

S.No.2

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
15-04-2024 AT 10:30 AM**

CP(IB) No. 167/7/HDB/2022
u/s. 7 of IBC, 2016

IN THE MATTER OF:

M/s Pegasus Assets Reconstruction

...Financial Creditor

AND

Ravi Electronics Pvt Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Orders pronounced. In the result, **this petition is admitted.**

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

CP (IB) No.167/7/HDB/2022

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:

M/s Pegasus Assets Reconstruction Private Limited

Having its registered office at:

507, Dalamal House
Jamnalal Bajaj Marg
Nariman Point
Mumbai – 400 021.

And

Branch office at:

M/s Pegasus Assets Reconstruction Private Limited
No.69, 5th Cross
Behind Nano Hospital
Nyanappanahalli
BTM Layout, 6th Stage
Bengaluru – 560 076.

.. Financial Creditor

VERSUS

M/s Ravi Electronics Private Limited

Rep. by its Managing Director
Plot No.F-1/A, IDA, Kukatpally
Hyderabad – 500 054.

.. Corporate Debtor

Date of Order: 15.04.2024

Coram:

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
HON'BLE MEMBER (JUDICIAL)

SHRI CHARAN SINGH,
HON'BLE MEMBER (TECHNICAL)

Parties/Counsels present:

For Petitioner : Shri R. Rajendra Prasad, Advocate.

For Respondent : Shri P. Ramesh Babu, Advocate.

PER BENCH

1. This Company Petition is filed by M/s Pegasus Assets Reconstruction Private Limited (hereinafter referred as 'Financial Creditor') under Section 7 of Insolvency and Bankruptcy Code (hereinafter to be referred as "IBC"), read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against M/s Ravi Electronics Private Limited (hereinafter referred as 'Corporate Debtor'), alleging that an amount of Rs.2,45,67,019.20 (Rupees two crore forty five lacs sixty seven thousand nineteen and paise twenty only) as on 22.12.2021 is due and payable by the respondent/ Corporate Guarantor/ Corporate Debtor; date of default being 03.12.2013.

2. Nagesh Babu has been authorized to represent the petitioner/ Financial Creditor vide Board Resolution dated 02.08.2018 (Annexure-1, page 12 of the Company Petition).

3. **Limitation.**

3.1 The petitioner has claimed date of default as 03.12.2013 in Column-2, Form-1, page 6 of the Company Petition. In the same Column the petitioner has sought exemption of one year by virtue of the benefit of relaxation given by the Hon'ble Supreme Court of India vide order dated 08.03.2021 in Suo Motu Writ Petition (Civil) No.3 of 2020 due to COVID-19 pandemic, for the period from 15.03.2020 to 14.03.2021 for computing period of limitation. Copy of the said order is at pages 95-97 of the Company Petition.

3.2 The petitioner, however has neither claimed that the Company Petition is within the period of limitation nor has given an explanation from 03.12.2013 till the date of filing of the Company Petition on 19.05.2022, if there is any delay.

4. The petitioner/ M/s Pegasus Assets Reconstruction Private Limited has been incorporated on 20.01.2004, having CIN: U65999MH2004PTC144113. Whereas, the respondent/ Corporate Debtor has been incorporated on 13.11.1981. A copy of Certificate of

Incorporation dated 13.11.1981 is at page 14 (Annexure-2) of this Company Petition. The respondent has CIN: U32300TG1981PTC003266.

5. Averments made by the Financial Creditor are:

5.1 M/s Instruments Techniques Pvt Ltd, the original borrower had availed Cash Credit facility for its business. The respondent/ Corporate Debtor stood guarantor to the same and has executed Corporate Guarantee in favour of the Financial Creditor for repayment of the financial facilities availed by the principal borrower. The respondent/ Corporate Debtor had mortgaged the industrial land admeasuring acres 0.55 cents equivalent to 2225.13 sq. meters and building thereon situated at No.F-1/A, IDA, Kukatpally, Quthbullapur, Ranga Reddy District. Its estimated value as on date of filing this petition was Rs.13,31,00,000/-.

5.2 The said Cash Credit facility amounting to Rs.75 lacs vide Sanction Letter dated 28.03.2012. Copy of said Sanction Letter dated 28.03.2012 issued by Secured Creditor to the Corporate Debtor is at Annexure-5 of the Company Petition. The respondent has given Undertaking dated 31.03.2012 for the said Cash Credit Loan of Rs.75 lacs availed by the principal borrower. Copy of the said Undertaking is at Annexure-6 (page 77) of the Company Petition. The respondent/

Corporate Debtor has confirmed the said mortgage vide letter dated 31.03.2012 (Annexure-7, page 78 of the Company Petition). The Corporate Debtor has also executed Guarantee Agreement dated 31.03.2012 (Page 79 of the Company Petition).

5.3 However, the original borrower had defaulted in timely servicing the debt leading to loan account of the borrower getting classified as Non-performing Asset (NPA) since 03.12.2003.

5.4 The Financial Creditor had issued Recall Notice dated 06.12.2013 (Annexure-10, page 83 of the Company Petition) to the Principal Borrower and the Corporate Guarantor demanding a sum of Rs.81,40,250.32 including interest as on 03.12.2013 and both of them defaulted in repayment.

5.5 The petitioner claims that as on 22.12.2021 total outstanding amount due is Rs.2,45,67,019.20 as per Statement of Account (Annexure-12, page 94 of the Company Petition).

5.6 Since the Principal Borrower and the Corporate Guarantor had defaulted in repayment of the said sum, O.A. No.72 of 2018 was filed by the Financial Creditor under section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB & FI Act) before the

Debts Recovery Tribunal-I (DRT), Hyderabad. Said OA No.72 of 2018 was allowed vide order dated 16.08.2019. The DRT had issued Recovery Certificate vide R.C. No.636/ 2018 dated 24.09.2018 for a sum of Rs.1,77,33,181.79. Copy of Recovery Certificate is at Annexure-11, page 88 of the Company Petition. The Corporate Debtor has failed to pay the said amount. Hence this Company Petition.

6. The respondent/ Corporate Debtor has filed REPLY dated 04.08.2022, submitting that:

6.1 The Corporate Debtor claims that the Financial Creditor had never informed the Corporate Debtor about DRT Proceedings or issuance of Recovery Certificate. It came to the knowledge of the Corporate Debtor only when proceedings were instituted by the Financial Creditor in NCLT and that Recovery Certificate vide R.C. No.636/ 2018 dated 24.09.2018 for a sum of Rs.1,77,33,181.79 was issued by DRT.

6.2 On one hand the Corporate Debtor has not impleaded the legal heirs of one of the Certificate Debtors, namely, Dr. SSRL Swamy, (Surapaneni Surya Rama Lakshmana Swamy) who has died on 27.02.2014, before the DRT, though the same was communicated to the Financial Creditor vide letter dated 25.10.2015 (Annexure

A1, pages 9 to 17 of the Reply). Hence the DRT proceedings are void ab initio. On the other hand the Financial Creditor had never informed the Corporate Debtor regarding the DRT proceedings. Issuance of Recovery Certificate came to the knowledge of the Corporate Debtor only through NCLT proceedings.

6.3 It is submitted that Recovery Certificate is equivalent to Money Decree. When the decree itself is void there cannot be any debt based on such a void decree. In absence of any debt, issue of debt becoming due does not arise and the petition under section 7 is therefore, not maintainable.

6.4 The respondent contended that this Tribunal has to decide the following point as a preliminary issue is:

- Whether the impugned Recovery Certificate produced by the Financial Creditor valid in the eye of law?

6.5 The respondent further contends that even assuming that the impugned Recovery Certificate is valid, the Financial Creditor owes an explanation on the point of limitation in view of the following events.

03.12.2003 The loan account became Non-performing Asset (NPA).

24.09.2018 The DRT had issued Recovery Certificate.

15.05.2022 This Company Petition is filed under section 7 of the I&B Code, 2016.

7. The learned counsel for the petitioner/ Financial Creditor has filed Written Submissions dated 07.08.2023 and Brief Written Submissions dated 19,12,2023; the learned counsel for the respondent/ Corporate Debtor has filed Written Arguments dated 15.12.2023, reiterating their respective contentions raised during their respective oral submissions.

8. It is observed that the docket proceedings of DRT in OA No.72 of 2018, have been filed by the Financial Creditor vide Memo dated 12.12.2023. Besides the Financial Creditor has produced said docket proceedings and certain other documents related to DRT in OA No.72 of 2018 by way of Annexures-I, II and III of Written Submissions dated 19.12.2023.

9. The Corporate Debtor has produced the following documents vide
Written Arguments dated 15.12.2023:

- (i) Death Certificate dated 05.12.2023 of one of the guarantors,
namely, Surapaneni Surya Rama Lakshmana Swamy as
Annexure A/1.
- (ii) Letter dated 25.10.2015 addressed by the original borrower to
the Financial Creditor by the Corporate Debtor as Annexure
A/2.
- (iii) Letter dated 03.11.2015 addressed by the Financial Creditor to
the original borrower, acknowledging death of one of the
guarantors, as Annexure A/3.

10. In the light of the contest as aforementioned, the following points
emerge for our consideration:

1. Whether a financial debt claimed as due and payable by the
respondent to the petitioner even assuming to be existing, the same
is not enforceable under law as such the present petition is liable to
be dismissed?
2. Whether debt as claimed is barred by limitation?

11. We have heard Learned Counsel Mr. R.Rajendra Prasad for the Financial Creditor and Learned Counsel Mr. P.Ramesh Babu for the Corporate Debtor. Perused the Written Submissions and other documents filed by both sides.

Point No.1:

Whether a financial debt claimed as due and payable by the respondent to the petitioner even assuming to be existing, the same is not enforceable under law as such the present petition is liable to be dismissed?

The Submissions

12. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor signed a Guarantee Agreement dated 31.03.2012 for guaranteeing a cash credit limit of Rs.75 lakhs sanctioned to M/s Instruments Techniques Pvt. Ltd./ Principal borrower by Catholic Syrian Bank Limited from whom the debt was assigned to the Petitioner. However, the principal borrower defaulted due repayment of the said credit facility and the recall notice was issued and also OA.No.72/2008 was filed with DRT. Learned Counsel for the petitioner further submitted that DRT allowed the said OA on

16.08.2018 for a sum of Rs.1,77,33,181.79/- and finally Recovery Certificate for the same was issued on 24.09.2018. Since the debt could not be recovered through the said Recovery Certificate. Hence, this Company Petition.

13. Learned Counsel for the Respondent did not refute the execution of the Guarantee Agreement by the Corporate Debtor but submitted that the Respondent was not aware of the DRT proceedings and further contended that the decree issued by DRT is void-ab-initio as the Financial Creditor has not impleaded the legal heirs of one of the certificate debtors namely Dr.SSRL Swamy in the said OA, though he expired on 27.02.2014 and his death was communicated to Financial Creditor vide letter dated 25.10.2015. The Learned Counsel for the Respondent further contended that since the DRT proceedings are void-ab-initio, there cannot be any debt based on such a void decree. The Learned Counsel finally submitted that in the absence of any debt, the issue of debt becoming due does not arise and the petition under Section 7 of IBC, is therefore not maintainable.
14. Learned Counsel finally pleaded that , this petition in the backdrop of above facts either be dismissed or kept on hold till the final

outcome of necessary steps taken by the respondent in DRT to declare the above said decree as null and void.

15. The learned counsel for the petitioner could not produce any sufficient proof to counter the argument put forth by learned counsel of the respondent but maintained that the decree and recovery certificate issued by DRT are valid and in force till any adverse adjudication by DRT in this respect.

Our analysis & findings:

16. We have gone through the documents and found that the Corporate Guarantor/ Corporate Debtor has executed a valid Guarantee Agreement in favour of the native lender and the debt due under the said Guarantee Agreement is more than the threshold limit of Rs. One Crore.
17. The main contention of the respondent is that RC issued by the Ld. DRT, is void-ab-initio, and unenforceable as such the present proceedings initiated under the said RC, is per se, not maintainable. This plea, irrespective of merit if any, is not within the scope of enquiry contemplated in an petition filed under section 7 of IB Code.

18. In this regard we profitably rely on the ruling in re, Innoventive Industries vs ICICI Bank which is held as below:

The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.

19. Further, it is settled law that the Decree or a Recovery Certificate issued by the Court/Tribunal having jurisdiction remain valid and fully enforceable until the same are rescinded by any competent Court or Authority. Admittedly, though an Appeal has been preferred by the respondent before the Hon'ble DRAT, till date the impugned Recovery Certificate is not stayed or set aside. Hence the same is binding on the respondent.

20. Therefore, in the light of our discussion as above, and without going into the merits of the plea that the impugned recovery certificate is unenforceable under law, and by taking into consideration the fact that there exists a valid guarantee agreement signed by the respondent and also the recovery

certificated issued by the Ld. DRT decree for a sum exceeding the threshold limit of Rs One crore , we hold that there exists a financial debt due and payable by the Corporate Debtor and the Corporate Debtor has defaulted in repayment of the same. Accordingly, the point is answered.

Point No.2:

Whether debt as claimed is barred by limitation?

The Submissions.

21.The Ld. Counsel for the Respondent submits that Ld. DRT had issued a Recovery Certificate on 24.09.2018 whereas the Company Petition was filed on 15.05.2022. Thus, this Petition is filed beyond limitation period of 3 years as per Limitation Act, 1963.

22.The Learned Counsel for the Petitioner contended that since exemption of one year is available by virtue of the benefit of relaxation given by the Hon'ble Supreme Court of India vide order dated 08.03.2021 in suo-moto Writ Petition (Civil) No. 03/2020, due to Covid-19 Pandemic for the period from 15.03.2020 to 14.02.2021 for computing period of limitation , the Petition filed is well within the limitation period.

Our analysis & findings

23. The period of limitation of 3 years in this case which is to be reckoned from the date of issuance of the recovery certificate expires on 24.09.2021. However, by virtue of ruling of the Hon'ble Supreme Court in re SUO MOTU WRIT PETITION (C)No.3 of 2020 wherein Hon'ble Supreme Court in Para 5(III) held as below:

“In the cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply”.

Therefore, the period of limitation in this case stands extended upto 23.09.2022.

24. Since the present petition is filed on 15.05.2022, it is well within the limitation period. Accordingly, we decide that the Petition filed is within the limitation period.

25. Therefore, in the light of our findings on the points above, we are fully satisfied that the petitioner is able to establish the existence of a financial debt exceeding Rs.1 Crore due and payable by the respondent to the petitioner and its default. Further we also found that this petition is in order.

26.Hence, the Adjudicating Authority admits this Petition under Section 7 of I&B Code, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions: -

- (a) Corporate Debtor, M/s Ravi Electronics Private Limited, is admitted in Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016.
- (b) The Bench hereby prohibits 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

- (c) 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.
- (d) Notwithstanding anything contained in any other law for the time being in force, a 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, shall not be suspended or terminated 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.
- (e) 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.
- (f) That the order of moratorium shall have effect from the date 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, whichever is earlier.

(g) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

(h) The Financial Creditor has proposed the name of Shri S.Kasthuri Rengan as Interim Resolution Professional in Part-III of the Petition. That this Bench hereby appoints Shri S.Kasthuri Rengan having Registration No. IBBI/IPA-001/IP-P00064/2017-18/10150 as Interim Resolution Professional, whose contact details are:

e-mail ID: adkrco@gmail.com,

Address: 909A, Raghava Ratna Towers,

Abids, Hyderabad – 500 001.

Mobile: 9246344297

as Interim Resolution Professional (IRP) to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

- (i) Proposed IRP has filed written communication that his Authorisation for Assignment is valid till 03.10.2024. This information is available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.
- (j) The Registry is directed to furnish certified copy of this order to the parties as per Rule 50 of the NCLT Rules, 2016.
- (k) The petitioner is directed to communicate this order to the proposed Interim Resolution Professional.
- (l) Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for making appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under Corporate Insolvency Resolution Process.
- (m) Accordingly, this Petition is admitted.

SD

Charan Singh
Member Technical
Karim/sridher/pavani

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial