



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) No.81/ALD/2019

In the matter of:

An application under section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

M/s ASREC (INDIA) LIMITED

Having its registered office at:

Solitaire Corporate Park, Building No.2,
Unit No.201-202A & 200-202B, Ground Floor,
Andheri Ghatkopar Link Road,
Chakala, Andheri (East), Mumbai – 400093,
Through its Chief Manager,
Mr. Ajay Goel.

... **Financial Creditor**

Versus

M/s HARIG CRANKSHAFTS LTD.

Having its registered office at:

C-49, Noida Phase-II,
Gautam Budh Nagar, U.P.

... **Corporate Debtor**

Order pronounced on: 31.03.2023

Coram:

Shri Praveen Gupta : Member (Judicial)

Shri Ashish Verma : Member (Technical)

Appearances (through video conference):

For Financial Creditor : Sh. Suraj Prakash, Adv.

For Corporate Debtor : Sh. Rahul Agarwal with Sh. Shubham Agarwal, Adv.

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ORDER

1. This Application was filed by the Applicant, Bank of India under section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as I&B Code, 2016) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 in Form 1 containing all the information as required in Part I, II, III, IV and V of the Form, against the Respondent, M/s Harig Crankshafts Ltd. However, later via an Assignment Agreement registered on 18.5.2022, M/s Asrec (India) Limited substituted Bank of India and became the Financial Creditor.

2. The facts leading to filing of this application as discussed in the Form 1 are as below:
 - 2.1 The Original petitioner in this case was Bank of India. During the period of 16th November, 1988 till 19th February, 2009 the corporate debtor availed various credit facilities from the original applicant and to secure these credit facilities, equitable mortgage of immovable property was created of the company situated at C-49, Noida Phase 2, district Gautam Buddh Nagar building.

 - 2.2 After availing the credit facilities, the corporate debtor failed to comply to the terms and conditions of the loan agreements and thus, the accounts of the corporate data were classified by the original applicant as NPA on 1 September 2008

 - 2.3 On 12th May 2010, Applicant issued demand notice under section 13 of SARFAESI Act demanding a sum of rupees 38,96,76,930/- followed by legal notice dated 03.01.2011.

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- 2.4** As per the books of accounts of the original creditor, a sum of Rs.44,37,85,234.93 including interest up to 10 March 2011 was due and payable by the corporate debtor to the original creditor. In 2011, the original creditor filed an Original Application [OA no. 247/2011] against the CD and guarantors under section 19 (1) of recovery of Debts and Bankruptcy Act, 1993 before DRT Lucknow for recovering the said amount.
- 2.5** During the pendency of this OA, a purported private treaty / agreement under the SARFAESI Act was entered by the bank with M/s Paras Builders And Promoters for an amount of Rs. 34.50 crores but the same could not be materialized and was terminated on 30th August, 2014. An OTS was given by the corporate debtor for Rs.31.50 crore but it didn't fructify.
- 2.6** During the pendency of the above-mentioned OA, the present application under section 7 was filed. The CD gave an OTS of Rs.27.73 crore to the Applicant vide letter dated 08.08.2019 but CD couldn't honor the same and therefore the default continued.
- 2.7** As provided by the Applicant Bank in Part IV of application, total amount of Rs. 44,37,85,234.93/- became due inclusive of interest upto 11.03.2011. The OA No.247 of 2011 was filed before the Debts Recovery Tribunal, Lucknow for a sum of Rs.93,19,29,380.42/- inclusive of interest upto 31.10.2018, as stated above.

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2.8 The OA before DRT, Lucknow was allowed on 06.09.2021 and a recovery certificate worth Rs.44,37,85,234.93 along with interest (interest accrued during and after the proceedings) was issued.

2.9 The said debt of CD were assigned by the Bank of India to M/s ASREC (India) Ltd., an asset reconstruction Company vide assignment agreement registered on 18.05.2022, for Rs.26.25 crore.

2.10 An interlocutory application, IA 153/2022 seeking substitution of present applicant i.e. M/s ASREC (India) Ltd, in place of Bank of India (original applicant) was filed before this Adjudicating Authority. The said IA was allowed on 11.07.2022. Another interlocutory application, IA 312/2022 seeking amendment in Part III of Sec 7 Application was also filed before this Adjudicating Authority. The said IA was also allowed on 06.12.2022. A new IRP, Mr. Saurabh Chawla also replaced Mr. Sumit Bansal, the erstwhile IRP.

2.11 Additional Documents were taken on record vide order dated 19.01.2023 by this Adjudicating Authority and on 21.01.2023, the CD gave its No Objection for admission of the present petition, which is also discussed at later part of this order.

3. As regard to the limitation aspect it is to be seen that the credit facilities which were availed by the Respondent/Corporate Debtor from the Financial Creditor i.e. Bank of India were not repaid and the Respondent/Corporate Debtor failed to maintain the financial discipline arising out of which several proceedings before different forums were initiated by the original creditor which is Bank of India in this case. Even an OTS proposal which was given by the Corporate Debtor for an amount of Rs.31.50 crore on 30th November, 2018 did not mature. Proceedings

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under SARFAESI Act under Section 13(2) were also earlier initiated and apart from this, an Original Application No. 247/2011 was also filed by the original petitioners/Bank against the Corporate Debtor under Section 19(1) of the Recovery of Debts and Bankruptcy Act before the DRT, Lucknow for recovery of an amount of Rs. 44,37,85,234/-.

4. While the proceedings before the DRT were pending the present application under Section 7 was filed by the Bank of India on 12th March, 2019 declaring default amount of Rs.93,19,29,380/- and date of default on 31.10.2018 in Part IV of the Application.
5. Even thereafter, also vide another communication dated 8th August, 2019 the Corporate Debtor had given another proposal to the original petitioner bank for one time settlement by offering an amount of Rs. 27.73 crore which was also not adhered to by the Corporate Debtor.
6. Meanwhile the Original Application No. 247 of 2011 filed by the Bank also concluded and vide an order dated 6th September, 2021, the DRT Lucknow while allowing the aforesaid OA issued the Recovery Certificate to the tune of Rs. 44.37 Crore (approximately).
7. From above, it is evident that prior to filing of the present petition on 12th March, 2019, there was already an OTS offered by the Corporate Debtor on 30th November, 2018 which however, did not materialize and did not mature. Though, the matter is within the limitation viewed from the point of view of the debt becoming due after failure of the OTS on 30th November, 2018. However, additionally the issuance of the recovery certificate by the DRT, Lucknow on 6th September, 2021 has given a continued cause of action for the purpose of reckoning of limitation in

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view of the judgment of the Hon'ble Supreme Court in the matter of Kotak Mahindra Bank Limited Vs. A. Balakrishnan & Anr in Civil Appeal No. 689/2021 **where in the Hon'ble Supreme Court held as under: 84**

To conclude, we hold that a liability in respect of a claim arising out of a Recovery Certificate would be a "financial debt" within the meaning of clause (8) of Section 5 of the IBC. Consequently, the holder of the Recovery Certificate would be a financial creditor within the meaning of clause (7) of Section 5 of the IBC. As such, the holder of such certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate.

8. Even though, the present petition under Section 7 had been filed on 12th March, 2019 and limitation as on the date of filing of the present petition has to be seen in the context of the date of default which as stated above is already within limitation, however, it was contended by the Ld. Counsel representing the petitioner that even in view of the judgment of the Hon'ble Supreme Court which dated 30th May, 2022 during the pendency of the present petition would as much be applicable as the present petition was still pending. We are therefore, of the opinion that as contended by the Ld. Counsel representing the petitioner, the judgment which has come during the pendency of a Lis would apply and therefore, the present petition is within the limitation be it viewed from any angle. It also requires mentioning that the original petition was filed by the Bank of India and later on the debt was assigned by way of assigned agreement dated 30th March, 2022 registered on 18.5.2022 as a result of which the present applicant namely M/s. Asrec (India) Ltd and Assets Reconstruction Company has got into the role of Financial Creditor and

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IA No.153/2022 was filed seeking substitution of the present applicant in place of the original applicant i.e. the Bank of India which was allowed vide order dated 11.07.2022 in the aforesaid IA No.153/2022. As regards to the appointment of IRP the present petitioner has filed IA No.312/2022 on 19.09.2022 seeking amendment in part III of the application and in terms of an order dated 6th December, 2022, this Tribunal had allowed the aforesaid IA and the new IRP Mr. Saurabh Chawla was allowed to replace the earlier proposed IRP Mr. Sumit Bansal.

9. It is worthwhile to mention that initially the reply had been filed by the Corporate Debtor, on 16th August, 2019 contesting the case. However, it seems that after the recovery certificate having being issued by the DRT, Lucknow on 6th September, 2021 against the Corporate Debtor for an amount of about Rs.44.37 crore, the Respondent/Corporate Debtor chose not to contest any longer. Therefore an affidavit dated 21.01.2023 was filed vide Diary No. 507 dated 27.01.2023 wherein the relevant paras of the affidavit as under:

1. That I am the Director and Authorized Signatory of the Corporate Debtor, and have been authorized to file the present affidavit on behalf of the Corporate Debtor and as such I am well conversant with the facts and circumstances of the present case and am duly competent to affirm this affidavit.
2. That it is most humbly submitted that the Company Application No. (IB) 81/ALD/2019 was filed against the Corporate Debtor/Harig Crankshafts Ltd. under Section 7 of IBC.

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3. That it is most humbly submitted that the Corporate Debtor/Harig Crankshafts Ltd. does not wish to contest the aforementioned application and has no objection to it being admitted to the Corporate Insolvency Resolution Process. The Hon'ble Tribunal may be pleased to pass appropriate orders in accordance with law in the matter.

10. In view of the stand now being taken by the Respondent/Corporate Debtor by way of an affidavit that they are not having any objection to the matter being admitted by this Tribunal under Section 7 of the Code, we are therefore, not inclined to deal with the averments initially made in reply to the main petition. The admission by the Respondent/Corporate Debtor by way of the said affidavit therefore, in this case would support the case of the Financial Creditor and there being clear debt and default, the present petition would deserve to be admitted.

11. 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 threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. Accordingly, the petitioner proved the debt and the default, which is more than threshold limit of one Lakh. 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

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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) 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 the moratorium period.
- (f) 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 financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- (g) 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 the corporate debtor under Section 33 as the case may be.”

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12. The new/ proposed IRP Mr. Saurabh Chawla is appointed as the IRP in this matter and the credentials of which have been verified by Ms. Aditi Kharbanda, LRA from the IBBI portal and there is nothing adverse against him. In view of this, we appoint Mr. Saurabh Chawla Registration No. IBBI/IPA-003/ICAI-N-00368/2021-2022/13834, R/o A-2/101, Second Floor, Rajouri Garden, New Delhi, 110027, Email: saurabh445@gmail.com, Mobile No.9818426272, as the IRP and an amount of Rs.2,00,000/ is to be paid initially to the IRP to make the initial expenses of logistics and Publication. The IRP is directed to take the steps as mandated under the IBC, especially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.
13. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial 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 the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.
14. 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 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 amount, however, is subject to adjustment by the Committee of Creditors

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as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

15. A certified copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a certified copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a certified copy of this order to the Interim Resolution Professional at his e-mail address forthwith.
16. List the matter on 1st May, 2023 for filing of the progress report/further proceeding.

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(Ashish Verma)
Member (Technical)

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(Praveen Gupta)
Member (Judicial)

31st March, 2023

Aditi Kharbanda
(LRA)