

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)**

CP (IB) No.59/Chd/CHD/2021

**Under Section 7 of the
Insolvency and Bankruptcy
Code, 2016**

In the matter of:

M/s Pegasus Assets Reconstruction Pvt. Ltd.

Having office at 55-56, 5th Floor, Free Press House,
Nariman Point, Mumbai- 400021

Also at Unit No.106, Best Business Park, Plot No.P-2,
Netaji Subhash Place, Opp. Fun Cinema Pitampura, New Delhi- 110034

Through its Authorized Signatory

Email: ramakant@pegasus-arc.com,

M: 9087788888

...Petitioner-Financial Creditor

Versus

M/s Raj Transmission Engineering Limited

CIN: U45202CH2006PLC029824,

Registered Address at Plot 705, Industrial Area,
Phase-I, Chandigarh, U.T. Chandigarh

E-mail: sanjeevsharma@hotmail.com, tejinder104@yahoo.com

Phone: 01762-522243, 522244, 285917

...Respondent-Corporate Debtor

Judgment delivered on: 07.10.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing:

For the Petitioner/Financial Creditor : Mr. Dinkar Singh, Advocate

For the Respondent/Corporate Debtor : Mr. Vishav Bharti Gupta, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short hereinafter referred to as '**Code**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,

2016 by Pegasus Assets Reconstruction Pvt. Ltd. (for short hereinafter referred to as '**petitioner/financial creditor**') for initiating the Corporate Insolvency Resolution Process (for short hereinafter referred to as the '**CIRP**') against M/s Raj Transmission Engineering Private Limited (for short hereinafter referred to as the '**respondent/corporate debtor**'). The petition is signed by Mr. Ramakant Pandey, who has been authorized by the Board of the Directors of the financial creditor vide Resolution dated 02.08.2018 (Annexure A) and the affidavit verifying the contents of the application is on page 20A to 20C of the petition.

2. The corporate debtor, namely, M/s Raj Transmission Engineering Limited, is a company incorporated on 27.02.2006 under the Companies Act, 1956, having CIN U45202CH2006PLC029824 and its registered office is at Plot 705, Industrial Area, Phase-I, Chandigarh, U.T., Chandigarh. Therefore, the matter falls within the territorial jurisdiction of this Adjudicating Authority. Copy of master data of the corporate debtor is at Annexure J of the petition.

3. The brief facts, as stated in the petition, are that the financial creditor vide registered deed of assignment from Allahabad Bank took over on assignment the total debt of the corporate debtor. The total amount of debt sanctioned on 21.08.2009 by Allahabad Bank is stated to be Rs.26,00,00,000/- and the amount was disbursed to the corporate debtor on 21.08.2009. It has been stated that Allahabad Bank at the request of the corporate debtor restructured the debt on 31.12.2012 to Rs.24,83,00,000/-. However, the corporate debtor committed default in repayment of debt as per restructured loan. Thus, Allahabad Bank filed Original Application No.74/2012 on 01.01.2012 before the Debts Recovery Tribunal (for short '**DRT**') to recover the total amount of debt of Rs.22,05,21,317.73 as on 31.01.2012 with pendent lite and future interest. Thereafter, Allahabad Bank during

the pendency of OA No.74/2012 assigned the debt in favour of the financial creditor, applicant herein, vide registered deed of Assignment agreement dated 27.09.2013.

4. Further, it has been stated that on 08.01.2014, the corporate debtor executed deed of settlement (Annexure C) with the financial creditor for a consolidated amount of Rs.18,50,00,000/- payable in 18 months, as per the schedule attached with the deed of settlement. Thereafter, the DRT, Chandigarh, vide its order dated 22.01.2014 (Annexure D) decreed the OA in terms of the deed of settlement dated 08.01.2014. According to the petitioner, as per Schedule 'A' to the deed of settlement, the corporate debtor was to make the payment from 25.02.2014 till 25.06.2015, however, the corporate debtor made the payment as under:-

Date	Amount paid (Rs.)
04.04.2014	95,00,000
04.04.2014	5,00,000
04.08.2014	80,00,000
30.03.2015	4,00,000
19.05.2015	60,00,000
11.03.2016	40,00,000
17.11.2016	15,00,000
17.11.2016	23,90,00,000
12.04.2017	4,00,000
03.08.2017	17,00,000
12.09.2017	8,00,000
27.10.2017	7,00,000
15.02.2018	2,50,000
04.10.2018	6,00,000
Total	3,67,40,000

As the respondent/corporate debtor failed to make any payment, thus, the financial creditor vide recall notice dated 30.09.2019 (Annexure E) recalled the settlement and thereafter, filed an application dated 30.01.2020 bearing MA No.87 of 2020 before the DRT, Chandigarh for revival of IA and to issue recovery certificate for the total amount due and recoverable after adjusting the amount received.

5. Thereafter, the DRT Chandigarh vide its order dated 25.05.2021 (Annexure A with IA No.539 of 2021) read with order dated 22.06.2021 (Annexure A with IA No.539 of 2021) allowed MA No.87 of 2020 and directed its Registry to prepare the recovery certificate. Accordingly, Recovery Certificate dated 27.07.2021 (Annexure A with IA No.539 of 2021) was issued against the corporate debtor for recovery of debt of Rs.1,05,88,08,533.31 along with future interest @10% simple from 01.06.2021 i.e. date of filing of the calculation of outstanding amount till the date of actual realization in full jointly and severally from the corporate debtors and its guarantors.

Thus, as per amended Form-I filed by the financial creditor through IA No.539/2021, the total amount claimed by the financial creditor as per Recovery Certificate dated 27.07.2021 issued by DRT Chandigarh against the corporate debtor for recovery of debt is Rs.1,05,88,533.31 alongwith future interest @ 10% simple interest from 01.06.2021 i.e. date of filing of the calculation of outstanding amount till the date of actual realization in full jointly and severally from the corporate debtor.

6. Notice of this petition was issued to the corporate debtor vide order dated 07.03.2022 to show cause as to why this petition be not admitted. In compliance thereof, the respondent corporate debtor filed its reply vide Diary No.01706/2 dated 07.07.2022 through Mr. Rajinder Kumar Chauhan, Director of the respondent/corporate debtor, who has been authorized by Board Resolution dated 27.06.2022, copy whereof has been annexed with the reply. In the said reply it has been stated by the respondent/corporate debtor that it was involved in the business of telecom tower and due to lack of demand, the corporate debtor had been unable to generate revenues, which eventually led to huge losses. Further, it has been

submitted in the reply that the corporate debtor has been facing a very high liquidity crunch due to non-materialization of receivables and it has admitted that it has incurred defaults of other operational creditors as well.

7. We have heard the learned counsel for the financial creditor and the learned counsel for the respondent-corporate debtor and have also perused the record carefully.

8. Section 7(5)(a) of the Code is as follows:-

“5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”

9. The issue for consideration is whether the present application is filed within limitation. The financial creditor has filed amended Form-I through IA No.539 of 2021 vide Diary No.01097 dated 28.09.2021 and in support thereof, he has also placed reliance on judgment dated 04.08.2021 passed by the Hon'ble Supreme Court in **Civil Appeal No.1650 of 2020; Dena Bank (now Bank of Baroda) versus C. Shivakumar Reddy and Another**, the relevant paragraph of the same reads as under:-

“143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.”

In the present case, the DRT Chandigarh vide its order dated 25.05.2021 (Annexure A with IA No.539 of 2021) read with order dated 22.06.2021 (Annexure A with IA No.539 of 2021) allowed MA No.87 of 2020 and directed its Registry to

prepare the recovery certificate. Accordingly, Recovery Certificate dated 27.07.2021 (Annexure A with IA No.539 of 2021) was issued against the corporate debtor for recovery of debt of Rs.1,05,88,08,533.31 along with future interest @10% simple from 01.06.2021 i.e. date of filing of the calculation of outstanding amount till the date of actual realization in full jointly and severally from the corporate debtors and its guarantors. Therefore, it can be safely inferred that this application has been filed within limitation.

10. Another issue for consideration is whether a default has occurred or not. It is observed from the record that in the present case, the occurrence of default is, *inter alia*, evidenced by Recovery Certificate dated 27.07.2021 issued by DRT, Chandigarh. During the course of arguments and also in the reply filed by it, the respondent/corporate debtor has admitted its liability and has shown its incapacity to pay the liability due to high liquidity financial crunch.

11. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In Part-III of Form No.1, Mr. Vivek Kumar Arora, Registration No.IBBI/IPA-001/IP-P00122/2017-18/10264, has been proposed as Interim Resolution Professional. In the written communication dated 28.09.2020 submitted in Form 2 by the proposed Interim Resolution Professional, it has been certified that there are no disciplinary proceedings pending against him with the Board or the Insolvency Professional agency of Indian Institute of Insolvency Professional of ICAI.

Thus, the application filed in the prescribed Form No.1 is found to be complete. The Law Research Associate of this Tribunal has checked the credentials of Mr. Vivek Kumar Arora, and there is nothing adverse against him. In view of the above, we appoint Mr. Vivek Kumar Arora, Registration No.IBBI/IPA-001/IP-

P00122/2017-18/10264, Address: 629, Sector 16-D, Chandigarh- 160015, Email:- vivekharora1@gmail.com, ip.vivekharora@gmail.com, Mobile No.:- 9872000629, as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of Code, 2016.

12. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC. More so, the respondent has admitted the claim and expressed its inability to pay back the debt. Accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry.

- 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

Operational Assets and Enforcement of Security Interest Act, 2002; and

- 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.

13. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

14. The order of moratorium shall have effect from the date of this order till 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 as the case may be.

15. The following directions are issued to the Interim Resolution Professional:-

- i.) The term of appointment of Mr. Vivek Kumar Arora shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the

Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) This Adjudicating Authority directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. This Adjudicating Authority further directs that the Interim Resolution Professional should also make all efforts simultaneously to retrieve the required information from the computerized data of the corporate debtor from the systems handed over to the Interim Resolution Professional after initiation of CIRP. For retrieving relevant information, the Interim Resolution Professional may take the help of any digital forensic companies from the empanelled list available with the Registry of this Adjudicating Authority, if required. This is imperative for meeting the Code's objectives for maximising the value of the assets of the corporate debtor and completing the resolution process in a time-bound manner. The Interim Resolution professional is also directed to make a specific mention of non-compliance, if any, in this regard

in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP and move an application seeking appropriate remedy, if required.

- vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and
- viii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

16. We direct the Financial Creditor to deposit a sum of ₹2,00,000/- (Rupees Two Lakh Only) with the Interim Resolution Professional, to meet out the expense 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 amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

17. Accordingly, the petition is admitted and allowed.

18. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution

Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

October 07th, 2022