

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
08-05-2024 AT 10:30 AM**

CP(IB) No. 147/7/HDB/2023

AND

IA (IBC) 777/2024 in CP(IB) No. 147/7/HDB/2023

u/s. 7 of IBC, 2016

IN THE MATTER OF:

State Bank of India

...Financial Creditor

AND

M/s. Vijay Textiles Limited

...Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)

SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

ORDER

CP(IB) No. 147/7/HDB/2023

Orders pronounced. In the result, **this company petition is dismissed. No costs.**

IA (IBC) 777/2024

Learned Senior Counsel Mr Krishna Grandhi along with the counsel on record Mr Maharshi Viswaraj, for applicant present physically.

Learned Counsel Mr GP Yash Vardhan, for Financial Creditor present physically.

This application was filed to hear both sides on Section 10(a) of IBC, 2016.

We heard the both sides on 29.04.2024 and the issue of 10(a) is considered and decided in the main company petition for section 7.

In view of this, **this application is disposed of.**

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - I, HYDERABAD**

C.P. (IB) No.147/7/HDB/2023

Under Section 7 of The Insolvency
and Bankruptcy Code, 2016

IN THE MATTER OF:

State Bank of India

Reg. Office: State Bank Bhavan,
Madame Cama Road, Nariman Point,
Mumbai, Maharashtra-400021

One of the Branch offices:

State Bank of India,
Stressed Assets Management Branch,
Secunderabad, 5-9-76, 2nd Floor,
Prabhat Towers, Chapel Road, Gunfoundry,
Hyderabad-500001.

...Financial Creditor

AND

M/s. Vijay Textiles Ltd

Reg. Office: 104, Surya Towers,
SP Road, Secunderabad, Telangana – 500003.

...Corporate Debtor

Date of Order:08.05.2024

Coram:

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA

HON'BLE MEMBER (JUDICIAL)

SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Parties/Counsels present:

For Petitioner : Mr. GP Yashvardhan (Counsel)

For Respondent : Mr. Maharshi Vishwaraj (Counsel)

PER BENCH

ORDER

1. This is a Petition filed by 'State Bank of India' (hereinafter referred as 'Financial Creditor') under Section 7 of 'The Insolvency and Bankruptcy Code, 2016' (hereinafter referred as 'IBC') seeking initiation of 'Corporate Insolvency Resolution Process' (hereinafter referred as 'CIRP') of 'M/s. Vijay Textiles Ltd' (hereinafter referred as 'Corporate Debtor'). It was alleged that the Corporate Debtor committed a default of Rs. 87,10,59,630.59/- (Rupees Eighty-Seven Crores Ten Lakhs Fifty-Nine Thousand Six Hundred and Thirty Five-Nine Paise Only) towards the Financial Creditor. The details of the debt and default as alleged by the Financial Creditor as on 31.05.2023 are as follows:

Principal Amount Rs. 55,36,81,130.17

Interest Rs. 31,73,78,500.52

Total Claim

Rs. 87,10,59,630.59

Date of Default - 01.02.2014

Terms by which Date of Default was arrived at (**Not specifically stated or mentioned in the Petition**).

2. It was submitted that the Corporate Debtor was provided with financial assistance by way of credit facilities by the Financial Creditor herein, State Bank of Hyderabad (now merged with the Financial Creditor herein) and Axis Bank. It was submitted that in order to secure the payment of the credit facilities availed by the Corporate Debtor, hypothecation charge was established on the stocks, movables, receivables and other mortgaged properties of the Corporate Debtor. That the Guarantors of the Corporate Debtor executed guarantee agreements for payment of the financial assistance obtained by the Corporate Debtor.

3. It was submitted that the Corporate Debtor after availing the financial facilities, violated the terms of the sanction letters and documents and thereby committed default on 01.02.2014. It was submitted that after this default, the account of the Corporate Debtor was restructured by way of a Master Restructuring Agreement dated 31.07.2014 entered into between the Corporate Debtor and the Financial Creditor along with State Bank of Hyderabad and Axis Bank. Subsequently, this Master Restructuring Agreement was amended by way of amendment to the Restructuring Agreement dated 06.02.2017

4. It was submitted that the Financial Creditor along with the other lenders sanctioned credit facilities vide Sanction Letters dated 29.01.2014, 11.02.2016, 26.10.2016, 04.12.2017, 14.11.2018, 29.01.2019 and 14.02.2020 (**Annexure 1 Page 150-276 of The Petition**). That the Corporate Debtor vide Sanction Letter dated 14.02.2020 (**Page No.255 of The Petition**) availed financial assistance to a tune of Rs.70.37 Crores from the Financial Creditor herein.

4. It was submitted that the Corporate Debtor once again committed default by violating the terms of the Master Restructuring Agreement dated 31.07.2014 and in lieu of the same, the account of the Corporate Debtor was declared as NPA on 29.03.2021. It was submitted that as the restructuring of the debt of the Corporate Debtor was failed, the date of default committed by the Corporate Debtor dates back to 01.02.2014 and the date of declaration of the account of Corporate Debtor as NPA dates back to 01.05. 2014 as per the RBI Guidelines.

5. It was submitted that the debt and default on part of the Corporate Debtor were supported by balance confirmation letters and revival letters issued on various dates which were executed by the Corporate Debtor admitting and acknowledging the liability of debt towards the availed credit facilities **(Annexure No.14 of The Petition)**.

6. It was submitted that as the Corporate Debtor committed a default, the Financial Creditor approached The Debt Recovery Tribunal, Hyderabad (hereinafter referred as DRT, Hyderabad) to recover the amounts due vide Original Application No.334 of 2022. That during the pendency of these proceedings before DRT, Hyderabad, the Corporate Debtor vide letter dated 10.11.2022 submitted a One Time Settlement (OTS) proposal to the Financial Creditor **(Page No.37 of The Petition)**. That in lieu of this OTS proposal, a compromise was arrived at between the Financial Creditor and the Corporate Debtor and that DRT, Hyderabad allowed the Application filed by the Financial Creditor vide orders dated 21.02.2023 by granting a liberty to the Financial Creditor herein to approach the DRT for issuance of Recovery Certificate against the Defendants therein if the OTS proposal fails.

7. It is submitted that as the OTS proposal failed, the Financial Creditor herein filed an M.A. No. 25 of 2023 before DRT, Hyderabad for issuance of a Recovery Certificate against the Corporate Debtor and that the said M.A. No.25 of 2023 is pending for orders before DRT, Hyderabad (**Annexure No.4 of The Petition**).

8. On the other hand, the Corporate Debtor did not dispute the debt and default on its part. The Corporate Debtor expressly admitted the liability of payment of Rs. 76,72,43,446 (**Para 8 of The Counter**). Moreover, it was submitted by the Corporate Debtor that the Financial Creditor issued a letter dated 22.08.2023 stating that the Corporate Debtor paid an amount of Rs.5.79 crores upto 31.03.2023 out of the due amount of Rs.61 crores (**Para 11 of The Counter**). Through this, the Corporate Debtor submitted that it has the bonafide intention of clearing the dues of the Financial Creditor.

9. The defence set up by the Corporate Debtor was that the Corporate Debtor was unable to monetize the assets of the Corporate Debtor and of an associate Partnership Firm of the Corporate Debtor. It was stated that the Covid-19 pandemic had affected the business of the Corporate Debtor. It was further stated by the Corporate Debtor that there was a delay in realization of receivables, decline in turnover and other market conditions which effected the business of the Corporate Debtor. That all these circumstances resulted in non-payment of debt by the Corporate Debtor owed towards the Financial Creditor.

10. It was submitted that after the compromise in the proceedings before DRT, Hyderabad, the Corporate Debtor paid an amount of Rs. 8.62 crores to the Financial Creditor between January, 2023 and March, 2023 and also sought time for repayment of the debt in terms of the compromise. But that the Financial Creditor without considering the request of the Corporate Debtor issued a possession notice under SARFAESI Act over the properties of the Corporate

Debtor situated at Rajapur Village, Balanagar Mandal, Mahabubnagar District to an extent of 25.01 acres

11. It was submitted that the present Petition is premature and not maintainable as the Financial Creditor invoked the SARFAESI proceedings for the debt. That the Financial Creditor is involved in forum shopping whereby a possession notice under SARFAESI Act was issued and the present Petition was filed in respect of the same debt. It was submitted that nothing stopped the Financial Creditor from selling the properties of the Corporate Debtor under SARFAESI proceedings when the Financial Creditor is having the possession of the same.

12. In lieu of these facts and circumstances, the Corporate Debtor prayed for rejection of the present Petition.

13. The Financial Creditor, by way of a Rejoinder, reiterated the contentions already put forth in Company Petition. It was also submitted that the DRT, Hyderabad issued a Recovery Certificate dated 12.07.2023 wherein the Corporate Debtor along with four other persons was made jointly and severally liable to pay an amount of Rs.96,28,41,648/-. That as per this certificate, the Financial Creditor has a fresh cause of action to seek initiation of CIRP of Corporate Debtor under Section 7 of IBC.

14. Both the parties filed written submissions reiterating the contentions put forth by them and also relied on the rulings of different Judicial Authorities in respect of the contentions raised.

15. Subsequently, an application vide I.A. No. 777/2024 (through Urgent Listing I.A. No.776/2024) was filed by the Corporate Debtor seeking opportunity to

advance submissions. This Tribunal, permitted the Corporate Debtor to submit on the contention limited to applicability of Section 10A to the present case.

16. The Corporate Debtor filed additional written submissions on 06.05.2024 mainly pleading that the default occurred during section 10A period of the IBC, 2016. The Corporate Debtor averred that Financial Creditor issued sanction/renewal of credit facilities arrangement letter dated 14.02.2020 and at that point of time no default or over due was there by the Corporate Debtor. The Financial Creditor declared the account of Corporate Debtor as NPA on 29.03.2021, immediately 4 days after the moratorium period during Covid-19 was over.

17. In the light of the contest put forth by both the parties herein, the point that emerges for our consideration is:

POINT:

Whether there is a financial debt exceeding Rupees One Crore and Corporate Debtor defaulted the same and if so whether the said default occurred when Section 10 A IBC, 2016 was in operation ?

18. Heard, Ld. Counsel Mr. Yashvardhan, for the Financial Creditor and Ld. Counsel Mr. M.Viswaraj, for the Corporate Debtor, perused the record and the written submissions.

POINT:

Whether there is a financial debt exceeding Rupees One Crore and Corporate Debtor defaulted the same and if so whether the said default occurred when Section 10 A IBC, 2016 was in operation?

The Submissions:

19. The learned counsel for the financial creditor submits that financial creditor for the first-time disbursed loan to corporate debtor on 28.08.2023 which was sanctioned and renewed from time to time, last sanction/ renewal of facilities being on 14.02.2020 for an amount of Rs 70.37 crores. Learned counsel further submitted that first time default occurred on 01.02.2014 and thereafter, the account of the corporate debtor was restructured on 31.07.2014. Pursuant to the restructuring, corporate debtor again defaulted in making payment due to which account of the corporate debtor was declared as NPA on 29.03.2021. Learned counsel contended that due to failed restructuring as per RBI guidelines, the date of default will date back to 01.02.2014, hence default does not fall under Section 10 A, period.

20. Learned counsel for Corporate Debtor did not deny averments pertaining to sanctioning of credit facilities, first default in February -2014, restructuring arrangement entered between corporate debtor and financial creditor but submitted that after restructuring Corporate Debtor was paying regularly till 2020, hence it cannot be a case of failed restructuring and RBI guidelines for dating back of date of default will not apply. Learned counsel further submitted that account was upgraded to performing asset and was reclassified again as NPA on 29.03.2021 after CD defaulted again in the year 2020 because of Covid pandemic. The learned counsel for the corporate debtor contended that corporate debtor admits debt and default and raises no dispute as to the fact that there is a financial debt and default on part of the Corporate Debtor but the only contention raised by corporate debtor is that default occurred during Section 10 A period as his business was severely affected on account of covid pandemic. Learned counsel for corporate debtor further submitted that CD is making all-out effort to

pay the dues by selling properties owned by CD and other subsidiary companies. The counsel for corporate debtor further contended that financial creditor has started DRT and SARFEASI proceedings against the corporate debtor and also filed this application, thus financial creditor is involved in forum shopping for recovery of its dues and not allowing time to clear the dues by selling off the assets.

Our analysis & findings:

21. Admittedly, on perusal of written and oral submissions made by both the parties, we find no dispute about the debt and default of over Rs1.00 crore. Therefore, the first part of the point is clearly in affirmative as the respondent is not disputing the same and facts of the case are supporting existence of debt and default. So, the short issue which remains to be decided is whether default occurred during Section 10 A period or not.

22. Beyond doubt and as admitted by both the parties the first default occurred in February -2014. Consequent to the said default, the account of the Corporate Debtor was restructured by way of a Master Restructuring Agreement dated 31.07.2014 entered into between the Corporate Debtor and the Financial Creditor along with State Bank of Hyderabad and Axis Bank. Subsequently, this Master Restructuring Agreement was amended by way of amendment to the Restructuring Agreement dated 06.02.2017.

23. As per prudential guidelines issued by RBI in respect of restructured accounts if restructuring fails during the monitoring period, the date of default and consequently date of NPA will continue to be the same as it was before

restructuring of the account. The financial creditor's contention that because the restructuring failed the date of default and consequently date of NPA will be reckoned as 01.02.2014 and 01.05.2014 is not acceptable as the account was upgraded to performing asset by financial creditor on satisfactory performance under monitoring period and was reclassified as NPA on 29.03.2021 because of default occurred during year 2020. To bring more clarity on this point, we reproduce below relevant extract from RBI Master circular NO, RBI/2023-24/06 DOR.STR.REC.3/21.04.048/2023-24 dated April 1, 2023 on Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances.

17. Prudential Norms¹⁵

17.1 Asset Classification

In case of restructuring, the accounts classified as 'standard' shall be immediately downgraded as non-performing assets (NPAs), i.e., 'sub-standard' to begin with. The NPAs, upon restructuring, would continue to have the same asset classification as prior to restructuring. In both cases, the asset classification shall continue to be governed by the ageing criteria as laid out in Part A of this Master Circular.

15 Applicable

17.2 Conditions for Upgrade

17.2.1 For MSME accounts where aggregate exposure of the lenders is less than ₹25 crore:

An account may be considered for upgradation to 'standard' only if it demonstrates satisfactory performance during the specified period. 'Specified Period' means a period of one year from the commencement of the first payment of interest or principal, whichever is later, on the credit facility with longest period of moratorium under the terms of restructuring package. 'Satisfactory Performance' means no payment

(interest and/or principal) shall remain overdue for a period of more than 30 days. In case of cash credit / overdraft account, satisfactory performance means that the outstanding in the account shall not be more than the sanctioned limit or drawing power, whichever is lower, for a period of more than 30 days.

17.2.2 For all other accounts not included in sub-paragraph 17.2.1

17.2.2.1 Standard accounts classified as NPA and NPA accounts retained in the same category on restructuring by the lenders may be upgraded only when all the outstanding loan / facilities in the account demonstrate 'satisfactory performance'¹⁶ during the period from the date of implementation of RP up to the date by which at least 10 per cent of the sum of outstanding principal debt as per the RP and interest capitalisation sanctioned as part of the restructuring, if any, is repaid ('monitoring period').

Provided that the account cannot be upgraded before one year from the commencement of the first payment of interest or principal (whichever is later) on the credit facility with longest period of moratorium under the terms of RP.

24. On perusal of RBI guidelines, *supra*, we find that CD not being a MSME unit, the guidelines as per para 17.2.2.1 will be applicable on the case on hand. The relevant guidelines clearly says that NPA accounts on restructuring are to be retained in the same category on restructuring by the lenders and may be upgraded only when all the outstanding loan / facilities in the account demonstrate 'satisfactory performance' during the period from the date of implementation of resolution plan (RP) up to the date by which at least 10 per cent of the sum of outstanding principal debt as per the resolution plan (RP) and interest capitalisation sanctioned as part of the restructuring, if any, is repaid ('monitoring period'). The guidelines further provide that the account cannot be upgraded before one year from the commencement of the first payment of interest or principal (whichever is later) on the credit facility with longest period of

moratorium under the terms of RP. Since this account was upgraded by financial creditor, it is very clear that it has shown satisfactory performance during monitoring period applicable to this case and therefore it cannot be treated a case of failed restructuring and date of default cannot be treated as 01.02.2014.

25. Also, on careful perusal of sanction/ renewal of credit facilities letter dated 14.02.2020, we do not find any mention / condition / covenant which shows that account of corporate debtor was in default at the time of issuance of sanction letter. Therefore, it is as clear as crystal that default occurred after February -2020 in the month of March 2020 or thereafter and consequently the account was classified as NPA on 29.03.2021, just at the end of Section 10 A period. The Financial Creditor did not specify as to when the Account of the Corporate Debtor was declared to be in default, but stated the date of NPA as 29.03.2021. As per regulatory norms , the date of declaration of an Account or Asset as NPA will be 180-90 days from the date of default of payment. Following these norms, the date of default committed by the Corporate Debtor dates back to 29.12.2020 if is taken as 90 days and to 29.09.2020 if it is taken as 180 days. However, in both these cases, the date of default is squarely covered by Section 10A of IBC. Hence, it can be concluded that the date of default of the Corporate Debtor falls under the period prescribed by Section 10A of IBC.

26. The point is accordingly decided that there is a financial debt exceeding Rupees One Crore and Corporate Debtor defaulted the same but the said default occurred during Section 10 A period of IBC, 2016.

27. Before, we proceed further, to decide the impact of default occurring during Section 10 A period, on the admission of the present petition, we feel it proper to refer section 10 A of IBC, 2016 which is as below:

10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified² in this behalf: Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020

Admittedly, as per Section 10 A of IBC, 2016, no application for the initiation of CIRP of a corporate debtor shall ever be filed for any default arising on or after 25.03.2020 for a period of six months which period was later extended by six more months, thus for any default occurring from 25.03.2020 to 25.03.2021, CIRP cannot be initiated against corporate debtor.

28. However, pending adjudication of the present petition, Ld. DRT, Hyderabad issued a Recovery Certificate dated 12.07.2023 wherein the Corporate Debtor along with four other persons were made jointly and severally liable to pay an amount of Rs.96,28,41,648/-. The learned counsel for the financial creditor submitted that the Recovery Certificate issued by the DRT, Hyderabad gives a

fresh cause of action to initiate proceedings under Section 7 of IBC and sought liberty to file a fresh petition in case of dismissal of the present petition on ground of Section 10 A period. If that be so, we grant liberty to the financial creditor to initiate any further proceedings as permissible under law.

29. In the light of our discussion as above we hold that the company petition is not maintainable and the same therefore is hereby rejected. However without costs.

SD/-

Charan Singh
Member Technical

Anil/Pavani

SD/-

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial