



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

CP (IB) No. 1060/MB/2023

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

ENCORE ASSET RECONSTRUCTION COMPANY PRIVATE LIMITED

[CIN: U74140DL2013PTC259641]

Registered Office: Caddie Commercial Tower, 5th Floor
Regus Business Centre, Aerocity (Dial)
New Delhi-110037.

...Financial Creditor

V/s

TIRUPATI POLYPLAST IRRIGATION SYSTEMS PRIVATE LIMITED

[CIN: U01403MH2015PTC262580]

Registered Office: J-22, MIDC Area
Jalgaon-425003, Maharashtra.

...Corporate Debtor

Pronounced: 04.04.2025

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Financial Creditor: Adv. B. Gopalakrishnan a/w. Adv. Nitesh Ghadge, Adv.
Ashish Dalal, Adv. Ishvi Jain & Adv. Gauri Nar i/b. BGK
Law Associates

Corporate Debtor: Adv. Darshan Sahuji a/w. Shreyas Deshpande i/b. Adv.
Shilpa Talhar

ORDER**[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]****1. BACKGROUND**

1.1 This C.P. (IB) No. 1060/MB/2023 (Application) was filed on 28.07.2022, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AAA Rules) by Encore Asset Reconstruction Company Private Limited, the Financial Creditor (FC), through Mr. Sagar Ravindra Muley, Deputy Manager of the FC, authorised *vide* Authority Letter dated 13.12.2021, for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Tirupati Polyplast Irrigation Systems Private Limited, the Corporate Debtor (CD).

1.2 The total amount of default alleged is Rs.4,34,94,573/- (Four Crore Thirty-Four Lakh Ninety-Four Thousand Five Hundred Seventy-Three Rupees) as on 31.12.2021, including the principal amount of Rs.3,14,01,000/- along with Rs. 1,11,40,163/- as monthly interest, calculated from 01.01.2020 to 31.12.2021 at the rate of 12% per annum and the amount of Rs.14,91,504/- as penal interest calculated at the rate of 2% per annum. It is based on default in repayment of the loan for Rs.3,40,00,000/- availed of by the CD from Jalgaon Peoples Co-Operative Bank Limited (Original Lender).

1.3 The date of default as mentioned in Part-IV of the Application is 29.07.2019, i.e., the date on which the CD's account was classified as Non-Performing Asset (NPA) by the Original Lender. Since the CD defaulted in payment of its outstanding dues, the FC prayed that CIRP may be initiated in respect of the CD under Section 7 of the IBC.



2. CONTENTIONS OF FC

2.1 The Original Lender is a multi-State Scheduled Co-Operative Bank registered under the Multi-State Co-Operative Societies Act, 2002, while the CD is a private company, engaged in the manufacture of Drip Irrigation system, Agri pipes and allied articles. For business purposes, the CD sought credit facilities from the original lender *vide* its Loan Application dated 27.10.2016, and obtained loan of Rs.3,40,00,000/- comprising of Rs.1,90,00,000/- as Term Loan and Rs.1,50,00,000/- as Cash Credit Facility. It is submitted that the CD passed the Board Resolutions dated 18.10.2016 and 16.10.2017 to seek loans/facilities from the Original Lender.

2.2 To secure the said Credit facilities, the CD executed various documents which are as follows:

- a) Agreement for Hypothecation of Goods dated 14.12.2016 and 15.12.2016;
- b) CD's Letter of undertaking dated 14.12.2016 regarding book debt facility;
- c) CD's revival letter dated 14.12.2016 for cash credit facility;
- d) Guarantee Agreement dated 14.12.2016 and 15.12.2016;
- e) General Undertaking dated 14.12.2016 and 15.12.2016;
- f) Letter of Continuity dated 14.12.2016 for Demand Promissory Note;
- g) Irrevocable Power of Attorney dated 15.12.2016 in favour of the Original Lender regarding Term Loan;
- h) Master undertaking from the CD's Director over cash credit facility for Rs.1,00,00,000/-;
- i) Demand Promissory Note dated 14.12.2016 & 15.12.2016 for Cash Credit Facility and Term Loan respectively;
- j) Term Loan Agreement dated 15.12.2016;



- k) Simple Mortgage Deed dated 19.01.2017;
- l) Loan Application dated 13.10.2017 for renewal/additional working capital;
- m) Mortgage Deed by way of Additional Affidavit dated 10.11.2017; and
- n) Certificates of Charge Registration dated 17.07.2020.

2.3 The said loan amount of Rs. 3,40,00,000/- was granted to the CD by the Original Lender *vide* Sanction Letter dated 17.11.2016 for Term Loan and Sanction Letters dated 17.11.2016 and 23.10.2017 for Cash Credit Facility. However, due to default in repayment of the aforesaid loan by the CD, its loan account was declared as NPA on 29.07.2019. The FC placed a copy of statement of accounts from 01.01.2020 to 31.12.2021 along with the Certificates dated 29.02.2020 under Sections 2(a) to (c) of the Bankers' Books Evidence Act, 1891 on record to show the part-payments by the CD totalling Rs.5,38,727/- on 30.03.2020 and 31.03.2020, made to the Original Lender.

2.4 The Original Lender issued demand notice dated 01.11.2019 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) to the CD seeking repayment of Rs.3,26,18,341/- along with interest.

2.5 The CD had acknowledged the debt and sought settlement of dues through One Time Settlement (OTS) mechanism *vide* its undated letter to the Original Lender's Authorised Officer and OTS letters dated 05.07.2020; 16.06.2021 and 27.11.2021 to the FC. In the said OTS letters, the CD cited the ground of Demonetisation and COVID-19 Pandemic for its inability to repay the debts and attempted to settle its dues for an amount of Rs.3,00,00,000/-. Further, the CD's undated OTS letter was received by the Original Lender on 12.03.2020, which



is subsequent to the issuance of the Original Lender's SARFAESI notice on 01.11.2019.

2.6 Subsequently, the loan account of the CD was assigned by the Original Lender, viz., Jalgaon Peoples Co-Operative Bank Limited, in favour of the FC, *vide* Assignment Agreement dated 25.06.2020. The FC placed the CD's record of financial information on the Information Utility (IU) as on 30.04.2021, regarding the term loan and cash credit facility.

2.7 The Application is not barred by limitation since it was actually filed on 28.07.2022, which is within the limitation period from the date of default i.e., 29.07.2020. Further, the period of 15.03.2020 to 28.02.2022 has to be excluded for determining limitation as per Hon'ble Supreme Court's decision in *In Re: Cognizance for Extension of Limitation.*, [M.A. No. 21 of 2022 in MA No. 665 of 2021 in Suo Motu Writ Petition (Civil) No. 3/2020]. As the CD had already acknowledged its debt owed to the FC through various OTS letters within the limitation period, the period for filing the Application got extended with the OTS letters.

3. CONTENTIONS OF CD

3.1 The Application is barred by limitation as the date of default is 29.07.2019, as mentioned in the Part-IV of the Application, while the same seems to have been filed in 2023, which is beyond the period of three years from the date of default as per Article 137 of the Limitation Act, 1963.

3.2 This Bench observed that the CD sought time to explore the possibility of settlement as evident from order dated 19.04.2024. However, the settlement did not materialise. Further, despite seeking time for filing its reply, the CD failed to



file Affidavit-in Reply or any other document to challenge the FC's contentions. Pursuant to this, this Tribunal directed the CD to pay the cost of Rs. 50,000/- to the FC *vide* order dated 19.01.2024. Since the CD was very much represented by Counsel, and sought time for settlement, the Bench did not set it *ex-parte* but heard its Counsel in detail.

4. ANALYSIS AND FINDINGS

4.1 We have perused all the documents and pleadings and heard both the Ld. Counsel for the FC and the CD.

4.2 The sole issue to be determined in C.P. (IB) No. 1060/MB/2023 is limitation.

4.3 As far as the issue of limitation is concerned, we observe that the Application was filed on 28.07.2022, while the date of default mentioned in Part-IV of the application is 29.07.2019 i.e., date of declaration of CD's accounts as NPA. Even if we do not consider the date of NPA declaration as default date, the fact that the CD not only made the last part-payment of Rs4,99,950/- on 31.03.2021 but also issued the OTS proposals *vide* its letters dated 05.07.2020; 16.06.2021 and 27.11.2021 to the FC and its undated OTS proposal to the Original Lender demonstrate that the CD acknowledges the debt and liability for default towards the FC. Since the OTS proposals were issued before the expiry of prescribed period of limitation, it can be concluded that the limitation period for filing the present Application got extended. The Principal Bench of the Hon'ble NCLAT, New Delhi in *Tejas Khandhar Vs. Bank of Baroda.*, [Company Appeal (AT) (Insolvency) No. 371/2020] held that the OTS proposal falls within the ambit of '*acknowledgement of debt*' as defined under Section 18 of the Limitation Act,



1963. Thus, we conclude that the present Application is filed within the limitation and the issue of limitation is decided in favour of the FC.

4.4 Regarding the debt and default, it is evident from the OTS proposals issued by the CD that the CD failed to repay the outstanding dues towards the FC. The Charge Numbers upon the assets of the CD's assets as per the Certificates of Charge Registration dated 17.07.2020, matches with the charges mentioned in the CD's master data. Apart from raising the ground of limitation, the CD failed to challenge the debt and default on its part by providing any evidence or written document in its support. There is nothing to indicate that the CD has ever repaid the debt and liability as admitted by them and hence it is in default of the amount as pleaded by the FC. Thus, we hold that the FC has successfully demonstrated and proved the debt and default in this case. It is reiterated that the CD admits the said outstanding debt. Therefore, we are of the considered view that this Application is complete and satisfies all the necessary requirements for admission under Section 7 of the IBC.

4.5 The FC has proposed the name of Mr. Indrajit Mukherjee, a registered Insolvency Professional having Registration Number- IBBI/IPA-001/IP-P-01533/2018-2019/12450, as the Interim Resolution Professional (IRP), to carry out the functions as mentioned under the IBC. The proposed IRP has given its written consent and the same is placed on record. It is also certified in Form 2 that no disciplinary proceedings are pending against him.

ORDER

In the result, this Application bearing **CP(IB) No. 1060/ND/2023** under Section 7 of the IBC read with Rule 4 of the AAA Rules, filed by Encore Asset Reconstruction Company Private Limited, the FC, for initiating CIRP in respect of Tirupati Polyplast Irrigation Systems Private Limited, the CD is **admitted**.

We further declare moratorium u/s 14 of the IBC, with consequential directions as follows:

I. We prohibit-

- a) the institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the SARFAESI Act;
- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.

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

III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under section 31(1) of the IBC or passes an order for the liquidation of the CD under section 33 thereof, as the case may be.



- IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Indrajit Mukherjee**, a registered Insolvency Professional having **Registration Number- IBBI/IPA-001/IP-P-01533/2018-2019/12450** and **e-mail- indrajitmukherjee15@yahoo.com**, having valid Authorisation for Assignment up to **31.12.2025** as the IRP to carry out the functions under the IBC. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.
- VI. That during the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of IBC. The officers and managers of the CD are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the CD. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the IBC. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.
- VII. In exercise of the powers under Rule 11 of the NCLT Rules, we order the FC to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the FC on priority upon the funds

available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- VIII. A copy of this Order be sent to the Registrar of Companies, Mumbai Maharashtra, for updating the Master Data of the CD.
- IX. Registry is directed to immediately communicate this Order to the FC, the CD and the IRP by way of e-mail and WhatsApp, not later than two days from the date of this Order.
- X. The Registry is directed to communicate electronic version of this order to the Insolvency and Bankruptcy Board of India forthwith for information and record.
- XI. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

//Tanmay Jain//