

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. V, MUMBAI BENCH**

C.P. No. 144/(IB)-MB-V/2021

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. Pridhvi Asset Reconstruction and Securitisation Company Limited,

‘RAJA PRAASADAMU’, 4th Floor, Wing No.1, Plot No. 6, 6A, 6B, Masjid Banda Road, Kondapur Hyderabad - 500084

.... Petitioner/Financial Creditor

Vs.

M/s. Megi Agro Chem Limited,

504, Neelambari, Thane Belapur Road, Vitawa, Thane, Maharashtra – 400605, India

...Corporate Debtor/Respondent

Order Reserved on : 01.08.2022

Order Pronounced On: 05.08.2022

Coram:

Hon’ble Shri. H.V. Subba Rao, Member (Judicial)

Hon’ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (Via Video Conference):

For the Petitioner : Mr. Pulkitesh Dutt Tiwari, Adv.

For the Respondent : Mr. R. J. Ranawat, Adv.

Per: H.V. Subba Rao, Member (Judicial)

ORDER

1. The Petitioner/Applicant viz. 'M/s. Pridhvi Asset Reconstruction and Securitisation Company Limited'. (hereinafter as Petitioner) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against 'M/s Megi Agro Chem Limited' (hereinafter as 'Corporate Debtor') for a Resolution of an unresolved Financial Debt of Rs.119,55,66,488/-.

2. In the requisite Form-1, under the head "Particulars of Financial Debt" the amount claimed to be in default is demonstrated as below:

Total Debt granted is Rs. 36,97,00,000/- as follows:

- Term Loan account No. 010665410000121 (Belapur)
Principal amount granted = Rs. 29,67,00,000/-
Sanctioned on 23rd August 2010; Disbursed on 20th November 2010. A copy of the Term Loan Agreement dated 20th November 2010 is annexed to the Petition.
- Term Loan account No. 010665410000157 (Thane)
Principal amount granted is Rs. 7,30,00,000/-
Sanctioned on 22nd March 2012; Disbursed on 31st March 2012. A copy of the Term Loan Agreement dated 28th March 2012 is annexed to the Petition.
- The amount of default under the Term Loan Account No. 010665410000121 (Belapur) is Rs. 96,39,96,545 as on 31st May 2020. This is inclusive of interest @ 13.25% +Penal Interest @ 2%.
- The amount of default under the Term Loan Account No. 010665410000157 (Thane) is Rs. 23,15,69,943 as on 31st May

2020. This is inclusive of interest @ 13.25% +Penal Interest @ 2%.

Thus, the **aggregate amount of default is Rs. 119,55,66,488/- as on 31st May 2020** (This is the aggregate for all loans and facilities granted to the Corporate Debtor).

Brief Facts-

3. On 20th November 2010, the Corporate Debtor “has availed a term loan of Rs. 29,67,00,000/- from the Bank of India. The said loan was sanctioned on 23.08.2010 and full amounts were disbursed on 20.11.2010.
4. On 28th March 2012, the Corporate Debtor has availed another term loan of Rs. 7,30,00,000/- from the Bank of India. The said loan was sanctioned on 22.03.2012 and full amounts were disbursed on 31.03.2012.
5. The Petitioner has enclosed the following documents in support of the Loans granted to the Corporate Debtor:
 - a) Agreement of Term Loan and Hypothecation of moveable assets / goods / property / Plant & Machinery dated 20th November 2010.
 - b) Memorandum of entry for creation of mortgage dated 20th November 2010.
 - c) Deed of Guarantee dated 20th November 2010.
 - d) Hypothecation cum loan agreement dated 28th March 2012.
 - e) Deed of Guarantee dated 28th March 2012.
 - f) Extension of Equitable Mortgage dated 28th March 2012.
 - g) Demand Promissory Note for Rs. 4,50,00,000 dated 28th March 2012.
 - h) Valuation Reports.

6. The Corporate Debtor has failed to make the repayments in terms of the term loan agreements and the account of the Corporate Debtor was declared NPA by the Bank of India on 31.12.2012. The statement of account maintained by the Petitioner used for workings for computation of amount is annexed to the Petition.
7. On 23rd March 2015, M/s. Pridhvi Asset Reconstruction and Securitisation Company Limited ("**Financial Creditor**") entered into an assignment agreement with the Bank of India whereby the loans disbursed by the Bank of India to the Corporate Debtor were assigned to the Financial Creditor along with all rights, title and interests.
8. Despite the Petitioner's requests, the Corporate Debtor has failed to repay the amounts due and payable by it, as per the Term Loan agreement dated 20.11.2010 and Term Loan agreement dated 28.03.2012. The Corporate Debtor has repeatedly represented to the Petitioner that it wishes to enter into a one-time settlement with the Petitioner and repeatedly has acknowledged its outstanding liability to the Financial Petitioner in writing. A list of the correspondence whereby the Corporate Debtor has acknowledged its liability is as follows:
 - i. Letter dated 13th April 2015 sent by the Corporate Debtor to the Financial Creditor, annexed to the Company Petition.
 - ii. Letter dated 22nd October 2016 sent by the Corporate Debtor to the Financial Creditor, annexed to the Company Petition.
 - iii. Letter dated 22nd June 2017 sent by the Corporate Debtor to the Financial Creditor, annexed to the Company Petition.
 - iv. Letter dated 22nd July 2017 sent by the Corporate Debtor to the Financial Creditor, annexed to the Company Petition.
 - v. Letter dated 12th October 2021 sent by the Corporate Debtor to the Financial Creditor, annexed to the Additional Affidavit dated 4th April 2022.

- vi. Letter dated 28th October 2021 sent by the Corporate Debtor to the Financial Creditor, annexed to the Additional Affidavit dated 4th April 2022.
9. On 12.10.2021, the Corporate Debtor has made a written one time full and final settlement offer of Rs. 13.5 Crore to the Petitioner for settling its outstanding dues. The Copy of the One-time Settlement Proposal is reproduced below: -



MEGI AGRO CHEM LTD

HEAD OFF.:504-NEELAMBARI,
THANE-BELAPUR ROAD,
VITAWA THANE - 400 605.
E-mail : megiagrochem1@gmail.com

Without Prejudice

Ref No. MACL/Parns/2021/LO1
Date.: 12/10/2021

To,
Chief Executive officer
Pridhvi Asset Reconstruction & Securitisation
Company limited,
1-55, 4th floor, Raja Praasadamu,
Masjid Band Road, Kondapur,
Hyderabad, Telangana, 500084

Sub: - Foreclosure of debt under OTS

Dear Sir,

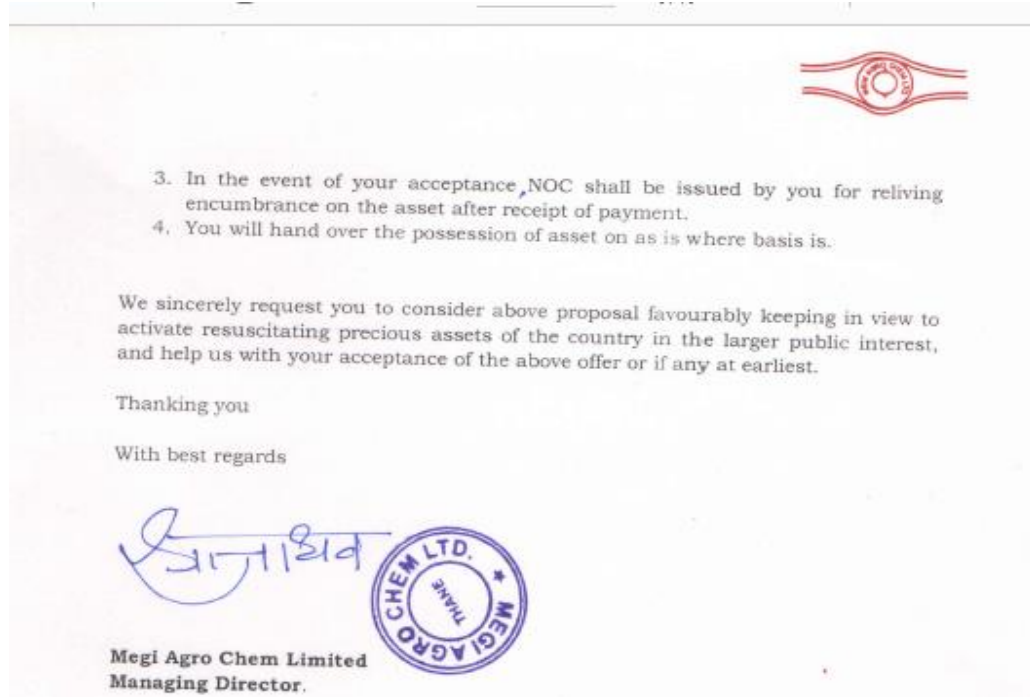
We refer to the assets acquired by you from Bank of India wide deed of assignment dated 23rd March 2015,

Please appreciate that we have been relentlessly continued our efforts to raise the funds for settlement of your dues. With lot of agonizing hurdles, we have been able to organize the funds to the tune of Rs. 13.5 Cr

While on this please note that deteriorated assets, over a long period of ten years has been a cause of anxiety for refurbishment of the plant. We apprehend that the project may prove to be unviable under the present circumstances. Where in the entire plant and machinery is totally rusted in the absence of any maintenance since its acquisition by your good self.

Taking into account the prevailing situation of the plant and our express intent to re-pay your dues, we are pleased to submit our proposal for foreclosure of your dues without any prejudice, under one-time settlement as follows.

1. We propose the foreclosure settlement Amount of Rs. 13.5 Cr (ThirteenCorerand FiftyLakhsOnly.) as one time full and final settlement amount towards the entire dues.
2. Needless to add that the amount will be paid as proposed by you.



10. On 28.10.2021, the Corporate Debtor has made a written one time full and final settlement offer of Rs. 18 Crore to the Petitioner for settling its outstanding dues. The Copy of the One-time Settlement Proposal is reproduced below: -

**MEGI AGRO CHEM LTD**

HEAD OFF. 504-NEELAMBARI,
THANE-BELAPUR ROAD,
VITAWA THANE - 400 605.
E-mail : megiagrochem1@gmail.com

Without Prejudice

Ref No. MACL/Paras/2021/L02
Date.: 28/10/2021

To,
The Chief Executive Officer
Pridhvi Asset Reconstruction & Securitisation Company Limited,
1-55, 4th floor, Raja Praasadamu,
Masjid Band Road, Kondapur, Hyderabad, Telangana - 500084.

Sub: - One Time settlement of dues - M/s Megi Agro Chem Ltd.,

Dear Sir,

This refers to our visit to your office on 27.10.2021 and subsequent to our letter no. MACL/Paras/2021/L02 dated 12.10.2021 regarding One-Time-Settlement of total dues under OTS. We are aware that the debts of M/s Megi Agro Chem Ltd., Ltd were acquired by your company from Bank of India in the year 2015. In order to settle the dues, we have identified an investor viz., Mr. Vasant Jain and he has agreed to fund the OTS amount to be entered with your Company.

With reference to the personal discussions held on 27.10.2021 at your office by our representative, we hereby revise our OTS Offer from Rs. 13.50 Crs to Rs. 18.00 Crs on the following terms:

Instalments	Amount	Date	Remarks
1 st	0.50 Crs	26.10.2021	To be kept in No-Lien Account till Our Offer is accepted.
2 nd	4.50 Crs	25.11.2021	To be deposited against the sanction of our OTS Offer by your Company
3 rd	13.00 Crs	NA	Within 60 -90 days from the final sanction of OTS Offer

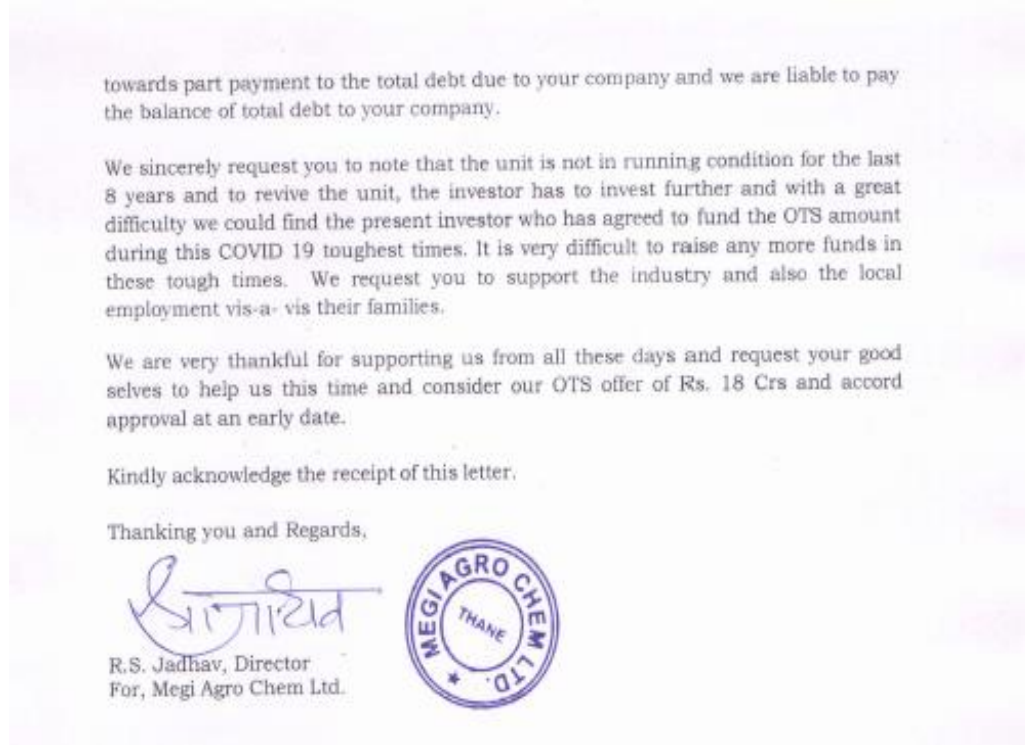
Please find attached the following cheques issued by the investor in support of our OTS Offer:

Cheque No	Date	Amount	Drawn On
428635	26.10.2021	50,00,000/-	Bank of India, Mazgaon Branch
428634	25.11.2021	4,50,00,000/-	Bank of India, Mazgaon Branch

We request you to keep the upfront amount of Rs. 50 lakhs in "No Lien" account and credit the same to our loan account after approval of our OTS proposal.

In case of default in paying the OTS amount as mentioned above, your company is at liberty to withdraw the sanction of OTS and appropriate the payments made





11. The offer of One Time Settlement was **not** accepted by the Petitioner, as stated in the Additional Affidavit filed by the Petitioner on 13.04.2022 before the Bench.
12. The Corporate Debtor has failed to appear on several previous occasions i.e. on 12.03.2021, 06.08.2021, 18.10.2021, 28.10.2021, 01.12.2021, and 04.02.2022. On 25.03.2022, when the matter was listed for hearing before the Bench.

Reply filed by the Corporate Debtor

13. The counsel for the Corporate Debtor, in its reply dated 10.05.2022, submits that the above Company Petition is barred by limitation.

Findings:

14. Heard the arguments of both sides and perused the record. The learned counsel appearing for the Financial Creditor/ Petitioner invited the attention of this Bench to the various documents executed

by the Corporate Debtor while availing the loan facilities from the original lender namely Bank of India and also invited the attention of this Bench to the various letters addressed by the Corporate Debtor requesting for settlement of the loan amount under OTS.

15. The learned counsel appearing for the Corporate Debtor both in the reply as well as during the arguments raised the only issue of limitation in this matter. It is the contention of the counsel appearing for the Corporate Debtor that the Financial Creditor has filed an OA before the Debt Recovery Tribunal against the Corporate Debtor and also initiated the measures under the SARFAESI Act, 2002 way back in 2013 after declaring the account as NPA. It is his further submission that subsequent to 2013, the Corporate Debtor did not make any payment nor executed any documents which would extend the period of limitation and the above Company Petition being filed on 21.07.2020 is clearly barred by limitation. In this connection, it is appropriate to mention here that the Financial Creditor annexed letter dated 22.10.2016 at page 239 of the Company Petition addressed by the Corporate Debtor to the present Financial Creditor offering an amount of 3.10 million USD as full and final settlement. Similarly, they have also annexed another letter dated 22.06.2017 addressed by the Corporate Debtor to the present Petitioner herein offering Rs. 19 crores. Similarly, they have also annexed another letter dated 22.07.2017 addressed by the Corporate Debtor offering Rs. 21.25 crores.
16. The Financial Creditor also annexed another two letters dated 12.10.2021 and 28.10.2021 addressed by the Corporate Debtor offering an amount of Rs. 13.5 crores and Rs. 18 crores respectively towards the full and final settlement.
17. In this connection, it is important to mention that the Hon'ble Supreme Court in various judgements including the *Dena Bank Vs. C. Shivakumar Reddy* time and again held that the acknowledgement of debts, OTS proposals given by the Corporate Debtor would amount to an acknowledgement within the meaning of section 18 of the

Limitation Act, 1963 and would extend the period of limitation. In view of the various judgements passed by the Hon'ble Apex Court this Bench is of the considered opinion that the entire arguments of the Corporate Debtor on the point of limitation is not legally sustainable and is liable to be rejected. Except the plea of limitation, the counsel appearing for the Corporate Debtor did not raise any substantial legal point in opposing the above Company Petition.

18. For the aforesaid reasons, this Bench is of the view that the above Company Petition deserves to be admitted. Accordingly, the above Company Petition is admitted by passing the following order.

ORDER

- a. The above Company Petition No. 144/(IB)-MB-V/2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. Megi Agro Chem Limited.
- b. This Bench hereby appoints Mr. Vakati Balasubramanyam Reddy having registration No. IBBI/IPA-001/IP-P00662/2017-2018/11131, having address E-505, Galaxy Apartments, Near Bhantara Bhavan, Quoreshi Nagar, Kurla East, Mumbai City, Maharashtra, 400070 having email id: vbsreddy7@gmail.com, as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs.5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the

corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P. No. 144/(IB)-MB-V/2021 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-
Anuradha Sanjay Bhatia
Member (Technical)

SD/-
H.V. Subba Rao
Member (Judicial)