



**IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-II**

**CP (IB) No. 141/MB/2024**

*[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:

**PEGASUS ASSETS RECONSTRUCTION PRIVATE LIMITED**

[CIN: U65999MH2004PTC144113]

507,Dalamal House,  
Jamnalal Bajaj Marg,Nariman Point,  
Mumbai-400021,Maharashtra.  
Email: deepa@pegasus-arc.com

**...Financial Creditor/Applicant**

*VERSUS*

**DEE PLONE POLYSTER PVT.LTD**

[CIN: U17100MH1994PTC075953]

5/7, Vithoba Lane,3<sup>rd</sup> Floor,  
Vithalwadi,Mumbai -400002..  
Email ID:vinodparmar@yahoo.co.in

**...Corporate Debtor/Respondent**

**Pronounced: 02.09.2025**

**CORAM:**

**HON'BLE SHRI ASHISH KALIA, MEMBER (JUDICIAL)**

**HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)**

**Appearances : Hybrid**

Financial Creditor: Adv. Rahul Gaikwad a/w Adv Nikita Abhyankar a/w

Adv. Komal Singh i/b Gravitas legal

Corporate Debtor : Adv. Kunal Kanungo



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**ORDER**

***Per: ASHISH KALIA, MEMBER (JUDICIAL)***

**Brief facts of the Case**

1. This Application bearing C.P.(IB) No.141MB/2024 was filed by Pegasus Assets Reconstruction Private Limited, the Financial Creditor on 01.11.2023 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as “the AAA Rules”) for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) against DEE Plone Polyester Pvt Ltd , the Corporate Debtor.
2. The total amount claimed to be in default, as per Part-IV of the Application, is Rs. **37,35,74,442.07/-** ((Rupees Thirty-Seven Crores Thirty-Five Lakhs Seventy-Four Thousand Four Hundred Forty-Two and Seven Paise Only), in respect Term Loan , Cash Credit Facility advanced to the Corporate Debtor by the Financial Creditor during the period from 2014 to 2017
3. The Financial Creditor submits that the Dombivli Nagari Sahakari Bank Ltd. (herein referred to as “**DNS Bank**”) assigned the debt and all associated security rights to Pegasus ARC through a registered Assignment Deed dated **31.12.2020**

**AVERMENTS OF FINANCIAL CREDITOR**



4. Pegasus Assets Reconstruction Pvt. Ltd. ("Financial Creditor") is an Asset Reconstruction Company registered with the RBI under Section 3 of the SARFAESI Act, 2002. The Financial Creditor acquired the financial assets (loan accounts) of Dee Plone Polyester Pvt. Ltd. ("Corporate Debtor") from DNS Bank by way of an **Assignment of Debt Agreement dated 31.12.2020**
5. The Financial Creditor has granted following loan facilities as under:
- i. DNS Bank had initially sanctioned the following facilities to the Corporate Debtor:
  - ii. For sum of Rs. 10 crores term loan and cash credit facility for 5 crores
  - iii. Fresh Term Loan of ₹6.18 Crores sanctioned on 17.07.2016.
  - iv. The debt was later part of a consortium loan with Apna Sahakari Bank Ltd., with DNS Bank acting as the lead bank, extending ₹6.18 Crores of the ₹10.8 Crores total facility.
6. The Debt was secured by way of Multiple hypothecation and mortgage deeds which were executed between 2014 and 2017 securing Movable and immovable assets including plant and machinery, stocks, receivables, land and building, etc. Guarantor's properties were also mortgaged, covering land parcels, industrial sheds, and residential assets. Total security value is estimated at approx. ₹12.90 Crores (mortgaged land & building) and ₹7.65 Crores (other assets).
7. The Corporate Debtor defaulted in repayment and the loan account was classified as **NPA on 31.03.2018** by DNS Bank. As of 16.10.2023, the



outstanding default amount is **₹37,35,74,442.07**, inclusive of principal, interest, and penal charges.

8. It is moreover asserted that the Corporate Debtor acknowledged the outstanding debt in its **audited balance sheets for FY 2018-19, 2019-20, and 2020-21**, referencing DNS Bank under Notes to Accounts. Additionally, the Corporate Debtor admitted its liability in an email dated **16.02.2024**, addressed to the Financial Creditor. Despite duly acknowledging and admitting its liability towards the outstanding debt, the Corporate Debtor failed to discharge the same. Consequently, the Financial Creditor has approached this Tribunal, seeking initiation of CIRP against the Corporate Debtor. Therefore, the period of limitation is preserved due to acknowledgment of debt under Section 18 of the Limitation Act via:

1. Annual Financial Statements up to 31.03.2021.
2. The email acknowledgment dated 16.02.2024.
3. Therefore, the petition filed in 01.11.2023 is within the limitation period.

#### **Affidavit of Reply on Behalf of the Corporate Debtor**

9. Notices were issued to the Corporate Debtor to appear and file the Reply to the Application filed by the Financial creditor. The Corporate Debtor have filed their reply in affidavit submitting that the Petition is not maintainable due to Lack of Valid Authorization and the Petition filed by Ms. Deepa Murthy without furnishing a valid Board Resolution or Power of Attorney as required under Form I and MCA Notification dated 27.02.2019 (S.O. 1091(E)). This non-compliance violates the binding precedent of **Palogix Infrastructure**



**Pvt. Ltd. v. ICICI Bank Ltd., (2017 SCC OnLine NCLAT 66)**, rendering the Petition fundamentally defective. Although Board Resolutions were later filed along with the Rejoinder, the original defect affects the maintainability to initiate alleged Assignment Agreement dated 31.12.2020 between Dombivli Nagari Sahakari Bank and Pegasus Assets Reconstruction Pvt. Ltd. was never notified to the Corporate Debtor, and therefore, any liability claimed is denied.

10. The Respondent/Corporate Debtor further raised an objection of Non-Compliance with Regulation 20(1A) of IBBI (IU) Regulations, 2017, on the following grounds:
  - a. As per Regulation 20(1A) inserted by Notification dated 14.06.2022, submission of the Record of Default from an Information Utility is mandatory before filing a Section 7 application.
  - b. The present Petition dated 01.11.2023 lacks a Form D certificate from NeSL, despite the NCLT Joint Registrar's direction dated 03.04.2023.
  - c. The absence of a valid Information Utility record renders the Petition incomplete and liable to dismissal.
  
11. The Corporate Debtor further emphasizes on the fact that the Loan Agreements annexed (Pages 627–691 of Petition) are not duly registered under the **Indian Registration Act, 1908** and are Insufficiently stamped under the **Maharashtra Stamp Act, 1958**. Hence these documents are inadmissible as per settled law and cannot form the basis of establishing a financial debt. Clause 5.1 of the Loan Agreement dated 06.05.2014 mandates a recall notice to constitute default, which was never served. The



alleged default date of 31.03.2018 is unsubstantiated and denied by the Corporate Debtor.

12. It is the submission made by the Corporate debtor that the Petition relies on electronic records such as ledgers and account statements without filing the **mandatory 65B Certificate**. Electronic evidence without this certificate is legally inadmissible and cannot be considered by this Tribunal.
13. The Corporate Debtor submits that there is a Violation of Rule 4(3) of the IBC (Application to Adjudicating Authority) Rules, 2016. Rule 4(3) mandates service of the application to both the Corporate Debtor and the Insolvency and Bankruptcy Board of India (IBBI) before filing. No material has been produced to show such service on the IBBI. Non-compliance with this mandatory provision is fatal, as affirmed in ***State of U.P. v. Singhara Singh, AIR 1964 SC 358 and Vidarbha Industries Power Ltd. v. Axis Bank Ltd., (2022) 8 SCC 352***
14. Lastly, it is submitted that the present Petition is Fraudulent and Maliciously Hit by Section 65 of the IBC. The Corporate Debtor is a solvent Company and had approached the Financial Creditor for restructuring and settlement of dues. Instead, the Financial Creditor initiated CIRP proceedings purely for recovery purposes, which is a misuse of this Code.

#### **Rejoinder on Behalf of the Financial Creditor**

15. The Applicant has filed the Rejoinder to the Reply in Affidavit filed by the Corporate Debtor. The Financial Creditor submits that the contents of the Corporate Debtor's Reply are denied in *toto* and the Corporate Debtor is put to strict proof thereof. Financial Creditor submits that the Corporate Debtor



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has only raised technical and curable objections, without denying the existence of debt or occurrence of default. The Financial Creditor further states that the audited books of the Corporate Debtor clearly show continuous and increasing losses and negative cash flow, thereby evidencing financial distress.

16. It is reiterated by the Applicant that the Corporate Debtor availed loan facilities from DNS Bank (assignor) which are duly reflected in the Corporate Debtor's audited accounts and the erstwhile director of the Corporate Debtor, Mr. Vinod Parmar, by email dated 16.02.2024, admitted that the loan account was declared NPA and acknowledged liabilities.
17. The Applicant/Financial Creditor assigned the debt to Pegasus ARC under SARFAESI Act, which was intimated to the Corporate Debtor vide letter dated 06.01.2021. Now they are estopped from disputing the assignment, most particularly when they have approached Pegasus ARC for settlement.
18. It is stated by the Financial Creditor that the present Application is filed through its authorised representative who is duly empowered under Board Resolutions dated 27.07.2023 and 12.12.2023. Copy of the same is placed on record and inability to file record of default with IU is not fatal. Reliance is placed on *Vijay Kumar Singhania v. Bank of Baroda* (In Hon'ble NCLAT, upheld by Hon'ble Supreme Court) holding that absence of IU record cannot be a ground to reject a Section 7 petition.
19. The Financial Creditor asserts that the alleged inadequate stamping of loan documents constitutes a curable defect. In support of this position, reference



is made to *Hiten Meghji Bharani v. Shankheshwar Properties* (NCLAT) and the Hon'ble Supreme Court's 7 Judge ruling on stamping, which reaffirm that such deficiencies do not preclude rectification and should not defeat the enforceability of documents at the admission stage. Furthermore, it is submitted that the production of a Section 65B certificate is not mandatory during the admission stage of proceedings, and that the absence of such certificate is likewise a curable defect, as held in *M.R. Hiremath, Anvar P.V.*, and *Arjun Panditrao Khotkar*, where the courts clarified that the admission of a Section 7 petition under the Insolvency and Bankruptcy Code is a summary proceeding, making objections regarding the admissibility of evidence irrelevant at this preliminary stage. The Financial Creditor also points out that, through its own communications (notably the email dated 16.02.2024), the Corporate Debtor has admitted financial stress and sought settlement, further supporting the case for admission of the petition by itself.

### **Finding and Analysis**

20. We have duly considered the averments of the Financial Creditor as well as Corporate Debtor with the materials on record.
21. The Financial Creditor, Pegasus Assets Reconstruction Pvt. Ltd., claims that a sum of Rs. **37,35,74,442.07/-** is in default in respect of loan facilities originally sanctioned by Dombivli Nagari Sahakari Bank Ltd. (herein referred to as "**DNS Bank**") to the Corporate Debtor between 2014–2017, and subsequently assigned to the Applicant under a registered Assignment Deed dated 31.12.2020. It is contended that the debt was duly secured by hypothecation and mortgage of movable and immovable assets, and that the



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Corporate Debtor defaulted in repayment, leading to classification of the account as NPA on 31.03.2018. The Financial Creditor further relies upon acknowledgments of debt in the Corporate Debtor's audited financial statements up to 2021 and an email dated 16.02.2024, to contend that limitation is preserved under Section 18 of the Limitation Act.

22. The Corporate Debtor, on the other hand, challenges the maintainability of the Application, alleging lack of valid authorization at the time of filing, non-compliance with Regulation 20(1A) of the IBBI (IU) Regulations, absence of a valid IU record, inadmissibility of inadequately stamped and unregistered loan agreements, and lack of a mandatory Section 65B certificate for electronic records. It is further argued that Rule 4(3) of the IBC (Application to Adjudicating Authority) Rules, 2016 was not complied with, and that the Petition is hit by Section 65 of the Code being filed for recovery purposes, despite the Corporate Debtor being a solvent company which had sought restructuring.
23. In rejoinder, the Financial Creditor denies the objections in toto, submitting that the Corporate Debtor's contentions are merely technical and curable in nature, without any denial of the underlying debt or default. It is pointed out that valid Board Resolutions have been placed on record, assignment was duly intimated, and reliance is placed on Judicial precedents to argue that absence of an IU record, stamping defects, or non-filing of a Section 65B certificate cannot be grounds for rejection at the admission stage. The Financial Creditor emphasizes that the Corporate Debtor's own audited



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accounts and email acknowledgments clearly evidence liability and financial distress, and that the Petition is, therefore, maintainable.

24. We note that the Applicant has placed on record the authorization of its officer in the Rejoinder. Accordingly, we are of the view that the initial lapse in authorization is only a curable defect. As held in several NCLT/NCLAT precedents, the objection regarding maintainability of this application does not survive, since the Board Resolution submitted through the Rejoinder sufficiently rectifies the defect and does not affect the maintainability of the Application.
25. The non-filing of Form D from NeSL is a procedural lapse but not a jurisdictional bar under current case law (especially in absence of a binding ruling mandating rejection solely for this). We note that the Financial Creditor sought to record the default of the Corporate Debtor with the Information Utility (NeSL). However, the Information Utility was unable to notify the Corporate Debtor of the default at the email address available with the Financial Creditor and on the Ministry of Corporate Affairs website, as the intimation emails were bounced.
26. We note that Even if some loan documents are not stamped or registered, the debt can be evidenced by alternative means (account statements, acknowledgments, balance sheets). Also with respect to the contention raised in the reply filed by the Corporate Debtor that the purported Loan Agreement dated 24.03.2017 is not duly registered and adequately stamped as per the provision of Stamp Act and, therefore, the said application is not maintainable, this Bench relies on the judgement of The Hon'ble Supreme



Court in Curative Petition (C) No. 44 of 2023 in Review Petition (C) No. 704 of 2021 in Civil Appeal No. 1599 of 2020 of N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd, Civil Appeal No(S). 3802-3803 of 2020 which states as under:-

*224. The conclusions reached in this judgment are summarised below: a. Agreements which are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act. Such agreements are not rendered void or void ab initio or unenforceable; b. Non-stamping or inadequate stamping is a curable defect;”*

27. Therefore in view of the above judgement the inadequate stamping of the Loan Agreement, is a curable defect. Moreover, the admissibility of such document which are not duly stamped are not supposed to be under challenge or question before this Tribunal while dealing with Application u/s 7 or 9 of the Code. It is equally true that the proceedings u/s 7 are not akin to some recovery suit or proceedings wherein the liability of the Corporate Debtor on the basis of loan or other documents executed by it is to be ascertained. Therefore, inadequacy of any document in terms of requirement of the Stamp Act, in our considered view, cannot be made a ground to nonsuit the Petitioner in an Application u/s 7 of the Code. Rather, in such proceedings, this Tribunal simply has to arrive at a conclusion that whether the debt and default exist and the minimum threshold u/s 4 of the IBC is met.



28. We further note the contention of the Corporate Debtor that there is non-compliance by the Financial Creditor with Section 65B of the Indian Evidence Act, 1872, and hence the Petition should not be admitted. In our considered view, while such an objection is technical in nature, absence of a Section 65B certificate may affect evidentiary weight but does not invalidate the application where other corroborative evidence exists. In the present Petition, there is a clear existence and acknowledgment of debt by the Corporate Debtor, which sufficiently establishes the debt between the Financial Creditor/Applicant and the Corporate Debtor. It is also pertinent to note that by order dated 23.07.2025, we had de-reserved this matter on account of the said objection and directed the Applicant to file an additional affidavit addressing the issue. The Applicant has complied with the said order and explained in the Additional Affidavit they have filed, stating that prior to e-filing the present Company Petition, the Bank Account statements as maintained by the Financial Creditor were extracted and printed in its office, supported by a Certificate dated 16.10.2023 annexed as Exhibit "B." Further, under Section 4 of the Bankers' Books Evidence Act, subject to the provisions of the said Act, certified copies of entries in the banker's books are to be received in evidence in legal proceedings as prima facie proof of such entries and are admissible as evidence of the matters contained therein. In light of the above, the account statements filed by the Financial Creditor, being maintained in the ordinary course of business, are admissible as evidence, and hence the objection raised by the Corporate Debtor is devoid of merit and stands rejected.



29. We emphasize on the objection raised by the Corporate Debtor that there is a Violation of Rule 4(3) of the IBC (Application to Adjudicating Authority) Rules, 2016. Rule 4(3) mandates service of the application to both the Corporate Debtor and the Insolvency and Bankruptcy Board of India (IBBI) before filing. We observe that the omission of service upon the IBBI constitutes a procedural irregularity, albeit one that is rectifiable. Accordingly, when this Application was listed for clarification on 23.07.2025, learned Counsel for the Financial Creditor was directed to clear the defect by effecting service of the petition upon the IBBI. On that occasion, Counsel undertook to file proof of such service in additional Affidavit. It is now duly noted that Counsel has scrupulously complied with the subsequent order dated 12.08.2025, having served a copy of the petition upon the IBBI. The proof of service stands substantiated through the Additional Affidavit of the Financial Creditor, tendered in compliance with the directions of order dated 23.07.2025, and is now annexed to the petition.
30. We note from the Balance Sheets up to FY 2020–21 and the email dated 20.02.2024, that the Corporate Debtor has acknowledged its liability towards the Financial Creditor. In the said email, the Corporate Debtor attributes its inability to repay to financial stress after COVID-19, high manufacturing costs, cheap imports, and the personal health issues of its key managerial person, while also stating that only plant and machinery can be realized to settle dues. This acknowledgment of debt amounts to an admission under Section 18 of the Limitation Act, thereby extending the limitation period and making the present Application which is filed on 01.11.2023, well within the Limitation.



31. Considering the above discussion, we come to conclusion that the petitioner has been able to establish that there is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of ‘debt’ and ‘default’ for admission of a petition under section 7 of the I&B Code, have been, therefore, met in this case. Besides, the Company Petition is well within the period of limitation.

### **ORDER**

- a. This Application bearing **C.P. (IB) No.141/2024** filed under Section 7 of the Code by Pegasus Assets Reconstruction Private Limited, the Financial Creditor for initiating CIRP against DEE Plone Polyester Pvt Ltd, the Corporate Debtor is hereby **Admitted**.
- b. We further declare moratorium under Section 14 of the Code with consequential directions as mentioned below:-
  1. We Prohibit :
    - i. 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;
    - ii. transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
    - iii. any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property



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including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- iv. the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
2. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
  3. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the Code or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.
  4. That the public announcement of the CIRP shall be made in immediately as specified under Section 13 of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.
  5. That this Bench hereby appoints **Mr. Anuj Bajpai a registered Insolvency Professional** having **Registration Number IBBI/IPA-001/IP-P00311/2017-2018/10575** valid Authorisation for Assignment up to **31.12.2025** and **e-mail address Anuj19603@yahoo.co.in** as the IRP to carry out the functions under the Code.



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6. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.
  7. That during the CIRP Period, the management of the Corporate Debtor 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 Code. The officers and managers of the Corporate Debtor is directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. 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/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the Code. Coercive steps will follow against them under the provisions of the Code read with Rule 11 of the NCLT Rules for any violation of law.
  8. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
  9. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Financial Creditor is directed to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees Only) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Financial Creditor on priority upon the funds becoming available with



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IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.

10.A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.

11.A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.

12.The Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by way of Speed Post and e-mail.

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

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

**Sd/-**  
**ASHISH KALIA**  
**MEMBER (JUDICIAL)**