

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

**C.P. NO. 1315/I&BP/2017**

Under Section 7 of the I&B Code, 2016

In the matter of

**ALCHEMIST ASSET RECONSTRUCTION  
COMPANY LTD.**

.... Financial Creditor

v/s.

**ABHIJEET MADC NAGPUR ENERGY PVT. LTD.**

.... Corporate Debtor

And

**IVN P. No.21 of 2017 in  
C.P. NO. 1315/I&BP/2017**

**MAHARASHTRA AIRPORT DEVELOPMENT  
COMPANY (MADC)**

... Applicant/Intervener

Order delivered on: 6.10.2017

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)  
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioner: Mr. Nilesh Sharma &

Mr. Ashish Pyasi, Advocates for Financial Creditor.

For the Respondent: Mr. Nishtha Sikroria, Advocate for Corporate Debtor

For the Intervener: Mr. Shardul Singh a/w Mr. Rahul Sinha, Advocate  
i/b DSK Legal.

*Per V. Nallasenapathy, Member (Technical)*

**ORDER**

*Pronounced on 21.9.2017*

This Insolvency and Bankruptcy Petition is filed by the Financial Creditor

Alchemist Asset Reconstruction Company Ltd (herein after called AARC) u/s 7

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read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules) 2016 against the Corporate Debtor (Abhijeet MADC Nagpur Energy Pvt. Ltd.) saying that the Corporate Debtor defaulted in making the payment of financial debt to the extent of ₹9,59,33,21,883 (Rupees Nine Hundred and Fifty Nine Crores Thirty Three Lakhs Twenty One Thousand Eight Hundred Eight Three Only)

2. The Corporate Debtor was incorporated on 12.7.2007 and engaged in the business of developing, designing, constructing, operating and maintaining coal based electric generation plant and other incidental facilities & power generation plant. The operations of the Corporate Debtor have become like open and shut, commenced on 1.8.2011 and suspended in January 2014.

3. The Corporate Debtor total paid up Share Capital is ₹450.93 crores with Equity Share Capital of ₹160.93 crores and Preference Share Capital of ₹290 crores as on 31.3.2014. The Maharashtra Airport Development Company Ltd. is holding 26% of the Share Capital of the Corporate Debtor. The corrected Form – 1 filed by AARC reveals that a sum of ₹727.64 crores was disbursed by Axis Bank, State Bank of Hyderabad, Bank of Maharashtra and UCO Bank over a period of time from 2.7.2009 to 30.4.2013.

3. The AARC is an assignee of the loans due to the following financial institutions which were assigned to it as mentioned below:



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- a) Assignment Deed dated 28.09.2015 (Executed on 02.09.2016) by Axis Bank Ltd.
  - b) Assignment Deed dated 31.12.2015 Executed by State Bank of Hyderabad.
  - c) Assignment Deed dated 30.03.2017 Executed by Bank of Maharashtra.
  - d) Assignment Deed dated 30.03.2017 Executed by UCO Bank.
4. AARC enclosed the following loan documents executed by the corporate debtor in proof of debts
- a) Common Senior Rupee Loan Agreement dated 02.07.2009
  - b) Subordinate Rupee Loan Agreement dated 02.07.2009
  - c) Additional Common Senior Rupee Loan Agreement dated 12.03.2010
  - d) Additional Subordinate Rupee Loan Agreement dated 12.03.2010
  - e) Working Capital Consortium Agreement dated 09.08.2011
  - f) Letter of Approval of CDR Scheme dated 28.03.2013
  - g) Master Restructuring Agreement dated 30.04.2013
  - h) Certificate of Registration of charges dated 03.07.2009 and 14.11.2011

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- i) Certificate of Modification of charges dated 25.03.2010; 30.06.2010; 11.11.2010; 21.02.2011; 29.03.2012 and 04.05.2013.
- j) CERSAI registration of charge in favor of AARC dated 03.07.2009; 30.06.2010; 21.02.2011 and 29.03.2012.

5. AARC enclosed the statement of account of Axis Bank, State Bank of Hyderabad, Bank of Maharashtra and UCO Bank showing the dues of Corporate Debtor.

6. AARC states that the Corporate Debtor was not able to make payments of its dues to the original lenders as per the original repayment schedule and at request of the Corporate Debtor, the lenders referred the matter to the Corporate Debt Restructuring Forum. Then CDR scheme was approved under CDR Mechanism on 28.3.2013 and a Master Restructuring Agreement was executed between the Corporate Debtor and the Lender on 30.4.2013. In spite of all these efforts, the Corporate Debtor defaulted in making repayment of interest and principal, as a result, the account of the Corporate Debtor was classified as NPA by UCO Bank on 4.11.2012, the State Bank of Hyderabad on 17.9.2014, Bank of Maharashtra on 30.9.2014 and the Axis Bank on 21.7.2015. Thereafter, all the above Banks assigned their debts in favor of AARC, on such assignment, AARC on 17.1.2017 issued section 13 (2) notice under SARFAESI Act enclosing the computation of amount due from the Corporate Debtor as on 31.7.2017 along with Statement of Account for all the four above said Banks. The amount due to AARC



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as on 31.7.2017 is ₹9,59,33,21,883 and the same is in default. In fact, previously Axis Bank, on behalf of Consortium of Banks issued SARFAESI notice on 28.9.2015 itself. AARC also enclosed the copies of entries in the Banker's Books of all the four banks in accordance with the Bankers Books of Evidence Act, 1891. When the debtor failed to repay it even after notice was given, this petitioner filed this petition by enclosing all the documents above mentioned.

7. The AARC suggested Mr. Vinod Kumar Kothari, 1006-1009, Krishna Building, 224 AJC Bose Road, Kolkata – 700017, Email ID [resolution@vinodkothari.com](mailto:resolution@vinodkothari.com) having Registration No. IBBI/IPA-002/IP-N00019/2016-17/10033 as Interim Resolution Professional.

8. This Adjudicating Authority, on perusal of the documents filed by the Creditor, it is evident that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional, having this Bench noticed that default has occurred and there is no disciplinary proceedings pending against the proposed resolution professional, the Application under sub-section (2) of section 7 is taken as complete, accordingly this Bench hereby admits this Application declaring Moratorium with the directions as mentioned below:

- a) That this Bench hereby prohibits 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,



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- arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- b) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- d) That the order of moratorium shall have effect from 21.09.2017 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.



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- e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- f) That this Bench hereby appoints, Mr. Vinod Kumar Kothari, 1006-1009, Krishna Building, 224 AJC Bose Road, Kolkata – 700017, Email ID [resolution@vinodkothari.com](mailto:resolution@vinodkothari.com) having Registration No. IBBI/IPA-002/IP-N00019/2016-17/10033 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.
9. On the Company Petition filed by AARC as mentioned above, MADC, wholly owned by State of Maharashtra filed an Intervening Application (Inv P 21/2017) stating that the land on which this Power Project has come belongs to MADC and the same has been leased out for 33 years to the Corporate Debtor Company as reflected in the Concession Agreement dated 7.11.2007 to build and operate Power Plant and Transmission Line and transfer this line as well as Plant to MADC 33 years after expiry of Agreement dated 7.11.2007. In view of the Agreement in between the Corporate Debtor and MADC, it has been using Transmission Line since 2014 to the extent of its requirement i.e., 9 MW to MADC Projects. The Applicant has sought a relief to direct IRP and Committee of Creditors that they shall cooperate with Applicant as per the order of MERC dated 4.8.2017 and also in accordance with the concession Agreement dated 4.8.2017.11.2007.



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10. On the prayer made by this applicant company incorporated by State Government of Maharashtra, this Bench hereby holds that IRP will continue to manage switch yard and the transmission line as per the Order dated 4.8.2017 passed by Maharashtra Electricity Regulatory Commission (MERC) and in case any dispute arises on the site, Corporate Debtor represented by IRP and Committee of Creditors (CoC) shall co-operate with MADC as per the order of MERC dated 4.8.2017 and also in accordance with the Concession Agreement entered into between MADC and the Corporate Debtor on 7.11.2007.
11. It appears that MADC has been supplying Power to all the units in the SEZ area, thereby if at all any interruption comes to power supply to SEZ area, such interruption will have ramifications on various Projects running in the SEZ area.
12. Moreover, MADC being the land owner of the land on which Power Project has been built and this applicant company being incorporated by Maharashtra Govt. to cater the needs of SEZ area and also for development of Airport area, we are of the view that Insolvency Resolution Professional appointed in this case and CoC shall not interfere with the pre-existing rights of MADC and also the Order dated 4.8.2017 passed by MERC.
13. Accordingly, this Bench hereby directs that Insolvency Resolution Professional shall continue to manage the transmission line as per the Order dated 4.8.2017 passed by MERC and concessional Agreement dated 7.11.2017, in case any



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difficulty arises on either side, the Corporate Debtor represented by IRP and CoC shall co-operate with MADDC.

14.. Accordingly, this CP 1315 of 2017 is hereby allowed and INV 21 of 2017 filed by the Maharashtra Airport Development Company (MADC) is disposed in the terms above.

15. The Registry is hereby directed to communicate the copy of this order to AARC, the Corporate Debtor and MADDC.

Sd/-

**V. NALLASENAPATHY**  
Member (Technical)

Sd/-

**B.S.V. PRAKASHKUMAR**  
Member (Judicial)