

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

Company Petition No. (IB)-397(PB)/2018

**Under Section 7 of the Insolvency and Bankruptcy Code,
2016**

In the matter of:

Bank of India

Applicant/Financial Creditor

V.

Basic India Limited

Respondent / Corporate Debtor

Judgment delivered on: -- 12.10.2018

CORAM:

MR. CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT

MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)

For Applicant:

Mr. H.P. Bhardwaj, Advocate

For Respondent:

Mr. Janender Kumar, and
Ms. Radhika, Advocates



ORDER

S. K. Mohapatra, Member

1. Bank of India, claiming as the financial creditor, has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s Basic India Limited, referred to as the corporate debtor.
2. The Respondent Company M/s Basic India Limited (CIN No. U74899DL1995PLC072972) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 05.10.1995 having its registered office at 1009, 10th Floor, House No. 27, Barakhamba Road, Connaught Place, New Delhi-110001. Since the registered office of the respondent



corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. It is appropriate to mention that the applicant Bank of India is a body corporate constituted under the banking companies (Acquisition and Transfer of Undertakings) Act of 1970, having Head Office at Star House, C-5, "G" Block, Bandra-Kurla Complex, Bandra (East), Mumbai-400051 and one of its branch office amongst others at Laxmi Niwas, 172 S.B. Road, Ambala Cantt. (Haryana)-133 001.
4. Shri Suresh Chandra Batra, authorized representative of the applicant and working as Chief Manager has preferred the present application on behalf of the applicant, Bank of India, for initiation of corporate insolvency resolution process against



the respondent corporate debtor in terms of the provisions of the Code.

- 5.. The applicant has proposed the name of Mr. Anup Sood, for appointment as Interim Resolution Professional having registration number IBBI /IPA-003 /IP-N000114 /2017-2018/ 11218, resident of Flat No. 185, Block-H, 5th Floor, Spangle Condos, Old Ambala Road, Gazipur, Tehsil - Derabassi, Distt.- SAS Nagar, Mohali - 140603, Punjab with email-id anupsood1954@gmail.com. Mr. Anup Sood has agreed to accept appointment as the interim resolution professional and has signed a communication dated 23rd March, 2018 in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Anup Sood as per the



requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

6. It is the case of the petitioner that in the year 2002 the respondent corporate debtor has approached Bank of India for sanction of various credit facilities to the corporate debtor. Consequently, applicant Bank had sanctioned financial facilities to the respondent corporate debtor, which had been renewed/enhanced from time to time. The applicant bank sanctioned/renewed the following financial facilities on 28.08.2013 and the corporate debtor executed the loaning and security documents for the Term Loan I, Term Loan II and Term Loan III as these were sanctioned for the first time and other facilities were renewed.

	Facility	Sanctioned Limit (Rs in Crore)
Term Loan		
	Term Loan 1	11.06
	Term Loan 2	2.63



	Term Loan 3	0.56
Term Loan (1+2+3)		14.25
A) WCL / CASH CREDIT		
I.	Cash Credit (Stock)	9.00
II.	Cash Credit (Book Debts) upto 90 days	4.00
	Max Limit - Ai & ii	10.00
B) Pre-shipment & Post shipment advance		
I)	EPC	35.00
II)	FBP (DP/DA 90 Days	10.00
Max. I + II		40.00
	Max Limit A & B	50.00
Non-fund based limits (BD) Total FBL + NFBL		1.0
Total FBL + NFBL		64.25

7. The financial facilities granted to the corporate debtor were lastly renewed on 06.08.2016 when the following facilities were granted/renewed:

	Facility	Sanctioned Limit (Rs.)
A. i	Term Loan I	8,03,00,000.00
ii	Term Loan II	1,86,00,000.00
iii	Term Loan III	37,00,000.00



B. i	Cash Credit (Hypothecation Stock)	18,00,00,000.00
Ii	Cash Credit (Hypothecation Books Debts)	8,00,00,000.00
	Max Limit - Bi & ii	20,00,00,000.00
C. I	EPC	66,00,00,000.00
ii	FBP	66,00,00,000.00
	Max Limit - Bi & ii	71,00,00,000.00
	Total CC + EPC + FBP	91,00,00,000.00
	Non Fund Based	
	CEL	1,48,00,000.00
	Total	102,74,00,000.00

8. Thereafter, the respondent corporate debtor made a request to the applicant bank for grant of TOL for Rs. 3 Crores for 90 days for completing urgent export orders. The said facility was additionally granted on 26.04.2017 and was availed by the corporate debtor. It is submitted that the corporate debtor acknowledged sanction of the aforesaid facilities and the same continued to be enjoyed by the corporate debtor.

9. In order to secure the various financial facilities the respondent company signed and executed various security and loaning documents in the favour of the petitioner bank. In addition the



corporate debtor equitably mortgaged properties and hypothecated and created charge on the entire fixed and current assets of the company. Besides in order to secure the facilities personal guarantees were executed by Mr. Athar Zia, Mrs. Sheeza Zia, Mr. Pipinder Singh & Mr. M. Z. Siddiqui as personal guarantors.

10. It is the case of the applicant bank that the corporate debtor availed and utilized various financial facilities granted by the petitioner bank but failed to maintain financial discipline and was irregular in servicing the said debt. Consequently, the petitioner bank declared the account of corporate debtor as NPA on 30.09.2017 as per the extant guidelines of the Reserve Bank of India.

11. As the corporate debtor failed to pay the debt, the petitioner bank issued a demand notice under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 on 08.10.2017 but with no avail.

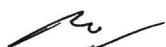


12. It is stated in the application that as on 13.03.2018 the total outstanding amount including interest due to the respondent corporate debtor comes to Rs. 1,04,36,38,469/- (one hundred four Crores thirty six Lakhs thirty eight Thousand four Hundred and sixty nine only). The details of amount due as on 13.03.2018 in respect of various loan facilities and the corresponding date of default have been enumerated at part IV of the application as below:

Part - IV

PARTICULARS OF FINANCIAL DEBT

2	Amount claimed to be in default and the Date of which the default occurred (attach the workings for computation of amount)	Total Outstanding as on 13.03.2018: Rs. 99,60,83,998.00 + 4,75,54,471.00 (int. Upto 13.03.2018 = 1, 04,36,469.00.		
		Facility	Date of Default	Amt. Due as 13.03.18
		Cash Credit (stocks)	29.04.17	2257.54
		CC (B-Debts)	29.04.17	233.74
		Term Loan 1	30.04.17	750.96
		Term Loan 2	30.05.17	172.53



and days of default in tabular form)	Term Loan 3	30.05.17	33.31
	EPC	25.07.17	6988.30

13. The applicant bank has relied upon the following securities and other loan related documents executed between the parties in respect of the financial facility sanctioned to the respondent corporate debtor:

- I. *Hypothecation of the entire fixed and current assets (present and future) of the Corporate Debtor.*
- II. *Hypothecation of all moveable plant and machinery and all other moveable assets of the Corporate Debtor.*
- III. *Equitable Mortgage of various properties as detailed in the application.*
- IV. *Hypothecation of stocks and Book debts.*
- V. *Personal guarantees of Mr. Atharzia, Mrs. Sheezazia, Mr. Papinder Singh & Mr. M.Z. Siddique.*



- VI. Various sanction letters in respect of sanction of loan facilities including renewal of the facilities duly accepted by the Corporate Debtor.
- VII. Various demand promissory notes letter of continuing security for DP Note supplemental agreement.
- VIII. Acknowledgement of debts of the outstanding amount made on 30.01.2015 and 25.09.2016.
- IX. Recording of oral assent extension of equitable mortgage of the properties.
- X. Statement of account and certificate under the Banker's Book Evidence Act.
- XI. Form-8 dated 26.04.2017 filed with the Registrar of companies registering charge in favour of the financial creditor.
- XII. CRILIC Report in support of record of default.

14. The respondent corporate debtor has filed its reply on 12th June, 2018. One of the objections raised by the respondent is that FDR amounting to Rs.3,21,45,728.93 is lying with the applicant bank. It is alleged that once the petitioner is having an FDR, the loan account will neither become an NPA nor there can be any default in the said account. In this regard petitioner in their rejoinder has stated that the said FDRs cannot be applied towards repayment of loan as these were specifically charged in favour of the financial creditor. It is submitted that Corporate Debtor has defaulted in servicing the debt and the default amount as on 13.03.2018 comes to huge sum of Rs.104 Crores approximately. It is also submitted in the rejoinder that TDRs worth Rs.385 Lakhs were held as collateral securities in the account and the same have been appropriated after the account turned NPA. In that view of the matter as after adjustment, huge default is still persisting



the applicant financial creditor has right to proceed under Section 7 of the Code.

15. It is also the case of the respondent that the financial creditor has taken insurance cover from ECGC-9 (Export Credit Guarantee Corporation) and the premium for ECGC is being paid by the Corporate Debtor since last 16 years. It is submitted that huge premium towards ECGC insurance was being paid for loss coverage of bank and safety of the Corporate Debtor and therefore, the applicant should claim Rs. 67 Crores PCL amount from ECGC instead of the Corporate Debtor. It is the contention of the respondent that applicant has already filed its claim with ECGC, which is under process and therefore, the said amount cannot be claimed from the Corporate Debtor. In this connection the applicant has submitted that the plea of the respondent is misplaced as the ECGC insurance is for the bank and not for the defaulter. It is submitted that financial creditor is duty bound to refund the



amount to ECGC after recovering the same from the borrower and that there has been huge default on the part of the corporate debtor. It is pertinent to refer here that the Code requires the Adjudicating Authority only to ascertain and record satisfaction as to occurrence of default before admitting the application. It is not the case of the respondent that even 1 Lakh is not due to the applicant bank. There is also no dispute that respondent had approached the bank with OTS proposal. When there is huge default in crores and which exceeds much above the threshold limit of Rs. 1 Lakh, the Code gets triggered in view of Section 4 of the Code. What is material is that the default is at least 1 Lakh. Accordingly such objection of partial adjustment of dues, if any, cannot stop the financial creditor to avail the provisions of the Code.

16. Respondent has raised another objection on the ground that the applicant bank has not provided correct particulars of financial debt. It is alleged that



the amount claimed to be in default is completely different from the amount claimed in balance confirmation certificate. The respondent has relied upon the following table to show the discrepancy in the claim:

Facility	Amount as per Form-1	Amount as per Bank Confirmation Certificate
Cash credit (Stocks)	2257.54	2120.62
C.C. Book Debts	233.74	219.99
Term Loan 1	750.96	702.57
Term Loan 2	170.53	161.41
Term loan 3	33.31	31.15
EPC	6988.3	6722.31



17. In this connection applicant has submitted that *'the difference between the balance confirmation certificate dated 30.09.2017 and as per Form-1 occurred due to uncharged interest up to 13.03.2018 which was not included in the confirmation certificate'*. The interest charged during the aforesaid period was not included in the confirmation certificate. It is thus seen that the variance in the amount of default is mainly on account of difference of dates. Be that as it may the corporate debtor would be entitled to raise objection of mismatching of dues before the resolution professional/ committee of creditors. Adjudicating Authority is only to ascertain the existence of a default and not the exact amount due. Mere mismatch of the figures will ipso facto not estop the admission of corporate insolvency resolution process under section 7 of the Code.

18. In the present proceeding the Tribunal is not supposed to ascertain the quantum of amount of default or to pass a decree as to how much is actually



due to the applicant financial creditor. The Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application.

19. It is pertinent to mention here that dispute over the quantum of default, cannot be a ground for rejection of an application under Section 7 of the Code as the determination of quantum of financial debt is not within the domain of the Adjudicating Authority. Similarly, the objection on the ground of discrepancies in the amount of claim cannot sustain.

20. The respondent company has also raised objection of forum shopping and submitted that action has already been initiated by the applicant under the provisions of SARFAESI Act. In this regard it is well settled that pendency of proceedings and initiation of action under SARFAESI Act cannot be an impediment or bar to initiate the Corporate



Insolvency Resolution Process under Section 7 of the Code.

21. The respondent have also taken a stand that in the year 2013 the financial creditor pressurized and persuaded it to buy their own bad asset, a rice factory in Safidon District, Jind for 15 Crores. It is stated that while pursuing to purchase the aforesaid rice factory the applicant assured the respondent to provide appropriate working capital facility to run the mill and for its renovation and addition of new machinery. It is alleged that minimum working capital credit facilities as assured by the applicant was not provided which adversely affected the working of the Corporate Debtor. The applicant bank in its rejoinder has denied that the financial creditor ever pressurized and persuaded the respondent to buy the rice factory. It is submitted that the unit was purchased by the respondent in e-auction under SARFAESI Act, 2002. Petitioner has also denied that financial creditor ever assured the Corporate Debtor



to provide working capital facility to run the mill at optimal capacity. The applicants contended that they have extended co-operation by extending timely and adequate credit facilities as per loan agreements. It is alleged that Corporate Debtor admitted that they could not sustain the unit and it was difficult for them to run the project with a long term profitable viability. In this connection, it is pertinent to note that as per the provisions of the Code, once there is existence of default and the application is complete and no proceedings are pending against the proposed IRP, the application under Section 7 is to be admitted. The Adjudicating Authority is not required to look into any other criteria while considering the application preferred under Section 7 of the Code.

22. It is also the case of the respondent that efforts are being initiated for compromise under one-time settlement Scheme. However, in the rejoinder applicant has submitted that, '*Corporate Debtor has*



approached the financial creditor with OTS proposal and the same has been rejected.' In the order dated 6th August, 2018 the fact of rejection of settlement proposal has been noted. Needless to say, that applicant bank deals with public money and the bank cannot be forced to give up a portion of their claim. Besides Compromise or restructuring of facilities etc. should be left to the parties to settle the matter in their best interest or exigencies of the business. However, in the absence of any binding compromise agreement, it is beyond the powers of the Adjudicating Authority to decline or defer the prayer of the applicant financial creditor for admission of the petition filed under Section 7 of the Code.

23. The respondent company has also raised that complete details of facilities provided to them since, 2002 have not been annexed. In this connection there is no dispute that the financial facilities sanctioned by the applicant bank were



renewed/enhanced from time to time. The financial facilities were lastly renewed on 06.08.2016. Loan agreements including security documents were executed in order to secure the loan agreement. Moreover, the respondent corporate debtor had acknowledged the debt as on 25.09.2016 by executing balance confirmation letters. Applicant bank has also placed on record statement of accounts in respect of various facilities duly certified under the Bankers Book Evidence Act. The application under Section 7 is maintainable once the default is more than one lakh, in view of Section 4 of the Code. Accordingly, the objection of the respondent in this regard also cannot sustain.

24. It is pertinent to mention here that the scheme of the Code provides for triggering the insolvency resolution process by three categories of persons namely,

- a) Financial creditor
- b) Operational creditor, and
- c) Corporate debtor itself.



25. The procedure in relation to the Initiation of Corporate Insolvency Resolution Process by the “Financial Creditor” is delineated under Section 7 of the Code, wherein only “Financial Creditor” / “Financial Creditors” can file an application. As per Section 7(1) of the Code an application could be maintained by a Financial Creditor either by itself or jointly with other Financial Creditors.
26. The expressions “Financial Creditor” and “Financial debt” have been defined in Section 5 (7) and 5 (8) of the Code and precisely “Financial debt” is a debt along with interest, if any, which is disbursed against the consideration for time value of money.
27. In the present case applicant bank had sanctioned and disbursed the term loan amount recoverable with applicable interest by entering in to loan agreements with the corporate debtor. The corporate debtor had borrowed the credit facility against payment of interest as agreed between the



parties. The loan was disbursed against the consideration for time value of money with a clear commercial effect of borrowing. Moreover the debt claimed in the present application includes both the component of outstanding principal and interest. In that view of the matter not only the present claim comes within the purview of '*Financial Debt*' but also the applicant bank can clearly be termed as '*Financial Creditor*' so as to prefer the present application under Section 7 of the Code.

28. The application filed by the applicant financial creditor under sub-section 5 (a) of Section 7 of the code, has to be admitted on satisfaction that:

- Default has occurred.
- Application is complete, and
- No disciplinary proceeding against the proposed IRP is pending.

29. Hon'ble Supreme Court in the case of Mobilox Innovations Private Limited V. Kirusa Software



Private Limited reported in AIR 2017 SC 4532 at Para 19 has observed that:

“Once the adjudicating authority / Tribunal is satisfied as to the existence of the default and has ensured that the application is complete and no disciplinary proceedings are pending against the proposed resolution professional, it shall admit the application. **The adjudicating authority/Tribunal is not required to look into any other criteria for admission of the application.**” (Emphasis given)

30. An application of financial creditor under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence of existence of default. What is material is that the default is at least 1 lakh. In view of Section 4 of the Code, the moment default is of Rupees one lakh or more, the application to trigger Corporate



Insolvency Resolution Process under the Code is maintainable.

31. The statement of accounts in respect of various loan facilities duly certified in accordance with Bankers Book Evidence Act 1891 kept during the course of banking business basing on which the claim has been raised can be termed as sufficient evidence of financial debt. The detail outflow and disbursement made from the accounts pertaining to respective loan facilities are reflected in the relevant account statements. There is no dispute that the loan was sanctioned loan documents were executed charge/security were created in order to secure the loan. It is further seen that respondent Corporate Debtor has signed Demand Promissory Note and has confirmed the balance outstanding by signing balance confirmation letters. The applicant bank has also placed CRILIC Report as a record of default to show that the account of Corporate Debtor was reported as loss account.



32. It is thus seen that the applicant financial creditor has placed on record voluminous and overwhelming evidence in support of the disbursement as well as to prove the default.

33. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the loan facilities and has committed default in repayment of the outstanding loan amount.

34. As a sequel to the aforesaid discussion it is seen that the applicant bank clearly comes within the definition of Financial Creditor. The material placed on record further confirms that applicant financial creditor had disbursed various loan facilities to the respondent corporate debtor and the respondent has availed the loan and committed default in repayment of the outstanding financial



debt. On a bare perusal of Form – I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed IRP. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

35. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

36. Mr. Anup Sood, having registration number IBBI /IPA-003 /IP-N000114 /2017-2018/ 11218, resident of Flat No. 185, Block-H, 5th Floor, Spangle Condos, Old Ambala Road, Gazipur, Tehsil - Derabassi, Distt.- SAS Nagar, Mohali - 140603,



Punjab with email-id anupsood1954@gmail.com, is appointed as an Interim Resolution Professional.

37. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by the IBBI Regulations) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

38. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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.”

39. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency



and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

40. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution Professional would



be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

41. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.


(M.M. KUMAR)

PRESIDENT


(S. K. MOHAPATRA)

MEMBER (T)