

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

CP No. 299/(IB)-MB-V/2023

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

Axis Bank Limited

Trishul, 3rd Floor, Opposite Samartheshwar Temple, Near Law Garden, Ellis Bridge, Ahmedabad 380 006 and Structured Assets Group at 7th Floor, C-2, Axis House, Wadia International Centre, Pandurang Budhkar Marg, Worli, Mumbai – 400025

... Petitioner/Financial Creditor

V/s

Vin Semiconductors Private Limited

306/307, Marathon Max, LBS Marg, Opposite Nirmal Lifestyle, Mulund (West), Mumbai -400080.

... Respondent/Corporate Debtor

Order Dated: 10.11.2023

Coram:

Hon'ble Ms. Reeta Kohli, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearances (Physically):

For the Petitioner : Adv. Sagar Pathak a/w Adv. Nikita Bangera
i/b PSA Law Office
For the Corporate Debtor : Adv. Manoj Mishra

ORDER

Per: Reeta Kohli, Member (Judicial)

1. This Company Petition is filed by **Axis Bank Limited** (hereinafter called **“Petitioner”**) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Vin Semiconductors Private Limited** (hereinafter called **“Corporate Debtor”**) alleging that the Corporate Debtor committed default on 30.11.2021 to the extent of Rs. **12,68,03,019.17/-**. This Petition has been filed by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called **“IBC”**) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. List of documents attached to this Petition in order to prove the existence of Financial Debt, the amount and date of default are as follows:
 - a. A copy of Sanction Letters dated 04.07.2013, 20.06.2014, 05.09.2014, 21.08.2015, 11.09.2015, 18.02.2017, 25.04.2017, 16.05.2018, 02.07.2018, 12.01.2018, 08.08.2019, 13.03.2020, 09.07.2022, 09.07.2022, 17.08.2021, 30.12.2021.
 - b. A copy of Demand Promissory Note along with a D.P. Note delivery cum waiver letter dated 08.08.2013, 12.01.2014, 11.09.2015.
 - c. A copy of Term Loan Agreement dated 08.08.2013, 12.12.2014.
 - d. Copies of Deed of Guarantee dated 08.08.2023
 - e. A copy of Acknowledgement dated 06.02.2015, 19.07.2017, 09.02.2022.

- f. A copy of the Second Supplemental Deed of Hypothecation dated 11.09.2015
- g. A copy of Notice under Section 13(2) of the SARFAESI Act dated 16.08.2022 issued by the Financial Creditor.
- h. A copy of record of default with NeSL.
- i. A copy of Certificates in terms of Section 2A of the Bankers' Book Evidence Act, 1891.

Brief Facts

- 3. The Petition reveals that the Corporate Debtor approached the Financial Creditor to avail credit facilities amounting to Rs. 11,57,00,000/- and the Financial Creditor, after due consideration had sanctioned the credit facilities amounting to Rs. 11,57,00,000/- to the Corporate Debtor vide sanction letter dated 04th July 2013 bearing Ref. No.: AXIS/SME/MUM-II/SC/235/2013-14 ("**First Sanction Letter**"). The transaction was approved by the Board of Directors of the Corporate Debtor vide Board Resolution dated 04th July 2013. Thereafter, the Financial Creditor extended various credit facilities to the Corporate Debtor under **the First to Sixteenth Sanction letters dated** 04.07.2013, 20.06.2014, 05.09.2014, 21.08.2015, 11.09.2015, 18.02.2017, 25.04.2017, 16.05.2018, 02.07.2018, 12.01.2018, 08.08.2019, 13.03.2020, 09.07.2022, 09.07.2022, 17.08.2021, 30.12.2021 respectively.
- 4. It is submitted that on 09th February 2022, the Financial Creditor had sent an email to the Corporate Debtor notifying that an amount of Rs. 49,97,529.82/- was overdue since 30th November 2021 and the balance outstanding was Rs. 12,18,30,861.82. The Financial Creditor further requested the Corporate Debtor to regularise its account to avoid from being declared as a Non-Performing Asset.

5. Pursuant to the above, the Corporate Debtor on 09th February 2022 issued an Acknowledgment of Debt *inter alia* acknowledging its indebtedness to the Corporate Debtor to the extent of Rs. 12,18,30,861.82 as on 08th February 2022.
6. On 10th February 2022 and 11th February 2022, the Financial Creditor sent a reminder email to the Corporate Debtor to fund its account to avoid being declared as an NPA.
7. On 10th March 2022, the Financial Creditor addressed a letter to the Corporate Debtor, Mr. Subhash Pawar, Mrs. Shalaka Pawar and Mr. Motilal Pawar *inter alia* stating that in view of the failure of the Corporate Debtor to regularise its account despite the repeated requests and reminders of the Financial Creditor, the account of the Corporate Debtor **had been declared as an NPA with effect from 28th February 2022**. The Financial Creditor also called upon the Corporate Debtor to clear the overdue amount of Rs. 14,09,58,082.59/- within 7 days of receipt of the letter.
8. On 26th July 2022, the Financial Creditor addressed a recall notice dated 26th July 2022 bearing Ref. No.: AXIS/SAG/PRK/2022-23/995 to the Corporate Debtor, Mrs. Shalaka Subhash Pawar, Mr. Subhash Motilal Pawar, Mr. Motilal Yamnasa Pawar, Mr. Vishal Motilal Pawar and Mrs. Sandhya Vijay Malji *inter alia* calling upon them to pay the Financial Creditor jointly and severally an amount of Rs. 11,37,38,831.79 outstanding as on 25th July 2022 with further interest with effect from 26th July 2022 at the contractual rates, payable/ compounded monthly along with charges as per the contractual terms of sanctions. The Financial Creditor also invoked the Guarantee given by Mrs. Shalaka Pawar, Mr. Subhash Motilal Pawar, Mr. Motilal Yamnasa Pawar and called upon them to pay the said outstanding amount.

9. Thereafter, the Financial Creditor issued a Notice under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**") dated 16th August 2022 bearing Ref. No.: AXIS/SAG/PRK/2022-23/1034 upon the Corporate Debtor, Mrs. Shalaka Subhash Pawar, Mr. Subhash Motilal Pawar, Mr. Motilal Yamnasa Pawar, Mr. Vishal Motilal Pawar and Mrs. Sandhya Vijay Malji *inter alia* calling upon them to make payment of an amount of Rs. 11,44,61,166.79/- being the amount due as on 10th August 2022 with further interest from 11th August 2022 till the date of payment at contractual rate payable/ compounded at monthly rests and penal interest as applicable within a period of 60 days from the date of the Notice. However, the Corporate Debtor failed to make the payment.
10. Hence, due to non-payment of debts, the Petitioner filed this Petition u/s 7 of the IBC, as a Financial Creditor, for initiating the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.
11. The Corporate Debtor failed to appear despite service of notice as on 17.06.2023 and the case was adjourned on various dates i.e. 11.07.2023, 31.07.2023 and 22.08.2023. Till date no one appeared on behalf of the Corporate Debtor and Hence the Corporate Debtor was proceeded Ex-Parte vide order dated 31.07.2023. The relevant extract of the order is reproduced below:



NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V

8. C.P. (IB)/299(MB)2023

CORAM:

SMT. ANURADHA SANJAY BHATIA
HON'BLE MEMBER (T)

SHRI KULDIP KUMAR KAREER
HON'BLE MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 31.07.2023

NAME OF THE PARTIES:

Axis Bank Limited

V/s.

Vin Semiconductors Private Limited

Section: 7 of Insolvency & Bankruptcy Code, 2016

ORDER

Adv. Jain i/b P & A Law Offices appeared for the Financial Creditor. None for the Corporate Debtor. None present on behalf of the respondent. Record reveals that notice was dully served and delivered to the Corporate Debtor as on 17.06.2023, till date no one appeared on behalf of the Corporate Debtor.

In facts and circumstance of the case, the Corporate Debtor is proceeded against ex-parte. List this matter on **22.08.2023** for final hearing.

Sd/-

ANURADHA BHATIA
Member (Technical)

Sd/-

KULDIP KUMAR KAREER
Member (Judicial)

12. On 22.08.2023, the Corporate Debtor sought time to file reply, however, since there was already an order proceeding Ex-Parte against the Corporate Debtor and no request for recalling the ex-parte order still, in the interest of justice, the Corporate Debtor was granted indulgence and premised to file an application for setting aside ex-parte order and also

file the reply after depositing the cost of Rs. 25,000/- in "Bharat Kosh" imposed vide order dated 22.08.2023. The extract of the order is reproduced below:



NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

13. C.P. (IB)/299(MB)2023

CORAM:

MS. REETA KOHLI,
MEMBER (J)

MS. MADHU SINHA,
MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **22.08.2023**.

NAME OF THE PARTIES: Axis Bank Limited

Vs

Vin Semiconductors Private Limited

SECTION : Sec 7 of IBC 2016

Presence: Mr. Sagar Pathak, Ld. Counsel for the Petitioner

Mr. Omkar Kelkar, Ld. Counsel Corporate Debtor.

ORDER

The Ld. Counsel for the Corporate Debtor seeks time to file reply. The perusal of the file shows that there is already an order proceeding ex-parte against the Corporate Debtor. Today even though the counsel is appearing but no application / prayer has been made for setting aside the ex-parte order and the request for grant of time is being made.

In the interest of justice, the Corporate Debtor is granted permission to file an application for setting aside ex-parte order and also the reply after depositing the cost of Rs. 25,000/- in "Bharat Kosh"

The matter is adjourned to 12.09.2023.

Sd/-
MADHU SINHA
Member(Technical)

(P)

Sd/-
REETA KOHLI
Member(Judicial)

13. However, on 12.09.2023, once again none appeared on behalf of the Corporate Debtor even though the case was passed over awaiting the appearance of the Corporate Debtor. Ultimately the Bench was left with no option but to hear the counsel for the Petitioner and reserved for the orders. The relevant extracts of the orders are reproduced below:



NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

203. C.P. (IB)/299(MB)2023

CORAM:

MS. REETA KOHLI,
MEMBER (J)

MS. MADHU SINHA,
MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON **12.09.2023**.

NAME OF THE PARTIES: Axis Bank Limited

Vs

Vin Semiconductors Private Limited

SECTION : Sec 7 of IBC 2016

Presence: Adv. Sagar Pathak a/w Adv. Nikita Bangera i/b PSA Law Office for
the Petitioner/Financial Creditor are present. **None for the
Respondent/Corporate Debtor.**

ORDER

Heard the counsel appearing for the Financial Creditor and the matter is reserved
for order.

Sd/-
MADHU SINHA
Member(Technical)

Sd/-
REETA KOHLI
Member(Judicial)

14. Thereafter, the counsel for the Respondent mentions that he was unaware of the fact that the matter was listed on 12.09.2023 and the non-appearance on behalf of the Respondent was not intentional. He further mentions that at the time of serving the written submission by the Petitioner he has come to know that the matter was Reserve for order. The counsel for the Respondent submits that he has complied with the order dated 22.08.2023 by depositing the cost Rs. 25,000/- towards Bharatkosh on 07.10.2023 and seeks an opportunity to be heard in the interest of justice. Hence, the Respondent filed an I.A. 4636 of 2023 which was taken into consideration.
15. During the course of the argument the contention of the Corporate Debtor hinges on the date of default of 30.11.2021 submitted by the Petitioner in Part – IV of the Petition. The Corporate Debtor contended that the credit facilities were renewed by the Petitioner as per 16th Sanction Letter bearing Ref. No. AXIS/SAG/PRK/2021-22/720 dated 30.12.2021 thus giving a fresh life to the loan accounts as all the previous loan agreement/sanction letters got merged into the 16th Sanction letter dated 30.12.2021.
16. The Corporate Debtor further contends that in order to trigger the CIRP, as per Section 7(5) of the Insolvency and Bankruptcy Code, 2016 there must be an occurrence of default on the part of the Corporate debtor however in the present case the Petitioner has failed to establish that the default has occurred on 31.11.2021. Since the credit facilities were renewed on 30.12.2021 vide 16th Sanction Letter and thus as a consequence the classification of account as NPA on 28.02.2022, issuance of Recall Notice dated 26.07.2022 and Demand Notice dated 16.08.2022 also stand null and void ab initio.
17. The another contention raised by the Corporate Debtor is that the accounts of the Respondent were classified as NPA on 28.02.2022 vide notice bearing Ref. No. AXIS/SAG/PRK/2021-22/824 dated 10.03.2022 by the Petitioner. However, the Corporate Debtor has relied on the

commercial credit information report maintained by the CIBIL, wherein the accounts of the Respondent were shown as 'standard' and not as 'non-performing asset' in the month of February 2022 till March 2022.

18. In response to the above contentions the Petitioner has argued that the Corporate Debtor had started defaulting in its payment obligations under the credit facilities from 30.11.2021. The total amount in default under the facilities granted was Rs. 12,68,03,019.17. In view of the defaults the account of the Corporate Debtor was classified as NPA on 28.02.2022 in accordance with the guidelines issued by the Reserve Bank of India.
19. The Petitioner stated that they have submitted an authenticated Record of Default – Form D dated 25.01.2023, generated by the National E – Governance Services Limited (NeSL) and has relied on the Judgement of the Hon'ble NCLAT in **Vipul Himatlal Shah & Ors. Vs Teco Industries & Ors. Dated 18.05.2022** which states that the Adjudicating Authority or the Appellate Authority are not required to further examine the record in case the record of Information Utility shows that there is a debt which is in default. The relevant extract of the Judgement is as under :

“16.it is clear that in case the record of Information Utility shows that there is a debt which is in default, the Adjudicating Authority or the Appellate Authority are not required to further examine the record maintained by the Information Utility, moreso when the record of the Information Utility is deemed authenticated and no dispute or refutation of said record has been done by the corporate debtor earlier.”

20. In the Present case, the Petitioner has submitted the NeSL report dated 25.01.2023 which clearly records the existence of debt which is in default and the date of default. The same has not been disputed or refuted by the

Corporate Debtor. Therefore, the bench is of the considered view that the existence of occurrence of default as per Section 7(5) of the Insolvency and Bankruptcy Code, 2016 exists.

21. Further, with regards to the contention of the Corporate Debtor that the credit facilities were renewed by the Petitioner as per 16th Sanction Letter bearing Ref. No. AXIS/SAG/PRK/2021-22/720 dated 30.12.2021 thus giving a fresh life to the loan accounts as all the previous loan agreements. The classification of account as NPA on 28.02.2022 was null and void ab initio. The Petitioner submits that the sanction letter dated 30.12.2021 has not novated the period of sanction of credit facilities. The sanction tenor of the borrower's credit facilities had already expired, and the limits could not be continued on lapsed sanction. The Petitioner further submits that the Corporate Debtor requested for short extension of credit facilities so as to regularize the sanction tenor. However, the Corporate Debtor did not regularize its accounts despite having made the request and the same was declared NPA on 28.02.2022. Hence, in view of the above fact the contention of the Corporate Debtor does not survive.

FINDINGS:

22. We have heard the Counsels appearing for the Petitioner as well as Respondent and perused the material available on record.
23. It is an undisputed fact that several credit facilities have been sanctioned by the Axis Bank Limited to the Corporate Debtor vide sixteen sanction letters dated 04.07.2013, 20.06.2014, 05.09.2014, 21.08.2015, 11.09.2015, 18.02.2017, 25.04.2017, 16.05.2018, 02.07.2018, 12.01.2018, 08.08.2019, 13.03.2020, 09.07.2022, 09.07.2022, 17.08.2021, 30.12.2021 respectively. The first date of default as submitted by the Financial Creditor in Form 1 is 30.09.2021 and the account of the Corporate Debtor was declared as Non-Performing Asset '**NPA**' on 28.02.2022. The Bench further considered that the Corporate

Debtor has acknowledged its debt on several occasions vide acknowledgement of debt dated 06.02.2015, 19.07.2017 and 09.02.2022 annexed as “Annexure 40, Annexure 60 and Annexure 89” of the Company Petition.

24. The Petitioner further issued a notice under Section 13(2) of SARFAESI Act, on 16.08.2022, calling upon the Corporate Debtor and its guarantors to pay the amount of Rs. 11,44,61,166.79 with further interest. However, the Corporate Debtor failed to repay the default amount.
25. The Petitioner has also filed record of default by the Information Utility (NeSL) dated 30.11.2022.
26. From the set of documents placed on record by the Petitioner, it is found that the Corporate Debtor has defaulted in repayment of debt. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case for admission u/s 7 of the I&B Code.
27. Considering the above discussion, this bench is of the considered view that the petitioner has been able to establish that there is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of **‘debt’** and **‘default’** for admission of a petition under section 7 of the I&B Code, have been, therefore, met in this case. Besides, the Company Petition is well within the period of limitation. The Petitioners have also suggested the name of proposed Interim Resolution Professional in Part-3 of the Petition along with his consent letter in Form-2
28. Consequently, the petition is ordered to be admitted in the following terms:

ORDER

- a. The above Company Petition No. 299/IBC/MB/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Vin Semiconductors Private Limited**.
- b. The IRP proposed by the Financial Creditor, **Mr. Prashant Jain**, having registration No. IBBI/IPA-001/IP-P01368/2018-2019/12131, having address at A501, Shanti Heights, Plot No. 2,3,9B/10, Sector 11, Koparkharine, Thane, Navi Mumbai, Maharashtra- 400709, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner 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 declared moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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 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.
- f. 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.
- g. 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.
- 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 board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the 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. 299/IBC/MB/2023 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

Madhu Sinha
Member (Technical)
/Abhay/

SD/-

Reeta Kohli
Member (Judicial)