



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI
CP (IBC)/144(CHE)/2023**

*(filed 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 *AKS Alloys Limited*

PRUDENT ARC LIMITED,
Registered Office at 611, Sixth Floor,
D Mall, Plot No.A-1, Netaji Subash Palace,
Pirampura, West Delhi,
New Delhi – 110 034.

...Applicant/Financial Creditor

-Versus-

AKS ALLOYS PRIVATE LIMITED
No.770, TTH Road,
Chennai – 600 081.

...Respondent/Corporate Debtor

CORAM

**SHRI JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)
SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)**

Present

For Applicant : Preethi S Arasu, G. Mani Prabhu, M. Hemanth Advocates

For Respondent : R. Prem Kumar, Anbarasu, Advocates

Order Pronounced on 25th October 2024

ORDER

(Heard through hybrid mode)

1. This is an Application filed by **PRUDENT ARC LIMITED** (hereinafter the “Financial Creditor”) against **AKS ALLOYS PRIVATE LIMITED** (hereinafter the “Corporate Debtor”) under Section 7 of the



Insolvency and Bankruptcy Code, 2016 seeking to initiate Corporate Insolvency Resolution Process against the Corporate Debtor herein.

2. In Part-I of the Application, it is stated that the Financial Creditor is company incorporated on 23.09.2011 with CIN:U74900DL2011PLC225445.

3. In Part – II of the Application, it is stated that the Corporate Debtor was incorporated on 25.01.1994 with CIN:U51101TN1994PTC026627 and the Registered office of the Corporate Debtor is situated at No.770, T H Road, Chennai, Tamil Nadu – 600081.

4. In Part III of the application, the Financial Creditor has proposed one Mr. Piyush Kisanlal Jani, with Registration No: IBBI/IPA-001/IP-P01439/2018-2019/12164 as the “Interim Resolution Professional” of the Corporate Debtor.

5. In Part-IV of the Application, a total sum of Rs.38,13,82,405/- (Rupees Thirty Eight Crore Thirteen Lakhs Eighty two Thousand Four Hundred and Five only) has been claimed by the Financial Creditor as the Financial debt, due and payable by the Corporate Debtor. The date of default mentioned in the application is as on **25.01.2021**.

SUBMISSIONS BY THE APPLICANT

6. It is submitted that the Applicant had sanctioned cash credit of Rs.40.00 lakhs, letter of credit of Rs.100 lakhs and letter of guarantee of Rs.25 lakhs to the Corporate Debtor. The Corporate Debtor executed loan



documents on 07.09.2001. Subsequently as per sanction letter dated 17.05.2017 corporate debtor was granted cash credit limit of Rs.1400 lakhs. Letter of credit liability of Rs.1000 lakhs and letter of guarantee of Rs.31 lakhs.

7. It is submitted that Rs.38,13,82,405/- comprising the principal amount of credit facilities along with the interest rate of 12.65% per annum and penal interest of 2% as on 31.05.2023 has been defaulted.

8. It is submitted that outstanding due exceeded the drawing power sanctioned limit of cash credit facility of Rs.1400 lakhs and the defendant did not reduce the overdue amount hence the applicant had classified cash credit loan account of 1st defendant as NPA.

SUBMISSIONS BY THE RESPONDENT

9. It is stated that the Respondent had availed the credit facilities from Indian Overseas Bank, only after referring the assignment agreement entered between the Bank and the Petitioner. It is stated that the Respondent Company is having expertise in the steel industry and engaged in the business for trading of steel products.

10. It is stated that the bank was all along supportive and encouraged the business by extending the required facilities, but due to some reasons



dropped to support the business by way of stopping the required credit facilities which lead to closure of manufacturing activities.

11. It is stated that the proposal of the bank to assign the Respondent's debt to the Petitioner was never disclosed.

REJOINDER FILED BY THE APPLICANT

12. It is stated that the Applicant acquired the financial asset of the Indian Overseas Bank (Assignor Bank) relating to the debt of the Respondent under Section 5 of the SARFAESI Act under intimation to the Respondent Company by the Assignor Bank as well as by the Assignee ARC (Applicant) as per the provisions of the SARFAESI Act/RBI guidelines.

13. It is submitted that the Respondent did not pay the Letter of Credit amount on the due date and both the accounts became NPA on 30.06.2019.

14. It is submitted that forensic audit was conducted by M/s Pradeep and Associates and various irregularities were found like collection of receivables were not routed to repay working capital loan, related party transactions and diversion of funds. So, the account was declared fraud vide FMR No. IOBK-2102-0021 on 24.05.2021 by Indian Overseas Bank



and thereafter CBI complaint was lodged by Indian Overseas Bank on 16.03.2022.

15. It is submitted that Indian Overseas Bank issued demand notice and the Respondent failed to discharge its liability.

16. It is submitted that after the account was declared NPA, demand notices were issued on 30.07.2019 and 31.10.2019.

FINDINGS OF THIS TRIBUNAL

17. Heard the submissions of both the parties and perused the document on record.

18. Under Adjudication is an application filed by Prudent ARC Limited against AKS Alloys Private Limited for imitation of CIRP against the Respondent under section 7 of Insolvency and Bankruptcy code 2016.

19. The Applicant submitted that as per latest sanction letter dated 17.05.2017 the corporate debtor was granted a cash credit limit of Rs.1400 Lakh, Letter of credit of Rs.1000 lakhs, Buyer credit as sub limit to letter of credit of Rs.1000 Lakhs, letter of guarantee of Rs.31 lakhs, which was exceeded by the respondent and the respondent has not served the interest in the cash credit account. Hence the cash credit account of the respondent company was classified as NPA on 20.06.2019.



20. The details of the credit facilities sanctioned by Indian Overseas Bank along with copies of the working of computation of the amount and interest calculation have been provided. Further, the copy of assignment agreement of the financial asset by Indian Overseas Bank in favor of Prudent ARC Limited has been submitted.

21. In the Counter filed by the respondent, Corporate Debtor has given the reasons for the account becoming NPA, including the non-sanction of proposed term loan, etc. Nowhere in the counter had it denied of availing of credit facilities, calculation of default amount, etc.

22. The amount due is above the threshold limit for admission to CIRP. The applicant has provided necessary proof, that the filing of CIRP application is within the limitation period.

23. Applicant has also provided various documents including the following as proof for the financial debt,

- a) Copy of record of default filed with information utility,
- b) Copy of entries in a bankers book in accordance with the Bankers Book evidence act 1981 and
- c) Order of DRT in IA/1500/2022
- d) Assignment deed executed between Indian Overseas Bank and Applicant.



24. The Applicant has filed NeSL Form C, On perusal of the report it is seen that the Authentication status is updated to “Authenticated” the type of debt is given as Financial debt and the defaulted amount is mentioned as Rs.37,66,95,385.93/-.

25. It has been held by the Hon’ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank and another (2018) 1 SCC 407* as well as in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353* after going through the Scheme of IBC, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor as compared to the one filed under Section 9 by an Operational Creditor. In a Section 7 Application where there is an existence of a ‘financial debt’ and the default in excess of Rs.1,00,00,000/-, this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP).

26. In the present case, it is clear that there is a default on the part of the Corporate Debtor for a sum exceeding of Rs.1 Crore.

27. The Applicant / Financial Creditor has proved that there is a ‘debt’ and ‘default’ on the part of the Corporate Debtor and hence in term of Section 7(5) of IBC, 2016, the present application is required to be



admitted and Corporate Insolvency Resolution Process as against the Corporate Debtor is required to be initiated.

28. Under the said circumstances, we are of the view that the present Application is required to be admitted in terms of Section 7(5) (a) of IBC, 2016. We therefore admit this application and order for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

29. The Financial Creditor has proposed the name of *Mr. Piyush Kisanlal Jani having Reg. No. IBBI/IPA-001/IP-P01439/2018-2019/12164 e-mail Id: capiyushj@gmail.com* as the Interim Resolution Professional (IRP) who has also filed her consent in Form – 2 at page No.138 (Annexure-II) of the Application and also upon verification from the IBBI website, it is seen that the said person holds valid Authorization for Assignment till 31.12.2025. *Mr. Piyush Kisanlal Jani* is appointed as the IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The IRP who is appointed shall take forward the process of



Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

30. As a consequence of the Application being **admitted** in terms of Section 7(5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

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 license, 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 or a similar grant or right during moratorium period;

31. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) *The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

(2A) *Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues*



arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) *The provisions of sub-section (1) shall not apply to*
- (a) *such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;*
 - (b) *a surety in a contract of guarantee to a corporate debtor.*

32. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) *The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:*

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

33. The suspended Board of Directors is directed to give complete access to Books of Accounts maintained under Section 128 of the Companies Act 2013. In case the books are maintained in the electronic mode, the suspended Board of Directors are required to share with the Resolution professional all the information regarding maintaining the backup and regarding the service provider kept under Rule 3(5) and Rule



3(6) of the Companies Account Rules, 2014 , especially the name of the service provider, the internet protocol of the Service Provider and its location and also the address of the location of Books of Accounts maintained in the cloud. In case accounting software is maintained, the IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of Ministry of Corporate Affairs. The *Rule 3(5) and Rule 3(6) of the Companies Account Rules, 2014* are reproduced as under:

5) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law:

***Provided** that the back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a daily basis .*

(6) The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement-

- (a) the name of the service provider;*
- (b) the internet protocol address of service provider;*
- (c) the location of the service provider (wherever applicable);*
- (d) where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.*



(e) where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India.

Explanation:- For the purposes of this rule, the expression “electronic mode” includes “electronic form” as defined in clause (r) of sub-section (1) of section 2 of Information Technology Act, 2000 (21 of 2000) and also includes an electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000) and “books of account ” shall have the meaning assigned to it under the Act.

34. Statutory Auditor of the Corporate Debtor is directed to share with the resolution professional the audit documentation and Audit Trials which they are mandated to retain pursuant to SA 230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI.

35. The Financial Creditors are directed to pay a sum of **Rs.5,00,000 /-** (**Rupees Five lakhs only**) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



36. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

37. Accordingly, CP (IBC)/144(CHE)/2023 stands **Admitted**.

-SD-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-SD-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)

Rannika