



S.No.2

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
22-05-2023 AT 10:30 AM**

**CP(IB) No. 67/9/HDB/2023**  
u/s. 7 of IBC, 2016

**IN THE MATTER OF:**  
ASREC (India) Limited

**...Financial Creditor**

**VS**

Balaji Stake Rice Industries Limited

**...Corporate Debtor**

**C O R A M:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Order in **CP(IB) No. 67/9/HDB/2023** pronounced, recorded vide separate sheets.  
In the result, Company Petition is admitted and the corporate debtor is put under  
CIRP as per the terms and conditions mentioned in the order.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**



**NATIONAL COMPANY LAW TRIBUNAL, BENCH-1,  
HYDERABAD**

**CA (IB) No.67/7/HDB/2023**  
Application under Section 7 of the  
Insolvency and Bankruptcy Code, 2016

**Between**

ASREC (India) Limited  
Unit No.201,200A,202 & 200B, Ground Floor  
Build No.2, Solitaire Corporate Park,  
Andheri (E) Andheri Kural Road  
Mumbai 400059, Maharashtra

...Applicant

VS

Balaji Stake Rice Industries Limited  
Having Registered Office  
@ H No. 2-2-534/1, Ram Nagar,  
Hanumakonda, Warangal, Telangana

...Respondent

**Date of order: 22.05.2023.**

**Coram**

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)  
Shri Charan Singh, Hon'ble Member (Technical)

**Parties/ Counsels present:**

For the Applicant : Ms. Mano Ranjani, Counsel.

**PER: BENCH**

1. *This Petition is filed by ASREC (India) Limited under Section 7 of Insolvency and Bankruptcy Code (hereinafter to be referred as "Code"), read with Rule 4 of Insolvency and Bankruptcy seeking initiation of*



*Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon, contending that the Respondent defaulted in the payment of alleged debt of Rs. 18,09,76,188.87 (Rs. 10,04,09,828/- (as Principal) + Rs.8,05,66,360.87 (as Interest) as on 31.01.2023.*

**2. Gist of the application:**

- a. It is averred that the Corporate Debtor was availing credit facilities from State Bank of Hyderabad (Presently merged into State Bank of India) (henceforth being referred to as (“**Banker**”) from the year 2005 onwards out of different sanction letters and agreements against securities like personal guarantees, hypothecation of raw materials & current assets, hypothecation of plant and machinery, equitable mortgage of factory & Agricultural Lands etc.,
- b. On 15.09.2011, the Corporate Debtor requested the Banker to sanction the renewed credit facilities against hypothecation charge, equitable mortgage and the personal guarantees already given to the Banker and accordingly the banker issued the Sanction cum Acceptance letter dated 29.12.2011 for the following facilities:-
  - Renewal of existing Cash Credit (Hypo) limited at Rs.900,00,000/-
  - Sanction of SME Credit plus limited to Rs.25,00,000/-
- c. It is averred that the Corporate Debtor availed the financial assistance with an undertaking for repayment of the said financial assistance in terms of the agreements executed by it with the Banker but the



Corporate Debtor defaulted in repayment of interest and instalments of the loan and further failed to clear the overdue amount, owing to the loan account of the Corporate Debtor became Non-Performing Asset (NPA) on 8th March 2013.

- d. The Corporate Debtor issued a letter dated 29.7.2013 to the Banker expressing the problems and the liquidity crunch being faced by it and requested for Rehabilitation of its Unit as per Kohli Committee recommendation and RBI Circular RPCD No. PL.NF.BC.57/06.04.01/2001-2002 dated 16.01.2002 and in reply, the Banker sought clarifications and advised the Corporate Debtor to come with a plan for regularization/rehabilitation of Corporate Debtor's account, however the said proposal did not move forward.
- e. Consequently, the Banker sent notices U/S 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) to the Corporate Debtor on 26.08.2013, 06.11.2013 and 07.01.2014, followed by a Possession Notice dated 21.04.2014 U/S 8(1) of the Security Interest (Enforcement) Rules, 2002.
- f. Subsequently, the Banker on 31.01.2014 filed original Application OA 206/2014 before the Hon'ble Debts Recovery Tribunal-I, Hyderabad against the Corporate Debtor and its Directors U/S 19 of the Recover of Debts due to Banks and Financial Institutions (Act) 1993 (RDDBFI Act) claiming an amount of Rs. 12,41,34,828/-.



- g. While things stood thus, the Banker had assigned the title, interest, securities and dues payable by the Corporate Debtor to it, in favour of the Petitioner herein vide assignment agreement dated 30.09.2014.
- h. It is further stated that on 12.09.2016 and 03.10.2016 the Corporate Debtor proposed One Time Settlement (OTS) offer with an amount of Rs.12.25 Crores and Rs.13.09 Crores respectively to the Petitioner/ Financial Creditor herein.
- i. On 09.03.2018, Hon'ble Debts Recovery Tribunal -I Hyderabad allowed the OA 206/2014 declaring that:-
- The Corporate Debtor and other defendants of OS 206/2014 are jointly and severally liable to pay to the Financial Creditor a sum of Rs. 12,41,34,828/- with subsequent interest @ 13% pa from 12.09.2017 till the date of realization.
  - The Financial Creditor is secured by way of hypothecation of movables and mortgaged immovable properties as described in Schedule to the OA and the Financial Creditor is entitled to proceed against the same towards recovery of debt.
  - The Financial Creditor is also entitled to proceed against person and properties of the other defendants (2 to 5) and the properties of the CD towards realization of its dues.
  - The Financial Creditor is entitled to the cost of the OA.  
and directed for issue of the recovery certificate accordingly.
- j. The Presiding Officer, Debts Recovery Tribunal 20.03.2021 had issued the **Recovery Certificate U/S 19(7) of the (RDDDBFI Act)**, a copy of which is annexed and marked as Annexure A13.



- k. It is also averred that some of the Personal Guarantors made payments of Rs.50,30,000/- (in 2017), Rs.4496046 (in 2018), Rs.70,00,000/- (in 2021) and Rs.60,00,000/- (in 2022) towards sale under private treaty and got their property released from mortgage and on 16.01.2023 the Financial Creditor sold one property of 2 guarantors in open auction and recovered Rs 37,25,000/-.
- l. As per the Ledger account of the Corporate Debtor in the books of the Financial Creditor, the outstanding amount payable by the Corporate Debtor as on 31.01.2023 is Rs. **18,09,76,188.87** (Rs. 10,04,09,828/- (as Principal) + Rs.8,05,66,360.87 (as Interest).
- m. The Petitioner has submitted the record of financial information to the Information Utility, NeSL.
- n. It is further stated that the instant Application is well within the period of limitation under the Code and not barred by the period of limitation prescribed / laid down under the Code. A table with sequence of events evidencing the compliance of limitation period from the date of Corporate Debtor being declared as NPA is detailed below:

<b>SNo</b>	<b>Date</b>	<b>Particulars of the Events</b>
1	8-Mar-13	Date of NPA
2	29-Jul-13	CD sent request for rehabilitation letter to the Banker
3	26-Aug-13	Banker issued notices u/s 13(2) to the CD
4	6-Nov-13	Banker issued notices u/s 13(2) to the CD
5	7-Jan-14	Banker issued notices u/s 13(2) to the CD
6	21-Apr-14	Banker issued possession notice u/s 8(1) of Security Interest (Enforcement) Rules, 2002
7	31-Jan-14	Banker filed OA 206/2014 u/s 19 of RDDBFI Act against the CD
8	12-Sep-16	Date of OTS proposal given by the CD



9	9-Mar-18	Date of Order awarded by Hon'ble DRT-1 Hyd in favor of the Banker
10	9-Mar-19	First year of Limitation Period - 365 days from Order date
11	8-Mar-20	Second year of Limitation Period - 365 days from Order date
12	14-Mar-20	6days of the third year of Limitation Period
13	15.03.2020 to 28.02.2022	Exclusion Period of 715 days for the purposes of limitation as the Hon'ble Supreme Court in the MA 21 of 2022 in MA 665 of 2021 in the Suo Motu Writ Petition (Civil) No. 3 of 2020 dated 10.01.2022
14	20-Mar-21	Presiding Officer DRT issued Recovery Certificate u/s 19(7) r/w Sec 19(22) of RDDBFI Act.
15	22-Feb-23	359days of the third year of Limitation Period from Order date

- o. The Petitioner has placed reliance on the following judgements:-
- (a) Hon'ble Supreme Court in its order dated 30.05.2022 in Civil Appeal No. 689 of 2021 in *re: Kotak Mahindra Bank Limited versus A. Balakrishnan & Anr* held that a recovery certificate issued under the RDDBFI Act would qualify as a "financial debt" under the Code and give rise to a fresh cause of action U/S 7 of the IBC. The judgment also approved an earlier decision of a two judge bench of the Hon'ble Supreme Court in the case of Dena Bank (now Bank of Baroda) vs. C Shivakumar Reddy & Anr, 2021 SCC online SC 543, which inter alia held that a fresh period of limitation period would accrue for an application U/S 7 from the date of a recovery certificate. Extract of the Order are as below:

**Para 84.** *To conclude, we hold that a liability in respect of a claim arising out of a Recovery Certificate would be a "financial debt" within the meaning of clause (8) of Section 5 of the IBC. Consequently, the holder of the Recovery Certificate would be a financial creditor within the meaning of clause (7) of Section*



5 of the IBC. As such, the holder of such certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate.

Para 85. We further find that the view taken by the two-Judge Bench of this Court in the case of Dena Bank (supra) is correct in law and we affirm the same. We further find that in the facts of the present case, the application under Section 7 of the IBC was filed within a period of three years from the date on which the Recovery Certificate was issued. As such, the application under Section 7 of the IBC was within limitation and the learned NCLAT has erred in holding that it is barred by limitation.

- (b) Hon'ble Supreme Court order in MA 21 of 2022 in MA 665 of 2021 in the Suo Motu Writ Petition (Civil) No. 3 of 2020 dated 10.01.2022; wherein it was ordered that:

the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation. Further, in cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply. In the instant case the balance period of limitation is 359 days (details are as per item 12 to 15 of the above table).

Thus, considering the exclusion of 715 days as per the order passed by the Hon'ble Supreme Court in the MA 21 of 2022 in MA 665 of 2021 in the Suo Motu Writ Petition (Civil) No. 3 of 2020 dated



10.01.2022, DRT Certificate dated 20-Mar-2021 issued by the Presiding Officer, DRT u/s 19(7) r/w Sec 19(22) of RDDBFI Act and Hon'ble Supreme Court's order in the case of Kotak Mahindra Bank Limited versus A. Balakrishnan & Anr (as quoted in Para V(2) above, and the paltry insignificant payments done by the CD to the Financial Creditor in the years 2017, 2018, 2021, 2022 and 2023 it is stated that this application is well within limitation from all viewpoints. Thus submitting, prayed the Adjudicating Authority to initiate CIRP against the Corporate Debtor.

3. In the above backdrop the point that emerges for consideration by this Tribunal is:

**Whether a Financial debt as claimed by the Petitioner is due and payable by the Corporate Debtor to the Petitioner? If so, whether the Corporate Debtor defaulted in payment of the said Financial debt?**

3. We have heard Ms. Mano Ranjani, Ld. Counsel for the Petitioner, carefully examined the record placed before us by the Petitioner.
4. At the outset it is to be stated that, despite service of notice and opportunity, the corporate debtor did not choose to contest the matter, as such the averments as made in the Company Petition remained un-rebutted.
5. The financial debt as claimed by the Petitioner is based on the recovery certificate issued by the DRT, Hyderabad, vide OA.No.206 of 2014 filed by the Petitioner against the Corporate Debtor and others.



6. Hon'ble Supreme Court of India, in re, Dena Bank (now Bank of Baroda) vs. C Shivakumar Reddy & Anr, 2021 SCC online SC 543, inter alia, held that *a fresh period of limitation period would accrue for an application U/S 7 from the date of a recovery certificate*. Extract of para 85 of the said Order is as under:-

Para 85. We further find that the view taken by the two-Judge Bench of this Court in the case of Dena Bank (supra) is correct in law and we affirm the same. We further find that in the facts of the present case, the application under Section 7 of the IBC was filed within a period of three years from the date on which the Recovery Certificate was issued. As such, the application under Section 7 of the IBC was within limitation and the learned NCLAT has erred in holding that it is barred by limitation.

Since, the Recovery Certificate in this case has been issued on 20.03.2021, and the present petition having been filed on 14.02.2023, is within 3 years from the date of issuance of the Recovery Certificate, the present Petition is within the period of limitation. Even if the limitation is reckoned from the date of the order passed by the DRT, Hyderabad, yet by virtue of the order of Hon'ble Supreme Court of India in suo-moto matter, supra, the Petition is within the period of time.

The financial debt claimed as due and payable by the corporate debtor which has been crystallized under the Recovery Certificate issued by the DRT, has not been discharged by the Corporate Debtor. Therefore, existence of financial debt of a sum over rupees one crore and its default by the corporate debtor stands established



unequivocally. We also find the present petition is in order, hence it is a fit case to be admitted into CIRP.

6. Hence, the Adjudicating Authority admits the Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:

- (a) The Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;
- (b) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) That 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.



- (d) That the order of moratorium shall have effect from the date of this order till the 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 Corporate Debtor under Section 33, whichever is earlier.
- (e) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.
- (f) The Financial Creditor prayed this Adjudicating Authority to appoint the IRP. This Bench hereby appoints Mr. Ganesh Venkata Siva Rama Krishna Remani, Insolvency Professional, #R/o H.No. 302, Nahar Business Centre, Chandivali, Mumbai-400072, email id: [ganesh.remani@nliten.in](mailto:ganesh.remani@nliten.in), Phone No. 9967500010 having registration No. IBBI/IPA/001/IP-P01386/2018-2019/12176 as Interim Resolution Professional, to carry the functions as mentioned under the Insolvency & Bankruptcy Code. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with. Proposed IRP shall file Form-B issued by the IBBI within three days hereafter. This information is also available in IBBI Website. Authorisation for Assignment is valid up to 27.10.2023 Thus,



there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

- (g) The Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.
- (h) The Registry is also directed to communicate the IRP and Financial Creditor and send copy of this order.
- (i) The petitioner is directed to pay a sum of Rs.1,00,000/- to the interim resolution professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of IBBI regulation, 2016.
- (j) This shall, however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.
- (k) The Financial Creditor is directed to communicate this order to the IRP appointed in this case.
- (l) The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.
- (m) Accordingly, this Petition is admitted.

**Sd/-**  
**CHARAN SINGH**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**DR. N.VENKATA RAMAKRISHNA BADARINATH**  
**MEMBER (JUDICIAL)**

*Swapna/Binnu*