

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT 1**

CP(IB) 463/7/NCLT/AHM/ 2019

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 19.02.2020**

Name of the Company: **Reliance Asset Reconstruction Co Ltd
V/s
Morakhia Copper & Alloys Pvt Ltd**

Section: Section 7 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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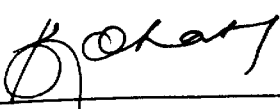
1.

2.

ORDER

The present IB Petition filed under Section 7 of Insolvency & Bankruptcy Code, is kept for pronouncement of order today.

The petition is admitted as detailed order is recorded vide separate sheet.



**(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)**



**(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)**

Dated this the 19th day of February, 2020

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B.) No. 463/7/NCLT/AHM/2019

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

In the matter of:

RELIANCE ASSET RECONSTRUCTION
COMPANY LIMITED

An Asset Reconstruction Company
incorporated under the Companies
Act, 1956 and duly registered with the
Reserve Bank of India.

Having Registered Office at Reliance
Centre 6th Floor, North Wing, Off.
Western Express Highway, Santacruz
(East), Mumbai-400 055 in capacity as
a Trustee of RARC Dena Bank 024
Trust.

..... Petitioner

Versus

MORAKHIA COPPER AND ALLOYS
PRIVATE LIMITED

(The Corporate Debtor was earlier
known as MORAKHIA METALS AND
ALLOYS PRIVATE LIMITED and
changed its name vide notification
dated 19.03.2013 issued by the
Ministry of Corporate Affairs)

Having its Registered Office at:
12, 2nd Floor, 'B' Wing, Mardia Plaza,
C. G. Road, Ahmedabad-380 006
Gujarat.

.....Respondent



Appearance:

Advocate, Shri Baiju Bhagat for the Applicant/Financial Creditor
Advocate, Shri Sunil Bhavsar & A. W. H. R. Shah for the
Respondent/Corporate Debtor

Order Pronounced on **19.02.2020**

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present I.B. Petition is filed by the Financial Creditor **Reliance Asset Reconstruction Company Limited (a Trustee of RARC Dena Bank 024 Trust)** under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as a "Code"), **seeking initiation of Corporate Insolvency Resolution Process** ("CIRP" in Short) against the Corporate Debtor Company namely, Morakhia Copper and Alloys Private Limited for the default committed by the Corporate Debtor in making repayment of the Cash Credit, Term Loan, BP, Devolved LC facility availed from the Bank.
2. The Applicant (FC), Reliance Asset Reconstruction Company Limited as a **Trustee of RARC Dena Bank 024 Trust** hereby submits this application to initiate a corporate insolvency resolution process in the matter of Morakhia Copper and Alloys Private Limited (Formerly known as Morakhia Metal & Alloys Private Limited).

3. By virtue of an Assignment Agreement dated 09/12/2016 executed between Dena Bank and the Financial Creditor herein as Trustee of RARC Dena Bank 024 Trust, Dena Bank (now Bank of Baroda) has assigned financial assets/debts including loan accounts **along with right, title and interest together with underlying securities in favour the Financial Creditor under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.**
4. By notice dated 24/10/2018 regarding proposed petition before NCLT under Insolvency and Bankruptcy Code, the Financial Creditor intimated **the Corporate Debtor that the Financial Creditor, acting as Trustee of RARC Dena Bank 024 Trust, has become the creditor in place of Dena Bank and is lawfully entitled to recover the entire dues from the Corporate Debtor in the loan availed by Corporate Debtor from Dena Bank.**
5. The application has been filed by the duly authorised officer, Shri Rajesh Bichitkar, (AVP – Legal) of the Financial Creditor and working for gain at Reliance Centre.
6. The Respondent Corporate Debtor (CD) Company, namely Morakhia Copper and Alloys Private Limited was

incorporated on 05/01/1990 with CIN:
U27101GJ1990PTC013215.

7. The nominal share capital of the Respondent (CD) Company is INR.10,00,00,000.00 (Rupees Ten Crores Only) and the paid-up share capital of the company is INR.6,75,50,000.00 (Rupees Seven Crores Seventy Five Lakhs Fifty Thousand only). The Registered Office of the Corporate Debtor Company is situated at: 12, 2nd Floor, B wing, Mardia Plaza, Near Panchavati Petrol Pump, Ellisbridge, C. G. Road, Ahmedabad – 380 006, Gujarat.
8. The Corporate Debtor is engaged into manufacturing of Copper billets, Copper Tubes through scrap route. The copper scrap is melted and converted into copper billets, tubes as per customer specifications.
9. It is submitted that the Respondent Company Morakhia Copper and Alloys Private Limited (Formerly known as Morakhia Metal & Alloys Private Limited) had availed various credit facilities to the tune of INR.35.15 Crores vide sanction letter dated 18/06/2012 from Dena Bank with certain terms and conditions including collateral securities of properties. The Corporate Debtor availed the Loans executing various documents and some

documents executed by the mortgagors/guarantors in favour of the Company binding themselves as liable to pay the loan facilities availed by the Corporate Debtor.

Thus, total aggregate limits were sanctioned by the Petitioner vide sanction letter dated 18/06/2012 from the Dena Bank with certain terms and conditions including hypothecation of plant and machineries and mortgage of immovable properties which was duly accepted/acknowledged by the Corporate Debtor (Page no. 90 to 93 of the paper book). Mortgage of the property has been created on 15/04/2013.

10. The Corporate Debtor has defaulted payment and the **date of default is 28/08/2014** as stated by the Applicant (Page no. 5 of paper book) which confirms that the Account is **in default**.

11. The statements of accounts of the Corporate debtor have been filed and the Applicant has submitted a Certificate to this effect under Banker's Book of Evidence Act, 1891. (Page no. 137 to 140 of paper book). The Applicant has claimed their dues of **INR.55,63,11,030.38 (Rupees: Fifty Five Crores Sixty Three Lakhs Eleven Thousand Thirty and Thirty Eight Paise Only)** as on 21/05/2019. **Which is inclusive of undebited/uncharged interest of**

INR.32,55,27,644.38. The Corporate Debtor has also paid **INR.4,73,50,000.00** between **04/11/2016** to **25/01/2018.**

12. The Financial Creditor, in support of its contentions has annexed the details of Financial Debt, Records and evidences of default including copies of all the sanction letters, the workings showing the amount claimed to be in default and its calculation in tabular form. (Page no.137-138 of paper book)
13. The present application has been filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy before this Adjudicating Authority to initiate the Corporate Insolvency Resolution Process.
14. The Financial Creditor, to substantiate their claim, has **enclosed following documents: -**
 - i. Copy of the sanction letter dated 18/06/2012. (Page no.70-78 of paper book)
 - ii. Copy of Demand Promissory Note dated 19/07/2012. (Page no. 84 of paper book)

- iii. Letter of Continuity dated 19/07/2012. (Page no. 85 of paper book)
- iv. Copy of General undertaking dated 19/07/2012. (Page no.86-89 of paper book)
- v. Letters of acknowledgement of Debt dated as on 19/07/2012. (Page no.95 of paper book)
- vi. Letters of acknowledgement of Debt dated as on 26/07/2012. (Page no. 96 of paper book)
- vii. Letters of acknowledgement of Debt dated as on 12/04/2013. (Page no. 97-98 of paper book)
- viii. Letters of acknowledgement of Debt dated as on 15/04/2013. (Page no. 99-100 of paper book)
- ix. Copy of mortgage deed dated 15/04/2013. (Page no.101-124 of paper book)
- x. Copy of notice dated 04/03/2016. (Page no.125-127 of paper book)
- xi. Copy of letter dated 23/12/2017 for settlement of loan. (Page no.129-130 of paper book)
- xii. Copy of sanction letter dated 09/01/2018. (Page no.131-133 of paper book)
- xiii. Copy of letters dated 09/10/2018. (Page no. 134 of paper book)
- xiv. Copy of notice dated 24/10/2018. (Page no.135-136 of paper book)

xv. **Copies of statement of account under Bankers
Book Evidence Act. (Page no.137-140 of paper
book)**

15. In the present matter, this Tribunal, vide its order dated 11/07/2019 had directed the Petitioner Bank to serve the notice of date of hearing to the Corporate Debtor and file the proof of service of notice before this Tribunal. Thereafter, the Respondent/Corporate Debtor appeared before this Tribunal on 29/08/2019 and sought time to file objections within two weeks.

16. In response to the present I.B. Petition filed by the Financial Creditor, the Respondent has filed its Objections on 18/09/2019, hereby denies all the averments made in the Application under Section 7 filed by the Petitioner Bank.

16.1 It is submitted that company namely Reliance Assets and Reconstruction company, who is claimed to be the financial creditor, however the said company has no locus standi to file the present insolvency petition since the said petitioner/financial creditor has not acquired any right title to initiate insolvency proceedings under the said Act in Deed of Assignment, therefore the

present petition filed is absolutely an initio, void and not tenable at Law.

16.2 It is submitted that the documentary evidence produced by the petition is prima facie appears to be executed at Bombay and stamp duty is appears to be paid only a sum of INR. 31,560.00 The said deed of assignment is appearing to be for a total sum of INR.12,18,09,236.88 for the so called due amount as on date of 17/09/2016.

16.3 It is submitted that the averments made therein are not wholly correct and true. It is denied that the properties mentioned therein are legally and validly mortgaged in favour of the erstwhile Dena Bank and by virtue of the Deed of Assignment, the petitioner company has acquired its right as averred. It is pertinent to note that a negotiation for **amicable settlement was under process** and the same was at the final stage. However, at the relevant time the debts were assigned by Dena Bank to the petitioner company. The Deed of Assignment is registered at Bombay. Thereafter a meeting with the officer **of the petitioner company** and the director of the **respondent company were held** and number of times the negotiation had taken place for the amicable

settlement. In terms of the settlement, the petitioner company has agreed to accept a total sum of INR.15,50,00,000.00 being full and final settlement.

16.4 It is further stated that such other objections which may be raised at the time of proceedings, to dismiss the present petition filed by the petitioner without any authority and compensatory cost may be awarded.

17. The matter was taken up and heard both sides by this Bench on 11/07/2019, 29/08/2019, 25/09/2019, 23/10/2019, 23/10/2019, 18/11/2019, 04/12/2019, 08/01/2020 & 15/01/2020. **The counsels of the Petitioner** and the Respondent were present and put forth their submissions before the Bench.

18. Further, the Respondent filed their written submission on 15/01/2020 and reiterated the submission made earlier;

18.1 It is stated by the Respondent Company that during the above referred period the negotiation had taken place with the vice President of the applicant company and thereafter on 28/11/2019 also submitted a revised a proposal in writing and

accordingly on 08/01/2020, the learned advocate appeared on behalf of the learned Senior Counsel had also informed to the Hon'ble Bench regarding possibility of the amicable settlement.

18.2 It is stated by the Corporate Debtor that without prejudice to the contentions raised and admitting any liabilities state that earlier the respondent company has been banking transactions with the Dena Bank, IFB Branch, Mumbai and litigations were also going on between the company and the Dena Bank. It is mentioned in the petition that the Dena Bank by virtue of the assignment agreement dated 09/12/2016 executed under Section 5 of the SARFAESI Act and it is claimed by the applicant that by virtue of the said assignment, the applicant became the financial creditor of the respondent company. However, the respondent has challenged the locus standi of the applicant company to file this present petition.

19. The Financial Creditor has also submitted its written submission on 17/01/2020.

19.1 It is stated the after transfer of debts to the applicant under a transfer deed, the Corporate Debtor approached the applicant on **23/12/2017**

(Page no.129-130 of the petition) **for OTS and in that response**, the applicant vide its letter dated 09/01/2018 (Page no.131 of the petition) **conveyed the approval of OTS of dues on the terms and conditions attached thereto**. Despite lapse of considerable time, the **Corporate Debtor failed to comply with the terms and conditions of settlement package and therefore, the OTS offer dated 09/01/2018 was withdrawn by applicant's letter dated 09/10/2018 (Page no.134 of petition)**

19.2 The Corporate Debtor paid an amount of **Rs.3.75 Crores to the Applicant on 25/01/2018 hence also the limitation would be extended**. (Page No.138 12th last line, entry dated 25/01/2018 statement of accounts of petition). This is reflected in **their Reply Affidavit, Balance Sheet and our statement of accounts and Rebuttal**. Thus a **right to sue** accrued to the applicant on 25/01/2018, the applicant filed present application in **May 2019 which is within the limitation of three years counted from 25/01/2018**.

19.3 The Corporate Debtor paid an amount of Rs.77 Lakhs to the Applicant. (Page no. 15-17 Copies of proposal letter dated **27/03/2017** and corporate debtor's Financial statement dated **31/03/2018** are

enclosed as Annexure – ‘**B**’ and ‘**C**’ respectively in Rebuttal). Also (**Page 18 para 5.18 of the petition**)

In view of the aforesaid, it is therefore submitted that the petition needs to be **Admitted and initiate CIRP of the Respondent.**

20. The Learned Lawyer of the **petitioner clarified the positions and put forth its arguments relying on the documents submitted by them**, which were executed by the Corporate Debtor and the Mortgagors/Guarantors.
21. It is a settled legal position that the pendency of SARFAESI proceeding or other disputes do not prevent a Financial Creditor to trigger the C.I.R.P. because the nature of remedy being sought for under the provisions of the I.B. Code is “Remedy in Rem” in respect of the CD.
22. The Petitioner Bank has suggested the name of Insolvency Professional to be appointed, if this petition is allowed and the proposed I.R.P. has also given his affirmation/consent in writing, which is annexed with the present I.B. Petition.

Observations

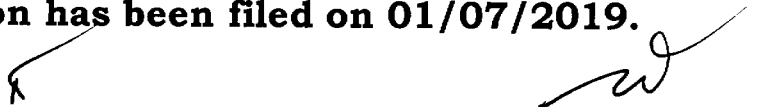
23. The Financial Creditor has **submitted the documents duly executed** by the Corporate Debtors and guarantors along with a Certificate under the Banker's Book of Evidence Act, 1891, in support of their IB Petition for initiation of C.I.R.P. (Page no. 137 to 140 of paper book).
- 23.1 The various credit facilities were sanctioned and released by the Financial Creditor and the same were availed by Corporate Debtor Morakhia Copper and Alloys Private Limited. The Charges have been Modified and filed by the CD in favour of the Petitioner on **09/12/2016**.
- 23.2 The CD has defaulted in making repayment of credit facilities to the Petitioner Bank and **the date of default is 28/08/2014**. The Statement of accounts submitted by the applicant **confirms the default** committed by the Corporate Debtor.
- 23.3 The Petitioner Bank has filed the petition **within the period of limitation, as the date of payment of INR.3,75,00,000.00 as on 25/01/2018 whereas this petition has been filed by the Financial Creditor on 01/07/2019**.
- 23.4 The present I.B. Petition is filed by the duly authorised official of the Financial Creditor in a prescribed format under **Section 7** of the I.B. Code

annexing copies of loan documents **confirming the existence of debt due and defaulted** and proposed a name of Resolution Professional to act as an Interim Resolution Professional (IRP).

- 23.5 The Corporate Debtor has paid **INR.4,73,50,000.00 during the period between 04/11/2016 to 25/01/2018.**
- 23.6 Undebited interest of **INR.32,55,27,664.38 has been claimed along with the book outstanding of INR.23,07,83,386.00**

ORDER

24. Considering the material papers filed by the Petitioner Bank, arguments of both sides and the facts mentioned in the **Para No. 23, 23.1, 23.2, 23.3, 23.4, 23.5 & 23.6** this **Adjudicating Authority is satisfied** that,
- (a) The Corporate Debtor **availed the** credit facilities from the **Financial Creditor.**
 - (b) Existence of debt is **above Rs. One Lakh**
 - (c) **Debt is due;**
 - (d) Default has occurred on **28/08/2014;**
 - (e) **Petition has been filed within the limitation period as the Corporate Debtor has paid INR.4,73,50,000.00 on various dates between 04/11/2016 to 25/01/2018 wherein this petition has been filed on 01/07/2019.**



(f) Copy of the Application filed before the Tribunal has been sent to the Corporate Debtor and the application filed by the **Financial Creditor Under Section 7 of IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process** in respect of the Corporate Debtor.

Hence, the present IB Petition is admitted with the following Directions/observations. The date of admission of this petition is 19/02/2020.

25. This Adjudicating Authority hereby appoints, as proposed, by the Financial Creditor **Mr. Jitender Kumar Jain, having Insolvency Professional Registration No. IBBI/IPA-002/IP-N00033/2016-17/10070, Email ID: jit1.jain@gmail.com, Address: C/o. Arcindo Law, Level 8, Vibgyor Tower, G Block, C-62, Bandra Kurla Complex, Bandra (East), Mumbai - 400 098, Maharashtra, India as an Interim Resolution Professional.** The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor soon after receipt of an authenticated copy of this order. The IRP is also to act further as per the order/directions issued by this Adjudicating Authority and to follow the provisions Under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code 2016.

26. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this **Adjudicating Authority declares moratorium with effect from today** for prohibiting all of the following, namely: -

- I. (a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 (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.*
- II. *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;*
- III. *The provisions of sub-section (1) shall not apply to*
 - (a) *such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- IV. *The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.*

27. The **IRP is hereby advised to adhere the time limit** as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP" in short) and perform the duties as specified Under Section 17, 18, 20 and 21 of I.B Code. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, in Sections 15, 17, 18, 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. It is further made clear that all the personnels connected with the Corporate Debtor, its promoters or any other persons 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, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its 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.

28. It is also observed that the Applicant has claimed **total dues of INR.55,63,11,030.38 as on 21/05/2019 which is inclusive of undebited/uncharged interest of INR.32,55,27,644.38.**

Moreover, the Corporate Debtor has paid INR.4,73,50,000.00 during the Period between 04/11/2016 to 25/01/2018.


One of the **prime objectives** of the Insolvency and Bankruptcy Code, 2016 is to **find** out a **viable Insolvency Resolution Plan in time** for the Corporate Debtor and in order to have a Resolution Plan Viable, feasible and implementation successful, in the era of **Minimum Cost of funds based Lending Rate ("MCLR" in short)/Repo Rate Linked Interest Rate/Falling Interest Rate Regime** and **Competitive market condition**, the Committee of Creditor(s) (COC) **may explore**, while finalizing the Resolution Plan for the Corporate Debtor, the **possibility of loading maximum interest** at the Applicant Bank's Base Rate (BR) +1% from the date of default to the date of implementation of MCLR and further from the date of implementation of MCLR till the date of approval of the Resolution Plan at




the interest rate of Petitioner Bank's One Year MCLR or One Year MCLR +1% without any penal/overdue interest.

29. The **Registry is hereby directed** to communicate the authentic copy of this order to the Financial Creditor, Corporate Debtor Company, the I.R.P and also to the Registrar of Companies, Gujarat immediately through speed post / registered post.

30. Thus the present I.B petition filed Under Section 7 of the IBC stands admitted with the above directions and observations.


(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (T)


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (J)