

**NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH**

C.P.(IB) 1166/MB/2020

Under Section 7 of the IBC, 2016

In the matter of

**Edelweiss Asset Reconstruction
Company Limited**

Edelweiss House, Off C.S.T. Road, Kalina,
Mumbai, Maharashtra- 400098

... Petitioner

v/s.

Perfect Engine Components Private Limited

1101, Viraj Towers, Junc of Andheri- Kurla
Road, W. E. Highway, Andheri (east), Mumbai
City, Maharashtra- 400069

... Corporate Debtor

Date of the Order: 25.04.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via Video Conferencing):

For the Petitioner:

Sr. Counsel Mr. Tushad Cooper a/w Bhalchandra Palav, Drishti Doshi & Aniket
Dighe i/b Bhal & Co.

For the Corporate Debtor:

Mr. Anand Chhibbar, Sr. Adv., Mr. Manuj Nagrath, Adv., Dr. Ms. Misha M. Kumar,
Adv., Mr. Aditya Jain, Adv.

Per: Anuradha Sanjay Bhatia, Member (Technical)



ORDER

1. This Company Petition is filed by **Edelweiss Asset Reconstruction Company Limited** (hereinafter called "**Petitioner**") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against **Perfect Engine Components Private Limited** (hereinafter called "**Corporate Debtor**") alleging that the Corporate Debtor committed default to the extent of Rs. 226,77,83,051/-, as on 15th July, 2020, invoking the provisions of Section 7 of the Insolvency & Bankruptcy Code (hereinafter called "**Code**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Brief Facts of the case:

2. The Petition reveals that the State Bank of India ("**Original Lender**") had extended various credit facilities to the Corporate Debtor, at the requests made by the Corporate Debtor, vide its Sanction Letters, the details of which are extracted below:

Sr. No.	Date of Sanction	Amount (Rs.)
1.	26 th November 2008	22.31 crores
2.	26 th May 2009	23.21 crores
3.	15 th March 2010	29.81 crores
4.	31 st March 2011	62.73 crores

3. The Counsel for the Petitioner submits that the above mentioned credit facilities were secured by the Personal and Corporate, Guarantees of various individuals and one Corporate namely **M/S. Perfect Engineering Products Ltd.**, vide the following Deeds of Guarantee:

- a. Guarantee Agreement dated 11.12.2008
- b. Guarantee Agreement dated 15.12.2008
- c. Guarantee Agreement dated 30.05.2009
- d. Guarantee Agreement dated 23.03.2010
- e. Guarantee Agreement dated 31.03.2011



4. The Counsel for the Petitioner submits that the Corporate Debtor entered into the following Agreements for Hypothecation of Goods and Assets with the Original Lender, in relation to the abovementioned credit facilities extended:
 - a. Agreement of Hypothecation of Goods and Assets dated 11.12.2008
 - b. Supplemental Agreement of Hypothecation of Goods and Assets for increase in overall limit dated 30.05.2009
 - c. Supplemental Agreement of Hypothecation of Goods and Assets for increase in overall limit dated 23.03.2010
 - d. Supplemental Agreement of Hypothecation of Goods and Assets for increase in overall limit dated 31.03.2011

5. The Counsel for the Petitioner further submits that the Corporate Debtor also created mortgage of various immovable properties in favor of the Original Lender vide the following Deeds of Mortgage:
 - a. Registered Mortgage Deed dated 24.12.2008
 - b. Registered Mortgage Deed dated 13.08.2010
 - c. Registered Mortgage Deed dated 08.08.2011

6. The Counsel for the Petitioner further submits that the Corporate Debtor committed default in repayment of its outstanding dues on 31.03.2009, and the Corporate Debtor's account was declared as NPA on 30.06.2009 by the Original Lender. The Corporate Debtor had also acknowledged the outstanding debt, which is reflected in various Balance Confirmation Letters, issued by the State Bank of India dated 31.03.2010, 31.03.2010, 31.03.2011 and 31.03.2012. The last Balance Confirmation Letter dated 31.03.2012 is as below:



STATE BANK OF INDIA, COMMERCIAL BRANCH, PUNE

I/ We confirm that the balance of my/ our following accounts as on 31.03.2012 was as under:-
 Name of the Company: - Perfect Engine Components Pvt Ltd
 CIF No. 85396419686

Facility	Account No.	Outstanding (Amount in Rs.)
Cash Credit	30605170687	44,10,65,100.36 (Dr.)
Term Loan -1	30605335494	5,91,31,712.00 (Dr.)
Term Loan -2	31152647501	1,25,34,691.00 (Dr.)
Term Loan -3 (Corp Loan)	31859876526	4,93,36,459.00 (Dr.)
Term Loan -4	31868158288	3,39,45,768.00 (Dr.)
LC (Inland & Foreign)	30635502983	0.00
BG (Inland & Foreign)	---	---
Others (Please Specify)	---	---

due by me/ us to the Bank, as shown in your statement of account on that date.
 For PERFECT ENGINE COMPONENTS PVT LTD.

Signature (s) AT 145
 Address _____ Authorised Signatory

2012 Please return this form duly signed and notify any change of address.

7. The Original Lender, i.e., **State Bank of India**, had issued a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to the Corporate Debtor on 06.08.2012. Later, the total outstanding debt, along with all the securities in favor of the Original Lender came to be assigned in favor of the present Petitioner vide Deed of Assignment dated 19.03.2014. Thereafter, the Petitioner became a Secured Creditor in respect of the Corporate Debtor, being assignee of the debt. The Petitioner also issued a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to the Corporate Debtor on 06.12.2019. The Petitioner has also annexed NESL and CIBIL Reports to the Petition.
8. The Counsel for the Petitioner further submits that the Petitioner also filed an Original Application No. 01/2014 in the Debt Recovery Tribunal against the Corporate Debtor under Section 19(1) of the Recovery of Debts due to Banks



and Financial Institutions Act, 1993 for the recovery of the dues in the sum of Rs. 80,67,60,995.92/- along with future interest. The Debt Recovery Tribunal, vide its Order dated 22.11.2016, allowed the Original Application and issued the Recovery Certificate also.

9. The Counsel for the Petitioner further submits that it addressed a Restructuring Letter dated 30.06.2017, for restructuring the loans of the group companies (including the Corporate Debtor). The Restructuring Letter confirmed the terms and conditions provided that the combined dues of all three companies shall be payable as follows;
- a. Rs. 77.50 Crores repayable from operational cash flows of the company as per the schedule provided in Annexure I.
 - b. The possession of land (admeasuring 9,048 sq. mtrs.) and building at Wagle Industrial Estate; Thane (Thane Property) has been taken by EARC and the Promoter shall assist in sale of the property. The estimated value of the Thane property is Rs. 60 crores.
 - c. The possession of Land Parcel admeasuring 14,100 sq. mtrs. at Chikalse, Pune has been taken by EARC and EARC may sell the property under SARFAESI and adjust the proceeds against the dues of PEPL. The promoter shall assist in scouting buyers for the property. The estimated value of the property is Rs. 2.48 crores.
 - d. Equity shares for 13.5% stake in equity in Perfect Engineering Products Limited (48,88,841 nos. of Face Value Rs. 10/- each) and Perfect Engine Components Private Limited (40,578 nos. of Face Value Rs. 10/- each) allotted to EARC. At present, the shares allotted have been valued at Rs. 26.50 crores. Such stake of 13.5% will be maintained at all points in time. EARC may get further equity stake of upto 6.5% post September 30, 2017 depending on achievement of projected EBITDA (provided in Annexure 11) in FY17 by the Companies (PEPL and PECL). Equity stake shall be computed on basis of EV/EBIDTA multiple of 30 times on 12 months EBIDTA for the period April 2016-March 2017.



- e. If the combined EBITDA of PEPL and PECL for FY-2017 is less than Rs. 11 crores then EARC will be allotted further equity stake of upto 6.50% in PEPL and PECL (post dilution).
- i. Such equity will be issued not later than December 31, 2017.
 - ii. If EBITDA is equal to or more than Rs. 11 crores, then no further equity is proposed to be allotted.
10. The Petitioner, vide its Letter dated 01.06.2018, revoked the said Restructuring Letter due to a default on part of the Corporate Debtor in honoring the payment terms as stated in the Restructuring Letter. This revocation by the Petitioner was done as per one of the terms of the Restructuring Letter dated 30.06.2017 which stated that *"in case of non-compliance of any of the terms of restructuring, EARC has the right to unilaterally revoke the restructuring and the original liabilities of the companies will be restored along with further interest and costs and adjustment shall be made of the payments made till that time."*
11. It is further submitted by the Counsel for the Petitioner that the Petitioner has also produced the Balance Sheets and Independent Auditor's Report of the Corporate Debtor's Account for the year ended on 2015, 2016, 2017 and 2019 which clearly reflects the credit facilities extended by the Petitioner to the Corporate Debtor and further reflects the outstanding amounts of loan owed by the Corporate Debtor to the Petitioner.
12. The Counsel for the Petitioner submits that due to the failure of the Corporate Debtor to make the payment of the entire outstanding amount, the Petitioner has filed the present Petition seeking initiation of Corporate Insolvency Resolution Process of the Corporate Debtor, for a claim amount of Rs. 226,77,83,051/-.
13. The Counsel for the Petitioner submitted the following computation of dues payable by the Corporate Debtor to the Petitioner:



(Amount in Rs.)

Facilities	Opening Principal	Conversion of Debt into Equity	Closing Principal	Interest	Penal Interest	Total Dues
30605170687 -DCC	45,10,29,753	4,95,02,898	40,15,26,855	1,15,68,63,474	9,89,12,878	1,65,73,03,207
30605335494 -TL-1	5,81,60,112	63,83,380	5,17,76,732	17,57,63,911	1,43,01,069	24,18,41,712
31152647501 -TL-2	1,23,25,723	13,52,813	1,09,72,910	3,72,30,961	30,29,360	5,12,33,232
31868158288 -TL-3	3,35,00,000	36,76,802	2,98,23,198	9,20,58,160	77,11,359	12,95,92,718
31859876526 -Corp Loan	4,86,00,000	53,34,107	4,32,65,893	13,32,85,295	1,12,60,994	18,78,12,182
TOTAL	60,36,15,588	6,62,50,000	53,73,65,588	1,59,52,01,802	13,52,15,661	2,26,77,83,051

Written Submission of the Petitioner:

14. The Petitioner submitted that vide Order dated 10.08.2021, this Hon'ble Tribunal had rejected CP (IB) 1166/2020 *inter alia* on the grounds that there exists no 'debt' and 'default' and that the captioned Petition is 'barred by limitation'. However, Hon'ble National Company Law Appellate Tribunal ("**NCLAT**") vide Order dated 22.12.2022 passed in the Company Appeal (AT) (Ins) No. 840 of 2021 filed by the Petitioner herein, concluded that the captioned Petition was not 'barred by limitation' and there was 'debt and default'.

The relevant Paragraph 9 of the Hon'ble NCLAT Order dated 22.12.2022 is reproduced as under:

"9. For all the aforementioned reasons we are of the considered view that the Section 7 Application is not 'barred by Limitation', and that there is a 'debt' and 'default', and the facts of the instant case are squarely covered by the ratio of the Hon'ble Apex Court in 'Dena Bank (now Bank of Baroda)' (Supra)"

15. The Hon'ble NCLAT while reaching at the above conclusion made following



pertinent observations in various Paragraphs, the relevant extracts of which are being reproduced hereunder:

A. LIMITATION:

i. Judgment/ Decree for money or Certificate of Recovery or Arbitral Award in favour of the 'Financial Creditor', constitutes an 'acknowledgment of debt' and gives rise to a fresh cause of action-

Paragraph 5- "We are of the considered view that the issue of Limitation is to be tested on the touchstone of the ratio of the Hon'ble Apex Court in 'Dena Bank (now Bank of Baroda) Vs. 'C. Shivakumar Reddy & Anr.' wherein the Hon'ble Apex Court has clearly laid down that Judgement/decree for money or Certificate of Recovery or Arbitral Award in favour of the 'Financial Creditor', constitutes an 'acknowledgement of debt' and gives rise to a fresh cause of action, provided it is within three years of the default:

In this connection, the Supreme Court at paragraph 130 of the said judgment held as under:

"130. We see no reason why the principles should not apply to an application under Section 7 IBC which enables a financial creditor to file an application initiating the corporate insolvency resolution process against a corporate debtor before the adjudicating authority, when a default has occurred. As observed earlier in this judgment, on a conjoint reading of the provisions of the IBC quoted above, it is clear that a final judgment and/or decree of any court or tribunal or any arbitral award for payment of money, if not satisfied, would fall within the ambit of a financial debt, enabling the creditor to initiate proceedings under Section 7 IBC....."

ii. Date of default does not mean only the 'date of NPA' and in fact, the date of default under IBC is to mean non-payment of a debt which has become 'due and payable'.

Paragraph 7- "In the afore noted Judgement, the Hon'ble Apex Court has clearly laid down the principle that the 'date of default does not mean a strict interpretation that it has to be the 'date of NPA' in fact, the 'date of



default' defined under Section 3(12) of the Code is to mean 'non-payment of a date which has become 'due and payable' whether in whole or any part and is not paid by the Corporate Debtor'. It is an admitted fact in the instant case that there were some Consent Terms entered into between 'Edelweiss' and the 'Corporate Debtor' in Transfer Original Application No.560/2016 filed before the DRT-1, Mumbai, which is signed by Mr. Amrish Vijay Shah the Director of the 'Corporate Debtor'. It is clearly stated in this Consent Terms in the default Clause that in case of non-compliance of any of the Terms stated in the Restructuring Letter that all liabilities as per the Original Application No.560/2016 shall be restored. It is also an admitted fact that the second Restructuring was cancelled vide Letter dated 01.06.2018 and the Reply by the 'Corporate Debtor' dated 14.06.2018 in paras (d) & (e) has admitted that they could not get the Working Capital Limits sanctioned and for various other reasons mentioned in the paras (d) & (e) the terms of the Restructuring Package could not be adhered to. This construes an 'acknowledgement of debt and default' and signed by the CEO of Mr. Amrish Shah of the 'Corporate Debtor.....'.

iii. Respondent has acknowledged its liability to repay the debt on various occasion-

Paragraph 8- "It is also seen from the Balance Sheets that there has been an 'acknowledgement of liability' upto the years 2018-19. The contention of the Learned Counsel for the Respondent that the Restructuring Letters were sanctioned beyond three years of the date of NPA and therefore is 'barred by Limitation' is untenable as at the cost of repetition we hold that as per the ratio of the Hon'ble Apex Court in '**Laxmi Pat Surana**' (**Supra**) the 'date of default' cannot be strictly construed as the date of NPA. The material on record shows that the 'Corporate Debtor' has been consistently acknowledging its 'debt' from 31.03.2010 onwards by way of letters in Restructuring Packages, and also by way of communication the Appellant/'Financial Creditor' for Restructuring, apart from the liability being shown in the Balance Sheets"



16. The Corporate Debtor, thereafter challenged the Hon'ble NCLAT Order before Hon'ble Supreme Court ("**SC**") mainly on the grounds that:

- (i) there was no default to any of the terms of the Restructuring Agreement
- (ii) there was no allegation by the Petitioner that the Respondent had diverted the operating cash flows for any other purpose other than what was stipulated in OTS Package.
- (iii) the letter dated 30.06.2017 categorically contained a clause wherein the outstanding amount was only supposed to be paid from the operational cash flows
- (iv) the Impugned Order dated 22.12.2022 passed by the Hon'ble NCLAT had not relied upon any substantive pleadings, evidence or law in assessment, etc.

17. The Hon'ble Supreme Court vide the Order dated 17.02.2023 upheld the Hon'ble NCLAT Order dated 22.12.2022 and rejected all the above contentions raised by the Respondent while noting that it would be wrong to read that the Respondent shall repay the outstanding amount to the Petitioner only from the operational cash flow as a condition precedent for making payment. In this connection the Hon'ble Supreme Court held as under:

"We do not find any good ground and reason to interfere with the impugned judgment, as in our opinion, the appellant had to pay Rs. 77.50 crore in instalments with effect from 30.06.2015 towards the satisfaction of the decretal amount. The stipulation in the Restructuring Package/Proposal that the appellant will pay the said amount from the 'operational cashflow' cannot be read as a condition precedent for making payment. This would not be a correct way to read the agreement/Restructuring Package/Proposal. Thus, the argument that unless there was/is 'operational cashflow', the amount was/is not payable, is completely untenable and is rejected. Recording the aforesaid, the appeal is dismissed. Pending application(s), if any, shall stand disposed of"

18. It is the submission of the Petitioner that in view of the Order dated 22.12.2022 passed by Hon'ble NCLAT and confirmed by the Hon'ble SC that there is a clear 'debt and default' and that the Petition is not 'barred by limitation', the same has ordinarily to be admitted especially where the Section 7 petition has been filed by a Financial Creditor.



Written submission of the Corporate Debtor:

19. The Learned counsel on behalf of the Corporate Debtor has raised the following contentions:

- i) The NCLAT order does not direct NCLT, Mumbai-5 to admit the Petition. Instead, NCLT is directed to proceed in accordance with law.
- ii) NCLT, Mumbai as well as NCLAT has only considered two aspects namely limitation and existence of debt and default. However, it is necessary that issues which were not considered and not adjudicated by NCLT, Mumbai and Hon'ble NCLAT should be heard and adjudicated upon.
- iii) The Adjudicating Authority has adequate discretionary power more particularly u/s. 7 of the Code and is not bound to mechanically admit a Corporate Debtor to CIRP proceedings.
- iv) The present proceedings are, particularly after taking into account the supervening events, adversarial to the Corporate Debtor. It is clear that the only intent of the Financial Creditor is recovery. It is trite law that the CIRP proceedings are not intended to be adversarial to the Corporate Debtor and the Code cannot be used as a recovery tool.
- v) The Petition u/s. 7 filed with malicious intention is not only liable to be dismissed but appropriate action is required to be taken against the Petitioner.

20. Further, the Corporate Debtor has sought to rely upon the Judgment in *Vidarbha Industries Power Limited vs Axis Bank [(2022) SCC Online SC 841]* wherein, in the peculiar facts and circumstances of the said case, the Supreme Court observed that “the NCLT as also the Appellate Tribunal (NCLAT) fell in error in holding that once it was found that a debt existed and a corporate debtor was in default there would be no option to the adjudicating authority (NCLT) but to admit the petition under Section 7 of IBC.”



21. The Learned counsel on behalf of the Corporate Debtor has emphasized that the present proceedings are adversarial to the Corporate Debtor and are being used merely as a tool of recovery. The Learned counsel for the Corporate Debtor placed before this Bench the recent actions of the Financial Creditor which show that all along, the Financial Creditor is interested only in pursuing recovery proceedings against the Corporate Debtor as follows:

Date	Event
6.12.2019	SARFAESI Notice u/s 13(2)
31.01.2020	Reply of Corporate Debtor to Section 13(2) Notice
7.08.2020 or thereabouts	Present Petition filed by Financial Creditor
1.12.2022	Intimation of possession of invocation of Section 13(4) of SARFAESI and taking over of symbolic possession
31.1.2023	Application U/S. 14 Of SARFAESI filed By Financial Creditor (394/2023)

The intent of a person is manifested by his action. The SARFAESI Action by the Financial Creditor and that too when the IBC proceedings are pending manifests that the Financial Creditor is taking actions adversarial to the Corporate Debtor for the sole purpose of recovery of its dues. SARFAESI is a coercive proceeding for expeditious recovery of dues.

22. Lastly, it was argued that the entire Petition is thus an attempt at recover and is otherwise also vitiated. Thus, the Petition u/s. 7 should not be admitted.

Finding:

23. Heard the Learned Counsel for the Petitioner and the Learned Counsel appearing for the Corporate Debtor and perused the material available on record.
24. It may be noted that the Judgment in *Vidarbha Industries Power Limited vs Axis Bank* [(2022) SCC Online SC 841] was taken into review by Axis Bank Limited [(2022) SCC Online SC 1339] and it was observed by the Hon'ble SC that the Judgment in Vidarbha was decided on the basis of the case in hand



and that "it is well settled that the judgments and observations in judgments are not to be read as provision of statute. Judicial utterances and/or pronouncements are in the context of particular facts of the case."

25. The Corporate Debtor has also inter alia, further sought to place reliance rely upon certain other cases where the Hon'ble Supreme Court's decision in Vidarbha Industries Power Limited v. Axis Bank Limited was noted. However, the facts of those case are materially and substantially different from the present Petition pending before this Hon'ble Tribunal.
26. The Corporate Debtor has also sought to place reliance upon the decision of the Hon'ble Supreme Court in **Swiss Ribbons Pvt Ltd and Anr. VS UOI [2019 (4) SCC 17]** in paragraphs 27 & 28, to urge that CIRP proceedings are not adversarial to the Corporate Debtor but is infact protective of its interest. In this connection we find that the said judgment is far from supporting the case of the Respondent Corporate Debtor, militates squarely in favour of the petitioner. The said judgement squarely holds that the purpose of the IBC is to ensure "reorganisation and insolvency resolution of corporate debtors... in a time bound manner" as to ensure that the value of such assets will not deplete. In para 27 of the said judgement the Supreme Court expressly held as under:

*"Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. **This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs** When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme - workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximize their investment."*

What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.

The interests of the corporate debtor have, therefore, been bifurcated



and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed under Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process"

A bare perusal of aforesaid observations of the Supreme Court makes it abundantly clear that the primary aim of the IBC is a reorganisation and insolvency resolution of Corporate Debtor, including inter alia by removal and/or replacement of existing promoters and substitution thereof by an infusion of fresh promoters so as to bring the Corporate Debtor back into the economic mainstream in order to enable it to repay its debts. By so doing, the Corporate Debtor itself becomes the beneficiary of the resolution scheme and the interest of all stake holders- workers, creditors and investors are taken care of. It is for this reason that Hon'ble Supreme Court in para 28 of its Judgement held that the interest of the Corporate Debtor has therefore been bifurcated and separated from that of its promoters/ those who are in management and has held that the resolution process is not adversarial to the Corporate Debtor but in fact, protective of its interests.

27. Further, with regard to the claim of the Corporate Debtor that the Restructuring package offered by the Petitioner to the Group Companies of Respondent [(Perfect Engineering Products Private Limited, **Perfect Engine Component Private Limited** and Karla Engine Component Limited)] is a debt recovery exercise is frivolous and baseless. In this connection it is pertinent to note that the petitioning creditor had after the debt of the Corporate Debtor had been assigned to it in 2014, entered into an arrangement of restructuring of the debt on two separate occasions i.e. on 7/11/2014 and 30/6/2017 with a bona fide intention. The said restructuring package was offered twice to the Corporate Debtor on 07.11.2014 and 30.06.2017 with bonafide intention. However, the Corporate Debtor willfully defaulted on each of the occasion to repay the amount payable under the Restructuring Package. Therefore, the Petitioner was left with no other option but to file Company Petition under Section 7 of IBC in order to ensure timely rehabilitation of the Company and



financial well-being of 600 employees of the Corporate Debtor at the earliest.

28. Further, the contention raised by the Corporate Debtor that since the Petitioner has already initiated action under SARFAESI Act, the Petitioner cannot initiate proceedings under IBC is entirely untenable in law as confirmed in various Judgments. The Hon'ble NCLAT in *Punjab National Bank vs Vindhya Cereals Pvt Ltd [2020 SCC Online 957]* has expressly held that the Financial Creditor can proceed simultaneously under SARFAESI Act, 2002 as well as under the I&B Code.
29. The submissions of the Corporate Debtor that the Petitioner refused financial aid to the Corporate Debtor during the Covid pandemic, is entirely irrelevant. Significantly, the Corporate Debtor has failed to mention that there has been a huge outstanding debt repayable by the Corporate Debtor even before the Covid Pandemic. Additionally, despite providing multiple opportunities to the Corporate Debtor to pay the outstanding debt vide Restructuring Packages, the Corporate Debtor failed to clear its liabilities. The petitioner therefore, rightly considered it prudent to refuse the request of the Corporate Debtor to grant additional financial aid.
30. The argument of the Corporate Debtor that by virtue of the Petitioner holding shares in the Corporate Debtor, the Petitioner is acting malafide in filing the present petition is entirely unfounded and frivolous. On the contrary, it is submitted that in fact by virtue of the Petitioner holding 13.5% equity shares, the Petitioner is acting in a judicious manner to not act against its own interest and to rehabilitate the Corporate Debtor at the earliest in order to ensure the financial stability of the company and its economic interest therein as also to safeguard the livelihood and interest of the 600 employees working in the Company.
31. The contention of the Corporate Debtor that the Petitioner is guilty on playing a fraud on the court is entirely baseless, mischievous and devoid of any material particulars. The fact that the petitioner had been involved at an anterior stage between the original Creditor namely SBI and the Corporate Debtor in negotiations that had taken place between the said parties is entirely



irrelevant to the maintainability and tenability of the present proceedings.

32. One Further submission canvassed on behalf of the Petitioner in IA. 635/2023 is noted. The Petitioner had earlier proposed the name of Mr. Satyen Saraswat as the proposed Interim Resolution Professional ("IRP"). However, the Applicant now intends to substitute the above proposed IRP with M/s. ARCK Resolution Professionals who have given their consent form dated 23.12.2022 and their Registration Certificate.
33. As a consequence, keeping the aforesaid facts in mind, it is an undisputed fact that the Petitioner has not received the outstanding amount from the Corporate Debtor and that the formalities as prescribed under the Code have been complied by the Petitioner, we are of the considered view that this Petition deserves '**Admission**' by passing the following:

ORDER

- a. The above Company Petition No. 1166/IBC/MB/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Perfect Engine Components Private Limited**.
- b. The IRP proposed by the Financial Creditor, **M/s. ARCK Resolution Professionals LLP**, (Email- insolvency@arck.in) having registration No. IBBI/IPE-0030/IPA-1/2022-2023/50013, having address at Flat No. 409, 4th Floor, Ansal Bhawan, 16, Kasturba Gandhi Marg, Connaught Place, New Delhi-110001, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.



- d. That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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; 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.
- e. That the order of moratorium shall have effect from the date of pronouncement of this order 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.
- f. 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.
- g. 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.



- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P. No. 1166/IBC/MB/2020 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-
Anuradha Sanjay Bhatia
Member (Technical)

SD/-
Kuldip Kumar Kareer
Member (Judicial)



Certified True Copy
Copy Issued "free of cost"
On 26/04/2023

R. S. Sonawale
Deputy Registrar

National Company Law Tribunal Mumbai Bench