

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III**



C.P.(IB)-989 (MB)/C-III/2023

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016.)

In the matter of

Axis Bank Limited

Having Registered Office at:

Trishul, 3rd Floor, Opp Samartheshwar Temple, Near Law Garden, Ellisbridge, Ahemdabad, Gujarat- 380006

....Financial Creditor/Petitioner

Vs

Midas Petrochem Private Limited

Having Registered Office at:

Office No.109, Block B, Avon Arcade,

Dashratlal Joshi Marg,

Vile Parle (West)

Mumbai- 400057.

.... Corporate Debtor/Respondent

Order Pronounced on: 13.01.2025

**CORAM:*****Ms. Lakshmi Gurung, Member (Judicial)******Sh. Charanjeet Singh Gulati Member (Technical)*****APPEARANCES:**

For the Financial Creditor: Adv. Rohit Gupta, Adv. Suyesha Kakarla,
Adv. Shailesh Poria, Adv. Heena Girnari i/b
M/s. Economic Law Practice.

For the Corporate Debtor: Adv. Saket Jain

PER: SH. CHARANJEET SINGH GULATI MEMBER (TECHNICAL)

1. The Present Company Petition (IB) 989 (MB)/2023 is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“**IBC/Code**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Axis Bank Limited (“Financial Creditor/Petitioner”)** for initiating Corporate Insolvency Resolution Process (“**CIRP**”) against M/s. **Midas Petrochem Private Limited (“Corporate Debtor/Respondent”)** for a default amount of **Rs. 32,24,43,542.14** (Rupees Thirty-Two Crores Twenty-Four Lakhs Forty-Three Thousand Five Hundred and Forty-Two and Fourteen paise only) as on 31.07.2023 along with interest and other charges as per contractual rate.

Brief Facts:

2. The Corporate Debtor in order to meet its working capital requirements availed loan from the Financial Creditor in the following manner:

Year	Sanction Letter	Type of loan	Amount
2016	12.09.2016	Cash Credit Facility	Total : 11,00,00,000



		1)Inland Foreign letter of Credit Facility 2)Working Capital demand Loan Facility	1)6,00,00,000/- 2)5,00,00,000/-
2016	20.09.2016	Cash Credit facility availed on 12.09.2026 enhanced	15,00,00,000/-

3. Further certain modifications sought by the Corporate Debtor in original Credit facility dated 12.09.2016 were duly accepted by the Financial Creditor vide letter dated 28.09.2016.
4. The Original Credit Facility were sanctioned to the Corporate Debtor by way of a takeover of the outstanding amounts from the Bank of India, therefore the Corporate Debtor approached the Financial Creditor vide its letter dated 30.09. 2016, enclosing foreclosure letter dated 29.09.2016, received from the Bank of India, Mahalakshmi Branch, Mumbai and effected the disbursement out of the Original Credit Facility by remitting the outstanding amount of Rs. 14,79,80,109.65/- in favour of Bank of India.
5. In the year 2017 the Corporate Debtor again approached the Financial Creditor to enhance the Cash Credit facility of 15,00,00,000/- to 23,00,00,000/-. The same was sanctioned by the Financial Creditor vide its sanction letter dated 21.11.2017.
6. The Cash Credit facilities availed by the Corporate Debtor were subsequently closed by the Corporate Debtor.



7. Further in August 2020, the Corporate Debtor approached the Financial to avail an additional credit facility of Rs.4,95,00,000/- under the Emergency Credit Line Guarantee Scheme (hereinafter referred to as the "**ECLGS**"), The same was granted to the Corporate Debtor vide Sanction Letter dated 25.08.2020 and a Term Loan cum Hypothecation document dated 07.09.2020 was executed between the Financial Creditor and Corporate Debtor.
8. Further to enable the Borrower to meet its funding requirements due to sudden outbreak of the COVID-19 Pandemic the Financial Creditor increased the aggregate Credit Facilities availed by the Corporate Debtor from the financial Creditor to Rs. 27,95,00,000/- vide its sanction Letter dated 23.06.2021.
9. On 26.11.2020 a letter of Acknowledgement was executed between the Financial Creditor and its guarantors acknowledging their indebtedness as on 13.10.2020 to the extent of 25,64,36,120.10/- in respect of total credit facilities granted by the financial Creditor.

Submissions by the Financial Creditor:

10. At the time of sanctioning the Credit Facilities, the Corporate Debtor had agreed to abide by terms and conditions of Sanction Letters and had undertaken to repay the outstanding dues on the respective due dates as per the terms therein. However, the Corporate Debtor defaulted on repaying the amount due and payable to the Financial Creditor.
11. Despite sending repeated requests and reminders, the Corporate Debtor failed and neglected to repay the outstanding amount due and payable to the Financial Creditor. As result the account of the Corporate Debtor became Non-Performing Asset ("NPA") on 28.01.2022.
12. The Financial Creditor vide its letter dated 29.04.2022 ("Recall Notice") recalled the entire Credit Facilities availed by the Corporate Debtor together with further interest on the amount outstanding.



13. Further a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act) was sent on 23.06.2022, which was later withdrawn and replaced by notice dated 26.09.2022, calling upon the Corporate Debtor and its guarantors to make payment of the dues amounting to Rs. 28,65,81,700.14 outstanding repayable by them as on 31.08.2022.
14. The Corporate Debtor instead of making payment as and way of delay tactics sent emails dated 27.06.2022, 19.08.2022 and 15.09. 2022, to the Financial Creditor through their Advocates. The Financial Creditor has duly replied to all the emails sent by the Corporate Debtor.
15. The default occurred on 31.10.2021 when the account of the Corporate Debtor with the Financial Creditor became irregular and overdrawn.
16. The account of the Corporate Debtor with the Financial Creditor became NPA on 28.01.2022 and the Recall Notice was issued to the Corporate Debtor on 29.04.2022, thus the petition is filed within the limitation period of three years from the date of default.

Reply by the Corporate Debtor:

17. The Corporate Debtor filed reply dated 03.04.2024 taking various defense which can be summarized as below: -
 - i. Ms Payal Rajiv Kapila, Axis Bank is not a person duly authorised to act on behalf of the Financial Creditor or to initiate any Corporate Insolvency Resolution Process.
 - ii. The Affidavit in Support of Application under Section 7 of the Insolvency and Bankruptcy Code (IBC) to initiate the Corporate Insolvency Resolution Process (CIRP) is not duly stamped.



- iii. The sanctioned loan under the Emergency Credit Line Guarantee Scheme of Rs. 4.95 Crore was never disbursed to Corporate Debtor. The Financial Creditor has arbitrarily, illegally instead of disbursing the loan as mandated, has utilized it to adjust outstanding principal and interest and payments which is contrary to the RBI guidelines.
- iv. The Financial Creditor has falsely specified 31.10.2021 as the date of default. The actual default occurred in two instances:
 - a) On 08.09.2020 when overdue loan was unlawfully adjusted against EGLC funds to clear an existing overdue loan of Rs.2,47,50,000
 - b) November 2020, when EGLC funds were disbursed and used to pay interest dues as Corporate Debtor was not in the position to pay overdue interest and default was inevitable.
- v. It is evident that the default transpired in September 2020 and November 2020, falling within the period from 25.03.2020 to 24.03.2021, as specified under section 10 A. In Ramesh ***Kymal v. siemens Gantesa Renewable Power Pvt. Ltd.. (2021)*** it has been held that no application can ever be filed for' defaults occurring between 25.03. 2020, and 24.03.2021.
- vi. The Corporate Debtor (CD) is registered as an MSME and is entitled to the benefits of revival and rehabilitation under the framework of Rehabilitation of MSME. This framework was notified by the Central Government on 29.05.2015 under Section 9 of the MSME Act, read with RBI guidelines. However, The Corporate Debtor was arbitrarily not conferred the benefit under this Framework in violation of the MSME Act 2016 the same has been held in the judgement of Hon'ble Supreme Court in Pro Knits Vs Board of Canara Bank (SLP No' 7898 of 2024).
- vii. The Applicant has already initiated recovery proceedings under



the SARFAESI Act to enforce securities hypothecated and mortgaged by the Corporate Debtor (CD), Additionally. the Bank has submitted a claim to the National Credit Guarantee Trust Company (NCGTC) under the Emergency Credit Line Guarantee Scheme (ECLGS) and has already recovered 50 % of the loan amount through this claim'

- viii.* The Financial Creditor exerted pressure on the Corporate Debtor demanding infusion of capital, reduction in credit limits and persistently imposing high rates of interest and excessive bank charges.
- ix.* MSME Act casts a duty to constitute a committee, primarily consisting of Bank officers and independent experts on MSME. The Financial Creditor was duty bound to make an application for effecting a corrective action plan and if such corrective action plan is not successful, only then it can adopt the recovery steps. The Financial Creditor or NBFCs have never constituted any such committee and therefore no recovery could have been initiated in violation of the said Notification.
- x.* It is incumbent upon the respondent bank before classifying the Applicant account as NPA and initiate recovery process to abide by Framework for (MSMEs) issued vide notification no S.O. 1432(E), dated 29.05.2015, therefore the initiation of a petition under the IBC without affording the opportunity for revival and rehabilitation as outlined in the MSME Act and RBI guidelines strongly implies that this Petition is being utilised as a recovery mechanism rather than a resolution strategy.
- xi.* The RBI directives to recalculate drawing power by reducing margin and/or reassessing the working capital cycle were also not granted. The said guideline was binding upon the Financial Creditor in terms of Sections 21 and 35A of the Banking Regulation Act 1949.



- xii.* The Financial Creditor invoked the guarantee provided by NCGTC for the ECLGS Loan amounting to 49 lakh and subsequently filed its claim. As per the Scheme's stipulations, the applicant bank is permitted to file its claim only subsequent to the initiation of recovery proceedings. The Corporate Debtor suspects that the Financial Creditor may have already recovered a significant portion of the claim amount under the ECLGS, yet this detail has not been disclosed in the present Application.
- xiii.* This Tribunal lacks the jurisdiction to entertain the present Petition as the Financial Creditor is first bound to Act in accordance with provisions of MSME Act, 2006 and Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises under MSME Act.
- xiv.* The actions of the Financial Creditor constitute a violation of Section 65 of the IBC, which prohibits the initiation of proceedings with malicious intent or for purposes of recovery than resolution. The Financial Creditor has already initiated recovery proceedings under the SARFAESI Act to enforce securities hypothecated and mortgaged by the Corporate Debtor. Additionally, the Bank has submitted a claim to the National Credit Guarantee Trust Company (NCGTC) under the Emergency Credit Line Guarantee Scheme (ECLGS) and has already recovered 75% of the loan amount through this claim'
- i.* *The Hon'ble Supreme Court in Mobilox Innovations Private Limited Vs. 'Kirusa Software Private Limited', (2018) 1 SCC 353, has observed that the fundamental intent of IBC is 'maximising the value of assets in the process of Resolution.*
- ii.* *The Hon'ble NCLAT in 'Binani Industries Limited' Vs. 'Bank of Baroda & Anr.', Company Appeal (AT) (Ins.) No. 82 of 2018, has observed that IBC is not a Recovery Proceeding.*



- iii. *The Hon'ble NCLAT in 'Asset Advisory Services' Vs. VSS Projects', CP (IB) No. 96/7/HDB (2017), and also in Praveen Kumar Mundra' Vs. CIL Securities Ltd.', 2019 SCC OnLine NCLAT 334, has noted that CIRP cannot be initiated with fraudulent and malicious intent for any purpose other than the Resolution of Insolvency or Liquidation'.*

Additional Affidavit dated 15.03.2024 on behalf of Financial Creditor:

18. The Financial Creditor filed an Additional Affidavit dated 15.03.2024 to bring on record updated NeSL Certificate dated 06.03.2024.

Rejoinder dated 17.05.2024 on behalf of Financial Creditor:

19. The Financial Creditor had duly paid amounts of Rs.14,79,80,109.65/- and Rs. 8 crores to Bank of India and Yes Bank Limited, respectively, on behalf of the Corporate Debtor in order to take over the outstanding amounts under the pre-existing facilities enjoyed by the Corporate Debtor from Bank of India and Yes Bank Limited, in accordance with the terms set out in its sanction as set out in the Company Petition.
20. The amounts under the Original Credit Facility and Enhanced Credit Facility were disbursed to the Corporate Debtor from time to time which can be seen from the statement of account for the period from 30.09.2016 to 27.07.2023 and Term Loan cum Hypothecation Agreement executed by the Corporate Debtor which explicitly states that the interest was payable monthly failing which it would be considered as an event of default.
21. The Corporate Debtor has also admitted to having availed an additional limit for an amount of Rs.4.95 crores under the "ECLGS Facility which is reflected in the statement of account for the period from 07.08.2020 to 27.07.2023



22. Further, National Credit Guarantee Trustee Company Limited (hereinafter referred to as the '**NCGTC**') has also provided a clarification that the interest on the credit facility under ECLGS is payable even during the moratorium of 1 year granted on repayment of principal loan which means that it is payable from the day of disbursement.
23. The outstanding debt has also been authenticated by the Information Utility, NSEL, after following due process and under notice to the Corporate Debtor.
24. The Corporate Debtor executed various facility and security documents in favour of the Financial Creditor and provided Letters of Acknowledgement of the outstanding dues from time to time which shows various Credit facilities were sanctioned by the Financial Creditor to the Corporate Debtor, and disbursements were made to the Corporate Debtor against time value for money which establishes the existence of 'debt' and 'financial debt' under the Code.
25. The Corporate Debtor is clearly ignorant that a board resolution passed by the board of directors authorizing an employee of the company, *inter alia*, to sign the Company Petition on behalf of the Financial Creditor is a legally valid document for authorization.
26. The ECLGS facility has been disbursed as per Borrower's request from time to time. The Corporate Debtor had itself requested the Financial Creditor to utilise the amounts under ECLGS Facility towards the existing facilities since its business was affected due to COVID 19 and could not have serviced the existing credit facilities.
27. The Financial Creditor had renewed/reviewed the Enhanced Credit Facility and the ECLGS Facility on 23.06.2021 which is itself beyond the timeframe under section 10A of IBC, i.e. 25.03.2020 to 24.03.2021.



28. The Corporate Debtor had committed a default when it failed to service the interest payable on the ECLGS Facility from 31.10. 2021. Therefore, the account of the Corporate Debtor turned NPA after 90 days, i.e. on 28.01.2022. It is a well-established principle that the renewed terms/ modified terms supersede the original agreement therefore default under the restructured facilities is distinct event from the original default. The same was held by the NCLAT in the case of **Pradeep Madhukar More Vs Central Bank of India (Company Appeal (A7) (Insolvency) No.837 of 2023**
29. The Code does not recognize the Framework for Revival of MSME, 2015 and does not stipulate that the instructions under the Framework for Revival of MSME, 2015 have to be abided by the Bank before initiating proceedings under the Code. The Resolution Framework for COVID 19 Related Stress to MSME is in alternate to the mechanism provided to address the default of the Corporate Debtor for its benefit and interest of all the stakeholders. This Tribunal in the matter of **Small Industries Development Bank of India vs Viola Resorts Pvt. Ltd. (Company Petition No. 61 of 2023)** held that the RBI Framework benefit is an alternate mechanism to address the default of the Corporate Debtor for its benefit and interest of all the stakeholders. The denial of framework benefit is not tenable ground in consideration of an application us 7 of the Code.
30. As per Section 238 IBC supersedes all other prevalent laws despite inconsistencies or incongruous clauses including the MSME Development Act, 2006.
31. The case of M/S. Pro Knits Vs the Board of Directors of Canara Bank (SPL (C) No. 7898 of 2024) submitted by the Corporate Debtor since the Hon'ble Supreme Court itself did not reverse the declaration of NPA by the concerned banks and it only gave its observation.



32. The Department of Financial Services had introduced ECLGS with an aim to provide 100% Guarantee coverage to member lending institutions, like the Financial Creditor, for providing working capital term loans to Borrowers. The government has enabled the banks to provide additional credit facilities with a promise/guarantee to refund the 100% amount that could not be paid by the borrowers, however, subject to the condition, *inter alia*, that the banks take appropriate legal action to recover the said outstanding dues from the borrowers. The refund process entails the filing of Interim and Final Claim before the NCGTC.
33. Exhibit A to the present Affidavit in Rejoinder as follows;
- "Mere issue of recall notice shall not be construed as initiation of legal action. Legal action shall be considered as initiated upon filing of application in LokAdalat/ Civil Court/Revenue State Authority/ DRT or after action pursuant to the notice issued under Section 13 (4) of SARFAESI Act, 2002 or after admission of application under NCLT or commencement of arbitration proceedings or such other action as may be decided by NCGTC from time to time. "*
34. The fact that Financial Creditor bank has filed its claim to NCGTC itself goes to show that the present Petition is not being filed with an object of 'Recovery' but to revive the business of the Corporate Debtor.
35. The Financial Creditor is very well within its right to invoke the guarantee with the NCGTC and it does not concern the Corporate Debtor. The guarantee only covers Rs.4.95 crores and not the remaining outstanding dues of more than Rs. 28 crores.
36. The closure of the business activity of the Corporate Debtor was a result of the violation of RBI guidelines and Central Government Scheme by the Financial Creditor is devoid of any merit.
37. The Corporate Debtor to utilize the credit facilities provided by the Financial Creditor which have been extended and renewed from time to



time and the failure to apply under the Framework for Revival of MSME, 2015 and other schemes launched by the RBI that led to the closure of its business.

38. The object of the Code is for revival of the Corporate Debtor and it should not be used as a tool for recovery and hence the present Company Petition deserves to be admitted to protect the interest of all the stakeholders.

Analysis & Findings

39. Heard the Ld. counsel for the parties and perused the records.
40. The Corporate debtor submitted that this Tribunal lacks the jurisdiction to entertain the present Petition as despite being registered as an MSME the Corporate Debtor was not provided with the benefit under the Framework for Revival and Rehabilitation of MSMEs ('Framework), notified in pursuance to section 9 of the MSME Development Act, 2006. Therefore, the Petition is in violation of the MSME Development Act, 2006.
41. It was submitted that the Financial Creditor has failed to disburse the Emergency Credit Line Guarantee scheme (ECLGS) funds as mandated by the scheme and has utilized the said ECLGS funds towards overdue outstanding loans and has adjusted the balance against monthly interest dues thereby violating guidelines under the Reserve Bank.
42. It was also submitted that the Financial Creditor has failed to produce any evidence to show existence and disbursement of the debt claimed.
43. It is also contended that Ms. Payal Rajiv Kapila of Axis Bank is not a person duly authorised to act on behalf of the Financial Creditor or to initiate any Corporate Insolvency Resolution Process.
44. Also, that the default transpired in September 2020 and November 2020, falling within the period from 25.03.2020 to 24.03.2021, under section 10 A of the Code and therefore, the present application cannot be filed.



45. Per Contra, the Financial Creditor submitted that the benefit under the Framework for Revival and Rehabilitation of MSMEs is an alternative mechanism for recovery of debt remedies. As per Section 238, IBC supersedes all other prevalent laws despite any inconsistencies or incongruous clauses including the MSME Development Act, 2006.
46. It was submitted that ECLGS facility were disbursed as per Borrower's request. The Corporate Debtor had itself requested the Financial Creditor to utilise the amounts under ECLGS Facility towards the existing facilities since its business was affected due to COVID 19 and could not have serviced the existing credit facilities.
47. Further the Original Credit Facility and Enhanced Credit Facility were disbursed to the Corporate Debtor which can be seen from the statement of account for the period from 30.09.2016 to 27.07.2023 and that it has availed an additional limit for an amount of Rs.4.95 crores under the "ECLGS Facility which is reflected in the statement of account for the period from 07.08.2020 to 27.07.2023.
48. It was submitted that a board resolution was passed by the board of directors authorizing Ms. Payal Rajiv Kapila, *inter alia*, to sign the Company Petition on behalf of the Financial Creditor which is a legally valid document for authorization.
49. The Financial Creditor had renewed/reviewed the Enhanced Credit Facility and the ECLGS Facility on 23.06.2021 which is itself beyond the timeframe under section 10A of IBC, therefore, there is no bar on filing application under Section 7 of IBC.
50. In regard to the contention raised by the Corporate Debtor that this tribunal does not have jurisdiction as the Financial Creditor is first bound to Act in accordance with provisions of MSME Act, 2006 and Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises under MSME Act, it is stated that there is no such stipulation provided in the Code. Compliance and prior action in terms of MSME Act is not



prerequisite or mandatory before any petition under Section 7 of the Code could be entertained. IBC aims at resolution of the Corporate Debtor and for attaining the same various provisions and regulations are enshrined in the Code. Under Section 7 Petition, the Tribunal has to merely see whether there is a debt and default in the matter before it.

51. We are supported by the judgement of Hon'ble Supreme Court in ***Innovative Industries Limited vs. ICICI Bank and Anr*** [(2018) 1 SCC 407] wherein it was held as follows:

*30.....On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor **to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. Payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date.***

(Bold for Emphasis)

Therefore, as long as there is debt and default has occurred, this tribunal would have jurisdiction to entertain the case.

52. Further the Corporate Debtor has raised contention on that Ms. Payal Rajiv Kapila, Axis Bank is not a person duly authorised to act on behalf of the Financial Creditor or to initiate any Corporate Insolvency Resolution Process. In this regard, we have perused all the documents annexed by the Financial Creditor to the Petition. The Financial Creditor vide its Board Resolution dated 10.07.2019 has duly authorized Ms. Payal Rajiv Kapila to sign and initiate Insolvency Resolution Process. Therefore, this contention of the Corporate Debtor also stands rejected.



53. Further having considered the submissions made by the parties, the other issues to be decided by the Adjudicating Authority are as follows:
- i. Whether there is a debt
 - ii. Whether there is a default
 - iii. Whether provision of Section 10 A are applicable in the present case.
54. In regards to the first issue we note that the Corporate Debtor had approached Yes Bank and Bank of India to avail various Original Credit Facilities. Further the Corporate Debtor approached the Financial Creditor and requested it to take over its pre-existing facilities enjoyed by the Corporate Debtor from Bank of India and Yes Bank Limited. Accordingly, Axis Bank through its various sanction letters disbursed loan to the Corporate Debtor which is mentioned as under:

Sanction Letter	Type of loan	Amount
12.09.2016	Cash Credit Facilities 1)Inland Foreign letter of Credit Facility 2)Working Capital demand Loan Facility	Total :11,00,00,000 1)6,00,00,000/- 2)5,00,00,000/-
20.09.2016	Enhanced Cash Credit facilities	Total: 15,00,00,000
21.11.2017	Renewal cum enhancement of Credit Facilities 1)WDCL (Sublimit of CC). 2)Letter of Credit (Sublimit of	Total: 23,00,00,000 1)12,00,00,000/-



	CC. 3) Buyers Credit (Sublimit of LC)	2)6,00,00,000/- 3) 6,00,00,000/-
25.08.2020	Additional Credit facilities under Emergency Credit Line Guarantee Scheme for 48 months including 12 months of moratorium	Rs.4,95,00,000/- Rate of Interest applicable =Repo + 5.25% i.e 9.25% p.a.
23.06.2021	Renewal with Reduction of Emergency Credit Line Guarantee Scheme 1) Cash Credit 2) WCTL under EGLCS Scheme 3) Total FB	Total = 27,95,00,000/- 1)23,00,00,000/- 2)4,95,00,000/- 3)27.95 Rate of Interest applicable Repo + 6.25% =10.25%

55. The Financial Creditor paid Rs.14,79,80,109.65/- on 30.09.2016 to Bank of India and Rs. 8 crores to Yes Bank Limited, respectively, on behalf of the Corporate Debtor. As the loan/ facilities were taken over the by the Financial Creditor the Corporate Debtor is now liable to pay the Financial Creditor the total debt of Rs. 22,79,80,109.65/- along with interest.

56. Further the Corporate Debtor on 25.08.2020 approached the Financial Creditor to avail Additional Credit facilities under Emergency Credit Line



Guarantee Scheme (ECLGS) of Rs.4.95 crores. In furtherance to the same a term Loan cum Hypothecation Agreement dated 7.09.2020 was executed between the parties. It is to also note that this ECLGS facility was utilised by the Financial Creditor towards payment of the Original Credit existing facilities since the business of the Corporate Debtor was affected due to COVID 19 and it was unable to repay the existing debt. In the agreement dated 07.09.2020 it was clearly stated that interest applicable on the ECLGS facility was payable monthly failing which it would be considered as an event of default. Eventually the Corporate Debtor failed to pay interest on ECLGS facility, and therefore default occurred on 31.10.2021. Subsequently the account of the Corporate Debtor with the Financial Creditor became NPA on 28.01.2022.

57. We also note that the total debt due and payable as on 31.10.2021 is as follows:

Facility	Limit Sanctioned	Ledger Balance as on 31.12.2021	Credits	Debits plus unapplied Interest	Penal Interest without compounding	Total due
	(Rs Crore)	(Inclusive of Interest applied till 13.12.2021)		(From 01.01.2022 to 31.07.2022)	(From 01.01.2022 to 31.07.2022)	
Cash Credit	23.00	23,67,72,765.30	3,28,78,172.00	4,92,05,623.54	1,50,68,995.00	268169211.84
WCT L (EGLCS)	4.95	4,92,94,77.00	50,24,991.70	69,84,305.00	30,20,240.00	54274330.30
	Total Dues					322443542.14

58. Further the Corporate Debtor had executed Joint and Several Demand Promissory notes in favour of the Financial Creditor promising to pay back the loans availed by the Corporate Debtor along with interest when called for.



59. Also, the Corporate Debtor vide its Letter of Acknowledgement dated 26.11.2020 has acknowledged the debt, due and payable to the Financial Creditor. The relevant extracts of letter dated 26.11.2020 are reproduced herein under:

“I/ We hereby confirm and acknowledge my/ our indebtedness as on 13.10.2020 of the sum of Rs. 25,64,36,120.10 Rupees Twenty-Five Crore Sixty-four Lakhs Thirty-six thousand one hundred and twenty and ten paise only.) as stated in Schedule I below. The documents executed are in full force and effect and that the security there under is also in full force and effect.

Further, I/ We acknowledge for the purpose of Section 18 of the Limitation Act, 1963 in order to. preclude any question of limitation law that I/ We are liable to you for the payment of the outstanding amount as mentioned in the schedule I below and in respect of all the present and future indebtedness and liabilities of the said credit facilities together with interest, costs, charges and expenses in terms of the documents as executed from time to time and the said documents. shall remain in force with all relative securities, agreements and obligations.”

60. From the facts and discussions above it is clear that, there is a Financial Debt exceeding much more than 1 crore on the Corporate Debtor.
61. It is also observed that Recall Notice dated 29.04.2022 and Demand Notice dated 23.06.2022 have been served on the Corporate Debtor. Despite serving the same the Corporate Debtor has failed the repay the amount of debt.
62. It is to note that the Petitioner has also placed in its Additional Affidavit FORM D issued by NeSL wherein the status of default is stated as **“AUTHENTICATED”**. Further we note that in the said Form the date of



default is mentioned as 23.03.2023 and the default amount is Rs.20,89,19,585.00. Therefore, the default in repayment is also established.

63. In regards to the third issue, we say that the Corporate Debtor submitted that default in the present case has transpired in the month of September 2020 and November 2020, However, the Financial Creditor has stated that renewed ECLGS Facility itself was availed on 23.06.2021. Further the ECGLS funds were adjusted against the loans/interest due; and default occurred when interest due on 31.10.2021 on ECGLS were not paid, leading to issue of Recall Notice dated 29.04.2022 and demand notice dated 23.06.2022.
64. We note that the Corporate Debtor on 25.08.2020 availed Additional Credit facilities of Rs. Rs.4.95 crores under Emergency Credit Line Guarantee Scheme from the Financial Creditor. This additional Credit Facility availed was adjusted to pay the Original Credit facility availed by the Corporate Debtor from Axis Bank.
65. It is to further note that a Loan cum Hypothecation Agreement dated 7.09.2020 was executed between the Financial Creditor and Corporate Debtor wherein it was stated that the interest applicable on the ECLGS facility was payable monthly failing which it would be considered as an event of default. Once the entire amount of Rs.4.95 crore was exhausted the Financial creditor failed to pay interest, and such default occurred on 31.10.2021. The date of default is 31.10.2021 which is beyond the period of IBC specified under provision of Section 10 A, Hence the present Petition is not hit by the provisions of Section 10 of IBC.
66. Further it is a well-settled position that the Adjudicating Authority has to determine whether there is debt and default and if it is satisfied that a default has occurred, then the application under section 7 of the Code must be admitted unless it lacks other necessities as mandated thereunder.



67. We are supported by the decision of Hon'ble Supreme Court in ***Innovative Industries Limited vs. ICICI Bank and Anr [(2018) 1 SCC 407]*** wherein it was held as follows:

28. ... The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days' receipt of a notice from the adjudicating authority.

30.....On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. Payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

68. Given the facts and circumstances of the case and discussions hereinabove, the Company Petition bearing no.989 of 2023 is **admitted** and ordered as follows:



ORDER

- i. The above Company Petition No. (IB) 989(MB)/2023 is hereby **admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Midas Petrochem Private Limited.
- ii. The Petitioner has proposed the name of **Mr. Shreyansh Jain** Registration No. **IBBI/IPA-001/IPP01683/2019-2020/12727** to be appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The proposed IRP has filed his Written Communication dated 16.06.2023 in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Written Communication is accompanied by AFA which is valid upto 15.06.2024. However, upon verification we note that AFA is valid upto 30.06.2025. Accordingly, we appoint **Mr. Shreyansh Jain as the Interim Resolution Professional (IRP)** to carry out the functions as per the Insolvency & Bankruptcy Code, 2016.
- iii. The Financial Creditor shall deposit an amount of Rs. 5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favor of the Interim Resolution Professional (IRP) appointed herein, immediately upon communication of this Order.
- iv. There shall be a moratorium under section 14 of the Code prohibiting the following:
 - 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 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 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 Corporate Debtor.
- v. The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- vi. 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.
- vii. The order of moratorium shall have effect from the date of pronouncement 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, as the case may be.
- viii. The public announcement of the Corporate Insolvency Resolution process shall be made immediately as specified under section 13 of the Code.
- ix. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of section 17 of the Code. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.



- x. The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- xi. The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.
- xii. The Registry is also directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
- xiii. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- xiv. Accordingly, this Petition is **Admitted**.

SD/-

Charanjeet Singh Gulati
Member (Technical)

SD/-

Lakshmi Gurung
Member (Judicial)

Apurva, LRA