



NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH  
(Virtual Hearing)

PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)  
: SHRI SANJAY PURI – MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 27.09.2024 AT 01:00 P.M.

TC/CP. Nos.	IBC Stage	Present stage of the case	Section/Rule	Name of Parties
CP(IB)/35/7/AMR/2022	Pending Admission	For Orders	7 of IBC	Central Bank of India Vs. ASR Engineering & Projects Limited

**ORDER**

**Present:** Ms.Niharika Agarwal, Ld. Counsel for the FC

Mr. Y. Suryanarayana, Ld. Counsel for the CD.

Orders pronounced. CP(IB)/35/7/AMR/2022 is admitted and recorded vide separate sheets.

**SANJAY PURI**  
MEMBER (TECHNICAL)

**RAJEEV BHARDWAJ**  
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH AT MANGALAGIRI

CP(IB)/35/7/AMR/2022

[Petition filed 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]

AND

In the matter of  
M/S ASR ENGINEERING & PROJECTS LIMITED

Between:

**Central Bank of India,**

Head Office at Chandar Mukhi, Nariman Point,  
Mumbai – 400021

Specialized Stress Asset Management Vertical Branch at  
Kothi, Hyderabad – 500095,

Represented by Mr. Kama Syed,

S/o: Shri. Syed Khai Mohiuddin, Age: 52 Years,

Occ: Senior Manager & Authorized Signatory.

... Financial Creditor

AND

**M/s ASR Engineering & Projects Limited,**

Registered Office: Plot No. 27, Vidyut Nagar,

New Town, Ananthapur – 515004,

Andhra Pradesh.

... Corporate Debtor

Date of Order: 27.09.2024

CORAM:

SHRI RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)

SHRI SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

Sd/-

Sd/-



**Parties/Counsels Appearance:**

For the FC : Ms. Niharika Agarwal, Advocate.  
For the CD : Mr. Y. Suryanarayana, Advocate.

**ORDER**  
*[Per: Bench]*

1. The present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by Central Bank of India. (hereinafter called as "Financial Creditor/Applicant") praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s ASR Engineering and Projects Limited [hereinafter called as "Corporate Debtor" (CD)] for resolution of an unresolved Financial Debt of Rs.231,28,87,190/- as on 20.12.2021.
2. Facts of the Case as pleaded by the Financial Creditor in Petition briefly stated hereunder:
  - a. The CD is engaged in the business of laying of water pipelines, projects, construction of roads, buildings and electrical contracts. On the request of the CD, the Applicant sanctioned credit facilities in the form of working capital (fund based and non-fund based) along with other lenders for an amount of Rs. 470 crores vide Working Capital Consortium Agreement dated 15.02.2010<sup>1</sup>. The limit sanctioned by the Applicant to the CD is Rs. 65 Crores. Further, on request of the CD, the working capital limits were

<sup>1</sup> Exhibit 7 at page number 204-252 of the Application.

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increased from Rs. 470 crores to Rs. 750 crores and from Rs. 750 crores to Rs. 896 crores respectively. The limits of the Applicant out of the said amount of Rs. 896 Crores is Rs. 165 Crores vide sanction letter bearing no. CFB: CBI: CR: 2011-12: 433 dated 21.02.2012<sup>2</sup>.

- b. However, the CD faced financial stress and committed default in repayment of instalments of principal and interest amounts under the Working Capital Consortium Agreement and thereby failed to honor the terms of the Agreement. The CD has approached CDR cell and was admitted to the Corporate Debt Restructuring Forum, a non-statutory, voluntary mechanism set up under the aegis of the Reserve Bank of India. The CDR Empowerment Group at their meeting held on July 23, 2014 approved a restructuring package in terms of which existing facilities were to be restructured (including the facilities sanctioned by the Applicant to the CD) in the manner set out in letter bearing no. BY.CDR (SSA)/No.304/2014-2015 dated 04.08.2014.<sup>3</sup> In furtherance of the said package, the Applicant also restructured the facilities vide sanction letter dated 07.08.2014 bearing No. CFB/HYD/CR/2014-15/409 to CD<sup>4</sup>. The Master Restructuring Agreement dated 20.08.2014 was executed among inter alia the CD, Applicant and other lenders. The Master Restructuring Agreement dated 20.08.2014 was amended on 12.09.2014.<sup>5</sup> The total

<sup>2</sup> Exhibit 9 at page number 301-329 of the Application.

<sup>3</sup> Exhibit 10 at page number 330-357 of the Application

<sup>4</sup> Exhibit 11 at page number 358-368 of the Application

<sup>5</sup> Exhibit 12 at page number 369-441 of the Application

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exposure of the CDR Lenders was Rs. 1123.41 Crores. Out of the said amount the restructures amount of the Applicant is Rs. 197.81 Crores.<sup>6</sup>

- c. Despite the revision of loans, sanction of CDR Package and restructuring of loans by the Applicant including other lenders, the CD could not revive its business as expected under the said package. The Applicant upon default committed by CD in repayment of the dues has issued Demand Notice on 19.04.2017 calling upon CD to pay Rs.172,48,82,315.12<sup>7</sup>/. In response to the said demand notice vide letter dated 10.05.2017 the CD had admitted that it could not pay the dues to the Applicant and further assured that it will settle the due amounts. Further, CD vide letter dated 15.05.2017 further informed the Applicant that it has transferred an amount of Rs. 4 cores to the Applicant and further assured that it will clear the outstanding dues at the earliest.
- d. Subsequently, the applicant on default of CD, filed section 7 petition under IB Code 2016 against the CD before the National Company Law Tribunal, Amaravati Bench for initiation of CIRP. However, after filing the said petition the CD approached applicant and gave a proposal on 21.10.2017 with a undertaking to upgrade the account by the end of the March 2018 by paying the entire over dues and offered to pay Rs. 10,00,00,000/- per month form October 2017 to February 2018 and the balance overdue amount in the month of March 2018 including the regular EMI and interest and requested Applicant to process the withdrawal of section 7 petition filed by the Applicant.

<sup>6</sup> Exhibit 4 – Details of total amount of Debt granted dates of disbursements under facilities at page number 155-156 of the Application.

<sup>7</sup> Exhibit 33 at page number 995-996 of the Application.

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- e. Further, in accordance with the proposal dated 21.10.2017 the CD has deposited an amount of Rs.9,50,00,000/- towards the instalment for the month of October 2017. The Applicant pursuant to proposal made by CD filed a memo on 17.11.2017<sup>8</sup> seeking disposal of Section 7 petition in terms of clause 4 of the memo and sought for liberality to file fresh petition in the event of default committed by the CD in compliance of the said condition. The NCLT vide order dated 17.11.2017 has disposed the said petition in terms of clause 4 of the memo filed by the Applicant<sup>9</sup>.
- f. The Applicant issued a letter to the CD requesting compliance with the Memo dated 17.11.2017 and payment, but the CD sought extensions on various pretexts. On the request of the CD, the Applicant sanctioned a One-Time Settlement (OTS) of Rs. 50 Crores via letter No. SAM/HYD/2019-20/253 dated 28.01.2020.<sup>10</sup> Subsequently, the Applicant issued a letter on 27.02.2020 notifying the CD of non-compliance and advising payment by 29.02.2020. Due to further non-compliance, the Applicant informed the CD on 18.03.2020 that recovery measures would be initiated. CD requested additional time, which was denied. The Applicant then issued a demand notice dated 05.08.2020, calling upon the CD to pay Rs. 207,13,67,376/-, which the CD received on 10.08.2020.<sup>11</sup> Despite this, the Applicant, considering the CD's request, extended the payment deadline for the balance OTS amount of Rs. 45 Crores until 31.03.2021, per letter No. SAM/HYD/2021-21/711 dated 19.01.2021<sup>12</sup>

<sup>8</sup> Exhibit 39 at page number 1015-1017 of the Application.

<sup>9</sup> Exhibit - 40 at page number 1018-1022 of the Application

<sup>10</sup> Exhibit - 46 at page number 1035-1036 of the Application

<sup>11</sup> Exhibit- 53 at page number 1056-1063 of the Application

<sup>12</sup> Exhibit -57 at page number 1169-1175 of the Application

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and further informed that on failure it would imitate legal proceedings. The CD again requested an extension until 31.03.2022 in its letter dated 22.10.2021, but this request was rejected by the Applicant.

- g. The account of the CD was classified as Non-performing Asset on 31.12.2015. The CD also executed revival letter on 25.06.2018 in favor of the Consortium including the Applicant. Further, the CD has also admitted its liability in its balance sheet and independent auditor's report on 31.03.2019.

**Reply on Behalf of the Corporate Debtor:**

3. The Corporate Debtor objects to the above-captioned Company Petition on the following grounds:
  - a. The Respondent contends that the default in the present case was not due to its own actions but was primarily caused by various factors attributable to the consortium banks, including the Petitioner. The Respondent highlights that some of the consortium lenders did not permit the Respondent to utilize the un-availed facilities from the sanctioned limits under the Corporate Debt Restructuring (CDR) scheme, thereby preventing the Respondent from furnishing the necessary performance bank guarantees for qualified projects. Moreover, following the sanction of the CDR, the Respondent was unable to secure new projects, as companies under CDR are restricted from participating in government tenders. Additional factors contributing to the default include delays in the realization of receivables, project execution delays, a slowdown in

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government infrastructure spending, and the impact of the COVID-19 pandemic, during which no new projects were tendered, and ongoing projects were halted due to the lockdown.

- b. The Respondent asserts that under Section 7 of the Code, the Adjudicating Authority is required to exercise its discretion while considering an application, ensuring satisfaction regarding the existence of debt, the occurrence of default, and the causes leading to the default. The Respondent emphasizes that the Adjudicating Authority must also assess whether the case is fit for initiating the CIRP. The Respondent expresses confidence that it will be able to settle the Applicant's dues under the OTS scheme within a short period of 150 to 180 days. Responded implores the Adjudicating Authority to invoke Section 7(5)(a) of the IBC, which allows the Adjudicating Authority to reject an application if, despite the existence of a debt, the Adjudicating Authority deems it just to do so in the interest of achieving the overall objectives of the Code, namely the revival of the company and maximization of its value.
- c. In support of its position, the Respondent relies on the judgment in *Axis Bank Limited v. Vidharba Industries Power Limited*, where the default of the CD was attributable to statutory authorities rather than any fault of its own. The Respondent contends that the facts of the present case are similar, as the default was caused by the lending banks and not by the Respondent itself. The Respondent remains optimistic that it will clear the dues owed to the Applicant as per the OTS sanctioned, and accordingly, the Respondent requests that the AA exercise its discretion in favour of

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the Respondent, taking into account the extenuating circumstances leading to the default.

**Rejoinder by the Applicant:**

4. The Applicant has filed rejoinder to the counter filed by the Corporate Debtor reiterating the contents of the Applications and further contended that:
- a. Ample opportunities were granted to the CD from time to time to rectify its defects in making repayments of loans.
  - b. The applicant denies the contentions of the CD that the admission of the CD into CIRP would adversely impact creditors, lenders, as the objective of the IB Code is resolution of a distressed CD. As the CD and its promoters have filed in running the business, resolution under CIRP is proposed to safeguard the interest of all stakeholders and the Applicant relied on the following judgments to this effect:
    - i. **Chitra Sharma & Ors V. Union of India (2018) 18 SCC 575**
    - ii. **Arcelor Mittal (India) (P) Ltd. V. Satish Kumar Gupta (2019) 2 SCC 1**
    - iii. **Swiss Ribbons (P) Ltd V. Union of India (2019) 4 SCC 17**
    - iv. **Bank of Baroda and Anr Vs. Mbl Infrastructures Limited (2022) 5 SCC 661**
  - c. The Applicant contends that the CD has not denied existence of any of the transactions referred including the default committed by it to the Applicant. Therefore, it may be inferred that the CD has acknowledged the due payable to the Applicant. Hence the present petition is required to

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be admitted in view of the ratio laid down by the Hon'ble Supreme Court in M/s. Innoventive Industries Limited Vs. ICICI Bank, 2018 1 SCC 407.

5. We have heard the Learned Counsels for the parties and perused the averments made in the Application, Counter, Rejoinder, Written Submission along with the documents enclosed therein.
6. In light of the contentions, the point emerges for our consideration is :  
**Whether a financial debt as claimed by the Financial Creditor is due and payable by the Corporate Debtor, if so, whether the Corporate Debtor defaulted in repayment of the same?**
7. At the outset, we refer to section 7 of Code which clarifies that the Adjudicating Authority upon being satisfied that default has occurred of the financial debt, may order for the initiation of CIRP of the Corporate Debtor. The key ingredients of an Application filed under Section 7 of the Code are: (i) there has to be a financial debt, and (ii) there must be a default in repayment of the financial debt. Hence, the Applicant must establish that there is a financial debt and that a default has been committed in respect of that financial debt by the Corporate Debtor. Based on the documents placed on the record, particularly admission of the CD about the existence of liability, we have no hesitation to hold that the Financial Creditor has established that the Corporate Debtor has availed the credit facilities to an amount of Rs.197.81 Crores and had defaulted in the repayment despite ample opportunities afforded by the Financial Creditor.

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8. As regards to the Corporate Debtor's reliance on Hon'ble Supreme Court judgement in the matter of **Vidarbha Industries Power Ltd. v. Axis Bank Ltd., (2022) 8 SCC 352**, we usefully refer to the subsequent judgment of Hon'ble Supreme Court in **Suresh Kumar Reddy vs. Canara Bank & Ors. Civil Appeal No. 7121 of 2022**, which clarified that the decision in Vidarbha Industries only applies to the specific facts of that case, and does not contradict the previously established law regarding the admission of a Section 7 application as laid out in **Innoventive Industries Limited v. ICICI Bank and Another (2018) 1 SCC 407** and **E.S. Krishnamurthy & Ors. Vs. Bharath Hi-Tech Builders Pvt. Ltd. (2022) 3 SCC 161**. The Hon'ble Supreme Court reiterated the principles of the judgment in case cited supra and held that the moment the adjudicating authority is satisfied that there is a debt and a default has occurred, Section 7 application must be admitted unless it is incomplete. There is hardly a discretion left with the adjudicating authority (NCLT) to refuse admission of the application under Section 7 of the Code.
9. Hence, **Vidarbha case** could not be understood as taking a contrary position in law as opposed to **Innoventive Industries (Supra)** case and also the case law rendered in **E.S. Krishnamurthy (Supra)** by the Hon'ble Apex Court. Therefore, we find that the Vidarbha Judgement of the Hon'ble Apex Court will not come to the rescue of the Respondent, herein.
10. The Corporate Debtor itself admitted the debt in its counter. Moreover, it is seen from the records that the Applicant on the request of the CD has sanctioned OTS vide letter dated 28.01.2020 for an amount of Rs. 50 Crores. The said OTS proposal itself is evident that Corporate Debtor is admitting the Debt.

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11. The Account of the CD was declared as non-performing on 31.12.2015 and CD has executed revival letter in favor of the Bank Consortium including the Applicant on 25.06.2018. After the withdrawal of the petition under section 7 of IBC vide order dated 17.11.2017 in view of undertaking of the CD to clear the outstanding dues, gave undertaking vide letter dated 12.01.2018 and 05.02.2018 to pay the debt. On the request of the CD, the OTS was accepted by the FC vide letter dated 28.01.2020. The CD vide letter dated 18.03.2020 and 19.06.2020 requested for grant of additional time to pay the debts. The CD again requested vide letter dated 19.01.2021 for extension of time to pay the balance OTS amounts upto 31.03.2021. The CD has also repaid Rs.10 Crores on 22.01.2021 and further requested time to pay the debt. Accordingly, the present petition can be said to have been filed within the period of limitation.
12. Hence, from the material placed on record confirms that the debt is due and the Corporate Debtor has committed default in repayment of the outstanding financial debt. Therefore, on the basis of discussion in the aforesaid paragraphs, we are satisfied that the present application is complete in all respects. The Applicant is entitled to move the application against the Corporate Debtor in view of outstanding Financial Debt in default which is above the pecuniary threshold limit as provided under Section 4 of the Code, 2016.
13. In view of the above observations, we are inclined to admit the Petition as there is a debt due payable by the Corporate Debtor to the Financial Creditor.

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14. Accordingly, we admit the petition under Section 7 of IBC declaring moratorium for the purpose referred in Section 14 of IBC.

**ORDER**

- i. Mr. B. Naga Bhushan, (Registration No. IBBI/IPA-001/IP/P-00032/2016-17/10085); having office at 1-1-380/38, Ashok Nagar Extension, Hyderabad - 500020, Telangana State; e-mail: [nagabhushanca@gmail.com](mailto:nagabhushanca@gmail.com); is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website. He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 read with Regulations made thereunder. Specific consent of the IRP in Form 2 along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is filed, which is on record.
- ii. He is directed to take charge of the Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of Code and Rules made thereunder.
- iii. Moratorium in respect of the Corporate Debtor is hereby declared in terms of Section 14 of the Code.
- iv. The order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the Resolution Plan under section 31(1) or passes an order for

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liquidation of Corporate Debtor under section 33 of the IBC, 2016, as the case may be.

- v. The Directors, Promoters or any other person(s) associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for effectively discharging his functions under the Code. . Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- vi. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by section 20 of the IBC, 2016.
- vii. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- viii. The Registry is directed to communicate this order to the Financial Creditor, Corporate Debtor, and to the Interim Resolution Professional (IRP).
- ix. The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST (Centre), State Trade Tax, Provident Fund etc.

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who are likely to have their claim against Corporate Debtor as well as to the trade unions/employees associations so that they are informed timely of the initiation of CIRP against the Corporate Debtor timely.

- x. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

15. Accordingly, CP (IB)/35/7/AMR/2022 stands admitted.

**SANJAY PURI**  
**MEMBER (TECHNICAL)**

**RAJEEV BHARDWAJ**  
**MEMBER (JUDICIAL)**

*Sneha*