

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – IV**

CP (IB) 114/MB/C-IV/2023

Under section 7 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

**Encore Asset Reconstruction Private Limited
[CIN: U74140DL2013PTC259641]**

Carddie Commercial Tower, Regus Business Centr, 5th
Floor, Aerocity (DIAL), New Delhi-110 037

... Financial Creditor/Petitioner

Versus

**Tirupati Fabricators Private Limited
[CIN: U27300MH1989PTC054062]**

Plot No. J-22, MIDC area, Jalgaon, Maharashtra,425
003

... Corporate Debtor/Respondent

Order Delivered on 06.10.2023

Coram:

Hon'ble Member (Judicial) : Mr. Kishore Vemulapalli
Hon'ble Member (Technical) : Ms. Anu Jagmohan Singh

Appearances:

For the Financial Creditor : Mr. B. Gopalkrishnan a/w Mr.
Nilesh Ghadge and Mr. Ashish
Dala, Advocates.
For the Corporate Debtor : Ms. Shilpa G. Talhar, Advocate

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This Company Petition is filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Encore Asset Reconstruction Private Limited** ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process

(CIRP) against **M/s Tirupati Fabricators Private Limited** ("the Corporate Debtor").

2. The Corporate Debtor is a private company limited by shares incorporated on 27.10.2009 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is Plot No. J-22, MIDC area, Jalgaon, Maharashtra, 425 003. Therefore, this Bench has jurisdiction to deal with this petition.
3. The Corporate Debtor has availed and utilized certain credit facilities from the Original Lender, namely the Jalgaon Peoples Co-Operative Bank Limited amounting to an aggregate sum of Rs.4,00,00,000/- (Rupees Four Crores Only) as mentioned below:
 - i. Working Capital Term Loan of Rs.2,00,00,000/-;
 - ii. Hypothecation Cash Credit Limit of Rs.1,50,00,000/-;
 - iii. Term Loan of Rs.50,00,000/-.
4. The present Petition was filed on 29.07.2022 before this Tribunal claiming a sum of Rs.5,04,83,374/- (Rupees Five Crore Four Lakh Eighty-Three Thousand Three Hundred and Seventy-Four Only) is due and payable by the Corporate Debtor to the Applicant which is the amount in default, with further interest @12% p.a. and other charges, costs and expenses from 01.01.2023 till the date of payment and/or realization.

The details of amount claimed to be in default and the date on which the default occurred are as follows:

29.09.2019 being the date of declaration of NPA.

The financial creditor claims a sum of Rs.5,04,83,374 (Rupees Five Crores Four Lakhs Eighty-Three Thousand Three Hundred and Seventy-Four Lakhs Eighty-Three Thousand Three Hundred and Seventy-Four Only) which is the amount in default as on 31.12.2021 with further interest @12% p.a. and other charges, costs and expenses from 01.01.2022 till payment and or realization.

Facility	Principal Outstanding as on 31.12.2021	Simple Interest @12% p.a. as on 31.12.2021 (Including then uncharged interest charged by JPCB before assignment of debt)	Penal Interest	Amount received	Total Claim/Outstanding as on 31.12.2021
Term Loan-459	42,47,000	14,66,159	2,02,526	152	59,15,837
Hypothecation Cash Credit Limit-286	1,49,10,000	57,16,519	7,51,241	5,20,365	2,08,21,395
Working Capital Term Loan-43	1,70,28,000	59,05,662	8,12,944	464	2,37,46,142
Total					5,04,83,374

- During the course of hearing on 09.05.2023, this bench had raised a query that the date of default should be taken as a date which is 90 days prior to the date on which the account of the Corporate Debtor was classified as NPA. This Tribunal sought explanation from Petitioner that if, in the instant case, the date of default is

considered as the date 90 days prior to 29.07.2019 (NPA Date), then would this petition be barred by limitation due to the fact that it has been filed on 29.07.2022.

Submissions made the Financial Creditor:

**6. Acknowledgement of Debt by the Corporate Debtor through
OTS proposals:**

- (i) It is submitted that the provisions of the Limitation Act were made applicable to proceedings under the IBC by introduction of Section 238A which was inserted by Insolvency and Bankruptcy Code (Second Amendment) Act, 2018. It is now a settled principle of law as the Hon'ble Supreme Court of India in a plethora of judgements has clarified that the period of limitation for filing applications for initiation of insolvency proceedings would be 3 (three) years from the date of default with Article 137 of the Limitation Act, 1963 being applicable.
- (ii) It is submitted that the Corporate Debtor has acknowledged the debt owed to the Financial Creditor through various One-Time Settlement ("OTS") proposals made to the Financial Creditor at different intervals of time. The Corporate Debtor made an OTS proposal specifically referring to the loan accounts HY-286, TL-459 and WTCL-43 by a letter which was received on 12.03.2020. The said letter is annexed as "Annexure III" to this note and it by itself proves that this petition has been filed within the period of limitation.
- (iii) The Corporate Debtor made further OTS proposals through various letters dated 05.07.2020, 16.06.2021,

27.11.2021 and 16.01.2023. The said letters are annexed as Annexure IV, Annexure V, Annexure VI and Annexure VII to this note.

- (iv) It is submitted that Section 18 of the Limitation Act, 1963 provides that if a written acknowledgement of liability is given prior to the expiry of the prescribed period of limitation, a fresh period of limitation shall be computed from the time of signing of such document.
- (v) It is submitted that from the material on record, it is amply clear that the Corporate Debtor has acknowledged the debt through various OTS proposals made by him and that such acknowledgement of debt has occurred during the period of limitation as well and hence with each acknowledgement of debt, a fresh period of limitation arose and hence the petition filed by the Financial Creditor is maintainable.

Acknowledgement of Debt by the Corporate Debtor in the Audited Financial Statements for the year ended 31.03.2020:

It is further submitted that the Corporate Debtor has also acknowledged the debt in its balance sheet dated 31.03.2020 under the heading "*Long Term Borrowing*".

7. As concerned about the date of default, Petitioner submits as follows:

- (i) As regards the issue of date of default is concerned, the date of default in the Company Petition is mentioned as 29.07.2019 which is the date on which the accounts of the Corporate Debtor was declared as NPA.

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- (ii) The said NPA date of 29.07.2019 is the date on which the Original Lender i.c. Jalgaon People's Cooperative Bank Ltd., from whom the Financial Creditor has acquired the account, had declared the accounts of the Corporate Debtor as NPA.
- (iii) It is submitted that normally, even though banks declare the accounts as an NPA 90 days subsequent to the account becoming a substandard account or a default account and based on the same the date of default ought to have been somewhere in the month of April 2019 whereas the filing was made in the month of July 2022, the same would have no bearing on the aspect of the limitation for the reasons mentioned supra.
- (iv) The Applicant has to give a date of default which date of default can only be the date of NPA because the Applicant has acquired the said asset from a Bank and one of the preconditions for an Asset Reconstruction Company like the Applicant to acquire an impaired asset is that it has to be declared as an NPA. Therefore, the Applicant, a new entrant, cannot declare or show any other date other than the date of NPA because in the books of the Applicant the NPA date is the default date.
- (v) It is further submitted that the said default has been registered with the Information Utility ("IU") being NeSL and the same has already been attached to the main petition.

(vi) It is further submitted that on 01.11.2019 the original lender namely, the Jalgaon People's Co-operative Bank invoked the provisions of SARFAESI notice and issued a notice under Section 13(2) of the said act. The same was not objected to but was countered by submitting an OTS proposal and the said OTS proposal was received by the Bank on 12.03.2020. This clearly proves that the NPA date was never questioned and each time there is a OTS proposal it stands testimony to that the liability gets acknowledged.

The issue with regard to the date of default whether it is the NPA date or the actual date of default has already been considered in a case decided by Hon'ble NCLT Mumbai Bench in Bank of Maharashtra vs. Universal Tubes Accessories Private Limited, wherein this Hon'ble Tribunal accepted the NPA date of the public sector Nationalized Bank as the date of default and negated the pleading of the Corporate Debtor that the filing is barred by limitation.

8. The said loan has been secured by valid and subsisting mortgage, hypothecation, and personal guarantees.
9. The Corporate Debtor has credited valid, and subsisting charge on the below mentioned properties by executing mortgage deed dated 19.01.2017 and deed of further charge on mortgage property dated 16.11.2017 and mortgage deed by way of additional security dated 16.11.2017.

Details of mortgaged properties

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- a. All that piece and parcel of factory, land, building plant and machinery at Plot NO J-22 admeasuring 1800 Sq. mtr of MIDC Mehrun possessed by M/s Tirupati Fabricators Pvt. Ltd.
 - b. All that piece and parcel of property at F.P. No. 19 of TPS-III (old plot No. 9 of S. No. 490/3) area admeasuring 475.68 Sq. Mtr. of Mehrun Taluka and District Jalgaon

Additional Security:

- c. All that piece and parcel of Gat No.893 admeasuring H0-10R (10000.00 Sq.Ft.) -of Mamurabad Tal. & Dist. Jalgaon.
10. Mr. Murlidhar Ramdas Jawale, Mr. Harish Murlidhar Jawale, Mrs. Mangala Murlidhar Jawale and Mrs. Rupali harish Jawale have personally guaranteed to the loan facilities and have executed Personal Guarantee in favour of the Creditor vide Guarantee Agreement dated 15.12.2016 & 19.12.2016.
 11. The Corporate Debtor has hypothecated the goods vide an Agreement of Hypothecation of Goods dated 15.12.2016 & 19.12.2016.
 12. The Charge on the secured asset has been duly registered with the ROC.
 13. Copy of Security interest registered with CERSAI is annexed at Exh. -1. pg.no.290
 14. The Corporate Debtor defaulted the repayment and eventually declared NPA on 29.07.2019.

15. The loan was then recalled by issuing 13(2) SARFAESI Demand Notice dated 01.11.2019.

Findings:

16. Heard the Ld. Counsel for the Financial Creditors and perused the records.
17. This bench vide order dated 14.06.2023 on the issue of limitation and acknowledgement held that the present Petition is within limitation period, in view of decision of the Hon'ble NCLAT in the case of *Tejas Khandhar Vs. Bank of Baroda (2022) ibclaw.in 496* that proposal of OTS tantamount to acknowledgement of debt under section 18 of the Limitation Act.
18. Upon going through the record files, it is observed that vide order dated 22.08.2023, this bench forfeited the right to file reply by the Corporate Debtor on account of non-filing of reply. On many occasions 13.02.2023, 14.06.2023 and 17.07.2023 the Corporate Debtor was directed to file reply. However, no reply has been filed. Hence, the matter in hand taken on merits.
19. The following facts are not in dispute:
 - 19.1. At the request of the Corporate Debtor, the Financial Creditor granted Loan amounting to an aggregate sum of Rs.4,00,00,000/- (Rupees Four Crores Only) in favour of the Corporate Debtor.
 - 19.2. Pertinently, the Corporate Debtor has admitted its liability towards the Financial Creditor in its audited balance sheets for Financial Year 2019-20. Further acknowledged its liability

vide OTS letters dated 05.07.2020, 16.06.2021, 27.11.2021, 16.01.2023 & 31.03.2020 to repay Financial Creditor.

- 19.3. Several letters and notices have been issued to the Corporate Debtor calling upon the repayment of the debt.
 - 19.4. The said amount was extended to the Corporate Debtor for a consideration in time value of money and hence is a Financial Debt within the meaning of Section 5(8) of the IBC.
 - 19.5. At the outset, we note that there is no dispute over the fact that the Corporate Debtor defaulted in paying the financial debts of more than Rs. 1 Crore (as per Section 4 of the IBC). From evidence and material on record, we also hold that the application is filed by properly authorized person.
20. We also consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018] upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.
 21. Upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the fact that the Corporate Debtor owes debt to the Financial Creditor.
 22. The Financial Creditor has proposed the name of **Mr. Indrajit Myukherjee**, Registration No: IBBI/IPA-001/IP-P-01533/2018-2019/12450, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in

Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.

23. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
24. It is, accordingly, hereby ordered as follows: -
- (a) The petition bearing **CP (IB) 114/MB/C-IV/2023** filed by **Encore Asset Reconstruction Private Limited**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Tirupati Fabricators Private Limited [CIN: U27300MH1989PTC054062]**, the Corporate Debtor, is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;

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- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:-
- (i) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Indrajit Myukherjee**, Registration No: IBBI/IPA-001/IP-P-01533/2018-2019/12450, (Email:indrajitmukherjee15@yahoo.com), Mob. No.+917045312912, having address at B405, Siddhivinayak Twins, Plot No.9, Sector 17, Roadpali, Kalamboli, Navi Mumbai-412218 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These

expenses are subject to approval by the Committee of Creditors (CoC).

- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, 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 Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH

Member (Technical)

06.10.2023
SAM/SVR

Sd/-

KISHORE VEMULAPALLI

Member (Judicial)