



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through web based video conferencing platform)

CP (IB) No. 71/BB/2023
Application U/s. 7 of the IBC, 2016
R/w Rule 4 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

Union Bank of India,
Head Office: #239,
Vidhan Bhavan Road,
Nariman Point,
Mumbai- 400 021

Branch At: No. 25/2, I Main Road,
E-Block, II Stage, Dr. Raj Kumar Road,
Rajajinagar, Bangalore- 560 010.

... Financial Creditor/Petitioner

VERSUS

Sindhu Cargo Services Private Limited,
Registered office at:
No.-3, No.34,
Neelakunte, Near MVIT, College,
Bettahalasuru, Hunse Marana Halli PO,
Bangalore North Taluk.

... Respondent/Corporate Debtor

Order delivered on: 28/05/2024

Coram: Hon'ble Mr. K. Biswal, Member (Judicial)
Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri P.L.Vijay Kumar, Adv
For the Respondent : Shri Abhijit Atur., Adv

ORDER

Per: Manoj Kumar Dubey, Member (Technical)





1. The present petition is filed on 26/05/2023, under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016'/Code), read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016 (for brevity 'Rules'), by Union Bank of India (for brevity 'Financial Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of Sindhu Cargo Services Private Limited (for brevity 'Corporate Debtor/Respondent') for a total outstanding default amount of Rs. 62,13,89,436/-, In Part IV of Form No.1 filed with application, the following information is given:

3	Amount claimed to be in Default and dates on which the Defaults occurred (Attach the workings for computation of amount and days of Default in Tabular Form)	i. The total amount as on Feb 28, 2023 is Rs 62,13,89,436/. The statement of account of Corporate Debtor maintained by the Union Bank of India and certified in terms of Bankers Book of Evidence Act, 1891 is produced along with the Application. ii. The date of default occurred on 31/12/2019. The loan account was classified as Non-performing Asset on May 31, 2020.
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The NESL Record of Default is annexed at Page 212, which reflects 31/12/2019 as the Date of Default.

2. The facts of the case are discussed below:

- a. The Financial Creditor is a Body Corporate constituted under Banking Company (Acquisition and Transfer) of undertaking Act 1970. The Corporate Debtor availed credit facilities from the erstwhile Andhra Bank which was amalgamated with the Financial Creditor under "Amalgamation of Andhra Bank and Corporation Bank and into Union



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Bank of India Scheme, 2020" vide Gazette Notification No. 154(E) dated March 4, 2020. The amalgamation came into with effect from April 1, 2020. As per Clause 4 (2) of the said Scheme of amalgamation, the undertakings of the Andhra Bank shall vest or deemed to vest or be taken over by the Union Bank of India without requiring any act, deed, consent or instrument for transfer of the same. It is submitted that by virtue of said Amalgamation the Financial creditor is entitled to the file a petition under Section of the IBC, 2016 in respect of the dues of erstwhile Corporation Bank.

- b. The Corporate Debtor incorporated on October 14, 1991 as Sindhu Logistics Limited was converted into a private limited Company and the name of the Company was changed into Sindhu Cargo Services Private Limited on October 31, 2012. The main activity of the Corporate Debtor is to carry on business of clearing and Forwarding agents, owning hiring leasing, maintaining and operating Ware/godowns for storing merchandise, live stocks etc. and other allied activities.
- c. The Corporate Debtor for the purpose of business activity and to meet its working Capital requirement has availed credit facilities by way of Secured over draft against the security Book Debts and non-fund based limits by way of ILC/FLC/BG limits. The Corporate Debtor is enjoying credit facilities since August 2012. The credit facilities were revised and renewed from time to time.
- d. As on 16.05.2018, the Corporate Debtor was sanctioned Secured over draft limit of Rs. 45.00 Crores on terms and condition stipulated in the letter of sanction dated 16.05.2018 which were duly accepted by the Corporate Debtor and the Guarantor/Mortgagors. The Corporate Debtor in consideration of the credit facilities aggregating comprising of Common loan Agreement, Demand Promissory note, Counter Guarantee on 16.05.2018 etc.
- e. The loan account of the Corporate Debtor became irregular for various and the financial creditor was constrained to classify the loan account as NPA on 31.05.2020. As on 28.01.2021 a sum of Rs. 50,26,43,137/- was due and outstanding in the loan account including Interest as on the said date. The Financial Creditor issued a Demand notice under





Section 13(2) of the SARFESAI Act, 2002 on 02.02.2021 which was accepted by the Managing Director on behalf of the Corporate Debtor. The Corporate Debtor and the Guarantors were called upon to pay a Rs. 50,26,43,137/- within two months from the date of receipt of the Demand Notice. The Corporate debtor and the Guarantors neither replied to the notice nor did they pay the amount as demanded in the Notice. The Financial Creditor filed O.A bearing number 758/2021 before DRT which is yet to be adjudicated. The total default amount as on February 28, 2023 is Rs. 62,13,89,436.56/-.

3. Learned counsel for the Respondent filed objection vide diary No 5032, dated 03/10/2023 inter alia submitting that,
 - i. The instant petition is one which falls within the excluded period of Section 10A of the Code. It is submitted that the financial creditor, in its petition at Part IV has erroneously mentioned the Date of Default to be on 31.12.2019. However, it is submitted that the Corporate Debtor has made the last payment on 28.02.2020 and the next instalment fell due on 31.03.2020. It is submitted that when amounts were paid subsequent to the alleged date of default, the Financial Creditor cannot claim that the Date of default occurred months prior to the date on which the next instalment was due.
 - ii. It is submitted that the alleged date of NPA mentioned by the Financial Creditor is 31.05.2020. However, the Corporate Debtor was intimated of the same vide e-mail dated 04.11.2020. In fact, the Financial Creditor has categorized the Corporate Debtor during the midst of the pandemic and has modified the alleged date of default in order to maintain the instant application. It is submitted that the Financial Creditor has sought to consider the date of default to be in 31.12.2019, when the default occurred during the excluded period under Section 10A of the code.
 - iii. It is further submitted that in any case, the amount of default of Rs. 62,13,89,436/- has been calculated by the Financial Creditor to be the purported default amount as on 28.02.2023. Even as on the alleged date of default, i.e., 31.12.2019, only Rs. 57,17,711/-



was payable and the same was paid by the Corporate Debtor, despite the interest amount being calculated incorrectly. Further, the Corporate Debtor has paid the interest charged upto March. Therefore, it is submitted that even assuming that the purported date of default to be correct, i.e., 31.12.2019, the amount which fell due was far below the minimum threshold of Rupees One Crore. It is submitted that on the said ground as well, the instant petition filed by the Financial Creditor deserved to be rejected.

- iv. The other contention raised was that the Loan facility was due for renewal on 04.05.2019, and, as per procedure, the Corporate Debtor submitted a renewal application on 03.05.2019. Towards processing the same, the Financial Creditor debited a sum of Rs. 21,24,000/- as loan processing fees from the account of the Corporate Debtor. It is submitted that the Corporate Debtor was under the understanding that its application for renewal was being processed in light of the monies being debited from its account.
- v. However, it was noticed by the corporate debtor that the Financial Creditor was levying a penal interest of 1-2% over and above the applicable rate of interest on account of the alleged non-renewal of the loan. It is submitted that no intimation was given to the corporate debtor with respect to the levy of additional penal interest. There was no ground for levy of penal interest as the Corporate Debtor had already applied for renewal of the loan. Consequently, the Corporate debtor notified the Financial Creditor vide letter dated 12.07.2019, that it has submitted the application for renewal and thus, is not liable to pay penal interest. Further, after a lapse of 111 days, the Financial Creditor communicated to the Corporate Debtor that it required certain additional details. Accordingly, the corporate debtor provided all necessary details sought for on 29.08.2019. Pursuant to the same, the Respondent deducted an additional sum of Rs. 10,62,000/- on 30.10.2019 towards processing fee and an additional sum of Rs. 59,000/- towards documentation charges. The Corporate Debtor was





informed at the time that subsequent to the same, its renewal application will be processed. As such, the Corporate Debtor had paid a total sum of Rs. 32,45,000/- to the Financial Creditor only towards fee for considering the renewal application.

- vi. It is submitted that consequent to the onset of the pandemic, the Government of India, RBI and Finance Ministry introduced economic relief regulatory packages, which the Corporate Debtor was entitled to claim relief under. This included, the RBI Guidelines dated 27/03/2020 and 23/05/2020, under which was entitled for the moratorium for a period of six months. Although the Corporate Debtor was entitled to all the benefits provided by the RBI, the Financial Creditor failed to process the same.
- vii. The corporate debtor being aggrieved by the same, approached the Hon'ble High Court of Karnataka by filing a writ petition under Article 226 of the Constitution of India bearing W.P No. 11060/2021 seeking for a writ of mandamus for considering the Corporate Debtor's request for restructuring the loan package in light of the Emergency Credit Line Guarantee Scheme dated 26/11/2020 and RBI Circular dated 06.08.2020, after quashing the classification of its loan as NPA. It is submitted that the said Writ Petition came to be allowed vide order dated 23/11/2021 and the Financial Creditor was directed to consider the Corporate Debtor's request for the benefit of the ECLG Scheme and the RBI Circulars in question within a period of eight (8) weeks if the Corporate Debtor submits information/documents as required by the Financial Creditor. It is submitted that in spite of the High Court directing the Financial Creditor, the Financial Creditor has not provided the benefit of ECLG Scheme and RBI Circulars.
4. The Learned Counsel for the Petitioner filed its Rejoinder vide Diary No 6374 dated 18/12/2023 submitting that the contention of the Respondents that the date of default is erroneously recorded as 31/12/2019 is not correct. The Financial Creditor has produced statement of account duly certified as per the provisions of Bankers Book of Evidence Act, 1891. It is contented that an amount of Rs.





46,85,62,839/- was due and outstanding as on the said date and a sum of Rs. 1,85,62,839/- was overdue as on 31/12/2019. The contention that only a sum of Rs. 57,17,711/- was due as on 31/12/2019 which was paid is absolutely false and contrary to the evidence on record. In this regard it is submitted that the loan account was never within the limits sanctioned from date of default except on 28.02.2020 when the outstanding amount in the loan account was Rs. 44,99,34,320/-. It is evident from the statement of account that only a sum of Rs. 4,15,258.26/- was credited to the loan account on 28.02.2020 bringing the outstanding amount below the limit of Rs. 45.00 Crores by only Rs. 63680/-. Once default is committed, the subsequent payment is irrelevant for determining whether a default is committed within the meaning of sub-section 12 of Section 3 of IBC, 2016. Moreover, the contention to the effect that last payment was made on 28.02.2020 and the next Instalment fell due on 31.03.2020 is not correct. The loan availed is a Secured Over Draft limit. The Borrower has to pay the Interest as and when debited to the loan account. Hence the question of payment of Installments in case of working capital loan limits does not arise.

5. It is further submitted that consequent to the order of the Hon'ble High Court in W.P. No. 11060/2021 dated 23/11/2021, the financial creditor processed the request for Emergency Line of Credit, which was rejected for the reasons stated in the letter dated 12.01.2022.
6. The Petitioner filed written submission vide Diary No 1710 dated 15/03/2024 and contented as under:
 - i. The Loan limits were sanctioned for a period of one year and to be annually renewed. The due date for renewal was 04/05/2019. It is an important stipulation of the sanction that the Interest is to be serviced as and when debited. The clause 12 of the Composite Loan agreement lays down the same.
 - ii. The Corporate Debtor failed to service the Interest as and when debited to the loan account in the months of September 2019 to December 2019. As a result, the loan account exceeded the sanctioned limit of Rs 45 Crores. The outstanding amount as on





- 31/12/2019 was 1,65,80,839/- which is also confirmed by the Respondent in the Compliance affidavit dated 20/01/2024.
- iii. The Corporate Debtor applied for renewal of the loan without any proper documents/compliance. In view of the RBI notification on Income recognition and Asset classification, the banks are not allowed to classify the accounts as NPA for the reasons of deficiencies, and be classified as NPA only if the same has not been renewed for 180 days from the due date. Hence, the account was classified as NPA on 30/05/2020 in accordance with the Prudential norms.
 - iv. As per the Record of Default (ROD) issued by the NeSL, the date of default is on 31/12/2019. The information utility has issued communication to the Corporate Debtor on 4th, 8th, 12th December 2022 in respect of the ROD and Corporate Debtor did not raise any objections as to the date of default with the NeSL. The Corporate Debtor is therefore stopped from disputing the date of default before the Hon'ble Adjudicating Authority.
 - v. The contention of the Corporate Debtor that the default occurred during the excluded period under Section 10A is not correct and contrary to the evidence on record. The bar imposed under Section 10A does not apply to the default committed before 25th March 2020. It is proved beyond doubt that the default that has occurred on 31/12/2019, as such the Application does not come within the ambit of Section 10A of the IBC, 2016.
7. Further, the Respondent has filed Written Submission, vide Diary No 1726 dated 15/03/2024, wherein the contention made in the objections have been reiterated, and the same is taken on record.
 8. Heard both Ld. Counsels for the parties and perused the records.
 9. It is seen from Form 1 of the petition and Record of Default issued by the NESL, that the date of default is 31/12/2019. However, on the analysis of the Loan agreement dated 16/05/2018, the heading of the Agreement itself reflects that the "Due date" shall be 04/05/2019. It is also stated that as such the loan limits were sanctioned for a period of



one year and to be annually renewed. Hence, the main due date for repayment of the loan was the failure on the part of the Respondents to renew the Overdraft Limit i.e as on 04/05/2019. Further, it is the contention of the Petitioner that, said Loan facility being a overdraft credit facility, the debt become due as and when the limit of loan provided exceeded the limit of withdrawal and hence the date of default is 31/12/2019 i.e when the overdue amount was 1,65,80,839/-.

10. The main contention of the Respondents herein is that the date of default claimed by the Petitioner is false, since there was part payment till 28/02/2020 and the next instalment fell due on 31/03/2020. Therefore, the Financial Creditor has maliciously and erroneously calculated the date of default to be on 31/12/2019. Further, that the loan of the Respondent was classified as NPA as on 31/05/2020, which is during the 10A period and hence the instant petition is liable to be dismissed. In this regard, it is essential to demarcate that the "date of default" and "part payment" cannot be synonymously interchanged to be interpreted as a single "default." In this connection, it would be relevant to place reliance on the judgement of the coordinate Bench of NCLT, New Delhi, in the case of **M/s DB Power Limited v Kreate Energy (I) Private Limited, (2023) ibclaw.in 792 NCLT**, order dated 31.10.2023 has held that "the submission of the applicant that the dates of acknowledgement of liability towards the operational debt, the date of the last part payment, the date of issuance of cheque, the date of dishonour of the said cheque, the date of sending the demand notice, and consequential failure of the Respondent to pay the operational debt, having fallen after the period stipulated under Section 10A of the Code i.e., after 24.03.2021 and each of the said events gave rise to a fresh cause of action, being new date of default on the part of the Corporate Debtor to pay the operational debt to the Applicant, for preferring the present proceedings under Section 9 of the Code, 2016 **cannot be accepted.**"

11. Moreover, in the judgement of Hon'ble NCLAT in the matter of **SLB Welfare Association v. PSA Impex Limited & others, (2022) ibclaw.in**



890 NCLAT order dated 04/11/2022 it is held that "the reason given by Adjudicating Authority for rejecting argument of Section 10A was based on alleged acknowledgment letter dated 03.06.2021 received from Corporate Debtor when the date of default given by Operational creditor in Section 9 Application is 31.03.2020, the mere fact that acknowledgment has been given by Corporate Debtor on 03.06.2021 accepting the debt, shall not change the date of default. We, thus, do not agree with the reasons given by the Adjudicating Authority that since acknowledgment is dated 03.06.2021, the date of default will become 03.06.2021. **The date of default and acknowledgment are two different events and date of default is not dependent on acknowledgment of debt**".

12. Further, in connection with the R.O.D issued by the information utility i.e NESL in the judgement of the **Milind Kashiram Jadhav v. State Bank of India and Anr. (2024) ibclaw.in 273 NCLAT**, it was stated as under:

"NESL Certificates stand as concrete manifestations of default, providing a clear and indisputable record of the debtor's failure to meet its financial obligations. Section 7(3)(a) states that **"the Financial Creditor shall, along with the application furnish - (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;"** and in this case record of default with the information utility was filed and is on record. In such a case there is no relevance of other documents as claimed by the Appellant and Admission cannot be disallowed on this ground". Therefore the date of Default as stated & Authenticated in the R.O.D in Form D issued by the NESL being 31/12/2019, which does not fall within the ambit of 10A period is the actual and original date of Default.

13. It is observed that consequent to the Order of the Hon'ble High Court of Karnataka in W.P No. 11060/2021, dated 23/11/2021, the Petitioner herein had considered and processed the Emergency Lime of Credit which was rejected vide letter dated 12/01/2022, for various reasons of default & the Loan limit being overdue on the part of the Creditor.



However, it is pertinent to note herein that the same was not further challenged by the Respondents herein, hence is binding on it.

14. Also, the ledger of the Petitioner submitted by the Respondents vide Memo dated 22/01/2024 clearly reflects that as on 31/12/2019, there was an overdue of Rs 1,65,80,839/- and hence the issue of threshold is satisfied.

15. Accordingly, we are of the considered view that the contention of the Respondent regarding 30/05/2020 being the date of default owing to the part payment on 28/02/2020 cannot be accepted. **The part payment done by the Respondent on 28/02/2020 is only an acknowledgement of Default and cannot be interpreted to shift the date of default to 30/05/2020.** An acknowledgement of the Debt may only be used for extension of Limitation; but it cant enable the shifting the date of default if the default has already occurred earlier.

16. Further, it is observed that the Corporate Debtor herein made an OTS proposal on 21/01/2021. Therefore, in light of the judgement of the Hon'ble Supreme Court in the case of *Dena Bank v. C. Shivakumar Reddy* (2021) 10 SCC 330, and the decision of Hon'ble NCLAT, New Delhi in *Tejas Khandhar v. Bank of Baroda* in CP(AT)(Ins) No. 371 of 2020, dated 21/07/2022 the present Company Petition filed on 26/05/2023 is within limitation.

17. In view of the above discussion, we are of the considered opinion that there is a debt and default in this case; and the Petition is filed within the limitation period. The threshold requirement is also fulfilled. Hence the present petition **CP (IB) No. 71 of 2023 is admitted** and moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:



CP (IB) No. 71/BB/2023

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- a. 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;
 - b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor 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 Corporate Debtor 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 Corporate Debtor;
 - e. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
 - f. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
 - g. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

18. This bench appoints Mrs Shirley Mathew Registration No. IBBI/IPA-001/IP/-PO1043/2017018/176, having registered address: 2, No. 23, 5th Cross, Hutchins Road, St Thomas Town, Bangalore - 560084





Contact No: 9845510322, e-mail Shirley@smathew.in as Interim Resolution Professional to carry the functions as mentioned under the IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Section 15,17,18,19,20,21 of the IBC. The IRP shall file his written consent within one week from today.

19. The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs Only) 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.
20. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.
21. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)



(IB) No.71/BB/2023

Sd/-

(K BISWAL)
MEMBER (JUDICIAL)

CERTIFIED TO BE TRUE COPY
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[Signature]
DEPUTY/ASST. REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
Bengaluru Bench

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