

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

CP (IB) No. 9/MB/2023

Under section 7 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

Pegasus Assets Reconstruction Private Limited
507, Dalamal Tower, Jamnalal Bajaj Marg,
Nariman Point, Mumbai – 400021.

... Financial Creditor /Petitioner

Versus

Vilsons Roofing Product Private Limited
[CIN:U26953PN2004PTC019669]
Vilsons Tower, 1220/47, 'E' Ward, Opp.
Popatrao Jagdale Hall, Rajarampuri 1st Lane,
Kolhapur, Maharashtra-416008.

...Corporate Debtor / Respondent

Order Delivered on :27.10.2023

Coram:

Hon'ble Member (Judicial) : Justice V.G. Bisht, (Retd.)
Hon'ble Member (Technical) : Mr. Prabhat Kumar

Appearances:

For the Financial Creditor : Ms. Jyoti Singh, Advocate
For the Corporate Debtor : Mr. Rohit Gupta, Advocate

ORDER

Per: Justice V.G. Bisht, Member (Judicial)

1. This is a Company Petition filed under section 7 ("the Petition") of the Insolvency and Bankruptcy Code, 2016 (IBC) by Pegasus Assets Reconstruction Private Limited ("the Financial Creditor"), seeking to

initiate Corporate Insolvency Resolution Process (CIRP) against Vilsons Roofing Product Private Limited ("the Corporate Debtor").

2. The Corporate Debtor is company incorporated on 23.08.2004 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Pune. Its registered office is at Vilsons Tower, 1220/47, 'E' Ward, Opp. Popatrao Jagdale Hall, Rajarampuri 1st Lane, Kolhapur, Maharashtra-416008.

Facts:

3. The Financial Creditor is one of the private sector companies registered with Reserve Bank of India (RBI) as an Assets Reconstruction Company (ARC) under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The Financial Creditor (acting in its capacity as a trustee of Pegasus Group Twenty Eight Trust 4) is the assignee of entire loan along with all underlying securities/rights vide Assignment of Debt Agreement dated 27.02.2020 (Assignment Agreement) from The Shamrao Vithal Co-operative Bank Limited, the original lender (SVC Bank/Assignor Bank).
4. The Corporate Debtor. M/s. Vilsons Roofing Product Private Limited is a Private limited company incorporated on 23.08.2004 registered with ROC Pune under the Companies Act, 1956 and is involved in Manufacture of asbestos sheets.

5. The Corporate Debtor has availed secured term loan facilities and cash credit from the Assignor Bank amounting to Rs.39,50,00,000/- (Rupees Thirty Nine Crore and Fifty Lakhs Only) (Facility) under various term loan agreements and sanction letters issued by the Assignor Bank to the Corporate Debtor from time to time. In order to secure the Facility, several security documents were executed in the favor of the Assignor Bank. The list of the said finance and security documents are enumerated in part IV and V of the Petition.
6. In view of default committed by Corporate Debtor in payment of outstanding amounts, the account of the Corporate Debtor was classified as non performing asset (NPA) on 31.08.2018 by the Assignor Bank. The date of default stated to be in part IV of the Petition is 30.04.2018.
7. Subsequently, vide Assignment Agreement dated February 27, 2020, the entire loan along with all underlying securities/rights of the Assignor Bank was assigned to the Financial Creditor.
8. The Corporate Debtor, with the consent of Financial Creditor, sold Part of Plot no. C-2 and C-2(part) admeasuring 40,000 sq. mtrs at Kolhapur for consideration of Rs. 3,40,00,000/- (Rupees Three Crore Forty Lakh) in the year 2020 and the said money was paid by the Corporate Debtor to the Financial Creditor to reduce its outstanding debt.

9. Thereafter, upon request of the Corporate Debtor, the entire loan amount was restructured by the Financial Creditor on 27.03.2021 (Sanctioned Restructuring Plan). Under the terms and conditions of said Sanctioned Restructuring Plan the Corporate Debtor and guarantors admitted their liability jointly and severally for an amount of Rs. 30,33,02,248.17 (Rupees Thirty Crore Thirty Three Lakh Two Thousand Two Hundred and Forty-Eight and Seventeen Paise) as on 23.12.2019 and further fee, charges, interest thereon.
10. However, the Corporate Debtor failed to fulfil all the terms and conditions under the Sanctioned Restructuring Plan. The Financial Creditor vide letter dated 21.07.2021 gave 7 days notice to the Corporate Debtor to clear the outstanding dues failing which the Financial Creditor shall be constrained to cancel the sanctioned restructuring plan.
11. The Corporate Debtor requested for some time to clear the outstanding dues and not to cancel the sanctioned restructuring plan by letter dated 26.07.2022. However, the Financial Creditor was constrained to cancel the Restructuring Plan approved by it vide letter dated 26.08.2022 and adjusted the amount already received against the total outstanding liability of the Corporate Debtor.
12. After cancellation of Sanctioned Restructuring Plan, the Corporate Debtor had made a payment of Rs10,00,000/- (Rupees Ten Lakh) on

30.08.2022 and Rs. 43,00,000/- (Rupees Forty Three Lakh) on 15.09.2022 respectively. Thereafter, several proposals were given by the Corporate Debtor however, the same were not acceptable to the Financial Creditor.

13. In view of the above, the Financial Creditor has filed this present application for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor for the default of the Facility availed by it.
14. The primary defenses raised by the Corporate Debtor are two-fold a) that the Petition is barred by Limitation and b) the default basis the NPA classification does not subsist after restructuring of loan.
15. On the issue of limitation, it is argued that the date of default is 30.04.2018 being the date on which the account of corporate Debtor was classified as NPA. The Corporate Debtor contends that the Financial Creditor has not placed on record any document showing that the Corporate debtor has defaulted in its repayment obligation on 30.04.2018 or three months prior to 30.04.2018 considering the fact that the date of default is 30.04.2018.
16. The Petition was filed on December 2022 and the date of default is 30.04.2018. Hence, the Petition is barred by Limitation.
17. Secondly, the Corporate Debtor submits that pursuant to sanctioned restructuring plan, the Petitioner cannot maintain the present Petition

on the basis of the classification of the account of the Corporate Debtor as NPA on 30.04.2018. The argument advanced by the Corporate Debtor is that a Section 7 Petition is maintainable if there is default of the restructured facilities and not the basis of classification of NPA by the original lender.

18. Further, if the account of the Corporate Debtor was to be classified as NPA by the Financial Creditor for the purpose of claiming default being an Asset Reconstruction Company, the same has to be done in terms of Master Circular- Asset Reconstruction Company dated 10.02.2022.
19. The Corporate Debtor submits that Rule 4(3) of the Application to Adjudicating Authority Rules, 2016 mandates that every Petition has to be served Insolvency and Bankruptcy Board of India before filing the same with this Tribunal.
20. Lastly, the Corporate Debtor contends that the Petition is filed with the malicious intent and not for the resolution of the Corporate Debtor. The Corporate Debtor submits that it is commercially solvent and a going concern with more than 137 employees. The Corporate Debtor has placed reliance in *Vidarbha Industries Power Limited vs Axis Bank Limited (2022) 8 SCC 352*.
21. The Petitioner by way of rejoinder, submits that the loan account of the Corporate Debtor was classified as NPA on 31.08.2018 and the date of

default is 30.04.2018. The Petitioner submits that limitation as per Article 137 would come to an end on 30.04.2021, however, in the interim the Corporate Debtor was sanctioned restructuring plan dated 27.03.2021 which extends the Limitation Period.

22. Further, the Corporate Debtor has vide letter dated 26.07.2022 requested for time to make payment thereby further extending the limitation period.
23. The Petitioner submits that clause 7 of the sanctioned restructuring plan provides that in the event the borrower commits a default, the sanction shall be revoked and original liability as on the cut off date and interest accrued thereon as per the facility agreement will be reinstated. Further, the restructuring was subject to the terms and conditions of the restructuring letter dated 27.03.2021 amended vide letter dated 30.03.2021. The clause 7 of the sanctioned restructuring plan clearly provides that in the event of default, the original liability as per the facility agreements shall stand reinstated.
24. The Petitioners have served a copy of Petition to the Insolvency and Bankruptcy Board of India on 09.12.2022.

Findings:

25. Heard Learned Counsel for the Financial Creditors and Learned Counsel for the Corporate Debtor. Perused the record.

26. Upon perusal of records, this Bench is of the considered opinion that Learned Counsel for Petitioner through his arguments articulated the existence of debt and default which are corroborated from the records annexed to the Petition. It is not disputed that the amount was disbursed to the Corporate Debtor and the Corporate Debtor has defaulted in repaying the amount.
27. Coming to the defenses raised by the Corporate Debtor, as far as the issue of Limitation is concerned the Petition is filed within the period of Limitation. The date of default is 30.04.2018 and the date of filing of the Petition is 15.12.2022, the period of limitation gets extended pursuant to restructuring of debt, which was acknowledged by the Corporate Debtor thus acknowledging its liability prior to expiry of original limitation period. Further, the Corporate Debtor has also made part payments in the August and September 2022, which also tantamount to acknowledgement of debt, thereby further extending the period of Limitation. Thus, we hold that the Petition is filed within the period of Limitation.
28. Further, the defense raised by the Corporate Debtor that post restructuring of loan, the default basis the original NPA classification cannot lie, is misplaced. Clause 7 of the sanctioned restructuring plan clearly provides that in the event of default, the sanction shall be revoked and the original liability as on the cut off date shall be

reinstated. The present Petition is maintainable on the basis of the original date of default and date of NPA.

29. Further the Corporate Debtor has relied on the judgement of the Hon'ble Apex Court in *Vidharbha Industries Power Limited vs Axis Bank Limited Civil Appeal NO. 4633 OF 2021* wherein the Hon'ble Supreme Court has held that discretionary power vests with this Tribunal under Section 7 (5)(a). It was held while discretion is conferred on the Adjudicating Authority, such discretionary power cannot be exercised arbitrarily or capriciously.

30. However, the Hon'ble Supreme Court in *M. Suresh Kumar Reddy vs Canara Bank & Ors. Civil Appeal No. 7121 of 2022* clarified the position of law after considering the decision in case of Vidarbha Industries (Supra) and held as under:

“13. Thus, it was clarified by the order in review that the decision in the case of Vidharbha Industries was in the setting of facts the case before this court. Hence, the decision in the case of Vidharbha Industries cannot be read and understood as taking a view which is contrary to the view taken in the cases of Innoventive Industries and E.S. Krishnamurthy. The view taken in the case of Innoventive Industries still holds good.”

31. The Hon'ble Supreme Court further held that the decision in the case of Vidarbha Industries cannot be read and understood as taking a view which is contrary to the view take in the case of Innoventive Industries and E.S.Krishnamurthy. It finally held that the non-payment of a part

of the debt when it becomes due and payable will amount to default on the part of the corporate debtor and an order under Section 7 Insolvency Bankruptcy Code (" IBC ") must follow.

32. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is more than minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
33. The Financial Creditor has proposed the name of **Ms. Vandana Garg, Registration No.IBBI/IPA-001/IP-900025/2016-17/10058**, as the Interim Resolution Professional of the Corporate Debtor. She has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
34. It is, accordingly, hereby ordered as follows: -
- (a) The Petition bearing **CP (IB) 9/MB/2023** filed by, **Pegasus Assets Reconstruction Private Limited** the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency

Resolution Process (CIRP) against **Vilsons Roofing Product Private Limited [CIN:U26953PN2004PTC019669]** , the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under section 14 of the IBC, regarding the following:

- (i) 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;
- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium:-

- (i) 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;

- (ii) The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) 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 IB Code.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Ms. Vandana Garg, Registration No. IBBI/IPA-001/IP-900025/2016-17/10058**, having address at Unit No. 307, 3rd Floor, Exgellencia Lodha Supremus 2, Wagle Estate, Panchapakhadi, Thane, Maharashtra- 400604. Email: vskgarg0899@gmail.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/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 IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or the 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- 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).
- (i) Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Pune, 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.

Sd/-
PRABHAT KUMAR
Member (Technical)

27.10.2023
Priyal

Sd/-
JUSTICE V.G. BISHT
Member (Judicial)