

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CP (IB) -2047/MB/2018  
Under Section 7 of the I&B Code, 2016  
In the matter of

Axis Bank Limited  
Trishul, 3<sup>rd</sup> Floor, Opp: Samartheswar  
Temple, Near Law Garden, Ellisbridge,  
Ahmedabad – 380006.  
.... Financial Creditor

Vs.

Alok Infrastructure Limited  
Peninsula Business Park, Tower B, 2<sup>nd</sup> &  
3<sup>rd</sup> Floor, Ganpatrao Kadam Marg, Lower  
Parel, Mumbai- 400013.  
.... Corporate Debtor

Order delivered on: 24.10.2018

Coram:  
Hon'ble Mr. Bhaskara Pantula Mohan, Member (J)  
Hon'ble Mr. V. Nallasenapathy, Member (T)

For the Petitioner: Chetan Kapadia, a/w. Priyanka Fadia i/b. Shashank Fadia

For the Respondent: Rohit Gupta a/w. Petrukshka Das Gupta i/b. M/s.  
Haresh Jagtiani and Associates.

*Per: V. Nallasenapathy, Member (T)*

**ORDER**

1. This Petition is filed by the Petitioner / Financial Creditor, Axis Bank Limited (hereinafter called as "Petitioner"), against Alok Infrastructure Limited (hereinafter called "Corporate Debtor"), seeking to set in motion the Corporate Insolvency Resolution process under section 7 of the Insolvency & Bankruptcy Code, 2016 (the Code) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority), Rules 2016, on the ground that the Respondent defaulted in making payment of a sum of Rs. 100,32,11,439/- as on 03.06.2018, including interest and the date of default being 30.06.2016.
2. The Petition reveals that the Petitioner sanctioned a Line of Credit Loan in the form of Overdraft Facility to the extent of Rs. 80 crores on 26.06.2015. Subsequently certain modifications were made in the terms and conditions of overdraft facilities vide sanction letter dated 01.07.2015 and 06.07.2015. On 2<sup>nd</sup> July, 2015 a line of credit agreement was entered into

between the petitioner and the Corporate Debtor and the same is enclosed with the petition. Further the following documents were enclosed to the petition in support of the loan;

- i) First charge on the entire current assets of the Corporate Debtor (except those charged to NCD holders);
- ii) Second charge on the movable fixed assets of the Corporate Debtor;
- iii) Subservient charge on the cash flows generated from the sale of residential units in "Ashford Royale";
- iv) Unconditional, irrevocable and continuing Deed of Guarantee dated 2<sup>nd</sup> July, 2015 executed by Mr. Surendra B. Jiwrajka in favour of the Financial Creditor;
- v) Unconditional, irrevocable and continuing Deed of Guarantee dated 17<sup>th</sup> July, 2015 executed by Mr. Ashok B. Jiwrajka in favour of the Financial Creditor;
- vi) Undertaking dated 2<sup>nd</sup> July, 2015 executed by Corporate Debtor in favour of the Financial Creditor;
- vii) Deed of undertaking cum Indemnity dated 2<sup>nd</sup> July, 2015 executed by Corporate Debtor in favour of the Financial Creditor;
- viii) Certificate under Section 2A(a) of the Banker's Book Evidence Act, 1891 along with statement of accounts;
- ix) Demand promissory note dated 2<sup>nd</sup> July, 2015 executed by Corporate Debtor in favour of the Financial Creditor;
- x) D. P. Note delivery cum Waiver letter executed by Corporate Debtor in favour of the Financial Creditor;
- xi) Composite Hypothecation deed executed by Corporate Debtor in favour of the Financial Creditor.

3. The Petitioner by a notice dated 02.02.2018 demanded a sum of Rs.97,28,22,336/- including interest from the Corporate Debtor towards the balance due for the line of credit facility. The petitioner submits that the balance due as on 3<sup>rd</sup> June, 2018 is Rs. 100,32,11,439/-.

4. In view of the above discussion it is clear that the debt is due and the Corporate Debtor has committed default in repaying the debt due.

5. The Learned Counsel appearing on behalf of the Corporate Debtor submits that a Petition filed by State Bank of India against M/s. Alok Industries Ltd., which is the holding Company of this Corporate Debtor, was admitted by NCLT, Ahmedabad in CP No. 48/7/NCLT/2017 on 18.07.2017. Consequently, an Insolvency Resolution Professional has taken control over Alok Industries Ltd., thereafter the committee of Creditors of Alok Industries Ltd. approved a resolution plan on 20.06.2018 and the resolution plan is pending for approval before NCLT, Ahmedabad. The Counsel further submits that initiation of CIRP against subsidiary of holding Company which is under CIRP amounts to enforcement action or coercive action as contemplated under Section 14 (1) (a) of the Code and hence the Petition deserves to be rejected.

6. Section 14(1)(a) provides as below:

"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."

7. The above section of the Code speaks about moratorium for prohibiting institution of suits or continuation of pending suits against the **Corporate Debtor** including execution of any judgment, etc. It does not speak about initiation of CIRP against the subsidiary of the Corporate Debtor. Initiation of CIRP against a subsidiary of a Corporate Debtor (under CIRP) will not be hit by Section 14(1)(a) moratorium by any stretch of imagination. Further, in the eyes of law a subsidiary company is a distinct entity just like how a holding company is a distinct legal entity. In view of this the contention of the Corporate Debtor herein is far-fetching and cannot be accepted. Further, the present proceeding is completely different and as far as the Corporate Debtor is concerned there is a debt and there is a default. This is what is required to be seen as per law.

8. The Counsel for the Corporate Debtor further submits that the Petitioner can make a claim before the Resolution Professional of Alok Industries Ltd., which is the holding Company of the Corporate Debtor herein as provided under Section 60 (5) of the Code which is reproduced below:-

*"Section 60 (5) of the Code: Notwithstanding anything to the contrary contained in any other law for the time being in force., the National Company Law Tribunal shall have jurisdiction to entertain or dispose of –*

- (a) *any application or proceeding by or against the corporate debtor or corporate person;*
- (b) *any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and*
- (c) *any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code."*

9. The Counsel further submits that in view of the provisions of Section 60(5)(b) this Petitioner ought to have approached the Resolution Professional of Alok Industries Ltd. before initiating the present proceedings and therefore NCLT, Ahmedabad will have jurisdiction to decide the present petition. This contention of the Corporate Debtor cannot be accepted in view of the fact that even though the Corporate Debtor is a subsidiary of a Holding Company against which CIRP proceedings are pending before NCLT, Ahmedabad, the registered office of the Corporate Debtor is situated within the jurisdiction of this Tribunal and further this proceeding is independent of the other proceedings or claims pending against the holding company.

10. Section 60 of the Code provides as below:

*"(1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.*

*(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or bankruptcy of a personal guarantor of such corporate debtor shall be filed before such National Company Law Tribunal.*

*(3) An insolvency resolution process or bankruptcy proceeding of a personal guarantor of the corporate debtor pending in any court or tribunal shall stand*

*transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.*

*(4) The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2).*

*(5) .....*

*(6)...."*

11. This Tribunal certainly has jurisdiction to entertain the Company petition in view of Section 60(1) of the Code. It is to be noted that Section 60(1) provides jurisdiction to the NCLT where CIRP is ordered against the Corporate Debtor in respect of insolvency resolution of personal guarantors only, but the insolvency resolution of a subsidiary company of the Corporate Debtor is not included here, may be due to the reason that the CIRP against the subsidiary company shall be initiated in the jurisdictional NCLT. That being the case, the Corporate Debtor herein cannot take shelter under Section 60(5)(b) which speaks about the jurisdiction of NCLT in respect of claims by or against the Corporate Debtor (not in respect of initiation of CIRP) including the subsidiary of the Corporate Debtor but that cannot lead to a conclusion that CIRP of a subsidiary of a Corporate Debtor against whom CIRP is to be initiated, shall be dealt with by the same NCLT where the Corporate Debtor (holding company) is undergoing CIRP despite the fact that the registered office of the subsidiary falls under the jurisdiction of another NCLT. In view of this, the contention of the Corporate Debtor that NCLT, Mumbai bench does not have jurisdiction will not hold water.

12. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

- (I) (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 (SARFAESI Act);

(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.

(II) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(IV) That the order of moratorium shall have effect from 24.10.2018 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

(VI) That this Bench hereby appoints Mr. Birendra Kumar Agrawal, F-1901, Whispering Palms Xclusive, Lokhandwala Township, Akurli Road, Kandivali East, Mumbai - 400 101 Email:- [bk@bhamaconsulting.com](mailto:bk@bhamaconsulting.com), having Registration No. IBBI/IPA-001/IP-P00564/2017-18/11040 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

13. Accordingly, this Petition is admitted.

14. The Registry is hereby directed to communicate this order to both the parties and also to the Insolvency Resolution Professional within seven days from the date the order is made available.

Sd/-

V. NALLASENAPATHY  
Member (T)

sd/-

BHASKARA PANTULA MOHAN  
Member (J)