

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 201
IB-614/ND/2023

IN THE MATTER OF:

Indian Bank (Erstwhile Allahabad Bank)

Stressed Assets Management,
Large Branch,
17, Parliament Street,
New Delhi-110001

**... Applicant/
Financial Creditor**

Versus

M/s Agson Global Private Limited

(Through its Director)
Reg. Office at:
JA-1218-1225, 12th Floor,
DLF Tower-A, Jasola,
New Delhi-110025

**... Respondent/
Corporate Debtor**

Under Section: 7 of IBC, 2016

Order delivered on 30.01.2024

CORAM:

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

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv Rajesh Kumar Gautam, Adv. Anant Gautam, Adv
Anani Achumi, Adv RP Daida, Adv Shivani Sagar, Adv
Dinesh Sharma

For the Respondent : Sr. Adv. Mr. Ramesh Singh, Adv. Sumit K. Batra, Adv.
Manish Khurana, Adv. Priyanka Jindal, Adv. Nanya

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

Stating in terse, the corporate debtor incorporated in the year 1994 approached a joint consortium of 11 Banks for extending the credit/loan facility (in cash) the Applicant herein before us i.e. Indian Bank (formerly known as Allahabad Bank) was also one of the members of the consortium. The total credit facility extended to the corporate debtor by the Applicant herein

before us, being member of consortium was Rs. 29.40 Cr. (Fund based Rs. 15.40 Cr. and Non-Fund based Rs.14 Cr.). Additionally, the Applicant also extended the credit facility by issuing LC. In brief the cash credit facility extended by the Applicant to the corporate debtor was Rs. 24.60 Cr. and the LC facility was Rs. 24.50 Cr. The details of debt and default have been mentioned in Part-IV of the application which reads thus:-

Part-IV

S.NO	PARTICULARS OF FINANCIAL DEBT	
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	<p>1. Facilities sanctioned vide Sanction Letter Dated 01.02.2018.</p> <p>- Term Loan of Rs. 29.40 cr</p> <p>2. Enhancement of Limits dated 24.06.2019.</p> <p>- Facility: Term Loan of Rs. 33.60 Cr as to the existing limit of Rs. 27.00 Cr.</p> <p>3. Review cum Enhancement of existing working Capital Limit dated 29.10.2019.</p> <p>- Facility: Term Loan of Rs. 48.60 Cr as to the existing limit of Rs. 33.60 Cr.</p>
2.	AMOUNT CLAIMED TO BE IN DEFAULT AS ON THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACHED THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	<p>Total amount due as on 10.08.2023: Rs.51,07,40,896</p> <p>[44,90,10,960 (Principal) + 6,17,29,936 (interest) as on 10.08.2023].</p> <p>N.P.A: 16.05.2022. (Loan Classified as N.P.A)</p> <p>Copies of Statement of Account from 16.05.2022 to 10.08.2023 & the Calculation Sheet of Calculation of interest and penal Interest are annexed herein and marked as Annexure A-2 (a) & Annexure A-2(b)</p> <p>Copy of Recall notice dated 09.01.2023 issued to the Corporate Debtor as well to the personal guarantors namely Mr. Apresh Garg, Mrs. Monika Garg is annexed herewith as Annexure A-3(a).</p>

		Copy of Demand Notice dated 25.04.2023 issued by the Applicant Bank to the Corporate Debtor as well as to the Personal Guarantor under Sec 13(2) of the SARFAESI Act,2002 is annexed herewith and marked as Annexure A-3(b) .
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2. As can be seen from the aforementioned, the term loan facility extended by the Applicant to CD vide letter dated 01.02.2018 was of Rs. 29.40 Cr. Subsequently on 24.06.2019 the facility was enhanced to Rs. 33.60 Cr. On review-cum-enhancement of existing worth capital limit, the term loan was enhanced to Rs.48.60 Cr. According to the averments made in clause 2 of Part-IV of the application total amount due to the Applicant, against the CD was Rs.51,07,40,896 as on 10.08.2023. The Applicant (FC) served the demand notice upon the corporate debtor on 25.04.2023 but the CD could not honour the same. Mr. Anant Gautam, Ld. Counsel appearing for the Applicant submitted that as the requirement of Section 7 (5)(a) has been satisfied in the present case, the application deserve to be admitted.

3. Per contra, Mr. Ramesh Singh Ld. Sr. Counsel appearing for the corporate debtor/Respondent arguing vociferously submitted that since the consortium comprising of the Applicant herein before us could examine the feasibility of transfer of liability/account to NARCL and in the meeting held on 30.01.2024, it could be discussed and resolved by all the members of the consortium that the NARCL may conduct due diligence of the accounts to be transferred to it for further steps, at this stage, no default can be claimed to have been committed at least by the Applicant, at the end of the corporate debtor. To further buttress his submissions, Mr. Ramesh Singh submitted that the corporate debtor is having 300 employees and is involved in the business of logistics, trading and manufacturing. In his submission, the restructuring proposal for restructuring of the loan account qua the corporate debtor has already been agreed. Referring to Page-149 of the reply viz., Annexure-A22 which is the Prudential Framework for Resolution of Stressed Assets issued by Reserve Bank of India, Mr. Ramesh Singh Ld. Sr. Counsel submitted CP(IB)-614/(ND)/2023
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categorically that once more than 60% of the creditors who are members of consortium could agree for restructuring. No different stand can be taken by the Applicant in these proceedings. Para 10 & 11 of the aforementioned Prudential Framework for Resolution of Stressed Assets relied upon on behalf of the Respondent reads thus:-

“10. That the Preamble of the Code is specifically worded to describe the spirit and objective of the Code to be reorganisation and insolvency resolution, pointedly omitting the word ‘Recovery’. The Parliament has made a conscious effort to ensure that there is a significant difference between Resolution and Recovery. The preamble of the Code is reproduced hereinunder:

“An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.”

11. The Hon’ble Supreme Court has time and again observed that the fundamental intent of IBC is maximising the value of assets in the process of Resolution. In Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited [2017] ibclaw.in 01 SC, the Hon’ble Apex Court has examined in detail the United Nations Legislative Guide on Insolvency, in which the Code finds its roots. Any Application to commence CIRP can be denied when the Creditor is using Insolvency as an inappropriate substitute for Debt Recovery Procedures. If IBC is purely used for the purpose of Debt Recovery, particularly when the amounts due are small, and the Company is a solvent entity and is a going concern, the question of Reorganising or Resolution of the Company does not arise.”

4. The Ld. Counsel could also rely upon the resolution passed by the consortium on 27.09.2023. According to him, in terms of the resolution, 90% of the lenders (the lenders who have 90% share in the amount of debt) have agreed to the restructuring proposal. Clause 3 of the resolution reads thus:-

“3. Stand of the Member Banks on Acceptance of the Restructuring Proposal and Discussion/Observations on TEV Report:

Shri Anil Kumar, CRM then sought the response from all the Member Banks on the Assent/ Dissent on the Restructuring Proposal requested by the Company and discussion on the TEV Report by member banks. He further clarified that though the decision on the restructuring proposal of the company is prerogative of each bank as per their own internal policies and it is well understood that the final decision on the restructuring shall always be subject to the approval from the Competent Authority of each banks, however the same needs to be clarified to get a clear consensus on the issue of restructuring as per the guidelines enforce. Further, Indian Overseas Bank confirmed that they are in-principle agreed to restructuring for revival of the company and also requested all the other banks to clarify their stand on the above issue.

Each member bank stated their position which is summarized as under:

#	Bank	Total O/s. debt as on 31-03-23. (Proposed Cut-off date as per the Resolution Plan) (Rs Cr)	% Share	Assent/ Dissent for Restructuring proposal consideration	Status on TEV Report
1	IOB	710.00	39.04%	Agreed for re-structuring	Under consideration
2	PNB	331.30	18.21%	Agreed for re-structuring in line with the Lead Bank	Under consideration
3	Union Bank	169.11	9.30%	Confirmation awaited	Under consideration
4	Bank of India	150.28	8.26%	Agreed for re-structuring in line with the Lead Bank	Under consideration
5	UCO Bank	122.79	6.75%	Agreed for re-structuring in line with the Lead Bank	Under consideration

6	Canara Bank	95.79	5.27%	Restructuring proposal will be considered subsequent to acceptance/ closure of forensic audit	Under consideration
7	SBI	56.30	3.10%	Not Agreeable	Not Applicable (member bank has expressed unwillingness for restructuring)
8	Central Bank	47.35	2.60%	Agreed for re-structuring in line with the Lead Bank	Under consideration
9	BOB	78.61	4.32%	Agreed for re-structuring in line with the Lead Bank	Under consideration
10	Indian Bank	44.95	2.47%	Not Agreeable	Not Applicable (member bank has expressed unwillingness for restructuring)
11	IDBI Bank	12.36	2.68%	Not Agreeable	Not Applicable (member bank has expressed unwillingness for restructuring)
	Total	1,818.85	100.00%		

Further it was discussed among the member banks that there were no major pending observations/queries related to TEV. However, it was decided to be discussed in the next meeting comprehensively.”

5. Mr. Ramesh Singh Ld. Sr. Counsel further submitted that in the wake of the aforementioned resolution and the instructions issued by the Reserve Bank of India, irrespective of the independent stand by the Applicant herein before us, it's consent for reconstructing of loan amount is subsumed and presumed.

6. Having referred to the order passed by the Hon'ble Delhi High Court, the Ld. Sr. Counsel submitted that in the wake of the order passed in Contempt Petition Case (C) 1336/2022 dated 21.03.2023 in Indian Overseas Bank vs. M/s Agson Global Pvt. Ltd. and Anr., the Respondent was to reserve a fund of Rs. 150 crore during the pendency of the petition to ensure that in case the

Petitioner could succeed the necessary benefit could be granted to it. The order reads thus:-

“

ORDER
21.03.2023

1. *Heard the learned senior counsel appearing on behalf of the parties.*
2. *Considering the submissions which are being made by the learned senior counsel appearing on behalf of the respective parties, these petitions deserve further hearing.*
3. *The same may not be possibly concluded before 31.03.2023.*
4. *Mr. Ramesh Singh, the learned senior counsel appearing on behalf of the petitioner in W.P.(C) 3919/2022 states that after 31.03.2023, the policy/scheme in question will expire and the instant petitions would, therefore, render infructuous.*
5. *He further states that if the entire amount allocated for the purpose of the scheme in question is disbursed or lapsed, even if the petitioner eventually succeeds, it will not able to reap the benefit.*
6. *In view of the aforesaid, this court directs that the case of the petitioner was considered by respondents on 03.03.2022 and the impugned decision was taken, therefore, the eligibility of the petitioner with respect to the scheme in question will have to be considered as on 03.03.2022 and eventually if the petitioner succeeds in proving that the petitioner is eligible for the benefit under the Scheme, this court can always direct the respondents to grant the necessary benefits. It is also directed to the respondent to reserve a fund of Rs.150 crores during the pendency of the instant petition to ensure that in case, the petitioner succeeds, the necessary benefit can be granted to him.*
7. *The contentions made by Mr. Ramesh Singh, the learned senior counsel are objected to and disputed by Mr. Neeraj Kumar, learned senior counsel for respondent No.1-bank.*
8. *List on 18.04.2023 for further hearing.*

PURUSHAINDRA KUMAR KAURAV, J
MARCH 21, 2023/p”

7. Rejoining the submissions, Mr. Anant Gautam Ld. Counsel appearing for the Applicant could submit that the Prudential Framework for Resolution of

Stressed Assets issued by Reserve Bank of India (RBI) on 07.06.2019 could be relevant only in such cases where the RP is 4% and in the present case as the RP of CD is 5%, the later would not apply to it. Para 14 of the resolution/guidelines reads thus:-

“14. RPs involving restructuring / change in ownership in respect of accounts where the aggregate exposure of lenders is ₹1 billion and above, shall require independent credit evaluation (ICE) of the residual debt by credit rating agencies (CRAs) specifically authorised by the Reserve Bank for this purpose. While accounts with aggregate exposure of ₹5 billion and above shall require two such ICEs, others shall require one ICE. Only such RPs which receive a credit opinion of RP4 or better for the residual debt from one or two CRAs, as the case may be, shall be considered for implementation. Further, ICEs shall be subject to the following:

(a) The CRAs shall be directly engaged by the lenders and the payment of fee for such assignments shall be made by the lenders.

(b) If lenders obtain ICE from more than the required number of CRAs, all such ICE opinions shall be RP4 or better for the RP to be considered for implementation.”

8. Referring to the resolution dated 06.01.2024 passed by the consortium, Mr. Anant Gautam submitted that though it was the semblance of the members of the consortium that the amount of debt/loan may be restructured and the issue of transfer of account to NARCL may be kept in view, but at the same time the other proceedings should also be emphasized and pursued. Agenda addressed to by the consortium in its meeting reads thus:-

“2. Exploring alternate recovery measures i.e., initiation of SARFAESI action, filing of suit, approaching NCLT, Transfer of account to NARCL etc.

Mr. Anil Kumar informed the JLM that as decided in last JLM & Consortium meeting that CARE Credit Rating agency was assigned to provide the rating of resolution plan submitted by borrower M/s AGPL. After comprehensive discussion and Credit evaluation CARE provided rating of RP5 to the captioned restructuring proposal. However as per extant guidelines no resolution plan can be taken

for consideration with Rating RP4 and above. CARE rating agency provided the rationale for arriving at this rating. Borrower then represented to the rating agency for revisiting the rating and subsequently again lots of correspondence and physical meeting took place. However, CARE maintained the same rating during the final processing. Now as the resolution plan submitted by the borrower stand void and therefore consortium has to look for other alternate recovery measures eg SARFESAI action/ Going to NCLT etc.

In light of the above IOB (Lead Bank) explored all the alternate recovery measures which includes transferring the account to NARCL.

It was also informed that IOB is in principle agreeable for transferring the account to NARCL and requested all the other banks to discuss and come to a consensus for consortiums future course of recovery action.

Mr. Rajiv Ranjan Mallick then asked each bank to put their views on alternate recovery measures. All member banks stated their Bank's stand and all the Bank's agreed in principle for transferring the account to NARCL subject to approval by their competent authority.

BOB pointed out that as under restructuring process there are chances of higher recovery same may be reconsidered by assigning the rating job to some other rating agency. Further Canara Bank said that Rating rationale may be intimated to company for representing its case with rating agency. SBI and UBI said that other recovery measures may also be run parallel with transfer of account to NARCL. Mr. Anil Kumar informed that as mentioned earlier in the meeting CARE has already provided rationale for its rating which was shared with company and there after company also represented its case which was ultimately declined by rating agency. As suggested by BOB to engage some other rating agency Mr. Anil Kumar replied that it will again unduly delay the recovery process and it was highly unlikely that any rating agency will give better rating, once a reputed rating agency has already assigned RP5 which is not acceptable for restructuring. Further borrower has filed a case against CARE rating agency at Delhi High Court for assigning them RP5 rating on their resolution plan. Hence in present scenario other recovery measures must be explored

Lead Bank has informed that there was recently review by the DFS of all the Banks on issue of eligible accounts which can be transferred to NARCL. In the said meeting our account M/s AGPL was also discussed, and our Bank has shared the PIM with NARCL in this regard. However final decision will be taken as per the decision arrived at JLM/Consortium.

BOB said as insurance claim for Fire at old Menthol unit is long pending a letter to insurance company may be written by lead bank on behalf of consortium asking for giving status of the claim. Also Lead Bank officials with official of some other consortium member banks may visit local office of Insurance company local office for ascertaining the status of the pending claim. Lead Bank assured for arranging such visit in near future with BOB.

SBI informed that they have issued SARFAESI notice under sec 13/2 and also filed suit in the matter. SBI then raised issue of insurance of P&M at new Menthol unit. Lead Bank responded that this is under process, and it will follow up with concerned parties for the same.

It was also decided that rationale of the Rating provided on resolution plan by CARE rating Agency (CARE) to be shared to all the consortium members. Along with communications made with CARE during Rating process.

As all the member Banks have to finalise the future course of recovery including transferring the account to NARCL it was decided that a meeting (JLM) will be called again in 3rd week of January 2024 to finalise above matters. Meanwhile all member banks will seek approval from their competent authority regarding transfer of account to NARCL and it will be decided in next JLM Meeting by Consensus. Meanwhile, it was also decided by all the members that formal due diligence by NARCL may be initiated to save time.

Lead bank informed that tentative date of next JLM is 16.01.24, exact date and time of the JLM will be intimated shortly.

Mr. Rajiv Ranjan Mallick then thanks officials present in the meeting for participation. The meeting concluded with a vote of thanks to the Chair by Mr. Rajiv Ranjan Mallick, AGM, IOB, Defence Colony Delhi.”

9. In sum and substance, the plea raised on behalf of the Applicant is that the steps taken by the consortium in its different meetings would not cut any ice as far as the present proceeding are concerned and the same is independent process going on between the members of the consortium. We heard the counsels for the parties and perused the record. It is not in dispute that the Applicant herein before us disbursed the loan to the corporate debtor and the corporate debtor has defaulted to repay the same. To substantiate the default, the Ld. Counsel for the Applicant made reference to the record of default issued by NeSL. The same is on record at Annexure-A7 to the paper book (Volume 5 Page-528 to 535). Ld. Sr. Counsel had been very fair in his stand that as far as the issue of disbursement of loan and default in payment is concerned, the same is not disputed and his only contention is that once the consortium of which the Applicant is a member is considering transferring the loan account to NARCL, the Applicant should not be treated as creditor qua the corporate debtor any longer. Nevertheless, indubitably it is not so that the account has already been transferred to NARCL. It is only the primary stage of discussion between the members of consortium to take steps in the direction and to enable the NARCL to carry the due diligence for the purpose of acquiring the loan accounts, in respect of which the CD could commit default. Once the accounts have not yet been transferred, we are afraid that the aforementioned resolution of RBI would not be applicable to the Financial Creditor (Applicant) before us. Nevertheless, it is not within the scope of our jurisdiction to comment upon such transaction. As has been noted hereinabove, in terms of the provisions of Section 7(5)(a) of IBC 2016, before admitting an application, what this Adjudicating Authority need to see is only that default has occurred, the application is complete and there is no disciplinary proceedings pending against the resolution professional. The Section 7(5) of IBC 2016 reads thus:-

“7. Initiation of corporate insolvency resolution process by financial creditor.—

.....

(5) Where the Adjudicating Authority is satisfied that—

- (a) *a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or*
- (b) *default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:*

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.”

10. Though it is for the purpose of espousing the claim before RP, but Regulation 8 of IBBI (CIRP) Regulations, 2016 specify certain categories of the evidence which can be relied upon by the Financial Creditor to buttress his claim before the RP. Such evidence are inter alia the record available with an information utility, if any, or a financial contracts supported by the financial statements as evidence of debt, a record evidencing that the amounts committed by the Financial Creditor to the corporate debtor under the facility has been drawn by the corporate debtor, financial statement showing that the debt has not been today for an order of the Court/Tribunal i.e. Adjudicating Authority upon the loan payment of debt, if any. The Regulation 8 reads thus:-

“8. Claims by financial creditors.—*(1) A person claiming to be a financial creditor, other than a financial creditor belonging to a class of creditors, shall submit claim with proof to the interim resolution professional in electronic form in Form C of the Schedule-I:*

Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.

(2) The existence of debt due to the financial creditor may be proved on the basis of—

- (a) *the records available with an information utility, if any; or*
- (b) *other relevant documents, including—*
 - (i) *a financial contract supported by financial statements as evidence of the debt;*

- (ii) record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;*
- (iii) financial statements showing that the debt has not been repaid; or*
- (iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.”*

11. In the present case, the Ld. Counsel for the Applicant could draw our attention to default report of any asset which has been enclosed as Annexure with the petition. **In the wake, we are left with no option, but to admit the present petition. Ordered accordingly.**

12. In the wake, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD and as a necessary consequence thereof 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.

13. As proposed by the Petitioner, Mr. Shailesh Verma, having e-mail id: shailesh3108@gmail.com and Registration No. IBBI/IPA-002/IP-N00070/2017-18/10148, is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against him and disclosures as required under IBBI

Regulations, 2016 are made by him within a period of one week from this Order. It is further ordered that:

Mr. Shailesh Verma (Registration No. IBBI/IPA-002/IP-N00070/2017-18/10148) shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.

14. The Petitioner is directed to deposit Rs. 2,00,000/- 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.

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

16. 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.**

17. It is made clear if there is any positive development regarding transfer of loan account to NARCL, by the consortium, it would be open to the parties to take steps in accordance with law.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

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