



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V**

C.P. (I.B) No. 44/MB/2024

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

IDBI Bank Ltd.

**Through Shri Ashish Aggarwal,
Deputy General Manager**

Having registered office address at
7th Floor, IDBI Tower, WTC Complex, Cuffe Parade, Mumbai – 400005 (Maharashtra)

...Petitioner/Financial Creditor

Vs

Agrimas Chemicals Limited

H2, Midc Ind. Estate, Taloja Dist. Raigadh,
Raigadh - 410208, (Maharashtra)

... Respondent/Corporate Debtor

Order Dated: 30.01.2025

Coram:

Ms. Reeta Kohli, Hon'ble Member (Judicial)

Ms. Madhu Sinha, Hon'ble Member (Technical)

**Appearances:**

For the Petitioner: Adv. Aprajita Chandra (PH) & Adv.
Ankur Kumar (VC)

For the Corporate Debtor: Adv. Rhea Fernandes (PH) & Adv. A Chandra (VC)

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ORDER

Per: Reeta Kohli, Member (Judicial)

- I. This Company Petition is filed by **IDBI Bank Ltd, through Shri Ashish Aggarwal, Deputy General Manager** (hereinafter referred as **“Petitioner/Financial Creditor”**) on 24.01.2024 seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as **“CIRP”**) against **Agrimas Chemicals Limited** (hereinafter called **“Corporate Debtor”**) by invoking the provisions of **Section 7** of the Insolvency and Bankruptcy code, 2016 (hereinafter called **“Code”**) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a Financial Debt of **Rs. 25,04,12,402.46/-**, and the date of default being **06.11.2018**.

II. **Facts of the Petitioner**

1. The case of the Petitioner is that upon request of the Corporate Debtor, the Financial Creditor, vide sanction dated 19.08.2014, sanctioned the Working Capital Limits of Rs. 16 Crores. Subsequently, vide sanction dated 20.04.2015, the said credit facility was reduced to Rs. 13 Crores. As stated, the aforementioned Working Capital Limited was sanctioned under the Working Capital Consortium Arrangement with other lenders. The above-stated amount was disbursed by IDBI Bank Limited on 25.06.2015.



However, vide letter dated 21.05.2019, the financial assistance extended to the Corporate Debtor was recalled.

2. As stated by the Petitioner, this Hon'ble Tribunal, vide Order dated 15.11.2021 passed in C.P No. 1837 of 2019, initiated CIRP against the Corporate Debtor. Pursuant to the admission of Corporate Debtor into CIRP, the Corporate Debtor proposed OTS to the Financial Creditor and in view of the acceptance of the said OTS proposal, C.P No. 1837 of 2019 was withdrawn, vide Order dated 21.03.2022 passed by this Hon'ble Tribunal. Further, post the aforesaid withdrawal of CIRP Petition against the Corporate Debtor, OTS request dated 27.01.2021 made by the Corporate Debtor was considered and approved by IDBI Bank and the Corporate Debtor was duly informed about the same, along with terms of settlement, vide email dated 21.11.2022. However, as submitted by the Petitioner, the Corporate Debtor failed to adhere to the proposed settlement.

3. As submitted by the Petitioner, vide Letter dated 28.08.2023, the Corporate Debtor submitted another consortium settlement offer to Lead Bank, i.e. SBI. As stated, the Corporate Debtor, vide email dated 27.10.2023, requested the Petitioner (Cross-check) to consider sanctioning Settlement as proposed vide letter dated 28.08.2023. It was further submitted that vide letter dated 30.12.2023, the Petitioner offered OTS



under “IDBI One Time Settlement Scheme (I-OTS 2023-24)” to the Corporate Debtor. Further, the Corporate Debtor, vide letter dated 30.01.2024, made a counter offer and requested the Petitioner to consider the proposal submitted by the Corporate Debtor vide letter dated 28.03.2023. The Petitioner Bank, vide letter dated 14.02.2024 rejected the averments made by the Corporate Debtor in its letter dated 30.01.2024 and apprised the Corporate Debtor to avail the benefits of the OTS proposal offered vide Petitioner’s letter dated 30.12.2023.

4. The Ld. Counsel for the Petitioner submitted that the OTS proposal was submitted by the Respondent on 12.01.2022 which was approved by Bank on 21.11.2022 but despite the approval of the OTS, the Respondent failed to make the payment in terms of the OTS proposal submitted. Thus, as contended by the Petitioner that though the OTS Scheme was offered to the Corporate Debtor, however, the Corporate Debtor has not availed the same. Hence, in view of the same, the Corporate Debtor does not deserve any indulgence to be granted by the Hon’ble Tribunal.
5. The Ld. Counsel also submitted that once the OTS terms are breached by the Corporate Debtor, the outstanding dues remains payable to the Petitioner as per its original arrangement. Reliance was also placed on the judgment of the Hon’ble Supreme Court in the case of *Innovative Industries Limited Vs. ICICI Bank and another* [CIVIL APPEAL Nos.



8337-8338 OF 2017], wherein the Hon'ble Supreme Court, while elaborating the scope of Section 7 of the Code, has held as under:

“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor.....claim to be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority....., as the case may be.

30. On the other hand, as we have been, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating



authority that the adjudicating authority may reject an application and not otherwise.”

6. Therefore, the Ld. Counsel for the Petitioner submitted that in view of the fact that the record of default generated from the information utility clearly records that the debt is admitted by the Corporate Debtor and thus, it is proved that there is a debt due against the Petitioner and the Petitioner has committed default of the due amount, the present Petition deserves to be admitted under Section 7 of the Code.

III. Facts of the Corporate Debtor

7. On the other hand, the case of the Corporate Debtor is that the present Petition filed by the Financial Creditor is a misuse of Insolvency & Bankruptcy Code, 2016 and the due process of law. As submitted, the Financial Creditor, in the present Petition, has concealed relevant facts and thus, on this ground alone, the Petition deserves to be dismissed.
8. The Ld. Counsel for the Respondent has vehemently submitted that the present Petition is not maintainable as the Petitioner Bank, i.e. IDBI has concealed that the loan was availed by the Respondent under the consortium arrangement with State Bank of India as the Lead Bank. As stated, the Petitioner has further concealed that the Respondent has submitted an OTS proposal dated 10.07.2023 and it was further revised after discussion with Banks and revised offer was submitted on 28.08.2023



to the Banks. However, the Bank has not responded to the said OTS proposal and the same remains pending with the Petitioner Bank as the same has neither been accepted nor rejected by the Bank. Further as submitted, the Respondent has already deposited a sum of Rs. 1.15 Crores to prove his bona-fide intent during the pending discussion pertaining to the OTS proposal.

9. The Ld. Counsel for the Respondent submitted that the Petition also deserves to be rejected on the ground of concealment of fact that a Writ Petition, i.e. W.P. (C) No. 7294 of 2022, filed by the Corporate Debtor against the Financial Creditor is pending adjudication before the Hon'ble High Court of Delhi, wherein the Petitioner Bank has admitted that it has received a fresh OTS proposal from the Respondent, and further the Bank also prayed for time to place on record the outcome of the said OTS proposal. However, as contended by the Corporate Debtor, no record of any outcome has been placed on record as yet and the Corporate Debtor has not been intimated about the outcome of the said OTS proposal. Therefore, in view of the same, the attempt of Petitioner Bank of hoodwinking the Hon'ble High Court of Delhi and also concealing the fact that aforementioned Writ Petition remains pending is ground enough for the rejection of the present Petition at the outset.

10. It was further submitted that the Lead Bank, i.e. SBI had, in fact, approved the OTS on 12.01.2022 and it is the Petitioner Bank which, due to lack of



coordination between the consortium bankers, took more than 20 months in reverting back on the OTS proposal. As stated, the Petitioner virtually forced the Respondent to re-work its OTS proposal and 10% of the approved OTS amount was thus duly deposited in No Lien account of the Lead Bank of the consortium. The Counsel further submitted that the said proposal as highlighted vide letter dated 30.01.2024 is still pending consideration, the same has neither been accepted nor rejected by the Petitioner Bank. Therefore, filing of the present petition for admission of the Respondent into CIRP is a mala-fide attempt on the part of the Petitioner and thus, the Petition deserves to be dismissed.

11. To substantiate his bona-fide intention, the Ld. Counsel for the Respondent further submitted that the customers of the Respondent/Corporate Debtor were hit hard by the unprecedented situation caused by Pandemic Covid-19 which adversely affected the business of the Respondent and it was in this backdrop, that the Petitioner and other consortium Bank discussed the OTS proposal and to prove its bona-fide, the Corporate Debtor has already paid a sum of Rs. 1.15 Crore. It was further contended that the default committed by the Respondent was not intentional and was a result of effect of the Pandemic.



IV. FINDINGS-

12. After having heard the Ld. Counsels for both the parties and perusing the documents placed on record, it is evident that the case of the Petitioner is that the Respondent/Corporate Debtor has failed to discharge its obligation of paying the due debt, the Petitioner, having been left with no other option, had approached this Hon'ble Tribunal for seeking initiation of CIRP of the Corporate Debtor. On the other hands, the case of the Corporate Debtor is that the present Petition filed by the Petitioner Bank is not maintainable and deserves to be dismissed as the Petitioner has concealed relevant facts from this Hon'ble Tribunal.

13. After careful perusal of the facts of the present case, we are of the opinion that 3 issues emerge for consideration, which are as under-

- i. *Whether pendency of an OTS proposal is an impediment for admission of a Petition filed under Section 7 of IBC, 2016?*
- ii. *Whether any bank from the consortium of banks can file a Petition for initiation of CIRP against the Corporate Debtor?*
- iii. *Whether pendency of a Writ Petition is an impediment for admission of a Petition filed under Section 7 of IBC, 2016?*

14. In order to adjudicate on the 1st issue, i.e., '*Whether pendency of an OTS proposal is an impediment for admission of a Petition filed under Section 7 of IBC, 2016?*', it is imperative to note that the Petitioner has established



that there exists a financial debt and default by the Corporate Debtor. The records of Information Utility clearly demonstrate that the Corporate Debtor has committed default in payment of the financial debt of Rs. 25,04,12,402.46/-, with the date of default being 01.10.2023. This fact has not been disputed by the Corporate Debtor.

15. Otherwise also, the case of the Respondent is not that the account stated is not due. It is also not the case of the Respondent that there is no default of the due amount, rather, the argument extended by the Ld. Counsel for the Respondent is that a proposal for OTS was being worked out, and in pursuance to that settlement proposal, an amount of Rs. 1.15 Crore has been paid. Keeping in view that, as on date, an amount of Rs. 25,04,12,402.46/- remains due and payable by the Corporate Debtor, the mere fact that an amount of Rs. 1.15 Crore has been deposited does not absolve the Corporate Debtor of its liability to pay the entire outstanding amount.

16. The Counsel for the Respondent strongly submitted that the Petition is not maintainable in view of the fact that the OTS proposal is still pending consideration. However, we deem it appropriate to take notice of the judgment of the Hon'ble Supreme Court in the matter of *Bijnor Urban Cooperative Bank Limited and others Vs. Meenal Agarwal and others [Civil Appeal No. 7411 of 2021]*, wherein the Hon'ble Supreme Court has been pleased to hold as under:



“the grant of benefit of OTS scheme cannot be prayed as a matter of right. It further stated that no bank can be compelled to accept a lesser amount under the OTS scheme despite the fact that the Bank is able to recover the entire loan amount by auctioning the secured property/mortgaged property. When the loan is disbursed by the bank and the outstanding amount is due and payable to the bank, it will always take a conscious decision in the interest of the bank and in its commercial wisdom. Therefore, the decision taken by the Bank to reject the OTS Proposal is done in its commercial wisdom.”

17. Thus, in the aforementioned judgment, the Hon’ble Supreme Court has expressly held that the grant of benefit of OTS scheme cannot be claimed as a matter of right. In the instant case, the proposal submitted by the Corporate Debtor has been rightly rejected in view of the commercial wisdom exercised by the Petitioner. Therefore, in light of the aforesaid, the mere pendency of OTS negotiations cannot be a ground to deny the statutory right of a Financial Creditor under Section 7 of the Code, particularly when there is an admitted default.

18. Furthermore, the 2nd issue in question is that ‘**Whether any bank from the consortium of banks can file a Petition for initiation of CIRP against the Corporate Debtor?**’. The Respondent also vehemently contended that the present Petition is not maintainable as the Petitioner Bank, i.e. IDBI has concealed that the loan was availed by the Respondent under the consortium arrangement with State Bank of India as the Lead Bank.



However, in this regard, it is imperative to take notice of the Three Member Decision of Hon'ble NCLAT in the matter of ***Amitabh Kumar Jha vs. Bank of India & Anr. [Company Appeal (AT)(INS) No. 1392 of 2019]***, wherein it was held as under-

“9. Having heard learned counsel for the parties including the Intervenors, we find that existence of financial debt and its default on the part of the ‘Corporate Debtor’ is not the issue in controversy as the same has admitted. The factum of the ‘Corporate Debtor’ having obtained financial facility from consortium of lenders including the ‘Bank of India’, the ‘Financial Creditor’ and default on the part of the ‘Corporate Debtor’ in discharging its liability do not form issue for consideration. It is also not in controversy that the financial debt in respect whereof the ‘Financial Creditor’ herein sought triggering of ‘Corporate Insolvency Resolution Process’ is payable both in law as also in fact. The ‘Corporate Debtor’ is merely banking upon the Financing Documents including CLA, STA and ICA to assail the impugned order notwithstanding the fact that neither the claim is barred by law nor do such Financing Documents clothe the ‘Corporate Debtor’ with a right to



disentitle the 'Financial Creditor' from enforcing its claim, in its individual capacity, despite being a member of the consortium of lenders. It is queer that the 'Corporate Debtor' is making a vain bid to get out of the rigours of its liability in terms of loan documents sanctioning the loan and giving rise to contractual liability as against it on the basis of an 'Inter-Creditor Agreement', to which admittedly it is not a party. It would be a travesty of justice to raise a plea that since the Creditors has an inter se agreement in regard to enforcement of the liability of the debtor qua the Creditor, an individual Creditor should not be permitted to enforce its right arising under a contract in regard to discharge of liability for loan advanced by the Creditor which is otherwise payable in law and not barred by any legal framework including the law of limitation. What transpires among the Creditors in regard to 'Inter-Creditor Agreement' is a matter exclusively inter se the Creditors. The debtor has no locus to meddle with the internal arrangement and affairs of the Creditors in regard to their joint or individual interests, more so when in the instant case the Intervenors who are the consortium



of lenders have supported the action taken by the 'Bank of India' in triggering 'Corporate Insolvency Resolution Process'. None of the members of the consortium of lenders has taken exception to enforcement of individual rights by the 'Bank of India' in regard to the financial debt payable to it and to the extent of its interest.

10. The statutory right across the ambit of Section 7 of the 'I&B Code' cannot be curtailed or made subservient to any 'Inter-Creditor Agreement'. The contractual rights, unless recognised by the statute as a permissible mode, would not override the statutory mechanism and right created and enforceable under statute."

19. Therefore, in view of the aforementioned Judgment, this Bench is of the judicious opinion that the rights of the Petitioner Bank (IDBI) cannot be curtailed merely on the ground that the loan was availed under a consortium arrangement with State Bank of India as the Lead Bank. The statutory right available to IDBI Bank under Section 7 of the I&B Code cannot be made subservient to any consortium arrangement, particularly when there is an admitted debt and default by the Respondent, and the Lead Bank (SBI) has not raised any objection to the present proceedings. The Respondent's contention regarding non-maintainability of the Petition on this ground is therefore untenable, as the existence of a consortium



arrangement does not disentitle an individual Financial Creditor from enforcing its claims in its individual capacity.

20. Moreover, the 3rd issue that requires consideration is that ‘*Whether pendency of a Writ Petition is an impediment for admission of a Petition filed under Section 7 of IBC, 2016?*’. The Respondent has also contended that a Writ Petition, i.e. W.P. (C) No. 7294 of 2022, filed by the Corporate Debtor against the Financial Creditor is pending adjudication before the Hon’ble High Court of Delhi and the present Petition deserves to be dismissed on the said ground. It is pertinent to take notice of the fact that none of the parties have placed on record the aforementioned Writ Petition. Rather, the Respondent has placed on record only a copy of the Order dated 22.02.2023 passed by the Hon’ble Delhi High Court in the said Writ Petition, wherein the Petitioner Bank was granted 6 weeks of time to place on record the outcome of the fresh OTS proposal submitted by the Corporate Debtor. Furthermore, the Petitioner, in its written submissions, has contended that “*the said Writ Petition was filed by the Respondent for being aggrieved by the order dated 30 April 2022 passed in the willful defaulter proceedings carried on by the Petitioner declaring the Petitioner as willful defaulters in terms of the RBI Master Circular on Willful Defaulters.*” Thus, in view of the aforementioned, this Bench is of the opinion that the said issue cannot be adjudicated upon, given that the contents and precise scope of the said Writ Petition have not been placed



before this Tribunal for consideration. This Tribunal, exercising summary jurisdiction under the I&B Code, 2016, is primarily concerned with the existence of a financial debt and default thereof. In the present case, there exists an admitted financial debt and default on the part of the Corporate Debtor. The pendency of the Writ Petition cannot operate as an impediment to the initiation of CIRP against the Corporate Debtor, particularly when the jurisdictional prerequisites under Section 7 of the I&B Code stand satisfied. Otherwise also, the Hon'ble NCLAT in the matter of ***Karan Goel Vs M/s Pashupati Jewellers & Anr. [Company Appeal (AT) (Insolvency) No. 1021 of 2019]***, has held as under-

“7. From the aforesaid finding of the Hon'ble Supreme Court, it is clear that once the Adjudicating Authority is satisfied on the basis of records that the debt is payable and there is default, the Adjudicating Authority is required to admit the application. The Respondent – M/s Pashupati Jewellers having enclosed the copy of the ‘Corporate Guarantee and Undertaking’ Agreement dated 7th April, 2017 instituted on e-Stamp, issued by Government of National Capital Territory of Delhi, it was not open to the Adjudicating Authority to deliberate on the issue whether e-Stamp is a forged document or not. Merely because a suit has been filed by the Appellant and



pending, cannot be a ground to reject the application under Section 7 of the I&B Code. Pre-existing dispute cannot be a subject matter of Section 7, though it may be relevant under Section 9 of the I&B Code.”

21. Thus, in light of the aforementioned, we are of the considered opinion that the pendency of a Writ Petition is no impediment to the initiation of CIRP against the Corporate Debtor, particularly when, in the present case, the condition laid down in Section 7 of the Code stand satisfied.

22. Therefore, keeping in view the above stated facts and circumstances, we are of the considered view that the present application fulfils all the requirements as stipulated under Section 7 of the Code. The Financial Creditor is entitled to claim its dues as it has been duly established that the default in payment of the financial debt has occurred. There exists no pre-existing dispute between the parties and the present Petition is not barred by Limitation. Further, the amount stated to be due in this case is above the threshold limit as stipulated under Section 4 (1) of IBC. The pendency of OTS negotiations or the partial payment of Rs. 1.15 Crore cannot be grounds for dismissal of the Petition when there is an admitted default of a significant amount. Further, the existence of a consortium arrangement does not disentitle an individual Financial Creditor, IDBI Bank, from enforcing its claims in its individual capacity. Furthermore, the pendency of the suit before the Hon’ble Delhi High Court is also no bar for initiation of CIRP under Section 7 of the Code. Also, the present Petition deserves



to be **admitted** in view of the settled law, wherein the Hon'ble Supreme Court in the matter of *M/s. Innoventive Industries Ltd. vs. ICICI Bank [2018 (1) SCC 407]* has been pleased to hold as under-

“28. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the Adjudicating Authority. Under sub-section (7), the Adjudicating Authority shall then communicate the order passed to the Financial Creditor and Corporate Debtor within 7 days of admission or rejection of such application, as the case may be.”

23. Thus, **CP No. 44 of 2024** is hereby admitted by passing the following Order-

ORDER

- a.** The above Company Petition No. 44/IBC/MB/2024 is hereby **admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Agrimas Chemicals Limited**.
- b.** The Petitioner has proposed the name of **Mr. Huzefa Fakhri Sitabkhan**, bearing Registration No. IBBI/IPA-001/IP-P00311/2017-2018/10115, with the place of residence at 1012, Dalamal Tower, Free Press Journal Marg, 211 Nariman Point, Mumbai - 400021, as Interim Resolution Professional. The IRP proposed by the Petitioner, is hereby appointed as Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.



- c. The Petitioner shall deposit an amount of Rs. 2 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d. That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- f. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- g. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.



- h.** That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i.** During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j.** Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k.** Accordingly, C.P. No. 44/IBC/MB/2024 is **admitted**.
- l.** The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

MADHU SINHA
Member (Technical)

/Jhanvi/

Sd/-

REETA KOHLI
Member (Judicial)