



**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD**

COURT - II

CP (IB) 06/NCLT/AHM/2021

[Application for initiation of Corporate Insolvency Resolution Process
under Section 7 of the Insolvency & Bankruptcy Code, 2016]

In the Matter of:

Meliora Asset Reconstruction Company Limited

**Applicant/
Financial Creditor**

Versus

Baid Industries Private Limited

**Respondent/
Corporate Debtor**

Order Pronounced on: 07/12/2022

Coram:

**DR. DEEPTI MUKESH
MEMBER (JUDICIAL)
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**



MEMO OF PARTIES

Meliora Asset Reconstruction Company Limited

Registered office at:

106, Bharat Towers, 5th Lane

Dwarakanagar,

Vishakhapatnam 530 016

Corporate Office at:

503 Mayfair Gardens,

Road No. 12

Banjara Hills,

Hyderabad, Telangana

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Applicant/Financial Creditor

Versus

Baid Industries Private Limited

Registered Office at

102, "Airlon House", First Floor

2/4569, Sangrampura Main Road

Surat 395 002

Gujarat State

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Respondent/Corporate Debtor

Appearance:

For Applicant: Ms. Mano Ranjani, Advocate

For the Respondent: Mr. Mohit Gupta, Advocate



ORDER

1. The Present Application is filed on 31.12.2020 under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') through Mr. K. Srinivasan, Chief Executive Officer of **M/s. Meliora Asset Reconstruction Company Limited** (for brevity 'Applicant') authorised vide resolution dated 23.12.2016, with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) against **M/s. Baid Industries Private Limited** (for brevity 'Corporate Debtor').
2. The Applicant is a limited company incorporated under the provisions of the Companies Act, 1956, duly registered on 21.11.2012 with the Registrar of Companies, Andhra Pradesh, having CIN: U65923AP2012PLC084298 and having registered office at #106, First Floor, Bharat Towers, 5th lane, Dwarakanagar, Vishakhapatnam 530 016.
3. The Corporate Debtor is a private limited company, incorporated under the provisions of the Companies Act, 1956 on 16.05.2007 duly



registered with Registrar of Companies, Ahmedabad, Gujarat State with CIN: U17100GJ2007PTC050851, having registered office at 102, “Airlon House”, First Floor, 2/4569 Sangrampura Main Road, Surat 395 002, Gujarat State. The authorised share capital of the corporate debtor is Rs. 3,90,00,000/- and the paid-up share capital is Rs.3,89,18,900/-.The corporate debtor is engaged in the manufacture of doubling trusted embroidery.

4. It is submitted by the applicant that under a consortium arrangement, State Bank of India (SBI) & Dena Bank, vide sanction letter dated 20.03.2014 had sanctioned term loan and cash credit facilities of Rs. 43.35 crores to the corporate debtor out of which Dena Bank’s disbursement was of Rs. 13.11 crores with 24.09 % and disbursement of SBI was Rs. 30.24 crores with 76% in nature of CC facility, term loan facility, letter of credit (LC) against various securities like personal guarantees, corporate guarantee, hypothecation of entire current assets, plant & machinery together with movable assets of the corporate debtor, equitable mortgage of land, factory land & building, two residential flats belonging to the corporate debtor and the personal guarantors respectively and a pledge of 30% shares of the corporate debtor with cash collateral



(lien marked on TDR) under respective loan and security agreements entered into and executed between corporate debtor and consortium of banks. Details of the loan sanctioned by Dena Bank are as under:

	Amount sanctioned and granted (Amount in crores)	Date of the first disbursement	Date of the last disbursement
CC Facility – I	0.65	20.03.2014	20.03.2015
Term loan facility – I	1.95	20.02.2014	20.03.2015
Term loan Facility – II (WCTL)	7.26	20.03.2015	
Term loan facility – III (FITL)	1.00	20.03.2015	
Term loan facility – IV	0.25	20.03.2015	
Devolved L.C.	2.00	20.03.2015	

The corporate debtor had committed default in the repayment of interest and instalments of the loan and further failed to clear the overdue amounts under the loans to consortium banks. As a result, Dena Bank, a member of consortium banks classified the loan account of the corporate debtor as Non-Performing Asset on 28.02.2015.

5. It is submitted by the applicant that Dena Bank, a Member Bank of the consortium of SBI, has assigned the debt of the corporate debtor in favour of Meliora Asset Reconstruction Company Limited, the



financial creditor herein, vide assignment agreement dated 21.01.2017 bearing registration number 2905/2017. By virtue of this assignment agreement, the assignor has entirely assigned the title, interest, securities and dues payable by the corporate debtor in favour of the assignee, Rs. 26,09,52,560/- (Rupees twenty-six core nine lacs fifty-two thousand five hundred sixty only) comprising principal amounts of credit facilities as on 25.11.2016 and interest thereon from 25.11.2016 till 30.09.2020 at the sanctioned rate of interest @ 13.45% plus cost and charges along with future interest at the same rate from 01.10.2020 till the date of closure of account, due and payable by the corporate debtor. The applicant issued letters dated 24.05.2017 to the corporate debtor, its guarantors, personal guarantors and mortgagers communicating the assignment of debt by Dena Bank to the applicant. A copy of the deed of assignment dated 24.05.2017 is annexed.

6. State Bank of India, the lead bank of the consortium filed Original Application u/s. 19 of RDDB & FI Act, 1999 being O.A. No. 192/2019 before DRT, Ahmedabad against the corporate debtor for its proportionate claim amount of Rs. 56,50,21,005.49 and the matter is pending.



7. It is further submitted that the corporate debtor had intentionally delayed and defaulted the payment of total outstanding dues as mentioned above and ignored the demands of the applicant as a result the applicant has filed the instant application under Section 7 of Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
8. The corporate debtor filed an affidavit in reply inter alia stating that:
 - The application is barred by law of limitation. OTS letter will not amount to an acknowledgement of debt
 - The applicant had initiated action without seeking the consent and approval of the Joint Lenders' Forum (JLF) in order to circumvent the guidelines of the Reserve Bank of India (RBI) which are mandatory in nature
9. The applicant filed a rejoinder stating that:
 - The allegations made by the corporate debtor in its reply are false and hence denied



- Application is not barred by limitation as the corporate debtor has been approaching the applicant from time to time with proposals of One Time Settlement (OTS) and in response to the OTS letter of the corporate debtor dated 18.05.2019, the applicant had accepted OTS proposed by corporate debtor vide letter dated 28.05.2019 and the corporate debtor made part payment of Rs. 1.25 crores in instalments of Rs. 25 lacs, Rs. 75 lacs and Rs. 25 lacs on respective dates 30.04.2019, 10.05.2019 and 24.01.2020;
- The balance sheet of the corporate debtor for the year 2018-19 shows the entries of secured loans taken from SBI and Dena Bank which amounts to an acknowledgement of liability under Section 18 of the Limitation Act. A copy of the balance sheet of the corporate debtor as of 31.03.2019 is annexed with the rejoinder.
- The applicant relies on the following judgements:

(a) Sesh Nath Singh & Anr vs Baidyabati Sheoraphuli Co-operative Bank Ltd., Civil Appeal No. 9198 of 2019;

(b) Asset Reconstruction Company (India) Ltd. vs Bishal Jaiswal & Anr; Civil Appeal No.323 of 2021;



wherein the Hon'ble Supreme Court held that Section 18 of the Limitation Act applies to Insolvency and Bankruptcy Code.

- Application is filed under the provisions of I & B Code and as per I & B Code the applicant need not take approval from Lead Bank to file a Section 7 application if a debt is due and default is committed by the corporate debtor;
- Copies of Draft OTS offer dated 19.10.2021 and OTS offers dated 13.09.2021 and 16.09.2021 given by the corporate debtor to the Lead Bank State Bank of India, are annexed to the rejoinder;

10. The applicant filed written submissions and stated that:

- The corporate debtor acknowledged the debt in its balance sheets for FY 2015-16 up to FY 2018-19 and that loans were restructured and rephrased from time to time. On 28.05.2019 OTS was extended between the parties. The applicant has annexed a copy of the following documents:

(a) OTS sanction letter dated 28.05.2019;

(b) Letter dated 13.09.2019 on the cancellation of Certificate of Registration u/s. 4 (1) of SARFAESI Act issued by RBI;



- (c) Letter dated 23.11.2021 given by the Applicant to RBI requesting for extension of repayment period on investments by qualified buyers beyond 5 years;
- (d) Mail dated 11.01.2022 from RBI granting time up to 3 years for realization of financials assets and consequent redemption of security receipts;
- (e) Preliminary Information Memorandum by Dena Bank confirming the date of default as 28.02.2015;
- (f) Caution notices given by the applicant against any attempts to sell the mortgaged property by the corporate debtor;

The applicant further submitted the following documents:

- (a) Synopsis of a list of dates and events and how the application is within limitations.
- (b) Balance sheets of the corporate debtor wherein the corporate debtor acknowledged its debt as on 31.03.2016 up to 31.03.2019;
- (c) OTS offer given by corporate debtor on 08.01.2022
- (d) Mail sent by the applicant to the corporate debtor rejecting the OTS offer.



11. Corporate debtor filed written arguments inter alia stating that;

- RBI had cancelled the registration certificate of the applicant on 30.08.2019 before the filing of this Section 7 application. The effect of the cancellation of the registration certificate is that the debt is no longer enforceable. The corporate debtor relies upon Section 3 of the SARFAESI Act, 2002;

The corporate debtor has placed on record the following judgements:

(a) *Union of India vs. Kishorilal Gupta and Bros.*, AIR 1959 SC 1362

(para Nos. 11 & 12 and Pg. Nos. 6 to 7)

(b) *Gujarat State Financial Services Ltd. vs. Amar Polyester Ltd.*

(1988) 1 GLR 731 (para No. 7)

to support its arguments that because of OTS dated 28.05.2019, the original cause of action does not survive. The earlier contract stands discharged. Subsequently, if there is any breach of OTS, it will give rise to a new cause of action and the proceedings will be initiated on the basis of a new cause of action, i.e., for breach of OTS and not initiated on the original cause of action, i.e., default in payment of credit facilities granted pursuant to a loan agreement.



12. As per Form 1, part IV, the corporate debtor is in default of total Rs. 26,09,52,560/- (Rupees twenty-six crore nine lacs fifty-two thousand five hundred sixty only) as on 25.11.2016. Taking into consideration various OTS offers made by the corporate debtor and balance sheets of the corporate debtor wherein the corporate debtor has acknowledged its debt from 31.03.2016 till 31.03.2019 and the present application is filed on 31.12.2020 is within limitation and not barred by law.
13. The registered office of the corporate debtor is situated in Surat, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.
14. Heard the submissions and perused the documents on record. The arguments of both sides are dealt with as under:
 - a) The first objection raised by the corporate debtor is that the application is barred by law of limitation.

As per records, the corporate debtor had availed the credit facilities from the Bank between 20.03.2014 and 20.04.2015 and



the corporate debtor has been acknowledging the debt in its books of accounts from then onwards. Also, the corporate debtor has been regularly approaching the applicant with its proposals for One Time Settlement. Further, the corporate debtor even paid Rs. 1.25 crores during the financial year 2019-20 against the OTS scheme accepted by the applicant for Rs. 10.75 crores vide letter dated 28.05.2019 but the corporate debtor failed to pay the balance amount as per the agreed terms and the said settlement failed. Even after filing the instant application, the corporate debtor again on 08.01.2022 approached the applicant with an OTS offer for Rs. 11.00 crores which was not acceptable to the applicant. Thus, the present application is well within the limitation and not barred by law.

- (b) The second objection raised by the corporate debtor is that the registration certificate of the applicant had been cancelled by RBI on 30.08.2019 before the filing of this Section 7 application and the effect of the cancellation of the registration certificate is that the debt is no longer enforceable.



As far as the second objection is concerned we noticed that on 21.01.2017 an assignment deed was executed by Dena Bank under which the loans given by it to the corporate debtor were assigned to the applicant. On perusal of the letter dated 13.09.2019 given by the RBI to the applicant wherein RBI directed the applicant not to transact the business of an ARC and not to acquire any fresh financial assets or undertake any ARC business from the date of the Communication, i.e, 13.09.2019 also mentioned that as per Section 4(3) of the SARFAESI Act, 2002, the applicant shall be deemed to be an Asset Reconstruction Company (ARC) until it repays the entire investments held by it to the qualified buyers within a maximum period of 5 years from the date of acquisition of the financial assets concerned and till such time the applicant shall continue to be governed by relevant provisions of the SARFAESI Act, 2002 and we further noticed that the RBI gave an extension of time up to (3) three years vide mail dated 19.01.2022 for realization of the financial assets. Thus, in view of the letter dated 13.09.2019 and mail dated 19.01.2022, it is evident that the present applicant is permitted to proceed to realise/recover the debts due to it till the expiry of permission granted by RBI vide letter dated 13.09.2021.



- (c) The third objection raised by the corporate debtor is that the applicant had initiated action without seeking the consent and approval of the Joint Lenders' Forum (JLF) in order to circumvent the guidelines of the Reserve Bank of India (RBI) which are mandatory in nature.

As far as the third objection is concerned we have considered the following provisions of the Code which are reproduced hereinbelow:

“Section 5 (7) 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 transferred to”

And

“Section 7. (1) A financial creditor either by itself or jointly with 1[other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.”

In view of the above provisions, the present applicant is eligible and entitled to file the section 7 application independently when the minimum amount of the default is one crore rupees.



15. In light of the above discussions, it is evident that the debt is due and payable and the default has occurred. The present application is complete in terms of Section 7 (5) of the Code. The applicant is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. In light of the above facts and records, the present application is admitted and CIRP is ordered to be initiated against the corporate debtor.
16. The applicant has proposed the name of Mr. Murali Prasad Nalam as Insolvency Resolution Professional, who is hereby appointed as IRP of the corporate debtor having registration number IBBI/IPA-001/IP-P00933/2017-2018/11537 having an office at Villa 67, Road No. 3, Dollar Meadows, Near Orchids International School, Bowrampet, Hyderabad 500 043, Telangana, (Mobile 9849073076, email muraliadvise@gmail.com) subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2 along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is filed, which is on record.



17. We direct the Financial Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Murali Prasad Nalam to meet the expenses for performing functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Financial Creditor.

18. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate debtor, prohibiting actions 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(4) of the Code shall remain in force.



19. A copy of the order shall be communicated to the applicant, IRP and the corporate debtor. A copy of the order along with a complete copy of the application be served to IRP by the applicant within 7 days of the order. In addition, a copy of the order shall also be forwarded to IBBI for its records and to take steps for updating the Master Data of the corporate debtor in the MCA portal and shall forward the compliance report to the Registrar, NCLT.

Sd/-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

Sd/-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

Rahul/LRA & Nair/steno