

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

**CP 1882/I&BP/NCLT/MAH/2018**

(Under Section 7 of the I&B Code, 2016)

In the matter of

**Asset Reconstruction Company  
(India) Limited**

...Financial Creditor  
v/s.

**Shivam Water Treaters Private  
Limited**

...Corporate Debtor

**Order Delivered on: 15.10.2018**

Coram: Hon'ble Shri V. P. Singh, Member (Judicial)  
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Ms. Jyoti Singh Advocate and Ms. Neha Naik,  
Advocate i/b Phoenix Legal

For the Respondent: Mr. Mayank Bagle, Advocate i/b Mr. Puneet  
Gogad, Advocate

*Per V. P. Singh, Member (Judicial)*

**ORDER**

1. It is a Company Petition filed u/s 7 of Insolvency & Bankruptcy Code, 2016 (IBC) by Asset Reconstruction Company (India) Limited (**hereinafter referred to as 'ARCIL Company'**), Financial Creditor against Shivam Water Treaters Private Limited, Corporate Debtor, to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor on the grounds that, as on 27.09.2017, Corporate Debtor has defaulted in making repayment of debt amounting to Rs.1,24,34,45,232/- collectively under the Cash Credit Facility, Corporate Loan I and Corporate Loan II.

2. It is pertinent to note the brief facts that led to the present petition. State Bank of India (**hereinafter referred to as "SBI"**) i.e. the original lender sanctioned credit limits for a total amount of Rs.39,37,00,000/- vide its sanction letter dated 17.09.2009 which was secured by various security documents. SBI along with Allahabad Bank who is also a lender of the Corporate Debtor constituted SBI consortium vide an inter se agreement on 10.10.2009 and SBI was

nominated as the lead bank in the consortium. Another Working Capital Consortium Agreement dated 10.10.2009 was entered into between SBI, Allahabad Bank and the Corporate Debtor. On 31.03.2011 SBI issued another Arrangement Letter for renewal/enhancement of credit limit to Rs.41,26,00,000/-, which included an amount of Rs.10,00,00,000/- sanctioned by SBI. The account of Corporate Debtor was classified as Non-Performing Asset on 21.07.2011 after which, in the year 2012, the lenders had initiated recovery and SARFAESI proceedings and several proceedings remain pending inter se parties.

3. This petition was originally filed before NCLT, Ahmedabad Bench in October, 2017 and was subsequently transferred to this Bench by an order of Registrar, National Company Law Tribunal dated 17.05.2018. The order of the Registrar was passed pursuant to order of the Hon'ble Supreme Court dated 09.05.2018.

4. It is the case of the Petitioner that the Petitioner is a company incorporated under Companies Act 1956 and registered as a Securitization or Reconstruction company with Reserve Bank of India under section 3 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI) and has acquired the financial secured assets of the SBI vide a Registered Assignment Agreement dated 28.03.2014 acting in the capacity of Trustee of Arcil-AST IV-Trust (**hereinafter referred to as 'ARCIL Trust'**).

5. The counsel for the Petitioner submits that it being an assignee, falls in the definition of Financial Creditor as per section 5(7) of IBC, 2016. As per section 7(1) of IBC, 2016 a Financial Creditor can file an application for initiation of CIRP of corporate Debtor either by itself or jointly with other financial creditor or any other person on behalf of the financial creditor. Hence ARCIL Company in its capacity as a trustee of ARCIL Trust is entitled to file the application in terms of Section 7(1) of IBC, 2016.

6. The counsel for the petitioner submits that it has acquired the financial assets of SBI due from Corporate Debtor as per section 5(1)(b) of SARFAESI Act vide an assignment agreement dated 28.03.2014 through Mr. Amit Kedia who was authorized vide a Power of Attorney dated 03.02.2011 which was subsequently registered on 24.07.2014 by Mr. Amit Kedia, authorized for this purpose on 23.07.2014. The counsel for the petitioner emphasizes on the fact that the respondent has not denied the outstanding debt and its liability to

pay under the facilities granted to it by the lenders and thereby admitting the debt and default. The Corporate Debtor has also made payment to the Petitioner on 21.08.2014 i.e. after the assignment of the debt by the lenders to the Petitioner on 28.03.2014 and is thereby estopped from disputing the assignment agreement.

7. The Petitioner submits that the Corporate Debtor has defaulted on the principal amount for which it has been charged with interest under various arrangements as per the following details as on 27.09.2017:

Total outstanding dues (along with interest; in INR)	Loan Facility
4,65,83,386/-	Corporate Loan I
96,97,18,459/-	Cash Credit Facility
22,71,43,388/-	Corporate Loan II
<b>1243445232/-</b>	<b>Total outstanding</b>

8. The Respondent in this petition has raised certain issues in its defense to establish that this Bench does not have jurisdiction to entertain the petition nor does the Petitioner has a right to file the Petition. At the very onset of the hearing the counsel for the Respondent submitted that there is direction for this petition to be heard by Bench constituting specific Members and hence shall be listed before such Bench of NCLT. The counsel for the Respondent submits that the present petition under section 7 of IBC is filed by the ARCIL Trust and not by the ARCIL Company as the Petitioner in its application states that it is acting in its capacity as a trustee of ARCIL Trust. The Respondent alleges that the present Petition is without power and authority as it is signed by the representative of the ARCIL Company and not the representative of the ARCIL Trust and the same is not supported by any duly executed Trust resolution. The Respondent has relied upon the observation of the Hon'ble DRT-I, Ahmedabad in its order dated 10.06.2016 in S.A. No.24 of 2013 wherein it was observed that State Bank of India cannot legally assign the Debts and Securities in favor of a ARCIL Trust. It was further submitted that ARCIL Company has no locus to file the Petition as Assignment Deed in favour of ARCIL trust is struck down by DRT-I at Ahmedabad and therefore there is no valid assignment in favour of Financial Creditor in light of DRT order.

9. The counsel for the Respondent submits that the petitioner has not placed any board resolution on record authorizing the petition to be filed and relying on the judgment in Palogix Infrastructure Private Limited vs ICICI Bank Limited in *Company Appeal (AT) (Insol.) No. 30 of 2017* the present petition is not maintainable. The counsel for the Respondent submits that the said Assignment Deed is executed on 28.03.2014, however, the said Deed relies upon an authority letter dated 23.07.2014 authorising Mr. Amit Kedia to enter into the Assignment Deed which was executed prior in time to the authorisation. It is further alleged that the Financial Creditor fraudulently suppressed an alleged Authorisation executed by the Creditor in the year 2011 authorising Mr. Kedia to enter into such Assignment Deed and that a copy of the same is not provided to the Respondent for examining its validity and therefore the same is forged and fabricated.

10. The counsel for the Respondent has also argued that the petition is time barred as being filed beyond the limitation period of three years from the date when the account of the respondent company was classified as NPA on 21.07.2011.

11. On perusal of the petition and the documents filed it is noted that the SBI i.e. the original lender sanctioned credit limits for a total amount of Rs.39,37,00,000/- vide its sanction letter dated 17.09.2009 which was secured by various security documents. SBI along with Allahabad Bank who is also a lender of the Corporate Debtor constituted SBI consortium vide an inter se agreement on 10.10.2009 and SBI was nominated as the lead bank in the consortium. Allahabad Bank executed a Letter of Authority in favour of SBI authorizing them to take all actions and decisions on its behalf as Lead bank of the SBI Consortium. Another Working Capital Consortium Agreement was entered into between SBI, Allahabad Bank and the Corporate Debtor. On 31.03.2011 SBI issued another Arrangement Letter for renewal/enhancement of credit limit to Rs.41,26,00,000/-, which included an amount of Rs.10,00,00,000/- sanctioned by SBI. The account of Corporate Debtor was classified as Non-Performing Asset on 21.07.2011 after which, in the year 2012, the lenders had initiated recovery and SARFAESI proceedings and several proceedings remain pending inter se parties.

12. It is to be noted that as per the certificate under the Information Technology Act, 2000 issued by the ARCIL Company the total dues along with the interest of the Corporate Debtor amounts to Rs.1,24,34,45,232/-. As per the calculation work sheet, certain

payments are made by the Corporate Debtor to the Petitioner on 21.08.2014 under all the three Borrower account codes. These payments to the Petitioner are not disputed by the Respondent and are made after the execution of assignment agreement which the Respondent is now contesting to be invalid.

13. As per section 5(7) of IBC, 2016, financial creditor means any person to whom a financial debt is owed and includes a person to whom such a debt is legally assigned or transferred. On perusal of the Assignment Agreement dated 28.03.2014, the agreement legally assigns the impugned debt to ARCIL Company as Trustee of ARCIL Trust. Therefore ARCIL Company is a financial creditor in the meaning of section 5(7) and we do not find any force in the argument of the Respondent that the ARCIL Company is not a Financial Creditor in terms of provisions of IBC, 2016.

14. The Respondent has nowhere disputed the existence of debt to SBI and neither has it raised any question on default in repayment of the Debt. Hence the Debt and default is admitted. The only contention of the Respondent is regarding the assignment of the said debt which is already settled as per our discussion above. Therefore, there is clear existence of a debt as defined in Section 3(11) of IBC, also there is default in this case within the meaning of Section 3(12) of IBC without any evidence of dispute with regard to the claim amount.

15. As to the respondents contention regarding the Hon'ble DRT holding the assignment agreement invalid, it must be noted that the proceedings there were under SARFAESI Act which is different from that in the present petition before this Bench which is under IBC, 2016. More particularly, in the light of the appeal against the said order of DRT it is not binding on this aspect.

16. The contention of the Respondent, that the Petition is time barred, ought to be rejected as the prescribed limitation period in suits for enforcing payment of money secured by a mortgage or otherwise charged upon immovable property is Twelve years from the date when money sued for becomes due. In the light of decision of Hon'ble NCLAT in the matter of *Innoventive Industries Ltd. vs. ICICI Bank & Anr.*, in *Company Appeal (AT) (Insolvency) No. 1 & 2 of 2017*, we do not find any force in any of the arguments of the Respondent.

17. For the Petitioner having proved the existence of debt as well as existence of default, this Petition is hereby admitted against this Corporate Debtor.

18. The Corporate Debtor having named the Interim Resolution Professional with his consent, there being no disciplinary proceedings against the same, this Bench hereby admits this petition filed under Section 7 of IBC, 2016, declaring moratorium with consequential directions as mentioned below:

- I. That this Bench hereby prohibits
  - 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.
- II. 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.
- III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. 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 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.

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V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.

VI. That this Bench hereby appoints Ms. Hema Shah, having Registration Number [IBBI/IPA-001/IP-P00343/2017-18/10664] as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

19. Accordingly, this Petition is admitted.

20. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or whatsapp.

sd/-

**RAVIKUMAR DURAISAMY**  
**Member (Technical)**

sd/-

**V. P. Singh**  
**Member (Judicial)**

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