



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

IN
CP (IB)- 25/ND/2023

HDFC Bank Limited

307-308, Roots Tower,
HDFC Bank House, Senapati
Bapat Marg, Lower Parel,
(West), Mumbai-400013, Maharashtra

**... Applicant/
Financial Creditor**

Versus

Madhuvan Tieup Pvt Ltd.,

(Borrower)
House No. 28, Pocket-1
Paschim Puri, Delhi-110063

**... Respondent/
Corporate Debtor**

Under Section: 7 of IBC, 2016

Order delivered on: 06.04.2026

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. REENA SINHA PURI, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Bheem S. Jain
For the Respondent : Adv. Mohit Chaudhary, Adv. Kunal, S., Adv.
Arpit Goyal



ORDER

PER: SHRI ASHOK KUMAR BHARDWAJ, MEMBER (J)

CP (IB) No. 25/ND/2025

The captioned petition has been preferred under Section 7 of IBC, 2016. Amount of debt defaulted to be paid, as mentioned in Part-IV of the petition is Rs. 80, 78,16,596.11/- (Rupees Eighty Crores Seventy-Eight Lakhs Sixteen Thousand Five Hundred Ninety-Six And Paise Eleven Only).

2. The factual position was captured in the order dated 05.07.2023, passed by this Tribunal, admitting the application, thus to avoid reiteration of the same, we extract, pertinent excerpt from the said order as under:-

*“HDFC Bank Limited (for brevity, the **“Applicant”/“Applicant Bank”**) has filed the present petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the **“IBC, 2016”**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Madhuvan Tieup Private Limited (for brevity, the **“Respondent”**).*

2. *The Respondent namely, M/s Madhuvan Tieup Private Limited is a Company incorporated on 28.03.1996 with CIN U51909DL1996PTC264255 under the provisions of the Companies Act, 1956 having its registered office at House No. 28, Pocket-1, Paschim Purl, Delhi- 110063, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs.12,00,00,000/- and the Paid-up Share Capital of the Company is Rs.2,84,26,700/- as per Master Data.*

3. *It is stated by the Applicant that the Respondent furnished requisite Board Resolutions dated 01.06.2017 and 12.05.2018 and on the request of Respondent, the Applicant Bank granted the*



following credit/loan facilities to Respondent vide Sanction Letters dated 31.05.2017 and 11.05.2018:

Sr. No.	Nature of the Facility	Amount (Rs. in crores)
1.	Term Loan-1	56.50
2.	Term Loan-2	05.00
3.	Term Loan- 3	25.00
Total		86.50

4. The particulars of the unpaid financial debt claimed and the date of default are mentioned in Part IV of the application, which is reproduced below:

PART-IV PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	DATE OF SANCTIONS ALONGWITH AMOUNTS: - 1) 31.05.2017: RS. 61.50 CRORES 2) 11.05.2018: RS. 25.00 CRORES
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)	AMOUNT: RS. 80,78,16,596.11/- (RUPEES EIGHTY CRORES SEVENTY EIGHT LAKHS SIXTEEN THOUSAND FIVE HUNDRED NINETY SIX AND PAISE ELEVEN ONLY) AS ON 19.12.2022 BESIDES ACCRUED INTEREST FROM 20.12.2022. DATE OF DEFAULT: ➤ 27.12.2019: THE ACCOUNT OF THE CORPORATE DEBTOR STOOD CLASSIFIED AS NPA. (DETAILED STATEMENT OF ACCOUNT ALONGWITH INTEREST CALCULATION SHEET IS ANNEXED ALONGWITH THE PRESENT APPLICATION).

5. Evidently, as per Part IV of the Application, the Applicant has claimed the debt of Rs. 80,78,16,596.11/- as of 19.12.2022, besides



accrued interest since 20.12.2022. Further, the Applicant has relied on 27.12.2019 as the date on which the default occurred and the account of CD became NPA.

6. The Applicant has relied upon the following documents to prove the existence of financial debt –

- i) Copy of the duly Audited Balance Sheet of the Corporate Debtor for the year ending on 31.03.2018;*
- ii) Copy of the notice dated 28.07.2020 issued under Section 13(2) Of the SARFAESI Act, 2002 along with the Reply given by Mr. Gurmeet Singh Matharoo and the response of Applicant Bank and Postal Receipts;*
- iii) Copy of Loan Recall cum Demand Notice dated 01.08.2020 along with postal receipts and tracking report; and*
- iv) Copy of Board Resolution in favour of Mr. Anirudh Bhargav.*

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

8. On issuance of the notice, the Respondent filed its reply stating that –

8.1 The present application has been filed for the purpose of recovery and not for seeking a Resolution of the Corporate Debtor/Respondent. The Applicant Bank has already initiated action under SARFAESI proceedings which are under challenge before DRT, which has ordered status quo in respect of the properties of the borrower.

8.2 There is no record of Information Utility annexed and therefore, the application is barred by Section 215 of IBC, 2016.

8.3 The present application is barred by Section 10A of IBC, 2016 and the date of default relied upon by the Applicant is erroneous.

8.4 The Applicant Bank has clubbed more than one loan account, which is not permissible.



9. We heard the submissions of both sides and perused the documents placed on record including the written submissions filed by the parties. The respondent has raised certain objections opposing the present Application.

10. It is contended by the respondent that the present application has been filed for the purpose of recovery and not for seeking resolution of the respondent. It is further stated that the Applicant Bank had also initiated the SARFAESI proceedings against the respondent attempting to sell its properties. It is stated that the sale notice dated 26.12.2022 was stayed by the Hon'ble Debt Recovery Tribunal vide its order dated 12.04.2023, the relevant extracts of which reads thus :

8. In the above facts and circumstances of the case, this Tribunal is of the view that there is prima illegality or irregularity in the measures taken by the respondent bank while auctioning the properties in question vide sale notice dated 26.12.2022 as the respondent bank has failed to serve the said sale notice dated 26.12.2022 as per Rules 8 of the Security Interest (Enforcement) Rules, 2002. Thus, prima facie case exists in favour of the applicant for granting Interim relief, accordingly, the status quo be maintained qua the properties in question till further order. All other issues shall be decided by this Tribunal at the time of final disposal after filing the evidences by the parties.

List this case on 30.05.2023 before the Ld. Registrar for completion of pleadings.

Sd- [Signature]
(GOVIND BALLABH SHARMA)
PRESIDING OFFICER,
DRT-I, Delhi

11. Per contra, the Applicant Bank has contended in its written submissions that the properties of the respondent/ Corporate Debtor were not mortgaged and were not the subject matter of the SARFAESI proceedings. The properties, which are the subject matter of the SARFAESI proceedings, are of the Corporate Guarantors namely, Bezel Motors Pvt. Ltd., Morning Maidens Pvt. Ltd and Mountain Meadows Holidays Pvt. Ltd.

12. In view of the clarification (ibid) given by the Applicant Bank, it becomes clear that the properties of the respondent/ Corporate



Debtor are not the subject matter of the SARFAESI proceedings, whose sale notice has been stayed by DRT. **In our view, even otherwise, there is no bar on the Applicant Bank to initiate action under IBC, 2016 besides invoking SARFAESI proceedings.** Hence, we do not find any merit in this objection of the Respondent.

13. The next objection taken by the Respondent is that there is no record of Information Utility filed with the present application, which is mandatory as per Section 215 (2) of IBC, 2016. In response to the aforesaid contention, it is stated by the Applicant Bank in its written submissions that debt and default have not been denied by the Applicant.

14. At this juncture, we refer to the judgment of the Hon'ble High Court of Calcutta passed in the matter of **“Univalue Projects Pvt. Ltd. Versus The Union of India & Ors.”** W. P. No. 5595 (W) of 2020, dated 18.08.2020, the relevant extracts of which reads thus –

“b) I am of the view that financial creditors can rely on either of the modes of evidences at hand to showcase a financial debt, that is, either a record of default from the IU OR any other document as specified which showcases the existence of a financial debt. Such other documents may belong to any of the four classes of documents stated in sub-regulation 2(b) of Regulation 8 of the CIRP, 2016 or as the Supreme Court has observed in *Swiss Ribbons (P) Ltd. (supra)*, all the eight classes of documents stated in Part-V to Form-1 appended with the AA Rules, 2016.

c) Based on sub-paragraph (b) above, it may therefore be inferred that Section 215 of the IBC, 2016 is not mandatory in nature.”

Thus, in terms of the Judgment (supra), Section 215 of IBC 2016 is not mandatory in nature and therefore, we do not find



any merit in the objection on this account raised by the respondent.

15. The next objection taken by the Respondent is that the present application is barred under Section 10A of IBC, 2016. It is contended that the major chunk of default was committed by the Respondent from 25.03.2020 to 25.03.2021. Further, the date of default is also faulty. It is contended by the Respondent that the date of default has to be taken from the date when the debt actually became due and payable and not from the date of NPA.

16. Per contra, the Applicant Bank has stated that it classified the account of the Respondent as NPA on 27.12.2019 and reckons this date as the date of default. In this regard, it has relied on the judgment of the Hon'ble Supreme Court passed in the matter of "**Laxmi Pat Surana vs. Union Bank of India and Others**" [AIR 2021 SC 1707], wherein the following was held-

"37. Ordinarily, upon declaration of the loan account/ debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 of the Code....."

17. In terms of the aforesaid Judgment (supra), **we do not find any illegality in the Applicant Bank relying on the date of NPA i.e., 27.12.2019 as the date of default.** Further, since this date of default is not falling within the Section 10A period, therefore, we are unable to accept the plea of the respondent that the application is barred by Section 10A of IBC 2016.

18. The Respondent has raised another objection that the present application is not maintainable since it has clubbed three different term loans and the same cannot be adjudicated under Section 7 Application. In support of its submission, it has relied on the Judgment of Hon'ble NCLAT passed in the matter of "**International Road Dynamics South Asia Pvt. Ltd. vs. Reliance**



Infrastructure Limited”; Comp (At) (Ins) 72/ 2017, the relevant contents of which reads thus:

“10. We are of the view that different claim(s) arising out of different agreements or work Order; having different dates of default, cannot be clubbed together for alleged default of debt, the cause of action is being separate. For the said reasons, we hold that the joint application preferred by appellant under Section 9 is defective, as distinct from incomplete; and, was not maintainable.”

19. *Evidently, the above-referred Judgment is not applicable to the facts of the present case as those observations were made in the context of the different claim(s) arising out of different agreements, being the subject matter of Section 9 Application, whereas the present application has been filed under Section 7 of IBC, 2016.*

20. *Accordingly, we find no tenable objections raised by the Respondent as to why the CIR Process shall not be initiated against it.*

21. *In the given facts and circumstances, the present Application being complete and the Applicant/Financial Creditor having established the default on the part of the respondent in making payment of its 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.”*

3. The aforementioned order passed by this Tribunal was challenged before the Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 895 of 2023, wherein Hon'ble NCLAT passed order dated 25.01.2024, dismissing the appeal. However, the suspended director qua the CD could prefer an application viz. IA-1090 of 2024, before Hon'ble NCLAT, espousing therein that the CD viz. Madhuvan Tieup Private Limited is an NBFC, thus the application preferred under Section 7 of IBC, 2016 was not maintainable qua it. Having examined the IA-1090 of 2024, Hon'ble NCLAT recalled order dated 25.01.2024 and restored the Company Appeal (AT) (Ins) No. 895 of 2023. The order dated 29.11.2024 passed in IA-1090 of 2024 reads thus:-

“29.11.2024: *This order shall dispose of I.A No. 1090 of 2024 filed in CA (AT) (Ins) No. 895 of 2024 by which the Applicant/ Appellant has requested for recalling of the order dated 25.01.2024 by which the aforesaid appal was dismissed.*

2. Shorn of unnecessary details, the present appeal has been filed against the order dated 05.07.2023 by which the application filed by HDFC Bank Limited under Section 7 of the Code has been admitted.

3. The positive case set up in this appeal by the Appellant is that the Appellant is the NBFC, therefore, the application under Section 7 was not maintainable. In order to prove the same, he has attached a



certificate of registration (annexure A3) issued on 11.02.2003 at Kolkata by the Department of Reserve Bank of India (RBI).

4. However, the plea of the Appellant was not accepted by this Court on the ground that in an affidavit dated 22.01.2024, filed by AR of the HDFC Bank Limited it was contended that RBI has given information under the Right to Information Act, 2005 to the effect that:-

“Was the Company by the name of Madhuvan Tie up Pvt. Ltd. (CIN No. U51909DL1996PTC264255), registered as NonBanking Financial Company (NBFC) with the RBI on 11.02.2003?

The RBI has answered this query in the following terms: “The NBFC- Madhuvan Tie up Pvt. Ltd. (CIN No. U51909DL1996PTC264255) is not registered with RBI as an NBFC.

The list of NBFCs registered with RBI is available on the website and can be accessed using the link [https://rbi.org.in/Scripts/BS NBFCList.aspx](https://rbi.org.in/Scripts/BS%20NBFCList.aspx).”

5. The Respondent had also attached a list of almost thousand pages in which the name of the Appellant as NBFC was conspicuously absent. As a result thereof, the appeal was dismissed.

6. In the present application, the appellant/applicant has averred that the certificate of registration as NBFC by the RBI was delivered pursuant to the order passed by the Hon’ble High Court of Delhi in Writ Petition No. 298 of 2024.

7. Since, there was an issue as to whether the Appellant was the NBFC at the time when the application was filed under Section 7, therefore, an order was passed on 18.10.2024 to seek information from the RBI itself in this regard. The order dated 18.10.2024 is reproduced as under:-

“In this appeal, the Appellant has alleged that it is a Nonbanking financial company (NBFC), therefore, the application filed under Section 7 is not maintainable against it. The Respondent produced the information derived under the Right to Information Act, 2005 from the RBI, New Delhi according to which the Appellant is not registered as NBFC by



the RBI and on the basis of which the appeal filed by the Appellant was dismissed. The Appellant has now filed the application for recalling of the order dated 25.01.2024 by way of I.A. No. 1090 of 2024 and has submitted that pursuant to a writ petition filed by the Appellant before the Hon'ble Delhi High Court, the Reserve Bank of India, has handed over the certificate of the registration as NBFC of the Appellant dated 11.02.2003. However, it transpired in the hearing dated 19.09.2024 as to whether the certificate appended by the Appellant as Annexure A3 was ever cancelled by the RBI? Counsel for the Appellant has filed an affidavit dated 14.10.2024 of the appellant in which he has averred that the certificate of NBFC as Annexure A3 has never been cancelled by the RBI. Since the issue involved in the main appeal as to whether the Appellant is a NBFC to whom the certificate has been issued by the RBI or not and there are two set of evidence before us one filed by the Respondent, obtained under the RTI from the RBI, New Delhi in which he has been informed that the Appellant is not a NBFC and on the other hand, the Appellant has produced the certificate as Annexure A3 which is alleged to have been given to the Appellant during the proceeding before the Hon'ble Delhi High Court, therefore, in order to arrive at a just conclusion about the aforesaid fact as to whether the Appellant was NBFC at the time when the application was filed under Section 7, it would be just and expedient to seek the information from the RBI itself, therefore, the registry is directed to send copy of this order to RBI, New Delhi through its regional director, office at, 6, Sansad Marg, New Delhi, 110001. The Reserve Bank of India is also requested to provide a concrete information in this regard, by recruiting some concerned official, on the next date of hearing. Adjourned to 29th November, 2024.”

8. Pursuant to the aforesaid order, Mr. Ramesh Babu has appeared alongwith the officials of the RBI. Mr. Ramesh Babu has submitted that after the order dated 25.01.2024 was passed, the person who had sought the information, namely, Bhim Sain Jain was duly informed that the RBI had issued the certificate to the Appellant in terms of Section 45-1A of RBI Act, 1934. The Text of the said order is also reproduced as under:-



भारतीय रिज़र्व बैंक
RESERVE BANK OF INDIA

CO.DOS.DSD.No. S8384/01.12.001/2023-2024

जनवरी 31, 2024

Shri Bheem Sain Jain
C-344, Defence Colony,
New Delhi, Pin: 110024

*Submitted by RBI.
in Court
dt. 31.01.2024*

Dear Sir,

Request for disclosure of Certificate of Registration issued under Section 45-IA of Reserve Bank of India Act, 1934 – Madhuvan TieUp Private Limited.

Please refer our earlier letter CO.DOS.DSD.No.S8384/01.12.001/2023-24 dated January 19, 2024 in response to the request for information under the Right to Information Act, 2005 seeking a copy of the Certificate of Registration issued to Madhuvan TieUp Private Limited by the Reserve Bank of India under Section 45-IA of the Reserve Bank of India Act, 1934. It has since come to our notice that the said company has been granted Certificate of Registration by the Reserve Bank of India to carry on the business of non-banking financial institution without accepting public deposits. A copy of the Certificate of Registration No. B-05.04729 dated the eleventh of February 2003 is attached herewith.

भवदीय / Yours faithfully,

अभय कुमार

(अभय कुमार) / (Abhay Kumar)

केंद्रीय लोक सूचना अधिकारी / Central Public Information Officer
अनुलग्नक: यथोक्त / Encls: As above

सर्वाधिकार विभाग/केन्द्रीय कार्यालय, गेट 1, विन् मायार रोड, कॉम्प्लेक्स, कोलकाता-400 005
फोन नं 022 2218 0131-39 फैक्स नं 022-22180932

Department of Supervision, Central Office, World Trade Centre 1, Colaba Parade, Colaba, Mumbai - 400 005
Tel: 022 2218 0131-39 Fax: 022-22180932

हिन्दी भाषा में सूचना प्रयोग के लिए

9. The Appellant has also attached with the application list of NBFC registered with the RBI as on 30.06.2024 dated 10.10.2024 in which the Appellant has been recorded as registered NBFC as serial no. 4697. The said entry is also reproduced as under:-

SR No.	NBFC	Regional Office	Whether have CoR for holding/accepting public deposits	Classification	Corporate Identification No.	Layer	Address	Email ID
4697	Madhuvan Tieup Pvt. Ltd.	Kolkata	No	ICC	U51909DL1996PTC264255	Base	House No. 28, Pocket -1, Paschim Puri, North West Delhi, New Delhi - 110063	madhuvantieup@gmail.com, mtp107@gmail.com



10. Counsel for the Appellant has also submitted that since it is an error apparent on the face of record which has been caused due to wrong information supplied by Respondent on the basis of information received from the RBI, therefore, the order can be recalled in terms of the order passed by this Court in *Union Bank of India Vs. Mr Dinkar T. Venkata Subramanian Company Appeal (AT) (Insolvency) No.729 of 2020*.

11. Counsel for Respondent as well as Counsel appearing for RBI have conceded the aforesaid facts and admitted that the appellant is a NBFC.

12. Thus, in view of the aforesaid facts and circumstances, the application is hereby allowed and the order dated 25.01.2024 is recalled, restoring the appeal no. 895 of 2023 to its original number alongwith interim order which was passed by this Tribunal on 18.07.2023 to the effect that impugned order shall remain stayed.

13. Since, we have disposed of the application, therefore, the RBI which is not a party in the appeal is hereby discharged.

List this appeal for hearing on 11th December, 2024.”

4. After the aforementioned order, Hon’ble NCLAT passed order dated 06.03.2025, allowing the appeal. In terms of the order, Hon’ble NCLAT expected this Tribunal to examine as to whether the Appellant before it viz. CD is engaged in the business of providing financial services as contemplated under Section 3 (16) & (17) of the Code. Paras 6 to 13 of the order dated 06.03.2025 passed by Hon’ble NCLAT reads thus:-

“6. Today, during the course of hearing, Counsel for the Appellant has submitted that the order in the application under Section 7 was reserved on 13.06.2023. The Appellant filed an application after the order was reserved on 03.07.2023 for brining on record the certificate of NBFC issued by RBI, however, the Tribunal allowed the application



under Section 7 on 05.07.2023 without taking into consideration the certificate issued by the RBI to the Appellant.

7. Be that as it may, the fact remains that the issue as to whether the Appellant being a NBFC, as certified by the regulator, namely, RBI is saved from the proceedings of the Code? In this regard, Counsel for the appellant has submitted that no application under Section 7 can be filed against the CD. Thereafter, he has referred to various definitions in order to justify that the Appellant being a NBFC cannot be proceeded against in terms of Section 7 of the Code. In this regard, Counsel for the Respondent has submitted that Section 3(17) also provides that "financial service provider" means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator which is of course the RBI in this case. It is further submitted that the appellant has to prove by leading evidence, if already not led, that whether it has, being authorised to act as NBFC, been engaged in the business of providing financial services.

8. We have heard Counsel for the parties and perused the record with their able assistance.

9. As a matter of fact, the issue regarding the appellant being NBFC and its effect has never been before the Ld. NCLT for the purpose of seeking dismissal of the application filed under Section 7 by the Respondent. There is no dispute that the appeal is a continuation of the original proceedings but since the Appellant has to prove, by leading evidence, if already not led, that it had been engaged in providing financial services, for challenging the application filed under Section 7, therefore, we find it just and expedient to set aside the impugned order and remand the matter back to the Ld. NCLT, keeping the issue open as to whether the application under Section 7 filed by the Respondent is maintainable against the present appellant in case the Appellant is a NBFC?



10. *The parties shall appear before the Ld. NCLT on 28th March, 2025.*

11. *It is needless to mention that the Ld. NCLT shall provide at least two opportunities to the parties to lead evidence, if any, if it is not on record to prove their case that the Appellant has been engaged in the business of providing financial services as contemplated under Section 3(16 & 17) of the code.*

12. *With these observations, the present appeal is allowed and the impugned order is set aside. I.As, if any, are hereby closed.*

13. *Before parting, we also observe that while allowing this appeal, we have not touched the merit of the case in any manner.”*

5. As a sequel to the aforementioned order passed by Hon’ble NCLAT, the Applicant placed on record certain additional documents. The Index of the documents is dated 28.04.2025.

6. Amongst the documents (ibid), the Applicant placed on record the reply to IA-1090 of 2024, filed by it before Hon’ble NCLAT. In para 1 of the reply (under the heading Preliminary Objections), the FC espoused that as per the provisions contained in Section 45-I Clause (f) of the RBI Act, 1934 a Non-Banking Financial Company means a Company which has its principal business of receiving deposits under any scheme or arrangement or in any other manner or lending in any manner, while the CD is engaged in the business of buyers, sellers, traders, merchants, indentors, brokers, agents, assemblers, stockists distributors and dealers in all kinds of agricultural produces & Products, machinery and engineering items and man-made fibre, textiles of all kinds and all types of yarn, cloth, oil and oil seeds, tea, coffee, spices, dry fruits, drugs, leather goods, paper, medicine, cotton, timber, items



of micro power system, general order commodities, garments, hosiery, textiles, iron & steel and all iron and steel products, ply-wood and rubber products jute and jute products, cement automobile parts and accessories, plastic and plastic products, electrical and electronic parts and devices and all kinds, of metals, (ferrous, G non-ferrous), chemicals, minerals, cosmetics vegetables, seeds, consumer durables etc. Other incidental objects of the Corporate Debtor include constructing and import and superintending buildings, offices and structures, import and purchase of machinery and development of lands, purchase, lease exchange of property etc. The MoA and AoA of CD i.e. Respondent No. 2 clearly depicts that Corporate Debtor i.e. Respondent No. 2 is not an NBFC.

7. In the aforementioned reply, the FC has also espoused that as per Section 45-IA clause (1) sub-clause (b) of the RBI Act, 1934 no Non-Banking Financial Company shall commence or carry the business of Non-Banking Financial Institution without having the net owned fund of Rs. 25 Lacs or such other amount, not exceeding Rs. 100 Crores and the CD could not place on record any documents to prove that it has required net owned fund.

8. According to the FC, the CD is solely relying upon the certificate of registration dated 11.02.2003 to contend that it is a Non-Banking Financial Institution, but it has not placed on record any documentary evidence to establish that it ever indulged in rendering service as NBFC. In terms of the RBI circular DNBS (PD) C.C. NO. 7703.05.002/2006-07 dated 21.09.2006, all NBFC are required to submit a certificate from their statutory auditors every year to the effect that they continue to undertake the business of NBFI requiring holding of CoR under the said section. Nevertheless, in the present



case, the CD has failed to bring on record any such certificate to vindicate that the CD i.e. Respondent No. 2 is actively continuing as a NBFC. Even if the CD obtained a certificate from RBI regarding its registration as NBFC, the same would not be sufficient to establish that it is active in such capacity, as in the list of all NBFCs for the years 2013 and 2023, available on the website of the RBI, the name of CD is not mentioned. Therefore, the CD cannot be, by any stretch of imagination, called the Financial Service Provider, as alleged.

9. The FC has also brought out that the Certificate of Registration dated 11.02.2023 relied upon by the CD was also surrendered after change in its registered address on 02.01.2014 and thereafter, nothing was done by CD, regarding updation of the certificate or procuring the surrendered certificate back from the RBI. Even otherwise also, as per the terms stipulated in the certificate of registration dated 11.02.2023, the same was required to be displayed at the registered office of the certificate holder. Since, the CD had no certificate after January 2014, there could be no question of display of certificate by it.

10. According to the FC, the plea regarding its status being that of NBFC raised on behalf of the CD before Hon'ble NCLAT was after thought, as no such plea was taken in the recovery proceedings initiated against it as also in reply to the present petition preferred under Section 7 of IBC, 2016.

11. Amongst the additional documents placed on record, the FC also included additional affidavit filed on behalf of the CD before Hon'ble NCLAT to bring on record the additional documents. With the additional affidavit, the CD enclosed the list of Non-Banking Financial Companies (NBFCs) and Asset Reconstruction Companies (ARCs) registered with the Reserve Bank of India



(RBI) as on June 30, 2024. The CD viz. Madhuvan Tieup Private Limited is enlisted at Serial No. 4697 of the list.

12. The CD has also filed separate affidavit, espousing therein that the RBI itself through its official acknowledged issuance of the NBFC registration certificate to the CD under the statutory provisions of the RBI Act.

13. We heard the counsels for the parties and perused the record. As far as the certificates issued by RBI and the list of NBFC are concerned, the same were part of record before Hon'ble NCLAT. Still Hon'ble NCLAT expected this Tribunal to find out and decide as to whether the Appellant had been engaged in the business of providing services as contemplated under Section 3(16) and (17) of the Code. The order passed by Hon'ble NCLAT has already been reproduced hereinabove. In view of the order passed by Hon'ble NCLAT, it is necessary to refer to sub-section 16 and 17 of Section 3 (ibid). The provisions reads thus:-

“(16) “financial service” includes any of the following services, namely: –

(a) accepting of deposits;

(b) safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;

(c) effecting contracts of insurance;

(d) offering, managing or agreeing to manage assets consisting of financial products belonging to another person;

(e) rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of—

(i) buying, selling, or subscribing to, a financial product;

(ii) availing a financial service; or

(iii) exercising any right associated with financial product or financial service;



(f) establishing or operating an investment scheme;

(g) maintaining or transferring records of ownership of a financial product;

(h) underwriting the issuance or subscription of a financial product; or

(i) selling, providing, or issuing stored value or payment instruments or providing payment services;

(17) “financial service provider” means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator;”

14. In due deference to the order passed by Hon’ble NCLAT, we note that in terms of the aforementioned provisions of IBC, 2016, financial service includes:- (a) accepting of deposits; (b) safeguarding and administering assets consisting of financial products, belonging to another person or agreeing to do so; (c) effecting contract of insurance; (d) offering managing or agreeing to manage assets consisting of financial products belonging to another person; (e) rendering or agreeing for consideration to render advice on or soliciting for the purposes of-(i) buying, selling or subscribing to a financial product; (ii) availing a financial service or; (iii) exercising any right associated with a financial product or financial service. (f) establishing or operating an investment scheme; (g) maintaining or transferring records of ownership of the financial products; (h) underwriting the issuance or subscription of a financial product; (i) selling, providing or issuing stored value or payment instruments or providing payment services.

15. Financial service provider as defined in the Code (ibid) means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator.



16. In order to comprehend the financial service, it is necessary to note definition of financial product which means securities, contracts of insurance, deposits, credit arrangements including loans and advances by banks and financial institutions, retirement benefit plans, small saving instruments, foreign currency contracts other than contracts to exchange one currency (whether Indian or not) for another which are to be settled immediately, or any other instrument as may be prescribed. Section 3 (15) of the code reads thus:-

“(15) “financial product” means securities, contracts of insurance, deposits, credit arrangements including loans and advances by banks and financial institutions, retirement benefit plans, small savings instruments, foreign currency contracts other than contracts to exchange one currency (whether Indian or not) for another which are to be settled immediately, or any other instrument as may be prescribed;”

17. Here, it would be pertinent to note that the financial institutions are given a different treatment in IBC not only in terms of the provisions of Section 3 (7) thereof, but also as per the explanation to Section 29A (c). The provision reads thus:-

“29A. Persons not eligible to be resolution applicant. –

(c) [at the time of submission of the resolution plan has an account,] or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) 3 [or the guidelines of a financial sector regulator issued under any other law for the time being in force,] and at least a period of one year has lapsed from the date of such classification till the date of



commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to nonperforming asset accounts before submission of resolution plan:

[Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Explanation I.- For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares 5 [or completion of such transactions as may be prescribed], prior to the insolvency commencement date.

Explanation II.— For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;]

18. Thus, it needs to be analysed that how and why the financial service providers are treated differently. Only reason is that they are crucial to economic stability. Thus, specialised insolvency framework exists to handle their failure. Sudden collapse of a financial service provider may result in widespread financial distress. Thus, as has been directed by Hon'ble NCLAT,



it is necessary to check, whether the CD is actually involved in providing financial service to such extent and in such manner that the order of its CIRP may result in widespread financial crisis or distress in any manner. It is seen from the Balance Sheet of the CD for the year ended on March 31, 2025, its revenue from operations is Rs. 7,714/- and the other income it has is Rs. 3600/-. Thus, any sudden collapse of management of the CD would not lead to any widespread financial distress or uneasiness. While saying so, we do not intend to prosper that only a financial institution having widespread business can be so treated for the purpose of IBC. We noted such factual position only in the backdrop of the fact that when the CD had procured a certificate of being NBFC dated 11.02.2003, it surrendered the same after change of its registered address on 02.01.2014 and then it got itself enlisted as NBFC in the year 2024. For the years 2013 to 2023, the CD was not there in any list of NBFCs. As can be seen from the Certificate of Registration dated 11.02.2003 issued by RBI, the ramification of the same was that the CD was authorised to carry on the business of NBFIs without excepting public deposits subject to the condition mentioned in the certificate. The certificate cannot be read as conclusive proof of the CD being a company involved in the business of providing financial services as per Section 3 (16) and (17) of IBC. With the additional affidavit filed by it, the CD could enclose list of NBFCs as on 30.06.2024. If the list is to be relied upon, then from 2013 to 2023 i.e. at the point of time when the CD availed the financial facility its name was not there in the list. Thus, with reference to inclusion of name of the CD in the list of NBFCs, no benefit can be given to it for the purpose of arriving at the conclusion as to whether the CD is NBFC or not. The CD could not adduce



any material to establish that it has been providing financial services. On the other hand, the FC could enlist the business carried by the CD, which of course, is not that of financial service. We do not find any reason to nix the plea of Applicant / FC. Here, it would not be out of context to note that a Non-Banking Financial Company measure its reliance on borrowed funds relating to its own capital which is generally restricted to a ratio of 7x (Total outside liabilities divided by owned funds). It is nowhere the case of the CD that such yardstick is followed by it. The own fund includes equity capital / paid-up equity capital, free reserves and retained earnings. The total outstanding debt defaulted to be paid by the CD as mentioned in Part-IV of the petition is Rs. 80,78,16,596.11/- (Rupees Eighty Crores Seventy-Eight Lakhs Sixteen Thousand Five Hundred Ninety-Six And Paise Eleven Only). Thus, the CD being NBFC could not have availed the financial facility to aforementioned extent. Thus, at this stage having availed the financial facility as above, it cannot claim itself to be NBFC. The paid-up capital of CD is Rs. 2,84,27000/- Its other liabilities are Rs. 1,63,34,00,000/-. The details of the same are given below:-

Sr. No	SBN	Charge Id	Charge Holder Name	Date of Creation	Date of Modification	Date of Satisfaction	Amount	Address	Whether charge registered by other entity	Asset Holder Name
1	H22893949	100166426	CSL FINANCE LIMITED	27/02/2018	-	03/10/2018	4,50,00,000	B/18, Ground Floor, W.E.A., Pusa Lane, Karol Bagh, New Delhi-110005, New Delhi, ,	No	-
2	G50675719	10608956	KOTAK MAHINDRA BANK LIMITED	06/07/2015	-	02/08/2017	40,00,00,000	Z78KC, C-27, G Block, Bandra Kurla Complex, Bandra (E), Mumbai, Maharashtra, India, 400051	No	-
3	B8912999	10115346	UNION BANK OF INDIA	08/07/2008	-	06/11/2013	3,84,00,000	F14/15, CONNAUGHT PLACE, NEW DELHI, NEW DELHI, Delhi, India, 110001	No	-
4	C00592574	10077065	Bank of India	12/10/2007	-	19/03/2014	15,00,00,000	New Delhi Corporate Banking Branch, 37, Shaheed Bhagat Singh Marg, New Delhi, Delhi, India, 110001	No	-
5	C58535444	10062818	HOUSING AND URBAN DEVELOPMENT CORPN LTD	14/08/2007	-	25/06/2015	1,00,00,00,000	HUDCO BHAWAN, INDIA, HABITAT CENTER, LOCHI ROAD, NEW DELHI, Delhi, India, 110003	No	-

19. Thus, apparently the liability of the CD is much beyond seven times of its own funds. Had the CD been NBFC, it could not have availed the financial facility as it has availed. We can't treat the CD as NBFC on the basis of



permission to do the business of financial service, on the basis of a certificate issued way back in the year 2003. Its status has to be judged by its demeanours and conduct / activities. In MCA data the CD is shown as small company. Besides, till this Tribunal passed order under Section 7 of IBC, 2016 on 05.07.2023, the CD never pleaded its status as NBFC. Obviously, we need to check the status of a company while taking a decision regarding commencement of CIRP. Indubitably, an NBFC, sudden fall of which may lead to widespread stress and crisis cannot be admitted to the process. Thus, we satisfied ourself regarding the current business of the company. Once, the CD has availed financial facility as non-NBFC, in the present proceedings, it cannot be given the benefit of such status. As has been noted hereinabove, we have already assessed the practical ramification of commencement of CIRP and have found that the same will not lead to any widespread stress. **In the totality of the facts, we are of the view that the application deserved to be admitted. Ordered accordingly.**

20. In the wake, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD. 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 by all and sundry:

- “(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.”

21. As proposed by the Petitioner, Mr. Umesh Gupta, having Registration No. IBBI/IPA-001/IP-P00848/2017-18/11431 is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against him and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. It is further ordered that:

“Mr. Umesh Gupta, IRP (Registration No. IBBI/IPA-001/IP-P00848/2017-18/11431) shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.”

22. The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.



23. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

24. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

Sd/-
(REENA SINHA PURI)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)