

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

Item No.02
(IB) – 107(ND)/2022

IN THE MATTER OF:

M/s. OMKARA ASSETS RECONSTRUCTION PRIVATE LIMITED

..... Applicant/Financial Creditor

VERSUS

M/s. UNILEC ENGINEER LTD.

..... Respondent/Corporate Debtor

SECTION

Section 7 of the Insolvency and Bankruptcy Code, 2016

Order Pronounced On: 16.05.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. (IB) – 107(ND)/2022 is **admitted.**

**-SD-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

**-SD-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III
(IB) – 107(ND)/2022**

Order 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:

M/s. OMKARA ASSETS RECONSTRUCTION PRIVATE LIMITED

Having Its Registered Office at:

No.9, M. P. Nagar First Street,
Kongu Nagar Extension, Tirupur,
Coimbatore, Tamil Nadu-641607
CIN: U67100TZ2014PTC020363

..... Applicant/Financial Creditor

VERSUS

M/s. UNILEC ENGINEER LTD.

Having Its Registered Office at:

II/114, Sadar Bazar Delhi Cantt.,
New Delhi, Delhi-110010
CIN: U74899DL1993PLC056633

..... Respondent/ Corporate Debtor

Order Pronounced On: 16.05.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Liquidator : Mr. Kunal Godhwani, Advocate

For the Respondent : ex-parte

M/s. Omkara Assets Reconstruction Pvt. Ltd. vs. M/s. Unilec Engineer Ltd.
(IB) – 107(ND)/2022
Date of Order : 16.05.2023

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

Description of the Parties:

1. This Application has been filed by M/s. OMKARA ASSETS RECONSTRUCTION PVT. LTD., the Financial Creditor (FC)/Applicant on 15.02.2022, before this Adjudicating Authority, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “the Code”) 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 Corporate Debtor (CD)/Respondent viz., M/s. UNILEC ENGINEER LTD., on the ground that the Corporate Debtor has defaulted to make a Payment of a sum of Rs. 1,75,78,721/- (Rupees One Crore Seventy Five Lakhs Seventy Eight Thousand Seven Hundred Twenty One Only).

2. The Applicant Company was incorporated on 19.03.2014, as a Company Limited by Shares (Non- govt. Company) having CIN: U67100TZ2014PTC020363, under the Companies Act, 2013. The Authorised Share Capital of the Applicant Company is Rs. 150,00,00,000/- (Rupees One Hundred Fifty Crore Only) and the Paid-up Share Capital of the Applicant Company is Rs. 93,82,35,400 /- (Rupees Ninety Three Crore Eighty Two Lakh Thirty Five Thousand Four Hundred Only). The Registered Office Address of the Applicant Company is No.9, M. P. Nagar First Street, Kongu Nagar Extension, Tirupur, Coimbatore, Tamil Nadu-641607. A true copy of the Company Details/Master Data of the Applicant Company obtained from the website of the Ministry of Corporate Affairs is filed along with the application.

3. The Respondent Company was incorporated on 27.12.1993, as a Company Limited by Shares (Non- govt. Company) having CIN:

M/s. Omkara Assets Reconstruction Pvt. Ltd. vs. M/s. Unilec Engineer Ltd.

(IB) – 107(ND)/2022

Date of Order : 16.05.2023

U74899DL1993PLC056633, under the erstwhile Companies Act, 1956 with the Registrar of Companies, NCT of Delhi and Haryana. The Authorised Share Capital of the Respondent Company is Rs. 1,50,00,000/- (*Rupees One Crore Fifty Lakh only*) and the Paid-up Share Capital of the Respondent Company is Rs. 1,36,94,060/- (*Rupees One Crore Thirty Six Lakh Ninety Four Thousand Sixty only*). The Registered Office Address of the Respondent Company is II/114, Sadar Bazar Delhi Cantt, New Delhi, Delhi-110010. Therefore, this Bench has jurisdiction to deal with this application. A true copy of the Company Details/Master Data of the Respondent Company obtained from the website of the Ministry of Corporate Affairs is filed along with the application.

4. **Submissions of the Financial Creditor:**

- a) On 29.06.2011, Corporate Debtor and L&T Finance Limited entered into a Loan Agreement and L&T Financial Limited agreed to extend financial facilities to Corporate Debtor in terms of Schedule-I of the Loan Agreement dated 29.06.2011. Subsequently, on 28.11.2017, an Amended and Restated Facility Agreement was executed between L&T Finance Limited and Corporate Debtor.
- b) In terms of Clause 2.1 of the Loan Agreement dated 29.06.2011, the facility extended by L&T Finance Limited was to be utilized by Corporate Debtor for its business purpose.
- c) On 28.09.2017, Corporate Debtor issued a Demand Promissory Note in favour of L&T Finance Limited. Mr. Amit Ary, who is a Director of Corporate Debtor executed a Deed of Personal Guarantee dated 28.09.2017 in favour of L&T Finance Limited. On account of certain disputes between parties, L&T Finance Limited preferred a petition bearing Commercial Arbitration Petition No. 41 of 2019 under Section 9 of the Arbitration and Conciliation Act, 1996 before the Hon'ble High Court of Bombay.

d) The Corporate Debtor acknowledged the liability of the Outstanding Debt of L&T Finance Limited and executed consent terms dated 26.06.2019 before the Hon'ble High Court of Bombay, whereby the Corporate Debtor agreed to repay the financial facility/financial debt of L&T Finance Limited by paying a total amount of Rs. 1,04,27,130/-. The Corporate Debtor paid an amount of 3,47,571/- by way of RTGS and for the remaining balance amount of Rs. 1,00,79,559/- issued 29 cheques for an amount of Rs. 3,47,571/- each.

The aforementioned amount was due and payable on or before 20th day of every month, starting from 20th May 2019 till 20th October 2021.

e) The consent terms dated 26.06.2019 as executed between Corporate Debtor and L&T Finance Limited were duly filed before the Hon'ble High Court of Bombay. On 09.07.2019, the Hon'ble High Court of Bombay recorded the consent terms executed between the Corporate Debtor and L&T Finance Limited and disposed of the Commercial Arbitration Petition No. 41 of 2019.

f) It is contended that the first installment was paid by the Corporate Debtor, however, subsequently, no amount has been paid by the Corporate Debtor, and accordingly, the Corporate Debtor defaulted on 20.06.2019. The default is continuing, as the Corporate Debtor has not paid the amount to Financial Creditor. In view of the above, the Corporate Debtor failed to abide by the terms of the consent terms and defaulted in repayment of the Financial Debt. The Hon'ble High Court vide its order dated 09.07.2019 categorically clarified that any breach in the consent terms would grant liberty to L&T Finance Limited (Petitioner) to execute the order dated 09.07.2019 as a decree. On 24.09.2019, L&T Finance Limited executed an assignment agreement in favour of Financial Creditor i.e. M/s. Omkara Assets Reconstruction Private Limited and assigned its debt and all rights, title and interest against Corporate Debtor in favour

of Financial Creditor i.e. M/s. Omkara Assets Reconstruction Private Limited.

g) The total outstanding amount is as follows:

As per the Assignment Agreement as on 31.08.2019	88,30,782/-
Normal Interest	39,42,196/-
Delay Payment Charges	54,58,425/-
Other Expenses (Legal)	65,000/-
Recovery	7,17,682/-
Total Dues as on 31.12.2021	1,75,78,721/-

h) The Financial Creditor has preferred the instant petition under Section 7 of the Code because of the default committed by the Corporate Debtor in repayment of the outstanding debt of the Financial Creditor.

i) The Financial Creditor has placed the following documents on record:

- i.** Copy of Power of Attorney and Board Resolution passed in favour of Mr. Ankur Rastogi for Initiating Proceedings on behalf of M/s. Omkara Assets Reconstruction Private Limited.
- ii.** Copy of Loan Agreement Dated 29.06.2011 executed between Corporate Debtor and L&T Finance Limited.
- iii.** Copy of Amended and Restated Facility Agreement Dated 28.11.2017 executed between Corporate Debtor And L&T Finance Limited.
- iv.** Copy of Demand Promissory Note Issued by M/s. Unilec Engineers Limited in Favour of L&T Finance Limited.
- v.** Copy of Deed of Personal Guarantee Dated 28.09.2017 executed by Mr. Amit Ary.
- vi.** Copy of Deed of Assignment Dated 24.09.2019.

vii. Copy of Commercial Creditor Information Report (CIBIL Report) of Corporate Debtor.

5. The present matter has proceeded ex-parte against the Respondent/Corporate Debtor vide order dated 11.05.2022 passed by this Adjudicating Authority.

6. Analysis and Findings

- i.** We have heard the Ld. Counsels appeared for the FC/Applicant from time to time. We have also perused the documents on record.
- ii.** This Adjudicating Authority *vide* order dated 16.11.2022 has observed following:

“Mr. Kunal Godhwani, Ld. Counsel appearing for the Petitioner seeks time to file an affidavit indicating therein that the Assignment of Debt was communicated to the Corporate Debtor and whether the Corporate Debtor was made aware of the assignment.”

In compliance, the Applicant/FC filed an affidavit dated 28.11.2022 in compliance of the order dated 16.11.2022 of this Adjudicating Authority, which is extracted as follows:

- a)** The present petition under Section 7 of the Code was preferred by the Financial Creditor on 15.02.2022. However, prior to the initiation of filing of the present petition, the Corporate Debtor was aware of the assignment of debt by L&T Finance Limited to the Financial Creditor.
- b)** The Financial Creditor was regularly requesting the Corporate Debtor to clear its debt and the same is evident from the email dated 08.11.2021 sent by the Financial Creditor to the Corporate Debtor which is prior to the filing of the petition.
- c)** On 07.12.2021 again an email was addressed to the Corporate Debtor, the above-mentioned emails are sent on

the email-id of the Corporate Debtor as provided on the portal of the Ministry of Corporate Affairs.

- iii.** It is noted that the loan was given in the year 2011 by L&T Finance Limited. Default occurred initially on 28.09.2017 and L&T Finance Limited preferred a petition before the Hon'ble High Court of Bombay and the petition was allowed and disposed of by the Hon'ble High Court of Bombay while recording the consent terms executed between the Corporate Debtor and L&T Finance Limited dated 26.06.2019, but the Corporate Debtor failed to pay the financial debt.
- iv.** In view of the initiation of CIRP in terms of Section 9 of the Code *vide* order dated 17.05.2022 passed by this Tribunal in the matter of (IB)-690(ND)/2019 titled as "Shera Metal Pvt. Ltd. vs. Unilec Engineers Ltd", On 27.05.2022, the present petition was disposed of with liberty to revive the same. It is further noted that in the matter of (IB)-690(ND)/2019 titled "Shera Metals Pvt. Ltd. vs. Unilec Engineers Ltd.", the Corporate Debtor entered into the settlement agreement with the Operational Creditor and in view thereof, petition no. IB-690/ND/2019 was disposed of *vide* order dated 08.06.2022. The present Applicant/FC then filed an application IA-3625/2022 in IB-107(ND)/2022 for the revival of the present petition and the same was allowed by this Tribunal *vide* order dated 02.08.2022.
- v.** On perusal of the record of default of the Corporate Debtor maintained by the Information Utility namely National E-Governance Services Limited (NESL) dated 04.02.2022, we find that this is the record w.r.t. the status of authentication by the debtor is shown as "To be Presented" with an outstanding amount of Rs. 1,75,78,721/- (Rupees One Crore Seventy Five Lakhs Seventy Eight Thousand Seven Hundred Twenty One Only) along with the date of default as 04.12.2017. Therefore, we are satisfied that there exist debt and default and the same is corroborated by the IU certificate filed along with the application.

It is therefore clear that once the Applicant/FC has proved that the Respondent/CD is in default in respect of the debts due and payable, the application is required to be admitted.

vi. In view of the facts and circumstances mentioned hereinabove, it is clear that financial debt was disbursed by the Applicant to the Corporate Debtor against consideration of the time value of money and thereafter the same has remained due and payable. Admittedly, the failure to adhere to the term by the Corporate Debtor for repayment of the interest and the principal amount, establishes the default in repayment of the said financial debt. This position in the instant case is a fit case for the commencement of CIRP of the Corporate Debtor in terms of Section 7(5)(a) of the Code.

vii. It is clear from the reading of the above paragraphs and the perusal of records and documents annexed by the Financial Creditor in its application, that the debt of the Respondent/CD is due and payable to the Applicant/FC and there is a default in payment of the debt of the Respondent/CD, within the meaning of provisions of section 7 of the IBC, 2016 and the default is more than the minimum amount stipulated under Section 4(1) of the IBC, 2016.

Hence, we are inclined to **admit** this application.

7. Order

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

- i.** The Application bearing **(IB)-107(ND)/2022** filed by the Applicant/(FC), under section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Respondent/(CD), is hereby **admitted**.
- ii.** We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows

from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- “(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.*

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]”

- iii.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the

Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.

- iv.** The Applicant/(FC) has proposed the name of Mr. Rajneesh Kumar Aggarwal as the Interim Resolution Professional (“IRP”) having address: C-60, 3rd Floor, C-Block Community Centre, Janak Puri, New Delhi - 110058. His Email id is ca@arkadvisors.in. His Contact No. is +91-9810073042. His registration number is IBBI/IPA-001/IP-P00886/2017-2018/11483.

The Applicant filed a copy of the Consent Issued by Mr. Rajneesh Kumar Aggarwal in Form 2, Written Communication by proposed IRP, as per the requirement of Rule 9(1) of the Adjudicating Authority Rules along with the Certificate of Registration and Authorization for Assignment in Form B.

Accordingly, Mr. Rajneesh Kumar Aggarwal is appointed as IRP.

- v.** In pursuance of Section 13(2) of the Code, we direct the IRP, 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.
- vi.** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, 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. There shall be no future opportunity given in this regard.

- vii.** The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- viii.** 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 Corporate Debtor.
- ix.** The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two 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").
- x.** In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, 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 Corporate Debtor and specific mention regarding admission of this petition must be notified.
- xi.** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.
- xii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

-SD-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)