



**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II), CHANDIGARH**

CP (IB)142/Chd/Hry/2024

(An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF:

ENDOGRAM LEASING AND TRADING COMPANY PVT. LTD.

Through its authorised representative
Registered Office at: 155, Regent Estate Debjyoti
Apartment, Kolkata, 700092
EMAIL: eltplworks21@gmail.com

...Petitioner/Financial Creditor

Versus

ALCHEMIST CAPITAL LIMITED

Registered Office at: Plot No.F-5, First
Floor, Rajiv Gandhi IT Park, Chandigarh, 160101
EMAIL: aclworks21@gmail.com

...Respondent/Corporate Debtor

Order delivered on: 01.08.2025

**Coram: MR. KHETRABASI BISWAL, MEMBER (JUDICIAL)
MR. KAUSHALENDRA KUMAR SINGH, MEMBER (TECHNICAL)**

Present:

For the Petitioner

: Mr. Anand Chhibbar, Senior Advocate
with Mr. Keshav Gupta, Advocate

For the Respondent

: Mr. Meenal Garg, Advocate



ORDER

1. The present Application has been filed by an Authorised Representative on behalf of **Endogram Leasing and Trading Company Pvt. Ltd.** (hereinafter referred to as “**Financial Creditor**”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “Code”) for initiation of Corporate Insolvency Resolution Process (CIRP) against **Alchemist Capital Limited** (hereinafter referred to as “**Corporate Debtor**”), through its Authorised Signatory for the default amount of Rs. 5,57,00,740/- (Rupees Five Crores, Fifty Seven Lakhs, Seven Hundred and Forty only) as on 31.12.2021. The date of default, as mentioned in the Application is 31.12.2021.

2. Brief facts of the case as stated in the Application and argued presented by the Learned Counsel for the Petitioner are summarised as follows:

(i) The Corporate Debtor had obtained an unsecured loan of Rs. 2,91,00,973/- from the Financial Creditor on 30.06.2011, pursuant to a Loan Agreement dated 01.07.2011. The tenure of the loan was ten years commencing from 01.07.2011. The Agreement contained a call option enabling the Financial Creditor to convert the loan into equity shares, but this option was not exercised. As per Clause 10 of the Agreement, the unconverted portion was to be repaid with interest at the applicable G-Sec rate on dates to be mutually agreed. Clause 11 of the said Agreement stipulated that no interest would accrue until 30.06.2014 in lieu of the said call option.



(ii) Throughout the ten-year period, the Corporate Debtor neither repaid the principal nor paid any interest due from 01.07.2014, leading to an outstanding liability of Rs. 5,18,14,642/- as of 30.06.2021. Upon completion of the loan tenure, the Financial Creditor issued a demand letter dated 12.07.2021, calling upon the Corporate Debtor to repay the said amount. The Corporate Debtor, via letter dated 06.08.2021, acknowledged the entire liability and requested time until 31.12.2021 for repayment, also agreeing to pay interest at 15% per annum in case of default beyond this date. Despite a further reminder on 07.01.2022, the Corporate Debtor failed to discharge the liability.

(iii) As a result, on 31.12.2021, the Corporate Debtor defaulted on a total outstanding amount of Rs. 5,57,00,740 as on 31.12.2021 thereby constituting a default under Section 3(12) of the Code.

3. The Petitioner has proposed the name of the interim resolution professional namely, Mr. Manoj Kumar Jain having Registration Number: IBBI/IPA-001/IP-P02707/2022-23/14173 to act as Interim Resolution Professional; having address at B-7/45, Second Floor, Safdarjung Enclave Extension New Delhi and Email - mkjain365@gmail.com to act as an IRP under Section 13(1)(c) of the Code, to act as an Interim Resolution Professional. Form 2 along with the written communication given by the proposed IRP along with Authorisation for Assignment has been annexed as Annexure P-4 to the Petition.

4. The Petition has been opposed by the Corporate Debtor by filing a Reply, vide Diary No.00505/1 dated 29.07.2024 The various contentions



raised in the Affidavit in Reply and as argued by their counsel are briefly summarised as under:-

- (i) The alleged financial dispute arises from a Loan Agreement dated 30.06.2011 between the parties. A close reading of the Agreement reveals that the sum of Rs.2,91,00,973/- disbursed by the Financial Creditor was intended to be treated as equity and not as debt. The fact that this amount was never converted into equity does not change its essential nature, and thus, it cannot be construed as a financial debt.
- (ii) The Financial Creditor has claimed Rs.2,65,99,767/- as interest at 15% per annum. However, the Loan Agreement contains no clause specifying any interest rate, and thus, the creditor cannot unilaterally impose interest. A letter dated 06.08.2021 from the Corporate Debtor further evidences that the Financial Creditor was requested not to levy interest until 31.12.2021.
- (iii) Moreover, the Financial Creditor relies solely on Form-C uploaded on the NeSL website and fails to furnish the mandatory Record of Default issued by an Information Utility, as required by NCLT, New Delhi order dated 03.04.2023 and IBBI Circular dated 16.06.2023.
- (iv) The letter dated 06.08.2021 from the Corporate Debtor clearly states that the Company was facing temporary financial constraints due to the global pandemic. The Corporate Debtor further put reliance on the Hon'ble Supreme Court in Invent Asset Securitisation and Reconstruction Pvt. Ltd. v. Girnar Fibres Ltd. and Vidarbha



Industries Power Ltd. v. Axis Bank Ltd. wherein it has emphasized that Section 7 petitions may be rejected if the Corporate Debtor is otherwise solvent.

5. It is noted that the Short written Submission was filed by the Financial Creditor vide Diary No.00505/2 dated 18.09.2024, and Corporate Debtor filed its written submission vide Diary No.00505/3 dated 24.09.2024.

6. We have heard the submissions made by the Learned Counsel for the Petitioner Financial Creditor as well as the Respondent/Corporate Debtor and have gone through the material available on record carefully, along with the extant provisions Code and the settled position of law on the subject issue.

7. From the material on record, it is evident that a sum of Rs. 2,91,00,973/- was disbursed by the Financial Creditor to the Corporate Debtor on 30.06.2011 under a Loan Agreement dated 01.07.2011, with a clear repayment tenure of 10 years. The Agreement incorporates provisions typical of a debt transaction, including:

- A fixed tenure,
- Call option for conversion (which was not exercised),
- Provision for repayment of the unconverted portion with interest,
- Specific deferment of interest until 30.06.2014 (Clause 11).

8. The existence of these clauses and structure of the transaction particularly the repayment obligation upon expiry of 10 years clearly meets the criteria of a “financial debt”* under Section 5(8) of the Code. The



submission of the Corporate Debtor that the disbursed amount was intended to be equity is untenable, especially in light of:

- The absence of actual conversion into equity,
- Acknowledgement of liability in writing post tenure,
- Specific agreement on interest obligation post default (15% p.a.).

9. Hon'ble Supreme Court in **Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd. (2021)** has clarified that even interest-free loans can qualify as financial debt, provided the disbursement has the commercial effect of borrowing. In the present case, the deferred interest and call option were commercial arrangements, but the underlying structure remains a debt obligation. The letter dated 06.08.2021 issued by the Corporate Debtor, acknowledging the entire outstanding of Rs.5,18,14,642/- and requesting time till 31.12.2021 to repay, constitutes a clear acknowledgment of liability under Section 18 of the Limitation Act, 1963. Further, the Corporate Debtor undertook to pay interest at 15% per annum in case of default beyond 31.12.2021, which confirms not only the existence of a financial debt but also the mutual understanding on applicable interest post default, regardless of whether a fixed interest clause existed in the original agreement. Furthermore, the Corporate Debtor in its written submission stated that "merely because the said amount has not been converted into equity, it cannot be considered debt", which demonstrates that the said amount was not converted into equity.

10. The argument from the Respondent side that the Financial Creditor has unilaterally claimed interest lacks merit. It is noted that Clause 10 of the agreement envisaged repayment of the unconverted portion with



interest at the G-Sec rate, and the letter of 06.08.2021 records Corporate Debtor's consent to 15% interest post 31.12.2021. Therefore, any argument regarding absence of contractual rate becomes irrelevant once post-tenure mutual agreement on interest is established.

11. The objection regarding non-submission of Record of Default (RoD) from an Information Utility (IU) is a procedural one. It is true that recent circulars and judicial pronouncements encourage submission of IU RoD; however, such filing is not mandatory where:

- Sufficient documentary evidence of default exists (e.g. loan agreement, default demand, debtor's acknowledgment), and
- The debt and default are otherwise undisputed or admitted.

12. The reliance on Vidarbha Industries v. Axis Bank is misplaced, as that case was decided in peculiar facts involving a regulatory stay on receivables and a clear solvency situation. In contrast the Corporate Debtor here has expressly acknowledged inability to repay and default of a significant financial debt has occurred and remained unpaid. The Hon'ble Supreme Court in **Swiss Ribbons v. Union of India** and **Innoventive Industries v. ICICI Bank** has emphasized the objective test of default under Section 7 of the Code. Once default is established and the debt is undisputed, the Tribunal is not required to assess solvency or fairness.

13. Considering the above, we are of the considered view that there exists financial debt which is payable and has been defaulted by the Respondent. The debt is more than the threshold limit of Rs. 1 crore as per Section 4 of the Code. This application is filed within the limitation and is defect-free; as such, the Application deserves to be admitted.



14. On the basis of the facts, the Application is otherwise defect-free & on record. Accordingly, we admit this application and Order as under:

(i) the Corporate Debtor **Alchemist Capital Limited** is admitted in the Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.

(ii) The moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the said Code.

(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 Securitisation and Reconstruction of Financial Assets and the 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.

(e) the Order of moratorium shall have effect from the date of this Order till the completion of the Corporate Insolvency



Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for the liquidation of the Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

(iii) We are hereby appointed Mr. Manoj Kumar Jain having Registration Number: IBBI/IPA-001/IP-P02707/2022-23/14173 to act as Interim Resolution Professional having address at B-7/45, Second Floor, Safdarjung Enclave Extension New Delhi and Email - mkjain365@gmail.com to act as an IRP under Section 13(1)(c) of the Insolvency and Bankruptcy Code, 2016. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of the Insolvency and Bankruptcy Code, 2016, r.w. Regulations made thereunder. The IRP shall make a public announcement of the initiation of the Corporate Insolvency Resolution Process and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Insolvency and Bankruptcy Code, 2016.

(iv) the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The Corporate Debtor is to provide effective assistance to the IRP as and when it takes charge of the assets and management of the Corporate Debtor.

(v) The IRP shall perform all its functions as contemplated, inter alia, by sections 17, 18, 20 & 21 of the Insolvency and Bankruptcy Code, 2016. It is further made clear that all personnel connected



with Corporate Debtor, its Promoter, or any other person associated with the management of the Corporate Debtor are under legal obligation under Section 19 of the Insolvency and Bankruptcy Code, 2016, to extend every assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter, or any other person, is required to assist or co-operate with the IRP, do not assist or co-operate, the IRP is at liberty to make an appropriate Application to this Adjudicating Authority with a prayer for passing an appropriate Order.

(vi) The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of the obligation imposed by Section 20 of the Insolvency and Bankruptcy Code, 2016.

(vii) The Financial Creditor is directed to pay an advance of Rs. 2,00,000/- (Rupees Two lakh only) to the IRP within two weeks from the date of receipt of this Order for smooth conduct of Corporate Insolvency Resolution Process and IRP to file proof of receipt of such amount before the Adjudicating Authority along with First Progress Report. Subsequently, the IRP may raise further demands for Interim funds, which shall be provided as per the Rules.

(viii) The Registry is directed to communicate a copy of this Order to the Financial Creditor, Corporate Debtor, and the Interim Resolution Professional and the concerned Registrar of Companies, after completion of the necessary formalities, within seven working days,



and upload the same on the website immediately after pronouncement of the Order.

(ix) The IRP shall also serve a copy of this Order to the various departments, such as Income Tax, GST, State Trade Tax, and Provident Fund, etc. those who are likely to have their claim against Corporate Debtor as well as to the trade unions/employees associations so that they are timely informed about the initiation of CIRP against the Corporate Debtor.

(x) The commencement of the Corporate Insolvency Resolution process shall be effective from the date of this Order.

15. The Registry is directed to communicate a copy of this Order immediately to both the Parties and also to IRP

16. As a result **CP (IB) No.142/Chd/Hry/2024** stands allowed and disposed of.

Sd/-

Kaushalendra Kumar Singh
Member (Technical)
Jashan

Sd/-

Khetrabasi Biswal
Member (Judicial)