



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 201
IB-585/ND/2024

IN THE MATTER OF:

Plaza Commercial Private Limited

...

Applicant/Petitioner

Versus

Mona Portfolio Limited

...

Respondent

Under Section: 7 of IBC, 2016

Order delivered on 05.12.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Aditya Bhattacharya, Adv. Kaustav S., Adv.
Ujjaval Gupta

For the Respondent : Adv. Keshav Maheshwari

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

The captioned petition has been preferred under Section 7 of IBC, 2016, seeking initiation of CIRP qua the Corporate Debtor viz. Mona Portfolio Limited. It is the case of the Petitioner that it is a company incorporated under the Companies Act, 2013 and is engaged in the business of finance. The Corporate Debtor is also in the same business and had accepted an Inter Corporate Deposit from Grainland Agrotech Private Limited. Subsequently, an agreement was entered into between M/s Grainland and the Financial Creditor whereby M/s Grainland assigned the debt to Financial Creditor. The loan amount which was assigned to the Financial Creditor by virtue of the Deed of Assignment of Debt amounted to Rs.65,93,91,000/-. The amount of debt defaulted to be paid and the dates of



default are mentioned in Part IV of the application. The relevant excerpt of the Part reads thus: -

ii.	Amount Claimed to be in Default and the Date on which the Default occurred (Attach workings for computation of amount and days of default in tabular form)	The total amount due to the Dinancial Creditor as principal is Rs. 65,93,91,000 (Sixty-Five Crores Ninety-Three Lakhs Ninety One Thousand only). The interest due on the same is at the rate of 7% p.a. from 01.02.2023 till date and which continues to be payable during the pendency of any legal action which may be taken in due course
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2. The deed of assignment has been placed on record as Annexure A-7 to the petition. The relevant excerpt of the deed reads thus: -

NOW THEREFORE IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AND THIS DEED WITNESSETH AS UNDER:

1. That the ASSIGNOR has assigned all its outstanding debts on account of the outstanding payments towards the said Inter Company Deposit ('ICD') which M/s. MONA PORTFOLIO LIMITED, owes to the ASSIGNOR for a consideration of transfer of investments set out on **Schedule I** held by the assignee in favour of the assignor.
2. That in consideration of transfer of investments set out on **Schedule I** held by the assignee in favour of the assignor which will be transferred within 3 months of execution of this agreement to the ASSIGNOR by the ASSIGNEE (the receipt whereof the ASSIGNOR hereby acknowledges) , the ASSIGNOR, as beneficial owner, does hereby transfer, sell and assign unto and to the use of the ASSIGNEE, the said debt and sums of money as specified in the **Schedule - II** which includes all dues, from **M/s MONA PORTFOLIO LIMITED** due to the ASSIGNOR; to have and to receive the same along with the one-time interest/compensation that will be mutually decided by the assignee and M/s Mona Portfolio Limited and also the future interest thereon for its absolute use and benefit with absolute power, authority and liberty to enforce payment thereof by way of all such rights which any creditor would have under the existing laws.



3. That the ASSIGNOR has assigned the said debt of Rs. Rs. 65,83,91,000/- (Rupees Sixty Five Crore Eighty Three Lakh Ninety One Thousand Only) to the ASSIGNEE. The ASSIGNOR will get the transfer of investments set out on **Schedule I** held by the assignee in favour of the assignor, which will be transferred within 3 months post execution of this agreement, as a consideration amount for the Assignment of Business Debt of Rs. 65,83,91,000/- (Rupees Sixty Five Crore Eighty Three Lakh Ninety One Thousand Only) as aforesaid, post execution of said transfer, the ASSIGNOR herein is not be left with any right, title or interest whatsoever to claim/recover or any right to recover any amount from M/s. MONA PORTFOLIO LIMITED relating to the ICDs, interest or any other amount related thereto, which are the subject matter of the present Deed and such rights shall henceforth exclusively vest in the ASSIGNEE. Hereinafter, the ASSIGNOR shall not have any surviving interest in the said debt in any manner whatsoever. The ASSIGNOR, his attorneys, assigns or heirs/successors shall not be entitled to, in any manner, for the repayment of the said debt by MONA PORTFOLIO LIMITED to ASSIGNEE or any other entity/person. The ASSIGNOR has consented to the assumption of liability, by MONA PORTFOLIO LIMITED, as far as the subject ICDs are concerned, to/in favour of ASSIGNEE herein.

4. That the ASSIGNOR has handed over all documents pertaining the ICDs under reference and those closely or remotely related to the said ICD and the Debt under reference, all rights qua the Debt being assigned by way of this assignment deed.

5. That the ASSIGNOR shall at all points of times hereafter do, execute and perform all such other acts, deeds, things, or writings as may be reasonably required by ASSIGNEE for realization of said assigned debt. Both ASSIGNOR as well as the ASSIGNEE shall be bound to comply with their respective applicable tax implications, if any.

6. That the ASSIGNEE shall not be liable for any expenses or dues which had been done or made or promised by the ASSIGNOR around the salvage or recovery of the loans by any other modus with any other party or parties other than this assignment deed.

3. The particulars of the IP proposed to be appointed as RP are given in Part III of the application which reads thus: -



PART III

<u>Particulars of the Proposed Interim Resolution Professional</u>	
Name, Address, Email Address and the Registration Number of the Proposed Interim Resolution Professional	Name:- Mahesh Agarwal Reg. No. IBBI/IPA-001/IP-P-P-01995/2020-2021/13087 Address:- D-13, Suvidha Apartment, Sector-13, Near DC Chowk, Rohini, Delhi-110085 Email Id:- ipl1387ma@gmail.com
	Insolvency Professional Agency: Indian Institute of Insolvency Professionals of ICAI

4. However, no consent of IP (ibid) has been placed on record.
5. It is seen from Section 7(3) of IBC, 2016, the Financial Creditor shall along with the application furnish record of the default recorded with the information utility or such other record or evidence of default as may be specified; the name of the resolution professional proposed to act as an interim resolution professional; and any other information as may be specified by the Board. The said provision reads thus: -

“7. Initiation of corporate insolvency resolution process by financial creditor.—

[...]

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;



(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.”

6. In terms of the provisions of Section 7(5) of the Code, where this Adjudicating Authority is satisfied that a default has occurred and the application under sub-section (2) is complete and there is no disciplinary proceeding pending against the proposed resolution professional, it may, by order, admit such application preferred under Section 7(1) of the Code.

7. Indubitably, from the deed of assignment, it is clear that the amount of debt payable by the Corporate Debtor to M/s Grainland was assigned to the Petitioner before us. Since on demand of the amount of debt by the Petitioner in terms of the letter dated 23.05.2024, the amount of debt was not repaid by the date specified in the notice i.e. within three days of receipt of the notice and the Corporate Debtor did not dispute the liability, the default occurred on expiry of three days from 23.05.2024.

8. It is seen that the written communication by proposed IRP in terms of Form 2 under sub-rule (1) of Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been placed on record. As can be seen from clauses (vi) & (vii) of the Form, the IP has declared that there are no disciplinary proceedings pending against him. The clauses read thus: -

“vi. certify that there are no disciplinary proceedings pending against me with the Board or IIIP (ICAI);

vii. affirm that I am eligible to be appointed as an interim resolution professional in respect of the corporate debtor in accordance with the



provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;”

9. To show the liability of the Corporate Debtor to repay the amount of debt to M/s Grainland Agrotech Private Limited, the Ld. Counsel for the Financial Creditor could draw our attention to “Confirmation of Accounts” by M/s Grainland Agrotech Private Limited, placed on record from page 33 to 45 of the petition.

10. From the aforementioned, it is clear that the requirement of the provisions of Section 7 (3) & (5) of the Code r/w Regulation 2A of IBBI (CIRP) Regulations 2016 are met.

11. On service of notice, appearance on behalf of Corporate Debtor has been made and a reply has also been filed. As can be seen from para 8 to 12, of the reply, the Corporate Debtor has accepted the liability to pay the amount of debt to the Petitioner as also the default committed by it in repayments of the same.

The paras read thus: -

“8. That the Respondent/Corporate-Debtor entered into and Agreement dated 18.09.2019 (hereinafter referred as ‘ICD Agreement’) with M/s Grainland Agrotech Private Limited (a company established under the provisions of Companies Act) vide which the Respondent/Corporate-Debtor has accepted the Inter Corporate Deposits from M/s Grainland Agrotech Private Limited.”

“9. That as per the terms of ICD Agreement dated 18.09.2019, a total unsecured loan of Rs. 100 Crores was to be extended by M/s Grainland Agrotech Private Limited to the Respondent/Corporate-Debtor herein. It is submitted that the loan amount was extended by the M/s Grainland Agrotech Private Limited to the Mona Portfolio in several trenches from time to time. It is pertinent to mention that the Respondent/Corporate Debtor has



repaid the huge sum (in several trenches) towards the part payment of the loan amount extended by the M/s Grainland Agrotech Private Limited.”

“10. That the Respondent/Corporate-Debtor has always been committed to the terms of ICD Agreement dated 18.09.2019, and in pursuance of that has already paid huge sums of money towards the payment of loan amount as well as interest amount. It is submitted that Respondent/Corporate-Debtor is still committed to fulfil its obligation as per the terms of the ICD Agreement dated 18.09.2019 and willing to pay the remaining sum towards the loan amount. It is submitted that only the payment of Rs. 65,93,91,000 (Sixty-Five Crores Ninety-Three Lakhs Ninety-One Thousand only) is remaining to be paid by the Respondent/Corporate Debtor towards the full and final closure of the Loan extended to the Respondent/Corporate Debtor vide ICD Agreement Dated 18.09.2019, and rest of the amount has already been paid.”

“11. It is hereby submitted that Respondent/Corporate-Debtor is determined to make the remaining payment of Rs. 65,93,91,000/-. It is just the financial constraints faced by the Respondent/Corporate-Debtor for last few years, primarily due to the hardship faced by the Respondent/Corporate-Debtor due to the unprecedented abysmal impact of the covid-19 Pandemic in the business of Respondent/Corporate-Debtor, the remaining amount could not be paid on time. It is hereby submitted that the Respondent/Corporate-Debtor is willing to make the payment of remaining loan amount and do the same in near future.”

“12. That on 15.04.2023 the Applicant intimated the Respondent/Corporate-Debtor about the Debt Assignment Agreement dated 31.01.2023 entered upon between Applicant and M/s Grainland Agrotech Private Limited vide which the Latter assigned the debt of Rs. 65,83,91,000/- to the former. It is submitted that the vide letter dated 20.04.2023, the Respondent/Corporate-Debtor acknowledged the Debt Assignment and updated its books accordingly.”

12. In view of the aforementioned, we are left with no option but to admit the captioned petition. Ordered accordingly.



13. In the wake, moratorium provided under Section 14 of IBC, 2016 is declared qua the CD and as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

- (a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.

14. As proposed by the Petitioner, **Mr. Mahesh Agarwal**, having Registration IBBI/IPA-001/IP-P-P-01995/2020-2021/13087 is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against him and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order.

15. It is further ordered that Mr. Mahesh Agarwal shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated



under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.

16. The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

17. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

18. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)