

**NATIONAL COMPANY LAW TRIBUNAL
COURT NO. V, MUMBAI BENCH**

CP No. 115/(IB)-MB-V/2021

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

In the matter of

Axis Bank Limited

Axis house, 7th Floor, C-2, Wadia International Centre, Pandurang Bhudhkar Marg, Worli, Mumbai-400025.

...Petitioner/ Financial Creditor

Vs.

Maharashtra Theatres Private Limited

RNA Corporate Park, 3rd Floor, Next to Collector's Office, Bandra (East), Mumbai-400051, Maharashtra.

...Corporate Debtor

Date of the Order: 31.03.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via Video Conferencing):

For the Petitioner:

Mr. Shyam Kapadia, Advocate a/w Ms. Savani Gupte, Mr. Lalit Munshi and Ms. Sailee Dhayalkar i/b Samvad partners.



For the Corporate Debtor:

Mr. Pulkit Sharma, Advocate i/b G. Aniruth Purusothaman.

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. This Company Petition is filed by **Axis Bank Limited** (hereinafter called "**Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Maharashtra Theatres Private Limited** (hereinafter called "**Corporate Debtor**") alleging that the Corporate Debtor committed default in the repayment of loan to the extent of Rs. 55,75,27,571/- including interest. This Petition has been filed by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called "**Code**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The instant Petition arises out of the defaults of the Corporate Debtor, under certain facilities advanced to it, by the Petitioner, from the years 2010 to 2016. A brief outline of these facilities is as under:
 - Term Loan Facility with Account Number 910060036954809 for an amount of INR 3,18,00,000/- sanctioned vide (i) Sanction Letter dated 5th June 2010 (ii) Revised Sanction Letter dated 22nd September 2010 and (iii) Loan Agreement dated 29th September 2010.
 - Overdraft Facility with Account Number 913030035125114 for an amount of 10,00,00,000/- sanctioned vide (i) Sanction Letter dated 26th July 2013 (ii) Renewal of Sanction Letter, dated 2nd March 2015 and (iii) Letter of Arrangement dated 27th July 2013 for INR 10,00,00.000/-.
 - Term Loan Facility with Account Number 913060035171516 for an amount of INR 37,75,00,000/- sanctioned vide (i) Sanction Letter dated 26th July 2013 (ii) Renewal of Sanction Letter, dated 2nd March 2015 and (iii) Term Loan Agreement dated 27th July 2013.



- Term Loan Facility with Account Number 96060017908184 for an amount of INR 3,15,00,000/- sanctioned vide (i) Sanction Letter dated 28th December 2015 (ii) Sanction Letter dated 29th March 2016 revalidating the loan and (iii) Term Loan Agreement dated 28th March 2016.
 - Term Loan Facility with Account Number 916060017908838 for an amount of INR 10,50,00,000/- sanctioned vide (i) Sanction Letter dated 28th December 2015 (ii) Sanction Letter dated 29th March 2016 revalidating the loan. (iii) Term Loan Agreement dated 28th March 2016.
3. The total amount sanctioned vide the Facilities was INR 64,58,00,000/- and the Facilities were to be repaid in terms of the schedule of repayments of each of the Facilities. The Facilities were also secured by various Security Documents, as elaborated in Form 1, Part V of the Petition. The Corporate Debtor had from 2012 till 2018 furnished several "**Acknowledgments of Debt**", *inter alia* confirming the amounts which were payable to the Financial Creditor, under the Facilities, and its liability to repay the said amount. These Acknowledgments of Debt are as under:
- (i) Acknowledgement of Debt, dated 31st December 2009, confirming that an amount of INR 20,78,11,103.84 was due and payable by the Corporate Debtor to the Financial Creditor as on 31st December 2009.
 - (ii) Acknowledgment of Debt, dated 12th December 2012, confirming that an amount of INR 20,44,65,181.89 was due and payable by the Corporate Debtor to the Financial Creditor as on 5th December 2012.
 - (iii) Acknowledgement of Debt, dated 22nd April 2015, confirming that an amount of INR 59,90,75,972.24 was due and payable by the Corporate Debtor to the Financial Creditor as on 12th January 2015.
 - (iv) Acknowledgment of Debt, dated 11th April 2018, confirming that an amount of INR 56,26,51,028.30 was due and payable by the Corporate Debtor to the Financial Creditor as on 17th January 2018.



4. In the year 2018, the Corporate Debtor defaulted in repayment of the Facilities. Accordingly, on 29th January 2019, the entire account of the Corporate Debtor with the Financial Creditor came to be classified as a non-performing asset i.e., NPA. Thereafter, the following correspondence ensued between the Corporate Debtor and the Financial Creditor, which *inter alia* shows that (i) **the NPA Date / Date of Default of 29th January 2019** was undisputed and (ii) the Debt itself was acknowledged and admitted and was never disputed:
- a. **Recall Notice** dated 11th July 2019 issued by the Financial Creditor to the Corporate Debtor calling upon the latter to pay a sum of INR 50,99,32,103.82/-, which was due as on 8th July 2013, with further interest and other charges as per the terms of the sanction within seven days ("Recall Notice"). The Recall Notice also recorded that the Corporate Debtor's account had been declared an NPA on 29th January 2019.
 - b. **Reply of the Corporate Debtor dated 21st August 2019 to the Recall Notice**, by which the Corporate Debtor acknowledged the debt and requested for an extension for "making the overdue payment" within a month. Pertinently, no dispute was raised either in relation to the debt or the date of default / NPA date.
 - c. Since the outstanding debt was not repaid despite the aforementioned commitment, the Financial Creditor issued a Notice dated 24th September 2019 Under **Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002**, calling upon the Corporate Debtor to pay a sum of INR 51,30,91,751.82 being the amount due as on 31st August 2019, with further interests and costs, within 60 days ("SARFAESI Notice"). This Notice once again recorded that the Corporate Debtor's account had been declared an NPA on 29th January 2019.
5. In the meantime, the Financial Creditor also duly reported the occurrence of the default to the information utility i.e. **National Governance Services Ltd. ("NeSL")**. The NeSL Reports annexed to the



Petition show the record of communication between NeSL and the Corporate Debtor with respect to the defaults arising under each of the Facilities. Despite several opportunities and reminders given to it, the Corporate Debtor did not dispute any part of the debt, and therefore, each of the defaults was deemed to be authenticated, as is evident from **the Records of Default with the information utility**. As the Corporate Debtor had defaulted in repayment of the Facilities, this instant Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") to initiate a Corporate Insolvency Resolution Process *qua* the Corporate Debtor came to be filed by the Financial Creditor.

Contentions of the Petitioner/ Financial Creditor:

6. There was a "financial debt" due from the Corporate Debtor to the Financial Creditor within the meaning of **Section 5(8) of the IBC** and that a "**default**" has occurred within the meaning of **Section 3 (12) of the IBC**. The financial debt is in excess of the financial threshold prescribed under Section 4(1) of the IBC. Further, the financial debt is undisputed and has in fact been acknowledged and admitted by the Corporate Debtor. In this regard, *inter alia* the following documents were relied on:
- Acknowledgments of Debt by the Corporate Debtor on 12th December 2012, 22nd April 2015 and 11th April 2018.
 - The Corporate Debtor's reply dated 21st August 2019 to the Financial Creditor's Recall Notice.
 - The Records of Default of NeSL which show the status of the debt under each of the Facilities as "deemed to be authenticated".
7. Even in its Reply before this Hon'ble Tribunal, the Corporate Debtor had not disputed the existence of the debt or the occurrence of a default under the IBC. The Corporate Debtor has raised, only some technical objections in an attempt to oppose admission of the Petition. The Company Petition was filed on 31 December 2020, well within the



- period of limitation. This is evident from inter alia the following:
- a) the Date of Default is 29th January 2019.
 - b) the Corporate Debtor acknowledged its liability inter alia by its Acknowledgment of Debts dated 12th December 2012, 22nd April 2015 and 11th April 2018.
 - c) The Corporate Debtor again acknowledged its liability by its response dated 21st August 2019 to the Financial Creditor's Recall Notice.
 - d) In any event, the payments under the Facilities were due and payable till 2025.
8. In view of the clear terms of the IBC as well as the law laid down by the Hon'ble Supreme Court, the instant Petition ought to be admitted and Corporate Insolvency Resolution Process ought to be commenced against the Corporate Debtor.
9. To the argument of the Corporate Debtor that the Petition is hit by Section 10A of the Code, the attention of the Bench was drawn to the fact that the same has been adjudicated by Hon'ble NCLAT vide order dated 02.03.2022 in Company Appeal (AT) (Insolvency) No. 963 of 2021, Axis Bank Limited vs. Maharashtra Theatres Pvt. Ltd. in Petitioner's own case.
10. The Corporate Debtor also asserted that the Financial Creditor could not have preferred one application since it arises out of various Facilities. In this regard, the Financial Creditor also relied on the decision of the Hon'ble National Company Law Appellate Tribunal in *International Road Dynamics South Asia Pvt Ltd v. Reliance Infrastructure Ltd.* 2017 SCC OnLine NCLAT 218.
11. This decision is wholly inapplicable to the instant case. In *International Road Dynamics*, an application was filed under Section 9 of the IBC by an operational creditor, with respect to a debt arising on account of



three projects. In that case, admittedly the dates of default arising under each agreement were also different. It was in this context that the Hon'ble National Company Law Appellate Tribunal made its observations in relation to a joint application.

12. This decision, too, does not assist the Corporate Debtor, and can be clearly distinguished from the instant case. The instant case before this Hon'ble Tribunal arises in a Section 7 Petition, where this Hon'ble Tribunal is only required to ascertain the existence of a "financial debt and "default" within the meaning of the IBC. Further, the outstanding under the Facilities was always treated as one single debt, as is evident from the Acknowledgement of Debts by the Corporate Debtor on 31st December 2009; 12th December 2012; 22nd April 2015 and 11th April 2018 as well as the correspondence between the parties including the Corporate Debtors Reply dated 21st August 2019 by which it undertook to pay all the overdue amounts within a month. Moreover, even the date of NPA / date of default for the Facilities in the instant case is one common date i.e. 29th January 2019.
13. In light of the aforesaid, as there has been a default within the meaning of the IBC by the Corporate Debtor and the default is in excess of the financial threshold prescribed under the IBC, the instant Petition opt to be admitted.

Reply of the Corporate Debtor:

14. The Corporate Debtor has filed its reply denying each and every allegation and contention raised by the Petitioner. The Corporate Debtor submitted that the present Petition is not maintainable and bad in law.
15. In the first round of litigation, the Corporate Debtor had raised the contention of the Petition under Section 7 being barred by limitation and had relied on Section 10 of the Insolvency and Bankruptcy Code, 2016 and even submitted that since the date of default is 31st October



2020, no application for initiation of Corporate Insolvency Resolution Process could have been filed for any default arising on or after 25th March 2020, as per the notification issued by Ministry of Law and Justice dated 05.06.2020. This had been argued by the Corporate Debtor earlier too and the NCLT had vide order dated 08.10.2021 concluded that the Petition is barred by Section 10A and hence not maintainable. The Petitioner carried the appeal against this order of NCLT to NCLAT, Principal Bench, New Delhi and vide order dated 2nd March 2022, Hon'ble NCLAT held that the Petition was not barred by Section 10A and the date indicated as 31st October 2020 was not the date of default but the date on which the total amount was outstanding as mentioned in Para 4 of the Company Petition. Since the matter has already been agitated before Hon'ble NCLAT and has reached finality we hold that the Petition is maintainable.

16. The other submissions of the Learned Counsel for the Corporate Debtor are summarised as under:
- a) The date of default is not stated in the petition.
 - b) Authorization for assignment of the proposed Interim Resolution Professional is not annexed.
 - c) Period of default falls in the period when there was bar under Section 10A of the IBC.
 - d) Usurious and extortionate penal interest charged.
17. In light of the above, it was pleaded that the captioned petition filed by the Financial Creditor deserves to be dismissed.

FINDINGS:

18. Heard the Learned Counsel for the Petitioner and the Learned Counsel appearing for the Corporate Debtor.



19. As mentioned above, this is the second round of litigation whereby the order was passed by Adjudicating Authority (NCLT) vide order dated 8th October 2021 and the Adjudicating Authority had held that the initiation of CIRP against the Corporate Debtor is not warranted as the Petition is clearly barred by Section 10A of the IBC. The Company Petition was dismissed by the Adjudicating Authority and the same came to be challenged before the Hon'ble NCLAT. After hearing the Counsel for the Petitioner and the Counsel appearing for the Corporate Debtor, the Hon'ble NCLAT, Principal Bench, New Delhi vide order dated 2nd March 2022 held that the date of default was never claimed as 31st October 2020 and the Adjudicating Authority had committed an error in taking 31st October 2020 as date of default and hence, came to a wrong conclusion that the Petition is barred by Section 10A. The relevant portion of the aforementioned judgment of Hon'ble NCLAT is reproduced as under:

"5. When the Application under Section 7 is read in whole it is clear that date of default was never claimed as 31.10.2020. The Adjudicating Authority committed error is taking 31.10.2020 as the date of default and hence coming to the wrong conclusion that the application is barred by Section 10A. We, thus, are satisfied that Application was not barred by Section 10A. Further, from the list of documents which was filed by the Applicant, the credit facility recall notice dated 11.07.2019 is mentioned and brought on the record and other notices have also been referred to which clearly indicate that 31.10.2020 was not date of default.

6. In view of the aforesaid, the order dated 08.10.2021 is set aside. We remit back the matter to the Adjudicating Authority to pass fresh order on Section 7 Application after hearing the parties. Appeal is allowed accordingly."

Hence, the issue regarding maintainability is set to rest.

20. It is an undisputed fact that the instant Petition raised out of the default of the Corporate Debtor in certain facilities advanced to it by the Financial Creditor i.e. Axis Bank Limited from the years 2010-2016. The facilities were secured by various security documents which are in



Form-1 Part-5 of the Petition. It is also an undisputed fact that the Corporate Debtor has, from the year 2012 to 2018, furnished several Acknowledgements of the Debt confirming the amount which were payable to the Financial Creditor in the facilities and it is liable to repay the said amount. The Acknowledgements of Debt were annexed to the Petition.

21. As borne out from the Petition, the date of default with respect to which the Petition has been filed is 29th January 2019 which is also the date on which the account of the Corporate Debtor was classified as NPA. Further, the documents executed between the Corporate Debtor and Financial Creditor, the record of default stated by NeSL reconfirms the date of default as 29th January 2019. The Recall Notice dated 11th July 2019, issued by the Financial Creditor to the Corporate Debtor, calling upon the latter to pay a sum of INR 50,99,32,103.82/- with further interest and other charges, recorded that the Corporate Debtor's account has been declared as NPA on 29th January 2019.
22. The reply of the Corporate Debtor dated 21st August 2019 to the Recall Notice did not raise any dispute in the relation to either the debt or the date of default. The Financial Creditor duly reported the occurrence of default to the information utility i.e. NeSL and the NeSL report annexed to the Petition show the record of communication between NeSL and the Corporate Debtor with respect to the default arising under all the facilities. The Corporate Debtor did not dispute any part of the debt.
23. After consideration of the facts brought on record and the acknowledgement and admission by the Corporate Debtor, we are of the view that this instant Petition filed under Section 7 of the IBC, 2016 deserves to be admitted.
24. As a consequence, keeping the aforesaid facts in mind, it is an undisputed fact that the Petitioner has not received the outstanding



amount from the Corporate Debtor and that the formalities as prescribed under the Code have been complied by the Petitioner, we are of the considered view that this Petition deserves '**Admission**' by passing the following:

ORDER

- a. The above Company Petition No. 372/IBC/MB/2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Maharashtra Theatres Private Limited**.
- b. The IRP proposed by the Financial Creditor, **Mr. Shailesh Desai**, (ip10362.desai@gmail.com) having registration No. IBBI/IPA-001/IP-P00183/2017-2018/10362, having address at C/o, headway Resolution and Insolvency Services Pvt. Ltd. (IPE), 708, Raheja Centre, 7th Floor, Free Press Marg, Nariman Point, Mumbai-400021, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 5 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. 115/IBC/MB/2021 is **admitted** and IA 379/2023 is disposed of.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

Anuradha Sanjay Bhatia
Member (Technical)

SD/-

Kuldip Kumar Kareer
Member (Judicial)

Certified True Copy

Copy Issued "free of cost"

On 07/11/2023

P. S. Sonawane
Deputy Registrar 07/11/2023

National Company Law Tribunal Mumbai Bench

