

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”**

**CP (IB) No. 381/Chd/Hry/2018**

**Under Section 7 of the  
Insolvency and Bankruptcy  
Code, 2016**

**In the matter of:-**

**Alchemist Asset Reconstruction Company Limited**

having its registered office at  
D-54, 1st Floor, Defence Colony,  
New Delhi-110 024  
through Mr. Amrit Agrawal,  
Chief Financial Advisor

....Petitioner-Financial Creditor

Vs.

**Haryana Steel & Alloys Limited**

having its registered office at  
48<sup>th</sup> KM Stone, G.T. Road,  
P O-Engineering College,  
Murthal, Sonapat,  
Haryana-131 039  
through its Managing Director

...Respondent-Corporate Debtor

**Judgment delivered on: 13.02.2019**

**Coram: HON'BLE MR. JUSTICE R. P. NAGRATH, MEMBER (JUDICIAL)  
HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Petitioner : (1). Mr. Manish Jain, Advocate  
(2). Ms. Divya Sharma, Advocate

For the Respondent : Mr. Mayur Kanwar, Advocate

**Per R.P. Nagrath, Member (Judicial)**

**Judgment**

This petition has been filed by the petitioner as financial creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the respondent-corporate debtor. The application has been filed in Form 1 as prescribed in Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity the 'Rules').

2. The petitioner was incorporated as a company under the Companies Act, 1956 and the certificate was issued by the Registrar of Companies, NCT Delhi and Haryana on 19.09.2002. The company was originally incorporated as Dhir & Dhir Asset Reconstruction & Securitisation Company Limited and Certificate of Registration as such was also issued by the Reserve Bank of India on 15.03.2007. The name of the company was later on changed to Alchemist Asset Reconstruction Company Limited (petitioner herein) and fresh Certificate of Registration was issued on 25.08.2009. Registration certificate was also issued by Reserve Bank of India on 16.12.2009. These Certificates are Annexure 1 (colly) and Annexure 2 (colly). The master data of the petitioner company is at Annexure A 3.

3. The instant petition has been filed by the financial creditor on the basis of a Resolution dated 26.06.2018 (Annexure 4) authorizing Mr. Amrit Agrawal, Chief Financial Advisor of the company to be an authorized Officer to exercise all the powers, functions under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (SARFAESI Act, 2002). Apart from various others acts, Mr. Amrit Agrawal, Chief Financial Advisor

has also been authorized to initiate the Corporate Insolvency Resolution Process (CIRP) in terms of the Code read with Rules and Regulations framed thereunder. The contents of the application in Form 1 filed by the petitioner is supported by an affidavit of Mr. Amrit Agrawal, Chief Financial Advisor of the petitioner which is at Page 23 of the paper book.

4. The respondent was incorporated as a company on 10.12.1969 under the Companies Act, 1956 with authorized share capital of ₹20 crores and paid up capital of ₹3,32,83,630/-. Copy of the master data of the respondent company is at Annexure 5.

5. It is stated that the loan facilities were granted to the respondent-corporate debtor originally by IFCI Ltd. and Industrial Investment Bank of India in the years 1993 and 1997 respectively. The respondent-corporate debtor approached IFCI to avail loan facility under the Equipment Credit Scheme and the Rupee Term Loan. The loan of ₹74.98 lacs was granted. Further, in the year 1994, IFCI Ltd. granted the financial assistance to meet the cost of equipments to the tune of ₹79.40 lacs. In the said year, the respondent-corporate debtor again approached IFCI Ltd., seeking Rupee Term Loan for Modernization-cum-Expansion Scheme of the existing project and a loan of ₹430 lacs was granted.

6. The respondent-corporate debtor executed the Equipment Credit Agreement Annexure 22, Deeds of the Personal Guarantee of the Promoters Annexure 23 and the Deed of Hypothecation dated 06.08.1993 (Annexure 24).

7. In the year 1994, the respondent-corporate debtor again executed similar documents dated 22.03.1994 which are from Annexure 25 to Annexure 27.

8. Further loan documents dated 29.11.1994 comprising of Loan Agreement (Annexure 28), Hypothecation Deed (Annexure 29) and Deed of Undertaking (Annexure 30) were executed.

9. It is stated that the corporate debtor failed to abide by the terms of loan and defaulted. IFCI Ltd. issued a notice dated 19.11.1999 recalling the entire principal amount disbursed to the corporate debtor including the interest and other amounts and called upon the corporate debtor to pay an amount of ₹4,40,90,557/- together with further interest w.e.f. 15.10.1999 and also interest on the credit limits on the Equipment Credit Scheme w.e.f. 01.11.1999. Copy of the recall notice is at Annexure 7.

10. Despite the aforesaid notice, the corporate debtor failed to pay due and payable amounts. IFCI Ltd., then filed OA No.390/2000 before the Debts Recovery Tribunal-I, Delhi under the provisions of Section 19 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Copy of the OA is at Annexure 8.

11. During the pendency of the said OA, the IFCI Ltd., assigned the debt in favour of Kotak Mahindra Bank (KMB) vide assignment deed dated 06.12.2006. KMB further assigned the debt by executing the assignment deed dated 16.06.2008 in favour of the petitioner. The name of the petitioner at that time was Dhir & Dhir Asset Reconstruction & Securitisation Company Limited, which was later on changed to petitioner company as already narrated in Para 2 of this judgment. The assignment deed is at Annexure 9 and the petitioner was substituted as an applicant before the DRT-I in OA No.390/2000 vide order dated 10.12.2008. The said OA was allowed by DRT-I, vide judgment dated 02.09.2015

and copy of the judgment is at Annexure 10 and concluding portion of the order of the Tribunal reads as under:-

- “i) I allow this OA and direct the defendants to pay within a period of 60 days a sum of Rs.37,23,302 alongwith pendentelite and future interest at the rate of 21% P.A. and Rs.4,69,03,470.00 alongwith pendentelite and future interest at the rate of 16.50% p.a. plus liquidating damages at the rate of 3.0612% and 2.10 p.a. respectively with effect from 1st July, 2000 till realization and the costs of the O.A. failing which the aforesaid amount shall be recovered from the sale of mortgaged properties i.e. No. 74, Murthal Industrial Estate, Phase-I, Tehsil & District, Sonapat, Haryana/hypothecated properties, if not already sold and other personal moveable and immovable assets of the defendant No.1. The applicant is also directed to file the revised statement of account before the learned Recovery Officer of this Tribunal.*
- ii) The recovery certificate be issued forthwith and be sent to the Recovery Officer, DRT-I, Delhi.*
- iii) The parties are directed to appear before the Ld. Recovery Officer on 10.10.2015. While taking the properties to task the Recovery Officer shall also issue a notice to the Official Liquidator who has filed the status report and defendant Nos. 4 and 5. The defendant No.4 has claimed that the charges created by defendant No.1 rank pari passu with the charges created by it in favour of IFCI without priority of one over the other. The Recovery Officer shall take into consideration while distributing the amounts realized. The applicant shall file the revised statement of account before the Recovery Officer.”*

12. Recovery Certificate dated 02.09.2015 was issued by DRT-I for a sum of ₹5,07,76,772/- (Page 11). DRT-I further directed that DRT-I granted pendent-lite interest @ 21% per annum and liquidated damages @ 3.0612% per annum on a sum of ₹37,23,302/- and pendent-lite and future interest @ 16.50% per annum and liquidated damages @ 2.10% per annum on a sum of ₹4,69,03,470/- from the date of filing of the OA till realization of amount in favour

of the (Financial Creditor herein) and against the corporate debtor and other defendants in the OA. The recovery Certificate is Annexure 11.

13. It is further stated that apart from the aforesaid facilities granted by IFCI Ltd., Indian Investment Bank of India (IIBI) also granted certain facilities to the corporate debtor which was to the tune of ₹250 lacs on 19.06.1997 and further loan of ₹315 on 06.02.1998. In this regard, the corporate debtor executed the medium term working capital loan agreement dated 19.06.1997 (Annexure 31), promissory note dated 09.06.1997 for ₹250 lacs (Annexure 32) and deed of hypothecation dated 19.06.1997 (Annexure 33) for the loan of ₹250 lacs. The personal guarantees dated 19.06.1997 are Annexure 34 (colly) and deed of undertaking dated 25.06.1997 is Annexure 35. The Memorandum of Entry dated 26.06.1997 is Annexure 36, for creation of equitable mortgage.

14. The loan agreement in respect of the second amount of ₹315 lacs is Annexure 37 dated 06.02.1998. Hypothecation Deed is Annexure 38 and Deed of Personal Guarantee Annexure 39, both dated 06.02.1998. The Deed of Undertaking dated 25.03.1998 is Annexure 40 and Memorandum of Entry relating to creation of the equitable mortgage is Annexure 41 dated 26.03.1998.

15. The corporate debtor failed to adhere to the repayment schedule and IIBI issued a recall notice dated 04.01.1999 (Annexure 12) calling upon the respondent-corporate debtor to pay the then outstanding amount to the tune of ₹6,20,29,868/- because of the default. For non-payment of the amount, the IIBI filed OA No.198 of 1999 before DRT-II, Delhi. Copy of OA is Annexure 13. IIBI assigned the debt in favour of Yes Bank Ltd. vide Assignment Deed dated 25.04.2007, copy of which is Annexure 14. Subsequently, Yes Bank assigned the debt further in favour of M/s Dhir & Dhir Asset Reconstruction & Securitisation

Company Limited (Page 185) vide Assignment Deed dated 21.02.2008 and copy of the assignment deed is Annexure 15. As already described, the name of the assignee was then changed to the name of the petitioner. Consequently, the name of the applicant before the DRT-II was substituted with the name of the applicant as an assignee. The DRT-II allowed the OA on 12.11.2009 and copy of the judgment is Annexure 16, as under:-

*“OA is allowed with costs. A recovery certificate of payment of Rs.6,64,96,997/- (Rupees Six crore sixty four lacs ninety six thousand nine hundred ninety seven only) by the defendants to the applicant bank alongwith pendentelite and furture interest thereon @ 12% per annum with quarterly rests on the said amount from the date of filing of suit i.e. 18/05/99 till the date of its full realization. This amount shall be recovered from the sale of hypothecated goods and the mortgaged property(ies) and the balance amount, if any, shall be recovered from the personal assets of the defendants, as per law.”*

Accordingly, the recovery certificate Annexure 17 was issued.

16. After the assignment of the debt due to IFCI Ltd. and Yes Bank in favour of the petitioner (financial creditor herein) a demand notice dated 17.07.2008 was issued under Section 13(2) of the SARFAESI Act, 2002 calling upon the corporate debtor to pay the entire dues to the financial creditor. The copy of the notice is at Annexure 18. The corporate debtor having failed to pay the amount, the financial creditor took physical possession of the property of the corporate debtor under Section 13(4) of the SARFAESI Act, on 28.11.2008. Copy of each of the notices under Section 13(4) of the SARFAESI Act alongwith the copy of the publication in the newspaper are collectively attached as Annexure 19(colly). The total amount in default against the corporate debtor as on 30.09.2018 is stated to be ₹1,14,90,76,067/- and the working and computation of the amount claimed to be in default is attached at Annexure 20 (colly) (page 235),

which is certified in terms of the Banker's Book Evidence Act. Annexure 21 is certificates of the charge filed with the Registrar of Companies and in that regard the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (page 531) has also prepared the search report Annexure 42. The petitioner-financial creditor also attached the audited financial statement of the company for the Financial Year(s) 2008-09 which is at Annexure 44.

17. Notice of this petition was issued to the respondent-corporate debtor to show cause as to why this petition be not admitted. Mr. Mayur Kanwar, Advocate who was present accepted the notice on behalf of respondent and filed the Memo of Appearance. The matter was adjourned to 29.01.2019 for enabling the respondent to file the reply/objections to the petition. Mr. Mayur Kanwar, Advocate filed his Power of Attorney alongwith the Board Resolution in favour of the Director of the company who has given the Power of Attorney to the learned counsel. The learned counsel for the respondent made a statement that the corporate debtor does not oppose the application and therefore, the reply is not required to be filed.

18. We have heard the learned counsel for the parties and carefully perused the records.

19. There is no dispute in default of payment of financial debt, the application has been filed in Form 1 as prescribed in Section 4(1) of the Rules. The petitioner, therefore, has complied with the requirements of sub-sections (1) and (2) of Section 7 of the Code.

20. Section 7(3) of the Code reads as under:-

*“(3) The financial creditor shall, along with the application furnish-*  
*(a) record of the default recorded with the information utility or*  
*such other record or evidence of default as may be specified;*



*(b) the name of the resolution professional proposed to act as an interim resolution professional; and*

*(c) any other information as may be specified by the Board.”*

21. To fulfill Clause (a) of Section 7(3) of the Code, the petitioner has brought enough evidence while narrating the facts of the case and the most prominent as the decree passed by the Debt Recovery Tribunals in two OAs filed by the petitioner. There is no arguments raised for the corporate debtor that the applicant in Form 1 lacks any particulars. Rather the contention raised was that the respondent-corporate debtor is not to file any objections/reply to the petition.

22. To comply with the requirement of Clause (b) of Section 7(3) of the Code the petitioner-financial creditor in Part-III of the application proposed the name of Mr. Arunava Sikdar a registered Resolution Professional to be appointed as Interim Resolution Professional in case the application is admitted. The Resolution Professional has furnished the written communication in Form 2 as prescribed in Rule 9(1) of the Rules, which is at Annexure 6. All the necessary particulars as required in the Form have been furnished. It is certified that there are no disciplinary proceedings pending against him with the IBBI or ICAI or Insolvency Professionals Agency. He is appointed as the Resolution Professional in one case but not acting as Interim Resolution Professional/Liquidator in any other proceedings.

23. We have perused the written communication in Form 2. The same is found in order and even no defect has been pointed out on behalf of the respondent-corporate debtor.

24. In view of the above, the petition is liable to be admitted in terms of Clause (i) of Section 9(5) of the Code. The petition, therefore, is admitted and

moratorium declared in terms of sub-section (1) of Section 14 of the code as under:-

- (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 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.

25. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

26. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench

approves the resolution plan under sub-section (1) of Section 31 or pass an order for liquidation of corporate debtor under Section 33 as the case may be.

27. In view of the above, the following directions are issued in respect of the appointment of the Interim Resolution Professional:-

- i) Appoint Mr. Arunava Sikdar, registered insolvency professional bearing Registration No. IBBI/IPA-001/IP-P00022/2016-17/10047, Mobile No. 98100-63161, email ID: [arunava.sikdar65@gmail.com](mailto:arunava.sikdar65@gmail.com) as Interim Resolution Professional.
- ii) The term of appointment of Mr. Arunava Sikdar shall be in accordance with the provisions of Section 16(5) of the Code;
- iii) In terms of Section 17 of 'the Code', from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the 'Corporate Debtor' shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the 'Code', including taking control and custody of the assets over which the 'Corporate Debtor' has ownership rights recorded in the balance sheet of the 'Corporate Debtor' etc. as provided in Section 18 (1) (f) of the 'Code'. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the 'Corporate Debtor';

- iv) The Interim Resolution Professional shall strictly act in accordance with the 'Code', all the rules framed thereunder by the Board or the Central Government and in accordance with the 'Code of Conduct' governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- v) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the 'Code' read with Section 15 calling for the submission of claims against 'Corporate Debtor';
- vi) It is hereby directed that the 'Corporate Debtor', its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the 'Corporate Debtor' as a going concern and extend all cooperation in accessing books and records as well as assets of the 'Corporate Debtor';
- vii) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of

the committee within seven days of filing the report of constitution of the committee; and

- viii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith at his e-mail address. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Pronounced in open court

Sd/-  
(Pradeep R. Sethi)  
Member (Technical)

Sd/-  
(Justice R.P. Nagrath)  
Member(Judicial)

February 13, 2019  
Yashpal