

NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.4
CP(IB)/59(MP)2023

Proceedings under Section 7 IBC

IN THE MATTER OF:

M/s Small Industries Development Bank of India
V/s
M/s Alumass Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 04/04/2024

Coram:

P. Mohan Raj, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

A. Bhadauria

Sd/-

**P. MOHAN RAJ
MEMBER (JUDICIAL)**

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

CP(IB) 59 of 2023

(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:

**Small Industries Development Bank of
India**

SIDBI Tower, 15 Ashok Marg
Lucknow- 226001, Uttar Pradesh

**Applicant/
Financial Creditor**

Versus

**M/s Alumass Private Limited
(Formerly known as Tirupati Balaji
Extrusion Private Limited)**

R/o- Plot No.81A/82C
Dewas Industrial Area
Sector-1, AB Road
Dewas (MP) -455001

**Respondent/
Corporate Debtor**

Order pronounced on: 04.04.2024

**Coram: Hon'ble P. Mohan Raj, Member (J)
Hon'ble Kaushalendra Kumar Singh, Member (T)**

Present:

For the Applicant: Ld. Adv. Mr. Roshan Kumar

For the Respondent: Ld. Adv. Mr. Rohit Dubey

ORDER

1. The instant application was filed on 21.08.2023 by Small Industrial Development Bank of India (Applicant) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**CODE**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority)

Rules, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) against Alumass Private Limited (Respondent) for the default amount of Rs. 1,02,33,203/- (principal amount Rs.72,56,913/- + interest amount of Rs. 29,76,290/-). The date of default as mentioned in Part IV of the present application is 08.09.2021.

2. The applicant is a registered bank set up on 02.04.1990 under an Act of Indian Parliament which primarily acts as the Principal Financial Institution for Promotion, Financing and Development of Micro, Small and Medium Enterprise (MSME) sector as well as for co-ordination of functions of institutions engaged in similar activities. Whereas, the respondent is a company formerly known as Tirupati Balaji Extrusion Private Limited incorporated under the Companies Act, 1956 and is engaged in the business of manufacturing.

3. The averments made by the financial creditor/applicant in its application and as argued by the learned counsel are summarised as under:

i. The respondent approached the applicant for a facility of RCF subordinated loan and FITL loan amounting to Rs.100 lakhs and Rs.4.56 lakhs respectively. The applicant gave loan amounting to Rs.100 lakhs under the Growth Capital & Equity Assistance Scheme for MSMEs (GEMS) for meeting margin money for working capital of the company for its plant located at Plot No.81A/82C, Dewas Industrial Area, Sector-1, AB Road, Dewas (MP) at a total project cost of Rs.144.23 lakhs and Funded Interest Term Loan amounting to Rs.4.56 lakhs for relief in moratorium during Covid-19. The applicant has also issued a letter of intent dated 18.11.2015 for the same wherein the terms & conditions of the said loan were mentioned.

ii. The said loan was given at the interest of 14.75% p.a. payable monthly and was to be repaid in 48 equal monthly instalments (comprising first 46 instalments of Rs.2 lakhs each and last two instalments of Rs.4 lakh each) commencing after initial moratorium of 36 months from the date of first disbursement. The date of repayment of instalments was agreed to be 10th of each month.

iii. The respondent passed a Board resolution on 19.11.2015 for accepting the terms & conditions of the aforesaid letter of intent. Further the applicant and the respondent entered into a Sub Ordinated Debt agreement which includes the Letter of Intent issued by the applicant and the acceptance of the same by the respondent thereof and General Conditions- Rupee Loan –GC-RC (SD)-2010 and modifications thereof from time to time.

iv. Further, the respondent also executed Deed of Guarantee on 19.11.2015 for Rs.100 lakhs and the Deed of Hypothecation in favour of the applicant on 19.11.2015. The respondent also issued a demand promissory note on 19.11.2015, wherein the director of the respondent promised to pay the applicant Rs.100 lakhs at 14.75% p.a. interest. Moreover, to secure the said loan amount, various securities and collaterals were secured by the respondent.

v. However, due to continuous default on the part of the respondent, the applicant issued loan recall notice dated 22.02.2022 for Rs.81,24,310/-. Subsequently, on failure to repay the loan the applicant invoked guarantee through letter dated 21.12.2022 for Rs.93,08,720/-to be paid within the time as prescribed in the deed of guarantee. Furthermore, the respondent issued notice dated 25.01.2023 under section 13 (2) of the

SARFAESI Act to recall the outstanding loan amount from the respondent and the guarantors.

vi. The loan granted to the respondent was duly recorded with the Information Utility (IU) viz. National E-Governance Service Limited and the said IU has duly authenticated the default and has issued a record of default in Form-D wherein the default committed by the respondent is evidently established under default status 'Authenticated'.

vii. The respondent has defaulted in repayment of the outstanding loans to the tune of Rs.1,02,33,203/- as on 10.07.2023. the details of each facility and default is as under:

Sanction date	Sanction amount	Disbursed amount	Principle Overdue	Interest Overdue	FI & PI overdue	Total outstanding
21.09.2015	1,00,00,000	1,00,00,000	68,00,000	21,73,529	6,13,890	95,87,419
10.09.2020	4,56,913	4,56,913	4,56,913	1,46,051	42,820	6,45,784
Total						1,02,33,203

viii. The respondent has not disputed the claim, instead the respondent has duly acknowledged the debt by issuing balance confirmations, acknowledgment of debt from time to time. The respondent is not in a position to repay the loan and therefore, the applicant has filed the present application.

ix. The respondent has defaulted in the repayment of the loan taken from Axis Bank and Standard Chartered Bank amounting to Rs.1,15,07,301 and Rs.10,47,37,614/- respectively as on 31.03.2020 as per the audited balance sheet.

4. The submissions made by the respondent is such that the respondent has approached the applicant in 18.11.2015 for availing loan facility of Rs.1,00,00,000/-, however due to Covid-19 the operations of the respondent were completely shut and the company suffered losses. The respondent is unable to pay the outstanding

amount and therefore, the respondent seeks minimum 3 years to pay the admitted outstanding debt of the applicant.

5. We have heard the learned counsel for the applicant as well as for the respondent and perused the material available on record. It is an undisputed admitted fact that the applicant granted loan to the respondent amounting to Rs.100 lakhs (debt start date- 14.12.2015) under the Growth Capital & Equity Assistance Scheme for MSMEs (GEMs) for meeting margin money for working capital of the company for its plant located at Plot No.81A/82C, Dewas Industrial Area, Sector-1, AB Road, Dewas (MP). Further the applicant granted Funded Interest Term Loan amounting to Rs.4.56 lakhs (debt start date- 10.09.2020) for relief in moratorium during Covid-19. The said loans were granted at 14.75% interest.

6. It is also noted that the said loans granted by the applicant to the respondent are also authenticated by the Information Utility NeSL on 03.07.2023 and the same are recorded as against RCF- Subordinated Loan and Direct Credit Scheme outstanding amount of Rs.93,30,568/- (principal- Rs.68,00,000/- + interest- 20,05,905/- + other charge- Rs.5,24,663/-) and Rs.6,28,525/- (principal- Rs.4,56,913/- + interest- 1,34,788/- + other charge- Rs.36,824/-) respectively. The total default amount as per NeSL Certificate is Rs.99,59,093/-, however, it includes the interest and other charges upto 15.06.2023. The outstanding default as per part IV of the application is Rs. 1,02,33,203/- which includes interest and other charges upto 10.07.2023 before filing the present application.

7. Considering the above, we are of the considered view that there exists financial debt which is payable and defaulted by the respondent. The same is also admitted and acknowledged by the respondent. The

debt is more than the threshold limit of Rs. 1 crore as per Section 4 of the IBC. This application is filed within limitation and is defect-free; and as such the application deserves to be admitted.

8. On the basis of the facts the application is otherwise defect free & on record. Accordingly, we admit this application and order as under:

(i) Corporate Debtor M/s Alumass Private Limited is admitted in the Corporate Insolvency Resolution Process under section 9 of the Insolvency & Bankruptcy Code, 2016.

(ii) The moratorium under section 14 of the Insolvency & Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- (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 Securitisation 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.*

(iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes

an order for liquidation of Corporate Debtor Company under Section 33 of the IBC, 2016, as the case may be.

(iv) As proposed by the financial creditor, we appoint Mr. Rakesh Kumar Jindal having registration No. IBBI/IPA – 002/IP-N01148/2021-2022/13963; having address at- House No.3656/6, Gali No.6, Narang Colony, Tri Nagar, Near Rose Garden, New Delhi-110035, to act as an IRP under Section 13(1)(c) of the IBC, 2016. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of the Insolvency & Bankruptcy Code, 2016 r.w. Regulations made thereunder.

(v) The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

(vi) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

(vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person, is 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.

(viii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

(ix) The Financial Creditor is directed to pay an advance of Rs. 1,00,000/- (Rupees one lakh only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, the IRP may raise further demands for Interim funds, which shall be provided as per Rules.

(x) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

(xi) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Trade Tax and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/ employee's associations so that they are timely informed about the initiation of CIRP against the corporate debtor.

(xii) The commencement of the Corporate Insolvency Resolution process shall be effective from the date of this order.

9. Accordingly, CP(IB) 59 of 2023 stands admitted.

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Kaushalendra Kumar Singh
Member (Technical)

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P. Mohan Raj
Member (Judicial)

Swati Khandelwal