

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

**CP (IB) No. 124/Chd/Pb/2023
Under Section 7 of IBC, 2016**

In the matter of C.P. (IB) No. 124/Chd/Pb/2023

Mudraksh Investfin Pvt. Ltd.

B-8/195, 1st Floor,
Sector-3, Rohini,
New Delhi- 110085
Through its Director- Mr. Anuj Goyal
PAN: AAACM6046P

...Petitioner/Financial Creditor

Vs.

Asian Alloys Limited

G.T. Road Khanna,
Ludhiana, Punjab- 141401
Through its Director

....Respondent/Corporate Debtor

Judgement delivered on: 16.04.2024

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. L. N. GUPTA, MEMBER (TECHNICAL)**

Present :

For the Petitioner/Financial Creditor : 1). Mr. Manish Jain, Advocate
2). Ms. Divya Sharma, Advocate

For the Respondent/Corporate Debtor : 1). Mr. Aalok Jagga, Advocate
2). Mr. APS Madaan, Advocate

Per: Sh. Harnam Singh Thakur, Member (Judicial)

Sh. L. N. Gupta, Member (Technical)

JUDGEMENT

The present petition has been filed by Mudraksh Investfin Pvt. Ltd., (hereinafter referred to as the “**Petitioner/Financial Creditor**”), through its Director, Mr. Anuj Goyal, under Section 7 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of Corporate Insolvency Resolution Process against Asian Alloys Limited, (hereinafter referred to as the “**Respondent/Corporate Debtor**”), claiming a default of Rs. 703,19,00,000/- (Rupees Seven Hundred and Three Crores and Nineteen Lakhs)on the part of the Corporate Debtor. The facts stated in the application are as under:

- 1.1. The Financial Creditor is an assignee of the debt owed by the Corporate Debtor to Bank of India (Assignor) vide Assignment Agreement dated 11.01.2023 (Annexure A-13). The Petitioner has stepped into the shoes of the Assignor and in terms of Section 5(7) of the Code, an application for initiation of CIRP can be filed by an Assignee of the debt.
- 1.2. Initially, Bank of India had advanced a total debt of Rs. 20,00,000/- to the Corporate Debtor which was acknowledged by the Corporate Debtor vide its letter dated 14.11.1986 (Annexure A-7). The Corporate Debtor, vide its letter dated 27.06.1998 sought renewal and enhancement of the credit facilities, which was sanctioned by Bank of India. In order to secure the said debt, the Corporate Debtor had also issued Demand Promissory Note of Rs. 7,40,00,000/- dated 05.02.1998. Letter of Continuing Security dated 05.02.1998, Deed of Guarantee dated 05.02.1998 and 14.11.1986 and

Supplementary Agreement of Hypothecation dated 05.02.1998 (Annexure A-9). The Petitioner is a secured Financial Creditor of the Corporate Debtor.

- 1.3. A Deed of Hypothecation dated 14.11.1986 was entered into between Bank of India ("**Bank**"), and the Respondent whereby the Respondent hypothecated all tangible moveable assets including in particular all stocks of raw materials, moveable machinery, spare parts, chemicals etc. in lieu of cash disbursement of Rs. 20,00,000/- (Rupees Twenty Lakhs only), and the Respondent issued a Demand Promissory Note amounting to Rs. 20,00,000/- along with a letter for continuing security, a letter of lien and set off and deed of guarantee and acknowledged receipt of Rs. 20,00,000/- out of total term loan of Rs. 50,00,000/-.
- 1.4. In furtherance of the above mentioned borrowings and credit facilities, the Respondent was liable to pay an amount of Rs. 703,19,00,000/- (Rupees Seven Hundred and Three Crores and Nineteen Lakhs). Since the Corporate Debtor defaulted, it was declared as a Non-Performing Asset ("**NPA**") on 31.03.1998 by the Bank upon failure to pay the dues for 90 days. Thus, the date of default is 31.03.1998, i.e., the date of NPA.
- 1.5. A Loan recall notice dated 11.01.2000 and a demand notice dated 24.12.2003 under Section 13(2) of the SARFAESI Act requesting for payment of the outstanding amount was issued by the Bank to the Respondent.
- 1.6. On 16.06.2004, pursuant to non-payment of the outstanding dues within 60 days from the date of receipt of the demand notice by the Respondent, the

Bank took the symbolic possession of the moveable and immovable assets belonging to the Respondent and took over the physical possession of the moveable and immovable assets on 28.07.2011.

- 1.7. It is submitted by the Petitioner that the Respondent has consistently defaulted since 31.03.1998 and it has acknowledged the debt in its balance sheets till 31.03.2022. (Annexure-A14)
2. The Respondent filed its reply via diary no. 00979/4 dated 21.12.2023, wherein it is stated that the purported assignment deed dated 11.01.2023 relied upon by the Petitioner is a result of collusion between the Petitioner and Bank of India.
 - 2.1. The Respondent has further submitted that the present petition has been filed by Mudraksh Investment Private Limited, who is not privy to the said loan transactions. Bank of India, from whom the credit facilities were purportedly availed by the Respondent, has not been impleaded as a party to the present petition.
 - 2.2. It is further submitted by the Respondent that the present petition has been filed during the pendency of the recovery proceedings before the DRT-I, Chandigarh, to hasten the said proceedings pending before DRT.
 - 2.3. It is alleged by the Respondent that the Petitioner has failed to produce any record of default available with the Information Utility.
 - 2.4. It is averred by the Respondent that the Petitioner has not appended any documents to evidence the grant of cash credit facility to the tune of Rs. 20,00,000/- which was gradually enhanced to Rs. 15,40,00,000/- during the years 1986 to 1998. Further, the Petitioner has not provided any

computation sheet as to how the default amount of Rs. 703,19,00,000/- has been arrived at.

- 2.5. It is submitted by the Respondent that as admitted by the Petitioner, the date of default was 31.03.1998, when the account was declared NPA, but the present petition has been filed after 15 years, in the year 2023. Reliance has been placed on Hon'ble Supreme Court's judgment in the matter of **Vashdeo R. Bhojwani vs. Abhyudaya Co-operative Bank Limited and another (2019) 9 SCC 158**, wherein the Apex Court relying upon its own judgment in the matter of **B.K. Educational Services Private Limited vs. Parag Gupta and Associates (2018) SCC Online SC 1921**, held that:

"42. It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application."

Further, the Hon'ble Supreme Court in **"Gaurav Hargovindbhai Dave v. Asset Reconstructions Company (India) Limited and another: (2019) 10 SCC 572"** noticed that the Respondent was declared NPA on 21st July, 2011. The Bank had filed two OAs before the Debts Recovery Tribunal in 2012 to recover the total debt. Taking into consideration the facts, the Hon'ble Supreme Court held that the default having taken place and the

account having been declared NPA on 21st July, 2011, the Application under Section 7 was barred by limitation.

3. Written submissions dated 20.03.2024 via diary no. 00979/2 were filed by the Petitioner, wherein it has been submitted that the Petitioner is an assignee of the debt owed by the Respondent to Bank of India (Assignor) vide Assignment Agreement dated 11.01.2023, and the Petitioner has stepped into the shoes of the Assignor, and in terms of Section 5(7) of the Code, an application for initiation of CIRP can be filed by an Assignee of the debt.
 - 3.1. The Petitioner further submitted that the Respondent had duly acknowledged the debt in its Balance Sheets for the years from 1997 to 2022, and thus, the period of limitation has been renewed with every such admission of the Respondent in its balance sheet. Moreover, Assignment Deed (Annexure A-13) has been executed between Bank of India and the Petitioner.
 - 3.2. The Petitioner has placed reliance upon the judgment of the Hon'ble NCLT New Delhi in the matter of **CFM Asset Reconstruction Pvt. Ltd. vs. MG Finvest Pvt. Ltd., (C.P. IB No. 115/Pb/2022)** wherein it held that the Corporate Debtor cannot challenge the assignment deed under proceedings under Section 7.
4. The Respondent filed its short written submissions vide diary no. 00979/22 dated 20.03.2024, wherein it has been submitted that there is no crystallized debt and the same is yet to be adjudicated.

- 4.1. The Respondent further contended that the charge was required to be registered under Section 77 of the Companies Act of 2013, in order to claim secured financial creditor. The rate of interest mentioned in the loan agreement/guarantee agreement is 17.5% per annum, which is exaggerated and extortionate.
5. We have heard the Ld. Counsels for both parties and gone through the facts and materials of the case available on record. The following issues arises for adjudication:
- 5.1. The first issue is whether the petition filed is within the period of limitation.
- The Petitioner has contended that the date of default is 31.03.1998, and the Respondent has defaulted since the above mentioned date and has duly acknowledged the debt in its balance sheets till 31.03.2022. In accordance with Section 18 of the Limitation Act, 1963, fresh period of limitation is computed from the date of acknowledgment of debt. Hence, the date of default in the case in hand is to be treated from the last balance sheet, i.e., 31.03.2022 and since the petition has been filed on 28.03.2023, it is well within the period of limitation.
- The reliance placed by the Respondent on judgments namely, **Vashdeo R. Bhojwani vs. Abhyudaya Co-operative Bank Limited and another** and **Gaurav Hargovindbhai Dave v. Asset Reconstructions Company (India) Limited and another** (supra), regarding the maintainability of the petition on the grounds of limitation are not applicable to the facts and circumstances of the present case.

5.2. The second issue is whether the Petitioner being an assignee can file a petition under Section 7 of the Code.

In this regard, we refer to Section 5(7) of the Code, which is reproduced overleaf for ready reference:

“financial creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.”

(emphasis placed)

Further, in the Assignment Agreement dated 11.01.2023 (Annexure A-13), executed between Bank of India and the Petitioner (Mudraksh Investfin Private Limited), Clause 2.1 under the head “Assignment” clearly stipulates that the Assignee, i.e., the Petitioner shall be deemed to be the full and absolute legal owner, and the only person legally entitled to recover and receive all amounts due, including the right to file a suit or institute such other recovery proceedings and take such other action as may be required for the purpose of recovery of the Amounts Due under financial documents, in its own name and right and as an Assignee. The said clause is reproduced hereunder:

“The Parties hereto acknowledge that provisions of SARFAESI Act will be applicable thereto and agree that on the Effective Date and in consideration of the Assignee paying the entire Purchase Consideration, to the Assignor, upon the terms and conditions set forth herein and in the relevant Financing Documents, the Assignor, as the true, legal, and beneficial owner, assigns in favor of the Assignee on “as is where is basis”, “as is what is basis”, whatever there is basis”, “true sale basis” and “without recourse basis”, all its rights, title and interest in the Financial Assets, the Financing Documents which the Assignor is entitled to. From the Effective Date the Assignee shall have the right to appropriate the amounts realized there from towards the payment of the Loans and to exercise all other rights of the Assignor in

relation to such Financial Assets. On the Effective Date, the Assignor shall, transfer/deliver or cause to be transferred/delivered to the Assignee all such original documents, deeds and/or writings, including but not limited to the Financing Documents etc. On the Effective Date, the Assignee shall be deemed to be the full and absolute legal owner, and the only person legally entitled to the Financial Assets or part thereof and to recover and receive all Amounts Due, including the right to file a suit or institute such other recovery proceedings and take such other action as may be required for the purpose of recovery of the Amounts Due under financial documents, in its own name and right and as an Assignee”.

Thus, from the conjoint reading of Section 5(7) of the Code and the above mentioned clause of the Assignment Agreement, the Petitioner is entitled to file the present petition.

- 5.3. The third issue is whether there has been any disbursement of the cash credit facilities by the Bank to the Respondent. The Respondent has alleged that the Petitioner has not appended any evidence of the grant of the cash credit facilities to the Respondent. From the demand promissory note dated 14.11.1986 issued by the Respondent in favour of Bank of India along with the letter for continuing security dated 14.11.1986, and deed of hypothecation dated 14.11.1986 executed between Bank of India and the Respondent, duly signed by the authorised representatives of both the parties, it is clearly evident that the Respondent had availed cash credit facilities to the tune of Rs. 20 lacs from Bank of India. Further, the letters dated 14.11.1986, and 27.06.1988 issued by the Respondent in favour of Bank of India, wherein the grant of the said cash credit facilities have been acknowledged by the Respondent, substantiates the claim of the Petitioner.

Thereafter, vide its letter dated 27.06.1998, the Corporate Debtor sought

enhancement of the credit facilities and issued Demand Promissory Note of Rs. 7,40,00,000/-.

- 5.4. The fourth issue arising for consideration is whether the Petitioner's failure to produce any record of default available with the Information Utility can render the present petition infructuous.

For the adjudication of the said issue, Section 7(4) of the Code is reproduced here under:

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

Thus, Section 7(4) not only relies upon the record of Information Utility for the purpose of proving default, but even on the basis of other evidence, the Financial Creditor can establish the default under Section 7(3), which is otherwise proved in the case in hand.

- 5.5. The other contention of the Ld. Counsel for the Corporate Debtor that the debt is not crystallised as it is pending before DRT, Chandigarh and of question of charge not registered under Section 77 of the Companies Act, 2013 are devoid of legal force in presence of cogent and convincing evidence of documents executed by the Corporate Debtor and the loan availed by it. Further, as long as the principal amount is above Rs. One Crore, i.e., the threshold limit, the stance of exorbitant rate of interest becomes irrelevant.

6. As a sequel to the above discussion and reasons recorded hereinbefore, the Petitioner has been able to establish that the Respondent had availed Cash Credit Hypothecation of Stock Account of the Petitioner of Rs. 25,98,93,928/- (Twenty Five Crore Ninety Eight Lakh Ninety Three Thousand Nine Hundred Twenty Eight only) and the balance amount in Hypothecation of Book Heads Account of Rs. 2,45,07,013/- (Two Crore Forty Five Lakh Seven Thousand and Thirteen Only), and thus the total amount of Rs. 28,44,00,941/- (Twenty Eight Crore Forty Four Lakh Nine Hundred Forty One only) from 12.01.2000 at the rate of 18% interest per annum.
7. In view of the above mentioned discussion, we find that the Petitioner bank has been able to establish the debt and default of the Respondent beyond doubt.
8. In the given facts and circumstances, the present application is admitted in terms of Section 7(5) of the IBC and accordingly, the Moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the Moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:
 - a. The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.”
 - 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. 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.
 - f. 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.
9. As proposed by the Petitioner, this Bench appoints Mr. Shamsheer Bahadur Singh, as IRP having Registration IBBI/IPA-003/0341/2021-2022/13623 ,Email: shamsheer_cs@yahoo.co.in, Mobile No. 9810771227, whose antecedents of the proposed IRP have been verified by the Legal Research Associate of this Adjudicating Authority, with the following directions:-
- i.) The term of appointment of Mr.Shamsheer Bahadur Singh, 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 the 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 morals;

- 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.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate

Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. 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.

- vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those

authorities/ institutions/ others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

- viii.) 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 the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and
 - ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.
10. The Petitioner is directed to deposit Rs. 2,00,000/- (Two Lakhs) only with the IRP to meet the immediate expenses in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. . The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Petitioner.

11. A copy of this Order shall immediately be communicated to the Petitioner Bank, the Respondent Company, and the IRP named above, by the Court Officer/Registry of this Tribunal.
12. The petition is admitted for CIRP of the Corporate Debtor and is disposed of accordingly.

Sd/-

(L. N. Gupta)
Member (Technical)

April 16, 2024
ASG

Sd/-

(Harnam Singh Thakur)
Member (Judicial)