

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Company Petition No. (IB)-477(ND)/2023

IN THE MATTER OF:

IndusInd Bank Limited

New Tower, 11th Floor

Hyatt Regency Complex,

Block – A, District Centre

Bhikaji Cama Place,

R.K. Puram

New Delhi -110066

... Applicant/Creditor

Versus

M/s Feedback Energy Distribution Co. Ltd.

311, 3rd Floor

Vardhman Plaza, Pocket 7,

Plot No.6, Sector 12

Dwarka, New Delhi-110078

...Respondent

Order Delivered on: 12.12.2023

SECTION: Section 7 of IBC 2016

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

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

PRESENT:

For the Applicant : Advocate Vidushi

For the Respondent : Adv Gaurav Mitra, Adv, Vipul Wadhwa, Adv.
Lavanya Pathak, Adv. Kashika Gera

ORDER

PER: SH. L. N. GUPTA, MEMBER (T)

IndusInd Bank Limited. (for brevity, the **“Applicant”**) has filed the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency process against M/s Feedback Energy Distribution Co. Ltd. (for brevity, the **“Respondent”**).

2. The Respondent namely, M/s. Feedback Energy Distribution Company Limited is a Company incorporated on 29.10.2012 under the provisions of the Companies Act, 1956 with CIN U40300DL2012PLC244113 having its registered office at 311, 3rd Floor, Vardhaman Plaza, Pocket – 7, Plot No. 6, Sector 12, Dwarka, New Delhi - 110078, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs.34,00,00,000/-, and the Paid-up Share Capital is Rs.33,61,60,000/-, as per the master data annexed with the application.

3. In its application, it is averred by the Applicant that vide sanction letter No. IBL/CAD North/2018-19/5819, dated 30.03.2019, it had sanctioned credit facilities like Cash Credit, Term Loan, etc for an aggregate amount of Rs. 105 Crores ("Credit Facilities") to the Respondent. Subsequently, at the request of the Respondent, the Applicant granted an additional working capital term loan facility by way of Guaranteed Emergency Credit Line

("GECL") vide sanction letter No. IBL/CAD North/2020- 21/2636 dated 04.02.2021 for an amount of Rs. 18.75 crores ("GECL Facility").

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

Part - IV

PARTICULARS OF FINANCIAL DEBT											
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	<p>Rs. 80,33,00,000/- (Rupees Eighty Crores, Thirty-Three Lacs only)</p> <p>Financial Creditor vide sanction letter No. IBL/CAD North/2018-19/5819 dated 30.03.2019 sanctioned credit facilities in the nature of Cash Credit, Term Loan etc. for an aggregate amount of Rs. 105.00 ("Credit Facilities") to the Corporate Debtor.</p> <p>That vide letter dated 30.03.2019 the existing interest rate and processing fee with respect to the term loan facility was amended/modified.</p> <p>Subsequently, due to economic distress caused by COVID 19 pandemic, an Emergency Credit Line Guarantee Scheme ("ECLG Scheme") was announced by the Ministry of Finance for Micro, Small and Medium Enterprises ("MSME"). That, at the request of the Corporate Debtor the Financial Creditor granted additional working capital term loan facility by way of Guaranteed Emergency Credit Line ("GECL") vide sanction letter No. IBL/CAD North/2020-21/2636 dated 04.02.2021 for an amount of Rs. 18.75 crores ("GECL Facility").</p> <p>The date of disbursal of aforesaid facilities are as under:</p> <table border="1"> <thead> <tr> <th>Account No.</th> <th>Disbursement dates</th> <th>Disbursed amount</th> </tr> </thead> <tbody> <tr> <td>Term Loan 1- 510003482845</td> <td>10-May-19</td> <td>40,00,00,000.00</td> </tr> <tr> <td>Term Loan 2 – 510003483484</td> <td>10-Jun-19</td> <td>35,00,00,000.00</td> </tr> </tbody> </table>	Account No.	Disbursement dates	Disbursed amount	Term Loan 1- 510003482845	10-May-19	40,00,00,000.00	Term Loan 2 – 510003483484	10-Jun-19	35,00,00,000.00
Account No.	Disbursement dates	Disbursed amount									
Term Loan 1- 510003482845	10-May-19	40,00,00,000.00									
Term Loan 2 – 510003483484	10-Jun-19	35,00,00,000.00									

		Term Loan 3 – 510003485761	09-Oct-19	15,00,00,000.00
		GECL - 574000001032	23-Feb-21	18,75,00,000.00
		Cash Credit - 650014112600	06-May-2019	10,00,00,000.00
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE OF WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	<p>OUTSTANDING AMOUNT:</p> <p>Rs. 124,79,99,510.77 (Rupees One Hundred Twenty Four Crores, Seventy-Nine Lacs, Ninety-Nine Thousand, Five Hundred, Ten and paise seventy-seven only) as on 31.05.2023.</p> <p>DATE OF DEFAULT:</p> <p>The date of default is 10th October 2021 pursuant whereof the account of the Corporate Debtor was classified as Non-Performing Assets on 08.01.2022 (NPA date)</p> <p>The working for computation of amount and days of default is annexed with the list of documents.</p> <p>The chronological list of facts and events relating to sanction, disbursement of credit facilities and default of the Corporate Debtor is given below which list be treated as part and parcel of this Part IV.</p>		

5. Thus, as per Part IV of the application reproduced above, the Applicant has claimed an outstanding “financial debt” of Rs. 124,79,99,510.77/- and relied on 10.10.2021 as the “date of default”. It has been added that the Account of the Respondent Company was classified as NPA on account of default on 08.01.2022. It is further submitted that on 31.01.2022, the Applicant Bank issued the Loan Recall Notice-cum-invocation of Guarantees, calling upon the CD and other obligors to pay the defaulted amount.

6. Further, the breakup of the defaulted amount claimed in Part IV of the Application has been provided by the Applicant on Page 17 of the Application, which reads thus:

Facility	Account no.	Amount (in Rupees)	Rate of Interest
Cash Credit	650014112600	15,51,64,340.77	Normal Interest – 10.80% p.a. Penal Interest – 7.80% p.a.
Term Loan	510003482845	38,49,80,844.00	For 510003482845 –
	510003483484	33,59,23,366.00	10.95% p.a.
	510003485761	15,26,06,716.00	Total ROI including Penal – 12.10% p.a. For 510003483484 – 11.20% p.a. Total ROI including Penal – 12.10% p.a. For 510003485761 – 10.10% p.a. Total ROI including Penal – 12.10% p.a.
GECL	574000001032	21,93,24,244.00	9.25% p.a. (linked with 1 Y MCLR) Total ROI including penal interest – 11.25% p.a.
TOTAL		124,79,99,510.77	

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

- (i) Copy of sanction letter dated 30.03.2019 (pages 36-51);
- (ii) Copy of Master General Terms Agreement (For Secured Facilities) dated 29.04.2019;
- (iii) Copy of Agreement for Cash Credit / Overdraft Facility dated 29.04.2019;

- (iv) Copy of Term Loan Agreement dated 29.04.2019;
- (v) Loan Recall Notice dated 31.01.2022 (page 538); and
- (vi) Audited Balance sheet as of 31st March 2022;

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

9. On issuance of the notice, the Respondent has filed its reply and Written Submissions stating mainly the following:

9.1 There is no default on the part of the Respondent in terms of Section 3(12) of IBC 2016. Further, there is no debt due and payable within the meaning of Section 3(11) of IBC 2016 and the amount purportedly claimed in default by the Applicant warrants adjudication, which cannot be adjudicated in a summary proceeding.

9.2 The Statement of Accounts annexed by the Applicant is false and not maintained as per the standard practice of accounting. This is evident from the fact that the alleged outstanding dues as reflected in the statement of accounts, do not match with the record of default of the Information Utility.

9.3 The present debt is not crystalized and the Applicant has preferred an OA before the Debt Recovery Tribunal, Delhi seeking adjudication of the dispute between the parties about the alleged outstanding dues.

9.4 The Respondent itself, much before the Applicant Bank took any action, initiated engagement with the Applicant Bank and sought a Resolution in the light of RBI's Framework dated 06.08.2020 being RBI/2020-21/16; DOR. No.

BP. BC/3 /21.04.048/2020-21 titled Resolution Framework for COVID-19-related Stress vide its letter dated 31.08.2020.

9.5 The Respondent Company proposed a Comprehensive Debt Restructuring Proposal ('CDRP') in August 2021. In furtherance of the said CDRP, Joint Lenders Meetings were held on 06.09.2021, 15.09.2021, and 21.10.2021, which were followed by one-to-one meetings with lenders. However, the Applicant paid no heed to the Respondent's request to opt for the one-time resolution/restructuring plan.

9.6 Emergency Guaranteed Credit Line Facility ["EGCL"] sanctioned by the Applicant Bank and inter-alia, for the alleged default of which the Applicant Bank has preferred the instant Petition, was granted to the Respondent under the Guaranteed Emergency Credit Line Scheme ["GECL"] released in the wake of the Covid-19. As per GECL, 100% guarantee coverage was provided by the National Credit Guarantee Trustee Company (NCGTC) on the outstanding amount for the credit facility. The EGCL facility so extended by the Applicant was secured by the government and therefore, there cannot be any default attributed to the Respondent in this regard.

9.7 Due to the chaos and havoc that was followed by the second wave of COVID-19, the recovery from many of the contractors of the Respondent got worse and settlements being offered by such contractors were meagre. As a result, the Respondent could not perform its work orders, and the same were either revised with limited scope of work or terminated forthwith.

9.8 The Respondent relies upon "Vidarbha Industries Power Limited V. Axis Bank Limited", wherein the Hon'ble Apex Court was of the view that the

objective of the Code is not to penalize solvent companies. The Respondent has also relied upon the order of the NCLT, Indore Bench in the matter of State Bank of India v. M/s Krishidhan Seeds Pvt. Ltd. wherein, additional time was granted to the CD as its management was trying to take the company out of the debt.

10. We have heard the submissions of both parties and perused the pleadings on record, including the Written Submissions filed by both parties. The Respondent in its defence has contended that there is no debt subsisting of the Applicant and there is no default committed by it. Moreover, the documents annexed by the Applicant are fabricated and there is no crystalized debt since the DRT proceedings initiated by the Applicant Bank are still pending. Per Contra, the Applicant has annexed various documents to prove the existence of debt and default as mentioned in Para 7 of this order. During the hearing, in support of its contentions, the Ld. Counsel for the Applicant referred to the Applicant Banks sanction letter (pages 36-51), Loan Recall Notice-cum-invocation of Guarantees dated 31.01.2022 (page 538) issued on behalf of the Applicant Bank, and the Balance Sheet of the Respondent for the Financial Year 2021-22 (pages 370-533).

11. To examine the contention of the Respondent that (a) there is no debt subsisting of the Applicant, (b) there is no default committed by it and (c) the documents of the Applicant are false and fabricated, in the interest of justice, we refer to the document of the Respondent itself i.e., “Disclosure of notes on borrowings explanatory (Text Block)” in the Balance Sheet of the Respondent Company for the FY 2021-22 (Pages 488-491 of the application), which reads thus:

Textual information (48)

Disclosure of notes on borrowings explanatory (Text Block)

19	Borrowings (current)				
	Loans repayable on demand (secured):				
	Current Maturities of term loan from banks (Refer note 16.1)	19,584.55	3,869.17		
Cash Credit	Cash credit (Refer note 19.1)	11,145.81	10,591.70		
WCDL Others- secured	Working capital demand loan from banks (Refer note 19.1)	575.46	687.97		
Working capital demand loan from others	Working capital demand loan from others (Refer note 19.2)	337.47	258.14		
	Short term loan (unsecured)				
Working capital demand loan from banks	Working capital demand loan from banks (Refer note 19.3)	1,000.00	1,000.00		
WCDL Others- Unsecured	Working capital demand loan from others (Refer note 19.4)	436.46	436.46		
Commercial Paper	Commercial Paper (Refer note 19.5)	2,000.00	2,000.00		
Loan from related Parties	From related parties (Refer note 19.6)	3,479.47	3,353.92		
	Total	38,559.23	22,397.36		
The requisite particulars in respect of above borrowings are as under:					
(a) The cash credit facility and loans repayable on demand from banks of Rs.11,721.27 lakhs (previous year Rs.11,479.67 lakhs) are secured by first pari-passu charge by way of hypothecation on the current assets, movable fixed assets of the Company both present and future. Some of these loans are secured by pledge of 12,07,643 equity shares of Feedback Infra Private Limited held by Mission Holdings Private Limited, pari-passu pledge of 1,65,96,000					
19.1	equity shares of the Company held by Feedback Infra Private Limited, Corporate Guarantee of Feedback Infra Private Limited and Mission Holdings Private Limited and personal guarantee of directors/ex-directors (Mr. Vinayak Chatterjee, Mr. R. S. Ramasubramaniam and Ms. Rumjhum Chatterjee).				
(b) The interest rate for these borrowings varies from 1 year MCLR + 1.45% per annum to 1 year MCLR + 2.6% per annum.					
19.2	Working capital demand loan of Rs.337.47 Lakhs (previous year Rs. 258.14 lakhs) @ 12 % per annum from National Small Industries Corporation Limited is secured by Bank Guarantee issued by Federal and RBL bank.				
Unsecured Working Capital Demand Loans from bank @ 12.50% per annum availed from IDFC bank is secured by					
19.3	Corporate Guarantee of Promoter Company (Feedback Infra Private Limited) and repayable after end of the term (1 year).				
Unsecured Working Capital Demand Loans from Others (Hero FinCorp. Limited) @ 12.50% per annum is secured by Corporate Guarantee of Promoter Company (Feedback Infra Private Limited) and Personal Guarantee of Director (Mr. Vinayak Chatterjee) and was repayable in 6 monthly instalments post moratorium period of 6 months. The company has defaulted in the repayment of loans to Hero FinCorp. Limited, and the lender has recalled the loan during the year vide their letter dated 15th June 2021. The company has not made any payments pursuant to the receipt of such loan recall letter. The company has accounted for the interest liability as per the confirmation provided by the lender at the year-end. The lender has further initiated arbitration proceedings against the company and the Delhi High Court has appointed an Arbitrator vide its judgement dated 21 July 2022. The matter is still under arbitration.					
19.4					
Unsecured Commercial Papers from IIFCL Mutual Fund (Infrastructure Debt Fund)-Series I and series-II are secured by					
19.5	Corporate Guarantee of Feedback Infra Private Limited and Mission Holdings Private Limited and personal guarantee of directors/ex-directors (Mr. Vinayak Chatterjee, Mr. R. S. Ramasubramaniam and Ms. Rumjhum Chatterjee).				
19.6	During the year Feedback Infra Private Limited charged interest of Rs. Nil (previous year Nil) on loan repayable on demand provided to the Company.				
19.7	The Company has defaulted in repayment of principal and payment of interest. The Details of continuing default as at 31 March 2022 is as follows:				
Particulars	Principal Amount	Principal Delays in days	Interest Amount	Interest Delays in days	Total
Repayment of Financial Institutions:					
Hero FinCorp Limited (WCDL)	436.46	488	47.11	488	
			4.97	336	
			5.19	305	
			5.07	275	
			5.30	244	
			5.35	213	
			5.23	183	
			5.46	152	
			5.34	122	
			5.58	91	

489

			5.64	60	
			5.15	32	
			5.75	1	
	436.46		111.14		547.60
Repayment of Banks:					
IDFC Bank Limited (Term Loan)	1,000.00	486	124.20	577	
			11.63	336	
			12.14	305	
			11.87	275	
			12.39	244	
			12.52	213	
			12.25	183	
			12.79	152	
			12.50	122	
			13.05	91	
			13.19	60	
			12.05	32	
			13.46	1	
	1,000.00		274.04		1,274.04
HDFC Bank Limited - Term Loan (Rs. 8,600 lakhs)	101.10	546	14.36	244	
	588.67	425	68.91	213	
	588.67	364	63.79	183	
	588.67	273	66.76	152	
	588.67	181	64.71	122	
	588.67	89	67.27	91	
			67.91	60	
			61.34	32	
			67.91	1	
	3,044.44		542.95		3,587.40
HDFC Bank Limited ECLGS - (Rs. 2,850 lakhs)	59.39	15	24.61	400-407	
			19.21	336	
			19.98	305	
			19.47	275	
			20.26	244	
			20.40	213	
			19.88	183	
			20.68	152	
			20.15	122	
			20.96	91	
			21.11	60	
			19.20	32	
			21.39	1	
	59.38		257.30		326.68
IndusInd Bank Limited Term Loan	23.05	203	49.37	183	
IndusInd Bank Limited ECLGS - (Rs. 1,875 lakhs)	48.00	112	79.86	152	
	63.86	51	77.82	122	
	48.00	22	80.91	91	
	39.08	9	81.45	60	
			74.05	32	
			79.47	1	
	221.97		522.93		744.90
RDL Bank Limited - ECLGS (Rs. 282.20 lakhs)	5.83	7	0.85	152	
			2.25	122	
			2.34	91	
			2.36	60	
			2.15	32	

490

			2.39	1	
	5.83		12.34		18.17
Federal Bank Ltd- ECLGS (Rs. 188 lakhs)	4.13	7			4.13
State Bank of Mauritius - ECLGS (Rs. 401.06 lakhs)	8.36	7	2.97	336	
			3.08	305	
			3.01	275	
			3.14	244	
			3.15	213	
			3.07	183	
			3.20	152	
			3.12	122	
			3.25	91	
			3.27	60	
			2.98	32	
			3.34	1	
Repayment of Cash Credit:	8.36		37.58		45.94
HDFC Bank	8,008.62	90	44.50	92	
			71.42	306	
			64.51	275	
			71.42	92	
State Bank of Mauritius	8,008.62		251.85		8,260.67
	1,057.84	183	8.17	152	
			15.58	122	
			16.09	91	
			16.09	60	
			14.54	32	
			16.09	1	
Repayment of Commercial Paper:	1,057.84		86.56		1,944.40
IIFCL Mutual Fund (Infrastructure Debt Fund)-Series I	1,000.00	390	11.50	336	
			11.50	306	
			11.50	275	
			11.50	245	
			11.50	214	
			11.50	184	
			11.50	153	
			11.50	123	
			11.50	92	
			11.50	62	
			11.50	31	
			11.50	1	
IIFCL Mutual Fund (Infrastructure Debt Fund)-Series II	1,000.00		138.00		1,138.00
	1,000.00	310	12.74	280	
			12.74	250	
			12.74	219	
			12.74	189	
			12.74	158	
			12.74	128	
			12.74	97	
			12.74	67	
			12.74	37	
			12.74	7	
Total	1,000.00		127.40		1,127.40
	16,647.22		2,372.10		19,019.32

19.8 During the year the company has not submitted quarterly stock and book debts statements to the banks/financial institutions.

Particulars		As at 31 March 2022	As at 31 March 2021
16	Borrowings (Non-current)		
	Secured term loans- at amortised Cost		
	Secured Term loan from banks		
	Term loan from banks (Refer note 16.1, 16.4, 16.5, 16.6 and 16.7)	19,726.82	21,675.14
	Vehicle loan		
	Vehicle Loan from UCO Bank (Refer note 16.2)	11.11	13.03
		19,737.93	21,688.17
	Less: Processing fees pending amortisation	-	86.84
	Less: amount disclosed under the head "Borrowings current-Loan Repayable on demand"	19,584.55	3,869.17
	Total	153.38	17,730.16

The requisite particulars in respect of above borrowings are as under:

(a) Secured term loans of Rs 14,120.56 lakhs (previous year Rs 16,068.88 lakhs) are secured by first pari-passu charge by way of hypothecation on the current assets, movable fixed assets of the Company both present and future, pledge of 12,07,643 equity shares of Feedback Infra Private Limited held by Mission Holdings Private Limited, pari-passu pledge of 1,65,96,000 equity shares of the Company held by Feedback Infra Private Limited, Corporate Guarantee of Feedback Infra Private Limited and Mission Holdings Private Limited and personal guarantee of directors/ex-directors (Mr. Vinayak Chatterjee, Mr. R. S. Ramasubramaniam and Ms. Rujhum Chatterjee).

(b) The interest rate term loans from bank varies from 1 year MCLR + 0.5% per annum to 1 year MCLR + 2.6% per annum.

(c) These term loans from banks are repayable in monthly, quarterly or annual instalments.

(d) Term Loan from Banks includes of Rs 5,606.26 lakh extended by the lenders under the Emergency Credit Line Guarantee Scheme (ECLGS) as on 31 March 2022 is secured under government's ECLGS and secured by second pari passu charge on entire current assets and movable fixed assets of the Company both present and future. Interest rate on these loan ranges from 9.05% to 9.25% p-a. The break up and other details of the scheme is as follows:

Name of the Bank	Amount (Rs- Lakhs)	Date of disbursement	Repayment period	Moratorium
State Bank of Mauritius	85.00	26 January 2021	5 years	1 year
State Bank of Mauritius	316.06	25 February 2021	5 years	1 year
HDFC Bank Limited	350.00	17 February 2021	5 years	1 year
HDFC Bank Limited	350.00	18 February 2021	5 years	1 year
HDFC Bank Limited	460.00	19 February 2021	5 years	1 year
HDFC Bank Limited	740.00	20 February 2021	5 years	1 year
HDFC Bank Limited	850.00	26 February 2021	5 years	1 year
Indus Ind Bank Limited	1875.00	23 February 2021	5 years	1 year
Federal Bank Limited	198.00	25 February 2021	5 years	1 year
RBL Bank Limited	282.20	25 February 2021	5 years	1 year
TOTAL	5,606.26			

16.2 Vehicle (i.e. car) loan from UCO Bank to be repaid within 84 Equal monthly Instalments (EMI) starting from 20 July 2019 to 20 June, 2026 Interest for this borrowing is MCLR 8.65 % + 0.4% per annum. The same Vehicle (i.e. car) has been hypothecated to the Bank as a primary security.

16.3 The Company has not complied with the debt covenants in the current year due to Covid-19 pandemic and economic/business situation. The Company does not anticipate any material impact on account of this, including taking action as permitted under the regulatory framework and resolution plan submitted to lenders for restructuring the loans (Refer note 47).

16.4 The company has taken term loan under ECLGS scheme of Rs. 308.00 lakhs and has also availed cash credit facility of Rs. 2,000.00 lakhs from M/s State Bank of Mauritius (SBM) on which there are delays in repayment of the loan as well as interest. Due to such delays in repayment, the lender has filed an application with National Company Law Tribunal for recovery of Rs. 2,324.59 lakhs. The application is pending admission and the next date of hearing is listed as 16th November 2022. The matter is still pending for resolution.

16.5 The Company has taken a Term Loan of Rs. 8,600 lakhs, Term loan under ECLGS of Rs. 2,875.00 lakhs and cash credit facility of Rs. 7,900 lakhs from M/s HDFC Bank on which there are delays in the repayment of the loan as well as interest. Due to such delays the lender has approached Debt Recovery Tribunal, New Delhi with a claim of Rs. 17,655.31 lakhs. The company has filed responses against the same and the proceedings are yet to be completed.

16.6 The Company has taken Term Loans of Rs. 10,875.00 lakhs and cash credit facility of Rs. 1,000 lakhs from M/s IndusInd Bank on which there are delays in the repayment of loan as well as interest. Due to such delays the lenders has approached Debt Recovery Tribunal, New Delhi (DRT). The company is yet to receive any communication from DRT or the bank.

16.7 The company has considered loans as repayable on demand where the company has not complied with the covenants stated in sanction letter.



On perusal of the Balance Sheet of the CD (ibid), it is observed that the Respondent itself has admitted the debt and default of the loans of various Banks including the Applicant Bank herein of more than Rs. one Crore.

12. The Applicant Bank has also placed on record the Form D (Record of Default) of NeSL to substantiate its claim regarding the Debt and Default.



FORM D
RECORD OF DEFAULT(RoD)

(Issued By information utility under sub- regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

This Record of Default is issued to the Financial Creditor M/s INDUSIND BANK LTD in respect of the default of debt as per details given below-

(a) Name of the Submitter:	M/s INDUSIND BANK LTD
(b) Schedule-2 Bank (Y/N):	Y
(c) Name of Corporate Debtor:	M/s FEEDBACK ENERGY DISTRIBUTION COMPANY LIMITED
(d) Unique Debt Identifier Number:	AAACI1314G_510003485761
(e) Registered Address:	425 DB MARG, LAMINGTON ROAD, MUMBAI
(f) Total Outstanding Amount:	151299780.00
(g) Default Amount:	58545254.00
(h) Date of Default:	09-10-2021
(i) Status of Authentication of Default:	AUTHENTICATED

Filing of Default(Submission ID No.)	Submitted on	Status of Authentication(Authenticated/Disputed/Deemed to be authenticated)	Authentication completed on
(35)	15-05-2023 17:25:15	*AUTHENTICATED Colour Code :GREEN	12-06-2023 13:41:54

NeSL is authorized to issue this record of default and has accordingly affixed its digital signature, as per the provisions of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, Guidelines for Technical Standards for Performance of Core Services and Other Services and the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2017.

From the Form D (Record of Default) of NeSL, it is evident that the Corporate Debtor Company is in default to the Applicant Bank for a debt of more than Rs. one crore.

13. From the pleadings, we also notice that as part of the Comprehensive Debt Restructuring Proposal ('CDRP'), the Respondent Company itself had proposed to the Applicant Bank for a one-time settlement of its dues, which in terms of the judgment of the Hon'ble Supreme Court in "Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy and Anr." is an acknowledgment of debt. The relevant para of the judgment dated 04.08.2021 reads thus:

*"141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. **This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act.** In Gaurav Hargovindbhai Dave (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019".*

(Emphasis placed)

14. As regards the grant of time to the Respondent to settle the matter, we find from the DMS record that the present application was preferred by the Applicant on 26.06.2023, and notice to the Respondent was issued on 21.08.2023. Even though as per the provision in Section 7(4) of IBC 2016, this Adjudicating Authority is required to admit or reject an application within 14 days, on the request of the Respondent and in the interest of justice, it had granted opportunities to the Respondent vide order dated 01.11.2023 and 08.11.2023. However, it failed to settle the matter.

15. To the reliance placed by the Respondent on the Judgement of the Hon'ble Supreme Court in the matter of "**Vidarbha Industries Power Limited V. Axis Bank Limited**" [CIVIL APPEAL NO. 4633 OF 2021], we are aware of the judgment passed by the Hon'ble Supreme Court in the "**Review Petition of Vidarbha Industries Power Limited (Supra) (2023) 7 Supreme Court Cases 321**" dated 22.09.2022, wherein the following was observed:

"6. The elucidation in para 90 and other paragraphs [of the judgment under review] were made in the context of the case at hand. It is well settled that judgments and observations in judgments are not to be read as provisions of statute. Judicial utterances and/or pronouncements are in the setting of the facts of a particular case."

Since the factual position in the instant case is not the same, therefore, in our considered view, the observations in the "Vidarbha Industries Power Limited" do not apply to the present case.

16. In view of the abovementioned discussion, the debt and default of the Respondent have been established by the Applicant Bank beyond doubt.

17. In the sequel to the above and the given facts and circumstances, the present Application being complete and the Applicant having established the default on the part of the Respondent in payment of the Financial Debt for an amount being above the minimum threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, the Moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the Moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:

“(a) The institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Respondent.”

18. As proposed by the Applicant, this Bench appoints Mr. Ankit Goel as IRP having Registration IBBI/IPA-001/IP- P02671/2022-2023/14088 Email ID: ankitgoel@aaainsolvency.com subject to the condition that no disciplinary proceedings is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week of this Order. This Adjudicating Authority further orders that:

Mr. Ankit Goel, as an IRP having Registration No. IBBI/IPA-001/IP-P02671/2022-2023/14088, Email ID: ankitgoel@aaainsolvency.com is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is further directed to take the steps as mandated under the IBC specifically under Sections 15, 17, 18, 20, and 21 of IBC, 2016.

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

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

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

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

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