

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, CHENNAI**

CP/1053/IB/2018 filed under Section 7
of the Insolvency and Bankruptcy Code,
2016 r/w Rule 4 of the Insolvency and
Bankruptcy (Application to Adjudicating
Authority) Rules, 2016

In the matter of *M/s. Krishna Industrial Corporation Limited*

Maximus Asset Reconstruction Company Limited
... *Financial Creditor*

-vs-

M/s. Krishna Industrial Corporation Limited
... *Corporate Debtor*

Coram:

R. VARADHARAJAN,
Hon'ble Member (Judicial)

ANIL KUMAR B,
Hon'ble Member (Technical)

Advocates for Financial Creditor: Mr. Srinath Sridevan
Advocate for Corporate Debtor : Mr. Roshan Atiq

ORDER

Per: Mr. R. VARADHARAJAN, MEMBER (JUDICIAL)

Order pronounced on 16th of December, 2019

1. This Application has been filed by **Maximus Asset Reconstruction Company Limited** (hereinafter referred to as 'Financial Creditor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **M/s. Krishna Industrial Corporation Limited** (hereinafter referred to as 'Corporate Debtor').

The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. A perusal of the proceedings shows that after receipt of the notice, the Corporate Debtor has entered appearance through its Counsel on 09.10.2018 and prayed for time to file the Reply, and at the request of the Counsel for the Corporate Debtor, the case was

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adjourned to 20.11.2018 and 13.12.2018 for filing the Reply. However, the Corporate Debtor did not choose to file any Reply and instead has prayed for time to settle the matter with the Financial Creditor, and at the request of the Counsel for the Corporate Debtor, the case was posted to 10.01.2019, 12.02.2019, 07.03.2019, 22.04.2019, 30.04.2019, 04.07.2019, 16.07.2019 and 01.08.2019, for reporting settlement. Thereafter, since the settlement between the parties was not successful, the case was adjourned for making final submissions by the parties to 05.09.2019, 24.09.2019, 26.09.2019 and 01.10.2019. Even after providing sufficient opportunity, the Corporate Debtor did not choose to argue the case, and in its place, once again the Corporate Debtor sought for time to settle the matter with the Financial Creditor and at their request, the case was adjourned to 05.11.2019 and 13.11.2019 for reporting settlement or to proceed with the matter. Even thereafter, the Corporate Debtor has neither reported for settlement nor chose to argue the case, and hence, on 27.11.2019, based on the



available records and after hearing the submissions of the Learned Counsel for the Financial Creditor, the order was reserved.

3. The Financial Creditor has claimed the total amount of Rs.23,78,42,690.69p as outstanding against the Corporate Debtor as on 30.06.2018. Clause 2 of Part-IV of the Application discloses the details of the loan amount due to the Financial Creditor by the Corporate Debtor in various loan accounts.

4. The case of the Financial Creditor is that the Corporate Debtor, which is engaged in the business of chemicals, fertilizers and carbon-di-oxide, has been enjoying various credit facilities originally from Andhra Bank, from 2006 onwards. Thereafter the credit facilities were renewed by Andhra Bank from time to time and the last such renewal was done at the request of the Corporate Debtor vide Sanction Letter No.0848/61/KICL/517 dated 28.11.2014 with various



stipulations therein, copy of which is placed at pages 21 to 25 of the typed set filed with the Application. The details of facilities renewed by Andhra Bank on 28.11.2014 are as follows:-

- i. OCC facility - Rs.4 Crores
- ii. FLC -Rs.11 Crores and
- iii. BG - Rs. 0.20 Crores

5. After availing the above facilities, the Corporate Debtor executed the following security documents in favour of the Andhra Bank as primary security for due repayment of the above loans, on 17.12.2014:-

- i. Composite Agreement for a total sum of Rs.15.20 Crores,
- ii. Counter Guarantee Form and
- iii. Demand Promissory Notes for Rs.4 Crores 11 Crores and Rs.0.20 Crores separately and



- iv. General Form of Guarantee not exceeding to Rs.15.20 Crores.

Besides executing the above documents, the Corporate Debtor created 2nd charge over the fixed assets of the Corporate Debtor morefully described in Clause -1 of Part-V of the Application in favour of the Andhra Bank as collateral security for due repayment of the loans availed by the Corporate Debtor.

6. After availing the above facilities, the Corporate Debtor has committed default and hence, the Financial Creditor has classified the loan accounts as Non-Performing Assets (NPA), on 28.02.2015. Immediately thereafter, the Andhra Bank has initiated proceedings under SARFAESI Act, 2002 and issued Notice under Section 13(2) of the SARFAESI Act, 2002 demanding the outstanding amount due to the Corporate Debtor, on 04.03.2015, copy of which is placed at pages 131 to 133 of the typed set filed with the Application.



7. Subsequently, the Financial Creditor sent a Legal Notice dated 07.12.2016 calling upon the Corporate Debtor to pay the outstanding amount. Copy of the Legal Notice is placed at pages 134 to 136 of the typed set filed with the Application, to which the Corporate Debtor has sent a Reply Notice dated 31.12.2017, wherein admitting the liability, it has stated that the delay in repayment was caused solely due to non-receipt of subsidy amount at appropriate time from the Central Government for the fertilizers sold by Corporate Debtor at the subsidized price fixed by the Central Government and the irregular and delayed release of subsidy by the Central Government, badly affected the operations of Corporate Debtor leading to the Corporate Debtor loss of turnover which in turn affected repayment capacity. It is further stated in the Reply Notice that the Corporate Debtor is making arrangements and would come up with a concrete proposal in the middle of January, 2017 for repayment. Copy of Reply Notice is placed at pages 227 to 229 of the typed set filed with the Application.

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8. In the interregnum, an Assignment Agreement was entered into between the Andhra Bank and the Applicant viz., Maximus ARC Limited wherein the loans disbursed together with all its rights, title and interest were assigned by Andhra Bank to Maximus ARC Limited namely the Financial Creditor herein. Copy of Assignment Agreement dated 18.08.2017 is placed at pages 143 to 226 of the typed set filed with the Application. In this regard, the Financial Creditor has also placed on record the Certificate of Registration for Modification of Charge issued by the Ministry of Corporate Affairs, at page 5 of the typed set filed with the Application.

9. Further, the Financial Creditor has filed the Commercial Credit Information Report maintained by CIBIL which shows record of default committed by the Corporate Debtor, copy of which is placed at pages 52 to 129 of the typed set filed with the Application. Besides



above, the Financial Report of the Corporate Debtor including the Balance Sheets, Annual Return as on the Financial Year ended on 31.03.2016 and Cash Flow Statement has been filed by the Financial Creditor at pages 1 to 63 of the additional typed set of document filed with the Application.

10. In addition, the Learned Counsel for the Financial Creditor has referred to the One Time Settlement (OTS) proposal submitted by the Corporate Debtor to the Financial Creditor on 28.03.2019 whereby the Corporate Debtor has confirmed the loan amount payable by it to the Financial Creditor and submitted the schedule of payments to settle the outstanding amount amicably. Copy of OTS proposal is placed at page 63 of the additional typed set of document filed along with the Application, to which the Financial Creditor in its Reply dated 30.03.2019 has accorded approval for OTS at Rs.12 Crores with condition that in the event of default in payment of any installment, the OTS offer would stand

automatically cancelled. Subsequently, the Corporate Debtor committed default after making payments of two installments, totaling to Rs.1 Crore, and as a result, the Financial Creditor vide its communication dated 02.07.2019 informed the Corporate Debtor about cancellation of OTS by the Financial Creditor. Subsequent thereof vide letter dated 12.07.2019, the Corporate Debtor has made payment of Rs.1 Crore by way of RTGS towards the OTS and stated that the said payment has been made pursuant to the direction of NCLT Order dated 04.07.2019. However, the settlement was not successful between the parties as evident from the proceedings of this Authority dated 01.08.2019. The Financial Creditor has finally produced an e-mail communication sent by the Financial Creditor to the Corporate Debtor stating therein that the Financial Creditor has not received any payment after 12.07.2019, copy of which is filed separately by the Financial Creditor.



11. A perusal of records shows that the Corporate Debtor did not chose to file any Counter Affidavit in the instant Application. However, it has filed a Memo dated 26.09.2019, wherein it is stated that to resolve the debt to the Financial Creditor, the Corporate Debtor has proposed to sell its Fertilizer Unit Comprising of Plant, Machinery, land and building measuring an extent of 44.72 Acres and pursuant to which the Corporate Debtor has entered into a Sale Agreement dated 24.09.2019 with one Gavirni Veerraju to sell the same and utilize the proceeds to settle the debt incurred to the Financial Creditor. Copy of Sale Agreement entered into between the Corporate Debtor and one Gavirni Veerraju is enclosed with the said Memo.

12. In view of the above contentions, it is to be noted that from the pleadings of the parties, it is evident that an existence of a Financial Debt owed to the Financial Creditor, as defined under Section 5 (8) of I&B Code, 2016 by the Corporate Debtor in excess of Rs.1,00,000/-



and in the repayment of which there is a default as envisaged under Section 3 (12) of I&B Code, 2016. Further as seen from the records, nowhere has the Corporate Debtor denied the existence of a 'debt' and its 'default'.

13. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Application as has been filed by the Financial Creditor is required to be admitted under Section 7 (5) of the I&B Code, 2016. In relation to the Sale Agreement dated 24.09.2019 referred to at paragraph 11 of the instant Order, the transaction is subject to the amenability of the Provisions of I&B Code, 2016 in view of the Order of admission passed.

14. The Financial Creditor has proposed the name of **Mr. S. Rajendran**, having Registration Number IBBI/IPA-002/IP-N00098/2017 – 2018/10241, as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of

the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP, who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 15,17,18 of the I&B Code, 2016 and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

15. As a consequence of the Application being admitted in terms of Section 7 of the I&B Code, 2016, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;



- (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.”

16. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;



- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) The provisions of sub – section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”

17. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub – section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the



date of such approval or liquidation order, as the case may be.”

18. Based on the above terms, the Application stands **admitted** in terms of Section 7 of the I&B Code, 2016 and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order forthwith by the Registry.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Mrs. P. ATHISTAMANI