

NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I)

CP (IB) 171/CHD/CHD/2023

IN THE MATTER OF:

IDBI Bank Ltd.

Through its Deputy General Manager

Mr. Atul Deep Gupta,

SCO 72-73, Sector 17-B,

Chandigarh- 160017

... Applicant/Financial Creditor

Versus

M/s. Cheema Paper Mills Pvt. Ltd.

Ramraj Road, Bajpur, District Udham

Singh Nagar, Uttarakhand - 262401

...Respondent

Order Delivered on: 14.05.2024

SECTION: Section 7 of IBC 2016

CORAM:

SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Pulkit Goyal, Advocate

For the Respondent : None (*Ex parte*)

Judgement

PER: SH. L. N. GUPTA, M(T) & SH. HARNAM SINGH THAKUR, M(J)

IDBI Bank Ltd. (for brevity, the **“Applicant”**) has filed the present application 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 with a prayer to initiate the Corporate Insolvency process against M/s Cheema Paper Mills Pvt. Ltd. (for brevity, the **“Respondent”**).

2. The Respondent namely, M/s Cheema Paper Mills Pvt. Ltd. is a Company incorporated on 06.07.2004 under the provisions of the Companies Act, 1956 with CIN U99999UP1981PTC005390 having its registered office at Ramraj Road, Bajpur, District Udham Singh Nagar, Uttarakhand - 262401, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs. 5,00,00,000/-, and the Paid-up Share Capital is Rs. 3,98,86,250/-, as per the master data annexed with the application.

3. In its application, it is averred by the Applicant that the Respondent executed Foreign Currency Loan (FCL) Agreement in favour of the Applicant amounting to SF 10.64 million (Rs. 2630 Lakhs Approximately). Later, the Corporate Debtor approached the Applicant for conversion of its Foreign Currency Loan into Single Currency Pool Facility to re-pay the loan in rupee equivalent of the sanctioned facility i.e. SF 10.64 million, which was duly accepted by the Applicant while executing an Amendatory Agreement dated

31.03.2000. Thereafter, the liabilities of the Respondent were restructured in the year 2002 and 2004 and certain reliefs & concession were granted.

3.1 The liabilities of the Respondent were further restructured in June, 2005, March 2006 and July 2006 envisaging re-scheduling of principal outstanding of Rupee Term Loan (RTL) and rupee tied Foreign Currency Loan, reduction in interest rate and conversion of existing Funded Interest Term Loan, deferred interest, and Non-Convertible Debentures into Cumulative Redeemable Preference Shares. The Respondent again approached the Applicant and other lenders for re-structuring of its liabilities under Corporate Debt Restructuring (CDR) in December, 2008 for comprehensive restructuring. In Dec 2010, CD was declared sick by BIFR and the Petitioner was declared as operating agency. In the meantime, on 18.03.2013, the corporate debtor approached the Applicant for settlement of dues by way of OTS which was approved. However, the company failed to pay the money and OTS was revoked. It has been averred that due to default in payments, the Account of the Respondent Company could be classified as NPA on 31.12.2008.

4. The detailed particulars of the unpaid Financial Debt including the total amount of default and the date of default claimed by the applicant in Part IV of the application reads thus:

2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT	Rs.254,95,95,389.88/- (Rupees Two Hundred Fifty Four Crore Ninety Five Lac Ninety Five Thousand Three Hundred Eighty Nine and Eighty Eight Paise only) as on 01.03.2023 plus further interest at applicable rate, costs, dues, and expenses that may accrue till total repayment and settlement
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<p>OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</p>	<p>of dues by the Corporate Debtor/Guarantors.</p> <p>M/s Cheema Spintex Limited, had availed the financial assistance from the petitioner financial creditor from time to time, however, on account of the default in making repayment of loans/ financial facilities the account of the corporate debtor was classified as NPA on 31.12.2008, by the petitioner financial creditor. However the account of the corporate debtor was restructured and granted OTS and extension of OTS on various occasions, despite the same the corporate debtor had failed to comply with the terms and conditions of the restructuring/CDR/OTS and lastly the OTS was revoked on 11.01.2016 and the CDR had also failed leading to the exit of the petitioner financial creditor from the CDR on 22.01.2016, and as such the account of the corporate debtor was declared NPA w.e.f. 31.12.2008 as per the RBI Guidelines. Table for working of default for all the accounts of corporate debtor:</p> <table border="1" data-bbox="587 1406 1321 2027"> <tr> <td>1.</td> <td>Account type</td> <td>Foreign Currency Loan</td> </tr> <tr> <td>2.</td> <td>Account no.</td> <td>1001673200002103</td> </tr> <tr> <td>3.</td> <td>Amount of disbursement</td> <td>Rs. 26,30,00,000/-</td> </tr> <tr> <td>4.</td> <td>Date of default</td> <td>07.04.2017 (15 days after issuance of recall notice)however the account was declared NPA w.e.f 31.12.2008 as per RBI circular</td> </tr> <tr> <td>5.</td> <td>Rate of interest</td> <td>14.15% p.a. plus penal interest as applicable</td> </tr> <tr> <td>6.</td> <td>Total outstanding as on 01.03.2023</td> <td>Rs.2,30,95,47,589.00/-</td> </tr> </table>	1.	Account type	Foreign Currency Loan	2.	Account no.	1001673200002103	3.	Amount of disbursement	Rs. 26,30,00,000/-	4.	Date of default	07.04.2017 (15 days after issuance of recall notice)however the account was declared NPA w.e.f 31.12.2008 as per RBI circular	5.	Rate of interest	14.15% p.a. plus penal interest as applicable	6.	Total outstanding as on 01.03.2023	Rs.2,30,95,47,589.00/-
1.	Account type	Foreign Currency Loan																	
2.	Account no.	1001673200002103																	
3.	Amount of disbursement	Rs. 26,30,00,000/-																	
4.	Date of default	07.04.2017 (15 days after issuance of recall notice)however the account was declared NPA w.e.f 31.12.2008 as per RBI circular																	
5.	Rate of interest	14.15% p.a. plus penal interest as applicable																	
6.	Total outstanding as on 01.03.2023	Rs.2,30,95,47,589.00/-																	

1.	Account type	Rupee Term Loan
2.	Account no.	1001673200002110
3.	Amount of disbursement	Rs.4,00,00,000/-
4.	Date of default	07.04.2017 (Expiry of 15 days of notice of recall), however the account was declared NPA w.e.f 31.12.2008 as per RBI circular.
5.	Rate of interest	14.15% p.a. plus penal interest as applicable
6.	Total outstanding as on 01.03.2023	Rs. 23,83,93,173/-

Subsequently on account of default of by the Corporate Debtor, Guarantee Invocation notice was issued to respondent Corporate Guarantor on May 31, 2017 calling upon the Corporate Guarantor to pay forthwith the amount due to IDBI Bank. However, the respondent Corporate Guarantor failed to make the payment.

Hence date of default is 31.05.2017.

5. Thus, as per Part IV of the application (ibid), the Applicant has claimed an outstanding “financial debt” of Rs. 254,95,95,389.88 and relied on 07.04.2017 as the “date of default”. It has been added that the Account of the Respondent Company became NPA on account of default on 31.12.2008. It is further submitted that the Applicant Bank issued the recall notice dated 23.03.2017 and letter of Invocation of Guarantee on 31.05.2017 and notice under Section 13(2) of SARFESI Act dated 15.09.2017, calling upon the CD and other obligors to pay the defaulted amount.

6. To buttress its plea, the Applicant has relied on the following documents:

- (i) Foreign Currency Loan Agreement dated 04.08.1995, 23.07.1997;
- (ii) Sanction Letter dated 26.08.2002 and Sanction of Restructuring dated 30.06.2005;
- (iii) Copy of the CDR Sanction dated 17.11.2009;
- (iv) Copy of Amendatory Agreement dated 31.03.2000;
- (v) Recall Notice dated 23.03.2017, Letter of Invocation of Guarantee dated 31.05.2017, Notice under Section 13(2) SARFESI dated 15.09.2017;
- (vi) Copy of Balance Sheets (page 499-521);
- (vii) Copy of the Audit Report dated 27.05.2010;
- (viii) OTS sanction letters dated 11.03.2013, 09.07.2014, 26.09.2014, 12.02.2015, 22.02.2016, 24.04.2021, 08.09.2022, 16.02.2023;
- (ix) Acknowledgement letters of debt towards IDBI Bank (page 522-529).

7. Based on the facts described above and the documents referred above, the Applicant has prayed for initiation of the CIRP against the Respondent.

8. On issuance of the notice, none appeared on behalf of the Respondent except on 25.04.2024, when the Ld. Counsel appearing for Respondent sought date for filing reply. No reply was filed. Last opportunity was given to the respondent to file the reply within one week. However, neither reply was filed on record nor anyone represented the respondent on 06.05.2024. Even on earlier date 15.01.2024, none appeared on behalf of the respondent, and one more opportunity was granted to corporate debtor for appearance. In the circumstances, respondent was proceeded ex parte vide order dated 06.05.2024.

9. We heard the submissions of Applicant and perused the pleadings on record. The Applicant has annexed various documents to prove existence of the debt and default as mentioned in Para 6 of this Judgement.

10. First, we would like to examine whether the present Application is filed within limitation period or not. We notice that, in the instant case, the Application is filed on 16.05.2023, whereas the date of default relied upon by the Applicant is 07.04.2017, which implies that the application has been filed after expiry of the limitation period of 03 years on 06.04.2020. However, we are conscious of the fact that due to Covid-19, the Hon'ble Supreme Court extended the period of limitation vide its order dated 10.01.2022 in "**Suo Motu Writ Petition (C) No. 3 of 2020**", the relevant extracts of which reads thus:

"5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

*I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, **it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.***

- II. *Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
- III. *In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”*

(Emphasis supplied)

11. Further, the Hon'ble NCLAT in the Company Appeal (AT) (Insolvency) No. 936 of 2021 in the matter of **“M/s. Essjay Ericsson Private Limited vs. M/s. Frontline (NCR) Business Solutions Pvt. Ltd”** dated 10.01.2022, specifically held that:

“12. When the Hon'ble Supreme Court in exercise of jurisdiction of Article 142 of the Constitution of India has directed for extension of period of limitation, a litigant is entitled for the benefit of extended period of limitation and if the petition, application, suit, appeal etc. are filed within extended period of limitation, the application, appeal, suit etc. shall be treated within period of limitation. When the Hon'ble Supreme Court has granted extension of period of limitation, it cannot be said that appeal, suit or application which is filed

during the relevant period is barred by time so as requiring an Application under Section 5 of the Limitation Act, 1963 for condonation of delay. When the appeal, suit, application etc. is filed within period of limitation as extended by the Hon'ble Supreme Court, there does not arise any occasion to pray for condonation of delay for filing suit, application or appeal. However, if a litigant being over cautious files an Application under Section 5 of the Limitation Act, 1963, no exception can be taken to that proceeding but there is no requirement in law to file an application under Section 5 of the Limitation Act, 1963.

13. Further, when an application, appeal or suit etc. is filed within extended period of limitation as directed by the Hon'ble Supreme Court, as noted above, there is no discretion left with the Court or Tribunal to hold that application, appeal or suit is delayed when there is no requirement of filing application under Limitation Act. In above circumstances, discretion of Court to consider sufficient cause does not arise.”

12. In the normal circumstances, the limitation of the present Applicant would have expired on 06.04.2020, however, in view of the directions passed by Hon'ble Supreme Court (Supra), the Applicant has got the benefit of the extended limitation period, as per which it had 90 days from 01.03.2022 to file the present application.

Further, we notice from the record that the Corporate Debtor vide its letter dated 24.04.2021 addressed to the General Manager-NPA Management Group, IDBI Bank Ltd. (page no. 522- 525 as Annexure 40 of the Application) made an offer of OTS to the Applicant Bank. Thus, the position regarding limitation which emerges is as follows:

S. No.	Documents	Date	Period of Limitation till
1.	Date of Default (as per Part IV of Application)	07.04.2017	06.04.2020
2.	The Hon'ble Supreme Court extended the period of limitation vide its order dated 10.01.2022 in Suo Motu Writ Petition (C) No. 3 of 2020	15.03.2020	30.05.2022 (i.e. 90 days from 01.03.2022)
3.	OTS by the Corporate Debtor	24.04.2021	23.04.2024
4.	Date of Filing of Present Application		16.05.2023

Accordingly, we find that the present Application, being filed on 16.05.2023, is well within the Limitation.

13. Furthermore, from the pleadings, we also notice that the Respondent Company itself had offers of one-time settlement of its dues to the Applicant Bank vide its letters dated 11.03.2013, 09.07.2014, 26.09.2014, 12.02.2015, 22.02.2016, 24.04.2021, 08.09.2022, 16.02.2023, which in terms of the judgment of the Hon'ble Supreme Court in "**Dena Bank (now Bank of Baroda)**

vs. C. Shivakumar Reddy and Anr.” are acknowledgments of debt. The relevant para of the judgment (supra) dated 04.08.2021 reads thus:

*“141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. **This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act.** In Gaurav Hargovindbhai Dave (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016 2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019”.*

(Emphasis placed)

14. Thus, in terms of the abovementioned discussion, we find that the Applicant Bank has been able to successfully establish the debt and default beyond doubt on the part of the Respondent in repayment of its financial debt. Further, since despite opportunities, neither any reply was filed nor anyone represented the respondent during hearing, we safely conclude that the respondent-corporate debtor has nothing to say in the matter.

15. In the sequel to the above and the given facts and circumstances, the present Application being complete and the Applicant having established the default on the part of the Respondent in payment of the Financial Debt for an amount being above the minimum threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, the Moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the Moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:

“(a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization 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 Respondent.”

16. As proposed by the Applicant, this Bench appoints Mr. Nipan Bansal as

IRP having Registration No. IBBI/IPA-001/IP-P00039/2017-18/10100 Email ID: irp@parshotamandassociates.com subject to the condition that no disciplinary proceedings is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week of this Order. This Adjudicating Authority further orders that:

Mr. Nipan Bansal, as an IRP having Registration No. IBBI/IPA-001/IP-P00039/2017-18/10100, Email ID: irp@parshotamandassociates.com is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is further directed to take the steps as mandated under the IBC specifically under Sections 15, 17, 18, 20, and 21 of IBC, 2016.

17. The Applicant is directed to deposit Rs.5,00,000/- (Five Lakhs) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Applicant.

18. A copy of this Order shall immediately be communicated to the Applicant Bank, the Respondent Company, IBBI, and the IRP named above by the Court Officer/Registry of this Tribunal.

19. **The Application is admitted and disposed of accordingly.**

Sd/-

(L. N. GUPTA)
MEMBER (T)

Sd/-

(HARNAM SINGH THAKUR)
MEMBER (J)