

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

C.P. (IB)/91(KB)2023

An Application 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:

Assets Care & Reconstruction Enterprise Limited

.....Financial Creditor/Petitioner

-Versus-

Ankit Metal & Power Limited [CIN: L27101WB2002PLC094979]

.....Corporate Debtor/ Respondent

Date of Pronouncement: 03.05.2024

Coram:

Shri Rohit Kapoor	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (via video conferencing/physically)

Mr. Ratnanko Banerji, Sr. Adv.	:	For the Financial Creditor
Mr. SoorjyaGanguli, Adv.		
Ms. Kiran Sharma, Adv.		
Ms. Akshita Bohra, Adv.		
Mr. Mainak Bose, Adv.	:	For the Corporate Debtor
Mr. DebarghaBasu, Adv.		
Mr. VishwarupAcharyya, Adv.		

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The Court convened through hybrid mode.
2. This Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred as “the Code” or “IBC”) by **Assets Care & Reconstruction Enterprise Limited** hereinafter referred to as “*Operational Creditor*” seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Ankit Metal & Power Limited** , hereinafter referred to as “*Corporate Debtor*”.
3. The Corporate Debtor is a private limited company incorporated on 07.08.2022. The authorized share-capital of the company ₹1,41,20,00,000/- and the paid-up share capital of the company is ₹1,41,11,05,000/-.
4. The total amount claimed to be in due to the Operational Creditor, is Rs. 22,13,81,08,600/-. The dates of default mentioned in the petition are 29.08.2014, 30.09.2014 and 30.09.2016.

Facts in Brief:

5. It is stated that the Corporate Debtor is engaged in the business of iron and steel including manufacturing of sponge iron, pig iron, MS ingots and billets, pellets and a variety of superior quality rolled products.
 - a. The Corporate Debtor had obtained financial assistance from the following banks-
 - i. IDBI Bank Limited (IDBI Bank)
 - ii. Indian Overseas Bank (IOB)
 - iii. State Bank of India (SBI)
 - iv. Allahabad Bank
 - b. The details of each of the facilities are provided hereunder:
 - i. Working Capital Consortium Agreement dated September 14, 2007 was executed between the Corporate Debtor and SBI, Andhra Bank, Syndicate Bank and IDBI Bank for Rs. 3790 Lakhs and thereafter,

supplementary working capital consortium agreements were entered from time to time.

- ii. IDBI Bank Limited (IDBI Bank') vide Facility Agreement dated August 11, 2008 for availing working capital facility of Rs. 20,00,00,000/-.
 - iii. Indian Overseal Bank (IOB) vide sanction letter dated January 14, 2012.
 - iv. Master Restructuring Agreement dated September 25, 2014 and Working Capital Consortium Agreement dated December 9, 2014 were executed for availing the aggregate working capital facilities for an amount of Rs. 477.62 Crores in the form of Cash Credit, Term Loans, Working Capital Terms Loans and Funded Interest Terms Loans from a consortium of banks including, inter alia, IDBI Bank, SBI, Allahabad Bank, and IOB ("Lender Banks") with SBI acting as Lead Bank.
 - v. The said Master Restructuring Agreement dated September 25, 2014 was entered into between the parties pursuant to a Corporate Debt Restructuring ('CDR') Scheme approved by the consortium of banks vide Letter of Approval dated September 17, 2014. A copy of the Master Restructuring Agreement dated September 25, 2014 and Working Capital Consortium Agreement dated December 9, 2014 are annexed as Annexure "E".
- c. Pursuant thereto, the Corporate Debtor had availed and utilized the said Facilities after securing the same by executing various restructuring agreements, deeds of hypothecation and various other facility and security documents.
- d. However, the Corporate Debtor failed to adhere to the terms and conditions agreed upon for availing the said Facilities. The Corporate Debtor defaulted in payments, and also failed to regularize various accounts of credits. Consequently, as per Banking Rules and Regulations and RBI guidelines, the account of the Corporate Debtor was classified as Non-Performing Asset

(hereinafter "NPA") by the Lender Banks on various dates as detailed hereinafter –

- i. On August 28, 2014 by SBI (as also appearing in the NeSL Record)
 - ii. On September 30, 2014 by Allahabad Bank (as also appearing in the NeSL Record)
 - iii. On September 30, 2016 by IDBI Bank (as also appearing in the NeSL Record)
 - iv. On September 30, 2016 by IOB (as also appearing in the NeSL Record)
- e. Thereafter, the Corporate Debtor continued to default in payment of the principal and/or interest as per the terms of the said Facilities and after deliberations on the same, the Joint Lenders Forum agreed to exit the Corporate Debtor from the CDR Scheme on December 28, 2016.
- f. Subsequently, IDBI Bank was constrained to recall the entire credit facilities sanctioned by IDBI Bank to the Corporate Debtor vide notice dated March 21, 2017 and demanded repayment of the sum of Rs. 29,55,91,071 (Rupees Twenty-Nine Crores Fifty-Five Lakhs Ninety-One Thousand Seventy-One only) which was due and payable to the IDBI Bank together with further applicable interest thereon.
- g. The Corporate Debtor had completely utilized the said credit facilities but deliberately neglected to pay the dues and as such committed default.
- h. On August 11, 2017, the Corporate Debtor executed a Revival Letter for the purposes of acknowledgment under section 18 of the Limitation Act, 1963 in favour of the Lenders Banks acknowledging the outstanding debt qua the Lender Banks and that the Corporate Debtor is liable to the banks for payment of all the outstanding amounts with interest costs, charges, and expenses in respect of the credit facilities granted under the Master Restructuring Agreement dated September 25, 2014 and related documents. A

copy of the Revival letter dated August 11, 2017 executed by the Corporate Debtor is annexed as Annexure "F".

- i. The Lender Banks, thereafter, assigned the secured debts along with the rights, title, interest and security interest on underlying assets, guarantees(s) thereof in their entirety to the Financial Creditor herein through the following assignment agreements ("Assignment Agreements") -
 - i. Assignment Agreement dated March 28, 2018 executed between IDBI Bank and Financial Creditor (in its capacity as Trustee of ACRE-43-TRUST), a copy of which is annexed as Annexure "G",
 - ii. Assignment Agreement dated June 29, 2018 executed between Indian Overseas Bank and Financial Creditor (in its capacity as Trustee of ACRE-39-TRUST), a copy of which is annexed as Annexure "H",
 - iii. Assignment Agreement dated June 29, 2018 executed between Allahabad Bank and Financial Creditor (in its capacity as Trustee of ACRE-45-TRUST), a copy of which is annexed as Annexure "I", and
 - iv. Assignment Agreement dated July 31, 2018 executed between SBI and Financial Creditor (in its capacity as Trustee of ACRE-46-TRUST), a copy of which is annexed as Annexure "J".
- j. By virtue of the Assignment Agreements, the Financial Creditor stepped into the shoes of the Lender Banks and became entitled to rightfully initiate legal actions against the Corporate Debtor.
- k. The Corporate Debtor had defaulted in repayment of the default amount under the said Facilities despite several opportunities being provided for repayment. The Corporate Debtor continues to be under the default in repayment of its dues towards the Financial Creditor. The Financial Creditor is thus entitled, by virtue of the provisions of the said Facilities and other facility documents as mentioned herein above, to initiate legal proceedings for the entire amount which has fallen due from the Corporate Debtor.

- l. By way of letters dated January 31, 2019 and March 25, 2019, the Corporate Debtor approached the instant Financial Creditor for settlement of the debts owed by it to the Lender Banks (now assigned to the Financial Creditor, however the said settlement failed. It is stated that letters dated January 31, 2019 and March 25, 2019 prove the existence and acknowledgement of debt and the default committed by the Corporate Debtor.
- m. Thereafter, the Financial Creditor was constrained to issue a show cause notice dated August 5, 2020 to the Corporate Debtor to show cause why the debt due should not be recalled. The Corporate Debtor never issued any response to the show cause notice dated August 5, 2020. A copy of the show cause notice dated August 5, 2020 is annexed as ANNEXURE "K".
- n. Thereafter, the Financial Creditor issued another letter dated August 24, 2020 to the Corporate Debtor for settlement of the amounts due, however, the Corporate Debtor failed to reply to the said letter. A copy of the letter dated August 24, 2020 issued by the Financial Creditor is annexed as ANNEXURE "L".
- o. Accordingly, the Financial Creditor was constrained to issue a Loan Recall Notice dated January 8, 2021 calling upon the Corporate Debtor to repay the outstanding loan amount, a copy of which is annexed as ANNEXURE "M".
- p. Thereafter, the Financial Creditor also issued a Recall Notice through its advocates on February 17, 2023 demanding repayment of the entire outstanding loan amount under the said Facilities. A copy of the letter dated February 17, 2023 is annexed as Annexure "N". However, till date the Corporate Debtor has neither responded to the aforesaid Loan Recall Notice nor paid the outstanding default amount.
- q. It is also stated that the Corporate Debtor has time and again acknowledged the outstanding debt and default in its Balance Sheet since the Financial Year 2014 till the latest Balance Sheet as on March 31, 2022. The Financial

creditor crave leave to file refer and reply upon the Balance Sheets of the Corporate Debtor for the Financial years March 31, 2014 till March 31, 2022.

- r. The Corporate Debtor has acknowledged the existence of debt, and a fresh period of limitation shall be computed from the time when such acknowledgment was signed, as per Section 18 of the Limitation Act, 1963.
6. The amount of default by the Corporate Debtor against the said facilities as on January 31, 2023 is Rs. 22,13,81,08,600/- (Rupees Two Thousand Two Hundred and Thirteen Crores Eighty One Lakhs Eight Thousand and Six Hundred only) together with interest. The Financial Creditor herein reserves its rights to file a claim following initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor, including penal interest arising out of the facility documents.

Analysis and Findings:

7. We have heard the Ld. Counsel for the parties and perused the record.
8. The main contentions raised by the Corporate Debtor in the Reply- Affidavit and the sur-rejoinder are as follows:
 - a. The Petitioner is not a Financial Creditor within the meaning of section 5(7) of the Code;
 - b. The Petitioner is acting as a front for undisclosed beneficiaries of different trusts and the acquisition of the purported debt of the respondent by the Petitioner has been funded by the said beneficiaries in violation of the provisions of the Prohibition of Benami Property Transactions Act, 1988;
 - c. The Assignment agreements are not sufficiently stamped;
 - d. The instant petition is time-barred;

On the issue of the ARC having locus to file the petition:

9. The primary contention of the Corporate Debtor is that the ARC herein does not fall within the definition of Financial Creditor under section 5(7) of the Code since the assignment of the alleged debt to the Petitioner is in violation of SARFAESI Act,

2002. Further according to the Corporate Debtor, since the Petitioner heren is acting in the capacity of a trustee of four trusts being ACRA-39 Trust, ACRA-43 Trust, ACRA-45 Trust and ACRA-46 Trust and not as the beneficiary of the assigned debt, such acquisition is contrary to section 5 of the SARAESI Act.

10. While Considering the said plea, we find it relevant to refer to sections 5(1) & 5(1A) of the SARFAESI Act which is reproduced hereinafter:

5. Acquisition of rights or interest in financial assets.—(1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any 2 [asset reconstruction company] may acquire financial assets of any bank or financial institution—

(a) by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or

(b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

(1A) Any document executed by any bank or financial institution under sub-section (1) in favour of the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitisation shall be exempted from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899 (2 of 1899):

Provided that the provisions of this sub-section shall not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitisation.

11. It is further relevant to refer to section 7 (2) and (2A) of the Sarfaesi Act, which are reproduced hereinafter:

7. Issue of security by raising of receipts or funds by asset reconstruction company.—

(1) Without prejudice to the provisions contained in the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992), any 2 [asset reconstruction company], may, after acquisition of any financial asset under sub-section (1) of section 5, offer security receipts to qualified institute buyers 3 [or such other category of investors including non-institutional investors as may be specified by the Reserve Bank in consultation with the Board, from time to time,] for subscription in accordance with the provisions of those Acts.

(2) A asset reconstruction company may raise funds from the qualified buyers by formulating schemes for acquiring financial assets and shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial asset acquired out of investments made by a qualified buyer and ensure that realisations of such financial asset is held and applied towards redemption of investments and payment of returns assured on such investments under the relevant scheme.

(2A) (a) The scheme for the purpose of offering security receipts under sub-section (1) or raising funds under sub-section (2), may be in the nature of a trust to be managed by the asset reconstruction company, and the asset reconstruction company shall hold the assets so acquired or the funds so raised for acquiring the assets, in trust for the benefit of the 2 [qualified buyers] holding the security receipts or from whom the funds are raised.

(b) The provisions of the Indian Trusts Act, 1882 (2 of 1882) shall, except in so far as they are inconsistent with the provisions of this Act, apply with respect to the trust referred to in clause (a) above.]

12. Upon a conjoint reading of the aforementioned provisions under sections 5 and 7 of the SARFAESI Act, the following becomes clear:

- a. An ARC can acquire financial assets of any bank or financial institution by entering into an agreement with such bank or financial institution for the

transfer of such financial assets to such ARC on such terms and conditions as may be agreed upon between them;

- b. An ARC may raise funds from the qualified buyers by formulating schemes for acquiring the said financial assets or after acquisition of any financial asset, it may offer security receipts to qualified institute buyers for subscription;
- c. Such scheme for the purpose of raising funds or the scheme for offering security receipts after the acquisition of the financial assets, may be in the nature of a trust to be managed by the ARC, and in such case, the ARC shall hold the assets so acquired or the funds so raised for acquiring the assets, in trust for the benefit of the qualified buyers holding the security receipts or from whom the funds are raised.

13. As such, in light of a conjoint reading of section 5 and & 7 of the SARFAESI Act, it is clear that the transfer of the debt of the Corporate Debtor to the Petitioner herein by way of execution of the assignment deeds annexed to the petition as Annexures G, H, I, J of the petition is in consonance with the provisions of the SARFAESI Act, 2002. The financial assets *i.e* the debt of the Corporate Debtor has been legally acquired by the Petitioner herein.

14. Further Section 5(2) of the SARFAESI Act provides that if a bank or a financial institution is a lender in relation to any financial assets acquired under Section 5(1) by an asset reconstruction company, then such asset reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

15. In this regard, we also seek to place reliance on the order passed by the Hon'ble National Company Law Appellate Tribunal (NCLAT) in ***Kanti Commercial Pvt Ltd vs Edelweiss Asset Reconstruction Co. Ltd*** [Company Appeal (AT) (Insolvency) No. 250 of 2018] held as follows:

In view of the aforesaid fact, the submission made by the counsel for the Appellant that the 'Edelweiss Asset Reconstruction Company Ltd.' cannot be treated to be a Financial Creditor is rejected. Admittedly, there is a debt owed by the Corporate Debtor

in favour of the South Indian Bank Ltd., now in favour of the Assignee - 'Edelweiss Asset Reconstruction Company Ltd.' and Corporate Debtor defaulted to pay the loan. The application under Section 7 of the I&B Code being complete and there being a debt and default, the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench by impugned order dated 1st May, 2018 admitted the application, passed order of moratorium and appointed Interim Resolution Professional with certain directions.

16. Further, in order dated 13.10.2023 passed by Ld. National Company Law Tribunal, Kochi in CP (IBC)/08/KOB/2023, the Ld. Coordinate Bench, placed reliance on order passed by Hon'ble NCLAT in **Kanti Commercial Pvt Ltd** (supra) and held that the assignee ARC is a Financial Creditor and is therefore competent to maintain an application under Section 7 of IBC. The relevant part of the order is reproduced hereinbelow;-

“6. Point No.1: The petitioner is an assignee of the South Indian Bank Ltd filed this petition under section 7 of IBC 2016. The petitioner is an Asset Reconstruction company registered under the provision of SARFEASI Act 2002. According to respondent the petitioner as an assignee is entitled to file proceeding only to recover the dues, it has no right to file petition under the IBC 2016 for an initiation of insolvency process. This contention is unsustainable the debtor cannot dictate terms upon the creditor or its assignee, what kind of legal action has to be taken against him. Section 5(7) of IBC 2016 defines the term ‘financial creditor’ is defined to include an assignee of such creditor as well’, which is evidenced by the words includes a person to whom such debt has been legally assigned or transferred to. When the petitioner is comes under the definition of financial creditor under IBC 2016, as such the petitioner can file the petition under section 7 of IBC 2016. The section 7 of IBC 2016 given a caption that ‘Initiations of corporate insolvency resolution process by financial creditor’. The NCLAT in Degree Cotsyn Pvt Ltd vs Phoenix Arc Pvt Ltd, Company Appeal (AT) (Insolvency) No. 480 of 2019 held that a person who is an assignee of debt under the SARFAESI Act 2002 can also maintain an application under section 7 of the IBC 2016.

[.....]

Thus, it is clear that in terms of section 5(7) of the IBC 2016, an assignee of a financial creditor is a financial creditor and such an assignee may also

maintain an application under section 7 of the IBC. Thus, this point is answered.”

17. In light of the aforesaid decisions, there remains no ambiguity that the ARC being the assignee of a Financial Creditor is also a Financial Creditor within the scope of Section 5 (7) of IBC, 2016 and is thus competent to file the present case under Section 7 of IBC, 2016. The plea of Corporate Debtor is, therefore, rejected in view of the position stated above.

On the issue of non-disclosure of beneficiaries:

18. The next objection raised by the Corporate Debtor is with regard to the non-disclosure of the beneficiaries of the four trusts of which the Financial Creditor herein is a trustee.
19. The Financial Creditor, being a registered asset reconstruction company is permitted under the “Master Circular – Asset Reconstruction Companies”¹ dated April 3, 2023 (**‘Master Circular’**) issued by the RBI, to acquire the financial assets either on its own books or in the books of a trust created in accordance with the provisions of the Indian Trusts Act, 1882 for the purpose of securitization and asset reconstruction.
20. Under Section 7 of the SARFAESI Act read with said Master Circular, an asset reconstruction company is under no obligation to disclose its beneficiaries as long as the security receipts are issued to qualified buyers.
21. Further, section 7 of the IBC also does not mandate the Financial Creditor to disclose the name of the beneficiaries of the trust and as such, the same is not relevant for the adjudication of the instant petition.
22. Furthermore, Rule 4(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 mandates the assignor in cases of assignment to produce documents relevant to “demonstrate the assignment or transfer”. In the instant matter, the assignment deed has been filed which sufficiently establishes the transfer of the debt to the Applicant. In no way can that be interpreted to include the trust deed. All that is relevant in the instant matter is that the debt became due in

¹ Annexure C to the rejoinder

favour of the original Creditors i.e the Cornsortium of banks which have thereafter been transferred to a third party i.e the Petitioner herein.

23. Moreover, the assignment of a debt and issue of Security receipts by the Trust is premise which has a backing of legal regulations. Effecting the assignment through a trust has many layers of advantages and has a legal backing. Trust structures can provide a layer of protection for both the assignor and the assignee. By transferring the debt through a trust, any liabilities or risks associated with the debt can be better managed and segregated from the assignee's other assets or obligations. As such when an assignment is done through a trust, this should be seen as risk mitigation necessity in line with the RBI Master Directions (Transfer of loan assets) rather than being questioned.

On the issue of stamping:

24. The Corporate Debtor has also claimed that the assignment agreements executed in favour of the Financial Creditor are not sufficiently stamped. In this regard, we seek to rely on the decision of the Hon'ble Supreme Court in the matter of ***Asset Reconstruction Company (India) Limited vs. Chief Controlling Revenue Authority*** [2022 SCC OnLine 515] wherein the Apex Court held as follows:

“9.... In fact, under Amendment Act 44 of 2016, sub-section (1A) was inserted in Section 5 of the Securitisation Act, exempting from stamp duty, any document executed by any bank under Section 5(1) in favour of an Asset Reconstruction Company acquiring financial assets for the purposes of asset reconstruction or securitization....”

25. Further, we would like to rely on the observations made by the Ld. National Company Law Tribunal, New Delhi bench in the matter of ***CFM Asset Reconstruction Pvt. Ltd. vs. Nikhil Footwears Pvt. Ltd.***² wherein the Ld. Adjudicating Authority has held as follows:

“9. We are of the considered view that the assignment of debt essentially being a transaction between the Creditor and the Assignee and assignment being recognized by the Code, 2016 as a valid mode of

²CP. No. (IB)- 106(ND)/2022

transfer of rights across the ambit of Section 5(7) of the Code, therefore, the entity who received the said assignment of debt falls within the fold of "Financial Creditor". Further, we are persuaded by the decision of the Hon'ble NCLAT in *Lalan Kumar Singh v. Phoenix ARC (P) Ltd.*, (MANU/NL/0345/2018, dated 20 12-2018) wherein the Hon'ble NCLAT while reiterating the objectives of the Code, 2016 observed that, "In the present case we find that the appellant has sought declaration that the assignment made by HSBC to "Phoenix" as illegal, which can be raised only in a civil suit. The appellant is trying to convert the proceedings under the "I&B Code" as civil proceedings akin to a trial which is not the legislative intent.

.....

12. In a summary proceeding like the IBC proceedings, it is out of the ambit of this Adjudicating Authority to go into the details as regard the requirement or exemption of registration of the Assignment Agreement and other related issues concerning the legality and issue of privity of parties to the Assignment Agreement dated 18.01.2021. Therefore, in this background the assignment cannot be challenged in the petition under Section 7 of the Code, 2016 and as such this issue cannot be decided by the Adjudicating Authority.

13. Further, it is pertinent to note that the assignment does not affect the liability and obligations of the Corporate Debtor to discharge the debt. When this is so, the Applicant herein I.e., CFM Asset Reconstruction Private Limited would step into the shoes of SBI (original lender) with the Assignment Deed dated 18.01.2021 executed in its favor. The contentions raised by the Corporate Debtor is accordingly repelled."

26. We would also like to rely on the decision of the Hon'ble National Company Law Appellate Tribunal (NCLAT) in the matter of **Mr. Praful Nandi Stara vs. Vistra**

ITCL (India) Limited & Ors.³ wherein the Appellate Aurtherity has held as follows:

“ 28.....We note that that the issue of debt being due and payable in the present case is not interdicted by any law but only a technical deficiency of insufficiency of their stamping has been raised which can be cured.”

27. In light of the aforesaid precedents, it is therefore clear that any document executed by any bank under Section 5(1) of SARFAESI Act in favor of an asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitization shall be exempted from stamp duty. Further, it is also clear that any lacunae regarding the registration of the said assignment deed need not be adjudicated upon by this Adjudicating Authority under IBC's summary jurisdiction.

On the issue of limitation:

28. While dealing with the point of limitation, it is pertinent to note that in case of an acknowledgement on behalf of the Corporate Debtor towards the debt owed to the Creditor, a fresh limitation period ensues under section 18 of the Limitation Act, 1963.

29. It is seen that the instant petition was filed on 29.03.2023. The dates of default for the for banks of the consortium as mentioned in the petition are the dates of declaration of the Accounts of the Corporate Debtor herein as NPA which are as follows:

- a. On September 30, 2014 by Allahabad Bank
- b. On August 28, 2014 by SBI.
- c. On September 30, 2016 by IDBI Bank.
- d. On September 30, 2016 by IOB.

30. As such the limitation periods for the said debts would originally end on 30.09.2017, 28.08.2017 and 30.09.2019 respectively. However, keeping the provision of section 18 in mind, the following acknowledgments and their implications on the limitation period need to be taken into account:

³ Company Appeal (AT) (Ins.) No. 713 of 2020

Date	Acknowledgement	Limitation period extended upto:
25.09.2014 (within limitation period)	Master Restructuring Agreement ⁴ and Working Capital Consortium Agreement entered into between Corporate Debtor and consortium of banks	25.09.2017
11.08.2017 (within limitation period)	Revival letter ⁵ executed by Corporate Debtor under Section 18 of Limitation Act	11.08.2020
05.01.2018 (within limitation period)	Reply ⁶ issued by Corporate Debtor to the Statutory notice under SARFAESI Act issued by IDBI Bank- acknowledging the debt	05.01.2021
31.01.2019 (within limitation period)	Letter ⁷ issued by Corporate Debtor addressing the Financial Creditor for settlement of debts	31.01.2022
25.03.2019 (within limitation period)	Letter ⁸ issued by Corporate Debtor addressing the Financial Creditor for settlement of debts	25.03.2022
02.03.2020 (within limitation period)	Letter ⁹ issued by Corporate Debtor addressing the Financial Creditor for settlement of debts	02.03.2023
14.08.2020	Letter ¹⁰ issued by Corporate Debtor addressing the Financial Creditor for settlement of debts	14.08.2023

31. In light of the aforesaid acknowledgements under section 18 of the Limitation Act, 1963, the limitation period shall be extended upto 14.08.2013. As such, the instant petition filed on 29.03.2023 is within limitation period.

⁴ Annexure E to Petition

⁵ Annexure F to Petition

⁶ Annexure HH to Petition

⁷ Annexure A to Rejoinder

⁸ Annexure A to Rejoinder

⁹ Annexure A to Rejoinder

¹⁰ Annexure A to Rejoinder

32. In light of the record available before us, including the Master Restructuring Agreement executed between the Corporate Debtor herein and the four banks , the SARFAESI Notice under section 13(2) of the SARFAESI Act and the revival letter dated 11.08.2017, the ‘debt’ and ‘default’ stand established. As such, this Adjudicating Authority is satisfied that this petition deserves to be admitted.

33. It is, accordingly, hereby ordered as follows:-

- i. The application bearing **CP (IB) No. 91/KB/2023** filed by **Assets Care and Reconstruction Enterprise Limited** (*Financial Creditor*), under section 7 of the Code read with rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Ankit Metal & Power Limited** (CIN: L27101WB2002PLC094979), the Corporate Debtor, is **admitted**.
- ii. There shall be a moratorium under section 14 of the IBC.
- iii. 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 IBC, as the case may be.
- iv. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- v. **Mr. Kshitiz Chhawchharia**, having registration number IBBI/IPA-001/IP-P00358/2017-2018/10616 email:kshitiz@bccindia.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.

- vi. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions 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 Code.
- vii. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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.
- viii. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- ix. The Financial Creditor shall initially deposit a sum of **₹ 4,00,000/- (Rupees Four Lakh only)** 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). Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.
- x. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- xi. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all

available means 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.

34. **CP (IB) No. 91/KB/2023** to come up on **28.06.2024** for filing the progress report.

35. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)