

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

IBA/43/2020 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 M/s. Alba Industries Limited**

**M/s. The Federal Bank Limited**  
Rep. by its Asst. Vice President  
Mr. Josemon P David  
Mount Road Branch  
SVS Club Building,  
No. 61, Anna Salai, Chennai-600002

....Financial Creditor

Vs.

**M/s. Alba Industries Limited**  
[CIN: U14102TN2000PLC045290]  
BMC House,3 2/2 Halls Road,  
Egmore, Chennai-600 008.

....Corporate Debtor

IA/167(CHE)/2021 and IA/168(CHE)/2021  
filed under Rule 11 of National Company  
Law Tribunal Rules, 2016

**M/s. Alba Industries Limited**  
[CIN: U14102TN2000PLC045290]  
BMC House,3 2/2 Halls Road,  
Egmore, Chennai-600 008.

---Applicant

V/s

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**COMMON ORDER**  
IBA/43/2020, IA/167(CHE)/2021 and IA/168(CHE)/2021  
In the matter of M/s. Alba Industries Limited



**M/s. The Federal Bank Limited**  
Rep. by its Asst. Vice President  
Mr. Josemon P David  
Mount Road Branch  
SVS Club Building,  
No. 61, Anna Salai, Chennai-600002

**---Respondent**

**CORAM:**

**R.SUCHARITHA, MEMBER (JUDICIAL)**  
**B. ANILKUMAR, MEMBER (TECHNICAL)**

**Presents:**

**IBA/43/2020:-**

For the Applicant/FC : Shri. P.V. Muralidhar, Advocate  
Shri. M Praveen Kumar, Advocate  
Shri. R.I. Ramesh, Advocate  
For the Respondent/CD : Shri.A.M. Sridharan, Advocate  
Shri. S. John Major, Advocate

**IA/167(CHE)/2021 and IA/168(CHE)/2021:**

For the Applicant(s) : Shri. S. John Major, Advocate  
For the Respondents : Shri. P.V. Muralidhar, Advocate  
Shri. M Praveen Kumar, Advocate  
Shri. R.I. Ramesh, Advocate

**COMMON ORDER**

**Per: R. SUCHARITHA, MEMBER (JUDICIAL)**

**Order pronounced on: 27.04.2021**

Under adjudication is an application filed pursuant to  
Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short

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“the Code, 2016”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. The Federal Bank Limited (hereinafter referred to as “**Financial Creditor**”) for initiation of Corporate Insolvency Resolution Process (in short “**CIRP**”) against M/s. Alba Industries Limited (hereinafter referred to as “**Corporate Debtor**”) on the ground that it has defaulted in repaying an amount of Rs.18,03,08,877.60 as on 07.11.2019.

2. On perusal of this application and the averments made by the Applicant in the application, the Corporate Debtor had approached the Financial Creditor for availing credit facilities. The Financial Creditor vide letter dated 26.08.2015 sanctioned Packing Credit limit of Two Crore; FD/UBP Eight crore and Term Loan of Twenty Five Crore. In consideration of the grant of credit facilities by the Financial Creditor, the Corporate Debtor had executed three demand promissory notes and security delivery letter in respect of credit facilities. In addition to the aforesaid documents, Financial Creditor and Corporate Debtor entered into a Term Loan

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Agreement for Rupees Twenty Five Crore. On 27.08.2015, two Directors of the Corporate Debtor Company had also executed a deed of Guarantee in favour of Financial Creditor. The above mentioned credit facilities were originally by the Corporate Debtor availed in the name of M/s. Beach Minerals Company India Limited and had subsequently changed its name into M/s. Alba Industries Limited.

3. The learned counsel further submitted that since the Corporate Debtor defaulted repayment in violation of the agreed terms and the account was classified as Non-Performing Asset (NPA) consequent upon default occurred on 27.08.2018 and on the said date there was an outstanding of Rs.16,06,46,747.60. On 12.11.2018, the Financial Creditor had issued a demand notice under Section 13(2) SARFAESI Act to the Corporate Debtor. Thereafter, some payments were made to the credit of loan account by the Corporate Debtor and on the date of filing of the present application under Section 7, there was a total outstanding of Rs.18,03,08,877.60.

The last payment of Rs.50 lakh was made by the Corporate Debtor

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to the aforesaid loan account on 22.05.2019 and hence, this application is within the period of limitation.

4. The learned counsel for the Corporate Debtor filed counter on 05.11.2020 submitted that, it is contended that a person has to be declared as bankrupt only when his "Liability exceeds the Assets" and mere default in payment of loan will not entitle the applicant bank to take harsh steps against respondent which is having a stock worth about Rs.300 crore approximately which is one among the properties given as a security to the applicant bank.

5. It is further submitted that on 24.03.2017, a team of officers headed by Revenue Divisional Officer, Tenkasi inspected the godown of the respondent on the direction of the Hon'ble High Court of Madras and Rs.300 crore worth finished products kept in the godown were sealed. The respondent is hopeful of reviving the business in a very successful manner and that the business activity is in temporary trouble due to the policies of the State and Central Governments. The respondent is also taking hectic steps to raise

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funds from other sources and disposing valuable lands only to settle the loan account of the petitioner. The Respondent is ready to submit a very detailed plan to settle the loan with the petitioner.

6. Thereafter, the learned counsel for the Corporate Debtor filed additional counter on 12.02.2021, submitted that one of the partnership firms namely M/s. Blue Metals Company had availed loans from the applicant-bank and settled. The same, further, another business house involved in mining industry administered by the elder brothers of the same family of this respondent got some favorable orders from the Hon'ble National Green Tribunal (South Zone) to this effect that the curtains for the business of mining for exports may be lifted at any time and that the respondent is likely to start its business operation by April-May 2021. The Hon'ble High Court of Madras, Madurai Bench again started physical hearing of matters from 01.02.2021 and this respondent prayed for a personal hearing enabling the respondent to put forward their case before the Hon'ble High Court, Madurai Bench.



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7. In the meantime, the Corporate Debtor has filed two applications IA/167(CHE)/2021 and IA/168(CHE) 2021. These two applications were filed by Corporate Debtor before this Tribunal on 05.03.2021.

8. IA/167(CHE)/2021 filed pursuant to Rule 11 of National Company Law Tribunal Rules, 2016 by the Applicant Company, seeking to eschew the documents from Pages 147 to 163(a) of the main application (IBA/43/2020) filed by the Respondent-Bank herein for want of proper affidavits.

9. Learned Counsel for the Applicant/Respondent submits that Section 7 application filed by the applicant has not followed the Rules 26(2), 34(4) and 127 of NCLT Rules 2016 and that the statement of accounts has not been accompanied by the Certificate under Section 4 of Banker's Book of Evidence Act. Furthermore, Applicant/Respondent contends that Form-6 makes it clear that the affidavit has to be executed on oath but the Respondent-Bank has attached several certificates and an affidavit under the Banker's Book Evidence Act, 1891 executed on 08.11.2019 which were not

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sworn before Notary Public or before an Advocate in terms of Rules 127 of the NCLT Rules, 2016.

10. IA/168/2021 filed pursuant to Rule 11 of National Company Law Tribunal Rules, 2016 by the Applicant Company, seeking for dismissal of main application. The Learned Counsel for Applicant/Respondent averred that the Respondent Bank had disbursed a total sum of Rs.24,96,61,723/- on 16.11.2015. It is further submitted that the amount repaid by the Company is as follows:

S.No.	Details	Amount paid (in Rs.)
1.	From 03.02.2016 to 27.08.2018	17,22,85,495/- (Less : Penal interest levied Rs.28,09,115/-)
2.	Total EMI (Principal + Interest)	16,94,76,380/-
3.	After 27.08.2018	50,00,000/-

11. Thus, the applicant company has paid Rs.2,37,76,680/- (i.e. more than the sum total of 31 EMIs – each EMI being Rs.14,57,00,000/-) which is sufficient enough to cover another 5 instalments. Further, the applicant company has also paid Rs.50,00,000/- after 27.08.2018. Hence, the term loan account could not have been declared as NPA on 27.08.2018 and that the applicant has not committed default as on 27.08.2018.

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12. On perusal of documents, it appears that 'debt' and 'default' are proved. In the counter filed by the Corporate Debtor on 05.03.2021, it was specifically admitted to sanction the credit facilities and also to the outstanding under the loan accounts in para 9 and 10 of their counter. Thereafter, the Corporate Debtor filed Additional Counter during February 2021 in which default in the loan account was categorically admitted.

13. Heard the submissions made by the Learned Counsel / Authorized Representative for both the parties. We are of the view that the grounds as raised by the Applicant in the present IA/167(CHE)/2021 and IA/168(CHE)/2021 do not hold much, since the affidavit not having been notarized is only a procedural irregularity and it is a curable defect. This irregularity can be rectified by the Applicant at any point of time. It is also pertinent to note here that the proviso to Section 7(5) of IBC, 2016 states that this Adjudicating Authority before rejecting the application under sub – clause (b) of sub-section (5) of Section 7 of IBC, 2016 shall give a notice to the Applicant to rectify the defect in the application. Thus,

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eventhough Rule 127 of NCLT Rules 2016 states that every affidavit should be sworn or affirmed by a Notary or an Affidavit, non-compliance of the same would not entail dismissal of an Application filed under Section 7 of IBC, 2016. Since the Rules enumerated under NCLT Rules, 2016 cannot override the provisions of IBC, 2016.

14. Taking into consideration above facts, the Financial Creditor has proved existence of 'debt' and 'default', with respect to outstanding due against the Corporate Debtor. Therefore, this Insolvency and Bankruptcy Application IBA/43/2020 stands **admitted** by appointing Mr. Mr. Nagalingam Muthiah (Regn.No.IBBI/IPA-001/IP-P00774/2017-18/11347) as Interim Resolution Professional, the consent letter dated 07.11.2019 is enclosed at Page.164 of the application with directions as follows:

- 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*

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*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 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 corporate debtor.*

II. That Supply of essential goods or services to the corporate debtor, if continuing, 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 Central Government in consultation with any financial sector regulator.

IV. That the order of moratorium shall have effect from this

Order till the completion of the corporate insolvency

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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. Nagalingam Muthiah** (Regn. No. IBBI/IPA-001/IP-P00774/2017-18/11347), Room No. 708, 7<sup>th</sup> Floor, Shivalaya Buildings, A"Block, Ethiraj Road, Egmore Chennai-600008, E-Mail:mnaga2050@gmailcom, Mobile No: 9789055123 as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.



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15. Accordingly, this Application IBA/43/2020 is hereby **admitted.**

16. Hence, IA/167(CHE)/2021 and IA/168(CHE)/2021 stands **dismissed.**

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

**-sd-**  
**(ANIL KUMAR B)**  
**MEMBER (TECHNICAL)**

**-sd-**  
**(R. SUCHARITHA)**  
**MEMBER (JUDICIAL)**

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