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**In the National Company Law Tribunal
Kolkata Bench
Kolkata**

**CORAM: Shri Madan B. Gosavi,
Member (Judicial)**

&

**Shri Virendra Kumar Gupta,
Member(Technical)**

CP(IB)No.346/KB/2019

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process 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;

-And-

In the Matter of:

Union Bank of India, having its registered and Head Office at 239, Vidhan Bhavan Marg, Nariman Point, Mumbai-400021..

..... Financial Creditor

In the Matter of:

M/s Surana Metals Limited, a company having its registered office at 12, Bonafield Lane, Kolkata-700001. CIN No. : L27209WB1983PLC036141

..... Corporate Debtor

Counsels appeared:

For Financial Creditor

1. Mr. Ranajit Chowdhury, Advocate





For the Corporate Debtor

1. Mr. Nimish Mishra, Advocate
2. Mr. Gaurav Singh, Advocate
3. Mr. L.P. Sharma, Advocate

Date of pronouncement of order: 6th December, 2019.

ORDER

Per Shri M.B. Gosavi, Member (J):

1. This application under Section 7 of Insolvency and Bankruptcy Code, 2016 is filed by the Financial Creditor – **Union Bank of India** against **M/s. Surana Metals Limited – Corporate Guarantor** of the **M/s. Mahaveer Construction, a proprietary concern** to start Corporate Insolvency Resolution Process (in short "CIRP") of the Corporate Debtor on the ground that the Corporate Debtor being guarantor of the principal borrower committed default in paying financial debt of Rs. 23,90,35,759/- (Rupees Twenty-Three Crore Ninety Lakh Thirty-Five Thousand Seven Hundred and Fifty-Nine Only).
2. The following facts are not in dispute: -
 - 2.1. In the year 2008, the financial creditor granted and disbursed in favour of M/s. Mahaveer Construction the term loan of Rs. 9,60,00,000/- (Rupees Nine Crore Sixty Lakh Only). The Corporate Debtor herein executed deed of guarantee in favour of the Bank. The guarantee is continuing guarantee. The principal borrower M/s. Mahaveer Construction is a proprietary concern of which Mr. Laxmi Pat Surana is a sole proprietor. Mr. Laxmi Pat Surana is also the director of M/s. Surana Metals Limited. It shows that Mr. Laxmi Pat Surana took a loan from the Bank in his individual capacity and executed deed of guarantee for the same

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loan as the director of M/s. Surana Metals Ltd. (the Corporate Debtor)

- 2.2. Borrower Laxmi Pat Surana committed default in paying the loan. However, he acknowledged and admitted debt on 03.03.2012, 27.05.2015. Despite acknowledgment of loan and making promise, he defaulted in paying the same. Hence, on 03.12.2018, the Bank sent notice of demand to the borrower as well as the Corporate Debtor calling them to clear their dues. The Financial Creditor states that inspite of repeated demands, the Corporate Debtor committed default in paying the financial debt. Hence, this proceeding is filed to start CIRP of the Corporate Debtor.
- 2.3. Corporate Debtor suggested name of one Mr. Sunil Mohan Acharya, 245/1, Bhattacharya Para, 6 No. Jheelpar Road, Ward No. 15, New Barrackpur, North 24 Pargana, Kolkata-700131, E-Mail:-sunilmohanacharya58@gmail.com having registration no. IBBI/IPA-N000174/2018-19/12120 for appointment of IRP.
3. Corporate Debtor served with the notice of this application. It appeared though Mr. Laxmi Pat Surana, Director of the original borrower. He filed affidavit in reply.
4. We have gone through that reply. It is seen that the Corporate Debtor raised two defenses to contest this application
 - (i) Claim is time barred.
 - (ii) He being guarantor of the loan of the individual and not the corporate person, this proceeding is not maintainable under Section 5A of the IBC, 2016.
5. We heard Ld. Counsel for the Financial Creditor and Ld. Counsel for the Corporate Debtor at length. We have gone through the evidence on record.
6. It is not in dispute that the loan of Rs. 9,60,00,000/- (Rupees Nine Crore Sixty Lakh Only) was granted and disbursed by the Bank to Mr. Laxmi

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Pat Surana, proprietor of M/s Mahaveer Construction. He is also the director of M/s. Surana Metals Limited. It is not in dispute that the Corporate Debtor executed deed of guarantee in favour of the Bank and thereby undertook to repay the loan upon default by the original borrower to pay the same. It is also not in dispute that the guarantee is the continuing guarantee.

7. It is seen from the evidence on record that not only the original borrower but also the Corporate Debtor admitted and acknowledged the debt time and again on 27.05.2015 (exhibit J-1) and 08.12.2018 (exhibit K). The Corporate Debtor replied the notice issued by the Bank clearly admitting the debt. We have gone through his reply to the notice. We hold that his reply is in form of admission of debt and nothing else. The Corporate Debtor contended that recovery proceeding is pending in Debt Recovery Tribunal, Kolkata against the Corporate Debtor. It cannot be said that debt become due and payable. We hold that it is admission of debt and his only defense is that it is yet to become due and payable. In this case, by virtue of guarantee in favour of the Bank, the Corporate Debtor undertook to clear loan of the original borrower in case original borrower commit default and it is duty of the Corporate Debtor to clear the outstanding. His defense is that debt is yet to become due is not sustainable.
8. Ld. Counsel for the Corporate Debtor submitted that claim is time barred. He pointed out date of default as 03.01.2010 and this proceeding is filed on 13.02.2019. According to him, it is time barred in view of the Hon'ble Supreme Court Ruling in case of Gaurav Hargovindbhai Dave V/s. Asset Reconstruction Company (India) Ltd. & Anr. (Civil Appeal No. 4952 of 2019).
9. We have gone through the Ruling. We hold that this Ruling is not applicable in this case. In case before Hon'ble Supreme Court, the facts were after the date of default in the year 2011, there was no



acknowledgment of debt by the Corporate Debtor in that proceeding. In this case, after the default in the year 2010, not only original borrower but also the Corporate Debtor admitted and acknowledgment the debt even in the year 2018. This proceeding is filed within period of limitation.

10. Ld. Counsel for the Corporate Debtor submitted that he cannot be the Corporate Debtor in view of the definition of corporate guarantor as stated in Section 5A of IBC, 2016. According to him, since his client is guarantor to the individual and not corporate person, no proceeding can lie against his client under IBC, 2016. We have considered about his above submission. Section 5A of IBC, 2016 states Corporate Guarantor means the corporate person who is surety in contract guarantee to a Corporate Debtor. Section 3(8) of IBC defines Corporate Debtor means corporate person who owes a debt of any person. In this case, it is not in dispute that by virtue of deed of guarantee, the Corporate Debtor herein who is the corporate person owes debt to the Bank. Hence, the Corporate definition in Section 5A of IBC, 2016 of corporate guarantor cannot be considered for exclusion of this proceeding from consideration for a simple reason that the definition is just explanatory definition as to who could be called as corporate guarantor. In this case, the Corporate Debtor is the guarantor of the individual. He executed deed of guarantee in the year 2008. He thereby undertook to repay the debt in case of default by the original borrower. The definition of the corporate guarantor relied on by him in Section 5A cannot be used to show applicability or inapplicability of provisions of IBC against him as it is just explanatory definition. Hence, we reject his argument.

11. In view of the evidence on record, we hold that the Financial Creditor proved that the financial debt is due and payable by the Corporate Debtor and he has committed default in paying the same.

12. We find that application is filed well within period of limitation. Financial Creditor suggested name of one Mr. Sunil Mohan Acharya,



245/1, Bhattacharya Para, 6 No. Jheelpar Road, Ward No. 15, New Barrackpur, North 24 Pargana, Kolkata-700131, E-Mail:- sunilmohanacharya58@gmail.com having registration no. IBBI/IPA-N000174/2018-19/12120 for appointment of IRP against whom no disciplinary proceeding appears to be pending. The application is defect free. Hence, we admit the same by following order.

ORDER

- i) The application filed by the Financial Creditor under section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s Surana Metals Ltd.** is hereby admitted.
- ii) We declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;




- c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization 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 the possession of the corporate debtor.
- v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x) **Mr. Sunil Mohan Acharya**, 245/1, Bhattacharya Para, 6 No. Jheelpar Road, Ward No. 15, New Barrackpur, North 24 Pargana, Kolkata-700131, E-Mail:-sunilmohanacharya58@gmail.com having registration no. IBBI/IPA-N000174/2018-19/12120 is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.




- xi) The Financial Creditor to pay sum of Rs. 1,00,000/- (Rupees One Lakh Only) to IRP as advance fees as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.
- xii) In case, further funds are required by IRP/RP and in the event of non-provision thereof, IRP/RP can approach this Tribunal so that CIRP would not be hampered for want of funds.
- xiii) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xiv) Registry is hereby directed under section 7(7) of the I.B. Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

List the matter on **23.01.2020** for the filing of the progress report.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


(Virendra Kumar Gupta)
Member(Technical)


(Madan B. Gosavi)
Member(Judicial)

Signed on this, the 6th day of December, 2019.