

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- II)
KOLKATA**

TP/36(KB)2022

In the Matter of:

ASREC (INDIA) LIMITED

Unit No.201, 200A, 202 & 200B, Ground Floor,
Building No.2, Solitaire Corporate Park,
Andheri (E), Andherikurla Road,
MH - 400059

.... Applicant / Financial Creditor.

Versus

M/S. BIHAR FIRE BRICKS AND POTTERIES LTD.

22, Strand Road, Kolkata - 700001

.... Respondent / Corporate Debtor.

CORAM:

Smt. Bidisha Banerjee: Hon'ble Member (Judicial)

Shri D. Arvind: Hon'ble Member (Technical)

Date of pronouncing the order: 01/05/2024.

Appearances (Physically/ via video conference)

1) Mr. Debabrata Ganguly, Adv.] For the Petitioner
2) Ms. Debaleena Ganguly, Adv.]

3) Mr. S. K. Tiwari, Adv.] For the Official Liquidator
4) Mr. J. Choradia, Adv.]

ORDER

Smt. Bidisha Banerjee, Member (Judicial)

1. The court congregated through a hybrid mode.
2. Learned Counsel for the Petitioner and Ld. Counsel for the

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Official Liquidator were heard at length.

3. This application has been preferred by the Petitioner to initiate a Corporate Insolvency Resolution Process in the matter of M/s. Bihar Fire Bricks and Potteries Ltd.

4. Submission of Asrec:-

4.1 The Corporate Debtor has availed several credit facilities from the United Bank of India and created a charge over the assets of the Corporate Debtor on 28.03.1956. The said loan account was secured by executing the various security documents through its directors and guarantors. For further security for availing such financial assistance, the directors of the Corporate Debtor and the guarantors had created equitable mortgages of the properties.

4.2 In 1984 numerous documents were executed for the purpose of availing said credit facilities. Subsequently, the borrower company (in Liquidation) defaulted in repayment of its dues to the United Bank of India, Kolkata Branch and consequently, the said bank classified the said loan account of the said borrower company (in Liquidation) as Bad & Doubtful of recovery with effect from 31.07.1986, and in accordance with the directions/guidelines of the Reserve Bank of India and treated the same account as NPA.

4.3 Thereafter, the Hon'ble High Court, Calcutta, on 04.12.1991 passed an order directing the Company to be wound up, the Official Liquidator was appointed as Liquidator of the Corporate Debtor in terms of Section 448 of the Companies Act, 1956 with the direction to take possession of assets and properties of the Company (in liquidation).

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4.4 By virtue of a Deed of Assignment dated 02.04.2009, the United Bank of India had irrevocably assigned, transferred the debt of the Company (in Liquidation) along with all debt, claim, right, title and interest in favour of ASREC (India) Ltd., the Financial Creditor herein. As on the date of assignment the outstanding amount due to the Assignor was Rs.8,61,00,000/- (Rupees Eight Crores Sixty One Lakhs only).

4.5 It is claimed that by virtue of the assignment agreement dated 02.04.2009, ASREC (India) Ltd. Has stepped into the shoes of the erstwhile lender i.e. United Bank of India and has become the secured creditor in respect to the said credit facilities extended in favour of the Corporate Debtor, as per the provisions of the Securitization and Reconstruction of Financial Assets and Endorsement of Security Interest Act, 2002.

4.6 That while initiating proceeding against the Corporate Debtor under the provisions of the SARFAESI Act, 2002 for the recovery of the said loan account the applicant came to know that the Corporate Debtor has gone into liquidation by virtue of the direction passed by the Hon'ble High Court at Calcutta. The applicant being the sole financial creditor of Corporate Debtor filed transfer application CA No.9 of 2021 on 22.02.2022 before the Hon'ble Kolkata High Court. The application was registered on 23.02.2022. The said application was admitted, and the matter was transferred from Hon'ble Calcutta High Court to this Tribunal vide order dated 22.12.2021.

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5. Particulars of the Debt and Default: -

- | | | |
|-------------|---------------------------------|---|
| i) | Total Amount of Debt granted | :Rs.8,61,24,000/- (Debt assigned) |
| ii) | Date(s) of Disbursement | :02.04.2009 (Date of assignment of debt) |
| iii) | Amount claimed to be in default | :Rs.64,65,93,977/-
(Rupees sixty four crores sixty five lakhs ninety three thousand nine hundred seventy seven only) |
| iv) | Date of Default | :02.04.2009 (Date of assignment of debt) |

6. The Official Liquidator's Stand:

The Status Report of the Official Liquidator (O.L. in short) is reproduced hereunder for clarity:

1. "That on the recommendation of the B.I.F.R., as made in B.I.F.R. Case No.8 of 1988, the Hon'ble High Court, Calcutta by an order dated 4th December, 1991 was pleased to wind up the above named company (in Liquidation) and appointed the Official Liquidator, attached to this Hon'ble Court, as liquidator, thereof.

a) That assets of company (in Liquidation) comprised of a landed assets / property situated at Nirsha, Jharkhand which was obtained possession by the Official Liquidator on 1st January, 1991. No other movable or immovable assets / properties, belonging to such company (in Liquidation), were found available. That the Hon'ble High Court, Calcutta by an order dated 14th December, 2007 appointed a valuer from the panel for its evaluation. However, valuation could not be completed for want of necessary cooperation from

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the Circle Officer, Nirsha who, inter alia, failed to provide the requisite Record of Right documents for demarcation of the said property, despite of the Hon'ble Court's direction. Hence the asset could not be sold. However, it has been resolved to make fresh attempt to obtain details of the said immovable property from the Circle Officer, Nirsha to proceed further in the matter.

- b) That the ex-directors of the said company (in Liquidation) never filed any Statement of Affairs with this office.*
- c) That, subsequently, on an application being I.A. No. CA/9/2021 as filed by ASREC (INDIA) LTD. The Hon'ble High Court, Calcutta by an order dated 22nd December, 2021 was pleased to transfer CA/9/2021 in B.I.F.R. Case 8 of 1988 to National Company Law Tribunal, Kolkata Bench.*
- d) That a Receipts and Payments Account drawn in respect of the said company (in Liquidation) for the period from 04.12.1991 to 31.03.2022 the currently available balance lying to the credit of such impugned company is to the tune of Rs.7,03,039/-. Out of such available fund the expenses to be incurred by this office relating to Advocate fees and incidental legal charges and miscellaneous charges amounts to Rs.1,50,000/-.*
- e) That I, therefore, humbly pray before the Hon'ble NCLT, KB to kindly consider the expenses to be mitigated by the Official Liquidator in respect of the said company (in Liquidation) and be pleased to direct segregation of an amount of Rs.1,50,000/- from the fund available with the company (in Liquidation) to be handed over to the Official Liquidator for meeting the expenses as*

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narrated at Para supra.”

7. None has appeared on behalf of the Debtor Company despite repeated opportunities. Hence, the claim of ASREC stands uncontroverted. We would go by the figures mentioned in Annexure- ‘A-I’, the Assignment Agreement and records of the Assignee ASREC.
8. We have no hesitation in admitting the current Transfer Petition **TP/36(KB)2022** ordered accordingly.
9. Thus, in terms of the enumerations supra, we **ALLOW** this instant application bearing **T.P. (IB) No. 36/KB/2022** filed under **Section 7 of the I&B Code**, and accordingly, we order the initiation of the **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders:**
 - i. The Application filed by **ASREC (India) Limited (Financial Creditor)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **Bihar Fire Bricks and Potteries Ltd. (Corporate Debtor)**.
 - ii. As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/Corporate Debtor, as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

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- iii.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:
- 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 asset 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 (54 of 2002);*
 - d. *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

[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 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, 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;]

- iv.** The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

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- v. The provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi. The Applicant has proposed the name of **“Mr. Ritesh R. Mahajan”**, Address: B-203, Devgiri Ganeshmala Sinhagad Road, Pune, Maharashtra, Pin Code: 411030, Registration No. **IBBI/IPA-002/IP-N00048/2017-18/10132**, as the “IRP”. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, annexed at Pages 26 and 27 to the application, as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or ICSI Institute of Insolvency Professionals. In addition, further necessary disclosures have been made by **“Mr. Ritesh R. Mahajan”** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **“Mr. Ritesh R. Mahajan”** as the **Interim Resolution Professional** (IRP) of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency &

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Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- viii.** During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities** and/or the **Officer-in-Charge** of Local

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Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.

- x.** The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), to whom the company(ies) are registered with, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall

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send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

- xiv.** The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
 - xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority from time to time.
 - xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 10.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.
- 11.** Post the Company Petition on **16/07/2024** for hearing the Periodical Progress Report by the IRP/RP as appointed herein.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed this, on the 01st day of May, 2024

Skb