

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

**CP (IB) No. 217/Chd/Hp/2023
Under Section 7 of IBC, 2016**

In the matter of C.P. (IB) No. 217/Chd/Hp/2023

Prudent Arc Limited

Having its registered office at:
(Prudent Trust 78/22, SR II)
611, D-Mall, Plot No. A-1
Netaji Subhash Place,
Pitampura, New Delhi- 110034
CIN: U74900DL2011PLC225445

...Petitioner/Financial Creditor

Vs.

M/s Tangnu Romai Power Generation Private Limited

Having its registered office at:
Hari Vishram
Lower Panthagatti
Shimla, H.P.- 171009
CIN: U40100HP2005PTC000333

....Respondent/Corporate Debtor

Judgement delivered on: 06.05.2024

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. L. N. GUPTA, MEMBER (TECHNICAL)**

Present :

For the Petitioner/Financial Creditor : Mr. Sumer Singh Brar, Advocate

For the Corporate Debtor/Corporate Debtor : Mr.Sandeep Singh Josan, Advocate

Per: Sh. Harnam Singh Thakur, Member (Judicial)

Sh. L. N. Gupta, Member (Technical)

JUDGEMENT

The present petition has been filed by Prudent Arc Limited., (hereinafter referred to as the “**Petitioner/Financial Creditor**”), through its Senior Executive Vice President, Mr. Amar Jit Kocharl, under Section 7 of the Insolvency and Bankruptcy Code, 2016, seeking the initiation of the Corporate Insolvency Resolution Process against M/s Tangnu Romai Power Generation Pvt. Ltd., (hereinafter referred to as the “**Corporate Debtor/Corporate Debtor**”), claiming a default of Rs. 115.47 crore on the part of the Corporate Debtor. The facts stated in the application are as follows:

2. The Financial Creditor is an assignee of the debt owed by the Corporate Debtor to the State Bank of India (hereinafter referred to as “**Assignor SBI**”) vide Assignment Agreement dated 28.02.2023 (Annexure A-6). The debts owed to the State Bank of India were assigned to the Petitioner ARC under the provisions of Section 5(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, vide Assignment Agreement dated 28.02.2023. The Petitioner has submitted that:
 - 2.1. The Assignor SBI, Punjab National Bank, and Axis Bank Limited, under a consortium arrangement, extended a term loan to the Corporate Debtor for Rs. 224 crore, with the share of the State Bank of India for Rs. 74 crore, while the share of the other consortium members, i.e., Axis Bank Limited

was Rs. 76 crore and Punjab National Bank for Rs. 14 crore, for the purpose of setting up a hydroelectric power plant over the Pubbar River and Supin River, situated in Shimla District in the state of Himachal Pradesh.

- 2.2. The Corporate Debtor defaulted in payment of installments of principal amount and interest in the case of loans availed from the Assignor SBI, and the account was declared a Non-Performing Asset on 29.12.2016, which is stated to be the date of default.
 - 2.3. The Petitioner ARC has acquired the debt owed by the Corporate Debtor to the Assignor SBI, and therefore, the Petitioner ARC has stepped into the shoes of the Assignor SBI.
3. A notice was issued to the Corporate Debtor as to why the petition should not be admitted. The Corporate Debtor filed its reply via diary no. 02691/2 dated 01.11.2023 and diary no. 02691/3 dated 11.12.2023, wherein it is stated that owing to the perilous financial state of the Corporate Debtor, the Banking/Financial Institutions entered into talks with the Petitioner ARC in order to restructure the said financial facilities to enable the Corporate Debtor to continue functioning as well as service its loan facilities and to revive the Corporate Debtor as it had already completed 35-40% of the work towards the construction of the dam in question. Further, the Corporate Debtor has submitted that:
 - 3.1. Vide Assignment Agreement Deeds dated 08.02.2023 with Assignor SBI and Assignment Agreement Deeds dated 26.05.2023, and 26.09.2022, with PNB and Axis Bank, the three Banking/Financial Institutions assigned their

respective debts to the Petitioner ARC, whereby the Petitioner ARC stepped into the shoes of the Assignors.

- 3.2. It is further submitted by the Corporate Debtor that PNB approached the Debts Recovery Tribunal-II, Bangalore, Karnataka (DRT), where the Ld. DRT ordered a recovery of INR 79,73,84,035.51/-. SBI also approached the DRT, Hyderabad, however, the said OA is still pending.
4. The Petitioner filed its written submissions dated 23.02.2024, vide diary no. 02691/4. The Corporate Debtor filed its short written submissions dated 23.02.2024 vide diary no. 02691/5.
5. During the course of arguments, the Ld. Counsel for the Petitioner submitted that the Petitioner ARC is a financial creditor by virtue of the Assignment Agreement dated 28.02.2023, whereby the State Bank of India assigned the debt of the Corporate Debtor owed to it to the Petitioner ARC. It further stated that:
 - 5.1. Initially the Corporate Debtor was declared a NPA on 16.12.2016, and the loan of the Respondent was restructured from 22.02.2018 as per the order in OA 340/2019, filed by the Assignor SBI against the Corporate Debtor before DRT-II Hyderabad, and the Corporate Debtor was directed to pay installments commencing from 01.04.2019.
 - 5.2. The debt has been acknowledged by the Corporate Debtor in its Board meeting held on 18.01.2018 and is further acknowledged in the account statement for the period 31.10.2019 to 23.02.2021, with a payment of Rs. 8,14,00,000/- made on 31.03.2020. Also, the Record of Information Utility placed on record by the Petitioner, records that the Corporate Debtor

defaulted in the payment of Rs. 115.47 crore, and the date of default is 29.12.2016.

- 5.3. The period of limitation was suspended by the Hon'ble Apex Court on account of the Covid-19 pandemic and acknowledgment of debt in its audited financial statement for the Financial Year 2021-22, taken together, clearly demonstrate that the Petitioner ARC has not taken any time-barred debt from the State Bank of India, and thus, the present petition is not time-barred.
- 5.4. The Petitioner ARC referred to the Hon'ble NCLT Principal Bench's judgment in ***State Bank of India vs. Raebareilly Allahabad Highway Private Limited, CP (IB) 130/Pb/2023***, decided on 01.02.2024, wherein the Hon'ble NCLT Principal Bench, while relying upon the judgment in the case of ***Edelweiss Asset Reconstruction Co. Ltd. v. Perfect Engine Components (P) Ltd., 2022 SCC OnLine NCLAT 1622***, has held that:

"22. Taking note of the decision in Edelweiss Asset Reconstruction Co. Ltd. v. Perfect Engine Components (P) Ltd., 2022 SCC OnLine NCLAT 1622, we are of the view, that ordinarily the Date of NPA can be considered as Date of Default but the right to apply under the Code accrues once there is a default (which is three months prior to Date of NPA). Hence, in the present case, even if we consider the Date of Default to be three month prior to the Date of NPA i.e. from 29.10.2016, the right to file the application was to be exercised within 3 years. It is noteworthy to mention herein that there has been subsequent acknowledgment by the Corporate Debtor acknowledging the debt through letter dated 31.03.2019, 02.12.2020, 03.04.2020, 02.04.2021, 05.04.2022. It has been

settled by the catena of Judgments that Section 18 of the Limitation Act is applicable to IBC proceedings.

The Code does not exclude the application of Section 6, 14 or 18 or any other provision of Limitation Act to proceeding under IBC provided that the said acknowledgments are made before the expiry of 3 years. Once an acknowledgment is done, a fresh cause of action arises, thereby extending the limitation period."

- 5.5. Reference is also made to the judgment rendered by the Hon'ble Supreme Court in the matter of ***M Suresh Kumar Reddy v. Canara Bank, (2023) 8 SCC 387.***
- 5.6. Petitioner ARC has relied upon the Hon'ble Apex Court's judgment in the matter of ***Swiss Ribbons Private Limited & another versus Union of India & others (2019) 4 SCC 17*** to assert that once the Adjudicating Authority is satisfied that the corporate debtor has defaulted and is unable to pay the debt, CIRP of the corporate debtor can be initiated.
6. Whereas, the Ld. Counsel for the Corporate Debtor submitted that, owing to factors beyond the control of the Corporate Debtor, it defaulted on the repayment of the loans. The Ld. Counsel for the Corporate Debtor further submitted that the Petitioner ARC, after completing its own due diligence towards the viability of the Corporate Debtor, restricted its loan vide assignment deeds dated 28.02.2023, 26.05.2023, and 26.09.2022, whereby SBI, PNB, and Axis Bank, assigned their respective debts to the Petitioner ARC. The Corporate Debtor has completed 35-40% of the work towards the construction of the dam in question. It is also submitted by the Ld. Counsel for the Corporate Debtor that it is a viable concern

and its business can indeed be turned around, thus achieving the objective of the Code, provided the same is granted a claim period as envisaged under the Code.

7. We have heard the Ld. Counsels for both parties. Since the registered office of the Corporate Debtor is situated in the state of Himachal Pradesh, this Adjudicating Authority has jurisdiction over the matter. After a careful perusal of the facts and circumstances of the case and the record, the following issues arise for adjudication:

- 7.1. The first issue is whether the petition filed is within the period of limitation.

The date of default relied in Part IV of the petition is 29.12.2016, which is the date of NPA. As per the Record of the Information Utility filed on record, the date of default is 29.12.2016. Further, the Corporate Debtor has duly acknowledged its debt in the board meeting held on 18.01.2018 and subsequently acknowledged it in its account statement for the period 31.10.2019 to 23.02.2021 (Annexure A-10). We are aware that in accordance with Section 18 of the Limitation Act, 1963, a fresh period of limitation is computed from the date of acknowledgment of debt. Hence, the fresh period of limitation, in the case in hand, is to be counted from the date when the debt was last acknowledged, i.e., from 23.02.2021. Since the petition was filed on 28.08.2023, we find it is well within the period of limitation.

- 7.2. The second issue is if there is debt disbursed to the Corporate Debtor and whether there is a default in the repayment of the same.

The said assignment agreement dated 28.02.2023, executed between the Assignor SBI and the Petitioner ARC (Annexure A-6), states the details of the debt assigned to the Corporate Debtor by the Assignor SBI, as per which the principal amount outstanding was Rs. 48.65 crore along with accrued interest of Rs. 62.82 crore as of 28.02.2023. Further, the O.A. No. 340/2019 filed by the Assignor SBI against the Corporate Debtor before DRT-II Hyderabad, wherein the loan granted to the Corporate Debtor was ordered to be restructured, further proves the disbursement of debt to the Corporate Debtor by the Assignor SBI.

Moreover, the acknowledgement of debt cum revival letter dated 22.02.2018, issued by the Corporate Debtor to Axis Trustee Services Limited, wherein the Corporate Debtor admitted and acknowledged the term facilities aggregating to Rs. 224 crores granted to it, along with the account statement dated 24.02.2021, issued by the Assignor SBI to the Corporate Debtor declaring the account of the Corporate Debtor as NPA, conclusively establishes that debt was assigned to the Corporate Debtor by the Assignor SBI.

Further, the record of the Information Utility annexed with the petition, wherein the date of default is stated as 29.12.2016 and the amount defaulted is mentioned as Rs. 115.47 crore, is a cogent and evidencing proof of default on the part of the Corporate Debtor, which is otherwise un rebutted.

7.3. Whether the Petitioner ARC can file the present petition.

The Petitioner ARC by virtue of the assignment agreement, had stepped into the shoes of the Assignor SBI, by virtue of the following clauses: Clause 2.1- Assignment under the Heading - Assignment of Loans states that the Assignee, i.e., the Petitioner ARC shall be deemed to be the full and absolute legal owner, and the only person legally entitled to the loans or any part thereof, free from any or all encumbrances, and to recover and receive all amounts due, including the right to file a suit or institute such other recovery proceedings and take such other action as may be required for the purpose of recovery of the loans, in its own name and right and as an Assignee and not as a representative or agent of the Assignor, and to exercise all other rights of the Assignor in relation thereto.

In this context, we refer to Section 5(7) of the Code, which defines a financial creditor as: *“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.**”*

(Emphasis placed)

Thus, from the conjoint reading of Section 5(7) of the Code and the above mentioned clause of the Assignment Agreement, the Petitioner ARC is entitled to file the present petition.

8. In view of the above-mentioned discussion, we find that the Petitioner ARC has been able to establish the debt and default of the debt of Rs. 115.47 crores by the Corporate Debtor beyond doubt.

9. In the given facts and circumstances, the present application is complete and is, therefore, admitted in terms of Section 7(5) of the IBC, and accordingly, the Moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the Moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:
- 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. It is further directed that the supply of essential goods or services to the corporate debtor, as may be specified, shall not be terminated, suspended, or interrupted during the moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

f. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, as the case may be.

10. As proposed by the Petitioner, this Bench appoints Mr. Jalesh Kumar Grover, as ----- IRP ----- having ----- Registration IBBI/IPA-001/IP-P00200/2017-2018/10390 ,Email: jk.grover27@gmail.com, Mobile No. 9501081808, whose antecedents of the proposed IRP have been verified by the Legal Research Associate of this Adjudicating Authority, with the following directions:-

- i.) The term of appointment of Mr. Jalesh Kumar Grover, shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership

rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The

concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities/ institutions/ others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.
- viii.) The Interim Resolution Professional shall, after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor, constitute a

Committee of Creditors and shall file a report, certifying the constitution of the Committee, to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and

- ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.
11. The Petitioner ARC is directed to deposit Rs. 2,00,000/- (Two Lakhs) only with the IRP to meet the immediate expenses in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. . The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Petitioner.
12. A copy of this Order shall immediately be communicated to the Petitioner ARC, the Corporate Debtor Company, and the IRP named above, by the Court Officer/Registry of this Tribunal.
13. The petition is **admitted** for CIRP of the Corporate Debtor and is **disposed of** accordingly.

Sd/-

(L.N. Gupta)
Member (Technical)

May 06 , 2024
ASG

Sd/-

(Harnam Singh Thakur)
Member (Judicial)