



NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.1
CP(IB)/40(MP)2022

Proceedings under Section 7 IBC
IN THE MATTER OF:

Omkara Assets Reconstruction Pvt Ltd
V/s
Panda Technologies India Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 21/01/2025

Coram:

Chitra Ram Hankare, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Neeraj

Sd/-

CHITRA RAM HANKARE
MEMBER (JUDICIAL)



**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

CP(IB) 40 of 2022

(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:

Omkara Assets Reconstruction Private Limited

No.9, M.P. Nagar First Street
Kongu Nagar Extension
Tirupur, Coimbatore
Tamil Nadu-641607

Financial Creditor

Versus

Panda Technologies India Private Limited

24, 1st Floor, Zone-II
M.P. Nagar
Bhopal (M.P.) -462011

Corporate Debtor

Order pronounced on: 21.01.2025

**Coram: Hon'ble Mrs. Chitra Hankare, Member (J)
Hon'ble Kaushalendra Kumar Singh, Member (T)**

Present:

For the Applicant: Ld. Adv. Mr. Kunal Godhwani

For the Respondent: Ld. Adv. Mr. Vijayesh Atre

JUDGMENT

1. The instant application was filed on 15.06.2022 by Omkara Assets Reconstruction Private Limited (Applicant) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**CODE**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) against Panda Technologies India Private Limited (Respondent)



for the default amount of Rs.1,40,40,535/- (Principal- Rs.64,33,286/- & interest- Rs.76,07,249/-). The date of default as mentioned in Part-IV of the application is 24.04.2017. The applicant is an assignee of L&T Finance Limited, who had advanced loan to the respondent.

2. Succinctly, the facts of the case as mentioned in the Company Petition and as submitted by the learned counsel for the applicant are as under:

(i) The respondent approached L&T FinCorp Limited (L&T) to avail short term loan financing facility on a revolving basis for the purchase of industrial products for L&T Valves Limited. L&T issued a sanction letter dated 17.07.2013 to the respondent and thereafter, entered into a facility agreement on the same date with the respondent. L&T disbursed the amount to the respondent in accordance with the said agreement. The respondent issued a demand promissory note on the same date i.e. 17.07.2013 for a sum of Rs.1,50,00,000/-. However, the respondent was irregular in repayment of the said disbursed amount. Therefore, L&T issued a demand notice dated 19.04.2017 to the respondent for an amount of Rs.67,19,390/- due as on 23.03.2017; wherein, L&T has categorically mentioned that the respondent approached the applicant on 27.08.2014 & 09.09.2015 to renew the short term financing facility of Rs.1,50,00,000/- and the same were agreed by the L&T. As stated in the application the said notice was received by the respondent on 24.04.2017 and accordingly the date of default in terms of the demand notice is stated to be 24.04.2017.

(ii) That an assignment agreement dated 24.09.2019 was executed by L&T Finance Limited in favour of the applicant i.e. Omkara Assets Reconstruction Private Limited and thereby L&T



assigned its debt, all rights, title and interest against the respondent to the applicant. Subsequently, the applicant sent a loan recall notice dated 18.12.2021 to the respondent and also informed the respondent through the same notice that L&T has through Deed of Assignment dated 24.09.2019 assigned the loan account of the respondent along with all rights, title and interests and all the underlying security interests in favour of the applicant and therefore, the applicant is entitled to recall the entire outstanding loan along with the interest and amount due thereof.

(iii) The conclusive plea adopted by the applicant is that the loan was sanctioned to the respondent on 17.07.2013 on revolving basis and the date of default is 24.04.2017. The said debt is acknowledged by the respondent in its audited balance sheet for the year 2016-17, 2017-18, 2018-19 & 2019-20. Moreover, in terms of suo-moto order dated 10.01.2022 passed by the Hon'ble Supreme Court the period from 15.03.2020 to 28.02.2022 is excluded and therefore, the present application is within limitation. Further, the assignment of the said debt by L&T to the applicant, is within the knowledge of the respondent, as the same is evident from the reply dated 24.01.2022 received from the respondent. A fresh certificate from NeSL has been issued to the applicant regarding the record of default as deemed to be authenticated and the same is also placed on record.

3. Moreover, the respondent neither replied nor has appeared in any of the hearings before this Adjudicating Authority even after serving the notice and newspaper publication. Therefore, the respondent was set ex-parte vide order dated 23.02.2023 of this Adjudicating Authority. Subsequently, the matter was heard and was reserved for order, however, on an application (IA 381 of 2024) filed by the respondent the



matter was released for giving an opportunity to the respondent to file its reply.

4. In this context, defense placed by the respondent in its reply dated 22.10.2024 and submissions made thereon and as presented/argued by the learned counsel for the respondent are summarized as under:

(i) The applicant has in its demand notice dated 19.04.2017, admittedly stated that the respondent on 27.08.2014 and 09.09.2015 approached the applicant for renewing short term financial facilities for purchase of machineries from L&T Valves Limited amounting to Rs.1,50,00,000/- under VALFIN Scheme. The same was permitted through sanction letters dated 27.08.2014 and 09.09.2015, pursuant to which the repayment of the loan was to be completed within a period of 90 days from the date of disbursement as per the Summary Schedule to the facility agreement.

(ii) That the period of 90 days from disbursement i.e. 09.09.2015 (being the last date of the sanction) has expired on 08.12.2015, which is the Date of Default in terms of Para 4 of the sanction letter. The sanction letter also allegedly provides for delayed payment charges on such defaulted amount from the date of default till the date of payment @ 16% p.a. & 22% p.a., if the delay is beyond 90 days and 121 days respectively.

(iii) Further, the demand notice was issued by the applicant claiming an amount of Rs.76,19,390/-, whereas, the application has been filed for an amount of Rs.64,33,286/-. The respondent has neither acknowledged any such amount nor has acknowledged any interest in its balance sheets. The date of



default stated by the applicant as 18.12.2021 allegedly being the loan recall notice date is incorrect.

(iv) Further, the account of the respondent was declared NPA on 11.06.2016, the same is also stated by the applicant in its loan recall notice dated 18.12.2021. The limitation period starts from the date when the account was declared NPA i.e. on 11.06.2016. However, the present application has been filed around 04.04.2022. Therefore, the present application is barred by limitation.

(v) Furthermore, in terms of the Master Circular No. RBI/2012-13/64 UBD.BPD. (PCB) MC No.3 /09.14.000/2012-13, dated 02.07.2012, no interest can be added to the outstanding amount subsequent to the declaration of the account as NPA. The date of default as per the application is 24.04.2017, no interest can be charged in accordance with the said RBI Circular.

(vi) Thus, the amount of claim is also less than the threshold limit of Rs.1,00,00,000/- in accordance to the provision of section 4 of the Code. Therefore, the present application is not maintainable.

5. We have heard the learned counsel for the applicant as well as for the respondent. After perusing the material available on record, it is noted that L&T FinCorp Limited sanctioned the financing facility of Rs.1,50,00,000/- to the respondent on 17.07.2013 for which a facility agreement on the same date was also executed. As per the said agreement the respondent was to repay the loan within 90 days from the date of disbursement with interest @ 13.75 % p.a. It was also agreed that if in case there is delay in repayment of the loan by the respondent for 91-120 days or beyond 121 days then the delayed payment charges



at 16% p.a. and 22% p.a. respectively would be payable by the respondent to the applicant. It is also noted that L&T FinCorp Limited and L&T Finance Limited was merged in the year 2016. Pursuant to the said merger, L&T Finance Limited (L&T) vide assignment agreement dated 24.04.2019 assigned its debt, all rights, title and interest against the respondent to the applicant i.e. Omkara Assets Reconstruction Private Limited.

6. It is also noted that the respondent executed Demand Promissory Note dated 17.07.2013 and thereby promised to pay the sum of Rs.1,50,00,000/- for value received, with interest at 13.75% p.a. for 90 days to the applicant. For ready reference the demand promissory note as executed by the respondent is reproduced as under:

ON DEMAND, I/We jointly and severally and unconditionally promise to pay L&T FinCorp Limited, or Order, the sum of Rs.1,50,00,000/- (Rupees one crore fifty lacs only) for value received, with interest at the rate of 13.75% p.a. for 90 days or at any rate which may be determined from time to time by L&T FinCorp Limited. I/We unconditionally and irrevocably waive the presentment for payment and and noting and protest of this promissory note.

7. It is noted that the respondent failed to repay the part of the said amount and therefore, the applicant sent a demand notice dated 19.04.2017 for an amount of Rs.67,19,390/- due as on 23.03.2017. Thereafter, applicant again sent a loan recall notice dated 18.12.2021 to the respondent, to which the respondent replied on 24.01.2022 and the same is also placed on record. In the said reply, the respondent has stated that L&T has already initiated arbitration proceedings against the respondent and the same are pending before the Arbitrator. The respondent further contended that since the arbitration proceedings are pending, any action initiated relating to the same subject matter is barred under the principles of res-judicata.



8. Furthermore, the present application CP(IB) 40 of 2022 was once heard and reserved for order on 28.08.2024, however, before the pronouncement of the order in the matter, the respondent filed IA 381 of 2024 under Rule 11 of NCLT Rules, 2016 seeking direction from this Adjudicating Authority to recall the ex-parte order dated 23.05.2023 passed against the respondent and also to recall the order dated 28.08.2024 i.e. when the present application was heard and was reserved for order.

Thereafter, vide order dated 16.10.2024 in IA 381 of 2024, the respondent was given an opportunity to file their reply. Thus the respondent has through its reply contended that the limitation period begins from the date when the account of the respondent was declared NPA i.e. 11.06.2016 and the present application being filed in the year 2022 is barred by limitation. Moreover, the respondent contended that since the respondent was declared NPA no interest thereon can be added to the outstanding amount.

9. We further note that the balance sheet of the respondent for the financial years 2016-17, 2017-18, 2018-19 & 2019-20 reflects – ‘Loan from Financial Institution L&T Finance Limited’ under the head Short-Term Borrowings for an amount of Rs.4801648/-, Rs.4006309/-, Rs.4006309/- & Rs.4006309/- respectively. The NeSL certificate wherein the status of authentication of default is reflected as Deemed to be authenticated is also placed on record.

10. Considering all the above, we are of the considered view that the applicant has sanctioned loan to the respondent on 17.07.2013 on revolving basis for which agreements were also executed against which the respondent has executed a demand promissory note on the same date. Further, the respondent has acknowledged the debt in its audited balance sheet from the financial years 2016-17 to 2019-20 and the



same are placed on record. Thus, the said acknowledgements resulted in the extension of limitation. Moreover, in view of directions of the Hon'ble Supreme Court in suo moto petition regarding limitation, the period from 15.03.2020 till 14.03.2021 is excluded in computing the period of limitation and since the present application is filed on 15.06.2022, the same is within the limitation period.

11. As regards the contention of the respondent that no interest can be charged on a company after its account is declared as NPA, in the context we note that such guidelines of the RBI are primarily for the accounting purposes and it does not mean that the interest chargeable for the period after declaration of NPA is completely waived off. The lender has the right to recover the interest also and as such the plea taken by the respondent is quite misplaced. The total debt together with the interest is above the threshold limit of Rs.1 crore.

12. Thus, the claim of the applicant stands established and prima facie there is default in payment of the amount due to the applicant. The default amount meets the threshold limit as per Section 4 of the IB Code, 2016 and the application is well within the limitation.

13. In the view of facts, it is clear that respondent has defaulted in the payment of its debts. On the basis of the facts the application is otherwise defect free & on record. Accordingly, we admit this application and order as under:

ORDER

(i) Corporate Debtor Panda Technologies India Private Limited is admitted in the Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016.

(ii) The moratorium under section 14 of the Insolvency & Bankruptcy Code, 2016 is declared for prohibiting all of the



following in terms of Section 14(1) of the Code.

- (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.*

(iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the IBC, 2016, as the case may be.

(iv) The Financial Creditor has proposed the name of the IRP, therefore, this Adjudicating Authority hereby appoints Mr.Mangesh Vittal Kekre having registration No.IBBI/IPA-001/IP-P00539/2017-18/10964 to act as an IRP under Section 13(1) (c) of the IBC, 2016.

(v) The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.



(vi) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

(vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person, is required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(viii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

(ix) The Financial Creditor is directed to pay an advance of Rs. 1,00,000/- (Rupees one lakh only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, the IRP may raise further demands for Interim funds, which shall be



provided as per Rules.

(x) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

14. The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Trade Tax and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/ employee's associations so that they are timely informed about the initiation of CIRP against the corporate debtor.

15. The commencement of Corporate Insolvency Resolution Process shall be effective from the date of this order.

-sd-

Kaushalendra Kumar Singh
Member (Technical)

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Chitra Hankare
Member (Judicial)

Swati Khandelwal