



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-686(ND)/2019

IN THE MATTER OF:

M/s. India Factoring and Finance Solutions Private Limited

Registered Office at :
401, Windsor House,
Off C.S.T. Road,
Kalina, Santacruz (E),
Mumbai – 400098

...Applicant/Financial Creditor

VERSUS

M/s. Altech Infrastructure Private Limited

Registered Office at :
Plot No. 293, Kehar Singh Estate,
West End Marg, Saidula-Jab
New Delhi-110030

...Respondent/ Corporate Debtor

Section: 7 of IBC, 2016

Order Delivered on: 16.09.2022

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Azeem and Adv. Ishani

For the Respondent : Adv. Abhishek Anand, Adv. Pathik Choudhury

(IB)-686(ND)2019

M/s. India Factoring & Finance Solutions Pvt. Ltd. Vs. Altech Infrastructure Pvt. Ltd.



ORDER

PER SH. L.N. GUPTA, MEMBER (T)

M/s. India Factoring & Finance Solutions Private Limited (for brevity, '**Applicant/Financial Creditor**') has filed the present application under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC, 2016**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency process against M/s. Altech Infrastructure Private Limited (for brevity, the '**Respondent**').

2. The Respondent namely, M/s. Altech Infrastructure Private Limited is a Company incorporated on 23.11.2006, under the provisions of the erstwhile Companies Act, 1956 with CIN U70109DL2006 PTC155875, having its registered office at Plot No. 293, Kehar Singh Estate, West End Marg, Saidula-Jab New Delhi-110030, which is within the territorial jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent is Rs. 5,00,00,000/- and Paid-up Share Capital is Rs. 3,99,00,000/- as per the master data annexed with the Petition.

3. It is submitted that the Applicant is engaged in the business of providing factoring services, encompassing finance and value-added services to business entities in India. The Respondent is engaged in designing, manufacturing & supply of deaerators, feed water heaters and other such machinery in India. The Respondent has been enjoying the trade finance facilities from the Applicant since the year 2017.



4. It is stated by the Applicant that vide Facility Letter dated 31.05.2017, it had provided trade finance facility to the Respondent with funds in use limit upto Rs 5,25,00,000/-. Further, this facility limit was amended vide Facility letter dated 31.10.2017 to Rs. 8,25,00,000/-.

5. It is further stated that the Respondent did not adhere to the financial discipline and defaulted in repayment of those facilities and accordingly, a sum of Rs. 03,91,11,953/- stood due to the Respondent as on 08.01.2019. Therefore, as per Clause 12 read with Clause 14 of the Facility Agreement, the Applicant sent a demand letter dated 14.01.2019 seeking payment of Rs. 03,91,11,953/- due as on 08.01.2019.

6. From perusal of the order dated 16.09.2019 on record, it is observed that on receipt of a part-payment of Rs 1 Crore and post-dated cheques from the remaining amount, the parties had earlier settled the matter. Accordingly, vide said order, the Application IB-686/ND/2019 was dismissed as withdrawn on the ground of settlement. It is further observed that liberty was granted to the Applicant to seek revival of the Application, in the event of any cheque being dishonored. Subsequently, the Applicant preferred an IA-1165/2020 seeking revival of IB-686/ND/20219 on the ground that the 03 post-dated cheques tendered by the Respondent returned dishonored. Accordingly, vide order dated 12.02.2020, this Adjudicating Authority had restored the Petition under consideration to its original stage and number.



7. During the course of hearing on 16.07.2021, it was observed by this Tribunal that there was no date of default mentioned in the Part IV of the Application. Accordingly, the Applicant was permitted to make necessary amendment in the Part IV of its Application. Accordingly, the Applicant vide IA-3412/2021 has filed the amended Part IV of the Application, which was taken on record vide order dated 31.03.2022.

8. That the detailed particulars of the total amount of default and the date of default are mentioned in the Part IV of the application, which is reproduced overleaf for the sake of convenience.

8

PART - IV	
PARTICULARS OF FINANCIAL DEBT	
1. TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	<p>That vide Facility Letter dated 31.05.2017 followed by a Factoring Agreement dated 09.06.2017 and amended Facility Letter dated 30.10.2017, the Corporate Debtor was extended Factoring services i.e. facility of purchasing Corporate Debtor's Receivables in terms of the agreement at a discounted rate. That the Financial Creditor also issued the Debtor Approval Letters classifying few debtors as Approved Debtors including M/s Alstom Bharat Forge Power Pvt Ltd, defining the Credit limit, recourse period, factoring charges and clients credit risk element percentage etc.</p> <p>The Facility Letter dated 31.05.2017 and the amendment letter dated 30.10.2017, Factoring Agreement dated 09.06.2017 and the copies of the Debtor approval letters dated 31.05.2017, 12.10.2017 and 30.10.2017 are annexed with the Original Petition under section 7 of the Code.</p> <p>That in view of the factoring agreement, the Corporate Debtor vide various communications informed the Financial Creditor of the receivables in respect of the goods sold/delivered to the debtor namely M/s Alstom Bharat Forge Power Pvt. Ltd, along with the respective invoices issued to M/s</p>



	<p>Alstom Bharat Forge Power Pvt. Ltd in view of the services rendered.</p> <p>In view of the receivables, funds were released by the Financial Creditor in favor of the Corporate Debtor as per the Factoring Agreement terms. Some of the remittances made by the M/s Alstom Bharat Forge Power Pvt. Ltd in respect of Approved receivables from time to time were appropriated by the Financial Creditor towards the amounts disbursed to the Corporate Debtor. However, certain amounts remained due to be paid in respect of the Factoring services provided by the financial facility to the Corporate Debtor, for which several verbal and written communication/reminders were sent to the Corporate Debtor, which still remain due and payable.</p> <p>That a demand letter dated 14.01.2019 was sent to the Corporate Debtor by the Financial Creditor demanding a total of Rs 3,91,11,953.00 (Rupees Three Crore Ninety One Lakh Eleven Thousand Nine Hundred and Fifty Three Only) which was due on 08.01.2019. Subsequently, a sum of Rs 10,00,000 (Rupees Ten Lakhs Only) was repaid by the Corporate Debtor to the Financial creditor in two instalments of 5,00,000.00 (Rupees Five Lakhs Each) each on 30.01.2019 and 01.02.2019. Thereafter, the Corporate Debtor did not make any payment to the</p>
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		<p>Six Only) including interest upto 11.09.2019 after appropriation of already paid amount of Rs 1,00,00,000/-. The remaining amount was tendered by way of four (4) post-dated cheques for a total sum of Rs. 2,39,25,236.00 (Rupees Two Crore Thirty Nine Lakhs Twenty Five Thousand Two Hundred and Thirty Six Only)</p> <p>Thereafter, three out of four cheques were dishonored and the Petitioner received only Rs. 17,44,871.91.00 (Rupees Seventeen Lakhs Forty Four Thousand Eight Hundred And Seventy One and Paise Ninety One Only) against the total sum of Rs. 2,39,25,236.00 (Rupees Two Crore Thirty Nine Lakhs Twenty Five Thousand Two Hundred and Thirty Six Only) Thereafter, the Corporate Debtor has paid a sum of Rs. 4,00,000.00 (Rupees Four Lakhs Only) on 01.10.2020.</p> <p>Therefore, the Total Outstanding of the Corporate Debtor toward the Petitioner is Rs. 2,18,07,144.95 (Rupees Two Crore Eighteen Lakhs Seven Thousand One Hundred Forty Four and Ninety Five Paisa Only) as on 30.06.2021. The Petitioner further submits that the Date of Default has also been changed because of change of outstanding amount due to a settlement during the Adjudication of this Petition.</p>
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE	<p>The total amount claimed to be in default by the Corporate Debtor is Rs. 2,18,07,144.95 (Rupees Two</p>



12

DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	Crore Eighteen Lakhs Seven Thousand One Hundred Forty Four and Ninety Five Paise Only) as on 30.06.2021. The said amount in default arises out of failure of the Corporate debtor to pay in consonance with the terms of the Restructuring Agreement dated 13.09.2019. Latest 'Date of Default' is 02.12.2019 Earlier total amount claimed to be in default by the Corporate Debtor is Rs. 3,86,33,104.04 (Rupees three crore eighty six lakhs thirty thousand one hundred and four only) as on date. The said amount in default arises out of failure of the Corporate debtor to pay in consonance with the terms of the Factoring Agreement dated 09.06.2017. Original Date of Default is 01.02.2019. That the 'Fund is Use' Statement attached with this Application till 30.06.2021 is itself a working calculation in tabular format.
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9. From the perusal of the amended Part IV of the Application, it is observed that the Applicant has now claimed balance amount of Rs. 2,18,07,144.95 as an unpaid financial debt as on 30.06.2021. It has also mentioned date of 02.12.2019 to be the date of default.



10. The Applicant has relied upon the following documents to prove the existence of financial debt -

- a) Factoring Agreement dated 09.06.2017,
- b) Facility Letter dated 31.05.2017 and amended Facility Letter dated 30.10.2017,
- c) Demand Letter dated 14.01.2019,
- d) A Copy of the "funds in use" statement of the Financial Creditor for the Respondent from 01.01.2012 to 13.02.2019, and
- e) Post-dated cheques (with following details) drawn on Bank of Baroda, issued by Respondent, pursuant to the settlement earlier -

Amount in INR	Date	Mode of Payment	Cheque no.
50,00,000.00	30.09.2019	PDC	002411
50,00,000.00	31.10.2019	PDC	002412
50,00,000.00	29.11.2019	PDC	002413
89,25,236.00	15.12.2019	PDC	002414

11. Basing on the aforesaid documents, the Financial Creditor has prayed for initiation of CIRP against the Respondent.

12. The Respondent has filed its reply, amended reply to the amended Part IV of the Application and Written Submissions on record.



13. It is stated by the Respondent in its replies that there is no debt due and payable as on the date of filing of the present application and the Applicant has failed to demonstrate any default committed by the Respondent. The Respondent in its replies has stated the following :

(a) No such installment of debt due and payable to the Respondent has been shown by the Applicant. The Applicant has also not shown that the Respondent has not been making payments towards the amounts payable including interest.

(b) The Respondent had a running account with the Applicant and the former used to deposit sums of money regularly in the Funds-in-use Account (FIU Account) against the payments that were due including interest. It is pertinent to note that even pursuant to the filing of the instant Petition, several amounts have been remitted to the Applicant herein in the FIU Account.

(c) The Applicant has placed a misunderstood reliance on clause 12 and clause 14 (Representations and Warranties) of the Factoring Agreement. The recourse available to the Applicant against the receivables was only once the demand was made by the Applicant to this effect and the default thereof has been committed by the Respondent. However, the Applicant has not raised any demand to the Respondent regarding the unpaid receivables till date. Therefore, it is clear that no event of default has occurred till date.



(d) The Events of Default are laid down under clause 20 of the Factoring Agreement, which states that upon occurrence of any event of default, the Applicant shall serve a default notice upon the Respondent. However, no default notice has been served upon the Respondent till date and hence, no event of default has occurred and this Petition is prima facie without cause of action.

(e) A bare perusal of the above Clause 20.2 of the Factoring Agreement would show that the amounts, if any, owed to the Applicant would be rendered due and payable only upon an express demand being made by the Applicant. It is further stated that Applicant has not communicated or placed on record any demand letter or notice to the Respondent. Hence, the elements of debt and default is missing from the present Petition.

(f) Further, the Respondent has mentioned that the amended Part IV of the Application is defective as it has not been filed in Form 1. It is added the amended Petition lacks certain necessary information and hence, the Petition is incomplete. It is further objected by the Respondent that the present Application is filed for recovery and not for the Resolution of the Respondent.

14. We have gone through the pleadings and Written Submissions on record and heard submissions made by the parties.

15. As regards the objection raised regarding the amended part IV of the Application being incomplete, we refer to the order dated 16.07.2021, by which this Adjudicating Authority had directed the Applicant to



amend Part IV of the Application only on the ground of non-mentioning of date of default in the main application. We observe that at no occasion, direction was passed to amend the entire Form 1 of the Application. Since the Applicant has brought "the date of default" on record by amending the Part IV, therefore, we are of the view that the present Petition is not incomplete.

16. We further observe that during the pendency of the Application, the Respondent had made part-payment of Rs 1 (one) Crore to the Applicant. Further post-dated cheques were handed over to the Applicant towards the remaining amount. The same was recorded in order dated 16.09.2019 passed by this Adjudicating Authority, which reads as follows :

"Pursuant to the compromise effected between the parties for a total sum of Rs.3,86,33,104/-, part payment of Rs.1 Crore has been received by the Financial Creditor. The remaining amount has been tendered by way of post-dated cheques.

Ld. Counsel for the petitioner wishes to withdraw the present petition with liberty to revive the petition in the event of any cheque being dishonoured.

Dismissed as withdrawn. Liberty granted."

The aforesaid act of part-payment and issue of post-dated cheques towards the remaining dues to the Applicant clearly amounts to an admission of liability and acknowledgement of debt by the Respondent towards the financial debt owed to the applicant.



17. So far as the contention of the Respondent that the present Application is filed by the Applicant for the purpose of recovery, we have seen from the records that the Respondent had earlier made an attempt to resolve its financial distress on its own by handing over post-dated cheques to the Applicant as recorded in the order dated 16.09.2019. However, despite such effort, the Respondent failed to get out of the default and the Applicant finding no other option is forced to avail liberty to revive the present Petition, which was permitted vide order dated 12.02.2020 of this Adjudicating Authority. The said order reads as follows:

“IA 1165/2020 has been filed by the Financial Creditor praying for revival of the said petition via the terms of the said order dated 16.09.2019. It is submitted that the petition had been withdrawn on a compromise being effected between the parties with liberty to seek its restoration in the event of any of the terms being adhered to. It is pointed out that the 3 post-dated cheques tendered by the Corporate Debtor have returned dishonoured. The dishonoured memos from the bank are on record.

The prayer of the Financial Creditor therefore merits consideration and is allowed. Petition IB-686/2019 is directed to be restored to its original stage and number. Notice of the same be effected on the Corporate Debtor and to their counsel, returnable on 26th February 2020. Dasti.”

18. Evidently, the chain of events depict that the Respondent is commercially insolvent and CIRP is necessary for bringing the Respondent to stand on its own feet. Hence, it would be wrong to say that Application has been filed only for the purpose of recovery.



19. In the given facts and circumstances, the present Application being complete and the Applicant having established the default of the Respondent in payment of the Financial Debt for an amount being above the threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), 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.”

20. As proposed by the Financial Creditor, this Bench appoints Mr. Anand Sonbhadra as IRP having Registration No. IBBI/IPA-001/IP-P00739/2017-18/11771 (Email: sonbhadra65@gmail.com), subject to




the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. This Adjudicating Authority orders that :

“Mr. Anand Sonbhadra as IRP having Registration No. IBBI/IPA-001/IP-P00739/2017-18/11771, (E-mail ID: sonbhadra65@gmail.com) is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is directed to take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.”

21. The Financial Creditor is directed to deposit Rs. 2,00,000/- (Two Lakh) 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.

22. A copy of this Order shall immediately be communicated to the Financial Creditor, the Respondent and the IRP mentioned above by the Court Officer/Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to the IBBI for their records.


(L.N. GUPTA)
MEMBER (T)


(DHARMINDER SINGH)
MEMBER (J)