

NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I)

CP (IB) 29/CHD/PB/2022

IN THE MATTER OF:

CANARA BANK

Through its Assistant General Manager,

Sh. Arvind Kumar

ARMB, Circle Office,

Sector 34, Chandigarh- 160034

... Applicant/Creditor

Versus

LAGGAR INDUSTRIES LIMITED

86, Sobti Building Mandir Marg,

Tanda Road, Jalandhar,

Punjab- 144001

...Respondent

Order Delivered on: 01.05.2024

SECTION: **Section 7 of IBC 2016**

CORAM:

SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (J)

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

PRESENT:

For the Applicant : Adv Arora Vishwas Kumar & Adv Abhishek

Bhateja

For the Respondent : Adv Aalok Jagga & Adv APS Madaan

ORDER

PER: SH. L. N. GUPTA, M(T) & SH. HARNAM SINGH THAKUR, M(J)

Canara Bank (for brevity, the **“Applicant”**) has filed the present application 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 with a prayer to initiate the Corporate Insolvency process against Laggar Industries Limited (for brevity, the **“Respondent”**).

2. The Respondent namely, Laggar Industries Limited is a Company incorporated on 09.10.1990 under the provisions of the Companies Act, 1956 with CIN U99999PB1990PLC010741 having its registered office at 86, Sobti Building Mandir Marg, Tanda Road, Jalandhar, Punjab- 144001, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs. 5,00,00,000/-, and the Paid-up Share Capital is Rs.4,68,60,640/-, as per the master data annexed with the application.

3. It is averred by the Applicant that the total amount of debt granted to the Respondent was to the tune of Rs. 23.50 Crore by way of sanction of open cash credit limit facility, bank guarantee and overdraft facility against Bill discounting as detailed below:

- i. Open Cash Credit Limit of Rs. 14 Crore;
- ii. Bank Guarantee of Rs. 5 Crore; and
- iii. Overdraft facility against Bill Discounting of Rs. 4.50 Crore.

4. The particulars of the unpaid Financial Debt including the total amount of default and the date of default as claimed by the applicant in Part IV of its application reads thus:

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)	<u>AMOUNT CLAIMED TO BE IN DEFAULT</u> Total outstanding as on date of filing of the preset application is Rs. 19,81,34,726.85 Therefore, amount claimed to be in default is Rs. 19,81,34,726.85 (Rupees Nineteen Crores Eighty One Lakhs Thirty Four Thousand Seven Hundred Twenty Six and Eighty Five Paisa) <u>THE DATE ON WHICH THE DEFAULT OCCURRED</u> The account of the Corporate Debtor was declared as NPA on 01.04.2018. Therefore, the date of default is 01.04.2018.
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5. As per Part IV of the application (ibid), the Applicant has claimed an outstanding “financial debt” of Rs.19,81,34,726.85 and stated that the Account of the Respondent Company was classified as NPA on 01.04.2018. It has relied on the date of NPA i.e., 01.04.2018 as the date of default. It is further submitted by the Applicant Bank that on 03.07.2018, it issued the Default Recall Notice-cum-invocation of Guarantees calling upon the CD and other obligors to pay the defaulted amount, and thereafter, on 03.08.2018 issued notice under Section 13(2) of SARFESI Act.

6. To buttress its plea, the Applicant has relied on the following documents:

- (i) Copy of recent Financial Statement(s) of the CD (pages 470-544);
- (ii) Copy of CIBIL report (page 545-603);
- (iii) Copy of Statement of Account from the date of Opening to December 2021 (page 604-736)
- (iv) Copy of Sanction Memorandum, dated 29.09.2011, and Sanction letters dated 23.02.2013, 01.10.2014, 17.06.2016.
- (v) Default/Loan Recall Notice dated 03.07.2018 (page 110-111);
- (vi) Notice under Section 13(2) SARFESI dated 03.08.2018 and possession notice under section 13(4) dated 13.11.2018.

7. Based on the above said facts and documents, the Applicant has prayed for the initiation of CIRP against the Respondent.

8. On issuance of notice, the Respondent filed its reply dated 20.07.2023 and Written Submissions dated 14.02.2024 stating mainly the following:

8.1 The present application does not disclose correct date of default. Page No. 9 of application states date of default as 01.04.2018, when the account was declared NPA. Definition of default is provided under Section 3 (12), as per which default means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable but is not paid by the debtor. It is accumulation of default of 3 months that leads to NPA and therefore, date of NPA cannot be date of default.

8.2 The date of default according to Bank is 01.04.2018, and the present application has been filed on 08.12.2021, therefore the Application is time

barred. Whereas, although default must be prior to 31.12.2017, but even assuming the said date, petition is filed beyond 3 years.

8.3 The statement of account is not certified by certificate of Bankers Book Evidence Act, 1891, because, even though a certificate purportedly appears at Page 737, it is not capable to be treated as certificate in absence of the date on the said certificate which makes it incomplete. As per Regulation 2A Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, statement of account certified under Section 2(3) of Act is required to be appended.

9. In rebuttal, the applicant has filed a Rejoinder dated 23.11.2023 to the reply filed by the Respondent and written submissions dated 28.03.2024 stating mainly the following:

9.1 The debt as availed by the respondent was in form of Open Cash Credit Limit Account, whereby the Respondent was supposed to make total credits/deposits in the OCC bank account to be sufficient to clear the outstanding interest continuously for 90 days as on date of balance sheet. The respondent herein has failed to deposit enough in the bank account, as it was required to do between 1st January 2018 and 31st March 2018 (viz. 90 days), which must have sufficiently covered the debited interest. Therefore, it has committed default. Accordingly, the date of default is the very first day after 31st March 2018 (the 90th day), viz. 01.04.2018. Therefore, the Date of Default has been mentioned as 01.04.2018.

9.2 The respondent in the reply has not specifically denied or disputed the credit facility granted by the Canara Bank. By virtue of financial statements

duly filed with the Registrar of Companies, which are also appended with the Company petition, the Respondent duly admits the liability of Canara Bank (Cash Credit Account) to the tune of Rs. 19,80,73,501.85 as existed on 31.03.2020, which is more than threshold limit of Rs 1 Crore in terms of section 4 of the Insolvency and Bankruptcy Code 2016.

9.3 The Respondent duly admits in its reply that the Respondent Company is in financial crunch, therefore, the Respondent Company is liable to be admitted under CIRP in terms of Section 7 of the IBC, 2016.

10. We heard the submissions of both parties and perused the pleadings on record, including the Written Submissions filed by both parties. The Respondent in its defence has contended that the present application does not disclose correct date of default as it has to be prior to 31.12.2017. Further, the application is time barred as it has been filed on 29.12.2021, whereas date of default according to Bank is 01.04.2018. Furthermore, the statement of account filed with the application is not certified by certificate of Bankers Book Evidence Act, 1891.

Per Contra, the Applicant has relied on various documents to prove the existence of debt and default as mentioned in paragraph 6 of this order. During the hearing, in support of its contentions, the Ld. Counsel for the Applicant referred to the Applicant Bank's sanction letters, Loan Recall Notice-cum-invocation of Guarantees dated 03.07.2018 issued on behalf of the Applicant Bank, and notice issued under Section 13(2) SARFESI dated 03.08.2018 and possession notice under section 13(4) dated 13.11.2018.

11. First, we would like to examine the respondent's first contention whether the present Application is barred by limitation. In the instant case, the Application is filed on 29.12.2021, whereas the date of default is 01.04.2018, which means the application has been filed after the expiry of the limitation period of 03 years. However, we are conscious of the fact that due to Covid-19, the Hon'ble Supreme Court extended the period of limitation vide its order dated 10.01.2022 in **Suo Motu Writ Petition (C) No. 3 of 2020**, the relevant extracts of which reads thus:

"5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

- I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
- II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
- III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022,*

notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

12. Further, the Hon’ble NCLAT in the **Company Appeal (AT) (Insolvency) No. 936 of 2021 in the matter of M/s. Essjay Ericsson Private Limited vs. M/s. Frontline (NCR) Business Solutions Pvt. Ltd** dated 10.01.2022, have specifically held that:

“12. When the Hon’ble Supreme Court in exercise of jurisdiction of Article 142 of the Constitution of India has directed for extension of period of limitation, a litigant is entitled for the benefit of extended period of limitation and if the petition, application, suit, appeal etc. are filed within extended period of limitation, the application, appeal, suit etc. shall be treated within period of limitation. When the Hon’ble Supreme Court has granted extension of period of limitation, it cannot be said that appeal, suit or application which is filed during the relevant period is barred by time so as requiring an Application under Section 5 of the Limitation Act, 1963 for condonation of delay. When the appeal, suit, application etc. is filed within period of limitation as extended by the Hon’ble Supreme Court, there does not arise any occasion to pray for condonation of delay for filing suit, application or appeal. However, if a litigant being over

cautious files an Application under Section 5 of the Limitation Act, 1963, no exception can be taken to that proceeding but there is no requirement in law to file an application under Section 5 of the Limitation Act, 1963.

13. Further, when an application, appeal or suit etc. is filed within extended period of limitation as directed by the Hon'ble Supreme Court, as noted above, there is no discretion left with the Court or Tribunal to hold that application, appeal or suit is delayed when there is no requirement of filing application under Limitation Act. In above circumstances, discretion of Court to consider sufficient cause does not arise."

13. In the normal circumstances, the limitation of the present Applicant would have expired on 31.03.2021, however, in view of the directions passed by Hon'ble Supreme Court (Supra), the Applicant has got the benefit of the extended limitation period, as per which *the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation.* Hence, the present application is deemed to have been filed within the limitation period.

14. Now, we would like to examine second contention of the Respondent that the present application does not disclose the correct date of default as it has taken the date of NPA i.e., 01.04.2018 as the "date of default" whereas it should have been prior to 31.12.2017. In this regard, we refer to the recent judgement dated 25.04.2024 of Hon'ble NCLAT's in ***Company Appeal (AT) (Ins) No. 1589 of 2023 Milind Kashiram Jadhav vs State Bank of India & Anr.***, the conclusions of which are reproduced overleaf:

“Conclusions:

74. The loan accounts of the Corporate Debtor were officially classified as Non-Performing Assets (NPA) on September 27, 2019, following 90 days of non-payment, thereby triggering a default event. Despite subsequent partial payments made by the borrower, the NPA status and default persisted, indicating a continuous state of default. **Consistent with established judicial precedents and the specific circumstances of the case, the date of NPA classification serves as the valid "Date of Default" for initiating insolvency proceedings.** Even after the NPA classification, the borrower remained in default. **Consequently, September 27, 2019, the date of NPA classification, stands as the "date of default" under the Insolvency and Bankruptcy Code (IBC), superseding any subsequent events, such as the loan recall notice issued on August 18, 2020.** The Adjudicating Authority's decision to admit the Bank's application for initiating Corporate Insolvency Resolution Process (CIRP) against the Company was apt and in accordance with the provisions of the IBC. There are no discernible flaws in the orders issued by the Adjudicating Authority; hence, they are upheld without any alteration. Appeal is dismissed. No costs are imposed in this matter.”

Thus, in terms of the judgement (supra), **the date of NPA classification serves as the valid "Date of Default" for initiating insolvency proceedings.**, and the Respondent's contention to not consider NPA as date of default stands negated.

15. The last contention raised by the Respondent is that the statement of account is not certified by certificate of Bankers Book Evidence Act, 1891, because, even though a certificate purportedly appears at Page 737, but it is not capable to be treated as certificate in absence of the date on the said certificate. Hence, we refer to the “Certificate under the Bankers Book Evidence Act, 1891” (page 737 of the Application), which reads thus:



Arm-35 737

CERTIFICATE UNDER THE BANKERS BOOK EVIDENCE ACT 1891

This is to certify that the computerized entries herein is a true copy of the printout of data stored in computer and the entries therein made in the usual and ordinary course of business of the bank, are still retained by it.

It is further certified that the statement of account reflects the entries stored in the core banking system of the Bank. The brief of the computer system and particulars related to it are as follows:-

1. The Bank uses its core banking system developed by Oracle, namely CBS 11.8.
2. The Bank has adopted various safeguards to ensure the data is entered and verified by authorized officials.
3. The user access to the system is restricted depending on the user's profile. Only the authorized user having a unique ID and password can log onto the system.
4. The system has a built-in feature which prevents and detects unauthorized change of data.
5. The banking software has necessary controls in place that restricts users from manipulating the data fields.
6. The backup are taken on daily basis and are stored at offsite location in fire proof cabinets with restricted access to the facility.
7. The data is replicated on real time basis to the Bank's disaster recovery center located at Bengaluru, to tackle any disaster situation and during the unavailability of local backup at production site.
8. In the scenario, where the data is transferred from the system to removable media like floppies, disc, tapes or any other electromagnetic data storage devices, verification checks are performed in order to ensure that data has been accurately transferred to such removable media.
9. The data available in both production and backup systems are totally tamper proof.
10. The core banking application the bank is using is highly reputed for its reliability and accuracy and is being used in large number of banks both in India and overseas.

ARVIND KUMAR
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CANARA BANK – CIRCLE OFFICE,
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[Signature]
ARVIND KUMAR, AGM, ARM BRANCH

DATE :
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On perusal of the Certificate under the Bankers Book Evidence Act, 1891 (ibid), we observe that the certificate under the Bankers Book Evidence Act, 1891 is duly signed and mere omission of date would not make the certificate invalid. Hence, we do not find merit in this contention of the Respondent.

16. In the light of discussion foregoing, we find that the debt and default of the Respondent has been established by the Applicant beyond doubt.

17. In the sequel to the above and the given facts and circumstances, the present Application being complete and the Applicant having established the default on the part of the Respondent in payment of the Financial Debt for an amount being above the minimum threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, the 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:

“(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.”

18. As proposed by the Applicant, this Bench appoints Mr. Sanjay Kumar Aggarwal as IRP having Registration No. IBBI/IPA-001/IP- N00126/2017-18/10295 Email ID: sanjayaggarwal.fcs@gmail.com subject to the condition that no disciplinary proceedings is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week of this Order. This Adjudicating Authority further orders that:

Mr. Sanjay Kumar Aggarwal, as an IRP having Registration No. IBBI/IPA-001/IP- N00126/2017-18/10295, Email ID: sanjayaggarwal.fcs@gmail.com is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is further directed to take the steps as mandated under the IBC specifically under Sections 15, 17, 18, 20, and 21 of IBC, 2016.

19. The Applicant is directed to deposit Rs.5,00,000/- (Five Lakhs) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Applicant

20. A copy of this Order shall immediately be communicated to the Applicant Bank, the Respondent Company, IBBI, and the IRP named above by the Court Officer/Registry of this Tribunal.

21. **The Application is admitted and disposed of accordingly.**

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(HARNAM SINGH THAKUR)
MEMBER (J)