

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-811(ND)/2022

IN THE MATTER OF:

Union Bank of India

(Erstwhile Corporation Bank)
Registered office at:
Union Bank Bhavan,
239, Vidhan Bhavan Marg
Nariman Point, Mumbai – 400021

Branch Office at :

M-93, Connaught Place,
New Delhi – 110001
Through its Attorney
Shri. Amit Kumar Sinha,
Chief Manager

...Applicant/Financial Creditor

VERSUS

M/s. Sheen India Private Limited

Registered Office at:
House No. 211,
Near Santhmath Satsang Ashram,
Mahroli, New Delhi - 110068

...Respondent

Section: 7 of IBC, 2016

Order Delivered on : 30.01.2023

CORAM

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

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

PRESENT:

For the Applicant : Adv. Ekta Choudhary

For the Respondent : Adv. Mohit Kumar

ORDER

PER: SHRI L. N. GUPTA, MEMBER (T)

Union Bank of India (for brevity, the '**Applicant/Financial Creditor**') has filed the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, **the 'IBC, 2016'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Sheen India Private Limited (for brevity, the '**Respondent**').

2. The Respondent namely, M/s Sheen India Private Limited is a Company incorporated on 15.09.2005 under the provisions of erstwhile Companies Act, 1956 with CIN U00060DL2005PTC140771 having its registered office at House No. 211, Near Santhmath Satsang Ashram, Mehrauli, New Delhi - 110068, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs.4,00,00,000/- and Paid-up Share Capital is Rs.3,54,10,500/-.

3. It is stated by the Applicant that the Respondent approached the Applicant for cash credit (CC) facility to the extent of Rs. 2720.56 Lakhs, which was granted vide sanction letter dated 01.02.2013. The CC facility was renewed/enhanced to Rs. 20 Crore. Further, the Respondent requested for an ad hoc facility to the extent of Rs. 400 Crore, which too was sanctioned and granted vide sanction letter dated 05.12.2013. The facilities were again reviewed vide sanction letter dated 31.03.2017

with enhancement of CMTSC Limit from Rs. 3 Crore to 4 Crore and sanction of cash credit limit of 5 Crore. The Respondent failed to pay the amount due and outstanding and thus, the account was declared NPA on 30.08.2017.

4. The particulars of the total unpaid financial debt claimed and the date of default are mentioned in Part IV of the application, which is reproduced below, for the sake of convenience:

2	<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH DEFAULT OCCURED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</p>	<p>Total Amount claimed as on 30.06.2022 Rs. 51,12,91,319.70/- (Rupees Fifty One Crores Twelve Lakh Ninety One Thousand Three Hundred Nineteen and Paise Seventy Only) and interest thereon.</p> <p>Date of Default is i.e. the date of NPA is 30.08.2017</p> <p>Table of computation of amounts as per the days of default is annexed herewith as <u>ANNEXURE A-5</u>.</p>
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5. On perusal of the Part IV of the Application, it is observed that the Applicant has claimed an amount of Rs.51,12,91,319.70 as the “unpaid financial debt” and relied on 30.08.2017 as the “date of default”.

6. In order to prove the existence of the financial debt, the Financial Creditor has relied on the following documents:

- a) Copy of sanction letter dated 15.05.2013.
- b) Copy of Demand Promissory Note dated 24.07.2014.
- c) Copy of bank statement.
- d) Copy of the 13(2)-demand notice dated 16.09.2017
- f) Copy of OTS dated 16.09.2019.
- g) Copy of OTS dated 19.11.2021
- h) Copy of OTS dated 09.02.2022

7. Basing on the aforesaid facts and documents, the Financial Creditor has prayed for initiation of CIRP against the Respondent.

8. On issuance of notice by this Adjudicating Authority, the Respondent filed its reply stating mainly that the application is barred by limitation. The Respondent has further submitted that:

8.1. As per the applicant, the accounts of the respondent were classified as Non-Performing Asset on 30.08.2017 and thus, the applicant, could have filed the application on or before 30.08.2020. Even otherwise, as per the unaudited balance sheet as on 31.03.2019 as filed by the applicant on pages 343- 352, the Applicant could have

filed the application on or before 31.03.2022, which the Applicant admittedly did not file. As such, the present application is time barred.

8.2. The Respondent could not make the payment, as required by the applicant, because, the Respondent's customers had stopped making payments to the respondent and as such, the respondent was not in a position to pay the applicant-bank.

8.3. The applicant is acting in haste and wants to damage the Respondent-Company by filing petitions, praying for insolvency of the Respondent and the personal guarantors, who are also the directors of the Respondent-Company, so that the chances of revival of the Respondent cannot be availed of, by them. Such an action by the applicant is mala fide per se and is against the public policy.

8.4. The Hon'ble Supreme Court has held that the object of the IBC is to first try and revive the company and not to spell its death knell and this objective cannot be lost sight of, while exercising powers under Section 7 of the IBC.

8.5. It is further submitted that the aims and object of the IBC is certainly not to penalize solvent companies, temporarily defaulting in repayment of its financial debts, by initiation of CIRP. It is submitted that Section 7(5)(a) of the IBC confers discretionary powers on this Tribunal to admit an application of a Financial Creditor under Section 7 of the IBC for initiation of CIRP.

9. After hearing submissions of both the parties and perusing the documents on record, this Bench observes that the Respondent has mainly contended that the present application is barred by limitation.

10. On perusal of Part-IV of the application, it is observed that date of NPA i.e., 30.08.2017 has been relied as the date of default, whereas the present application has been filed on 10.09.2022. **Hence, we would like to examine whether the present application has been filed within the period of limitation?**

11. On perusal of the record, it is observed that the Applicant has placed on record, the OTS proposal dated 16.09.2019 submitted by the Respondent to the Applicant Bank, which is reproduced below:


Born To Shine
SHEEN

Ref: Sheen/2019-20/01
Date: 16/09/2019

To
The Assistant General Manager
Corporation Bank
Sector-18, Noida
U.P.

Subject: OTS PROPOSAL

Dear Sir,

Kindly refer to our ongoing discussion regarding OTS for our loan liability with the bank.

Enclosed please find our financials along with calculations for OTS purpose.

We have taken 01/04/2017 as cut off date for the purpose of waiver of interest charged under various heads after account became NPA.

Our total loan liability as on 01/04/2017 was Rs. 2857.00 lacs. In due course we have reduced the same by Rs. 8.53 Crores (By way of disposing our properties).
Now our proposal for OTS is before you wherein we are requesting waiver in interest in total O/S as on 01/04/2017, which stands at Rs. 827.40 Lacs only, which includes complete waiver of interest charged under various heads which stands as interest on PC at Rs. 576.87 Lacs and interest on CC at Rs. 250.53 aggregating to Rs. 827.40 Lacs.

Kindly note that difference in principle outstanding in our books and bank is due to interest charged after account becoming NPA in 2017 is also added in Principle outstanding by the bank.

Keeping above as base our offer is to pay principle O/S of Rs. 1689.77 Lacs, which will be entirely repaid within 18 months from the date of sanction, we also confirm that in case bank levy's sum part of the interest, same will be acceptable to us, subject to mutual understandings.

Thanking you,
Sincerely Yours

SHEN INDIA PRIVATE LIMITED
(DIRECTOR) DIRECTOR

Enclosed Provisional Balance Sheet for 2018,
OTS CMA data

SHEN INDIA PRIVATE LIMITED
(Formerly Known as Sheen Sourcing and Buying Services Private Limited)
CIN - U99060DL2005PTC140771

Corp. Office : B-107, Sector 63, Noida (U.P.) 201303 Ph. : 0120-4670300, 4070300 Fax : 0120-2406448
Factory : B-152, Sector 63, Noida (U.P.) 201303 Ph. : 08527786230

 ISO 9001 : 2008
 ISO 14001 : 2004
 SA 8000 : 2008



12. At this juncture, we refer to the judgement of the Hon'ble Supreme Court in the matter of **“Dena Bank Vs. C. Shivakumar Reddy and Anr. in Civil Appeal No.1650 OF 2020”** dated 04.08.2021, wherein the following was held:

“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 Supplied)

13. From the bare perusal of the Hon'ble Supreme Court's judgment (Supra), it can be inferred that OTS proposal made within the period of limitation, can be considered to extend the period of limitation in terms of Section 18 of Limitation Act. Since, in the instant case, the OTS proposal was made by the Respondent to the Applicant on 16.09.2019, which is well within a period of three years from the date of NPA i.e.,

30.08.2017, hence, we are of the view that the limitation stands extended till 15.09.2022.

14. Since, the present application is filed on 10.09.2022, which is before the limitation expiry date of 15.09.2022, **we find that the present application is not barred by limitation.**

15. We further observe that the Respondent has admitted in its reply that *“the Respondent’s customers had stopped making payments to the respondent and as such, the respondent was not in a position to pay the applicant-bank”*. Thus, the Respondent has admitted the default. Further, it has contended that the IBC cannot be used to penalize solvent companies, *temporarily defaulting in repayment of its financial debts*, by initiation of CIRP. In this regard, we observe that the account of the Respondent was classified as NPA on 30.08.2017, which clearly reflects that the Respondent-Company has been in continuous default since last five years, hence, we find the aforesaid argument of the Respondent as baseless.

16. Hence, in the given facts and circumstances, the present Application being complete and the Applicant/Financial Creditor having established the default on the part of the Corporate Debtor in payment of the Financial Debt for the default amount being above the threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, 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 by all and sundry:

- “(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.”

17. As proposed by the Financial Creditor, this Bench appoints Mr. Tapan Chakraborty as IRP having Registration No. IBBI/IPA-003/IP-N00173/2018-19/12121 (Email: tapanchakraborty2611957@gmail.com) subject to the condition that no disciplinary proceeding 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 from this Order. This Adjudicating Authority further orders that :

“Mr. Tapan Chakraborty IRP (Registration No. IBBI/IPA-003/IP-N00173/2018-19/12121) is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The

IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.”

18. The Financial Creditor is directed to deposit Rs. 2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

19. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Applicant/Financial Creditor, the Corporate Debtor/Respondent and the IRP mentioned above.

20. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)