



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

CP (IB) No. 264/MB/2020 & C.P. (IB) No. 1234/MB/2022

*[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:

CFM ASSET RECONSTRUCTION PRIVATE LIMITED

[CIN No. U67100GJ2015PTC083994]

Registered Office: Block No. A/1003, West Gate

Near YMCA Club, Sur No. 835/13, S.G. Highway

Makarba, Ahmedabad-380051 Gujarat.

Corporate Office: 1st Floor, Wakefield House

Sprott Road, Ballard Estate

Mumbai-400038, Maharashtra.

...Financial Creditor

V/s

VIDARBHA INDUSTRIES PRIVATE LIMITED

[CIN: L51900MH1984PLC034501]

Registered Office: Refinery Area

Shirpur, Taluka Shirpur, District Dhule

Shirpur-425405, Maharashtra.

...Corporate Debtor

Pronounced: 30.09.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Hearing: Hybrid



Appearances:

Financial Creditor: Sr. Adv. Vikram Nankani, Sr. Adv. Darius J Khambata a/w Adv. Manmeet Singh, Adv. Sairam Subramanian, Mr. Anugrah Robin Frey, Ms. Saloni Shah, Ms. Bhavika Deora, Ms. Sadhvi Kumar, Ms. Jewel Bhateja & Ms. Ashika Jain i/b Saraf & Partners

Corporate Debtor: Sr. Adv. Prateek Seksaria a/w Ms. Raghavi Sharma & Adv. D.J. Kakalia i/b Mulla and Mulla Craigie Blune and Caroe.

COMMON ORDER

[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

1.1 These Company Petitions bearing C.P. (IB) No. 264/MB/2020 and 1234/MB/2022 (Applications) were filed on 17.01.2020 and 14.11.2022 respectively under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AA Rules) by Axis Bank Limited (Original Lender No. 1) and State Bank of India (Original Lender No. 2), the Financial Creditors (FCs) for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Vidarbha Industries Private Limited, the Corporate Debtor (CD).

1.2 The total amounts of default alleged in C.P. (IB) No. 264/2020 and 1234/2022 are Rs. 553,27,99,322/- and Rs. 2378.63 Crore respectively. It is submitted that the Original Lenders No. 1 and 2 are part of a consortium of lenders and they had extended certain credit facilities to the CD for business purposes. The consortium was based on Inter-Creditor Agreement dated 06.07.2019



with Original Lender No.1 as its Lead Bank. However, the CD defaulted in its payment obligations under the financing documents entered between the CD and the Original Lenders on 31.03.2019 and, therefore, the CD's loan accounts were classified as Non-Performing Asset on 28.06.2019 and 29.06.2019 respectively by the Original Lender No. 1 and 2. Since the CD defaulted in payment of its outstanding debt, the Original Lenders pray that CIRP may be initiated in respect of the CD under Section 7 of the IBC.

1.3 C.P. No. (IB)/264/2020 (Main C.P.) has a chequered history in that this matter travelled up to the Hon'ble Supreme Court in Civil Appeal No. 4633/2021 and brought about an important judgment by the Apex Court and finally returned to NCLT for re-consideration of Miscellaneous Application (M.A). No. 570/2020 in the Main C.P., for stay of further proceedings on merits in accordance with law. M.A. No. 570/2020 was filed by the CD challenging maintainability of the Main C.P. before Bench-II (Special Bench) of this Tribunal. The CD prayed for stay of the Main C.P. until final hearing and disposal of the following proceedings pending before various authorities:

- i. Civil Appeal No. 372 of 2017 by the Hon'ble Supreme Court;
- ii. Case No. 199 of 2017 by the Maharashtra Electricity Regulation Commission (MERC);
- iii. Case No. 44 of 2020 by the MERC; and
- iv. Appeal No. 446 of 2019 by the Appellate Tribunal for Electricity (APTEL)

1.4 However, Bench-II (Special Bench), *vide* order dated 29.01.2021, dismissed M.A. No. 570/2020 in the main C.P, *inter alia*, observing that it was intended to deflect the attention of the Tribunal from default in repayments of the CD's



debts. Further, it observed that the above pending proceedings were extraneous in nature in the proceedings under Section 7 or 9 of the IBC and that they shall not come in the way of expeditiously deciding the application. Aggrieved by the said order, the CD, challenged the same before the Hon'ble NCLAT and the NCLAT, Principal Bench, *vide* order dated 02.03.2021, dismissed the appeal in Company Appeal (AT) (Ins) No. 117 of 2021, holding that the flow of legal process cannot be permitted to be thwarted on considerations which are anterior to the mandate of Section 7(4) and 7(5) of the IBC. This order was challenged by the CD in Civil Appeal No. 4633/2021 before the Hon'ble Supreme Court in which the Hon'ble Supreme Court passed judgment dated 12.07.2022, setting aside the order of the Hon'ble NCLAT upholding the order of NCLT in M.A. No. 570/2020 dated 29.01.2021, and also directing NCLT to reconsider the said M.A. filed by the CD for stay of further proceedings on merits.

1.5 Subsequently, C.P.(IB) No. 264/2020 was transferred to this Bench along with many other matters on 26.03.2024 and later C.P.(IB) No. 1234/2022 was also transferred to us by the order of the Hon'ble President, NCLT in TA (IBC)-24(PB)/2024 dated 03.05.2024 for expeditious disposal as this Bench is specifically designated for taking up cases of admission. We took C.P.(IB) No. 264/2020 as the lead matter (Main C.P) and continuously heard M.A. No. 570/2020 and all other IAs along with both C.P.(IB) No. 264/2020 and C.P.(IB) No. 1234/2022. Consequently, hearing on the Main C.P. and M.A. 570/2020 was completed on 05.09.2024 and the same was listed for written submissions of parties on 23.09.2024. On that day, all the Sr. Counsel



appearing for the Applicant/CD and Respondent/FC jointly submitted that the M.A. and I.A challenging maintainability of C.P.(IB) No. 264/2020 and C.P.(IB)No. 1234/2022 were being unconditionally withdrawn by the Applicant/CD pursuant to the mutual discussions and negotiations and arriving at understanding by the parties.

1.6 Later the CD/Applicants in M.A. No. 570/2020 and in I.A. No. 1190/2021 filed I.A *vide* Filing Nos. 2709138/09109/2024 and 2709138/09110/2024 respectively, both dated 01.09.2024, praying for allowing unconditional withdrawal of the above M.A and the I.A. including other applications/pleadings/objections such as:

A. In C.P.(IB) No. 264/2020:

- (i) Affidavit in Reply dated 28.02.2020.
- (ii) Further Affidavit dated 10.03.2021
- (iii) Additional Affidavit dated 26.09.2021
- (iv) **Stay Application dated 11.02.2020 i.e., M.A. No 570/2020**
 - a) Affidavit in Reply dated 10.10.2022
 - b) Affidavit in Rejoinder dated 11.10.2022
 - c) Affidavit in Reply dated 18.11.2022
- (v) **Dismissal Application dated 31.05.2021 i.e., I.A. No 1190/2021**
 - a) Further Affidavit dated 19.08.2021
 - b) Affidavit in Rejoinder dated 11.10.2022

And

B. In C.P.(IB) No. 1234/2022:

- (i) I.A. No. 745/2023 for dismissal dated 23.02.2023;



- (ii) Affidavit in Rejoinder in I.A. No. 745/2023 dated 27.06.2023;
- (iii) Stay Application in I.A. No. 933/2023 dated 10.03.2023;
- (iv) Affidavit Rejoinder dated 27.06.2023 in I.A. No. 933 of 2023;

2. CONTENTIONS OF FC

2.1 Vidarbha Industries Power Limited (VIPL) is a special purpose vehicle incorporated for setting up of 600 MW coal-based thermal power plant at Butibori, Nagpur, Maharashtra. The CD availed loan from the FC of Rs. 749 Crore under different credit facilities from a consortium of lenders including Axis Bank Limited and State Bank of India. However, due to non-payment of debt, the CD's account with the lenders was classified as Non-Performing Asset on 28.06.2019. Subsequently, both Axis Bank Limited [C.P.(IB) No. 264/2020] and State Bank of India [C.P.(IB) No. 1234/2022] have respectively filed these applications under Section 7 of the IBC. Later, both of them assigned their debts to CFM Asset Reconstruction Private Limited (CFM), the present FC *vide* Assignment Agreement dated 17.08.2023.

2.2 It is submitted that the present FC, CFM Asset Reconstruction Private Limited (Assignee) was impleaded as Financial Creditor No. 2 along with the Original Lender No. 1 (Axis Bank Ltd.) in C.P.(IB) No. 264/2020 as well as the Original Lender No. 2 (State Bank of India) in C.P.(IB) No. 1234/2022 *vide* orders dated 07.03.2024 in I.A. No 4450 of 2023 and I.A. No. 4428/2023 respectively. Aggrieved by the said orders, the CD challenged the same before the Hon'ble NCLAT. However, the Hon'ble NCLAT, *vide* order dated 12.08.2024 in *Vidarbha Industries Power Limited Vs. CFM Asset*



Reconstruction Private Limited and Anr. [Comp. App. (AT) (Ins.) No. 1224 of 2024 with Comp. App. (AT) (Ins.) No. 1230 of 2024 & I.A. No. 4086 of 2024] upheld the order dated 07.03.2024 of NCLT in I.A. No. 4428/2023 but also modified the order dated 07.03.2024 of NCLT in I.A. No. 4450/2023 to the extent of substituting the FC in place of the Original Lender No. 1 as the sole applicant in C.P. (IB) No. 264/2020.

2.3 It is submitted that the CD's plant at Nagpur, Maharashtra, out of operation since 2019, was its primary source of revenue. The CD, *vide* its letter dated 15.02.2021 addressed to the Original Lender No.1, acknowledged the debt due and payable to various lenders including the Original Lenders. The Ld. Sr. Counsel for the FC submitted that the CD, *vide* its letter dated 26.05.2021 addressed to the Original Lender No.1 (Axis Bank Limited) informed the Original Lender No. 1 about the poor revenue generation of the plant except the nominal income of Rs. 37,00,000/- (Thirty-Seven Lakh Rupees) per month from rentals of transmission line. Further, the CD, *vide* the minutes of consortium meeting dated 25.02.2022, informed the consortium about lack of viability regarding the sale of power post-operationalisation of the said plant and absence of requisite funds to even remit salaries to its employees for which it sought urgent support of Rs.5,00,00,000/- from the consortium. The consortium was further informed on 24.05.2022 by the CD that as its promoter company, Reliance Power Limited (RPL) was itself under financial stress, there can be no financial contribution from the RPL to the CD.

2.4 The FC contends that the CD's contention of settling its outstanding dues merely on the basis of implementation of APTEL's order dated 03.11.2016 is



misplaced since the CD's claim of Rs. 1,730 Crore based on APTEL's order dated 03.11.2016, is neither crystallised nor ascertained, as Civil Appeal No. 372/2017 is currently pending before the Hon'ble Supreme Court. The APTEL's order has not attained finality as yet. Even if the CD is able to implement the said order, the total amount of debt due on the CD's part is more than Rs. 3,000 Crore, which cannot be completely satisfied upon implementation of the APTEL's order in whole.

2.5 It is submitted that the Central Government is also aware of the precarious financial condition of the CD which is evident from the minutes of the meeting with the lenders dated 02.05.2022, wherein it was noted that the debts owed by the CD to the lenders were approximately Rs. 3,000 Crore, which is much more than estimated claim of APTEL's order dated 03.11.2016 of Rs. 1,730 Crore as contended by the CD. This shows that the admission of the CD into CIRP would not adversely affect the CD's interests when its financial status is already in doldrums.

2.6 The CD's Financial Statements for the Financial Years (FYs) 2020-2021, 2021-2022 and subsequent FYs indicate acknowledgement of debt due and payable to the Original Lenders, namely, Axis Bank Limited and State Bank of India in C.P. (IB) No. 264/2020 and C.P.(IB) No. 1234/2022 respectively.

2.7 It is further submitted that the CD's plant has become non-operational since 15.01.2019 and hence, the ability of the CD to continue as a going concern is uncertain. In the circumstances, the FC prays that the CD is only to be admitted into CIRP under Section 7 of the IBC.



3. CONTENTIONS OF CD

3.1 It is the case of the CD that it had set up 600 MW coal-fired thermal power plant comprising of 2 units of 300 MW each. In the year 2007, it was awarded implementation of group captive power project through international bidding process conducted by the Maharashtra Industrial Development Corporation (MIDC), which was later converted into an independent power project. Subsequently, it offered Gross Energy Output of 600 MW to Reliance Infrastructure Limited (RIL) being a distributing licensee in Mumbai. RIL approached the MERC for approval of power procurement from the CD and on 20.02.2013, MERC granted approval for the same. The CD was also directed to provide Non-Objection Certificate from MIDC as a pre-condition for procurement of power by RIL. Thereafter, the Power Purchase Agreement (PPA) dated 14.08.2013 was executed between the CD and the RIL. However, on 21.06.2013, the Cabinet Committee on Economic Affairs (CCEA) limited the commitment of Public Sector Coal Companies and its subsidiaries to supply coal to power projects of the aggregate capacity of 700 MW. In January 2016, the CD filed an application before MERC for truing up its aggregate revenue requirement for determination of tariff under the applicable laws, *inter alia*, for the reason of increased fuel costs. On 20.06.2016, MERC disposed of the CD's application, *inter alia*, disallowing the substantial portion of the actual fuel costs for the FYs 2014-2015 and 2015-2016 resulting in the CD filing appeal before the APTEL. On 03.11.2016, APTEL, *inter alia*, observed that inordinate delay on the part of the Government/Public Sector Companies were not within the control of the



CD and amounted to *force majeure* events, which had delayed execution of fuel supply agreement. Against the order of APTEL, MERC filed Civil Appeal No 372/2017 before the Hon'ble Supreme Court which is pending. The primary contention raised by the CD is that it was unable to pay the dues to the Original Lenders as MERC has filed the Civil Appeal against the APTEL's award of Rs. 1,730 Crore on 03.11.2016 before the Hon'ble Supreme Court, which is still pending. Meanwhile, since there is no stay in Civil Appeal No. 372/2017, the CD has preferred an execution petition seeking implementation of the order of APTEL.

3.2 Further, due to defaults in payment of monthly energy bills by RIL, the CD also faced difficulties in sustaining its operations which it communicated to RIL by several emails. Later, the RIL's Mumbai distribution business was transferred to Reliance Electric Generation and Supply Limited (REGSL) *vide* MERC's order dated 28.06.2018 in Case Nos. 139 and 140 of 2017. REGSL was later acquired by Adani Group and renamed it as Adani Electricity Mumbai Limited (AEML) and on 29.08.2018, a Memorandum of Understanding was executed between the CD and the AEML. The CD was informed about assignment of Power Purchase Agreement to AEML w.e.f. 29.08.2018 by RIL *vide* its letter dated 03.09.2018. However, due to violation of PPA through set-off of the amounts due and payable to the CD by the AEML, the CD faced huge losses and was compelled to shut down its plant at Nagpur, Maharashtra on 15.01.2019. Pursuant to the closure of CD's plant, AEML issued a Procurer Preliminary Default Notice dated 18.01.2019 to the CD and on 20.04.2019, it terminated the PPA with the CD. The CD



challenged the unilateral termination of PPA by AEML by filing Case No. 247 of 2019 before MERC, wherein the termination of PPA was upheld by MERC vide its order dated 16.12.2019. Aggrieved by MERC's order dated 16.12.2019, the CD filed Appeal No. 446 of 2019 before APTEL which was dismissed by APTEL vide order dated 15.09.2020. The Original Lender No. 1 was a party to the APTEL's order dated 15.09.2020.

3.3 In short, the case of the CD is that it is a victim of circumstance beyond its control. Hence, it is only appropriate to stay the proceedings in the Main C.P., going by the direction of the Hon'ble Supreme Court to keep the Main C.P. in abeyance, as one of the options available to the NCLT while dealing with an application under Section 7 of the IBC, besides the discretion of admitting or rejecting the same as observed by the Hon'ble Supreme Court.

4. ANALYSIS AND FINDINGS

4.1 We have perused all the documents and pleadings and heard both the Ld. Counsel for the FC and the CD.

4.2 As stated above, the Hon'ble Supreme Court in its judgment dated 12.07.2022 in Civil Appeal No. 4633/2021, in para 79, stated "*In the case of a financial debt, there is little more flexibility. The Adjudicating Authority (NCLT) has been conferred the discretion to admit the application of the Financial Creditor. If facts and circumstances so warrant, the Adjudicating Authority can **keep the admission in abeyance** or even reject the application.*" (Emphasis supplied). However, in *Suresh Kumar Reddy Vs.*



Canara Bank & Ors., [Civil Appeal No. 7121 of 2022], the Hon'ble Supreme Court clarified that the decision in the case of Vidarbha Industries, the CD herein, was in the setting of facts of the case before it.

4.3 Be that as it may, since the CD has filed I.As *vide* Filing Nos. 2709138/09109/2024 & 2709138/09110/2024 giving unconditional consent for admission of both C.P.(IB) No. 264/2020 and C.P. (IB) No. 1234/2022 and commencing the CIRP pursuant to the discussions and negotiations it had with the lenders including the FC and also in view of the uncertainties faced by it, we feel it appropriate to admit the CD into CIRP without any further delay. The debt by the CD and its default of more than Rupees One Crore is undisputed and indisputable. Consequently, all the I.As, affidavits and M.A. referred to in Paragraph 1.6 above are also disposed of as withdrawn.

4.4 The Original Lender No. 1. (Assignee) in C.P. (IB) No. 264/2020 had proposed the name of Mr. Bimal Kumar Agarwal, a registered Insolvency Professional having Registration Number-IBBI/IPA-001/IP-P01409/2018-2019/12186 as the Interim Resolution Professional (IRP), to carry out the functions as mentioned under the IBC. Since the Original Lenders in C.P. (IB) Nos. 264/2020 and 1234/2022 have been substituted by the Assignee as FC in the aforesaid applications, the Assignee, *vide* its Written Submissions dated 25.09.2024 in C.P. (IB) No. 1234/2022 gave unconditional consent for nomination of Mr. Bimal Kumar Agarwal as the proposed IRP for the said application. The proposed IRP's written consent is also on record.



ORDER

This Application bearing C.P. (IB) No. 264/MB/2020 filed by the Original Lender No. 1, (Axis Bank Limited, now CFM Asset Reconstruction Private Limited), the FC, for initiating CIRP in respect of Vidarbha Industries Private Limited, the CD are **admitted**. Since the CD is the same in C.P. (IB) No. 1234/MB/2022, filed by Original Lender No.2, (State Bank of India, now CFM Asset Reconstruction Private Limited), it has become infructuous and no separate order of admission is required, and is, accordingly, disposed of.

We further declare moratorium u/s 14 of the IBC, with consequential directions as follows:

I. We prohibit-

- a) the institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.



- II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under section 31(1) of the IBC or passes an order for the liquidation of the CD under section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Bimal Kumar Agarwal**, a registered Insolvency Professional having Registration Number- IBBI/IPA-001/IP-P01409/2018-2019/12186 and **e-mail- bimalagarwal.arp@gmail.com**, having valid Authorisation for Assignment up to 30.06.2025 as the Interim Resolution Professional (IRP) to carry out the functions under the IBC. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.
- VI. During the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- VII. In exercise of the powers under Rule 11 of the NCLT Rules, we order the FC to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses



on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the FC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the CD.
- IX. Registry is directed to immediately communicate this Order to the FC, the CD and the IRP by way of e-mail and WhatsApp, not later than two days from the date of this Order.
- X. The Registry is directed to communicate this order to the Insolvency and Bankruptcy Board of India forthwith for information and record.

Compliance report of the order by Designated Registrar is to be submitted today.

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

//Tanmay Jain//



NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT VI

Item No. 03

C.P. (IB)/1234(MB)2022

CORAM

SHRI SANJIV DUTT
HON'BLE MEMBER (TECHNICAL)

SHRI K. R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **30.09.2024**

NAME OF THE PARTIES : **CFM Asset Reconstruction Private**
Limited

Vs

Vidarbha Industries Power Limited

For FC : Sr. Adv. Vikram Nankani a/w Adv. Manmeet Singh, Adv. Sairam Subramanian, Adv. Anugraph Robin Frey, Adv. Saloni Shah, Adv. Sadhvi Kumar, Adv. Jewel Bhateja i/b Saraf & Partners.

For CD : None Present

Section 7 of IBC

ORDER

1. Common order pronounced in C.P(IB)/264(MB)2020 and in this C.P in the Open Court. Here no separate order is required in this C.P. as the CD in both the above CPs are the same.
2. Ld. Sr. Counsel for the FC brought to our notice certain errors crept in the daily order dated 24.09.2024 which need correction.
3. Having heard the Ld. Sr. Counsel, we feel it to appropriate to amend the portion in Paragraph 2 “we feel appropriate to allow these above IAs and are, accordingly, **disposed of as withdrawn**” as “**we feel it appropriate to allow withdrawal of these IAs in CP 1234/2022 and the same are, accordingly, disposed of as withdrawn**”.
4. In the cause title, name of party “State Bank of India” shall be corrected as “CFM Asset Reconstruction Private Limited”.

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)
//SMM//

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)