

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH - I**

CP (IB) 973/MB/C-I/2020

Under section 7 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Bank of India Limited

[CIN: U99999MH1906PLC000243]

Star House, C-5, G-Block, Bandra Kurla Complex,
Bandra (East), Mumbai - 400051.

... Financial Creditor /Petitioner

Versus

Frost International Limited

[CIN: U05001MH1995PLC243081]

709- C Wing, One BKC, near Indian Oil Petrol Pump
Bandra Kurla Complex, Bandra (East) – 400051.

... Corporate Debtor /Respondent

Order Delivered on 09.02.2023

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Financial Creditor : Mr. Nishit Dhruva, Advocate.

For the Corporate Debtor : Mr. Ravi Kadam, Sr Advocate.

ORDER

Per: Justice P. N. Deshmukh, Member (Judicial)

1. This Company Petition is filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Bank of India Limited**. (“the Financial Creditors”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Frost International Limited** (“the Corporate Debtor”).
2. The present Petition was filed on 25.03.2022 before this Adjudicating Authority on the ground that a loan for a sum of Rs.756.75/- Crore (Rupees Seven hundred Fifty-six Crore Only) was advanced by the Financial Creditors i.e. along with interest of Rs.238,39,26,438.43/- (Rupees two hundred thirty eight crore thirty nine lakhs twenty six thousand four hundred and thirty eight and forty three paise) are payable by the Corporate Debtor and the Corporate Debtor has defaulted in repayment of the same.
3. The total amount claimed to be in default by the Financial Creditors is Rs.8,72,58,08,402.27/- (Rupees Eight hundred seventy-two crores fifty-eight lakhs eight thousand four hundred two and paise twenty-seven only). The date of default stated to be is 12.04.2018.
4. The Corporate Debtor is a company limited by shares incorporated on 17.05.1995 under the Companies Act, 1956, with the Registrar of Companies, Mumbai. Its registered office is at 709- C Wing, One BKC, near Indian Oil Petrol Pump Bandra Kurla Complex, Bandra (East) Mumbai - 400051. Therefore, this Bench has jurisdiction to deal with this petition.

Submissions made by the Financial Creditor:

5. The Financial Creditor submits that the Corporate Debtor was had availed various credit facilities sanctioned by the Applicant since 1996. The Financial Creditor have sanctioned total of Rs. 756.75 Crores vide sanction letter dated 05.09.2017 in the following facilities as under:

Sr. No.	Facilities	Amount (in Rs.)
1.	Cash Credit	0.75
2.	EPC/FBP	30.00
3.	Total FBL	30.75
4.	LC	700.00
5.	LoC for Buyers Credit	150.00
6.	ILC	30.00
7.	Bank Guarantee	50.00
8.	Credit Equivalent Exposure	26.00
	Total	756.75

6. The Corporate Debtor was liable to repay the amount of Rs.606,17,29,608.48/- (principal) along with interest of Rs.238,39,26,438.43/- plus Penal interest of Rs.28,01,52,355.36/- as on 01.05.2020. **(Application Pg no.06)**
7. Thereafter, the Financial Creditor submits that there are various securities in the form of Equitable mortgage on immovable properties in favour of the Applicant by way of deposit of the title deeds with respect to various facilities provided by it to the

Corporate Debtor. The details of the securities held by the Applicant are detailed as follows: **(Application, part V at pages 7-12).**

Primary Security:

- i. Equitable Mortgage and charge on pari pasu basis in favour of Applicant via. Memorandum of Entry dated 14th December, 2015 upon
 - a) Office Block No. 403, KalpanaPlaza, 24/147-B, Birhana Road, Kanpur.
 - b) Office Block No.411, Kalpana Plaza, 24/147-B, Birhana Road, Kanpur (**Annexed as "Exhibit G-1"**)

- ii. Equitable Mortgage and charge on pari pasu basis in favour of Applicant via. Memorandum of Entry dated 26th November, 2015 upon
 - a) Office Block No. 410, Kalpana Plaza, 24/147 B, Birhana Road Kanpur
 - b) Office Block No. 402, Kalpana Plaza, 24/147 B. Birhana Road, Kanpur
 - c) C-69, Okhla Industrial Area, Phase I, New Delhi.
 - d) C-70, Okhla Industrial Area, Phase I, New Delhi
 - e) Residential Flat S-279 Panchsheel Park, New Delhi
 - f) Office Space 909-910, Medows, Sahar Plaza Andheri Bast, Mumbai
 - g) Office Space 907-908, Medows, Sahar Plaza Andheri East, Mumbai

- h) Office Space 4, 4A, 4B, 4C, 40 on the third floor at premises no. 37, Shakespeare Saran, Ward 63 of KMC Kolkata. (**Annexed as "Exhibit G-2"**);
- iii. Equitable Mortgage and charge on pari pasu basis in favour of Applicant via. Memorandum of Entry dated 4th March, 2017 upon Apartment No.T-22-04-01, The Commonwealth Games, located off National Highway 24, Adjacent to Akshardham Temple at Noida Crossing, Delhi - 110 092 along with 3 car parking at Basement Level. (Annexed and marked as "Exhibit G-3" is the copy of Memorandum of Entry dated 04" March,2017;
- iv. Registered mortgage (Exclusive Charge) on Office Block Situated at Unit No. 709,7 Floor, "C" Wing, One BKC, G Block, Plot No 66, CTS No. 4207, Bandra Kurla Complex, off. Bandra-Kurla Link Road, Bandra (E), Mumbai – 400051 (**Annexed as "Exhibit G-4"**)
- v. Hypothecation of stocks of all the current assets of the Corporate Debtor, Raw Material, Stock in Process, Semi Finished and Finished Goods, Bills Receivables, Book Debts both present and future and also the whole of the moveable fixed assets (**Annexed as "Exhibit G-5)**
- Personal Guarantee:
1. Uday Jayant Desai

2. Suman Jayant Desai,
3. Nilima Uday Desai,
4. Sunil Verma,
5. Rita Sunil Verma,
6. Anoop Kumar Wadhera,
7. Sujay Uday Desai,
8. Sanjana Uday Desai,
9. Nipun Sunil Verma,
10. Saral Sunil Verma,
11. Poonam Anoop Kumar Wadhera
(Annexed as "Exhibit H-1" - copy of Deed of Guarantee dated 26th November, 2015.)
12. Uday J. Desai (HUF^o),
13. Sunil Verma (HUF)
(Annexed as "Exhibit H-2 - Deed of Guarantee dated 26 November, 2015 executed by Uday J. Desai (HUF), Sunil Verma (HUF)

Corporate Guarantee:

1. R. S. Builders Pvt. Ltd. via. Deed of Guarantee dated 26th November, 2015, (Annexed as "Exhibit H-3).
2. Globiz Exim Pvt. Ltd. via. Deed of Guarantee dated 26th November, 2015, (Annexed as "Exhibit H-4")
3. N. S. D. Nirman Pvt. Ltd. via. Deed of Guarantee dated 26th November, 2015, (Annexed as "Exhibit H-5)

8. The Corporate Debtor vide legal notice dated 06.08.2018 had called upon the Corporate Debtor to pay the principal amount along with interest from 21.06.2018 (**Annexure O-1 Pg 561**).
9. Owing to the failure of the Corporate Debtor to repay the amount, the account was declared NPA w.e.f. 30.06.2018.
10. The Corporate Debtor vide Revival letter has acknowledged the liability to the Applicant. The Revival letter addressed by the Corporate Debtor is placed as "**Exhibit O-2 at page 564**". Also, vide letters of acknowledgement of debt dated 23.01.2017 & 23.03.2018 and in the audited Balance sheets respectively. (**Rejoinder at Pg. 10**)
11. The stand taken by the Financial Creditors is that the Company Petition is barred by *Res Judicata* as a petition filed in respect of the same alleged debt and default, arising of the same transaction and cause of action by the Applicant was adjudicated by this Tribunal in CP No. 3608/I&B/NCLT/MB/MAH/2018.

Submissions made the Corporate Debtor:

12. The preliminary objection raised by the Corporate Debtor is on the issue of maintainability. The said ground is challenged through **I.A No. 2001 of 2022**. The Corporate Debtor submits that the same Applicant in relation to the same debt had earlier filed Insolvency Petition No. 3608 of 2018 against the Corporate Debtor; which was dismissed by this Tribunal without any liberty to refile the same. Thus, it was submitted by the Corporate Debtor a fresh Application cannot be maintained as it is barred by the principle of *Res Judicata*. The Corporate Debtor has relied on the

Judgments of **Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Ltd** (2022) 2 SCC 401 and **Vikas Dehiya v. Arrow Engineering Limited & Anr** (2022) 08 NCLAT CK 0018 wherein the court has held that the doctrine of *res judicata* is also applicable to the proceedings of the Code.

13. The Corporate Debtor has also submitted that the Applicant has conveniently suppressed the fact about the dismissal of the 2018 Application by this Tribunal and the said action of the Financial Creditor is misconduct in itself and on the Application is liable to be dismissed without going into the merits of the case. In furtherance of this argument, the Corporate Debtor has relied on the cases of **Dalip Singh v. State of Uttar Pradesh and Ors** (2010) 2 SCC 114 and **Oswal Fats and Oils Limited v. Additional Commissioner and Ors** (2010) 4 SCC 728
14. Moreover, it is the case of the Corporate Debtor that the present Application is in violation of the RBI circular dated 07.06.2019 as no opportunity was given to the Corporate Debtor to submit a resolution plan or restructure its debt under an inter creditor arrangement. The Corporate Debtor submits that the Corporate Debtor on 09.07.2018, had submitted a resolution plan which was rejected by the Financial Creditor on frivolous and arbitrary grounds. Further the Corporate Debtor had submitted a revised resolution plan which was also rejected by the Financial Creditor without any consideration arbitrarily. Furthermore, the Corporate Debtor also proposed one-time settlement on 07.09.2018 which was also not accepted by the Financial Creditor. Thus, it is contended by the corporate Debtor that the Financial Creditor has violated the principles of fair play and equity by prejudging the

Corporate Debtor's case and denying it an opportunity to present a revival plan under the RBI circular dated 07.06.2019. **(I.A Pg no 13-14).**

15. Further, the Corporate Debtor submitted that the prayers sought by the Financial Creditor in the Application cannot be granted by virtue of the order dated 13.12.2021 by this Tribunal in CP No.410 of 2021 filed by Union of India (through serious Fraud Investigation Officer) v. Frost International Ltd. wherein the Tribunal has directed the Respondents arrayed as parties to maintain status quo.

"The matter is taken up through Virtual Hearing (VC). This Company Petition is filed by Petitioner i.e. Serious Fraud Investigation Office (SFIO) us 212 rule 14(a) of the Companies Act, 2013 seeking various prayers, there are 20 respondents be arrayed as party respondents in this Petition. Learned Counsel for Petitioner submits that the properties which are not attached by Enforcement Director, needs to be protected. Senior Counsel Mr. Ravi Kadam appearing for Respondent Nos. 1, 10, 12 and 13 submitted that on 26.08.2021 some of the properties which are mentioned in the present Petition are already attached by Enforcement Director (ED). In the circumstances respondents as arrayed as parties in the in the present Petition are directed to maintain status quo in respect of prayer clause II and III of the Petition till the next adjourned date. List the matter for hearing on 10.01.2022.

Prayer clause II & III are reproduced for easy reference.

“II. Restrain the Respondents individuals from transferring, removing or disposing funds, assets and properties of Respondent No. 1 in any manner whatsoever;

“III Restrain the Respondents mortgaging or creating charge or lien or any third party interest or in any way alienating, transferring, encumbering or disposing of movable or immovable properties owned by them (including any funds, assets or properties) and further, direct freezing of all properties, including bank accounts.”

16. Further the Corporate Debtor contends that the Financial Creditor has declared the account of the Corporate Debtor as '*fraud*' only on the basis of the Report of forensic Auditor which interalia had not taken into considerations various transactions and the said action of the Financial Creditor is challenged and is pending adjudication before the Hon'ble Delhi High Court in LA No. 564 of 2019. **Reply pg. 1 5)**
17. Additionally, the Corporate debtor submits that as its Account has been classified as '*fraud*' the Corporate debtor is unable to seek benefit of the RBI issued COVID Regulatory package dated 23.05.2020 which permitted a relaxation of the review period and the resolution period of stressed assets under the Stressed Assets Regulatory Framework'. **(I.A Pg. 21).**
18. It is also submitted by the Corporate Debtor that the documents relied on by the Applicant are insufficiently stamped and hence inadmissible and cannot be acted upon. The Corporate debtor has relied on the judgments of **Smartworks Coworking Spaces Private Limited v. Turbot HQ India Private Limited** and **N. N. Global**

Mercantile Private Limited. v. Indo Unique Flame Limited and Ors (2021) 4 SCC 379 (I. A. Pg no. 14-15).

19. The Corporate Debtor has further submitted that the Application is filed without authority/incompetently that the bare perusal of the Power of Attorney and Letter of Authorization of the Authorized Officer it is apparent that the said Resolution 1) is not a power of Attorney. 2) has not been executed on stamp paper, cannot be taken cognizance of 3) has not been signed by signed by any Director or authorized person of Bank of India and thus the petition is not in conformity with requirement of the MCA notification dated 27.02.2019 notifying the persons authorized to file a petition under the Code. The Corporate Debtor has relied on the cases of **Palogix Infrastructure Pvt. Ltd. v. ICICI Bank Ltd. (2018] 1 Comp Cas-OL 140 (NCLAT), Ingersoll Rand Climate Solutions P. Ltd. v. Prajay Engineers Syndicate Lid. (NCLT, Hyderabad - Para 9) Shantilal Khushaldas and Brothers Put. Ltd. v. Smt. Chandanbala Sughir Shah [(1993) 2 Bom CR 651] and Nibro Limited v. National Insurance Co. [(1991) ILR II Del. 172]**
20. The submissions submitted in the I.A. 2001 of 2022 mirror the submissions of the Corporate Debtor in Reply to the Application and hence the contents are not reproduce for the sake of brevity.
21. The Corporate Debtor through an Additional Affidavit has submitted that the realizable value of the Applicants assets exceeds its potential liabilities thus, the net worth of the Applicant is positive. Further it is submitted by the Corporate Debtor that the contract with government of its prime asset of the Corporate Debtor i.e. its Oil Block investment by virtue of the Exploration Licensing Policy

issued by the Government of India in the Cambay Basin would be terminated as per Article 30.3 of the Product Sharing Contract in the event of bankruptcy. Resultantly ceasing the investment of the Corporate Debtor and non-recoverability of the investment. Thus, it was submitted by the Corporate Debtor that the initiation of CIRP and/or any takeover of the management by the Resolution Professional would ensure that both, the realizable value of the book debts and oil block would be nullified. Further the Corporate Debtor also submits that initiation of CIRP would render non-recover of dues from its foreign lender and the unemployment of its staff of 45 employees and workmen. The Corporate Debtor has relied on the judgment of the Hon'ble supreme Court in the matter of **Vidarbha Industries Power Limited v. Axis Bank Ltd. (2022) 8 SCC 352**

Submissions made by the Financial Creditor by way of Affidavit in Rejoinder:

22. The argument advanced by the Financial Creditors is that the earlier petition was filed based on the RBI circular dated 12.02.2018. However, the validity of the RBI circular dated 12.02.2018 was challenged in the matter of Dharani Sugars & Chemicals Limited v. Union of India wherein the Supreme Court held that the RBI circular dated 12.02.2018 was ultra vires and as consequence the circular became non-est. Thus, the Financial Creditor submitted that the 1st Petition was filed based on RBI circular dated 12.02.2018 and hence, could not have been filed as was concluded in the order dated 14.10.2019 of this Tribunal. **(Page 6 of Rejoinder).**
23. Further the Financial Creditor has submitted that the resolution plan and the revised resolution plan was rejected by the bank.

Further the one time settlement proposal to the bank from the Corporate Debtor was also rejected as the One time settlement offer was not viable and on very lower side. It was further submitted by the Financial Creditor that no plan was submitted by the Corporate Debtor in the year 2019 and it could not also not do so as the account of the Corporate Debtor was declared '*fraud*' pursuant to which the Financial Creditor has has filed a complaint/FIR before CBI on 19.01.2020. **(Page 7 of Rejoinder)**

24. The Financial Creditor further submits that the Hon'ble High Court passed an order dated 26.07.2019 in writ petition being No.8092 of 2019 of the Corporate Debtor challenging the declaration of the account '*fraud*' on the basis of the Forensic Audit report, the court held that sufficient opportunity had been given to the Petitioner/Corporate Debtor and no prejudice is caused to the petitioner. Thus, the petition being No. 8092 of 2019 of the Corporate Debtor challenging the declaration of the account '*fraud*' has been dismissed by the Hon'ble High Court **(Exhibit A, pg 8 of Rejoinder)**

Findings:

25. Heard the Ld. Counsel for the Financial Creditors and the Ld. Counsel for the Corporate Debtor and perused the records.
26. The Corporate Debtor's main contention is that the present Application is in violation of the RBI circular dated 07.06.2019 as no opportunity was given to the Corporate Debtor to submit a resolution plan or restructure its debt under an inter creditor arrangement. Whereas it is observed that the Corporate Debtor

on 09.07.2018, had submitted a resolution plan which was rejected by the Financial Creditor on frivolous and arbitrary grounds.

27. Upon perusal of records, this Bench is of the considered opinion that the money owed by the Corporate Debtor to the Financial Creditor is legally due and payable.
28. We also consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018] upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.
29. The Financial Creditor has proposed the name of **Mr. Amit Chandrakant Shah**, Registration No. IBBI/IPA-001/IP-P00821/2017-2018/11397, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
30. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this,

this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

31. It is, accordingly, hereby ordered as follows: -

- (a) The petition bearing **CP (IB) 3923/MB/C-I/2019** filed by **Bank of India Limited**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Frost International Limited [CIN: U05001MH1995PLC243081]**, the Corporate Debtor, is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:-
- (i) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Amit Chandrakant Shah**, Registration No. IBBI/IPA-001/IP-P00821/2017-2018/11397, having address at The Ruby, NW Wing, Senapati Bapat Marg, Dadar (W), Mumbai - 400028, is hereby appointed as Interim Resolution

Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the

Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

SHYAM BABU GAUTAM

Member (Technical)

09.02.2023

SAM

Sd/-

JUSTICE P. N. DESHMUKH

Member (Judicial)