

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III
(IB)-40(ND)/2023

Order 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.

IN THE MATTER OF:

M/s. ASREC (India) Ltd.

.... Financial Creditor

Vs.

M/s. Shree Industries Ltd.

[Erstwhile known as M/s. Rama Finance Ltd.]

.... Corporate Debtor

Order delivered On: 13.12.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Petitioner : Mr. Shahrukh Inam, Ms. Usha Singh, Advs.

For Respondent : Mr. Ratan K. Singh, Sr. Adv., Ms. Pallavi Anand, Adv.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This application has been filed by M/s. ASREC (India) Ltd. under Section 7 of IBC, 2016 seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against M/s. Shree Industries Ltd. [previously known as M/s. Rama Finance Ltd.], the Corporate Debtor herein.

2. Description of the Parties:

- i. The Applicant Company was incorporated on 25.11.2003, as a Union Govt. Company having CIN:U67100MH2003GOI143291, under the erstwhile Companies Act, 1956 with the Registrar of Companies, Mumbai. The Authorised Share Capital of the Applicant Company is Rs. 125,00,00,000/- (Rupees One Twenty

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- Five Crore Only) and the Paid-up Share Capital of the Applicant Company is Rs. 98,00,00,000/- (Rupees Ninety Eight Crore Only).
- ii.** The Respondent Company was incorporated on 16.01.1985, as a Company Limited by Shares (Non- govt. Company) having CIN:U74210DL1985PLC019851, under the erstwhile Companies Act, 1956 with the Registrar of Companies, NCT of Delhi and Haryana. The Authorised Share Capital of the Respondent Company is Rs. 3,27,00,000/- (Rupees Three Crore Twenty Seven Lakh Only) and the Paid-up Share Capital of the Respondent Company is Rs. 3,27,00,000/- (Rupees Three Crore Twenty Seven Lakh Only).
3. The Bank of Baroda under a consortium arrangement with the Gujarat State Financial Corporation ("GSFC"), Gujarat Industrial Investment Corporation ('GIIC') and Dena Bank had advanced financial assistance to M/s. Ganpati Pulp and Paper Ltd. (GPPL) against the security of fixed assets of the said company.
4. Under the said consortium loan arrangement, the consortium bank/financial institutions had advanced the following amounts to M/s. Ganpati Pulp and Paper Ltd (GPPL) by way of Term Loans and had charge on the immovable properties and hypothecated plant and machinery by way of pari passu charge on fixed assets, which are as follows:
- “Rs. 30.00 lakhs provided by Gujarat State Financial Corporation ("GSFC"),*
- Rs. 60.00 lakhs provided by Gujarat Industrial Investment Corporation ('GIIC'),*
- Rs.16.50 lakhs provided by Bank of Baroda and*
- Rs.16.50 lakhs provided by Dena Bank”*
5. Thereafter, Gujarat State Financial Corporation ("GSFC") published a sale notice dated 27.08.1990 for the sale of assets of M/s. Ganpati Pulp and Paper Ltd (GPPL). In response to the said sale notice, the Corporate Debtor/M/s. Shree Industries Ltd [previously known as M/s. Rama Finance Company Ltd.] purchased the said

property/assets by bidding the highest amount to the tune of Rs. 3.88 crores which was confirmed by Gujarat State Financial Corporation ("GSFC"). Upon confirmation of said sale, Corporate Debtor/M/s. Shree Industries Ltd. was put in possession of the assets of M/s. Ganpati Pulp and Paper Ltd (GPPL) by Gujarat State Financial Corporation ("GSFC") by virtue of an Agreement executed between the Corporate Debtor and the consortium lenders/members on 27.11.1990.

6. The Corporate Debtor/M/s. Shree Industries Ltd. under the terms and conditions of the aforementioned Agreement was required to pay a sum of Rs. 50.00 lacs as a down payment and the balance sale consideration was converted into a loan by the consortium members as per the terms and conditions as mentioned in the said Agreement dated 27.11.1990. After the payment of Rs. 50.00 lacs, by virtue of the said Agreement, Gujarat State Financial Corporation ("GSFC") as well as other consortium members became lenders and the Corporate Debtor, M/s. Shree Industries Limited became a Corporate Debtor for the amount of the balance purchaser price, which the Corporate Debtor had to pay to the Consortium members. The Consortium Members, therefore attained the status of Financial Creditor of the Corporate Debtor, M/s. Shree Industries Ltd.
7. The Corporate Debtor paid a sum of Rs. 2.47 Lacs to Applicant and after accounting and adjusting towards the debts, a sum of Rs. 92,35,21,674.03/- remained unpaid to Applicant by Corporate Debtor as on 30.06.2022.
8. In the year 1996-1997, the Corporate Debtor was constrained to refer its case to the Board of Industrial Financial Reconstruction (BIFR) and the case of the Corporate Debtor came to be registered as Case No. 129 of 1997. In the said proceedings, Corporate Debtor was declared as a sick company within the meaning of Section 3(i)(o) of the Sick Industrial Companies (Special Provision) Act, 1985 (SICA) vide the order dated 19.07.1997 passed by the Board of Industrial Financial Reconstruction (BIFR), and the said authority was pleased

to direct Industrial Finance Corporation of India (IFCI), the Operating Agency (OA) to formulate a draft rehabilitation scheme and rehabilitation process is in process, however, by virtue of the said order, Corporate Debtor continued to be a sick company. The order dated 19.07.1997 was challenged by GSFC before AAFIR and then to Hon'ble Supreme Court by way of SCA 11116/2008, wherein at the interim stage vide an order dated 26.02.2009, the parties were directed to maintain status quo qua property in question. Thereafter for a decade, the matter at length was heard, and vide an order dated 26.07.2022 passed in SCA No. 11116/2008 came to be disposed of subject to claim or counter claim issue of the parties in the matter to be considered and decided by the NCLT afresh.

9. In the intervening period, by virtue of an Assignment Agreement dated 29.03.2011, the Financial Creditor/Applicant herein acquired the Financial assets/Debts of M/s. Ganpati Pulp and Paper Mills Ltd. (GPPL)/the Corporate Debtor, M/s. Shree Industries Ltd. from the Assignor Bank i.e. Bank of Baroda.
10. Thereafter an OTS proposal dated 15.03.2016 was submitted by the Corporate Debtor whereby the Corporate Debtor offered to pay a sum of Rs. 5.75 Crores which the Corporate Debtor failed to comply and hence defaulted.
11. Since the litigation was pending before the Hon'ble High Court of Gujarat, the Hon'ble Court has taken a holistic view in the order dated 17.02.2021, wherein since no effective resolution of the matter was happening, either by payment to the secured creditors and other secured creditors nor secured creditors were allowed to take further recovery measures, subject to the rights of the various parties involved in the matter, therefore as an interim measure, the Hon'ble High Court has taken an appropriate view to modify the aforesaid blanket status quo order with a direction to Corporate Debtors to undertake the negotiation process of settlement of the dues and try to settle the dues.

12. In pursuance of the directions dated 17.02.2021, the Corporate Debtor as well Applicant exchanged the correspondences and fixed Schedule for the negotiation process of settlement, the Corporate Debtor vide letter dated 04.03.2021 addressed to the Applicant/Financial Creditor herein, proposed for settlement and acknowledged its dues and requested the Applicant/Financial Creditor to settle the dues of Financial Creditor.
13. The Corporate Debtor defaulted in payment and the total amount of debt in default (i.e. overdue) from the Corporate Debtor is Rs. 92,35,21,674.03 /- as on 30.06.2022.
14. The Applicant has sent the notice of default dated 01.03.2021 with regard to the outstanding amount payable by the Corporate Debtor to the Applicant herein.
15. The Corporate Debtor has failed to fulfill its obligations under the Agreement dated 27.11.1990 towards the Applicant/Financial Creditor herein.
16. The Applicant has filed and relied upon the following financial documents executed between the Financial Creditor and Corporate Debtor:

- “i. Letter dated 07.11.1990 addressed to Rama Finance Corporation Limited (Now SIL i.e. Shree Industries Limited) shown interest for purchase of asset i.e. Plant and Machinery and Land and Building of GPPL (Borrower Company assets) power conferred under Section 29 of SFCs Act, 1951*
- ii. Deed of Guarantee dated 12.12.1990 executed by Corporate Debtor.*
- iii. Registered Assignment Agreement dated 29.03.2011.*
- iv. Proposal Letter 15.03.2016 issued by Corporate Debtor*
- v. OTS Sanction letter dated 23.03.2016 issued by Applicant”*

17. The Applicant has also filed a record of default issued by the NeSL, the Banker's Certificate as per Banker's Books Evidence Act and Ledger Account maintained by the Financial Creditor in respect of the loan facility extended to Corporate Debtor.
18. The Applicant has issued a notice of default dated 01.03.2021 to the Corporate Debtor since the Corporate Debtor has failed to make the payment.
19. The Respondent (Corporate Debtor) has filed its reply affidavit denying the averments and allegations made by the Financial Creditor in the application filed under Section 7 of the IBC, 2016.
20. The Respondent has submitted that the Applicant has suppressed many relevant materials and therefore, is guilty of *suppressio veri* (suppression of true fact) and *suggestio falsi* (suggestion of false fact).
21. The Respondent has submitted that the Applicant is the successor in interest of one of the consortium members, namely Bank of Baroda, which had a 14.25% stake in the assets which were agreed to be sold in favour of the Respondent.
22. The claim of the Applicant is purportedly based on a loan agreement and the Applicant is claiming to be a Financial Creditor on the basis of the said loan agreement.
23. The Respondent has submitted that the said agreement was in fact a sale agreement but not a loan agreement. In this context, the Respondent has placed reliance on the relevant clauses of the agreement which are as follows:

"2. Out of the purchase price, payment of Rs.50,00,000/- (Rupees fifty lacs) (inclusive of the earnest money deposit of Rs.10.00 lacs) shall be made as "down payment" by the purchaser within a period of thirty days (30 days) from the date of execution of these presents, failing which earnest money deposit of Rs. 10.00 lacs shall stand forfeited to GSFC and it will be open to GSFC to accept the offer of the second highest bidder and call for payment.

3. The balance amount of Rs.3,38,00,000/- (Rupees three hundred thirty eight lacs) shall be paid by the purchaser to the Corporation within a period of five years in 20 (twenty) equal quarterly installments commencing from 1-5-1991.

4. The purchaser shall pay interest on the balance amount of Rs.338.00 lacs calculated at the rate of 16% per annum (gross) (including the period of moratorium) with half-yearly rests on 31st January and 31st July of every year. The amount of interest shall be paid regularly over and above the instalments of principal mentioned in Clause 3 above.

4.1 The purchaser shall be eligible to rebate in interest calculated at the rate of 1% per annum if all the amount of principal and interest referred to above are paid within the stipulated time as mentioned hereinabove. However, if there is any default or delay in payment as aforesaid, the purchaser shall pay penal interest at the rate of 6% per annum over and above the aforesaid interest at the rate of 15% per annum for the amount in default and for the period in default.

5.1 The amount of bank guarantee, Corporate guarantee and/or personal guarantee shall be for the balance amount due and payable by the purchaser inclusive of interest, cost and other expenses mentioned in this agreement.

6. On payment of Rs.50.00 lacs and on furnishing guarantee in favour of the financial institutions as mentioned above for securing the balance purchase prices, the GSFC shall handover possession of the assets of the Company to the purchaser on behalf of the financial institutions referred to above.

7. In case of the purchase furnishing corporate guarantee or collateral security as per clause 5(i) or 5(ii), until the entire sale consideration is paid in accordance with the terms and

conditions stipulated herein, the assets of the Company shall be subject to the charge for the amount of the sale consideration, and the purchaser shall hold the assets of the Company on behalf of GSFC, GIIC, BOB and DNB.

14. *The purchaser shall not dispose by way of sale, mortgage, lease, licence or gift any immovable property i.e., Land, building, plant and machinery of the Company, save and except stock in trade, manufactured goods etc., which are required to be disposed of for day-to-day business of the purchaser for carrying on the business of the Company, nor alienate possession of the assets of the company, till the entire amount of sale consideration is paid off as per these terms and conditions.*

20. *The possession of the assets of the Company will be handed over to the Purchaser on receipt of the down payment stipulated in these presents and after execution of the requisite legal documents by the purchaser.*

24. *The charge of the financial institutions on the assets of the Company shall continue to operate so long as full purchase price with stipulated interest, cost, charges and expenses is not paid to GSFC.*

25. *The GSFC shall release and pass on clear title in favour of the Purchaser on realising the full balance amount of Rs.338.00 lacs (Rupees three hundred thirty eight lacs) together with interest thereon as mentioned hereinabove and till then the purchaser shall be deemed to beholder of the assets of the Company in due course.”*

24. The Respondent has further submitted that the lead member of the consortium, i.e., GSFC had submitted a representation dated 29.09.2006 before the BIFR in Case No. 129/97 stating therein that:

"The original unit M/s. Ganpati Pulp and Paper Mills Ltd. was sold out to the Applicant unit M/s. Shree Industries Ltd. by the Corporation on behalf of 4 Institutions (GSFC, GIIC, Bank of Baroda and Dena Bank) on 07.11.1990 for Rs. 388 Lacs. On receipt of the down payment, "Possession Without Sale" was given to the Purchaser i.e. M/s. Shree Industries: Ltd. The full sale price has not yet been received, and hence documents in favour of purchaser have not been executed. We on behalf of institutions, continue to ownership right on the assets. We request that Assets under our ownership right be exempted from the Hon'ble BIFR Proceedings, and permission be granted for initiating recovery action..."

25. The Respondent relying on the said representation as quoted above, has submitted that the agreement dated 27.11.1990 was an agreement to sale.
26. The Respondent also relied upon an order passed by the Hon'ble Gujarat High Court in SCA No. 11116/2008 in which it was held that the transaction in question to be a sale.
27. Further, the GSFC, as well as the Applicant, have categorically submitted before the Hon'ble Gujarat High Court that the Agreement dated 27.11.1990 is an agreement to sale.
28. The Respondent has therefore submitted that the Applicant is not a Financial Creditor as no loan was given by the Applicant to the Respondent and the agreement in question is in fact an agreement to sale and not a loan agreement.
29. We have heard the submissions of the Ld. Counsels appearing for both parties and perused the records.
30. We have carefully perused the contents and terms and conditions of the loan agreement dated 27.11.1990. The Clauses mentioned in the said agreement as well as the representation given by one of the consortium members (GSFC) before the Board of Industrial Financial Reconstruction (BIFR) as well as the statement made by the GSFC and Applicant before the Hon'ble Gujarat High Court stating that the agreement dated 27.11.1990 is a sale agreement, makes it very clear

that the Applicant has changed its stand in the present case and claiming itself to be a Financial Creditor based on the said agreement which in our considered opinion is a sale agreement and not a loan agreement.

31. Having given a finding that the document in question is a sale agreement and not a loan agreement, we have to now examine as to whether any money has flown into the account of the Corporate Debtor by virtue of the said document/agreement and that the said money qualifies the test of being a “Financial Debt” under the definition of Section 5(8) of the IBC, 2016 and whether the Applicant is a “Financial Creditor” within the meaning of Section 5(7) of the IBC, 2016.

32. At this stage, it is relevant to refer to the definition of “Financial Creditor” which is as follows:

“5 (7) financial creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;”

33. At this stage, it is also relevant to refer to the definition of “Financial Debt” which is as follows:

“5. (8) financial debt means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes--

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;”

34. It has been held by the Hon’ble Supreme Court in the case of **“Innovative Industries Vs. ICICI Bank”** reported in 2018(1) SCC 407 that *“the Adjudicating Authority only has to determine whether a default has occurred i.e. whether the debt was due and remained unpaid.”*

35. The Hon’ble Supreme Court of India in the case of **“M. Suresh Kumar Reddy Vs. Canara Bank & Ors.”** “Civil Appeal No. 7121 of 2022” dealing with an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 has categorically held that:

“The adjudicating authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the adjudicating authority must then either admit or reject an application, respectively. These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5). The adjudicating authority cannot compel a party to the proceedings before it to settle a dispute.”

36. In the instant case, it is not disputed that under the consortium loan agreement, the consortium bank/financial institutions advanced certain amounts to M/s. Ganpati Pulp and Paper Limited by way of term loans as indicated below:

“Rs. 30.00 lakhs provided by Gujarat State Financial Corporation (“GSFC”),

Rs. 60.00 lakhs provided by Gujarat Industrial Investment Corporation (“GIIC”),

Rs. 16.50 lakhs provided by Bank of Baroda and

Rs. 16.50 lakhs provided by Dena Bank”

37. The Applicant/Financial Creditor i.e. ASREC India Limited stepped into the shoes of the Financial Creditor through an assignment deed dated 29.03.2011 executed by the consortium bank/financial institution in favour of the Applicant herein.
38. The assets of the GPPL were put on sale by the GSFC. The said assets were purchased by the Corporate Debtor i.e. Shree Industries Limited (previously known as M/s. Rama Finance Ltd.) and the Corporate Debtor was put in possession of the said assets.
39. Therefore, it is not in dispute that the amount in question has been disbursed to the Corporate Debtor which was disbursed against the consideration for the time value of money.
40. From the above factual position, we are of the considered opinion that the Applicant is a Financial Creditor as defined under Section 5(7) of the Code by virtue of the Assignment deed dated 29.03.2011 and the said amount which has been disbursed by way of a term loan can be considered as a Financial Debt within the meaning of Section 5(8) of the Code.
41. Further, the Corporate Debtor is in default of the said amount as borne out from the records i.e. through a record of default issued by the NeSL, the Banker's Certificate as per Banker's Books Evidence Act and the Ledger Account maintained by the Financial Creditor in respect of the loan facility extended to Corporate Debtor. These Records establish a case of admitted debt and default. Hence, we are of the considered view that the present application ought to be **admitted.**
42. In light of the above facts and circumstances, it is accordingly ordered as follows: -
- i)** The Application bearing **IB-40(ND)/2023** filed by the Applicant/(FC), under section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Respondent/(CD), is **admitted.**
 - ii)** We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium

flows from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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 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 corporate debtor.

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]”

iii) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be

terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.

- iv)** The Applicant/(FC) has proposed the name of Mr. Gautam Singhal as the Interim Resolution Professional (“IRP”) having address: DA-9, 3rd Floor, Enkay House, Veer Savarkar Block, Metro Pillar No. 54, Opposite Nathu Sweets, Main Vikas Marg, Shakarpur, Delhi-110092. His Email id is gautam@klfindia.com. His registration number is IBBI/IPA-001/IP/P-01437/2018-19/12240.

The Applicant filed a copy of the Consent Issued by Mr. Gautam Singhal in Form 2, Written Communication by proposed IRP, as per the requirement of Rule 9(l) of the Adjudicating Authority Rules along with the Certificate of Registration and Authorization for Assignment in Form B.

Accordingly, Mr. Mr. Gautam Singhal is appointed as IRP.

- v)** In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- vi)** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive

steps will follow. There shall be no future opportunity given in this regard.

- vii)** The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- viii)** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- ix)** The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors ("CoC").
- x)** In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today.
- xi)** The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- xii)** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.
- xiii)** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)