



FREE OF COST COPY

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-V)

COMPANY PETITION (IB) NO. 555/ND/2024

(A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.)

IN THE MATTER OF:

M/s. Alchemist Asset Reconstruction Company Limited

A-270, First & Second Floor,
Defence Colony South Delhi,
New Delhi, Delhi - 110024

...Applicant/Financial Creditor

Versus

M/s. Patel Wood Products Limited

RZ-B2/115, 1st Floor,
Vijay Enclave Palam,
South West Delhi,
Delhi - 110045

...Respondent/Corporate Debtor

Order Delivered on: 22.04.2025

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

Appearances:

For the Applicant : Mr. Vishwajeet Singh, Adv.

For the Respondent : Ms. Aishwarya Nabh, Adv.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity "the Code") read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by M/s. Alchemist Asset Reconstruction Company Limited

C.P.(IB) No. 555/ND/2024
Order Delivered on: 22.04.2025

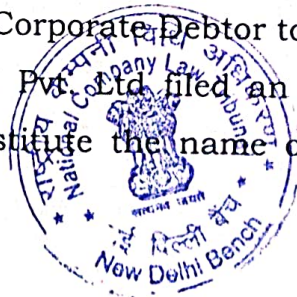


(hereinafter referred to as 'Financial Creditor'), represented by Mr. Suraj Singh Chauhan, seeking to initiate the Corporate Insolvency Resolution Process ("CIRP") against M/s Patel Wood Products Limited ("Corporate Debtor"). The Financial Creditor was incorporated on 19.09.2002, having Identification No. U74999DL200OLC117052.

2. The Corporate Debtor was incorporated on 27.05.1997, having CIN: U20299DL199PLC087495 under the Companies Act, 1956. Its registered office is RZ- B2/115, 1st Floor, Vijay Enclave Palam, South West Delhi, Delhi - 110045. Therefore, this Bench has jurisdiction to deal with this petition. The Authorized Share Capital of the Corporate Debtor is INR 12,50,00,000 (Twelve Crore Fifty Lakh Only). The Paid-Up Capital of the Corporate Debtor is INR 10,42,24,500 (Ten Crore Forty-Two Lakh Twenty-Four Thousand Five Hundred Only).
3. The present petition has been filed on the ground that the Corporate Debtor has defaulted to make a payment of a sum of INR 2,94,00,26,706 which is inclusive of interest at the rate of 21.75% p.a compounded monthly (Rupees Two Hundred Ninety, Four Crores, Twenty-Six Thousand, Seven Hundred and Six Only) on 30.04.2013 (date of NPA). Further, vide order dated 31.05.2019 the Hon'ble DRT issued a Recovery Certificate to Phoenix ARC Pvt. Ltd.

Submissions of Learned Counsel appearing for the Applicant are as under: -

4. The details of transactions leading to the filing of this petition as averred by the Financial Creditor are as follows:
 - a) The Corporate Debtor approached the ICICI Bank (hereinafter referred to as Original Lender), requesting credit facilities of Rs 14.978 Crores. The Original Lender vide Assignment Agreement dated 25.06.2014 assigned the account of the Corporate Debtor to Phoenix ARC Pvt. Ltd. Subsequently, Phoenix ARC Pvt. Ltd. filed an application before the Hon'ble DRT, Delhi to Substitute the name of the applicant in the



Original Application on account of the assignment of debt by the Original lender and the same was allowed vide order dated 03.09.2015.

- b) The Hon'ble DRT, Delhi vide order dated 31.05.2019 in O. A No. 253/2014 issued a Recovery Certificate to Phoenix Arc Private Limited and directed the Respondent to pay a sum of Rs 35.83 Crores together with pendent elite and future interest rate of 21.75 % p.a compounded monthly, from the date of filing of OA till its realization. The total amount payable by the Corporate Debtor to the said NPA Account is Rs 2,94,00,26,706.
- c) Further, the Phoenix ARC Pvt. Ltd vide Assignment Agreement dated 31.05.2024, assign the debt/ the NPA account of the Corporate Debtor to the Alchemist Asset Reconstruction Company Limited (present applicant). The Applicant issued a Demand Notice dated 06.06.2024 to the Corporate Debtor, intimating the Corporate Debtor pertaining to the assignment Agreement dated 31.05.2024 from the Phoenix ARC Pvt. Ltd to the applicant. The Corporate Debtor vide their reply dated 24.07.2024, acknowledges the amount due.
- d) Financial Creditor submitted that on perusal of the Annual Financial Statements of the Corporate Debtor for the years 2020-21, 2021-22 and 2022-23, the amount of Rs 36.40 Crores (Approx.) shows due from the Corporate Debtor towards the NPA account which was earlier held by the Original Lender and now assigned to the Petitioner.

Submissions on behalf of the Corporate Debtor are as under:

5. The details of the submissions made by the Corporate Debtor in their reply to the Section 7 petition are as follows:
 - a) The Corporate Debtor was not able to meet its debt obligations to the Financial Creditor and the loan account was declared Non-Performing Asset (NPA) on 30.04.2013. The default occurred due to unfavorable

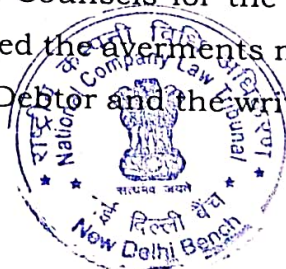


business conditions which were entirely beyond the control of the management of the Corporate Debtor.

- b) The Corporate Debtor pleaded that the Financial Creditor has claimed a default amount of Rs 294 Crores which includes inflated and unreasonable interest rates compounded at 21.75% per month. Such an exorbitant amount is unjustified and does not align with the original terms agreed upon between the parties. Moreover, the Respondent herein, tried to engage the Financial Creditor into a one-time settlement. However, the Financial Creditor proceeded hastily to file the present Petition before this Hon'ble Tribunal.
- c) It is stated that the present Petition is barred by limitation, as the account was NPA in 2013 and the period of limitation for filing an application under Section 7 of IBC 2016 is three years from the date of default, as per Article 137 of the Limitation Act, 1963. Since more than three years have elapsed from the date of default, the present Petition is barred by the Limitation. Hence not maintainable and is liable to be dismissed on this ground alone
- d) Further it is submitted by the Corporate Debtor that it is a settled position of law that the provisions of the Code cannot be turned into a debt recovery mechanism as the main intent of the legislature behind the IBC was to facilitate the revival and restructuring of the Corporate Debtors than to provide a forum for creditors to merely enforce monetary claims. The Hon'ble Supreme Court and the Appellate Authority have consistently reiterated this position. Consequently, any attempt to misuse the provisions of the Code for recovery purposes would be contrary to both the letter and spirit of the law.

Analysis and Findings

6. We have heard the Learned Counsels for the Financial Creditor and the Corporate Debtor and perused the averments made in the petition and the reply filed by the Corporate Debtor and the written submissions presented



by both the parties. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.

7. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a "debt" owed to the Financial Creditor and whether there is a "default" with respect to such debt.
8. In the instant petition, the Corporate Debtor had availed credit facilities of Rs 14.978 Crores from the Original Lender. The Original Lender Declared the account of the Corporate Debtor as NPA on 30.04.2013. The Original Lender vide Assignment Agreement dated 25.06.2014 assigned the account of the Corporate Debtor to Phoenix ARC Pvt. Ltd. The Hon'ble DRT, Delhi vide order dated 31.05.2019 in O.A. No. 253/2014 issued a Recovery Certificate to Phoenix ARC Private Limited and directed the Corporate Debtor to pay a sum of Rs 35.83. Crores together with pendent elite and future interest rate of 21.75 % p.a compounded monthly, from the date of filing of O.A. till its realization. Further, the Phoenix ARC Private Limited vide Assignment Agreement dated 31.05.2024 has transferred the rights and obligations to the Financial Creditor. The total amount as declared outstanding and claimed by the Financial Creditor in Part IV is INR 2,94,00,26,706/- (Rupees Two Hundred, Ninety-Four Crores, Twenty-Six Thousand, Seven Hundred and Six Only) till 31.05.2024. The Assignment Agreement dated 25.09.2014 and 31.05.2024 is placed on record.
9. On the perusal of documents placed on record before this tribunal by the applicant for the purpose of proving the existence of debt, disbursal of Financial Debt and acknowledgement of debt, have annexed the document with the instant application.

- i. Copy of the NESL Report



- ii. Copy of Master Facility Agreement dated 19.09.2007
- iii. Copy of the Annual Financial Statement of the Corporate Debtor for the year 2020-2021, 2021-2022 and 2022-2023.
- iv. Copy of the Credit Arrangement Letter dated 31.07.2007, 31.03.2008, 18.12.2008, 10.09.2009, 27.12.2010 and 07.03.2012 respectively.
- v. Copy of the order dated 31.05.2019 passed by the Hon'ble DRT, Delhi in O.A. NO. 253/2014.

Further, the Corporate Debtor has nowhere denied the existence of the debt in its averments. Therefore, one essential ingredient with respect to Section 7, that there has been a "debt", stands substantiated.

10. Further, the Corporate Debtor has failed to repay the amount as undertaken, thereby committing default with respect to the loan agreement and the subsequent amendment agreement. Thus, it is concluded that there exists a debt worth more than Rs. 1 Crore by the Corporate Debtor towards the Financial Creditor and the said Corporate Debtor has defaulted in the repayment of the said debt. Therefore, another major essential ingredient of Section 7, i.e., "default" with respect to the debt, stand substantiated.

11. In the present case, it is observed that the Corporate Debtor has raised an objection that the said loan account was classified as NPA on 30.04.2013 and the period of limitation for filing an application under Section 7 of the Code is three years from the date of default as, per Article 137 of the Limitation Act, 1963. The present Petition is barred by limitation and hence not maintainable. However, the applicant in the rejoinder submitted that the Hon'ble Supreme Court in its judgement in **Dena Bank v. C. Shivakumar Reddy & Anr. Civil Appeal No. 1650 of 2020**, held that when a claim fructifies into a final judgment and a recovery certificate is issued to the creditor authorizing to realise its dues, the same provides a fresh cause of action to the Financial Creditor to initiate proceedings under



Section 7 of the Code. The relevant excerpts from the aforesaid judgment are:

"128. In the instant case, Rs.111 lakhs had been paid towards outstanding interest on 28th March, 2014 and the offer of One Time Settlement was within three years thereafter. In any case, NCLAT overlooked the fact that a Certificate of Recovery has been issued in favour of Appellant Bank on 25th May 2017. The Corporate Debtor did not pay dues in terms of the Certificate of Recovery. The Certificate of Recovery in itself gives a fresh cause of action to the Appellant Bank to institute a petition under Section 7 of IBC The petition under Section 7 IBC was well within three years from 28th March 2014.

135. As observed above, the Appellant Bank filed the Petition under Section 7 of the IBC on 12th October 2018. Within three months, the Appellant Bank filed an application in the NCLT, for permission to place additional documents on record including the final judgment and order/decreed dated 27.3.2017 in O.A. 16/2015 and the Recovery Certificate dated 25.5.2017, enabling the Appellant Bank to recover Rs.52 crores odd. The judgment and order/decreed of the DRT and the Recovery Certificate gave a fresh cause of action to the Appellant Bank to initiate a petition under Section 7 of the IBC."

Further, it is on record that the corporate debtor has acknowledged the debt in the Annual Financial statements of the Corporate Debtor for the years 2020-2021, 2021-2022 and 2022-2023. The present application under Section 7 of the Code, 2016, was filed on 20.08.2024 as per the records, which is well within the period of limitation.

12. Thus, from the facts which are borne on record, as narrated above, we are of the considered view that the 'financial debt' is not barred by limitation, and the submissions of the Corporate Debtor as to the present application being barred by the limitation is not sustainable. Hence, in all respects, the 'debt' as claimed by the Financial Creditor is well within the period of limitation

13. From the perusal of aforesaid facts, it is clear that the applicants are Financial Creditors and the debt owed to them by the Corporate Debtor is



a Financial Debt, and there has been a default, as stipulated in Sections 3(12), 5(7) and Section 5(8) of the IBC which are as follows:

Section 3(12) of IBC defines Default. *“Default means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.”*

Section 5(7) of IBC defines Financial Creditor: *“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.”*

Section 5(8) of IBC defines Financial Debt. *“Financial Debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-*

- (a) Money borrowed against the payment of interest;*
- (b) Any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as maybe prescribed;*
- (e) Receivables sold or discounted other than any receivables sold on non-recourse basis;*
- (f) Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
- (g) Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
- (h) Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
- (i) The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause.”*



14. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petitioner established that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under Section 4(1) of the Code, stipulated at the relevant point of time. We are of the view that since this Petition was filed on 20.08.2024, and even admittedly the debt owed to the Financial Creditor is an amount of INR 2,94,00,26,706, which meets the threshold of Rs. One Crore.

15. In the light of the above facts and circumstances, and in terms of Section 7(5) (a) of the Code, the instant petition **COMPANY PETITION IB (IBC)/555(ND) 2024** filed by M/s. Alchemist Asset Reconstruction Company Limited, the Financial Creditor, under section 7 of the Code, read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating CIRP against M/s Patel Wood Products Limited, the Corporate Debtor, **stands admitted**.

16. The petitioner in Part-III of the petition has proposed the name of **Mr. Manoj Kumar Anand**, as Interim Resolution Professional, having Registration Number IBBI/IPA-001/IP-P00084/2017-18/10180 and E-mail ID anandmanoja@gmail.com, is hereby appointed as an Interim Resolution Professional (IRP) for the Corporate Debtor. The consent of the proposed interim resolution professional in Form 2 is taken on record. It is pertinent to mention that the IRP has a valid AFA.

17. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- 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 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. The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances 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, 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, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.
18. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
19. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.



20. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Manoj Kumar Anand to meet out the expenses to perform the initial 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 needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards the Resolution Process cost as per applicable rules.

21. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.

22. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex- management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing appropriate orders.

23. The Interim Resolution Professional shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

24. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named by the Registry. In addition, a copy of the



FREE OF COST COPY

order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send a compliance report to the Registrar, NCLT.

25. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./555 (ND)/2024** stands **admitted**.

26. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)



1a-1-
22.4.25

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)

Prashant
Jain
24.04.2025
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003