

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-I, MUMBAI BENCH**

C.P. No. 1050/IBC/MB/2023

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016
In the matter of

**J. C. Flowers Asset Reconstruction
Private Limited**

CIN: U74999MH2015PTC264081

Having registered office at:
12th floor, Compton Greaves House,
Dr. Annie Besant Road, Worli,
Mumbai – 400 030.

... Financial Creditor/Petitioner

Vs

Shivris Resources Private Limited

(CIN: U45201MH2006PTC165088)

Registered office at: 5th floor, Bhupati
Chambers, 13 Mathew Road,
Mumbai 400 004.

... Corporate Debtor

Order delivered on: 06.05.2024

Coram:

Hon'ble Justice (Retd.) Sh. Virendrasingh Bisht, Member (Judicial)

Hon'ble Shri Prabhat Kumar, Member (Technical)

Appearance :-

For the Operational Creditor : Mr. Shyam Kapadia, learned Counsel
a/w Ms. Sushmita Gandhi, Advocate
a/w Ms. Grishma Dalvi, Advocate
a/w Mr. Kushal Boolchandani, Advocate
i/b Indus Law

For the Corporate Debtor : Mr. Vijay Aggarwal, learned Counsel
a/w Mr. Suyash Shanker, Advocate

[Per: Justice (Retd.) V. G. Bisht, Member (J)]

1. This is an application filed by operational creditor/applicant under section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as “IB Code” for short) against Corporate Debtor/Respondent, for initiating Corporate Insolvency Process (“CIRP” for short).

Brief facts:-

2. According to the Financial Creditor, YES Bank Limited (“Assignor”) by way of facility letter dated 24.03.2014 had sanctioned a Rupee Term Loan aggregating to Rs. 50 Crores only to ABG Resources Private Limited which was subsequently renamed as Shivris Resources Private Limited (i.e. “Corporate Debtor”) with effect from 05.04.2016. The loan agreement dated 27.03.2014 was executed between Assignor and the Corporate Debtor. Whereby, the terms and conditions of the guarantee and the said Rupee Term Loan were defined.
3. It is next contended that the debt guaranteed to the Corporate Debtor was secured by way of deed of mortgage dated 28.03.2014 and further by way of deed of hypothecation dated 27.03.2014 and several corporate guarantees and personal guarantees.
4. The Financial Creditor alleges that the Corporate Debtor, however, defaulted in repayment of the said term loan. The date of default for the said term loan is 01.03.2015. Consequently, the Assignor issued Loan Recall cum guarantee invocation notice dated 25.04.2019 to the

Corporate Debtor, Aries and guarantor *inter alia* calling upon them to jointly and/or severally pay the outstanding dues to the Assignor within 3 days of the receipt of the notice. It also issued the demand notice under Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor and Aries Management Services Private Limited (being the Mortgager) *inter alia* calling upon the Corporate Debtor to pay the outstanding dues as on 22.04.2019 failing which the Assignor would enforce its rights in terms of Section 13 (4) of the SARFAESI Act, 2002.

5. It is further contended that subsequently, "Assignment Agreement" dated 16.12.2022 was executed between the Assignor and the Financial Creditor by way of which the Assignor assigned its debt along with underlying rights, liabilities and securities in favour of the Financial Creditor including the lone granted to the Corporate Debtor. Thus, by virtue of the said assignment agreement, the Financial Creditor has stepped in the shoes of the Assignor and is therefore entitled to recover the outstanding debt from the Corporate Debtor.
6. It is further contended that the Corporate Debtor and the Aries Management Services Private Limited jointly addressed the letter dated 15.09.2021 to the Financial Creditor *inter alia* offering one-time settlement for repayment of outstanding dues. The acceptance of said one-time settlement was conveyed by the Financial Creditor to the Corporate Debtor by its letter dated 25.10.2021. Despite the same no payments were made by the Corporate Debtor. There is outstanding debt which is due and payable

by the Corporate Debtor to the Financial Creditor. Therefore, the present Company Petition.

7. Corporate Debtor has resisted the petition by filing affidavit in reply. According to the Corporate Debtor, the present matter with regard to loan transaction entered into between the Corporate Debtor and YES Bank was part of larger credit facilities which was advanced by YES Bank to M/s. Vadraj Cement Limited (VCL) amounting to total of Rs. 450 Crores. The VCL was formerly known as ABG Cement Limited.
8. M/s. ABG Cement Ltd. had availed Rupee Term Loan of Rs. 370,00,00,000/- from Yes Bank vide sanction letter dated 23.01.2017. It further took additional short-term loan of Rs. 25,00,00,000/- in the subsequent year during the Financial year 2018-2019 Yes Bank had further enhanced the limits by Rs. 15,00,00,000/- bringing to total Rs. 410,00,00,000/-. M/s. Vadraj Cement Limited had paid back over Rs. 206 Crores to Yes Bank, bringing the remaining principal amount due from VCL down to Rs. 204 Crores.
9. The Corporate Debtor alleges that Yes Bank invoked the pledge on the securities given as co-lateral at the time of original loan of Rs. 410 Crores on 05.07.2019 without any intimation. Upon invocation of pledge 20% of shares of VCL, Yes Bank was having equity value of Rs. 400 Crores against an outstanding amount only Rs. 206.86 Crores and thus it was understood that Yes Bank would refund the balance amount to the management, totalling to almost Rs. 200 Crores.

10. The Corporate Debtor then alleges that in December, 2022 Yes Bank malafidely entered into an agreement with the Financial Creditor which is illegal and is in violation of order dated 19.09.2022 passed by Special Court, CBI-06, Rouse Avenue District Court, New Delhi. Whereby, Yes Bank Ltd. was restrained from creating any third-party rights. Therefore, the present petition is liable to be dismissed with exemplary costs, concludes Corporate Debtor.
11. Mr. Shyam Kapadia, learned Counsel for the Financial Creditor and Mr. Vijay Aggarwal, learned Counsel for the Corporate Debtor have filed written notes of submissions along with citations in support of their respective case. Perused.
12. From the pleadings and the documentary evidence made available on record by the Financial Creditor what is apparent is that the Corporate Debtor did default in making payment towards outstanding debt. It is also clear from the record that on 30.05.2015 the account of the Corporate Debtor was categorised as NPA.
13. Consequent upon the categorisation as NPA, it is also seen from (Exhibit-AA) at page no. 1106 that Assignor issued a Loan Recall-Cum-Guarantee invocation notice dated 25.04.2019 to the Corporate Debtor, Aries and the Guarantor *inter alia* calling upon them to jointly and/or severally pay the outstanding dues amounting to Rs. 16,96,62,103.23/- to the Assignor within 3 days of the receipt of the said notice.

14. The Financial Creditor then on 25.04.2019 issued a demand notice under Section 13(2) of the SARFAESI Act, 2002 (Exhibit-BB at page 1111) to the Corporate Debtor and *inter alia* calling upon them to repay outstanding dues amount to Rs. 16,96,62,103.23/- as on 22.04.2019 to be paid within 60 days from the date of said notice, failing which the Assignor would enforce its rights in terms of Section 13(4) of the SARFAESI Act, 2002. However, it seems that no concrete steps were taken from the side of the Corporate Debtor.
15. What is pertinent to note from record is that on 15.09.2021 the Corporate Debtor and Aries addressed the letter (Exhibit-EE at page no. 1124) to the Assignor acknowledging their debt and offered OTS to the Assignor for an amount of Rs. 11,00,00,000/- (Rupees Eleven Crore) to be paid in the following manner-

Description	Aries/Shivris	% of OTS	Timeline
Upfront payment	50 Lakhs	-	DD attached with this letter.
1 st Instalment	1.1 Crores	10%	Within 30 days from the acceptance of this proposal
2 nd Instalment	2.2 Crores	20%	Within 60 days from the acceptance of this proposal
3 rd Instalment	7.2 Crores	Bal Adjusting above	Within 90 days from the acceptance of this proposal
Total OTS Amount	11 Crores		

16. In response to the above, Assignor issued the response to the Corporate Debtor on 25.10.2021 (Exhibit-FF at page 1128) and informed that OTS is accepted subject to the following terms –

- *Submission of necessary documents including consent terms before Courts/Tribunals recording the terms of OTs.*
- *No amount was submitted with the OTS letter. The effectiveness of the OTS is conditional upon the receipt of the Upfront payment of Rs. 50 Lakhs.*
- *Upon receipt of INR 11 Crores, to the satisfaction of the Bank, the Bank shall issue a no dues certificate to the Borrower.*
- *In case of failure of any of the payments as per the timelines mentioned above/non-fulfilment of any of the conditions of this letter, the OTS shall stand cancelled with immediate effect.*

However, the Corporate Debtor did not adhere to the above noted terms and failed to make payments to the Financial Creditor.

17. There is also no dispute to the fact that on 16.12.2022 the Assignor assigned its debt/financial assets of the Corporate Debtor along with all rights/title, interest and underlying securities to the Financial Creditor by an Assignment Agreement dated 16.12.2022 (Exhibit-A page 14). However, this assignment agreement has been seriously assailed by the Corporate Debtor on the ground that the said assignment is illegal and in violation of order dated 19.09.2022 passed by Special Court, CBI-06, Rouse Avenue District Court, New Delhi.

18. In our considered view, the proceeding pending before Special Court, CBI-06, New Delhi do not have any bearing on the present Company Petition. The only essential and relevant factor for us is to ascertain, before admission of a petition filed under Section 7 of IB Code, existence of debt and default from the records and information utility or on the basis of evidence furnished by the Financial Creditor. This is settled law. We have already pointed out a letter dated 15.09.2021 (Exhibit-EE at page 1124) of the Company Petition that Corporate Debtor had offered a One Time Settlement to the Original lender and effectively acknowledged its liabilities. Thus, we do not find any substance in the objection so raised by the Corporate Debtor.
19. Similarly, the Corporate Debtor has also placed reliance on various judgments as specified by it in his affidavit in reply and as also submitted before us during the course of arguments. In our view all the judgments are distinguishable on the facts vis-à-vis the case in hand. The ratio laid down therein does not further the case of the Corporate Debtor in any manner. Hence, inability.
20. Necessary conclusion is that the application made by the Financial Creditor is complete in all respects as required by law. It sufficiently establishes that Corporate Debtor is in default of a debt due and payable and the default is in excess of minimum amount stipulated under Section 4(1) of the IB Code. Therefore, the debt and default stands established and we do not see any reason to deny the admission of the petition.

21. We therefore, admit the above Company petition by passing following order.

ORDER

This Application being C.P.(IB) No1050/2023 filed under Section 7 of the I & B Code, 2016, filed by **J. C. Flowers Asset Reconstruction Private Limited**, Financial Creditor/applicant against **Shivris Resources Private Limited** Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I & B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this 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

Operational 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 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 the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I & B Code shall not apply to
- a. Such transactions as may be notified by the Central Government in consultation with any operational sector regulator;
 - b. A surety in a contract of guarantee to a corporate debtor.
- 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 I & B Code or passes an

order for the liquidation of the corporate debtor under section 33 of I & B Code, as the case may be.

- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of I & B Code.
- VI. That this Bench hereby appoints **Mr. Uday Shreeram Sakrikar**, a registered insolvency resolution professional having **Registration number- IBBI/IPA-001/IP-P01230/2018-2019/11927** and Email ID- **ipudaysakrikar@gmail.com** as Interim Resolution Professional to carry out the functions as mentioned under I & B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- VII. The Financial Creditor shall deposit a Sum of Rs. 5,00,000/- (Rupees Five Lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and

inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC). The Remuneration of Interim Resolution Professional shall be Rs. 1,00,000/- p.m. till the constitution of CoC and decision of CoC in relation to remuneration of IRP/RP, in case it is not fixed by the operational creditor so far.

VIII. A copy of this order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the corporate debtor.

IX. The Registry is 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. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)**

Sapna