



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

(IB)-127(ND)/2022

IN THE MATTER OF:

SBM Bank (India) Limited

Registered office at:
101, Raheja Centre, 1st Floor,
Free Press Journal Marg,
Nariman Point, Mumbai – 400021

Branch Office at:

SBM Bank (India) Limited
Shop No. 4, DLF Capitol Point
Baba Khark Singh Road,
Connaught Place, Delhi - 110001

...Applicant/Financial Creditor

VERSUS

Feedback Energy Distribution Company Limit

311, 3rd Floor, Vardhaman Plaza,
Pocket – 7, Plot No. 6, Sector 12,
Dwarka, New Delhi - 110078

...Respondent

Section: 7 of IBC, 2016

Order Delivered on : 21.12.2022

CORAM

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (J)

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

PRESENT:

For the Applicant : Adv. Shilpa Thakur

For the Respondent : Sr. Adv. P. Nagesh, Adv. Mr. Karan Valecha,



ORDER

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

SBM Bank (India) Limited (for brevity, the '**Applicant/ Financial Creditor**') has filed the present Petition under the 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. Feedback Energy Distribution Company Limited (for brevity the '**Respondent**').

2. The Respondent namely, M/s. Feedback Energy Distribution Company Limited is a Company incorporated on 29.10.2012 under the provisions of erstwhile Companies Act, 1956 with CIN U40300DL2012 PLC244113 having its registered office at 311, 3rd Floor, Vardhaman Plaza, Pocket – 7, Plot No. 6, Sector 12, Dwarka, New Delhi - 110078, which is within the territorial jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs.34,00,00,000/- and Paid-up Share Capital is Rs.33,61,60,000/- as per the master data annexed with the Petition.

3. It is stated by the Applicant vide Sanction Letters dated 17.01.2020 and 24.01.2020, it had granted financial assistance, by providing OD Facility to Respondent to the tune of Rs. 20,00,00,000/- along with WTCL for Rs. 3,98,00,000/- vide sanction



letters dated 21.01.2021. As per the terms mentioned in the Sanction Letters, the repayment was to be made on 31st or the last day of the month. However, the Respondent defaulted in making payment of installment due of July, August, September and October. Due to the irregularity in the repayments, the account of the Respondent was classified as default account and a notice dated 20.10.2021 was sent to the Principal Borrower. In spite of receiving the said notice, the Respondent did not pay the outstanding dues. Hence, the account of the Respondent was classified as NPA on 30.10.2021, which was duly informed to the Principal Borrower vide letter dated 16.11.2021. Notice under section 13(2) of the SARFAESI Act, 2002 dated 08.12.2021 was also issued to the Respondent and its Guarantors.

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:

Part - IV

PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	1. Sanction Letter dated 17.01.2020 and 24.01.2020 providing Over Draft Facility and STL (sublimit) to the tune of INR 20,00,00,000 (Rupees Twenty Crore Only) 2. Sanction Letter dated 21.01.2021



		<p>providing WCTL (under ECLGS 2.0 Scheme of NCGTC) to the tune of INR 3,98,00,000 (Rupees Three Crore Ninety-Eight Lakhs only)</p> <p>The sanction letters dated 17.01.2020, 24.01.2020 and 21.01.2021 for the said limits is hereto annexed and collectively marked as 'Annexure- E- Colly'.</p>
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	<p>Outstanding Principal as on 31.12.2021: INR 22,65,01,788.82)</p> <p>Outstanding Interest (inclusive of Penal Interest) as on 31.12.2021: INR 68,40,447.04</p> <p>Total Outstanding Claim as on 31.12.2021: INR 23,33,42,235.86</p> <p><u>Date of Default: 30.10.2021</u></p> <p>The present petition has been filed within the limitation period. The working for computation of Amount and days of default is hereto annexed and marked as "Annexure- F"</p>

5. On perusal of Part IV of the Application, it is observed that the Applicant has claimed an amount of Rs.23,33,42,235.86 as the unpaid financial debt and 30.10.2021 to be the date of default.



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

7. On issuance of notice, the Respondent has filed its reply and stated that there is no default committed on part of the Respondent Company, as no debt is due and payable to the Respondent. Further, it has stated the following -

7.1. The Authority with which the present application is filed is defective and the Vakalatnama placed on record is also defective.

7.2. There are three Guarantors to the said loan facilities being (a) Feedback Infra Pvt. Ltd., (b) Mission Holding Pvt. Ltd., and (c) Mr. Vinayak Chatterjee.

7.3. The Applicant is alleged to have served a default Notice, dated 20.10.2021 to the CD. However, the same is not annexed along with the instant Application. Even the letter dated 16.11.2021, vide which the FC has purportedly informed the CD regarding its account being declared as NPA w.e.f. 30.10.2021 and the alleged loan recall letter dated 22.11.2021 are also not annexed with the Petition.

7.4. The Respondent is a power distributor and is a going concern. After the pandemic in last two years, the Respondent is in the process of recovery of its dues from its clients (Discoms). The Respondent is a claimant against the Discoms of the state of Madhya Pradesh in three



arbitration proceedings, wherein the claim amount of the Respondent is more than Rs. 200 Crore.

7.5. Prior to declaration of the account of the respondent as NPA by the Applicant, the Respondent vide letter dated 31.08.2020, sought One-Time Resolution in terms of the RBI's framework dated 06.08.2020. However, there was no response of the Applicant.

7.6. The Respondent also proposed the Comprehensive Debt Restructuring Proposal in December, 2021. In this regard, Joint Lender Meetings were held on 06.09.2021, 15.09.2021 & 21.10.2021. However, the Applicant rejected the same.

7.7. In the light of the above facts and judgment of the Hon'ble Supreme Court in the case of *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.*, (2022) 8 SCC 352 (para 86-88), this Tribunal ought to exercise its discretion while adjudicating an Application under Section 7 of the Code. In view of the aforesaid submissions as well as the law laid down by the Hon'ble Supreme Court in *Vidarbha Industries (Supra)*, the instant Petition deserves to be dismissed.

7.8. The Applicant with *mala fide* is initiating CIRP against the Respondent as well as Corporate Guarantors simultaneously for the same debt and on the same facts, which is against the law laid down by the Hon'ble NCLAT in the judgement of *Vishnu Kumar Agarwal Vs Piramal Enterprises Ltd (Company Appeal (AT)(Ins) No. 346 & 347 of 2018)*. The relevant para of the same is reproduced below -



“32. There is no bar in the ‘I&B Code’ for filing simultaneously two applications under Section 7 against the ‘Principal Borrower’ as well as the ‘Corporate Guarantor(s)’ or against both the ‘Guarantors’. However, once for same set of claim application under Section 7 filed by the ‘Financial Creditor’ is admitted against one of the ‘Corporate Debtor’ (‘Principal Borrower’ or ‘Corporate Guarantor(s)’), second application by the same ‘Financial Creditor’ for same set of claim and default cannot be admitted against the other ‘Corporate Debtor’ (the ‘Corporate Guarantor(s)’ or the ‘Principal Borrower’).”

7.9. The present Application has been filed only for the purpose of recovery, which is barred by the Judgement of Hon’ble Supreme Court passed in the matter of Invent Asset Securitisation and Reconstruction Pvt. Ltd. vs Girnar Fibres Ltd. being 2022 SCC OnLine SC 808.

7.10. The present application is barred by Section 10A of IBC, 2016 since the alleged default, if any, has been committed by the Borrower during the Section 10A period, during which no application could be filed for initiation of CIRP period. The date of NPA has been relied as date of default, in order to mislead this Tribunal.

7.11. Furthermore, the Respondent Company without prejudice to the foregoing, submits that the default if any, as alleged by the Applicant Bank cannot be construed as a default as the same falls within the scope and ambit of Force Majeure as per the Notification No. F .18/4/2020-PPD dated 19.02.2020 issued by the Government of



India, Ministry of Finance, Department of Expenditure, Procurement Policy Division.

8. The Applicant has filed its rejoinder and stated the following –

8.1. Power of Attorney ("POA") executed by the Bank in favour of Mr. Lokesh Singhal, Vice President is annexed at @ Pg. 20-23, V-I. Under clause 19 of the POA. Mr. Lokesh Singhal has been duly authorised to file & institute applications, vakalatnama etc. before this Hon'ble Tribunal (Pg. 22, V-I) and the said POA is executed under the Common Seal of the Bank (Pg. 23, V-I).

8.2. The Judgement of Hon'ble NCLAT in **Dr. Vishnu Kumar Agarwal Vs M/s Piramal Enterprises Limited** is under challenge before the Hon'ble Supreme Court, wherein status quo has been ordered vide order dated 01.02.2019. Hence, the same cannot be relied as a precedent as on date.

8.3. Further, the Hon'ble NCLAT had taken contrary view in the matter of **State Bank of India vs. Athena Energy Ventures Private Limited Company Appeal (AT) (Ins) No. 633 of 2020.**

8.4. The latest OTS was given by Respondent on 20.10.2022 for Rs. 2.71 Crore, which was revised to Rs. 3.30 Crore on 14.11.2022. On 15.11.2022, the approving committee of the Bank rejected the proposal as it was much below the total outstanding amount (including Principal, Interest, Overdue charges or any other amount due/outstanding dues) of Rs.23,33,42,235.86/- as on 31.12.2021. Since, the Respondent



has no funds to repay the loan, therefore, it has filed the application for initiating CIR Process against the Respondent.

8.5. The facts of Respondent are distinguishable from the Vidarbha case, as in the said case, the Corporate Debtor was expected to receive huge amount from the Government, which is not the case of the Respondent.

8.6. The OD Facilities were disbursed on 03.02.2020 in terms of sanction letters dated 17.01.2020 and 24.01.2020. Interest against OD Facility was paid irregularly from 30.09.2020 to July 2021. Last payment was made by the Respondent on 13.07.2021. Therefore, the account was classified as Non performing Asset (NPA) on 30.10.2021. Hence, Section 10A of IBC is not applicable as default does not pertain to the period from 25.03.2020 to 24.03.2021.

8.7. There is no clause with respect to Force Majeure in the loan documents executed by the Respondent. On account of Covid-19, RBI, through various circulars, has already extended moratorium to the borrower.

8.8. It is denied that vakalatnama in favour of previous counsel is defective in any manner. Bare comparison of signature of Mr. Lokesh Singhal in the power of attorney and vakalatnama would prove that the said vakalatnama was executed by Mr. Lokesh Singhal pursuant to his power of attorney. Therefore, all the allegations in this regard are devoid of merit and are liable to be rejected.



9. After hearing submissions of both the parties and perusing the documents placed on record, this Bench observes that the Respondent has raised certain objections against admission of the Application. It is contended by the Respondent that the default pertains to the period stipulated under Section 10A of IBC, 2016. Further, it has stated that the date of NPA cannot be relied as date of default. Hence, the CIRP cannot be initiated against it.

From perusal of records, it is seen that the account of the Respondent was classified as NPA on 30.10.2021, which is subsequent to the period stipulated under Section 10A of IBC, 2016. Further, there is nothing on record to suggest that the classification of the Respondent's Account as NPA was challenged or set aside by any court of law. Hence, we are of the view that the date of default does not fall within the period stipulated under Section 10A of IBC, 2016 and hence, the Application is not barred by Section 10A of IBC, 2016.

10. The Respondent has placed reliance on the judgement of the Hon'ble NCLAT in **Vishnu K. Agarwal vs Piramal Enterprises Ltd., Comp. Appeal (AT) (Insolvency) No. 346 of 2018** to demonstrate that CIRP cannot be initiated against both Borrower and Guarantor for the same set of claims. Per contra, the Applicant has relied upon the Judgment of the Hon'ble NCLAT passed in the matter of **State Bank of India vs. Athena Energy Ventures Private Limited Company Appeal (AT) (Ins) No. 633 of 2020**, wherein the following was held:



“19. It is clear that in the matter of guarantee, CIRP can proceed against Principal Borrower as well as Guarantor. The law as laid down by the Hon’ble High Courts for the respective jurisdictions, and law as laid down by the Hon’ble Supreme Court for the whole country is binding. In the matter of Piramal, the Bench of this Appellate Tribunal “interpreted” the law. **Ordinarily, we would respect and adopt the interpretation but for the reasons discussed above, we are unable to interpret the law in the manner it was interpreted in the matter of Piramal.** For such reasons, we are unable to uphold the Judgement as passed by the Adjudicating Authority.”

(Emphasis Supplied)

Though the Applications have been filed against the Guarantors, however, no IR/CIR process is initiated against them till date. Hence, without commenting anything on merits of those applications, the question of admitting two companies into IR/CIR process for the same debt does not arise at present.

11. As regards to exercising discretion to not to admit the present Application, we are of the view that there are no special and extra-ordinary circumstances being made out, as per which despite committing default, the Application should be dismissed.

12. With regard to the technical objections, we do not find any defect in the authority for which the application should be dismissed.

13. In the given facts and circumstances, the present Application being complete and the Applicant/Financial Creditor having



established the default in payment of the Financial Debt for the default amount being committed 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.”

14. As proposed by the Financial Creditor, this Bench appoints Mr. Rajneesh Kumar Aggarwal as IRP having Registration No. IBBI/IPA-001/IP-P00886/2017-18/11483 (Email: ca@arkadvisors.in) subject to the condition that no disciplinary proceedings are 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. Rajneesh Kumar Aggarwal IRP (E-mail: ca@aradvisor.in) having Registration No. IBBI/IPA-001/IP-P00886/2017-18/11483 is directed to take charge of the CIRP of the Respondent 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.

15. 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.

16. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Financial Creditor, the Respondent and the IRP mentioned above. In addition, a copy of the Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their record.

(L. N. GUPTA)
MEMBER (T)

(BACHU VENKAT BALARAM DAS)
MEMBER (J)