



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH-IV**

**Company Petition No. (IB)- 170(ND)/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:**

**OMKARA ASSETS RECONSTRUCTION PRIVATE LIMITED**

**.... Applicant/Financial Creditor**

**VERSUS**

**M/S. VIDHATA METAL PRIVATE LIMITED**

**.... Respondent/ Corporate Debtor**

**CORAM:**

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,  
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,  
HON'BLE MEMBER (TECHNICAL)**

**Order Delivered on: 06.02.2024**

**For the Applicant** : Mr. Adarsh Ramanujan, Mr. Lzafeer Ahmad Mr. Skanda Shekhar, Mr. Rajdeep Saral,  
**For the Respondent** : Mr. Krish Kalra & Ms. Rashi Arora, Advs

**ORDER**


**PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)**

The instant Company Application is filed by M/s. Omkara Assets Reconstruction Private Limited ('applicant') under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process ('CIRP') against M/s. Vidhata Metal Private Private Limited ('Respondent/Corporate Debtor') having CIN: U27310DL2008PTC175013

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**I.B./170(ND)/2023**

**Date of Order:06.02.2024**

 On the ground that the Corporate Debtor had committed a default in payment of Rs.42,46,49,737 (Rupees Forty Two Crore Forty Six Lakhs Forty Nine Thousand Seven Hundred Seven only) as on 31.10.2023.

2. The Corporate Debtor i.e., M/s. Vidhata Metal Private Limited having CIN: U27310DL2008PTC175013 is incorporated on 07.03.2008 under the provisions of the Companies Act, 1956 having its registered office situated at Room No.2, 2<sup>nd</sup> Floor, House No. 280, Pocket-7 Sector-24, Rohini Delhi - 110085. Since the registered office of the Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
  
3. Briefly stated facts of the case as mentioned in the Company Application, which are relevant to the issue in question, are that the original lender namely, State Bank of India had vide Arrangement letters dated 10.04.2012, 26.06.2012 & 06.02.2013 had sanctioned various credit facilities to the Corporate Debtor. The Original Lender had assigned the debt to ASREC (India) Limited on 28.11.2019, which was further assigned to M/s. Omkara Assets Reconstruction Private Limited, the present applicant/Financial Creditor herein on 17.03.2022. The details of the Credit facilities sanctioned/renewed to the Corporate Debtor vide Arrangement Letter dated 06.02.2013 are as follows:-
  - a) Demand cash credit facility of Rs. 20,00,00,000/- (twenty crore rupees only) from Rs. 15,00,00,000/- (fifteen crore rupees only).
  - b) Term loan of Rs. 4,36,00,000/- (four crore thirty six lakh rupees only);
  - c) Letter of credit facility of Rs. 10,00,00,000/- (ten crore rupees only) from Rs. 9,00,00,000/- (nine crore rupees only);
  - d) Bank guarantee of Rs. 2,00,00,000/- (two crore rupees only), and
  - e) Forward contract of Rs. 12,50,000/- (twelve lakh fifty thousand rupees only)



The Applicant further submitted that the Corporate Debtor had started defaulting in the repayments of the installments and failed to regularize the accounts despite several reminders from the Original Lender. Resultantly the accounts of the Corporate Debtor were classified as Non-Performing ASSET ('NPA') on 31.03.2015. Further, the Original Lender had issued notice under Section 13(4) of the SARFAESI Act, 2002 and also filed Securitization Application No. 49 of 2016 before the District Magistrate, Palghar under Section 14 of the SARFAESI Act, 2002. Pursuant to which, the District Magistrate vide its order dated 08.01.2019 had allowed the Securitization Application No. 49 of 2016, however, the combined fair value of the securitized immovable property and securitized plant and machinery recovered through the said proceedings is less than the debt due to the Financial Creditor.

5. The Applicant submitted that after the recovery of Rs.5,05,68,000/- (Five crore Five lakh fifty sixty eight thousand rupees only) through securitized immovable property, pursuant to proceedings under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, the current outstanding debt due as on 31.01.2023 is Rs. 42,46,49,737/- (forty two crore forty six lakh forty nine thousand seven only) inclusive of interest. Moreover, the Corporate Debtor had acknowledged the debt due to the Original Lender in its Tax Audit Reports related to Financial Year 2015-2016, 2016-2017. Further, the Corporate Debtor had made a One Time Settlement offer on 14.01.2020 and 23.04.2022 expressing its inability to pay the outstanding debt. Accordingly, the applicant prays for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.
6. This Adjudicating Authority vide its order dated 23.03.2023, had directed the Applicant to issue notice to the Corporate Debtor for their appearance as well as for filing the reply within two weeks. The Applicant vide affidavit of service dated 20.04.2023 submitted that the notice to the Corporate Debtor had been sent through speed post at the Registered office address as available on the MCA Portal, however the same was returned with remark " Receiver shifted from given



address”. The Applicant had also attempted physical service of the notice but the premises was locked. The Applicant had sent the notice of hearing at the e-mail id of one of the directors of the Corporate Debtor since the registered office of the Corporate Debtor as per the MCA Master Data is locked and the e-mail sent to the e-mail id of the Corporate Debtor as available on MCA Portal was bounced back.

7. This Adjudicating Authority in the interest of justice vide order dated 08.06.2023 and 03.07.2023 had again directed the Applicant to serve notice to the Corporate Debtor. The Applicant had submitted affidavit of service dated 17.07.2023 proving the service of notice to the Corporate Debt or via e-mail. This Adjudicating Authority vide its order dated 25.08.2022 had directed the Applicant Bank to issue notice to respondents through Publication. Considering, the above said facts as the Corporate Debtor has failed to appear despite notices, the Corporate Debtor was set ex parte by this Adjudicating Authority’s order dated 19.07.2023.
  
8. On a perusal of the record, this Adjudicating Authority observe that the date of default in Part-IV of the application was mentioned as 31.03.2015 and the said debt and its default was subsequently acknowledged by the Corporate Debtor on various occasions i.e., 16.10.2016, 07.09.2017, 14.01.2020 and 23.04.2022. This Adjudicating Authority observed that the present application is filed beyond a period of three years from the date of original default, however, in view of the subsequent acknowledgements of the debt by the Corporate Debtor before expiry of the period of limitation of three years, the period of limitation stands extended by a further period of three years as envisaged under Section 18 of the Limitation Act, 1963. Therefore, the present application is within the period of Limitation.




The Hon'ble Supreme Court in the matter of **Innoventive Industries Ltd. vs. CICI Bank & Anr (2018) 1 SCC 407**, held as follows :-

“29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code. 30. On the other hand, as we have seen, **in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due”** i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

“30. On the other hand, as we have seen, **in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due”** i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

10. Thus, it is clear that when a default takes place i.e., the debt becomes due and is not paid, the Insolvency Resolution Process shall begin against the corporate debtor. Therefore, on the basis of averments made in the present application and the documents placed on record, we are satisfied that the present application is complete in all respects and there exists debt and default above the pecuniary threshold limit. The Financial Creditor is entitled to move the application against the corporate debtor in view of outstanding financial debt in default above the pecuniary threshold limit as provided under Section 4 of the


 Code, 2016. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the instant petition **I.B./170/ND/2023 stands admitted and CIRP of M/s. Vidhata Metal Private Limited is initiated.**

11. The petitioner in Part-III of the petition has proposed the name of Mr. Ashish Vyas as proposed Interim Resolution Professional, having Registration Number IBBI/IPA-001/IP-P-01520/2018-2019/12267. Mr. Ashish Vyas, having registration number IBBI/IPA-001/IP-P-01520/2018 -2019/12267 and email – id ashishvyas2006@gmail.com is appointed as an Interim Resolution Professional (IRP) for corporate debtor. The consent of the proposed interim resolution profession in Form-2 is taken on record. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within Five (5) days of pronouncement of this order.
  
12. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
  - (a) 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;
  - (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.
  - (e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.



It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

14. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
15. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Ashish Vyas to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules
16. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
17. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional



As may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders.

18. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
19. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
20. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./170(ND)/2023 stands admitted.**

**Sd/-**

**(DR. SANJEEV RANJAN)  
MEMBER (T)**

**Sd/-**

**(MANI SANKARIAH SHANMUGA SUNDARAM)  
MEMBER (J)**