

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I**

C.P (IB) No.4072/MB/C-I/2019

Petition under Section 7 of the Insolvency and
Bankruptcy Code, 2016

Filed by

IDBI Bank Limited **...Petitioner**

Versus

Powerdeal Energy System (India) Private Limited

...Respondent

Order Pronounced on: 11.07.2024

Coram:

Hon'ble Member (Judicial) : Justice V.G. Bisht (Retd.)

Hon'ble Member (Technical) : Mr. Prabhat Kumar

Appearances:

For the Petitioner : Mr. Rishi Thakur, Advocate a/w
Mr. Abdullah Qureshi Ms.
Shradha Patil, Advocate i/b
India Law LLP, Advocates

For Respondent : Mr. S. M. Kapil, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The Petitioner/Financial Creditor **IDBI Bank Limited** has filed the present Company Petition seeking to initiate Corporate Resolution Insolvency Process under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**the Code**") against the Corporate Debtor/Respondent **Powerdeal Energy System (India) Private Limited**.

2. At the request of the Corporate Debtor, IDBI provided a working Capital facility (in the nature of the cash credit) aggregating to Rs. 22.0 crore ("Cash Credit Facility") and an external commercial borrowing facility aggregating to USD 4 million ("ECB Facility"). The total default under the Facilities as on 1 November 2019 is Rs. 123,04,06,067.80. It is submitted that date of default for the purpose of the petition is 31 March 2016 - the NPA date.
3. The Financial Creditor has relied on the sanction letters dated 24 December 2008, 6 March 2010, 9 November 2010, 2 October 2011, 21 December 2011, 27 January 2012, 7 November 2012, 21 December 2012, 19 March 2014 to establish the debt. In addition to the above sanction letters, the Corporate Debtor also entered into the facility agreements executed on 10 December 2010.
4. Somewhere, in March 2015, the Facilities were restructured. Under the Cash Credit Facility Rs 47.0 crore was restructured to Rs 17.86 crore. The Corporate Debtor executed the Master Restructuring Agreement dated 30 March 2015. Under the Schedule-II of the Master Restructuring Agreement the Corporate Debtor clearly admits the existing loan of Rs. 59.29 Crore.
5. On 11 July 2016, IDBI recalled the entire Facilities and demanded payment of the outstanding amount aggregating to Rs.68,42,01,552 together with further interest. Thereafter, on 9 September 2016, IDBI issued notice under section 13(2) of the SARFAESI Act 2002 and demanded payment of the total outstanding amount of Rs. 70,30,24,638.07.
6. Accordingly, it is submitted that the default is established and admitted by the Corporate Debtor. On the issue of Limitation, the Financial Creditor submits that the petition is within the limitation period. The NPA date is 31 March 2016. The Corporate Debtor vide letter dated 7 November 2016 extended the limitation to 7

November 2019. It is submitted that the Corporate Debtor vide letter dated 12 June 2017 offered one-time settlement of its liability. This letter extends the limitation period to 12 June 2020. The Corporate Debtor by letter dated 31 December 2018 again admits the liability. This extends the limitation period to 31 December 2021. The company petition was filed by 19 November 2019.

Submissions advanced by the Corporate Debtor

7. At the outset, the Corporate Debtor submits that documents relied on by the Financial Creditor are not available with the Financial Creditor. Thereafter, it is submitted that the debt and default has not been proved.
8. The primary defense of the Corporate Debtor is that the Petition filed by the Financial Creditor is not within Limitation. In a nutshell, it is pleaded that Letters of OTS were without prejudice and cannot extend Limitation. The Corporate Debtor has disputed the balance sheet for the year ended 31.03.2016 relied on by the Financial Creditor.

Findings:

9. We have perused the records and heard the submissions advanced by both sides.
10. From the documents placed on record, it cannot be disputed that monies were advanced to the Corporate Debtor and the Corporate Debtor has defaulted in repayment of the same. Accordingly, two pillars of debt and default which is sine qua non for admission of a Section 7 petition stands established.
11. Coming to the defense raised by the Corporate Debtor, the primary limb of his argument is that the Petition suffers from latches on account of Limitation. The date of default stated to be in Part IV of the Petition is 31.03.2016 w.e.f. from 31.03.2015. The Petitioner submits that the Corporate Debtor has acknowledged the debt vide

letter dated 07.11.2016, 12.06.2017 and 31.12.2018. In addition to these letters reliance is placed on balance sheet of the Corporate Debtor for the year ended 31.03.2016 wherein the loan disbursed by IDBI Bank i.e. the Financial Creditor herein is reflected in under Note 5 as short term borrowings. We have taken the note of the fact that the Corporate Debtor has disputed the aforesaid balance sheet. However, the debt stands corroborated and admitted on the basis of other relevant documents placed on record. The present Petition is filed on 19.11.2019, since, the last acknowledgement of debt is vide letter dated 31.12.2018, it is clear that the Petition is within Limitation.

12. As far the contention of the Corporate Debtor that the said letters were without prejudice and cannot be relied upon. The Hon'ble Supreme Court in the matter of *ITC Limited vs Blue Coast Hotels Limited and Ors (2018 SCC Online 237)* has settled the issue relating to without prejudice letters wherein it is iterated that said letters have a legal effect. Moreover, the Hon'ble NCLAT in the matter of *Abhishek Gupta vs Asset Reconstruction Company (India) Pvt. Ltd. (Company Appeal (AT) (Ins) No. 1094 of 2021)* taking note of the aforesaid decision of the Hon'ble Supreme Court in *ITC Limited (supra)* held that admission of debt in letters addressed as 'without prejudice' needs to be considered.
13. The Corporate Debtor has filed an Application bearing no. 601 of 2022 alleging that ECB amount of Rs.6,26,20,000/- was included in the debt amount resulting in irregularities and falsification of accounts. At this juncture, we are not concerned with crystallization of debt amount, we hold that the debt due is above the threshold of Rs. 1 Crore stipulated in the Code. Accordingly, we dismiss the IA No. 601 of 2022.
14. IA No. 5628 of 2023 is filed by the Corporate Debtor on the ground that certain documents relied on by the Financial Creditor were lost

and therefore should not be relied upon by the Financial Creditor. We hold that the debt and default in the instant matters stands established through relevant and secondary documents. Therefore, the said Application filed by the Corporate Debtor is sans merits and deserves to be dismissed.

15. The Financial Creditor has filed an Application bearing No. 750 of 2023 to replace the name of the IRP proposed in the Petition. Accordingly, Mr. Dhaval Jitendra Kumar Mistry having Registration No. IBBI/IPA-001/IP-P-01853/2019 -2020/12849 as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
16. It is, accordingly, hereby ordered as follows: -
 - a) The Petition bearing **CP (IB) 4072/MB/2019** filed IDBI Bank Limited the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Power Deal Energy Systems (India) Private Limited**, the Corporate Debtor, is **admitted**.
 - b) There shall be a moratorium under section 14 of the IBC, regarding the following:
 - i. 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;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

- iii. 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 (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- c) Notwithstanding the above, during the period of moratorium:-
- i. 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;
 - ii. The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- d) The 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 sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IB Code.
- e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- f) Mr. Dhaval Jitendra Kumar Mistry having Registration No. IBBI/IPA-001/IP-P-01853/2019-2020/12849, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC.

The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

- g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor 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.
- h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- i) Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

17. CP(IB) No. 4072 of 2019 is admitted. IA No. 601 of 2022 and IA No. 5628 of 2023 stands dismissed. IA No. 750 of 2023 is allowed.

Sd/-

PRABHAT KUMAR

Member (Technical)

11.07.2024

Priyal

Sd/-

JUSTICE V.G. BISHT

Member (Judicial)