BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH- III

IB-301/ND/2021

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

<u>IN THE MATTER OF</u>

ALCHEMIST ASSET RECONSTRUCTION COMPANY LIMITED

Through Mr. Manish Nihalani, Senior President

Registered Address

A-270, 1st & 2nd Floor, Defence Colony,

New Delhi-110024

...Financial Creditor/Applicant

Versus

M/s VINESH TRADERS PRIVATE LIMITED
Registered Address
At C-122, Mansarovar Garden,
NEW DELHI – 110015 **...Corporate Debtor/Respondent**

Coram:

Shri Bachu Venkat Balaram Das
Hon'ble Member (Judicial)

Shri Narender Kumar Bhola
Hon'ble Member (Technical)

Delivered on: 22.03.2022

Appearances:
Financial Creditor : Mr. Ashu Kansal (Advocate)
Corporate Debtor :Ms. Varsha Banerjee (Advocate)

ORDER

Per: Bachu Venkat Balaram Das, Member (Judicial)

1. This is an application filed by the Financial Creditor namely, Alchemist Asset Reconstruction Company Limited against the corporate debtor namely, Vinesh Traders Pvt. Ltd. under section 7 of the IBC, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor
2. The transaction leading to filing of application under consideration is as follows:
   a. The Corporate Debtor approached the Bank of India for availing long term loan facility and on the above request of the Corporate Debtor, the Bank disbursed the loan to the Respondent through its bank account of Rs. 1000 Lakhs, which was later enhanced at the request of CD to Rs. 1475 Lakhs. The Corporate Debtor and Bank executed Demand Promissory Note dated 03.06.2008,

Agreement of Hypothecation of Plant & Machinery, Stock & Book debts dated 03.06.2008, Cash Credit Facility Agreement dated 03.06.2008 and Stamped Undertaking dated 03.06.2008 were executed in favour of the Bank by the CD. The CD started making default in repaying the loan amount, thereafter the bank initiated recovery proceedings by filing OA before Ld. DRT, New Delhi claiming an amount of Rs. 16,97,71,991/- along with interest @ 4% over base rate presently 14.25% per annum with monthly rest and penal interest @ 2% per annum with effect from 23.09.2013 till actual realization. The bank had assigned the debt of the CD in favour of the Applicant in terms of section 5 of the SARFAESI Act through deed of assignment dated 30.12.2013.

b. It is submitted that on 08.08.2017 OA was decreed for an amount of Rs.16,97,71.991/- together with further interest thereon at the rate of 13.00% p.a. simple interest from 09.09.2013 till the date of payment in full with costs in favour of the Applicant herein. Thereafter, The CD submitted the settlement proposal for Rs. 10 Crores and proposed to pay the said amount over a period of 1 (one) year from the date of acceptance of offer. The amount was proposed to be paid through sale of assets mortgaged with the Applicant, with its prior approval. It is stated that the said settlement proposal was approved by the Applicant on 16.07.2019. As per the settlement proposal and the sanction letter, the CD was supposed to pay off Rs. 10 Crores by 15.07.2020, which admittedly the CD failed to do in terms of the Settlement Proposal and Sanction Letter and had defaulted. Thereafter, the Applicant herein had issued a letter for revocation on 20.03.2021.

c. It is further submitted that the corporate debtor has failed to repay the amount of Rs. 32,99,06,580/- (Rs. 16,97,71,991 Principal Amount + Rs. 16,93,67,329 Interest + Rs. 17,67,260 other cost) outstanding as on 25.05.2021 and accordingly proceeding under Section 7 of IBC is sought to be initiated.

3. The Counsel has appeared on behalf of the Corporate Debtor and submitted that there is no need to file reply to the present petition as the default is already admitted by the Corporate Debtor in its balance sheet.

4. This Adjudicating Authority has perused the petition and oral submission advanced by the counsels. The evidence placed by the financial creditor is sufficient to ascertain the existence of a default on the part of the Corporate Debtor and same is admitted by the counsel of the corporate debtor during oral submission. The Financial Creditor has fulfilled all the requirements of law. Accordingly, this Adjudicating Authority is inclined to **admit** this application and initiate the process of CIRP of the Corporate Debtor. The financial Creditor has also proposed the name of the Resolution Professional for appointment of IRP.
5. Mr. Sapan Mohan Garg having Regn. No.- IBBI/IPA-002/IP-N00315/2017-18/10903 (Email ID – sapan10@yahoo.com) is hereby appointed as IRP as has been proposed by the Financial Creditor. There is no disciplinary proceeding pending against the IRP as evident from the Form-2 dated 07.01.2020. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of

receiving the copy of this order and call for submissions of claim in the manner as prescribed.

6. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:

    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's 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

7. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

8. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

9. The financial Creditor is directed to send the copy of this order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this order as per the provisions of IBC, 2016.

10. The financial Creditor is directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect.

11. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.

12. The order is pronounced by this Adjudicating Authority through Virtual Hearing

-Sd-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

-Sd-

(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)