



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

CP(IB)/226(CHE)2022

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

*In the matter of **M/s. APOLLO POLYVINYL PVT. LTD.***

STATE BANK OF INDIA,

Represented by its Assistant General Manager,
Stressed Assets Management Branch,
Red Cross Building,
No.32, Montieth Road, Egmore,
Chennai-600 008

... Applicant / Financial Creditor

-Vs-

M/s. APOLLO POLYVINYL PRIVATE LIMITED,

Represented by its Directors,
Having its Registered Office
at No.6, Third Street, Balaji Nagar,
Royapettah, Chennai-600 014

... Respondent / Corporate Debtor

Order Pronounced on 24th April, 2023

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Financial Creditor: Mr. M.L. Ganesh, Advocate

For Corporate Debtor: Mr. S.R. Rajagopal, Senior Advocate

Ms. B. Tushitha, Advocate

Ms. A. Haripriya, Advocate

ORDER

Per: SANJIV JAIN, MEMBER (JUDICIAL)

This application under Section 7 of the Insolvency &
Bankruptcy Code, 2016 ("**IBC**") read with Rule 4 of the Insolvency
& Bankruptcy (Application to Adjudicating Authority) Rules, 2016



has been filed by State Bank of India, the Financial Creditor herein against **M/s. Apollo Polyvinyl Pvt. Ltd.**, the Corporate Debtor herein for initiating Corporate Insolvency Resolution Process ("**CIRP**").

2. The case of the Financial Creditor/Applicant in brief is that the Consortium Leader/Canara Bank had sanctioned the Term Loan facility of Rs. 25,00,00,000/- (Rupees Twenty Five Crores only) to the Corporate Debtor/Respondent on 09.12.2013. Similarly, the Financial Creditor/Applicant had sanctioned the Term Loan facility of Rs.22,00,00,000/- (Rupees Twenty Two Crores only) to the Corporate Debtor on 21.01.2014. To secure the loan amount, the directors of the Corporate Debtor executed the Deed of Personal Guarantee in favour of the lender banks. They also offered immovable properties as detailed in Schedule-A, Item No. 1 to 9 and created MOD on 18.09.2014 and 07.03.2017. The lender banks also sanctioned OCC facility to the Corporate Debtor on 14.12.2016 and 01.03.2017 respectively. The Consortium Leader i.e. Canara Bank converted the subsisting Term Loan facility of Rs.23,34,00,000/- (Rupees Twenty Three Crores Thirty Four Lakhs only) into Foreign Currency Term Loan on 08.09.2017 which the Corporate Debtor accepted on 14.11.2017. The consortium leader also sanctioned the adhoc OCC facility of Rs.3,00,00,000/- (Rupees Three Crores only) to the Corporate Debtor on 07.02.2018.



3. Due to the default committed by the borrower/Corporate Debtor, the consortium leader and the Financial Creditor classified the loan account of the Corporate Debtor as NPA on 30.07.2019 and 28.05.2019 respectively. They issued the demand notice under Section 13(2) of the SARFAESI Act for enforcing their security interest held in and over the mortgaged property on 20.08.2019.

4. It is stated that the Corporate Debtor had admitted its liability to the banks on 09.10.2019. The banks also took the symbolic possession of the secured assets under Section 13(4) of the SARFAESI Act on 01.11.2019. It is stated that the Corporate Debtor made some remittances towards part discharge of its liability to the consortium leader and the Financial Creditor on 15.12.2015 and 20.02.2019 respectively. It is stated that when the lending banks continued with the SARFAESI proceedings to sell the secured assets, the Corporate Debtor gave an OTS letter on 16.11.2021 requesting the lenders/Financial Creditor to accept a sum of Rs.12.50 Crores as full and final settlement of the entire dues payable to the consortium banks as against the staggering outstanding loan amount of Rs.65,39,93,711.48 (Rupees Sixty Five Crores Thirty Nine Lakhs Ninety Three Thousand Seven Hundred and Eleven and Paise Forty Eight only) as on 07.02.2020 which was rejected by the lead bank (Canara Bank). This made the



Applicant/Financial Creditor file the application under Section 7 of IBC, 2016 giving its information in Part-I and that of the Corporate Debtor in Part-II of the application.

5. In Part-IV, the Financial Creditor gave the details of the total amount of debt granted to the Corporate Debtor and the amount claimed to be in default and the date on which the default occurred i.e. Rs.49,54,16,567.83 (Rupees Forty Nine Crores Fifty Four Lakhs Sixteen Thousand Five Hundred and Sixty Seven and Paise Eighty Three only) as on 28.07.2022 payable to the Financial Creditor together with interest, cost and charges till repayment. It is stated that there is an admission of liability vide OTS letter dated 16.11.2021 and the date of default is 28.05.2019 (NPA) for which, demand notice dated 20.08.2019 was issued under Section 13(2) of the SARFAESI Act.

6. In Part-V of the application, the Financial Creditor has given the particulars of the financial debt i.e. documents, records and evidence of default as under:

1. PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY)

1. *Hypothecated stocks, plants, plant and machinery of the borrower. Value of the stocks are nil and estimated value of plant and*



machinery Rs.13,98,43,000.00. Joint deed of hypothecation dated 04.03.2017 and 07.11.2018.

- 2. Equitable mortgage of immovable properties belonging to the Corporate Debtor vide registered Memorandum of Deposit of Title Deeds and Doc. Nos.4115 of 2014 and 507 of 2017. Date of creation 18.09.2014 and 07.03.2017. Estimated value: Rs.18,66,58,000.00.*
- 3. The Certificate of Charge dated 22.07.2022 for the total limit of Rs.73 crores issued by ROC, Tamil Nadu, in favour of Canara Bank and SBI is filed as Annexure.*

7. On getting notice of the application, the Respondent filed its reply/counter alleging that as per the notice under Section 13(2) of SARFAESI Act, the account was classified as NPA by the Applicant on 28.05.2019. Therefore, the alleged date of default mentioned in 'Column 2' at Part-IV of Form-1 is erroneous and misrepresentation aimed at bringing the application within the period of three years from the date of default. The Applicant has failed to disclose the basis of calculations or produce necessary documents as regards alleged default. It is stated that the application filed before the Debts Recovery Tribunal-II, Chennai is yet to be adjudicated. It is stated that the application is not maintainable since the Applicant has invoked the provisions of the SARFAESI Act and taken possession of the company's assets and also owing to the pendency of the application before the Debts Recovery Tribunal-II, Chennai.



8. It is stated the Respondent has paid 8 quarterly instalments to the banks aggregating to Rs.12.48 Crores (Rupees Twelve Crores Forty Eight Lakhs only). The Applicant classified the Respondent as NPA without assigning valid reasons. It is stated that the Respondent had twelve outlets all over India. Owing to the restrictions imposed by the Governments on PVC Flex and other plastic materials, there was huge decline in demand. It also suffered at the ends of the pandemic. In spite of the said difficulties, the Respondent had offered OTS proposal of Rs.23.50 Crores (Rupees Twenty Three Crores Fifty Lakhs only) on 11.10.2022 to the consortium, but the Applicant invoked the Section 7 of IBC, 2016 after taking possession of the assets of the Respondent.

9. The Applicant filed the rejoinder denying the averments made in the counter. It is stated that in the counter/reply, the Corporate Debtor has not denied the liability made in OTS letter dated 16.11.2021 given to the Financial Creditor. It is stated that the application has been filed on 29.07.2022 i.e. within three years from the date of default. The date of default mentioned as 20.08.2019 is due to inadvertent mistake, though the loan accounts became NPA on 28.05.2019 as per RBI guidelines.

10. We have heard the counsels for the parties and perused the records of the case.



11. It is an admitted case of the parties that the Financial Creditor had sanctioned the Term Loan facility of Rs. 22,00,00,000/- (Rupees Twenty Two Crores only) on 21.01.2014 to the Corporate Debtor. The directors of the Corporate Debtor had executed Deed of Personal Guarantee in favour of the lender banks. The Corporate Debtor also mortgaged the immovable properties as detailed in Schedule-A in favour of the Financial Creditor/Applicant. The Applicant had also sanctioned OCC facility on 01.03.2017.

12. The records show that the Corporate Debtor failed to repay the loan and the loan account was declared as NPA on 28.05.2019 due to default committed by the Corporate Debtor. The Financial Creditor issued demand notice under Section 13(2) of the SARFAESI Act.

13. The records further show that the Corporate Debtor admitted its liability to the banks and sought time. It made some remittances towards part discharge of its liability to the Financial Creditor on 15.12.2015 and 20.02.2019 respectively. It also gave an OTS letter on 16.11.2021 to the Financial Creditor to accept certain sum which was rejected by the Applicant.

14. From the documents, it is evident that there is a clear admission/acknowledgment of debt by the Corporate Debtor/Respondent within the period of limitation which in the



present case started on 28.05.2019 when the account was declared as NPA as per RBI guidelines. The limitation period will revive from the date of acknowledgement. The debt is more than One Crore rupees. Therefore, the petition is maintainable irrespective of allegations as regards the rate of interest payable by the Corporate Debtor to the Financial Creditor. As regards pendency of SARFAESI proceedings before the Debts Recovery Tribunal-II, Chennai, the proceedings under IBC are the independent proceedings and have nothing to do with the proceedings before the Debts Recovery Tribunal-II, Chennai, moreover IBC overrides the provisions of SARFAESI Act as per Section 238 of IBC, 2016.

15. For the aforesaid reasons, we allow the application filed under Section 7 of IBC, 2016.

16. As a consequence of the application having been admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- 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.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder,

- (2) 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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
- (b) a surety in a contract of guarantee to a corporate debtor.

17. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced for ready reference:

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:



Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

18. The Financial Creditor has proposed the name of **Mr. Ashok Velamur Seshadri with Registration No. IBBI/IPA-001/IP-P00937/2017-18/11541** (under AFA valid till 15.11.2023 as per IBBI data), **Mobile No.9789672486**, **Email: ashokseshadrig@gmail.com** as the Interim Resolution Professional ("IRP") who has also filed his consent in Form-II. He is appointed as IRP.

19. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016 and file his report



within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

21. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

22. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

23. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date.

24. A copy of the order be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order also be forwarded to IBBI for its records and to the Interim Resolution Professional



above named forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

25. Accordingly, the present petition stands **admitted**.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

Suguna

- Sd -

SANJIV JAIN
MEMBER (JUDICIAL)

*Order pronounced under Rule 151 of NCLT Rules, 2016, by **Sanjiv Jain**, Member (Judicial) on behalf of the Bench comprising of **Sanjiv Jain**, Member (Judicial) and **Sameer Kakar**, Member (Technical).*

M. Nalluchooayal
(C.O.)