

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

Company Petition No. (IB)-170(PB)/2018

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

M/s IDBI Bank Limited

Applicant/Financial Creditor

Vs

ACIL Limited

Respondent / Corporate Debtor

Judgment delivered on: 08.08.2018

Coram:

**CHIEF JUSTICE (RTD.) M.M.KUMAR
Hon'ble President**

**S. K. MOHAPATRA
HON'BLE MEMBER (TECHNICAL)**



For Applicant:

Mr. Atul Sharma,
Ms Ashl Cherian, Advocates.

For Respondent Company:

Mr. Puneet Singh Bindra,
Ms Akshia Gupta, Advocates.

ORDER

S. K. Mohapatra, Member

1. IDBI Bank Limited, claiming as the financial creditor, has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent company M/s ACIL Limited, referred to as the corporate debtor.
2. The Respondent Company M/s ACIL Limited (CIN No. U34300DL1997PLC086695) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 15.04.1997 having its registered office at 4, Bhanot Apartment, LSC, Pushp Vihar, New Delhi - 110062. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution



Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. It is appropriate to mention that the applicant is a company incorporated on 27.09.2004 under the provisions of Companies Act, 1956 and a banking company within the meaning of Section 5 (c) of the Banking Regulation Act, 1949. The Head Office of the applicant company is at IDBI Tower, World Trade Complex, Cuffe Parade, Colaba, Mumbai-400005 and one of the branches, amongst others, at Videocon Tower, 1st floor, Jhandewalan Extension, New-Delhi-110055.
4. Smt. Shivani Singla, General Manager of the applicant has relied upon the authority letter dated 30.01.2018 of the applicant bank wherein she was authorised to submit application for and on behalf of IDBI Bank Limited to initiate corporate insolvency resolution process against ACIL Limited in terms of the provisions of the Code. A copy of the Authorisation Letter dated 30th January, 2018 has been placed on record. The authority letter is clearly an order of authorisation enabling Smt. Shivani Singla, General Manager of the



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applicant bank to sign and file the present application under Section 7 of the Code for initiation of corporate insolvency resolution process against respondent ACIL Limited in terms of the provisions of the Code.

5. The applicant initially had proposed the name of Shri Pradeep Kumar Sethi, for appointment as interim resolution professional. However due to an objection raised by the corporate debtor the applicant was directed vide order dated 04.06.2018 to rectify the petition and change the name of proposed IRP. Thereafter, the applicant vide affidavit dated 12.07.2018 has proposed name of Mr. Ravindra Loonkar, having registration number IBBI/IPA-002/IP-N00433/2017-2018/11206, having office at RBSA Restructuring Advisors LLP, 9C, 9th floor, Hansalaya Building, 15, Barakhamba Road, Connaught Place, New Delhi-110001, email id ravi.loonkar@gmail.com. A communication dated 11.07.2018 in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record. Mr. Ravindra Loonkar has agreed to accept appointment



as the IRP if an order admitting the present application is passed. He has certified that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Ravindra Loonkar as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

6. The particulars of financial debt including the details of various financial facilities sanctioned and amount disbursed in respective loan facilities have been given in Part-IV of Form-1 of the application as follows:

PARTICULARS OF FINANCIAL DEBT		
1.	Total amount of debt granted	Total amount of Debt granted: Rs. 359,00,00,000.00 As per Agreement 29th March 2012: Sanctioned & Disbursed-Rs. 254 crore As per Agreement dated 25th July 2016: Sanctioned: Rs.117 crore Disbursed: Rs.105 crore
2	Amount claimed to be in default and the date on which the default occurred .	Total Amount as on 01.01.2018 (Principal amount, interest and penal interest): Rs.331,77,60,788.73 NPA Date: March 15,2016



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7. It is the case of the applicant that pursuant to the request of the Respondent, the applicant sanctioned Term Loan of of Rs. 254 crore on 27.03.2012. A copy of Sanction Letter dated 27.03.2012 has been placed on record. Pursuant to the sanction the applicant and the Respondent executed Loan Agreement dated 29.03.2012 whereby the Petitioner agreed to lend an amount of Rs. 254 crores to the Respondent in terms of the Sanction Letter dated 27.03.2012 issued by the Petitioner. As per the Loan Agreement dated 29.03.2012, the Respondent agreed to pay interest at the rate stipulated on the principal amount of the loan outstanding from time to time from the date of disbursement of the loan. The Respondent company drew and utilized the entire amount of Rs. 254 crores from the Loan Term Account number 0127673200000921.

8. Despite availing the loan facilities under the Multiple Banking Arrangement and working Capital Consortium the respondent was still facing liquidity constraints and was unable to fulfill its commitment towards repayment of loans to the petitioner. Thereafter a Joint Lenders



Forum ("JLF Lenders") was constituted with the Petitioner designated as the Lead Bank. The JLF Lenders decided to follow the rectification approach and agreed that additional facilities would be considered for sanction as part of Corrective Action Plan (CAP) based on the outcome of the Techno Economic Viability Study.

9. Subsequently, the Respondent requested for fresh/renewal of credit facilities to finance its critical capital expenditure required under the CAP and for shoring up its Net Working Capital ("NWC"). The Lenders agreed to provide fresh corporate loans ("JLF Corporate Loans") and further to continue/renew the Existing Term Loans and Existing Working Capital ("JLF Term Loan").

10. In view of the concurrence by the Lenders, the Petitioner was designated as the Lead Bank and along with Bank of Maharashtra, Andhra Bank, State Bank of Mysore and the Karur Vysya Bank Limited (JLF Lenders) executed the Framework Agreement for Corrective Action Plan on 25.07.2016 with the Respondent as the Borrower, Mr. Arvind Dham (Director of the Respondent Company) as the Guarantor, M/s Amtek Auto Limited as



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Promotor/Pledger and M/s Alliance Integrated Metaliks Limited as Promoter/Pledger whereby and where under the Petitioner and the JLF Lenders granted JLF a Corporate Loan facility of Rs. 434 crores to the Respondent, out of which the Petitioner extended a corporate loan of Rs. 117 crores vide sanction letter on 19.03.2016 as detailed in Schedule IV of the Agreement dated 25.07.2016.

11. By 2016, two loans had been extended to the Respondent i.e. a Rupee Term Loan of Rs. 254 crores and a Corporate Loan of Rs. 117 crores. In terms of the Loan Agreement dated 25.07.2016, the Respondent was required to repay to the Petitioner Bank, the principal amount of the Loan, in accordance with the amortization schedule contained in the Loan Agreement dated 25.07.2016. The Respondent was also required to pay to the Petitioner, interest on the principal amounts of the Loan outstanding from time to time, at the rate and in the manner stipulated in the Loan Agreement dated 25.07.2016.



12. It is submitted that the respondent failed to maintain financial discipline in accordance with the terms and conditions of the sanction as well as loan-and-security documents and failed to repay the dues of the Petitioner. Accordingly, the Respondent's account became irregular and was classified as a Non-Performing Asset ("NPA") on 15.03.2016.

13. It is stated in the application that the Petitioner has granted a total loan of Rs. 371 crores in terms of the Agreement dated 27.03.2012 and 25.07.2016, out of which an amount of Rs. 359 crores were availed by the Respondent and the un availed portion of Rs. 12 crores were cancelled by the Petitioner on 22.12.2017 in view of the failure of the Respondent in adhering to the schedule of repayment.

14. It is the case of petitioner that the Respondent company has failed to repay the outstanding amount due to the Petitioner as per the Agreement dated 27.03.2012 and 25.07.2016 and has further failed to respond to the recall notice dated 11.01.2018 issued by the Petitioner.



15. The petitioner has placed on record the following details of securities executed in support of the debts sanctioned to the respondent company :

- a. *Deed of Hypothecation dated 29.03.2012 issued by the Respondent company formerly known as Amtek Crankshafts (India) Limited.*
- b. *Letter of Comfort issued by Amtek Auto Limited dated 28.03.2012.*
- c. *Promissory Note dated 22.03.2016 executed by ACIL Limited in terms of repayment of Term Loan of Rs. 117 crores.*
- d. *Undertaking to create mortgage/charge dated 29.03.2012 executed by ACIL Limited for creating first charge on its movable and immovable fixed assets of the company.*
- e. *Memorandum of Entry dated 13.10,2014 for immovable properties bearing Plot No. 53, measuring 7875 square meters of Land covered area of 5294.05 square meters (approx.) situated in Sector-3, IMT Manesar, Distt. Gurgaon, Haryana (Industrial Property).*



- f. Declaration and Undertaking dated 21.10.2014 executed by Vinod Kumar Uppal in favour of Canara Bank for creating first charge and mortgage for IDBI Bank RTL of Rs. 254 crore on its immovable properties bearing Plot No. 54, measuring 7875 square meters of Land covered area of 5294.05 square meters (approx) situated in Sector -3, IMT Manesar, Distt. Gurgaon, Haryana (Industrial Property).
- g. Undertaking to create mortgage charge dated 22.03.2016 by the respondent.
- h. Joint Deed of Hypothecation dated 25.07.2016 executed by the Respondent in favour of the Lead Bank (IDBI Bank Limited) acting for itself and for the benefit of the Lenders.
- i. Deed of Guarantee of Arvind Dham dated 25.07.2016 executed in favour of Lead Bank (IDBI Bank Limited) acting for itself and for the benefit of the Lenders.
- j. Agreement of Pledge dated 25.07.2016 executed by M/s. Amtek Auto Limited for pledge of



65,65,816 Equity Shares of ACIL Limited in favour of the Lead Bank (IDBI Bank Limited) acting for itself and for the benefit of the Lenders.

- k. Agreement of Pledge dated 25.07.2016 executed by M/s Alliance Integrated Metaliks Limited for pledge of 68,64,336 Equity Shares of ACIL Limited in favour of the Lead Bank (IDBI Bank Limited) acting for itself and for the benefit of the Lenders.
- l. Certificate of Registration of Charge issued by the Registrar of Companies dated 25.07.2016.
- m. Certificate of Registration of Modification of Mortgage dated, 10.10.2014, 20.10.2014 and 05.11.2012.
- n. Balance confirmation issued by the Respondent dated 31.03.2017.
- o. CRILC Report and Account Ledger Inquiry.
- p. Ledger Book Account maintained by the financial creditor along with certificate dated 31st January, 2018 issued under Bankers Book Evidence Act, 1891.



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16. It is the case of applicant that the authorized signatory of the Respondent had admitted, acknowledged and confirmed the outstanding balance due to the applicant from time to time. In support thereof, Balance Confirmation Letter signed and executed by the respondent on 31.03.2017 has been placed on record.
17. The applicant bank has also filed the relevant statement of accounts duly certified in accordance with Banker Books Evidence Act, 1891 as per requirement of Form 1 Part V column 7 of the application. The detailed outflow and disbursements made from the accounts pertaining to respective loan facilities are reflected in the relevant bank statements. Certified copy of statement of account kept during the course of banking business basing on which the claim has been raised can be termed as sufficient evidence of financial debt.
18. It is seen from the statement of account and loan documents that the loan was sanctioned, loan agreements were executed, charge and securities were created to secure the loan. Besides respondent corporate debtor has signed Demand Promissory Notes and created



charge and equitable mortgage in order to secure the debt. Respondent company utilised and enjoyed the loan facility and due to non-payment and non-refund of the outstanding dues, the account of the corporate debtor was declared NPA on 15.03.2016. The applicant bank has also placed CRILC report to show classification of loan accounts of respondent as DA1.

19. It is thus seen that the applicant 'financial creditor' has placed on record voluminous and overwhelming evidence in support of the claim as well as to prove the default.

20. The Respondent Corporate Debtor has filed its reply on 27.03.2018 and additional objections on 01.06.2018. The respondent has raised an objection that Smt. Shivani Singla has filed the instant petition without appropriate authorisation from the applicant bank. It is argued that in the absence of relevant Board Resolution of the applicant Bank, it is not clear as to how the Chief General Manager derived its power to sub-delegate the authority in favour of Smt. Shivani Singla to file the application. In this regard the applicant bank has placed on record



extracts from the 134th meeting of the Board of Directors held on 14.08.2017, wherein revision in delegation of powers (DoP) was approved by the Board of Directors of the applicant bank. As per approved delegation of powers an officer holding the rank of General Manager of the applicant bank can file a claim before NCLT, when its claim or exposure is Rs. 100 crores and above. In that view of the matter Smt. Shivani Singla who is holding the position of General Manger with the petitioner bank, clearly derives the authorisation to file the present application on behalf of the petitioner in terms of the delegation of powers governing the petitioner bank. There is thus no doubt that application for initiation of corporate insolvency resolution process in terms of the Code can be filed by General Manger of the bank. In addition the applicant bank to be on safer side has also placed on record a letter of authorisation from the Chief General Manager authorising Smt. Shivani Singla to file the present application and other pleadings in the present case. In view of the above the objection that the



application has been filed without authorisation is without any merit and cannot sustain.

21. Respondent has also raised an objection that the applicant Bank alone cannot file the present application without specific consent of the other consortium banks and without impleading them in the proceedings. This objection would also not detain us as Section 7 (1) of the Code provides that a financial creditor either by itself or jointly with other financial creditors may file an application for initiating Corporate Insolvency Resolution Process against a corporate debtor when a default has occurred. Therefore, there is no obligation on the part of applicant to join the consortium of Banks. Inter-se agreement between the financial creditors cannot override the express provisions of the Code nor can take away the right of any creditor to file application under Section 7 of the Code. Accordingly applicant bank individually has a clear right to file application under the Code in order to recover its dues. Besides in view of the overriding effect given to the provisions of Section 238 of the Code, anything inconsistent therewith contained in



any instrument cannot take away the right of the applicant as financial creditor to file application under Section 7 of the Code.

22. The respondent has also raised an objection that the Form-2 annexed with the application in reference to the proposed Interim Resolution Professional is incomplete and not as per law. In this regard it is seen that the applicant was directed vide order dated 04.06.2018 to rectify the petition and to propose a new name for appointment as an IRP. Thereafter, the applicant vide affidavit dated 12.07.2018 has proposed the name of Mr. Ravindra Loonkar, having registration number IBBI/IPA-002/IP-N00433/2017-2018/11206. The applicant has also filed Form 2 in which Mr. Ravindra Loonkar, the new proposed IRP has agreed to accept appointment as the IRP if an order admitting the present application is passed. He has also certified that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Ravindra Loonkar as per the requirement of



the IBBI Regulations. Accordingly, it is seen that the initial irregularity pointed out by respondent has now been duly rectified.

23. The respondent corporate debtor has also contended that its loan restructuring proposal is still under consideration of the consortium banks. Respondent accordingly disputed the claim on the ground that the present application is premature. The respondent company however failed to place any material to show that restructuring plan is under consideration of the petitioner. On the contrary the petitioner bank has prayed for admission of the application on account of clear default in repayment of the outstanding debts.

24. It is pertinent to note that in financial transactions, adjustments and compromise should be left to the parties to settle the matter in their best interest or exigencies of the business. However, in the absence of any binding compromise agreement/ debt restructuring approval, it is beyond the powers of the adjudicating authority to extend time indefinitely or to decline consideration of the prayer for admission of Section 7 petition. Needless to say



that time is the essence of the Code. A far strict time frame is expected to be followed by the Adjudicating Authority at every stage of the proceedings.

25. It is pertinent to mention here that the scheme of the Code provides for triggering the insolvency resolution process by three categories of persons namely,

- a) Financial creditor
- b) Operational creditor, and
- c) Corporate debtor itself.

26. The procedure in relation to the Initiation of Corporate Insolvency Resolution Process by the “Financial Creditor” is delineated under Section 7 of the Code, wherein “Financial Creditor” / “Financial Creditors” can file an application. As per Section 7(1) of the Code an application could be maintained by a Financial Creditor either by itself or jointly with other Financial Creditors.

27. The expressions “Financial Creditor” and “Financial debt” have been defined in Section 5 (7) and 5 (8) of the Code. Precisely “Financial debt” is a debt along with interest, if any, which is disbursed against the



consideration for time value of money. In the present case applicant bank had sanctioned and disbursed loan amounts recoverable with applicable interest by entering in to loan agreements with the corporate debtor in respect of each facility. The corporate debtor had borrowed the credit facilities against payment of interest as agreed between the parties. The loan was disbursed against the consideration of time value of money with a clear commercial effect of borrowing. Needless to say, that the debt/claim in question includes both the component of outstanding Principal and interest. In that view of the matter not only the present claim will come within the purview of 'Financial Debt' but also the applicant bank can clearly be termed as 'Financial Creditor' so as to prefer the present application under Section 7 of the Code.

28. Under sub-section 5 (a) of Section 7 of the code, the application filed by the applicant financial creditor has to be admitted on satisfaction that:

1. *Default has occurred.*
2. *Application is complete, and*



3. No disciplinary proceeding against the proposed IRP is pending.

29. Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited V. Kirusa Software Private Limited* reported in AIR 2017 SC 4532 at Para 19 has observed that:

*"Once the adjudicating authority / Tribunal is satisfied as to the existence of the default and has ensured that the application is complete and no disciplinary proceedings are pending against the proposed resolution professional, it shall admit the application. **The adjudicating authority/Tribunal is not required to look into any other criteria for admission of the application.**"* (Emphasis given)

30. As regards occurrence of default, it is the case of applicant that the authorized signatory of the respondent had admitted, acknowledged and confirmed that Rs. 1,15,90,31,434 and Rs. 1,86,58,93,228 in the respective Term Loan Accounts are outstanding as on



31.03.2017. A copy of the Balance Confirmation Letter signed and executed by the respondent confirming balance outstanding as on 31.03.2017 has been placed on record.

31. The material on record clearly goes to show that respondent has availed the loan facilities and has committed default in repayment of the loan amount. An application under Section 7 of the Code is acceptable so long as the debt is due and there has been occurrence of existence of default. What is material is that the default is at least 1 lakh. In view of Section 4 of the Code, the moment default is of Rupees one lakh or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable.

32. The applicant bank has also filed the relevant statement of accounts duly certified in accordance with Banker Books Evidence Act, 1891 as per the requirement of Form 1 part V column 7 of the application. The detailed outflow and disbursements made from the accounts pertaining to respective loan facilities are reflected in the relevant bank statements.



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Certified copy of statement of account kept during the course of banking business basing on which the claim has been raised can be termed as sufficient evidence of financial debt.

33. It is further seen from the statement of account and loan documents that the loan was sanctioned, loan agreements were executed and charge and securities were created to secure the loan. Respondent company utilised and enjoyed the loan facility and due to non-payment and non-refund of the outstanding dues, the account of the corporate debtor was declared NPA. The applicant bank has also placed CRILC report in order to show that accounts of corporate debtor was reported as loss and doubtful account.

34. It is thus seen that the applicant 'financial creditor' has placed on record voluminous and overwhelming evidence in support of the claim as well as to prove the default. Moreover, the application of the financial creditor is complete and there is no disciplinary proceeding pending against the proposed IRP. We are satisfied that the present application is complete and the applicant



financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been a default in payment of the financial debt.

35. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

36. Mr. Ravindra Loonkar, having registration number IBBI/ IPA- 002 /IP - N00433/ 2017-2018 /11206, having office at RBSA Restructuring Advisors LLP, 9C, 9th floor, Hansalaya Building, 15, Barakhamba Road, Connaught Place, New Delhi-110001, email id ravi.loonkar@gmail.com is appointed as an Interim Resolution Professional.

37. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Regulations) with regard to admission of this application under Section 7 of the Code.

38. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1)



(a), (b), (c) & (d). Thus, the following prohibitions are imposed:

“(a) 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;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor 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 corporate debtor in respect of its property including any action under the



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*Securitisation 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
corporate debtor.”*

39. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3)(b) of the Code.



40. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions



strictly in accordance with the provisions of the Code, Rules and Regulations.

41. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest possible but not later than seven days from today.



Sd/-

(M.M. KUMAR)
PRESIDENT

Sd/-

8/8/2018

(S. K. MOHAPATRA)
MEMBER (T)

Raju

14/8/2018

व.वि.बं. राजु / V.V.B. RAJU
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Deepak Kumar

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