

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, CHENNAI**

**IBA/873/2019**

*Under Section 7 r/w Rule 4 of the IBC, 2016*

**In the matter of M/s. ABT (Madras) Private Limited**

**M/s. Asset Reconstruction Company (India) Limited**

The Ruby, 10<sup>th</sup> Floor, 29, Senapati Bapat Marg,  
Dadar (West), Mumbai-400028.

**---Financial Creditor**

V/s

**M/s. ABT (Madras) Private Limited**

No. 180, Race-Course Road,  
Coimbatore-641018

**---Corporate Debtor**

**Order delivered on: 04.12.2019**

**Coram:**

**B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)**

**S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

For the Financial Creditor : *Shri. Mr. V.V. Sivakumar, Advocate*  
*For M/s. Dua Associates*

For the Corporate Debtor : *Shri. Arun C. Mohan, Advocate*  
*Shri. Keerthikiran Murali, Advocate*

**ORDER**

**Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

**Order pronounced on 04.12.2019**

It is an Insolvency and Bankruptcy Application filed u/s 7 of  
the Insolvency and Bankruptcy Code, 2016 ("the Code") by M/s.

✓

Asset Reconstruction Company (India) Limited (“ARCIL”) (hereinafter referred to as “Financial Creditor”) for initiation of Corporate Insolvency Resolution Process (in short “CIRP”) against M/s. ABT (Madras) Private Limited (hereinafter referred to as “Corporate Debtor”) on the ground that it has defaulted in repaying an amount of ₹507,97,10,877 (Rupees Five Hundred and Seven Crores Ninety Seven Lakhs Ten Thousand Eight Hundred and Seventy Seven only) as on 30.06.2019 with contractual rate of interest payable from 01.07.2019.

2. The learned counsel for the Financial Creditor submitted that Dewan Housing Finance Limited (DHFL – original lender), at request, sanctioned total mortgage loan of ₹355 crores vide sanction letters dated 29.03.2012 and 26.12.2014 to the Corporate Debtor and the loan disbursed was primarily secured by documents, equitable mortgage by deposit of title deeds, personal guarantees, promissory note etc. at an estimated value of ₹415.51crores.

2.1 In the year 2016, ABT Limited applied for demerger into two entities namely, M/s.ABT (Investments) Private Limited and

M/s. ABT (Madras) Private Limited (Corporate Debtor). The demerger was approved by the Hon'ble High Court of Madras on 18.04.2016. Further, as per the Scheme of Demerger and more specifically Part-V of Clause 5 (Loans and related Security) of the Scheme of Demerger, the liabilities of ABT Limited including secured properties situate at Guindy (Chennai) and Coimbatore were transferred and stood absorbed by the Corporate Debtor as **"Transferred Borrowings"**. It is further submitted that in pursuance of demerger and in order to pay aforesaid loans, the Corporate Debtor submitted OTS proposal for ₹325 crores to the Assignor (Dewan Housing Finance Limited) on 12.07.2016. On the approval of OTS, the Corporate Debtor made part payment of ₹115 crores but defaulted in repayment of the balance amount. As per the terms agreed upon between the parties, the Financial Creditor was constrained to revoke the OTS after adjusting the amount paid by the Corporate Debtor against the outstanding dues. The date of default commenced from 30.10.2017. By an Assignment Agreement dated 03.07.2018, the

sr

Assignor (Dewan Housing Finance Limited) assigned the aforesaid debts disbursed to Corporate Debtor to the Financial Creditor herein (ARCIL). On 07.01.2019, the Corporate Debtor acknowledged the outstanding debt and requested time to submit a proposal and also sent an e-mail dated 11.04.2019 in this regard.

2.2. To substantiate their claim, the Financial Creditor (ARCIL) has filed dates and events disclosing existence of debt and occurrence of default, which are as follows:

S.No.	DATES	EVENTS
1.	29.03.2012 & 26.12.2014	Sanction letters issued by the Assignor (DHFL) in favour of Corporate Debtor
2.	30.03.2012 & 27.12.2014	Demand Promissory Notes for ₹215 Crores and ₹140 Crores executed by the Corporate Debtor
3.	03.07.2018	Assignment Agreement executed and registered between the Assignor (DHFL) in favour of the Financial Creditor (ARCIL)
3.	07.01.2019	Minutes of the meeting held between the Financial Creditor and Corporate Debtor
4.	11.04.2019	E-mail issued by the Corporate Debtor to the Financial Creditor
5.	30.06.2019	Computation of dues as on date

✓

6.	30.03.2012	Mortgage by deposit of title deeds by the Corporate Debtor
7.	27.06.2019	Charge created by Corporate Debtor in favour of Financial Creditor and recorded with the Central Registry of Securitization, Asset Reconstruction and Security Interest of India Portal.
8.	30.06.2019	Statement of account for loans availed by Corporate Debtor
9.	31.03.2016	Audited Balance sheet of the Corporate Debtor ending March 31, 2016
10.	31.03.2017	Audited Balance sheet of the Corporate Debtor ending March 31, 2017

3. Looking at the dates and events as well as the annexure to the application, it is apparent that the Assignor (DHFL) has transferred its right by way of Assignment Agreement for recovery of credit facilities by Financial Creditor herein (ARCIL) as mentioned above but the Corporate Debtor defaulted in repaying the same.

4. In the counter filed on behalf of the Corporate Debtor, it is stated that ABT Limited (“Principal Borrower”) entered into two loan agreements with Dewan Housing Finance Limited (“DHFL - Original Lender”) and availed first loan of ₹215 crores on 30.03.2012 and second loan of ₹140 crores on 27.12.2014.

4.1. The Corporate Debtor counsel argued that the Assignment Agreement Clause 2.3.1 states *"nothing other than a financial asset as defined in the SARFAESI Act is acquired by the Assignee (ARCIL) from the Assignor (DHFL) as per this Agreement"*. From the above, what has been taken over by the Financial Creditor is merely the loan given by the original lender (DHFL) to the Corporate Debtor. There are no terms of payment between the Applicant and Corporate Debtor.

4.2 This Agreement between the lender (DHFL) and Applicant (ARCIL) was done with the sole purpose of getting benefit under Section 8F of the Indian Stamp Act. Since there is great deficit of stamp duty on the Assignment Agreement, it has to be impounded and no rights would flow for the Applicant against the Corporate Debtor unless the same is rectified.

4.3 The Corporate Debtor is unaware of the internal agreement between Assignor (DHFL) and the Financial Creditor (AIRCIL) since the Corporate Debtor was not a party to the Assignment Agreement. However, it is certainly clear that there are no dues

payable to the Financial Creditor as on date. In the light of the same, the Assignment Agreement is not binding on the Corporate Debtor and the Financial Creditor herein therefore cannot claim based on the said Assignment Agreement.

4.4 It is further submitted that with regard to first loan of ₹215 crores, the Corporate Debtor paid ₹296.50 together with interest at 11.57%. The statement of repayment to DHFL along with the respective RTGS details is given in Annexure-B of the counter. It is submitted that there was no due to DHFL as on December 2017.

5. To counter this claim, the Financial Creditor counsel filed rejoinder to the counter filed by the Corporate Debtor stating that the Deponent, ABT (Madras) Pvt. Ltd. was not authorized by the Corporate Debtor/Respondent to file the counter.

5.1. As per the Assignor's (DHFL) sanction letter dated 29.03.2012, the Corporate Debtor had to make repayment of first loan of ₹215 crores in 120 Equated Monthly Instalment of ₹4,51,74,046 with interest at 22.50%. Similarly, for the second

loan of ₹140 crores sanctioned on 26.12.2014, the Corporate Debtor had to repay in Equated Monthly Instalment of ₹2,92,71,918 with interest at 22.35%. During adjudication of the present proceedings, the Corporate Debtor has paid a sum of ₹4,60,60,701 to the Financial Creditor vide RTGS No.CIUBR 52019092600303184 towards partial discharge of aforesaid loans.

5.2. It is evident from the balance sheet as on 31.03.2016 of the Corporate Debtor that he had agreed to repay the Assignor a total amount of ₹325 crores towards first loan and second loan as per the OTS proposal dated 15.07.2016.

5.3. Further, the 2<sup>nd</sup> loan of ₹140 crores was availed by Corporate Debtor to pay the dues of 1<sup>st</sup> Loan and the other loan account (M/s.Sakthi Auto Component Limited) of the Corporate Debtor with the Assignor. It is submitted that out of the total loan of ₹140 crores availed by the Corporate Debtor, a sum of ₹91,07,32,312 was paid to the Assignor for the 1<sup>st</sup> Loan and a sum of ₹47,37,18,140 towards repayment of M/s.Sakthi Auto Component Limited's loan account as the said loans were

overdrawn and the balance sum of ₹1,55,49,548 towards payment of interest of the 2<sup>nd</sup> Loan. Therefore, the averment that the 2<sup>nd</sup> Loan was paid by the Corporate Debtor is false and denied.

5.4. It is also denied that the Corporate Debtor paid a sum of ₹296.50 crores towards 1<sup>st</sup> Loan at the agreed rate of interest at 11.57% per annum. It is submitted that the unsigned working sheet filed along with the counter reflects a payment of ₹190,76,57,927 and not ₹493,69,04,442 as claimed by the Corporate Debtor. Through e-mail dated 11.04.2019 the Corporate Debtor stated that it was facing liquidity issues and sought time till 30.04.2019 to clear the outstanding dues. Since the Corporate Debtor failed to service the liability, the Financial Creditor approached this Adjudicating Authority.

6. On perusal of documents, it appears that the Financial Creditor has denied vide para-11 of the rejoinder to the counter filed by the Corporate Debtor saying that through the Assignment Agreement dated 03.07.2018, the Financial Creditor has acquired the

loans of the Corporate Debtor from the Assignor (DHFL) under the SARFAESI Act together with security interest and all other rights available against the borrowers for recovery of outstanding loans and in this regard, all the requisite stamp duty charges have been duly paid in accordance with law. As per Clause 2.1 of the Assignment Agreement, the loans assigned to the Applicant herein will be secured by subsisting mortgages/charges/securities over the immovable property, created in favour of the original lender and shall continue to be in full force and effect in favour of the Applicant.

7. Regarding other averments made by the Corporate Debtor, the applicant has stated that the working sheet provided by the Corporate Debtor does not support the claim made by them stating that all the outstanding loans have been cleared to DHFL and that there is no overdue amount remaining payable.

8. On going through the facts adduced by both the parties, it is clear that the Corporate Debtor has failed to abide by the conditions of the OTS and has made only part payment towards the amount of

default. In view of the above, this Bench is of the view that the Corporate Debtor has defaulted in repaying outstanding debt of ₹507,97,10,877 (Rupees Five Hundred and Seven Crores, Ninety Seven Lakhs, Ten Thousand, Eight Hundred and Seventy Seven) as on 30.06.2019 and the Financial Creditor proved existence of debt and default. Therefore, this Bench hereby admits IBA/873/2019 by appointing Mr. Balakrishnan Venkatachalam as Interim Resolution Professional (IRP) looking at the consent given by the Financial Creditor stating that this Financial Creditor would pay remuneration to the IRP and the expenditure thereto until constitution of CoC.

9. In view of the aforesaid reasons, this **IBA/873/2019** is hereby **admitted** with the following directions:

I. that moratorium is hereby declared prohibiting all of the following actions, namely,

(a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution*

H

*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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

*(d) the recovery of any property by a owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

II. That the supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period.

III. That the provisions of Sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the

8/

Central Government in consultation with any financial sector regulator.

IV. That the order of moratorium shall have effect from the date of issue of 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 of IBC or passes an order for liquidation of Corporate Debtor under section 33 of IBC, as the case may be.

V. That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of IBC.

VI. That this Bench hereby appoints **Mr. Balakrishnan Venkatachalam**, having Regn. No. [IBBI/IPA-001/IP-P00229/2017-18/10458], GF02, "Lttina Padma-I" 5<sup>th</sup> Main Road, Ramamurthy Nagar, Bengaluru – 560016, E-mail: [cbalakrishnanip@gmail.com](mailto:cbalakrishnanip@gmail.com), Mobile: 8095768000, as Interim Resolution Professional (IRP), with his consent to carry the functions as mentioned under the Insolvency and

N

Bankruptcy Code. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/ Circulars/Directions issued in this regard.

10. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, Corporate Debtor and Interim Resolution Professional by way of e-mail.

**-Sd-**  
**(S. VIJAYARAGHAVAN)**  
**Member (Technical)**

**-Sd-**  
**(B. S.V. PRAKASH KUMAR)**  
**Member (Judicial)**

TJS/KNP