

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT III)**

Company Petition No. IB-694(ND)/2022

IN THE MATTER OF:-

M/s. Prudent ARC Limited

.....**Applicant/Petitioner**

Versus

M/s. Bhupesh Steel Pvt. Ltd.

.....**Respondent**

Pronounced on 22.12.2023

CORAM:-

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:-

For the Applicant : Mr. Pallav Saxena, Ms. Nipun Sharma, Advocates
For the Respondent : Mr. Milan Negi, Mr. Nikhil Jha, Advocates

O R D E R

Per: Shri Bachu Venkat Balaram Das, Member (J)

1. The present application was filed on 02.04.2022. This application has been filed by M/s. Prudent ARC Limited, the Financial Creditor/Applicant under Section 7 of IBC seeking initiation of CIRP against M/s. Bhupesh Steel Private Limited, the Corporate Debtor/Respondent herein.

2. In the year 2007, the Union Bank of India granted cash credit facility of Rs. 3,50,00,000/- (Rupees Three Crores Fifty Lakh Only) to the Corporate Debtor vide a sanction letter. The said cash credit facility of Rs. 3,50,00,000/- (Rupees Three Crores Fifty Lakh Only) was secured by Hypothecation of Corporate Debtors stock of raw material, goods etc., on 22.10.2007.

3. The Corporate Debtor deposited the title deeds of the immovable property bearing No. 16/11/1/2- 10,17/15/2/1-3, Bahalgarh, Sonipat Haryana. The Corporate Debtor also executed various security of loan documents in favour of Union Bank of India in respect to the cash Credit facility sanctioned to the Corporate Debtor. The cash credit facility sanctioned by the Union Bank of India was enhanced from time to time on the request made by the Corporate Debtor upto Rs. 5,00,00,000/- (Rupees Five Crores only) vide sanctioned letter dated 05.03.2012.

4. On 31.05.2013, the Union Bank of India sanctioned a loan of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) against a car - Fortuner Toyota.

5. The Applicant in Part-IV of Section-7 application has stated that the Principal amount of debt towards cash credit facility is Rs. 6,21,63,098/- (Rupees Six Crores Twenty-One Lakhs Sixty-Three Thousand Ninety-Eight only) as on 21.5.2015 and interest @ 15.65% per annum from 21.05.2015 onwards till realization of the said amount.

6. The Applicant has also stated that the amount of interest till 31.01.2022 quantifies to Rs. 9,53,09,477/- on the account of defaulted interest. As such, as on 31.01.2022, the amount recoverable from Respondent/ Corporate Debtor stands as Rs. 15,74,72,575/- (Rupees Fifteen Crores Seventy-Four Lakhs Seventy-Two Thousand Five Hundred and Seventy-Five only).

7. The Applicant has further stated that in Part-IV of the application that the default occurred on various counts which are mentioned below: -

- i. The default, with Union Bank of India occurred, for the first time when the Respondent/Corporate Debtor failed to repay the first interest installment of the Cash Credit facility on 21.05.2015 and the first instalment of principal on 21.05.2015 and since has been in default;

- ii. The loan account in respect to the cash credit facility was declared and classified as NPA on 21.05.2015. The NPA accounts was thereafter assigned to the Financial Creditor.
- iii. The default is continuing in nature since the Respondent/Corporate has failed to pay the installments to Union Bank of India, from 21.05.2015 till date.

8. The Applicant has also submitted that a car loan facility was availed which has been stated in part -IV of the petition as under: -

- i. The principal amount of debt stands due at Rs. 15,49,442/- (Rupees Fifteen Lakhs Forty-Nine Thousand Four Hundred and Forty-Two only) as on 30.06.2015 on which an interest is payable at rate of 12.70 % per annum from 30.06.2015 till realization.
- ii. The amount of interest till 31.01.2022 quantifies to Rs. 16,03,556/- on the account of default interest. As such as 31.01.2022, the amount recoverable from Respondent/ Corporate Debtor stands as Rs. 3152998/- (Rupees Thirty-One Lakhs Fifty-Two Thousand Nine Hundred and Ninety-Eight only).
- iii. The loan account in respect to the car loan facility was declared and classified as NPA on 30.06.2015. The NPA accounts was thereafter assigned to the Financial Creditor.

9. The Corporate Debtor has filed a reply affidavit denying the allegations made by the Applicant in this Section 7 application.

10. The Respondent at the outset has submitted that the Applicant is not a Financial Creditor under the definition of Section 5(7) and there is no debt due and payable within the meaning of Section 3(11) of the Code, 2016. The amount which has been claimed to be in default by the Applicant requires adjudication and it cannot be adjudicated in a summary proceeding by this Adjudicating Authority.

11. The Respondent also submitted that the Applicant has failed to demonstrate as to how the debt became due and also failed to demonstrate the date and time when the alleged debt became due and payable.

12. The Respondent has also submitted that the Applicant has combined two different cause of action and two different loan accounts, one with respect to cash credit facility and the other with respect to the car loan account in a single petition which is non admissible in law.

13. It is also submitted that the documents including sanction letter, loan and security documents with respect to cash credit facility were executed in the year 2008, whereas the car loan was provided in the year 2013 and the date of default as mentioned by the Applicant are also separate, the date of default for cash loan facility being 21.05.2015 and that for the car loan is 30.06.2015. Therefore, the present application is not maintainable, since two different cause of action cannot be combined in one application.

14. The Respondent has further denied that a sum of Rs 15,74,72,575/- is due and payable by the respondent being (Rs 6,21,63,098 towards principle and remaining towards interest). It is further submitted that the applicant has charged exorbitant interest on the disputed amount of debt as per its own whims and fancies without any agreement or mutual consent on the said rate of interest or penalties. Thus, the present sum alleged to be claim under the said petition is disputed and not liable to be paid by the respondent to the said applicant.

15. The Applicant has filed a rejoinder affidavit, wherein it has been submitted that the financial assets along with underlying securities of the Union Bank of India pertaining to the debt/financial asset of the Corporate Debtor with Union Bank of India (Erstwhile Financial Creditor) have been assigned to the present Applicant "Financial Creditor " vide Assignment Agreement dated 30.03.2017.

16. The Applicant therefore submitted that as per the definition of "Financial Creditor" under Section 5(7) of Insolvency and Bankruptcy Code, 2016, the

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 transfer to”.

17. We have heard the submissions of Ld. Counsel and perused the application, it is an admitted position that the financial asset along with underlying securities of the Union Bank of India pertaining to the debt/financial asset of Corporate Debtor with Union Bank of India were assigned to the Financial Creditor/Applicant vide Assignment Agreement dated 30.03.2017.

18. Therefore, the Applicant stepped into the shoes of Financial Creditor by virtue of the said Assignment deed and can be considered to be a Financial Creditor within the meaning of Section 5(7) of the Code. It is evident from the record that the cash credit facility with a sum of Rs. 4,50,00,000/- was sanctioned on 26.12.2008 by Union Bank of India. Subsequently, the deed of hypothecation was executed on 26.12.2008 by the Corporate Debtor in favour of the Financial Creditor hypothecating certain goods mentioned in the schedule in the agreement.

19. Further, a letter of undertaking was executed by the Corporate Debtor for non-alienating the hypothecated goods. Subsequently, the cash credit facility for a sum of Rs. 5 cores was renewed vide sanction letter dated 05.03.2012 issued by the Union Bank of India and the Corporate Debtor executed a deed of hypothecation agreement of goods and debts on 05.03.2012 and also issued a letter of undertaking for non-alienating the said hypothecated goods.

20. The cash credit facility of Rs. 5 crores was subsequently renewed vide sanctioned letter dated 22.07.2014 which was followed by the deed of hypothecation dated 23.07.2014 and a letter of undertaking dated 23.07.2014 executed by the Corporate Debtor.

21. Further, the car loan for a sum of Rs. 20,00,000/- was sanctioned by the Union Bank of India on 31.05.2013 and pursuant thereto a deed of hypothecation dated 31.05.2013 was executed by the Corporate Debtor in favour

of Union Bank of India hypothecating the vehicle. The Corporate Debtor has submitted that the present application is barred by limitation. Since, the date of default mentioned by the Applicant in Part-IV of the present application on 30.06.2015.

22. We have perused the audited financial statement for the year ending 31.03.2020 which is also accompanied by a opinion/report of Ritesh Kumar & Associates, Chartered Accountant of M/s. Bhupesh Steels Private Limited, the Corporate Debtor. The Chartered Accountant dated 29.12.2020 the auditor with respect to the cash credit loan and the car loan has given the following report/opinion: -

(viii) Car Loan from UBI A/c - 519506520000712, balance as on 30.06.2015 is Rs. 15,63,398. The account is classified as NPA by UBI on 01.08.2015 at Rs. 15,63,398/. No provision for interest has been made after 01.07.2015 since bank balance certificate for 01.07.2015 to 31.03.2020 is not available on records. The account has been taken over by ARC M/s Prudent ARC Limited)

Working capital Loan A/c - 37036 , balance as on 24.04.2015 is Rs. 6,31,63,068.58 outstanding as on 31.3.2020 is 6,14,51,972/-. The account is classified as NPA by UBI as on 24.04.15. No provision for interest has been made after 24.04.15 and balance as on 31.03.2020 is subject to confirmation from bank. Balance confirmation letter or bank statement is not available. The account has been taken over by ARC M/s Prudent ARC Limited)

23. A perusal of the above said audited Financial Statement makes it amply clear that the Corporate Debtor has acknowledged the debt in the year 2020 and therefore we are of the view that the present application filed under Section 7 of IBC, 2016 is within limitation.

24. From the above facts and circumstances of the case, we are of the view that the Applicant has established that there is a debt which is due and payable by the Corporate Debtor and the Corporate Debtor is defaulted in making the

payment. Accordingly, we hereby admit the instant application filed by Financial Creditor U/s 7 of the IBC, 2016.

25. The Financial Creditor has proposed the name of the IRP, therefore this Adjudicating Authority hereby appoints Mr. Anil Kumar Mittal having Regn. No. IBBI/IPA-002/IPN00742/2018-19/12263 as IRP. Consent and valid AoA of the IRP must be filed within three days of passing this order. The said IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.

26. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:

- 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's 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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 explanation below section - 14 (1) also stipulates "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, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period”.

27. The supply of essential goods or services of the said project of Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. However, the provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

28. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

29. The Financial Creditor is directed to send the copy of this order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor' assets etc., with respect to said project and make compliance with this order as per the provisions of IBC, 2016.

30. The Financial Creditor is directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect. Further, Financial Creditor shall provide initial finance to the tune of Rs. 2,00,000/- to the aforesaid Interim Resolution Professional within a weeks' time from the date of this order as advance towards initial cost and expenses of CIRP process. The said advance of Rs. 2,00,000/- shall be adjustable as CIRP cost by the Committee of Creditors immediately after its constitution by the IRP.

31. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.

32. The application bearing IB – 694/(ND)/2022 is ***admitted.***

SD/-

**(ATULCHATURVEDI)
MEMBER (TECHNICAL)**

SD/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**