

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

C.P. (IB) No. 590/NCLT/MB/2018

Under Section 7 of the I&B Code, 2016

In the matter of:

State Bank of India

...Financial Creditor / Applicant

V/s

Topworth Steels & Power Private Limited

...Corporate Debtor / Respondent

Order Dated: 29th January 2020

Coram: Hon'ble Member (Judicial): Mr Bhaskara Pantula Mohan
Hon'ble Member (Technical): Mr Rajesh Sharma

For the Applicant: Advocate Nishitha Nambiar i/b. India Law LLP

For the Respondent: Advocate Ryan Sherif i/b. A&P Partners a/w.
Mr Saurabh Sharma (Ex-Director of Respondent)

Per: Rajesh Sharma, Member (Technical)

ORDER

1. This is an application being C.P. (IB) No. 590/NCLT/MB/2018 filed by **State Bank of India**, the Financial Creditor / Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Topworth Steels & Power Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. The application is filed claiming a total default of ₹835,12,77,142/- (Rupees Eight Hundred and Thirty Five Crore Twelve Lakh Seventy Seven Thousand One Hundred and Forty Two Only) inclusive of interest as on 31.03.2018. The application is filed by Mr Mukesh

Kumar, AGM of Financial Creditor, duly authorised to file the present application vide Gazette Notification dated 31.03.1987.

3. The Applicant submitted that it had sanctioned Term Loans and other facilities to the Corporate Debtor from 2005 to 2015 vide various Sanction Letters. The Applicant submitted that the Applicant and the Corporate Debtor have entered into Working Capital Consortium Agreements, Loan Agreements and Common Loan Agreements in respect of the said facilities sanctioned by the Applicant to the Corporate Debtor. The Applicant further submitted that Deeds of Hypothecation and Guarantees, personal and corporate, secured the said credit facilities. Copies of documents mentioned supra are annexed to the application.
4. The Applicant submitted that the Corporate Debtor failed to repay the said loan facilities and therefore the account of the Corporate Debtor was classified as Non-Performing Asset (NPA) on 01.12.2014. The Applicant further submitted that there was a Corporate Debt Restructuring of the Corporate Debtor after it was declared as NPA and accordingly a Master Restructuring Facility dated 30.03.2015 was executed granting a credit facility aggregately by all the consortium members of ₹1346,72,00,000/- (Rupees One Thousand Three Hundred Forty Six Crore and Seventy Two Lakh Only) out of which the Applicants Bank's share was of ₹561,75,86,448/- (Rupees Five Hundred Sixty One Crore Seventy Five Lakh Eighty Six Thousand Four Hundred Forty Eight Only). Further, for renewal of the said facilities granted the Applicant with other lender banks entered into a Common Loan Agreement dated 30.04.2015 with the Corporate Debtor. Copies of the documents mentioned supra are annexed to the application.
5. The Applicant filed the present application on 09.04.2018. The Counsel for the Corporate Debtor on 13.07.2018 stated that, the Hon'ble High Court of Bombay has appointed Provisional Liquidator in the winding up matter pending against this Corporate Debtor. He further stated that this Bench has already dismissed another

Company Petition filed under IBC against the same Corporate Debtor on the ground that Provisional Liquidator has been appointed therefore, applying the same ratio present Company Petition should also be dismissed with the direction to this Petitioner/Applicant to approach the Provisional Liquidator as enunciated under the Companies Act, 1956. Accordingly, the matter was adjourned to 24.07.2018 at the request of the Petitioner for reporting withdrawal on the next date of hearing. Thereafter, this Bench vide its order dated 16.11.2018 dismissed this Company Petition stating that, as in the present case an Official Liquidator has already been appointed as Provisional Liquidator hence this Company Petition is not maintainable. The relevant extract from the order dated 16.11.2018 is reproduced hereinbelow:

- "2. *It has been informed that in a company petition for winding up of the corporate debtor, being Company Petition No. 114 of 2016 filed against the Corporate Debtor before the Hon'ble Bombay High Court, Official Liquidator has been appointed as Provisional Liquidator in respect of the Corporate Debtor.*
3. *The Financial Creditor has placed reliance on the case of 'Arise India Limited v TCI Freight'*
"Where the 'Provisional Liquidator' has been appointed, the question of initiation of 'Corporate Insolvency Resolution Process' under section 9 of the Insolvency and Bankruptcy Code, 2016, against the same 'Corporate Debtor' does not arise. For the said reason, we are not inclined to interfere with the impugned order and dismiss the appeal. No Cost."
4. *Given that in the present case an Official Liquidator has already been appointed as Provisional Liquidator, the present petition is covered by the NCLAT ruling and hence not maintainable.*
5. *This Petition is therefore dismissed accordingly."*
6. Thereafter, the Applicant herein, State Bank of India, filed an appeal before the Hon'ble National Company Law Appellate Tribunal

(NCLAT) against the order dated 16.11.2018 of this Bench, being Appeal No. Company Appeal (AT) (Insolvency) No. 790 of 2018. The Hon'ble NCLAT vide its order dated 19.08.2019 set aside the impugned order dated 16.11.2018 and remitted the case to this Bench to admit the application filed Under Section 7 of I&B Code, 2016. The relevant extract from the order dated 19.08.2019 is reproduced hereinbelow:

- "4. *For the reasons aforesaid, we set aside the impugned order dated 16.11.2018 and remit the case to the Adjudicating Authority (National Company Law Tribunal), Mumbai to admit the application under Section 7 after notice to the Respondent and pass appropriate order including the order of 'Moratorium' under section 14 of IBC. If such order of 'Moratorium' is passed, the proceeding Transferred under Section 434 of Companies Act, 2013 pending before NCLT Mumbai shall remain stayed till 'Resolution Process' is complete.*
5. *It will be also open to the 'Creditors' including the Applicant of the Company Petition 114 of 2016 to file claim before the Resolution Professional on admission of the Application under Section 7 of IBC which may be decided in accordance with law irrespective of pendency of transferred petition before the NCLT, Mumbai."*
7. The Counsel for the Corporate Debtor and the Director in person of the Corporate Debtor appeared on the date of hearing and accepted Corporate Debtor's liability as well as default. They further submitted that they have no objection to the present petition being admitted and recorded their remark in writing, with respect to the said no objection, on the daily attendance sheet.
8. We have heard the parties and perused the records and the directions given by the Appellate Tribunal.

9. It is evident that financial debt amounting to more than ₹1,00,000/- (Rupees One Lakh Only) is due and payable by the Corporate Debtor to the Applicant as on the date of filing of this Petition. Further, the Corporate Debtor has also admitted the financial debt. Therefore, an amount of more than ₹1,00,000/- is due and payable and there is default by the Corporate Debtor in repayment thereof.
10. The application is complete and has been filed under the proper form. The debt amount of more than Rupees One Lakh and default of the Corporate Debtor has been established and the application deserves to be admitted.
11. The Applicant has proposed the name of Mr Dushyant C Dave, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-003/IP-N00061/2017-18/10502] as **Interim Resolution Professional**, to carry out the functions of IRP along with his declaration in Form 2 that no disciplinary proceedings are pending against him, is annexed with the application.
12. The application under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the application filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This application filed under Section 7 of I&B Code, 2016, filed by **State Bank of India**, Financial Creditor / Applicant, against **Topworth Steels & Power Private Limited**, Corporate Debtor, for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:

- 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;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to –
- (a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - (b) a surety in a contract of guarantee to a corporate debtor.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints **Mr Dushyant C Dave**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-003/IP-N00061/2017-18/10502]** as Interim

Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

13. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

RAJESH SHARMA

Member (Technical)

Sd/-

BHASKARA PANTULA MOHAN

Member (Judicial)

29th January 2020