



IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI

CP(IB)/161(CHE)2023

(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of
Insolvency and Bankruptcy Code 2016 (Application to Adjudicating Authority))

In the matter of M/s. SAR Ispat Private Limited

Prudent ARC Limited
611, Sixth Floor, D Mall,
Plot No A-1, Netaji Subash Place,
Pitampura,
West Delhi
New Delhi 1100034

... Applicant / Financial Creditor

-Vs-

M/s. SAR Ispat Private Limited,
CIN: U27101TN1998PTC102002
No.770, T H Road
Chennai
Tamilnadu 600081

... Respondent / Corporate Debtor

Order pronounced on 05th January, 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Financial Creditor: Ms. Preethi S Arasu, Advocate

For Corporate Debtor: Mr. Vivekanandan, Advocate

ORDER

(Heard through VC)

This application under Section 7 of the Insolvency and Bankruptcy
Code, 2016 ("IBC") has been filed by **Prudent ARC Limited** (hereinafter



referred to as “Financial Creditor”) against SAR Ispat Private Limited (hereinafter referred to as “Corporate Debtor”) for initiating Corporate Insolvency Resolution Process (“CIRP”).

2. Part-I of the application sets out of the details of the Financial Creditor. As per which the Financial Creditor namely Prudent ARC Limited is situated at 611, Sixth Floor, D Mall, Plot No. A-1, Netaji Subash Place, Pitampura, West Delhi, New Delhi 110034. Part-II of the application sets out the details of the Corporate Debtor namely M/s. SAR Ispat Private Limited as per which it is a Private Limited company incorporated on 15th January 1998 under the Companies Act, 1956 with CIN No. U27101TN1998PTC102002. The Registered Office of the Corporate Debtor is situated at No.770, T H Road, Chennai, Tamil Nadu, 6000081. In Part-III of the application, the Financial Creditor has proposed the name of Mr. Piyush Kisanlal Jani (IBBI/IPA-001/IP-P01439/2018-2019/12164) as Interim Resolution Professional (IRP).

3. Part-IV of the application details the total amount of debt granted as Rs.27.0/- crores (Rupees Twenty Seven Crores) and amount claimed to be in default as Rs. 45,69,28,150/- comprising of principal amount of credit facilities along with interest at the rate of 12.65% per annum and penal



interest of 2% p.a. with monthly rests as on 31st May 2023. Further, the Date of Default is shown as 30th June 2019.

4. Part-V of the application describes the particulars of the Financial Debt, documents, records and evidence of the default as below:

- a) Demand Promissory Note dated 10.07.2017 for Rs. 16 crore (Cash Credit Limit).
- b) Demand Promissory Note dated 10.07.2017 for Rs. 11 crore (Letter of Credit).
- c) Letter of continuation of Cash Credit Limit.
- d) Letter of Hypothecation dated 10.07.2017 for CC limits.
- e) Hypothecation of book debts dated 10.07.2017.
- f) NeSL Record of Financial Information as on 02.06.2023 authenticated by Corporate Debtor as on 09.06.2023.
- g) Copy of OA No. 165 of 2021 before DRT III at Chennai
- h) Copy of registered assignment deed dated 14th September 2022 executed between Indian Overseas Bank and Prudent ARC Ltd, applicant.

FACTS OF THE CASE:

5. It is stated that at the request of M/s. SAR Ispat Private Limited, Indian Overseas Bank started providing financial assistance with effect from 06.12.2007. The facility was enhanced from time to time. It is stated that as per the last sanction advice dated 20th March 2017, Corporate Debtor availed a Cash Credit Limit of Rs. 16.0 crore, Letter of Credit Limit of Rs. 11.0 crore, Buyers Credit as a sublimit of Letter of Credit Rs. 10.0 crore and forward cover to hedge the foreign exchange risk to the extent of Rs. 12.0 crore. It is



stated that the authorised signatories of the Corporate Debtor executed the documents for the last sanctioned limits on 10.07.2017. It is stated that Rs.45,69,28,150/- is the total default amount comprising of principal amount of credit facilities along with interest at the rate of 12.65% per annum and penal interest of 2% p.a. with monthly rests as on 31.05.2023.

6. Copy of the working of computation of the amount and interest calculation for the period from 10.01.2017 to 06.01.2021 maintained by Indian Overseas Bank (the assignor Bank) and copy of the working of computation of the amount and interest calculation for the period from 06.01.2021 to 31.05.2023 maintained by Prudent ARC Ltd (the applicant and the assignee) are attached in Annexure of the typeset to the Application.

7. It is stated that Indian Overseas Bank assigned the debt of the Corporate Debtor to Prudent ARC Ltd vide Assignment Agreement dated 14th September 2022.

8. It is stated that the CIRP application dated 30th June 2023 has been initiated well within the period of limitation as explained hereunder:

i) Date of default is 30.06.2019.

ii) Revival Letters dated 23rd October 2019 obtained from the Corporate Debtor and guarantors.



iii) Due to Covid 19, the Hon'ble Supreme Court vide suo-motto order dated 10.01.2022 , directed that the period(s) of limitation as prescribed under any general or special laws shall be extended from 15.03.2020 to 28.02.2022 .

iv) IBC application was filed on 30.06.2023.

Accordingly, limitation for filing the application under Section 7 of IBC gets extended and the applicant filed the application within the extended timeline.

9. Mr. Sandeep Kothari, Director of the Corporate Debtor has filed the counter on behalf of the Corporate Debtor. It is stated that the Corporate Debtor is a pioneer in iron and steel industry with more than 40 years of expertise and practice. The Corporate Debtor undertook a project for setting up an automated steel plant for which Indian Overseas Bank had promised to sanction a term loan. Believing that bank would sanction the loan, the Corporate Debtor diverted the working capital into long term capital for purchase of plant and machinery. It is stated that as the bank failed to sanction the term loan, the expansion project got stuck halfway through, the working capital also got stuck and the account became NPA. It is stated that down trend in real estate, demonetisation, implementation of GST and Covid 19 further aggravated the problem.



10. It is stated that the account of AKS Alloys Pvt Ltd, a sister concern of the Corporate Debtor was seized by the GST authorities. Indian Overseas Bank also stopped the operations of the sister concern bank account suo-moto because of this and this arbitrary act of the bank severely prejudiced the performance of the Corporate Debtor.

11. It is stated that the fact of the credit facilities being assigned to Prudent ARC Ltd by Indian Overseas Bank was not informed to the Corporate Debtor which is against the Principles of Natural Justice. It is stated that the original application filed in OA No 165 of 2021 by Indian Overseas Bank in DRT was dismissed on 19.08.2022 in default and for non-prosecution.

12. In the rejoinder filed by the applicant, it is stated that Prudent ARC Ltd had vide letter dated 28.09.2022 informed the Corporate Debtor about the assignment of financial asset by Indian Overseas Bank in its favour.

13. It is stated that on 20.03.2019, when Indian Overseas Bank conducted unit inspection, there was no stock available. It is stated that Forensic Audit conducted revealed various irregularities like collection of receivables not being routed to repay working capital loan, related party transactions and diversion of funds. It is stated that Indian Overseas Bank declared the account as fraud and filed a CBI complaint.



14. It is stated that Prudent ARC Ltd had sought substitution in place of Indian Overseas Bank in the Original Application filed before DRT Chennai by the Indian Overseas Bank.

FINDINGS:

15. Heard the arguments of both the counsels and perused the documents placed on record.

16. The details of the credit facilities sanctioned by Indian Overseas Bank along with copies of the working of computation of the amount and interest calculation have been provided. Further, the copy of assignment agreement of the financial asset by Indian Overseas Bank in favour of Prudent ARC Limited has been submitted.

17. In the Counter filed by the respondent, Corporate Debtor has given the reasons for the account becoming NPA, including the non-sanction of proposed term loan, etc. Nowhere in the counter it denied of availing of credit facilities, calculation of default amount, etc.

18. The amount due is above the threshold limit for admission to CIRP. The applicant has provided necessary proof that filing the CIRP application is within the limitation period, including the extension period given by



Supreme Court in Suo-moto Writ Petition (3) of 2020 vide order dated 10.01.2022.

19. Applicant has also provided various documents including the following as proof for the financial debt:

- a) Demand Promissory Note dated 10.07.2017 for Rs. 16 crore (Cash Credit Limit) (Page 173 of the typeset).
- b) Demand Promissory Note dated 10.07.2017 for Rs. 11 crore (Letter of Credit) (Page 174 of the typeset).
- c) Letter of continuation of Cash Credit Limit (Page 175 of the typeset).
- d) Letter of Hypothecation dated 10.07.2017 for CC limits (Page 176 to 185 of the typeset).
- e) Hypothecation of book debts dated 10.07.2017 (Page 186 to 191 of the typeset).
- f) NeSL Record of Financial Information as on 02.06.2023 authenticated by Corporate Debtor as on 09.06.2023. (Page 19 to 20 of the typeset).
- g) Copy of OA No. 165 of 2021 before DRT III at Chennai (Page 65 to 97 of the typeset)
- h) Copy of registered assignment deed dated 14th September 2022 executed between Indian Overseas Bank and Prudent ARC Ltd, applicant (Page 98 to 144 of the typeset).

20. Under the said circumstances, we are of the view that the present Application is required to be admitted in terms of Section 7(5)(a) of IBC, 2016. We therefore admit this application and order for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.



21. The Financial Creditor has proposed the name of *Mr. Piyush Kishanlal Jani*, *Reg.No. IBBI/IPA-001/IP-P01439/2018-2019/12164*, *e-mail ID: capiushj@gmail.com* as the Interim Resolution Professional (IRP) who has also filed consent in Form – 2 and also upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till 05.11.2024. We therefore appointed *Mr. Piyush Kishanlal Jani* as the IRP. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

22. As a consequence of the Application being **admitted** in terms of Section 7(5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

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 licence, permit, registration, quota, concession, clearance 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 or a similar grant or right during moratorium period;

23. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods



or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

24. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

25. The Financial Creditor is directed to pay a sum of **Rs.5,00,000/- (Rupees Five Lakhs only)** to the Interim Resolution Professional upon the Interim



Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to him/her in accordance to Regulation 4 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

26. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

- Sd -

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

- Sd -

SANJIV JAIN
MEMBER (JUDICIAL)