section 7 of the IBC is not fatal, and on this ground alone,




an application cannot be rejected. Hence, we take 10.02.2020 as the date of default, which is before the COVID-19 period and within limitation, and is also not barred by Section 10A of the IBC.

5.3 The CD has contended that the Consortium Agreement and Supplemental Agreements do not confer on a single member the right to proceed against the CD. However, we find that the JLM dated 07.09.2021, authorised the lead bank to initiate action against the CD under the SARFAESI Act. Since Section 7 proceeding is not for recovery of money, the FC chose to file the present Application. As regards the claim of the CD regarding the issue of OTS, we find that no OTS proposal has been formally accepted by the lead bank or any other member of the Consortium, including the FC. On a scrutiny of the lead bank's notice dated 08.05.2023, it is revealed that it does not mention acceptance of OTS proposal. Interestingly, the borrower (CD herein) has categorically declared and confirmed that the credit facilities shall be governed by the terms and conditions, as set out in the Letters of Sanction of the IDBI Bank Consortium, including the Agreement Letter dated 02.11.2012 by the FC herein, in paragraph 2 of Article I of the Working Capital Consortium Agreement. This amounts to admission of debt and liability by the CD, and thus, we hold that the CD cannot escape from the same.

5.4 The CD submitted that there was an OTS submitted by it for repayment of twenty-two crore rupees initially, as evident from paragraph 5 of the minutes of JLM dated 14.12.2022. Later, it was decided to hold joint negotiations with the CD for upward revision in the settlement amount. Subsequently, it was agreed to further improve the settlement amount to twenty-eight crore




rupees on 22.06.2022. There was yet another upward revision to twenty-nine crore rupees by Consortium members including the FC. Hence, the CD states that it is not under any obligation to pay the original debt as it has been changed to a substituted obligation as per the OTS. According to the Ld. Counsel for the CD, once a creditor accepts satisfaction of a substituted obligation, the original obligation will be discharged until substituted obligation has been performed. According to him, pursuant to the agreement to pay twenty-nine crore rupees covered under the OTS, as contained in paras 6 and 7 of the minutes of JLM dated 14.12.2022, the CD was given time to pay the same until 31.03.2023. The CD had paid total of 2.90 crore rupees out of the said twenty-nine crores by way of seven demand drafts to the lead bank. The lead bank had also acknowledged receipt of the said Rs.2.90 crores by letter dated 08.05.2023. Hence, it is contended that the Consortium has dispensed with the performance of CD's promise to pay the original debt, in terms of Section 63 of the Indian Contract Act, 1872. The CD has heavily relied upon this OTS minutes of JLM. The Ld. Counsel for the CD drew our attention to the judgments of the Hon'ble Calcutta High Court in *UoI Vs. Kishorilal Gupta & Bros.* [1953 SCC OnLine Cal 10]; the Hon'ble High Court of Madhya Pradesh in *Century Spinning and Manufacturing Co. Ltd. Vs. Motilal Dhariwal* [1966 SCC OnLine MP 10]; and the Nagpur High Court in *Jamnubai w/o Badrinarayan & Anr. Vs. Murlidhar Sawatram & Ors.* [1945 SCC OnLine MP 33] to buttress his point that substituted agreement (OTS), has discharged existing cause of action. However, we find that the facts and circumstances of the above cases are different from that on hand. On examination of Annexure-I to the lead bank's



letter dated 08.05.2023, it is seen that it has been categorically stated by the lead bank, in clause 6 that, if the settlement amount is not fully paid, the OTS shall automatically stand revoked unless further period for payment is expressly granted by the bank. There is no evidence to show that the CD has made the full payment, even as per the said OTS, or that the lead bank or any member of the Consortium has expressly granted it further extension for payment. There is no conclusive acceptance of any changed conditions by the members of the Consortium. Since debt and default by the CD can be clearly inferred from the OTS minutes as also other documents provided by the FC, we hold that merely suggesting or offering settlement does not absolve liability of a debtor but acceptance by the creditors is necessary for concluding OTS. In the circumstances, the contention of the CD that the amount due to the FC is solely based on the OTS is unfounded, and this issue is decided against the CD.

5.5 The CD has raised a defence of lack of authorisation / absence of specific authorisation to the person who filed the Application before us. This Bench has already held in couple of cases that GPA is sufficient authorisation to an officer of the FC to move an application under Section 7 of the IBC, and hence, we are not inclined to subscribe to this contention of the CD. As regards validity of the AFA of the IP, it has been verified by us from the website of the Insolvency and Bankruptcy Board of India (IBBI) that the IP holds valid AFA till 30.06.2025. Hence, such hyper-technical defence raised by the CD is unacceptable. Regarding under-stamping of documents, the law is settled, and this Adjudicating authority has also held, that this is not a valid defence in an application under Section 7 of the IBC, being summary



in nature. Sufficiency or deficiency of stamp duty would have to be determined by the concerned authorities having jurisdiction and not by this Adjudicating Authority.

5.6 From the above discussions, the FC has successfully demonstrated and proved the debt, liability and default towards the FC by the CD. When debt is proved to be due and payable, and the debtor is in default, the Adjudicating Authority is bound to admit an application under Section 7 of the IBC, in the absence of any valid defence by the debtor. Therefore, we are of the considered view that this Application, which is complete and satisfies all the necessary requirements, deserves to be admitted under Section 7 of the IBC.

5.7 The FC has proposed the name of Mr. Rakesh Kumar Tulsyan, a registered Insolvency Professional having Registration Number-IBBI/IPA-001/IP-P01144/2018-2019/11970 having valid AFA as IP, to carry out the functions as IRP under the IBC. The proposed IRP has given its written consent and the same is placed on record.

ORDER

This Application bearing C.P. (IB) No. 383/MB/2022 under Section 7 of the IBC, filed by Axis Bank Limited, the FC, for initiating CIRP in respect of Best IT World (India) Private Limited, the CD is **admitted**.

We further declare moratorium u/s 14 of the IBC, with consequential directions as follows:



- I. We prohibit-
 - a) the institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the SARFAESI Act;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.
- II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating authority approves the resolution plan under section 31(1) of the IBC or passes an order for the liquidation of the CD under section 33 thereof, as the case may be.
- IV. That public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Rakesh Kumar Tulsyan**, a registered IP having Registration Number- IBBI/IPA-001/IP-P01144/2018-2019/11970 and **e-mail- tulsyanrk@gmail.com**, having valid AFA up to 30.06.2025, as the IRP to carry out the functions under the IBC. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.



- VI. During the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- VII. In exercise of the powers under Rule 11 of the NCLT Rules, we order the FC to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the FC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the CD.
- IX. The Registry is directed to immediately communicate this Order to the FC, the CD and the IRP by way of e-mail and WhatsApp, not later than two days from the date of this Order.
- X. The Registry is directed to communicate this order to the IBBI forthwith for information and record.
- XI. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)

//Tanmay Jain//