

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. IB-378(PB)/2017

IN THE MATTER OF:

Alchemist Asset Reconstruction Co. Ltd.Financial Creditor
v.
Moser Baer India Ltd.Corporate Debtor

**SECTION: Under Section 7 of The Insolvency and Bankruptcy
Code, 2016**

Judgment delivered on 14.11.2017

Coram:

CHIEF JUSTICE (Retd.) M.M. KUMAR
Hon'ble President

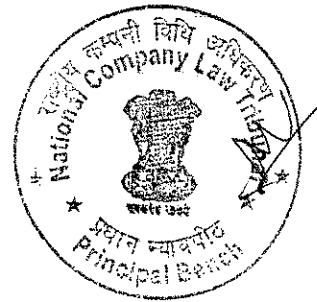
Ms. Deepa Krishan
Hon'ble Member (T)

For the Financial Creditor: -

For the Respondent: Ms. Varsha Banerjee, Advocate

JUDGMENT

Deepa Krishan, Member (Technical)

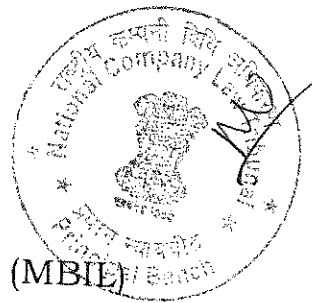


The 'Financial Creditor'- Alchemist Asset Reconstruction Co. Ltd (AARC) has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to trigger the Corporate Insolvency Resolution

Process in the matter of Moser Baer India Ltd. It is appropriate to mention that the 'financial creditor' is a body corporate that acquired the secured debt of State Bank of Hyderabad (now merged with State Bank of India) vide assignment deed dated 30.03.2016. The 'financial creditor'/Applicant was incorporated on 19.09.2002 and its identification number is U74999DL2002PLC117052 and has its registered office at D-54, First Floor, Defence Colony, New Delhi-110024

2. Mr. Manish Nihalani, Assistant Vice-President has been authorised by the Board of Directors of AARC vide Resolution passed in the Board Meeting held on 30.12.2016 inter-alia to file the requisite application before the Hon'ble Tribunal. Copy of Board of Directors' Resolution dated 30.12.2016 is attached as Annexure 1.

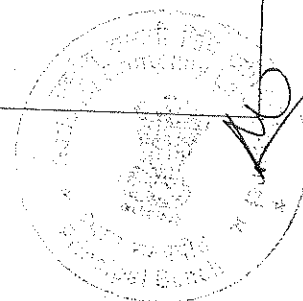
3. The Corporate Debtor- M/s Moser Baer India Ltd. (MBIE) was incorporated on 21.03.1983. The identification number of the Corporate Debtor is L51909DL1983PLC015418 and its registered office is situated at 43-B, Okhla Industrial Estate, New Delhi-110020. Its nominal share capital of equity shares is Rs. 1250.00



Crores (1,25,00,00,000 shares of Rs. 10 each) and paid-up share capital is Rs. 221.77 Crores (22,17,65,983 shares of Rs. 10 each).

4. In the application, the Financial Creditor has given the details of financial debt granted to the 'Corporate Debtor' with the dates of disbursement. A perusal of part IV of the application has highlighted the following particulars of financial debt:

"PARTICULARS OF FINANCIAL DEBT"					
1	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMEN T	Total amount of debt disbursed by State Bank of Hyderabad (now merged with State Bank of India) to the Corporate Debtor is as under: (Rs. In Crores)			
		S.No.	Particulars	Date of Disbursement / Sanction	Amount Disbursed
		1.	Corporate Loan Agreement	25.09.2009	50.00
		2.	Working Capital Facility	31.05.2010 (availed in parts upto 2012)	50.00
		Total		100.00	
		Vide Master Restructuring Agreement dated 27.12.2012, the debt disbursed was restructured as under:			



(Rs. In Crores)

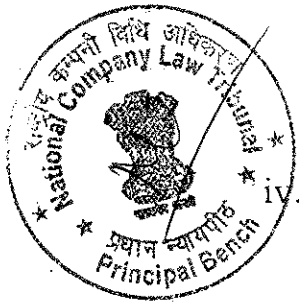
S. No.	Particulars	Amount Restructured
1.	Term Loan	50.00
2.	Fund Based Working Capital Limits (FWCL)	36.00
3.	Non-Fund Based Working Capital Limits (NFWCL)	18.00
4.	Funded-Interest Term Loan (FITL)	6.88
5.	Working Capital Term Loan (WCTL)	5.42
6.	Funded-Interest Working Capital Term Loan (FIWCTL)	0.57
7.	New Term Loan	2.60 (not disbursed)
	TOTAL	119.47

However, as the Corporate Debtor could not honour the obligations as per the MRA, lenders decided to exit the matter of the Corporate Debtor from CDR on 10.10.2016. Against the above debt, the total outstanding of the Corporate Debtor to the applicant as on 10.09.2017 amount to Rs. 1,85,37,13,958/-.

The detailed working by AARC for computation of amount outstanding as on 10.09.2017 along with accounts statement has been given as Annexure-3.

5. As per Part-IV of the Application, the amounts claimed to be in default and the dates on which the default occurred are mentioned as below: -

- i. Rs. 1,85,37,13,958/- (Rupees One Hundred Eighty-Five Crores Thirty-Seven Lakh Thirteen Thousand Nine Hundred Fifty-Eight Only) as on 10.09.2017 along with future interest at contractual rate.
- ii. Account of the Company acquired by AARC became NPA with effect from 26.11.2014 and that the said date may be considered as date of default. From the said date, total number of days of default as on 10.09.2017 are 1020.
- iii. After the account of the company became NPA, AARC issued recall notice dated 04.04.2017 to the Corporate Debtor giving it time of 15 days for making payment of the dues, however, again Corporate Debtor defaulted in making payment of the dues demanded.
- iv. Working by AARC for computation of amount outstanding as on 10.09.2017 along with the account statements is enclosed as Annexure 3.



The computation of claim as on 10th September 2017, and computation of days of default is given below: -

Computation of Claim as on September 10, 2017

Moser Baer India Limited			
S. No.	Account	Account No.	Amount
1	Term Loan	62271047709	85,85,90,910.19
2	Cash Credit	62132691020	90,32,65,284.45
3	WCTL	62271050802	6,75,59,395.23
4	FITL-I	52270986524	2,23,91,383.44
5	FITL-II	62271012925	19,06,984.89
	Total		1,85,37,13,958.21

Total no of Days of Default from declaration of NPA 26-11-2014 till 10-09-2017, 1020 days.

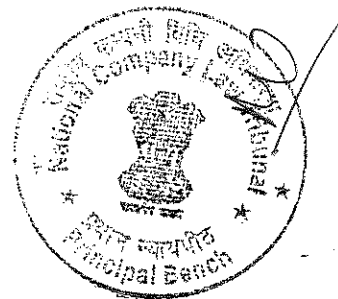
Moser Baer India Limited				
S. No.	Year	Start Date	End Date	No. of Days
1	2014	26-Nov-14	31-Mar-15	125
2	2015	31-Mar-15	31-Mar-16	366
3	2016	31-Mar-16	31-Mar-17	365
4	2017	31-Mar-17	10-Sep-17	164
				1020

The details of security held by on *pari passu* basis by the Financial Creditor / Applicant along with other CDR lenders have been filed as Annexure-4. These are detailed below: -

Secured Assets

Primary Security: -

For Term Loan and FITL



- First *pari passu* charge on fixed assets of the company.
- Second *pari passu* charge on the current assets

For Working Capital Facilities.

- First *pari passu* charge over current assets.
- Second *pari passu* charge over entire (present and future) fixed assets of the company.

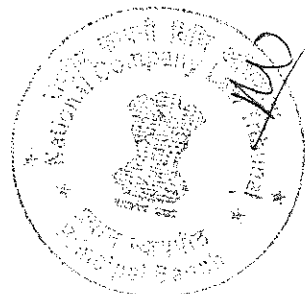
Collateral Security- 1st *pari passu* charge

- Negative lien on SEZ land owned in Chennai by subsidiary named Moser Baer Infrastructure & Developers Ltd. (MBIDL).
- Pledge of 100% of promoters' shareholding in Moser Baer India Limited.
- Pledge of shares of MBIDL

Details of properties

The details of properties Equitably Mortgaged by M/s. Moser Baer India Limited, in favour of Centbank Financial Services Limited, Security Trustee

- Plot No.- 119-124, Block-A, Sector-80, Noida admeasuring 12,464.37 Sq. Meters
- Plot No.-125, Block-A, Sector-80, Noida admeasuring 672 Sq. Meters.
- Plot No.-162, Block-A, Noida admeasuring 3478.84 Sq. Meters
- Plot No.-164, Block-A, Sector-80, Noida admeasuring 39,218.28 Sq. Meters
- Plot No.-154 A, Block-A, Sector-80 Noida admeasuring 4024.00 Sq. Meters



- vi. Plot No.- 66, Udhyog Vihar, Sector Ecotech-II, Greater Noida admeasuring 2,70,201.16 Sq. Meters
- vii. Plot No.- 66, Noida Special Economic Zone, Noida admeasuring 3937.50 Sq. Meters
- viii. Office premises No. 510, Maker Chamber-V, Nariman Point, Mumbai-400 021 admeasuring 600 Sq. ft.

Besides the aforementioned assets the loans are inter-alia secured by,

Personal Guarantee from:

1. Shri Deepak Puri
2. Mrs. Neeta Puri

Corporate Guarantee from:

1. Moser Baer Infrastructure & Developers Limited
43B, Okhla Industrial Estate
New Delhi-110020.

6. As per Part-V of the application the total estimated value of the security held by all the lenders of the Company as per estimate made by AARC is Rs. 271.85 Crores. Copies of Certificates of Registration of Mortgage and of Modification of Mortgages issued by Registrar of Companies, New Delhi have also been enclosed with the Application as Annexure 5 (Colly).

The financial creditor/Applicant has also placed the copies of the financial contracts with respect to the facilities given by the consortium lenders including State Bank of Hyderabad (now



merged with State Bank of India), now held by AARC are as Annexure 6 to 54 with the Application as Proof of Existence of Debt.

7. The 'financial creditor' has placed on record an overwhelming amount of evidence to prove the amount advanced to the Corporate Debtor.

8. Copies of entries in a Banker's Book in accordance with the Bankers Books Evidence Act, 1891 (18 of 1891) have also been filed. The entries in books of accounts of State Bank of Hyderabad (now merged with State Bank of India) are as follows:

(a) Term Loan (TL) (A/c No. 62108454191) – 25.09.2009 to 16.02.2013

(b) Restructured Term Loan (TL) (A/c No. 62271047709) – 16.02.2013 to 30.03.2016

(c) Working Capital (WC) (A/c No.- 62132691020) – 01.06.2010 to 30.03.2016

(d) Working Capital Term Loan (WCTL) (A/c No. 62271050802) – 16.02.2013 to 30.03.2016

(e) Funded-Interest Term Loan 1 (FITL 1) (A/c No. 62270986524) – 16.02.2013 to 30.03.2016

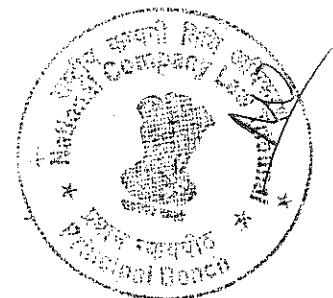
(f) Funded-Interest Working Capital Term Loan 2 (FITL 2) (A/c No.- 62271012925) – 16.02.2013 to 30.03.2016

Copy of State Bank of Hyderabad's (now State Bank of India) consent letter dated 30.03.2016 to AARC under section 5 of the SARFAESI Act wherein the Bank has given its consent to AARC for seeking substitution of its name in place of bank's name in all the pending legal proceedings are enclosed as Annexure 55.

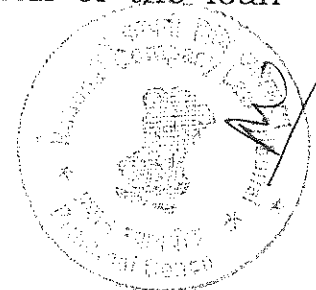
Copy of Statement of Account of MBIL prepared in the books of AARC from 19.03.2016 till 10.09.2017 is already enclosed as Annexure 3.

9. For the purpose of providing the existence of financial debt, the amount of debt and date of default, in addition to the order documents attached along with this application, the following additional documents are also attached:

i. Copy of State Bank of Hyderabad's (now State Bank of India) letter dated 12.04.2016 to MBIL informing about the assignment of dues of State Bank of Hyderabad (now State Bank of India) in favour of AARC is enclosed as Annexure 56.



- ii. Copies of entries in the Books of State Bank of Hyderabad (now State Bank of India) in accordance with Bankers Book Evidence Act, 1891 with respect to the loan facilities granted by it to MBIL is enclosed as Annexure 57.
- iii. Copy of the Certificates obtained from Central Registry of Securitization Asset Reconstruction & Security Interest of India on various dates showing the security interest to secure the loans to MBIL created in favour of Centbank Financial Services Limited as Security Trustee for lenders including State Bank of Hyderabad (now merged with State Bank of India) is enclosed as Annexure 58.
- iv. Copy of the letter dated 10.10.2016 issued by CDR Cell informing the lenders that the account of the corporate debtor stands exited from CDR system on account of failure of approved restructuring package is enclosed as Annexure 59.
- v. Copy of the Recall Notice dated 04.04.2017 issued by AARC to MBIL and its guarantors for recall of the loan facility is enclosed as Annexure 60.



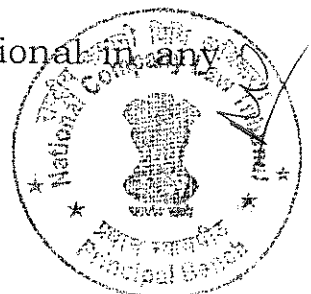
- vi. Copy of the Notice dated 13.09.2017 issued by Alchemist Asset Reconstruction Company Limited (AARC) to MBIL & its guarantors under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 along with the corrigendum dated 14.09.2017 is enclosed as Annexure 61.
- vii. Audited Balance Sheet of MBIL as on 31.03.2017 downloaded from the website of the Corporate Debtor is enclosed as Annexure 62. On page 103 of the said balance sheet (on Page No. 1180 of the application), in Note No. 45, there is an admission by the Corporate Debtor of the existence of default to its lenders.
- viii. The Company was registered with Hon'ble BIFR vide Registration No. 49/2014 on 16.09.2014. However, subsequently on notification of provisions of Sick Industrial Companies (Special Provisions) Repeal Act, 2003 with effect from 01.12.2016, the reference of the Company with Hon'ble BIFR got abated. Copy of the last order of the Hon'ble BIFR dated 17.02.2015 is enclosed as Annexure 63.
- ix. Proof of Service to Corporate Debtor is enclosed as Annexure 64.



10. The Learned Counsel for the Corporate Debtor accepted the notice of the application on 28.09.2017 and stated before us at the hearing that filing of reply would not be necessary. Thus, it is apparent that the Corporate Debtor does not oppose the application of the Financial Creditor filed u/s 7 of IBC and accordingly has nothing to say in respect of commission of default.

11. The 'financial creditor' has proposed the name of Devendra Singh, Director, Witworth Insolvency Professionals Pvt. Ltd., 93, DDA Site-I, Shanker Road, New Rajinder Nagar, New Delhi-110060, email-id:- dev_singh2006@yahoo.com, registration no.- IBBI/IPA-002/IPN00001/2016-17/10001 as the Interim Resolution Professional in Part-III of the Application. Copy of the Consent Letter from Interim Resolution Professional in Form-2 is enclosed as Annexure 2.

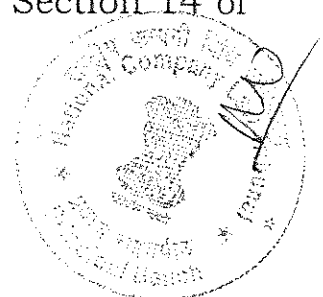
He has also made declaration and filed a written communication dated 19.09.2017 in Form-2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. According to the declaration made by Shri Devendra Singh, no disciplinary proceedings are pending against him and he is not serving as a Resolution Professional in any



other proceedings. It is also stated in the communication that he is eligible to be appointed as Resolution Professional in respect of the Corporate Debtor in accordance with provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons) Regulations, 2016. He has also stated in the written communication that he is not a related party either of the Financial Creditor or the Corporate Debtor. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

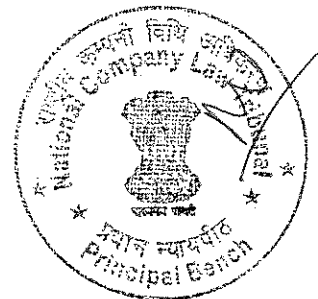
12. For the reasons aforementioned, this petition is admitted. Shri Devendra Singh who is duly registered with Insolvency and Bankruptcy Board of India IBBI/IPA-002/IPN00001/2016-17/10001 is hereby appointed as an Interim Resolution Professional.

13. In pursuance of Section 13 (2) of the Code we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Regulations) with regard to admission of this application under Section 7 of the Code. We also declare 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). 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 Securitisation 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.”



14. 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.

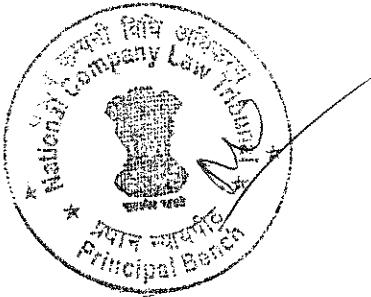
15. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value



of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

16. The Petition is disposed of in the above terms.

17. The office is directed to communicate a copy of the order to the Financial Creditor and the Corporate Debtor at the earliest possible but not later than seven days from today.



14.11.2017
Kanta

Nirmala Vincent
14/11/17

NIRMALA VINCENT
Court Officer
National Company Law Tribunal
Govt. of India, New Delhi

Sd/-
(CHIEF JUSTICE M.M. KUMAR)
PRESIDENT

Sd/-
(DEEPA KRISHAN)
MEMBER (TECHNICAL)

14.11.17