

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

C.P. (IB) No. 209/KB/2023

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

In the matter of:

Edelweiss Asset Reconstruction Company Limited

.....Financial Creditor/Petitioner

-Versus-

Mona Gases Private Limited [CIN: U11100JH2004PTC010737]

.....Corporate Debtor/ Respondent

Date of Hearing:10.06.2024

Date of Pronouncement: 25.06.2024

Coram:

Smt. Bidisha Banerjee	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (via video conferencing/physically)

<i>For the Financial Creditor</i>	:	Mr. Pratik Ghose, Adv. Mr. Avishek Roy Chowdhury, Adv.
<i>For the Corporate Debtor</i>	:	<i>None</i>

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court convened through hybrid mode.

2. This Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred as “the Code” or “IBC”) by **Edelweiss Asset Reconstruction Company Limited** hereinafter referred to as “*Financial Creditor*” seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Mona Gases Private Limited**, hereinafter referred to as “*Corporate Debtor*”.
3. The Corporate Debtor is a private limited company incorporated on 17.05.2004. The authorized share-capital of the company ₹25,00,000/- and the paid-up share capital of the company is ₹22,55,000/-.
4. The total amount claimed to be in due to the Financial Creditor, is Rs. 5,66,33,785/-. The date of default mentioned in the petition is 01.10.2006.

Submissions behalf of the Financial Creditor:

5. It is stated that Central Bank of India (CBI) had sanctioned credit facilities to the Corporate Debtor herein *vide* sanction letter¹ dated 04.01.2005, thereby granting a Term Loan -LAP to the tune of Rs.1,73,99,999/- (Rupees 173 lacs) to Corporate Debtor.
6. The Corporate Debtor committed default in repayment of the same and as such the account was classified as NPA on 01.10.2006. Notice under section 13(2) was issued by the predecessor-in-interest of the Financial Creditor herein.
7. The said account with all its rights title and interest was assigned to Edelweiss Asset Reconstruction Company Ltd. *vide* Assignment Deed dated 28.03.2014 subsequent to which the Corporate Debtor mutually agreed to a Negotiated Settlement of dues with the present Financial Creditor, the said settlement dated 17.04.2015 did not materialise and was revoked by a letter dated 26.05.2016.
8. As on 21.04.2023, the principal amount due and payable is Rs.2,48,76,155/- and the interest amount payable is Rs. 3,42,57,574/-. As such the total amount due and payable is Rs. 5,66,33,785/-. Further interest from 21.04.2023 till the date of realisation is also payable by the Corporate Debtor.

Contentions of Corporate Debtor

9. As recorded in the daily order dated 21.11.2023, notice was sent from the Registry to the Respondents *via* speed post and email which were duly delivered. Despite service of notice, the Respondents failed to appear in any of the subsequent

¹Annexure A

hearings. Affidavit of service in terms of order 21.02.2024 has been filed by the Ld. Counsel on behalf of the Financial Creditor. In absence of any representation on behalf of the Corporate Debtor, we proceed to deal with the matter on the basis of available documents.

Analysis and Findings:

10. Heard the Ld. Counsel on behalf of the Financial Creditor and perused the record.
11. From the loan sanction agreement² dated 04.01.2005 and the balance sheets³ of the Corporate Debtor for the Financial Year 2005-06, it is clear that the loan amount was disbursed to the Corporate Debtor. Thereafter, the account of the Corporate Debtor became NPA on 01.10.2006⁴ indicating that the Corporate Debtor had defaulted in its payments.
12. The default of the Corporate Debtor becomes further clear from the Negotiated Settlement of Dues between the parties dated 17.04.2015 which was signed by the parties herein. The said Negotiated Settlement of Dues was cancelled⁵ by the Financial Creditor herein, on 26.05.2016.
13. Furthermore, the Records⁶ of National E-Governance Services Limited (NESL) as on 21.04.2023 also reveal that an amount of Rs. 5,66,33,785/- is overdue for payment from the Corporate Debtor to the Financial Creditor herein.
14. Regarding the point of limitation, it is noted that the loan was sanctioned on 04.01.2005 and the account of the Corporate Debtor become NPA on 01.10.2006. Thereafter, Corporate Debtor has admitted to the aforesaid loan and well as its subsequent default (the NPA status of its loan account) default in its balance sheets pertaining to the Financial Years 2005-06⁷, 2006-07, 2007-08, 2008-09⁸, 2009-10, 2010-11, 2011-12⁹, 2012-13, 2012-14¹⁰, 2015-16, 2016-17, 2017-18¹¹, 2018-19, 2019-20, 2020-2021¹², 2021-2022¹³.

²Annexure A

³Annexure H, Page 79-79A

⁴Annexure F, Page 60

⁵Annexure E, Page 58

⁶ Annexure J

⁷Annexure H, Page. 79-79A

⁸Annexure H, Page. 90-90A

⁹Annexure H, Page. 99-99A

15. The acknowledgements have the effect of enlarging the limitation period in terms of section 18 of the Limitation Act, 1963 for the acknowledgements continues almost unabated till 2021-2022.
16. In this regard, we place reliance of the decision of Hon'ble Supreme Court of India in the matter of ***State Bank of India vs. Krishidhan Seeds Private Limited***¹⁴ wherein the Apex Court has held as follows:

“The decisions in Sesh Nath Singh (supra), Laxmi Pat Surana (supra) and Asset Reconstruction Company (supra) have subsequently been followed in numerous decisions of this Court delivered by two-Judge Benches, namely: (i) Dena Bank v C. Shivakumar Reddy¹⁵; (ii) State Bank of India v Vibha Agro Tech Limited¹⁶; (iii) Devas Multimedia Private Ltd. v Antrix Corporation Ltd. and Another¹⁷; and (iv) SVG Fashions Pvt. Ltd. (Earlier Known As SVG Fashions Ltd.) v Ritu Murli Manohar Goyal and Another¹⁸. Besides the above decisions, there is a more recent decision of a three-Judge Bench of this Court in Rajendra Narottamdas Sheth and Another v Chandra Prakash Jain and Another¹⁹, where, speaking for the Bench, Justice L Nageswara Rao held:

“25. We have already held that the burden of prima facie proving occurrence of the default and that the application filed under Section 7 of the Code is within the period of limitation, is entirely on the financial creditor. While the decision to admit an application under Section 7 is typically made on the basis of material furnished by the financial creditor, the Adjudicating Authority is not barred from examining the material that is placed on record by the corporate debtor to determine that such application is not beyond the period of limitation. Undoubtedly, there is sufficient material in the present case to justify enlargement

¹⁰Annexure H, Page. 105

¹¹Annexure H, Page. 131

¹²Annexure H, Page. 177

¹³Annexure H, Page. 195

¹⁴ (2022) ibclaw.in 40 SC

of the extension period in accordance with Section 18 of the Limitation Act and such material has also been considered by the Adjudicating Authority before admitting the application under Section 7 of the Code. The plea of Section 18 of the Limitation Act not having been raised by the Financial Creditor in the application filed under Section 7 cannot come to the rescue of the Appellants in the facts of this case. It is clarified that the onus on the financial creditor, at the time of filing an application under Section 7, to prima facie demonstrate default with respect to a debt, which is not time-barred, is not sought to be diluted herein. In the present case, if the documents constituting acknowledgement of the debt beyond April, 2016 had not been brought on record by the Corporate Debtor, the application would have been fit for dismissal on the ground of lack of any plea by the Financial Creditor before the Adjudicating Authority with respect to extension of the limitation period and application of Section 18 of the Limitation Act.”

13 In view of the above decisions, the position of law has been set at rest. Neither the NCLT nor the NCLAT had the benefit of adjudicating upon the factual controversy in the context of the decisions of this Court. The principles which emerge are that:

- (i) The provisions of Section 18 of the Limitation Act are not alien to and are applicable to proceedings under the IBC; and*
- (ii) An acknowledgement in a balance sheet without a qualification can furnish a legitimate basis for determining as to whether the period of limitation would stand extended, so long as the acknowledgement was within a period of three years from the original date of default.”*

17. In light of the law laid down in *Krishidan Seeds (supra)*, it is clear that section 18 of the Limitation act, 1963 will be applicable in the instant matter and a fresh limitation period would ensue from the date of each acknowledgement. Taking into account the aforesaid acknowledgments of dues, the limitation for filing of the instant petition would extend till 31.03.2025. As such, the instant petition filing on 08.08.2023 is well within limitation.
18. The aforesaid sanction letter, the Negotiated Settlement of Dues and the balance sheets of the Corporate Debtor clearly establish that there exists a debt due from the Corporate Debtor to the Financial Creditor and the Corporate Debtor has defaulted in repayment of the same.
19. Lastly, the amount of debt due and payable as on 21.04.2023 exceeds the minimum pecuniary threshold stipulated under section 4 of the Code.
20. In light of the record available before us, the 'debt' and 'default' stand established. As such, this Adjudicating Authority is satisfied that this petition deserves to be admitted.
21. It is, accordingly, hereby ordered as follows:-
 - i. The application bearing **CP (IB) No. 209/KB/2023** filed by **Edelweiss Asset Reconstruction Company Limited**(*Financial Creditor*), under section 7 of the Code read with rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Mona Gases Private Limited** [CIN: U11100JH2004PTC010737], the Corporate Debtor, is *admitted*.
 - ii. There shall be a moratorium under section 14 of the IBC.
 - iii. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- iv. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- v. **Mr. Uttam Kumar Agarwal**, having registration number IBBI/IPA-001/IP-P02075/2020-2021/13226email:uttamagarwal_ca@yahoo.co.in, Mobile: 9830087038, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.
- vi. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- vii. During the CIRP period, the management of the 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 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.
- viii. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- ix. The Financial Creditor shall initially deposit a sum of ₹ 3,00,000/- (**Rupees Three lakh only**) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC). Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No.

IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.

- x. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
 - xi. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
22. **CP (IB) No. 209/KB/2023** to come up on 26.07.2024 for filing the progress report.
23. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed this order on the 25th of June, 2024.

SM(LRA)

DIVISION BENCH
COURT - I

O-205

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/209(KB)2023
IA(I.B.C)/1987(KB)2024,
IA(I.B.C)/2184(KB)2024

**CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), SHRI BALRAJ JOSHI**

ORDER SHEET OF THE HEARING ON 2ND DECEMBER 2024

IN THE MATTER OF	EDELWEISS ASSET RECONSTRUCTION COMPANY LIMITED VS MONA GASES PRIVATE LIMITED
UNDER SECTION	IBC UNDER SEC 7

Counsel appeared through physically/virtually

Mr. Pratik Ghose, Adv.] For the Applicant/CoC
Mr. Avishek Roy Chowdhury, Adv.

ORDER

1. Ld. Counsel for the Applicant present.'
2. IA(I.B.C)/1987(KB)2024
 - a. We have been taken through the resolution to replace Mr. Uttam Kumar Agarwal, IRP by Mr. Sanjay Vijay Jeswani, IRP meeting held on 07.01.2024. The resolution has been passed by the CoC as required under law. On being satisfied with the pleadings, we allow the application to replace Mr Uttam Kumar Agarwal, by Mr. Sanjay Vijay Jeswani, being Registration No.IBBI/IPA-001/IP-P-02891/2024-2025/14432 as the IRP in the matter. Accordingly this IA is disposed of.
3. List the matter on **24.12.2024**.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)