

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

**IA No. 2297/2020**

**IN**

**CP (IB) 979/MB/2020**

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*

**India Resurgence ARC Private Limited  
..... Applicant/ Financial Creditor**

**Versus**

**India Steel Corporation Limited  
[CIN: - U27100MH2004PLC144559]  
..... Corporate Debtor**

**Order Delivered on :- 06.10.2021**

**Coram:**

**Mr. Ashok Kumar Borah : Hon'ble Member (Judicial)**

**Mr. Shyam Babu Gautam : Hon'ble Member (Technical)**

***Appearances:***

For the Petitioner: Senior Counsel, Mr. Darius Khambata

For the Respondent: Senior Counsel Mr. Janak Dwarkadas

## **ORDER**

***Per:- Shyam Babu Gautam, Member Technical***

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (**"IBC"**) seeking to initiate Corporate Insolvency Resolution Process (**"CIRP"**) against M/s Indian Steel Corporation Limited, (**"the Respondent"**) alleging default in payment of a Financial Debt.
2. The Respondent Company is incorporated on 16.02.2004 under the Companies Act, 1956. The Authorized Share Capital of the Respondent/Corporate Debtor Company is Rs. 90,00,00,000/- and the Paid Up Share Capital is Rs. 76,98,95,900/-.

### **The Submissions of the Financial Creditor are as follows: -**

3. The Corporate Debtor Company is engaged in the business of production of cold rolled steel and coated steel products for automobiles, home appliances, construction, etc.
4. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of outstanding financial Debt of INR 1633,36,24,150.79 (INR Sixteen Hundred Thirty-Three Crores Thirty-Six Lakhs Twenty-Four Thousand One Hundred Fifty and Seventy-Nine Paisa Only) as on 31<sup>st</sup> May 2020.

5. The Financial Creditor submits that SBI along with other lenders, as part of two separate consortium of banks, extended loans in the nature of,

(i) term loans, and

(ii) Working capital credit facilities,

to the Corporate Debtor in 2008 and 2013 respectively. Subsequently, these facilities were renewed, enhanced and restructured in year 2013 and 2016 respectively. Thereafter, on default of payment, the account of the Corporate Debtor was declared as a Non-Performing Asset **(NPA)** on 21.05.2016 by SBI.

6. The Applicant acquired the debt from SBI by way of a Deed of Assignment dated 03.05.2019 along with all rights, title and interest of SBI under the facility documents. Owing to continuous defaults, the Applicant issued a Demand Notice dated 23.08.2019 to the Corporate Debtor. But the Corporate debtor still failed to repay the sum due under the Facilities.

7. The Financial Creditor submits that on 05.08.2008, the Board of Directors of the Corporate Debtor passed a resolution which authorised and acknowledged the sanction of term loan facilities by a consortium of lenders comprising of the following Banks:

- i. State Bank of Indore (SBOI)
- ii. State Bank of Travancore (SBT)
- iii. State Bank of Patiala (SBP)
- iv. State Bank of Hyderabad (SBH)

- v. State Bank of Mysore (SBM)
- vi. State Bank of Saurashtra (SBS)
- vii. State Bank of Bikaner & Jaipur (SBBJ)
- viii. Jammu and Kashmir Bank (J&K Bank)
- ix. Punjab National Bank (PNB)
- x. State Bank of India (SBI)

8. The amount as mentioned by each of the member Bank of the Consortium is as follows:

<b><u>Sr. No.</u></b>	<b><u>Bank</u></b>	<b><u>Amt. in Crores</u></b> <b><u>(INR)</u></b>
1.	SBI	175
2.	SBH	85
3.	SBT	80
4.	SBP	75
5.	J&K Bank	63
6.	SBS	55
7.	SBM	50

8.	PNB	30
9.	SBOI	25
10.	SBBJ	25
<b>Total</b>		<b>INR 663 Crores</b>

The SBOI was designated as the Lead Bank of the aforesaid consortium by way of an Inter-Se agreement dated 09.09.2008.

9. Subsequently, in the month of June 2013, the Corporate Debtor approached different consortium of banks seeking working capital credit facilities for its project at Bhimasar, Gujrat. The names and amount disbursed by the consortium of banks is as follows:

<b><u>Sr. No.</u></b>	<b><u>Banks</u></b>	<b><u>Amt. in Crores (INR)</u></b>
1.	PNB	485.00
2.	SBI	290.86
3.	SBBJ	246.00
4.	IDBI Bank	200.00
5.	SBP	153.00

6.	J&K Bank	145.00
7.	SBT	127.50
8.	Corporation Bank	100.00
9.	SBH	82.50
<b>Total</b>		<b>INR 1829.86</b> <b>Crores</b>

The IDBI Bank was designated as the Lead Bank of the aforesaid capital consortium by way of an Inter-Se Agreement dated 22.06.2013.

10. In year 2013, in order to avoid erosion in working capital and to preserve the Liquidity and solvency of the Corporate Debtor, the Corporate Debtor, proposed to SBI and other Erstwhile Banks to restructure the Term Loan Facility and subsequently Working Capital Credit Facility was renewed/enhanced as follows:

**In Year 2013**

- A. **SBI:** The Term Loan Facility and Working Capital Credit Facility were renewed cum restructured up to a limit of INR 450.11 Crores vide Sanction Letter Dated 30.10.2013.
- B. **SBP:** Vide letter dated 02.03.2013, the Term Loan Facility of INR 75 Crores was restructured with extension in door to door tenor from 9 years to 10 years. It was further approved that the repayment would be done in 18 unequal quarterly instalments starting from December

2013 to March 2018, along with 9 months moratorium from 01.01.2013 to 30.09.2013.

Further, vide letter dated 20.03.2013, the SBP Bank also sanctioned One-time ad-hoc limit of INR 35 Crores which was valid up to 18.06.2013. Also, vide letter dated 04.12.2013, SBP approved the renewal of the existing Working Capital Credit Facilities.

C. **SBT:** Vide letter dated 13.03.2013, the Term Loan Facility of INR 80 Crores was restructured with extension in door to door tenor from 9 years to 10 years and 9 months moratorium from 01.01.2013 to 30.09.2013.

D. **SBH:** Vide letter dated 16.05.2013, the Term Loan Facility of INR 85 Crores was restructured with extension in door to door tenor from 9 years to 10 years and 9 months moratorium from 01.01.2013 to 30.09.2013.

E. **SBM:** Vide letter dated 27.04.2013, the Term Loan Facility of INR 50 Crores was restructured with extension in door to door tenor from 9 years to 10 years and 9 months moratorium from 01.01.2013 to 30.09.2013.

### **In Year 2015**

F. **SBI:** The Credit Limit was renewed up to a limit of INR 433.09 Crores vide Sanction Letter Dated 08.04.2015.

G. **SBP:** The Working Capital Facility were renewed vide Sanction Letter Dated 22.01.2015.

H. **SBBJ:** The request of the Corporate Debtor was agreed by SBBJ and issued a restructuring sanction letter dated 08.06.2015 which was duly signed by the Corporate Debtor, as its acknowledgment and acceptance of the terms and conditions was approved by SBBJ.

- i. Corporate Loan of INR 69 Crores with Door to Door Tenor of 7 years for shoring up on net working capital limits, repayable in 72 monthly instalments with moratorium period of 12 months.
- ii. Letter regarding Grant Individual limit within the Overall limit of INR 260.98 Crores dated 13.06.2015:
  - a) Working Capital Term Loan of INR 94 Crores repayable in 72 monthly instalments with moratorium period of 12 months.
  - b) Restructuring of Funded Interest Term Loan of INR 14.98 Crores repayable in 36 monthly Instalments with moratorium period of 12 months.
  - c) Fund Based Working Capital of INR 11 Crores.
  - d) Restructuring of Fund Based Working Capital of INR 69 Crores repayable in 72 monthly Instalments with moratorium period of 12 months.
  - e) Non-Fund Based Working Capital of INR 72 Crores.

Subsequently, the agreement of loan for overall limit dated 13.06.2015 was executed.



- I. **SBH:** Vide sanction Letter dated 05.12.2015 SBH approved Renewal of Working Capital Credit Facilities for one year with effect from 27.10.2015.

**In Year 2016**

- J. **SBBJ:** Vide letter dated 15.01.2016, SBBJ sanctioned the renewal of its credit limits under the Working Capital Credit Facilities limits up to INR 191.98 Crores.
- K. **SBT:** Vide letter dated 09.08.2016, SBT sanctioned renewal of Working Capital Credit Facilities.
11. The aforesaid facilities were secured by the Corporate Debtor and other third parties by way of various securities and contractual comforts.
12. Subsequently, the erstwhile associate banks of SBI, who were also members of the SBOI Consortium and/or IDBI Consortium have come to be vested in SBI following their acquisition by/merger into SBI from time to time, as detailed below:
- i. The State Bank of Indore (SBOI) was acquired by SBI with effect from 26.08.2010.
  - ii. State Bank OF Saurashtra (SBS) was acquired by SBI with effect from 13.08.2013.
  - iii. State Bank of Bikaner and Jaipur (SBBJ), State Bank of Hyderabad (SBH), State Bank of Travancore (SBT), State Bank

of Patiala (SBP), and State Bank of Mysore (SBM) were acquired by SBI with effect from 01.04.2017.

Consequent to the aforesaid mergers, all rights, entitlements and liabilities of the Erstwhile Associate Banks, including loan accounts of the Corporate Debtor maintained with them, were transferred to and vested in SBI.

13. Thereafter, through Joint Lenders Meeting dated 15.12.2015, all aforesaid consortium lenders designated PNB as the lead bank under both Consortium i.e. SBOI Consortium and IDBI Consortium.
14. In a series of default on part of the Corporate Debtor, SBI along with other Erstwhile Banks declared the account of the Corporate Debtor as an NPA on various dated between 21.05.2016 to 30.09.2016.
15. On 19.12.2014, the Corporate Debtor submitted a restructuring proposal to IDBI Bank whereby, it requested reduction in the Interest rates on the Facilities from existing level to 10.25% per annum (**“2014 Restructuring Proposal”**), waiver of penal and compounded interest and margin money. But, it was not approved.
16. Thereafter on 13.07.2016, the Corporate Debtor submitted a draft proposal for Scheme for Sustainable Structuring of Stressed Assets to the Lenders (**“2016 S4A Restructuring”**). Same was also not approved even after Restructuring.
17. As the Default of Corporate Debtor Continued and it failed to service the Facilities in terms of the relevant Facility Documents, it led to classification of the Corporate Debtor's Account as an NPA:

<b><u>Sr. no.</u></b>	<b><u>Bank</u></b>	<b><u>Date of NPA</u></b>
1.	SBI	21.05.2016
2.	SBH	25.07.2016
3.	SBM	30.09.2016
4.	SBBJ	30.09.2016
5.	SBP	30.09.2016
6.	SBT	30.09.2016

18. The Financial Creditor submits that SBI intimated the Managing Director of the Corporate Debtor about the Classification of the Corporate Debtor's Account as an NPA and called upon them to regularise the account immediately through letter dated 23.05.2016 but the Corporate Debtor completely failed to regularise the account. Subsequently, on 17.10.2016, due to failure on the part of the Corporate Debtor to regularize the account, SBI granted approval for transfer of the account to its Stressed Asset Management Branch (SAMB).
19. As per the applicable Reserve Bank of India (RBI) guidelines, banks were required to make provisioning of the account. Since the Corporate Debtor's account had been restructured in 2013, the NPA date was

reckoned back to 31.03.2014 only due to the fact that the restructuring had failed.

20. Thereafter, vide letter dated 15.01.2018, 16.02.2018 and 07.03.2018, the Corporate Debtor proposed a One-Time Settlement (OTS) of INR 400 Crores against aggregate debt owned by SBI and other Erstwhile Banks as on 31.12.2017. But the Corporate Debtor failed to pay the balance sum under the OTS on or before the due date. Therefore, the OTS failed in view of non-adherence by the Corporate Debtor to its terms and accordingly, SBI issued letter dated 22.06.2018 in this regard.
21. The Financial Creditor submits that the SBBJ issued notice dated 24.01.2017, accelerating the Facilities and calling upon the Corporate Debtor and the Guarantor to repay the outstanding amount of INR 246,42,79,606.59 immediately. But, the Corporate Debtor as well as the Guarantor failed to repay the aforesaid debt to SBBJ. The Corporate Debtor responded to the Recall Notice through its legal counsel.
22. Subsequently, SBI issued notice dated 25.07.2018 accelerating the Facilities and calling upon the Corporate Debtor, the Guarantor and the Corporate Guarantor to repay the entire outstanding amount due and payable, i.e. INR 1219,87,72,156.33.
23. On 03.05.2019, the Financial Creditor, being the trustee of India Resurgence ARC Trust I, acquired the Debt arising out of the Facilities from SBI by way of Deed of Assignment. The same was even notified to the Corporate Debtor through letter dated 07.05.2019 specifying the Debt due from Corporate Debtor to SBI amounts to INR 1401,34,27,711.74.

24. In view to revive the Corporate Debtor, an attempt was made by the Financial Creditor by initialising a non-binding term sheet with the Corporate Debtor on 20.03.2019 for sale of the Corporate Debtor to a Third Party investor by provision for a “Standstill period”. The corporate Debtor failed to take actions necessary to affect the transaction contemplated under the Non-Binding Term Sheet.
25. Subsequently, a Demand Notice was issued by the Financial Creditor on 23.08.2019, asking the Corporate Debtor to Pay entire due and payable under facilities, amounting to INR 1465,48,55,117.24. the Corporate Debtor responded to the Demand Notice through e-mail dated 30.08.2019.
26. Therefore, the Applicant submits that on account of default made time to time by the Corporate Debtor in servicing of the Facilities, as well as continuous defaults in repayment, the present Application has been filled on the basis of the entire outstanding amount in relation to the Facilities which is Due and payable by the Corporate Debtor, i.e. INR 1633,36,24,150.79 as on 31.05.2020. But the Corporate Debtor as well as the Guarantor failed to discharge their liabilities and failed to repay the aforesaid debt to SBI.
27. The Applicant submits that the present application is filed within limitation period as per the Limitation Act, 1863, and no part of the Financial Debt is barred by Limitation. The corporate Debtor has time to time acknowledged the amount owed to the Financial Creditors and the application is valid under Section 18 and 19 of the Limitation Act, 1863.
28. The below mentioned is the list of Particulars annexed by the Applicant in the petition:

- i. Acknowledgement of Debt through Letters;
  - ii. Acknowledgement of Liability in Financial Statements;
  - iii. Extension of Period of Limitation by way of Repayment of Debt;
  - iv. Particulars of Security Held, its Estimated Value and its date of Creation;
  - v. Record of Default with Information Utility;
  - vi. Copy of Latest Financial Contract contains all Amendments and Waivers till date;
  - vii. Copy of Entries in Bankers Book;
  - viii. Other Document to Prove the existence of Financial Debt;
29. Along with the above annexures, the Applicant has also attached various bank accounts reflecting repayment of debt, part payment, and payment towards outstanding principal and interest amounts.
30. The Applicant submits that the aforesaid clearly demonstrates:
  - i. The existence of Debt owed by the Corporate Debtor to the Financial Creditor under the Facilities
  - ii. The occurrence of persistent defaults on the part of the Corporate Debtor in repayment of such debt
31. The Financial Creditor filed an Affidavit dated 27.08.2021 for the replacement of the proposed Interim Resolution Professional as mentioned in the Petition. The Name and details of the IRP are as under:

<b><u>Proposed Interim Resolution Professional</u></b>	
<b>Name</b>	Mr. Ajay Joshi
<b>Registration No.</b>	IP Registration No. IBBI/IPA-003/IP-N00019/2017-18/10166
<b>Address:</b>	Dwarka, A/2 Phatak Baug Society, 999 Navi Peth, Pune 411030.
<b>Email</b>	ajay.joshi@ajayjoshiip.com

**The Submissions of the Corporate Debtor are as follows :-**

- 32.The Corporate Debtor filed its Additional Affidavit dated 30.08.2021. The Corporate Debtor submits the present Company Petition was filed by India Resurgence ARC Private Limited on 15.07.2020. Thereafter, the Corporate Debtor had filed e reply dated 02.12.2020 along with an Interlocutory Application No. 2297 of 2020 the Maintainability Application.
33. The Corporate Debtor submits and admits that the Corporate Debtor has defaulted in servicing its Financial obligation towards the debt payable to the Financial Creditor.
- 34.Further the Corporate Debtor submits that they do not wish to press the objections raised in the reply and also the Maintainability Application and also withdraws the same.

35. The Corporate Debtor further submits that the Corporate Debtor Company admits and acknowledges the debt and default as set out in the Insolvency Application as well as unconditionally withdraws the Maintainability Application. The Corporate Debtor also undertakes that such order of this Hon'ble Tribunal will not be challenged before any court or tribunal by the Corporate Debtor and/or its affiliates/promoters/shareholders/board of directors.

### **FINDINGS**

36. We have heard the submissions of the Counsel appearing for the Operational Creditor and Counsel appearing for the Corporate Debtor. It is considered that the Loan/Credit facilities have been sanctioned to the Corporate Debtor under Multiple Banking Arrangement. The total debt outstanding of the Corporate Debtor under Multiple Banking Arrangement appears to be INR 1633,36,24,150.79 (INR Sixteen Hundred Thirty-Three Crores Thirty-Six Lakhs Twenty-Four Thousand One Hundred Fifty and Seventy-Nine Paise Only) as on 31<sup>st</sup> May 2020.

37. Further, it is seen from the records available that the Corporate Debtor Company has filed its Additional Affidavit wherein the Corporate Debtor has admitted its liability to pay to the Financial Creditor. Also the Financial Creditor has established that the various term loans/Credit Working Capital were duly sanctioned and duly disbursed to the Corporate Debtor but there is no payment of Debt on the part of the Corporate Debtor. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be admitted u/s 7 of the I&B Code.



38. It is seen from the records that the Corporate Debtor had filed an IA No. 2297 for rejection of the present Company Petition No. 979 of 2020. In view of the admission of the present Company Petition, **IA 2297 is hereby rejected and is disposed of.**

39. Further, it is worth to reproduce sub-Section of (5) of S. 7 of the Code as follows:

*(5) Where the Adjudicating Authority is satisfied that—*

*(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or*

*(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:*

*Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.*

a. Hence, accordingly We, have perused this Petition/Application filed under Section 7 of the Code r.w. Rule 4 of the Rules and come to conclusion that, pursuant to S. 7 (7) (5) (a) of the Code

this Application is complete under sub-section (2) of S. 7 of the Code.

40. On going through the facts and submissions of the Petitioner and upon considering the same, it is concluded that the Financial Creditor has established that the loan/ Working Capital Credit facilities was duly sanctioned and duly disbursed to the Corporate Debtor but there has been default in payment of Debt on the part of the Corporate Debtor.
41. Considering the above facts, we come to conclusion that the nature of Debt 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 met in this case.
42. As a consequence, keeping the afore said facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves ‘**Admission**’.
43. For the foregoing reasons, the above Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

## **ORDER**

- a. **The above Company Petition No. (IB) - 979(MB)/2020 is hereby allowed and IA. 2297 of 2020 is rejected** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Indian Steel Corporation Limited.
- b. This Bench hereby appoints Mr. Ajay Joshi, Insolvency Professional, Registration No: IBBI/IPA-003/IP-N00019/2017-18/10166 as the Interim Resolution Professional having registered office at Dwarka, A/2, Phatak Baug Society, 999 Navi Peth, Pune – 411030, email :- [ajay.joshi@ajayjoshiip.com](mailto:ajay.joshi@ajayjoshiip.com) to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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 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 supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. 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.

g. 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.

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 suspended directors and 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 concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

**Accordingly, this Petition is admitted and IA No. 2297 is rejected and is disposed of.**

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**

**SHYAM BABU GAUTAM  
(MEMBER TECHNICAL)**

**Sd/-**

**ASHOK KUMAR BORAH  
(MEMBER JUDICIAL)**