



**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

CP (IB) No.653/(PB)/2023

Old No. (IB)-154(PB)/2018

**ORDER UNDER SECTION 7 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016 R/W RULE 4 OF THE
INSOLVENCY AND BANKRUPTCY (APPLICATION TO
ADJUDICATING AUTHORITY) RULES, 2016.**

IN THE MATTER OF:

**NATIONAL ASSET RECONSTRUCTION COMPANY LTD. ACTING IN
ITS CAPACITY AS A TRUSTEE OF NARCL TRUST**

Through Authorised Representative

..... Applicant/Financial Creditor

REGISTERED OFFICE ADDRESS:

6TH FLOOR, WORLD TRADE CENTRE COMPLEX,
CUFFE PARADE, MUMBAI-400005.

UIN- AAHCN6975B

Versus

HELIOS PHOTO VOLTAIC LIMITED

REGISTERED OFFICE ADDRESS:

..... Respondent/Corporate Debtor

14, FIRST FLOOR, OKHLA INDUSTRIAL ESTATE,
PHASE IV, SOUTH DELHI- 110020.

CIN- U40106DL2005PLC143431

ORDER PRONOUNCED ON: 11.01.2024

CORAM:

JUSTICE RAMALINGAM SUDHAKAR

HON'BLE PRESIDENT

SHRI AVINASH K. SRIVASTAVA

HON'BLE MEMBER (TECHNICAL)

Appearances:

For the Financial Creditor : Mr. Abhishek Anand, Mr. Dhruv
Malik, Ms. Palak Nenwani, Mr. Rohit
Chopra, Ms. Aditi Sinha, Advs.



For the Corporate Debtor : Mr. Alok Dhir, Ms. Varsha Banerjee,
Mr. Karan Grover, Advs.

ORDER

1. This is an application filed on 24.02.2018 by **Oriental Bank of Commerce** (OBC; Applicant/Financial Creditor), through its authorized representative Mr. Nem Kumar (P.F. No.- 130211) S/o Lt. Sh. Nathumal, Chief Manager, having registered office at 1st Floor, 8/1, Abdul Aziz Road, Karol Bagh, New Delhi- 110005 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC,2016), r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (Adjudicating Authority Rules), for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Professional (IRP), against the Respondent/Corporate Debtor (CD) viz., **Helios Photo Voltaic Limited** for the default amount of Rs. 859,76,56,275.30/- (Rupees Eight Hundred Fifty-Nine Crore Seventy-Six Lacs Fifty-Six Thousand Two Hundred Seventy-Five Rupees and Thirty paise Only), as on 20.12.2017 (Interest calculated at 12%)
2. The Respondent/CD was incorporated on 07.12.2005, having CIN No.: U40106DL2005PLC143431, under the Companies Act, 1956. The Corporate Debtor is involved in the manufacturing of solar energy equipment including optical media storage products, photovoltaic cells, thin film modules, panels and other products of electrical equipment alongwith wires and cables. The registered office is at 43 B, Okhla Industrial Estate, Phase-III, New Delhi- 110020. Therefore, this Bench has jurisdiction to deal with this application. A copy of the



Master Data of the Respondent/Corporate Debtor as accessed from the MCA website is annexed as **Exhibit A**.

- 3.** The present application was filed on 24.02.2018 before this Adjudicating Authority on the ground that the CD has defaulted to make the re-payment of **Rs. 859,76,56,275.30/-** (Rupees Eight Hundred Fifty-Nine Crore Seventy-Six Lacs Fifty-Six Thousand Two Hundred Seventy-Five Rupees and Thirty paise Only), as on 20.12.2017. A copy of the working for computation of amount and days of default in a tabular form is annexed at **Part- IV of Application**.
- 4.** It is submitted that the CD had availed various loan facilities from the Financial Creditor (FC), which was guaranteed by Moser Baer India Limited ("MBIL") from 2006 to 2011 as per the below details:

 - (a) Term Loan of INR 60 Crores in October 2006
 - (b) Term Loan of INR 210 Crores in December 2006
 - (c) Term Loan of INR 465 Crores in September 2008
- 5.** It is submitted that in the present application, for the loan facility availed by the CD, Moser Baer India Ltd. stood as Corporate Guarantor. The Corporate Guarantor had executed an Agreement of Guarantee, dated 12.10.2006, 28.12.2006, 12.09.2008, ('Guarantee Agreements') in favour of the Applicant herein, in pursuance of Agreement of Term Loan, dated 12.10.2006, Supplemental Agreements dated 21.12.2006 and 12.09.2008 ('Loan Agreements') executed between Applicant and the CD herein.
- 6.** That there were irregularities which persisted in the loan account of the Corporate Debtor. On 22.12.2011, the FC was approached by the CD seeking Corporate Debt Restructuring ("CDR"). On 27.09.2012, the CDR was approved by the Reserve Bank of India ("RBI").



7. That on 18.01.2013, the Corporate Debtor had executed the Master Restructuring Agreement and the Trust Retention Agreement.
8. That the statutory auditors of the FC made certain observations with respect to non-compliances of the terms of the CDR by the CD (for instance, the security as required had not been created, promoter's contribution had not been received in full, stock statement had not been received). This was informed to CD vide letter dated 07.05.2013. It was further informed to the CD vide letter dated 07.05.2013 that due to non-compliance of the terms of the CDR, the auditors of the FC duly downgraded the account of the CD with effect from 31.03.2013.
9. That on 22.07.2014, the FC issued the 1st recall notice to the CD for recovery of INR 574,86,88,439.25/-. Thereafter, various meetings were held between the erstwhile FC (OBC assigned the loan to National Asset Reconstruction Company Ltd; para 15 *ibid*) and the CD, wherein the CD had assured that it would route all transactions through the Trust Retention Account and close all accounts with the other banks, but no concrete steps had been taken by it and despite follow-up, the CD had also failed to deposit the payment received from JVVN for the past 4 (four) months. Vide letter dated 02.09.2014, the FC requested the CD to deposit the payment received, failing which it would be treated as a default.
10. That in the Joint Lenders Meeting (JLM) held on 18.09.2014, it was decided that a review note on the status of compliance of the CDR ("Review Note") would be sent to the CDR Cell. After discussing the Review Note, the CDR Empowered Group ("CDR EG") decided to defer the exit of the CD from the CDR mechanism till 30.06.2015. Thereafter, vide letter dated 09.07.2015, the erstwhile FC had called



upon each lender to intimate their confirmation on the exit of the CD from the CDR. Eventually, in the 267th meeting of the CDR EG on 28.10.2015, it was decided that the account of the CD stands exited from the CDR system on account of its failure to comply with the terms and conditions of the CDR.

- 11.** That as the CDR EG had permitted the exit of the CD from the CDR package, the FC was constrained to issue another recall notice dated 01.12.2015 to the CD seeking repayment of INR: 685 crores within 30 (thirty) days.
- 12.** It is submitted that on 17.12.2015, the CD issued a revival letter (“Revival Letter”) to the FC admitting and acknowledging its debt under Section 18 of the Limitation Act, 1963 (“Limitation Act”) and expressing its intent to pay the FC. Since the CD failed to repay the outstanding amounts and committed a default, the FC filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”) on 24.02.2018 (“Section 7 Petition”). Therefore, the Section 7 Petition is not barred by limitation, as wrongly contended by the CD.
- 13.** That this adjudicating authority was pleased to allow the Application (C.A. No. 853(PB)/2018) of the CD vide Order dated 10.10.2019, thereby dismissing the captioned petition (C.P No. IB-154(PB)/2018) of the Applicant on the ground that the claim of the FC was admitted in liquidation proceedings of the guarantor Moser Baer India Limited. However, the Hon'ble Appellate Tribunal in Company Appeal (AT) (Insolvency) No.1293 of 2019, allowed the Appeal of the Applicant vide Order, dated 04.08.2022, thereby setting aside the Order of this Adjudicating Authority, dated 10.10.2019.



- 14.** It is submitted that the CD herein challenged the Order of Hon'ble Appellate Tribunal, dated 04.08.2022, before the Hon'ble Supreme Court in Civil Appeal No.5844 of 2022 which is pending disposal.
- 15. IA-4750/2023** for bringing on record the Agreement for Assignment of OBC's loan to National Asset Reconstruction Company Ltd. has already been disposed of vide earlier order dated 04.10.2023, the same is extracted below:

“Mr. Alok Dhir, Ld. Counsel along with Ms. Varsha Banerjee appeared on behalf of the Corporate Debtor i.e. Helios Photo Voltaic Ltd. and fairly concedes that he has no serious objection to the prayer given the fact that the applicant has now produced a registered assignment agreement. Consequently, he steps into the shoes of the erstwhile Oriental Bank of Commerce (now Punjab National Bank). The Applicant will now be substituted in place of the Petitioner in the main petition.

*Accordingly, **IA-4750/2023 is allowed in above terms and stands disposed of.**”*

Pursuant to that, both the Ld. Counsels brought our attention to the order passed by the Hon'ble Supreme Court dated 31.07.2023 in Civil Appeal No(s). 5844/2022 which reads as follows:-



UPON hearing the counsel the Court made the following

O R D E R

The pendency of this Civil Appeal before this Court will not come in the way of the National Company Law Tribunal (NCLT), New Delhi, taking up the case pursuant to the remand made by the National Company Law Appellate Tribunal (NCLAT), Principal Bench, New Delhi.

It is needless to observe that in case the NCLT decides the matter prior to the disposal of this Civil Appeal by this Court, the order of the NCLT shall be subject to the result of this Civil Appeal.

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Nandu Kumar
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Both parties are directed to appear before NCLT on 08.2023, without expecting any separate notices from NCLT to be served on the parties herein.

Contd..

- 2 -

Registry to communicate a copy of this order to the NCLT, Delhi.

List in the second week of September, 2023.

In view of the judgment passed by Hon'ble NCLAT and the Hon'ble Supreme Court, there is no impediment before the NCLT to proceed with the case.

In view of the order passed by the Hon'ble Supreme Court and at the request of the Ld. Counsel for the Corporate Debtor who is yet to file the reply because of the earlier proceeding which did not necessitate filing of reply, we now direct the Corporate Debtor to file the reply on or before 18.10.2023.



Both the counsels are directed to upload all the pleadings on the E-portal of the Tribunal and hard copy of the same before the next date of hearing. At request, list the matter on 18.10.2023.

- 16. IA-5808/2023** for nominating a new Interim Resolution Professional i.e., ASC Insolvency Services LLP in place of Mr. Kuldip Kumar Bassi has been disposed of vide earlier order dated 31.10.2023, the same is extracted below:

*“Ld. Counsel Mr. Abhishek Anand appeared on behalf of the Financial Creditor and Ld. Counsel Mr. Alok Dhir also appeared on behalf of the Respondent. In view of the submissions made by the Ld. Counsel for the Financial Creditor, the application is allowed. Accordingly, the **IA-5808/2023 stands allowed and disposed of.**”*

- 17. The Applicant/Financial Creditor in support of the Application placed the following documents on record: -**

- i. Copy of the Agreements dated 12.10.2006 including Hypothecation, Term Loan, Guarantee and Form 8 creating/modifying charge for Rs. 60 Crores at Exhibit C (colly).
- ii. Copy of the Agreements dated 28.12.2006 including Hypothecation, Term Loan, Guarantee and Form 8 creating/modifying charge for Rs. 210 Crores at Exhibit D (colly).
- iii. Copy of the Agreements dated 12.09.2008 including Hypothecation, Term Loan, Guarantee and Form 8 creating/modifying charge for Rs. 465 Crores at Exhibit E (colly).
- iv. Copy of the letters dated 27.09.2012, 15.10.2012 issued by the Corporate Debt Restructuring Cell providing the terms of restructuring of the Corporate Debtor at Exhibit F & G.



- v. Copy of the Master Restructuring Agreement (MRA) dated 18.01.2013 executed by the Corporate Debtor in favour of the Consortium at Exhibit H.
- vi. Copy of the Deed of Guarantee of Mr. Deepak Puri dated 18.01.2013 at Exhibit I.
- vii. Copy of the Agreements for Working Capital Term Loan and Funded interest Term Loan dated 18.01.2013 at Exhibit J and K.
- viii. Copy of the Trust and Retention Account (TRA) Agreement dated 21.01.2013 executed by Corporate Debtor in favour of Consortium at Exhibit L.
- ix. Copy of the Correspondences, Board Resolutions and Revival Letters at Exhibit U, V, W, X & Y.
- x. Copy of the Recall Notice dated 01.12.2015 of Financial Creditor to the Corporate Debtor as well as MBIL and Mr. Deepak Puri and Revival Letter dated 17.12.2015 of Corporate Debtor to the Financial Creditor at Exhibit Y.

18. Submissions of the Ld. Counsel appearing for the Respondent/Corporate Debtor are:

- i. The notice was issued to the Respondent/Corporate Debtor for entering appearance as well as for filing reply vide Order dated 04.10.2023. After due service the Respondent/Corporate Debtor appeared through its counsel and filed Reply denying various averments made in the Application on 30.10.2023.
- ii. It is submitted that the Corporate Guarantor in the instant case is already undergoing Corporate Insolvency Resolution Process pursuant to Order dated 14.11.2017, passed by this Hon'ble Tribunal



in CP(IB)/378(PB)/2017. The Applicant before this Hon'ble Tribunal had also filed its claim before the Resolution Professional as well as subsequently appointed Liquidator of the Corporate Guarantor. The aspect of maintainability of simultaneous proceedings is pending before the Hon'ble Supreme Court (Civil Appeal No. 5844/2022), the decision whereof shall have a direct bearing on the adjudication of the Application under reply.

- iii. That the application filed by the applicant is barred by limitation as the application has been filed after expiry of limitation period of 3 years since it is admitted by the Applicant that the loan account was declared Non-Performing Asset (NPA) on 31.03.2013, whereas the Application under reply has been admittedly filed by the Applicant only on 24.02.2018. The CD in support of the above contention placed reliance upon the Judgment of Hon'ble Supreme Court in ***B.K. Educational Services (P) Ltd. vs Parag Gupta & Associates*** cited as AIR 2018 SC 5601, ***Gaurav Hargovind bhai Dave vs Asset Reconstruction Company (India) Ltd. and Anr*** cited as (2019) 10 SCC 572, ***Babulal Vardharji Gurjar vs Veer Gujjar Aluminium*** cited as (2020) 15 SCC 1, and that of Hon'ble Appellate Tribunal in ***Jagdish Prasad Sarada vs Allahabad Bank 2020*** cited as 2020 SCCOnLine NCLAT 621 and ***Bishal Jaiswal vs Asset Reconstruction Company being Company Appeal (AT) (Insolvency) No. 385 of 2020.***
- iv. It is submitted that the application under section 7 of IBC has been preferred with the sole intent of recovery and not for resolution of debts of the corporate debtor and argues that it is a well settled law and no more res integra that the proceedings under IBC are not recovery proceeding and cannot be invoked for arm twisting or for the purpose of recovery of any alleged outstanding amount. The



intent of the legislature while enacting the IBC was maximization of value of assets of Corporate Debtors and promotion of entrepreneurship while ensuring that the present proceedings are not misused as recovery proceedings. IBC is not intended to be a substitute to a recovery forum and thus, cannot be used to jeopardize the financial health of an otherwise solvent company by pushing it into insolvency. The Respondent relied on the judgment of Hon'ble Supreme Court in the matter of **Invent Asset Securitization and Reconstruction Pvt. Ltd. v. Girnar Fibres Ltd.** (2022 SCC OnLine SC 808).

- v. It is submitted that this Adjudicating Authority has the discretion to reject a petition under Section 7 of IBC and can exercise its power in the instant case when the CD is otherwise a solvent company and is occupying a good share of market in its area of business, however, due to present unfortunate market forces and conditions, the CD is currently facing financial constraints. The Respondent relied on the case of **Vidarbha Industries Power Limited v. Axis Bank Limited** cited as (2022) 8 SCC 352
- vi. It is submitted that the financial creditor has failed to provide record of default with the information utility along with the petition filed under section 7 of IBC which is in contravention of directions passed by the Joint Registrar of this Adjudicating Authority, dated 03.04.2023 and IBBI circular No. No. IBBI/IU/59/2023, dated 16.06.2023, wherein all the Applicants filing Petitions under Section 7 and 9 of IBC are required to file record of default issued by Information Utility, prior to filing of the Application.
- vii. Hence, the Respondent/CD has prayed for dismissal of the Application.



19. The Respondent/Corporate Debtor in support of the Reply has also placed the following documents on record: -

Annexure A-1: - Copy of the order, dated 31.07.2023, of Hon'ble Supreme Court

Annexure A-2: - Copy of the case status of the petition of the Applicant from the website of this Adjudicating Authority.

Annexure A-3 (colly)- Copy of the circular, dated 16.06.2023, issued by the IBBI and general order, of this Hon'ble Tribunal, dated 03.04.2023.

20. Rejoinder of the Applicant/Financial Creditor to the reply of the Respondent/Corporate Debtor are:

- i. The India Debt Resolution Company Limited has filed the present Rejoinder to the Reply filed by the Respondent/CD as a Power of Attorney Holder of National Asset Reconstruction Company Ltd. (NARCL) acting in its capacity as a trustee of NARCL Trust. In view of the Assignment Agreement dated 03.03.2023, the financial debt owed to the erstwhile Financial Creditor i.e., Oriental Bank of Commerce (now merged with Punjab National Bank) (hereinafter referred to as the "erstwhile Financial Creditor") by the Corporate Debtor has been assigned to the NARCL (Financial Creditor). It is further submitted that the financial debt for which the OBC had filed the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 has been legally assigned to the NARCL as per the Assignment Agreement.
- ii. It is submitted that the corporate insolvency resolution process was initiated against the Corporate Guarantor (MBIL) on 14.11.2017 in CP (IB) No. 378 of 2017 and the erstwhile Financial Creditor had filed its claim before the Resolution Professional appointed for the



Guarantor, however, the said claim was rejected. Accordingly, the erstwhile Financial Creditor had filed C.A. No. 247 of 2018 in C.P. (IB) No. 378 of 2017 before this Hon'ble Tribunal for admission of its claim in the corporate insolvency resolution process of the Guarantor and on 24.02.2018, the erstwhile Financial Creditor had filed the Section 7 Application against the Corporate Debtor before this Hon'ble Tribunal. Thereafter, the application for admission of claim was dismissed by order dated 25.04.2018. Accordingly, the erstwhile Financial Creditor had filed an appeal before the Hon'ble Appellate Tribunal against the order dated 25.04.2018. Subsequently, on 20.09.2018, liquidation order was passed by this Adjudicating Authority against the Guarantor in CP(IB) No. 378 of 2017 and on 22.11.2018, the erstwhile Financial Creditor filed its claim before the Liquidator of the Guarantor for an amount of INR 939,10,91,379/- and the said claim was admitted. As the claim of the erstwhile Financial Creditor was admitted, the NCLAT Appeal against rejection of claim was disposed of by order dated 31.05.2019. However, since the claim of the erstwhile Financial Creditor was admitted in the liquidation proceedings of the Guarantor, an application was filed by the Corporate Debtor seeking dismissal of the Section 7 Application (i.e., C.A. No. 853 of 2018), which was allowed by order dated 10.10.2019.

- iii. It is submitted that subsequently, the erstwhile Financial Creditor sent an email dated 29.11.2019 to the liquidator of the Guarantor stating that it had decided to withdraw its claim filed in the liquidation proceedings of the Guarantor. Thereafter, the dismissal of the Section 7 application was challenged by the erstwhile Financial Creditor before the Hon'ble Appellate Tribunal, which was allowed by order dated 04.08.2022, and the matter was remanded



back to this Hon'ble Tribunal. In view of the aforesaid, it is wholly misconceived and misleading for the CD to aver that the same claim is being pursued against the Principal Borrower and the Guarantor. It is pertinent to mention here that the claim of the FC is valid against both the CD (i.e., the Principal Borrower) as well as the Guarantor since their liability is coextensive with each other and it is because the claim of the FC has been withdrawn from the liquidation proceedings of the Guarantor in view of the Section 7 Application, it is being pursued against the CD i.e., the Borrower. A copy of the email dated 29.11.2019 sent by the erstwhile Financial Creditor to the liquidator of the Guarantor is annexed herewith and marked as **Annexure A-2**.

- iv.* It is submitted that it has wrongly been contended by the CD that it is a solvent company and therefore, this Hon'ble Tribunal has discretion to reject the Section 7 Petition in terms of judgement of Hon'ble Supreme Court in the case of **Vidarbha Industries Power Limited v. Axis Bank Ltd.** (Civil Appeal No. 4633 of 2021). However, it has already been clarified in the review petition filed in Vidarbha (supra) [Review Petition (C) No. 1043 of 2022] that judicial utterances are specific to the facts of the case and are not to be interpreted as statutes. Furthermore, in **M. Suresh Kumar Reddy v. Canara Bank & Ors.** (Civil Appeal No. 7121 of 2022, pr. 10), it has been held that if a default has occurred in payment of a debt, there is hardly any discretion left with the Adjudicating Authority to reject a Section 7 application. Besides, the CD has failed "to demonstrate any intent of repaying the loan and it has been going through financial distress since many years, which is also evident from its failure to comply with the terms and conditions of the CDR package.



- v. It is submitted that the NeSL filing was made on 03.06.2023 and the document generated in Form C has been filed by the Financial Creditor along with the Rejoinder as **Annexure A-3** at pg. 21. Subsequent thereto, the Record of Default Certificate has been issued in Form D by NeSL and the same is attached herewith as 'Annexure A'. In any event, the Section 7 Petition was filed in the year 2018 and there was no requirement at the time to file the record of default and thereafter, proceedings in relation thereto were pending before the Hon'ble Appellate Tribunal and the Hon'ble Supreme Court.
- vi. It is submitted that CIRP can be initiated against the Principal Borrower and the Corporate Guarantor. The financial creditor relied on the judgment of Hon'ble NCLAT dated 24.11.2020 passed in **State Bank of India v. Athena Energy Ventures Private Limited** [Company Appeal (AT) (Ins.) No. 633 of 2020, paras 13, 16, 19] that release or discharge of a principal borrower, by an involuntary process, i.e., by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract. Further reliance is placed on **K. Paramasivam v. Karur Vysya Bank Ltd. & Anr.** [2022 SCC OnLine SC 1163, prs. 13, 14, 15] wherein it has been held that CIRP can be initiated against the corporate guarantor even before initiating CIRP against the principal borrower in the first place.
- vii. It is submitted that the Financial Creditor has nominated a new Interim Resolution Professional i.e., ASC Insolvency Services LLP in place of Mr. Kuldip Kumar Bassi who was nominated by the erstwhile Financial Creditor for which IA No. **5808/2023** was filed



before this Adjudicating Authority which has been allowed by this Hon'ble Tribunal vide order dated 31.10.2023.

21. The Applicant/Financial Creditor in support of the Rejoinder placed the following documents on record: -

ANNEXURE A-1- Copy of the Board Resolution dated 20.03.2023 and Power of Attorney dated 13.04.2023.

ANNEXURE A-2- Copy of the email dated 29.11.2019 sent by the erstwhile Financial Creditor to the liquidator of the Guarantor

ANNEXURE A-3- Copy of the record of default guaranteed by National E-Governance Services Ltd.

Analysis and Findings

22. We have heard the Ld. Counsel for the petitioner and respondent and perused the documents submitted. We take note that this Adjudicating Authority vide order dated 10.10.2019 had dismissed the section 7 application filed by erstwhile FC namely Oriental bank of Commerce on the ground that the applicant could not have moved the application both against the CD and the Corporate Guarantor. Thereafter Hon'ble NCLAT vide its order dated 04.08.2022 set aside the order dated 10.10.2019 and remanded the matter back to this Adjudicating Authority. Thereafter the CD herein challenged the Order of Hon'ble Appellate Tribunal, dated 04.08.2022, before the Hon'ble Supreme Court and the matter is currently pending before Hon'ble Supreme Court. Hon'ble Supreme Court vide its order dated 31.07.2023 in Civil Appeal No. 5844/2022 has held that pendency of Civil Appeal No. 5844/2022 will not come in the way of this



Adjudicating Authority to take up the case pursuant to the remand made by Hon'ble NCLAT.

- 23.** During the course of hearing, the Ld. Counsel appearing on behalf of the Corporate Debtor argued and made the following objections in the instant case: -
- i. Seeking repayment of the same amount from both the principal borrower and corporate guarantor is legally untenable.
 - ii. Application has been filed after expiry of limitation period of 3 years and is barred by limitation.
 - iii. Application under section 7 of IBC has been preferred with the sole intent of recovery and not for resolution of debts of the Corporate Debtor.
 - iv. The Hon'ble Tribunal has the discretion to reject a petition under section 7 of IBC as the Corporate Debtor is otherwise a solvent company.
 - v. The Financial Creditor has failed to provide record of default with the Information Utility along with the petition filed under section 7 of IBC.
 - vi. The issue pending before the Hon'ble Supreme Court in CA No. 5844/2022 goes to the issue of maintainability of the present petition.
- 24.** Ld. Counsel for CD submitted that the CD defaulted in its repayment obligation since December, 2011. The revival letter dated 17.12.2015 in terms of Section 18 has been made after the expiration of prescribed limitation period and cannot come to the aid of the Applicant to extend the limitation beyond 3 years.
- 25.** The Applicant replied to the issue of maintainability by placing reliance on the fact that the loan account of the Corporate Debtor was declared as non-performing asset on 31.03.2013. The Corporate



Debtor issued a revival letter dated 17.12.2015 addressed to the Financial Creditor wherein it not only admitted and acknowledged its debt but also expressed intention to pay the applicant. Section 7 Petition was filed thereafter on 24.02.2018, i.e., within 3 years from the date of loan recall notice i.e. 01.12.2015 and the acknowledgment of debt by Corporate Debtor. Hence, the present petition is filed within the period of limitation and is not barred by limitation.

- 26.** A certificate under Section 65-B of the Indian Evidence Act, 1872 has been filed by the Financial Creditor showing the total dues along with the account statements of the three loan accounts. The said certificate further discloses sufficient compliance with the provisions of the Indian Evidence Act of 1872 and the same has been taken on record. Therefore, the applicant's plea of debt and default is evident enabling us to proceed as per the code.
- 27.** Ld. Counsel for CD submitted that the aspect of maintainability of simultaneous proceedings against both the Principal Borrower and the Corporate Guarantor is pending before the Hon'ble Supreme Court, the decision whereof shall have a direct bearing on the adjudication of the Application under consideration, therefore, in the judicial propriety, it would just and equitable for this Adjudicating Authority to await the Order of Hon'ble Supreme Court in Civil Appeal No.5844/2022}, prior to passing any final order in the instant case. However, we are not inclined to accept this objection as the Hon'ble Supreme Court vide its Order dated 31.07.2023 (para 15 *ibid*) has held that the pendency of the Civil Appeal before the Hon'ble Supreme Court will not come in the way of NCLT, New Delhi, taking up the case pursuant to the remand made by NCLAT, Principal Bench, New Delhi. Therefore, the proceedings before the Hon'ble NCLT is not stayed and can be duly adjudicated.



28. The CD contends that the Financial Creditor has failed to provide record of default with the Information Utility along with the petition filed under section 7 of IBC. The Petition was filed in the year 2018 when there was no requirement at the time to file the record of default and thereafter, proceedings in relation thereto were pending before the Hon'ble Appellate Tribunal and the Hon'ble Supreme Court. The Applicant vide its Rejoinder has annexed the record of default generated by National e-Governance Services Ltd. as Annexure A-3.
29. Therefore, the above objections do not come to the rescue of the Corporate Debtor. Further, the availment of loan and defaulting in repayment is not denied in any manner.

In view of the above, we are inclined to allow this Petition.

30. Further, we are supported by the judgment of the Hon'ble Supreme Court in **Innoventive Industries Ltd. Vs. ICICI Bank and Anr. (2018) 1 SC 407**, which clearly held that:

“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 of 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 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 it may reject an application and not otherwise”

- 31.** Therefore, in the facts of the present case, we are satisfied that the present petition is maintainable and is within the period of limitation. Also, that the financial debt is due and there is default in payment of debt.

ORDER

In the light of the above facts and circumstances, it is, **hereby ordered** as follows: -

- i. The Application bearing **C.P. (IB) – 653/(PB)/2023 (Old No. (IB)-154(PB)/2018** filed by **National Asset Reconstruction Company Ltd.**, the Applicant/Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Helios Photo Voltaic Limited**, the Respondent/Corporate Debtor, is hereby **admitted**.
- ii. As a consequence of the Application C.P. (IB) – **653/(PB)/2023** being admitted in terms of Section 7 of the Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/Corporate Debtor 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(3) of the Code shall come into force.



- iii. The Applicant/Financial Creditor has proposed the name of **ASC Insolvency LLP** having Registered Office at 166, DDA SFS Flats, Hauz Khas, New Delhi-110016 as the IRP. The registration number is **IBBI/IPE-0060/IPA-1/2022-23/50012**. The Insolvency Professional (IP) has filed his written communication at **Annexure A3** of IA-5808/2023, as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by IP that there are no disciplinary proceedings pending against it with the Board or in Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by **ASC Insolvency LLP** as per the requirement of the IBBI Regulations. Accordingly, it satisfies the requirement of the Section 7(3)(b) of the code. Hence, we appoint **ASC Insolvency LLP** as the IRP of the Respondent/Corporate Debtor.
- iv. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- v. During the CIRP period, the management of the Respondent/Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the Respondent/Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this



Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.

- vi. The IRP is expected to take full charge of the Respondent/Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- vii. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Respondent/Corporate Debtor.
- viii. The Applicant/Financial Creditor shall deposit a sum of **Rs.5,00,000/- (Rupees five Lakhs only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (CoC).
- ix. In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Applicant/Financial Creditor, the Respondent/Corporate Debtor, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Respondent/Corporate Debtor and specific mention regarding admission of this petition must be notified.
- x. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.



- xi. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
RAMALINGAM SUDHAKAR
(PRESIDENT)

Sd/-
AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)