

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

CP(IBC)/39/KOB/2023

(Under Section 7 of the IBC, 2016)

***In the matter of* FACT-RCF Building Products Ltd.**

MEMO OF PARTIES:

OMKARA ASSET RECONSTRUCTION PVT LTD.,
NO.9, M.P. Nagar First Street, Kongu Nagar
Extension, Tirupur, Coimbatore- 641607

... Petitioner/ Financial Creditor

-Vs-

FACT-RCF BUILDING PRODUCTS LTD.,
FACT Cochin Division Campus, Ambalamedu
Kochi 682303

... Respondent/Corporate Debtor

Order delivered on: 11.01.2024

Coram:

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| Hon'ble Member (Technical) | Hon'ble Member (Judicial) |
| Shri. Shyam Babu Gautam | TMT. (Retd.) Justice T Krishna Valli |

Appearances:

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| For the Applicant | : | Mr. A Kevin Thomas, Advocate |
| For the Respondent | : | Mr. R. Sudhish, Merin Thomas, Advocates |



ORDER

Per Coram

1. The petitioner has filed this application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as IB Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as Adjudicating Authority Rules, 2016) for initiation of Corporate Insolvency Process against the Corporate Debtor, **FACT-RCF BUILDING PRODUCTS LTD.** The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).
2. Part I of the application, sets out the details of the Financial Creditor from which, it is evident that the Financial Creditor is an Asset reconstruction company registered under Companies Act, and governed by the RBI. As per Part II of the application, the Corporate Debtor is a Public Limited Company with Corporate Identification Number U26992KL2008PLC022347 and having its registered office at FACT Cochin Division Campus, Ambalamedu, Kochi 682303. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. Ravindra Chaturvedi, IBBI Registration Number: IBBI/IPA-001/IP-P00792/2017-2018/11359 as the Interim Resolution Professional.
3. Part IV of the application signifies the amount of debt to the tune of Rs. 59,58,58,954/- as on 12.09.2023. Part V of the application



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describes the particulars of Financial Debt; documents, records and evidence of default as described below:

- 1) Assignment Deed dated 31.03.2018 executed by New India Cooperative Bank and Financial Creditor, along with relevant schedule
- 2) Trust Deed of the Financial Creditor
- 3) Record of Default with NESL produced as Annexure A15,
- 4) Certificate of registration of charge with MCA produced as Annexure A14
- 5) Sanction Letter dated 17.07.2009
- 6) Sanction Letter dated 29.06.2013
- 7) Demand Promissory Note dated 28.08.2009
- 8) Non-Encumbrance Letter dated 28.08.2009 executed by the Corporate Debtor
- 9) Demand Promissory Note dated 01.12.2014 for FITL
- 10) Hypothecation Agreement dated 28.08.2009
- 11) Supplementary Hypothecation Agreement dated 01.12.2014
- 12) Memorandum of Deposit of Title Deed
- 13) Statement of Account of Assignor Bank and Financial Creditor
- 14) Notice under Section 13(2) of the SARFAESI Act Assignor Bank dated 28.09.2016



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- 15) Annual Financial Statement of the Corporate Debtor for the period 2017-2018
- 16) Annual Financial Statement of the Corporate Debtor for the period 2019-2020
- 17) Annual Financial Statement of the Corporate Debtor for the period 2021-2022
- 18) True copy of the OTS letters dated 20.09.2019 and 01.10.2019

4. Brief fact of the case is:

- i. The present application is filed by Omkara Assets Reconstruction Pvt Ltd, under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process against the Corporate Debtor, FACT-RCF Building Products Ltd.
- ii. The original Financial Creditor, New India Cooperative Bank Ltd. (hereinafter 'Assignor') sanctioned a Term Loan of Rs. 24 crores by way of agreement dated 17.07.2009. This term loan was restructured by Assignor at request of CD on 29.06.2013 whereinafter the total debt granted stood at Rs. 29.75 crores.
- iii. CD created pari passu security on plant and machinery, equitable mortgage on land of 11 acres in favour of Assignor on 28.08.2009 and 01.12.2014. A Charge was also registered with MCA. As loan repayment became irregular the account was classified as NPA on 31.07.2016. SARFAESI measures



were also initiated on 28.09.2016. Later the Assignor assigned the loan to the FC vide Annexure A8, Assignment deed dated 31.03.2018 transferring all rights of Assignor to recover the loan. Two OTS proposals were made by CD to FC on 20.09.2019 and 01.10.2019 which was rejected by FC as it was offered on significant haircut. It is stated that the debt is acknowledged in Audited Balance sheets for FY's 2017-2022. FC has filed WPC before Hon'ble Kerala High court on 31.01.2020 which was referred to mediation and DRT proceedings before DRT, Ernakulam which are pending.

- iv. It is stated that as on 12.09.2023, CD is in default of Rs. 59,58,58,954/- under the loan account. The applicant has submitted the default with NESL, information utility. The debt is above the threshold limit of 1 crore under IBC and jurisdiction falls within this Tribunal.
 - v. Since no action to settle the debt has been made by the CD, the FC proceeds under IBC to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.
 - vi. The application was filed by the FC on 25.09.2023 and states that the petition is filed within the period of limitation under the IBC.
5. On the respondent side, takes the contention that the assignment made by Assignor to FC is invalid for not having obtained prior consent of RBI as mandated by law. Further it is stated that the financial position of the CD is completely eroded and CD has also stopped operations pursuant to order CJM, Ernakulam dated



07.09.2019. It is also stated CD has endeavoured to settle other financial creditors albeit other proceedings and actions initiated under common law.

6. Heard the submissions, and perused the documents placed on record. The debt amounting to 59,58,58,954/- as on 12.09.2023 is beyond the threshold limit stipulated under the IBC, 2016. The only point to be considered in the case which is otherwise complete in all aspects of law is the question of limitation. The date of default of debt by the CD is stated as 31.07.2016 in part (IV) of the petition, which is when the account of CD turned NPA in books of Assignor. Subsequently the debt was assigned to the FC on 31.03.2018. The CD has proposed for OTS on 20.09.2019 and 01.10.2019 as per Annexure A13, and the debt is reflected in the Audited Balance sheet of CD for FY's 2017-2022 as per Annexure A10, A11 and A12. Hence, going by the dictum laid by Hon'ble Apex Court in ***Asset Reconstruction company (India) Limited vs Bishal Jaiswal and Anr. AIR 2021 SC 5249***, we feel that this petition filed on 25.09.2023, comes well within the period of limitation under the law for the reason of CD having acknowledged the debt of FC in its Audited Balance sheets.
7. Now, as per the Insolvency and Bankruptcy Code, 2016 the definition of Financial Creditor under Section 5 (7) 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; thereby, the applicant herein, is a Financial Creditor. From records



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produced before us it is evident that there exists a 'Debt' between the parties and the said debt qualifies to be a 'Financial Debt' as defined under 5(8) of IBC, 2016. Also, the Corporate Debtor has defaulted in repayment of the said 'Financial Debt' which is due and payable to the Financial Creditor. Under the aforementioned conditions, this Tribunal has no choice but to move forward with the current case and start the Corporate Insolvency Resolution Process with regards to the Corporate Debtor in light of any objections raised by the Corporate Debtor.

8. So, in light of the case's facts, circumstances narrated in the preceding paras, and legal provisions envisaged under the code, we believe that this application, as submitted by the Applicant-Financial Creditor, deserves be admitted under Section 7(5) of the IBC, 2016.
9. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders.
 - A. The petition bearing CP (IBC)/39/ KOB /2023, by Omkara Asset Reconstruction Pvt Ltd, the Financial Creditor, under section 7 of Insolvency and Bankruptcy Code 2016 read with rule 4 (1) of Insolvency and Bankruptcy (Petition to Adjudicating Authority) Rules, 2016 for initiating CIRP against **FACT-RCF BUILDING PRODUCTS LTD.**, (CIN: U26992KL2008PLC022347), the corporate debtor is **ADMITTED**.
 - B. There will be a moratorium under section 14 of the Code.



- C. The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of Corporate Debtor under section 33 of the Code, as the case may be.
- D. Public announcement of the CIRP shall be made immediately as specified under section 13 of the code read with regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.
- E. The Financial Creditor has proposed the name of one **Mr. Ravindra Chaturvedi**, IBBI Registration Number: IBBI/IPA-001/IP-P00792/2017-2018/11359; email: **ravinchaturvedi@hotmail.com**, as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The designated IRP must take any additional actions in this regard that are mandated by the law, more specifically Sections 15, 17, and 18 of the Code. 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. The fee payable to IRP or as the case



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may be, the RP shall comply with such Regulation, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by section 15, and to 21 of the Code.

- F. During the CIRP period the management of the Corporate Debtor shall vest with the IRP or, as the case may be, the 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.
- G. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.
- H. The financial creditor shall deposit a sum of Rs.3,00,000/- (Three Lakhs Only) with the IRP to meet the expenses arising out of issuing publication and inviting claims. These expenses are subject to approval by the Committee of Creditor (COC).
- I. In terms of section 7 (5)(a) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the corporate debtor and IRP by Speed Post & e-mail immediately, and in any case, not later than two days from the date of this order.



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

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- J. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kerala, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt a copy of this order.
10. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
11. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

T KRISHNA VALLI
(MEMBER JUDICIAL)

Signed on this, the 11th day of January, 2024.

Rohit/LRA

Certified to be True Copy-

Deputy Registrar
National Company Law Tribunal
Kochi Bench

