

In the National Company Law Tribunal  
Mumbai Bench.

C.P. (IB)/2054/MB/2018

Under Section 7 of Insolvency & Bankruptcy Code, 2016

In the matter of

**State Bank of India** : Petitioner

V/s

**Uttam Galva Metalics Limited** : Respondent

Heard on : 15.06.2018  
Order delivered on: 11.07.2018

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

For the Petitioner(s): : 1. Mr. Ameya Gokhale,  
2. Ms. Meghna Rajadhyaksha and  
3. Mr. Umang Singh, i/b  
Shardul Amarchand Mangaldas & Co.

For the Respondent(s): : 1. Mr. J.P. Sen, Senior Advocate;  
2. Mr. Mayur Khandeparkar, Advocate;  
3. Mr. Dhiraj Mhetre,  
4. Mr. Kanishk Kejriwal, i/b  
Khaitan Legal Associates, Advocates.

**Per M.K. Shrawat, Member (Judicial).**

**ORDER**

1. A Petition was filed before NCLT, Chandigarh Bench on 29.12.2017 by State Bank of India in the capacity of '**Financial Creditor**' U/s. 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter The Code), read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against the Corporate Debtor M/s. Uttam Galva Metalics Limited, Registered Office at : 502, Global Foyer Building, Sector 43, Golf Course Road, Gurgaon, Haryana-122002, before the NCLT, Chandigarh Bench, to claim a Financial Debt of ₹306,85,08,344/-. By the Registry of Chandigarh NCLT, the Petition was numbered as CP (IB) No.18/Chd/HP/2018.

1.1. For the sake of completeness of the record it is worth mentioning that in the case of Uttam Value Steels Ltd. Vs. State Bank of India an Application was submitted before the Principal Bench, NCLT, New Delhi (CA No.91 (PB)/2018) with a Prayer for transfer of

CP(IB) No.1830/2017 from NCLT, Mumbai to NCLT, Chandigarh. However, the Hon'ble Principal Bench has ordered to transfer Chandigarh case of Uttam Galva Metalics Ltd. to NCLT, Mumbai (Order dated 13.02.2018).

2. Subsequently, when the case came up for hearing on 20.03.2018, Learned Counsel for the Respondent and Petitioner Bank informed the Chandigarh Bench about the order dated 13.02.2018 passed in CA No. 91(PB)/2018 titled as "Uttam Value Steels Limited Versus State Bank of India and Anr." by Hon'ble Principal Bench of NCLT, New Delhi transferring that Petition to NCLT, Mumbai Bench, as under :-

*"(a) CP (Insolvency & Bankruptcy) No. 18/Chd/HP/2018 be transferred and be heard along with C.P.(IB) No.*

*1830/2017 at NCLT, Mumbai Bench.*

*(b) The Registrar of NCLT, Chandigarh Bench is directed to send all the papers books and the order sheet file of C.P. (IB) No.18/Chd/HP/2018 to the Registrar, NCLT, Mumbai Bench as early as possible so that there is no delay in the proceedings."*

2.1. In terms of the said Order, NCLT, Chandigarh Bench transferred the impugned Petition No.18/Chd/HP/2018 to Mumbai Bench of NCLT, vide Letter No. NCLT/Chd/Reg.371 dated 09.05.2018. On 21.05.2018 the said Petition was received by NCLT, Mumbai and thereafter numbered as CP (IB)/2054 of 2018 in NCLT, Mumbai Bench.

2.2. The Petitioner Bank (**Financial Creditor**) is seeking invocation of Insolvency proceedings under Section 7 of The Code against "**Financial Debtor**" M/s. Uttam Galva Metalics Limited, Gurgaon, Haryana-122002.

3. Requisite Form No.1 is submitted, therein vide Part-IV "Particulars of Financial Debt", the total amount of Debt granted/ disbursed is stated to be equivalent to ₹461,38,69,230/- Rupees Four Hundred and Sixty One Crores, Thirty Eight Lakhs Sixty Nine Thousand Two Hundred and Thirty).

3.1. However, the Financial Creditor is claiming the "Debt in Default" of ₹306,85,08,344/-.



(A) Description of Loan	(B) Reference Agreement (Term Loan/Corporate Loan/Cape x Loan/GMC)	(C) Disbursed Amount of Loan (In Rs.)	(D) Date of commence ment of default in Repayment of Interest	(E) Date of commence ment of default in Repayment of Principal	(F) Aggregate Period of Default in repayment of interest – Calculated from (D) upto the Application Date (30.11.2017 ) (Without reference to the individual repayment defaults) (In No. of Days)	(G) Aggregate Period of Default in repayment of Principal Amount of Loan – Calculated from (E) upto the Application Date (30.11.2017 ) (Without reference to the individual repayment defaults) (In No. of Days)	(H) Principal Amount outstanding (In Rs.)	(I) Drawing Power (In Rs.)	(J) Principal Amount in Default as on 30 <sup>th</sup> November 2017 (In Rs.)	(K) Interest Amount in Default (including the default interest, additional interest/ charges as per the Loan Agreement) as on 30 November 2017 (In Rs.)	(L+H+K) Total exposure outstanding as on 30 <sup>th</sup> November, 2017 (In Rs.)	(M+J+K) Total default amount outstanding as on 30 <sup>th</sup> November, 2017 (In Rs.)
CASH CREDIT	WCF as per Part IV item 5 (B)	42,50,00,000	01-07-2016	02-07-2016	518	517	216,45,13,141.53	0.00	216,45,13,141.53	46,71,92,315.19	2,63,17,05,456.72	2,63,17,05,456.72
TERM LOAN	RTL-2 as per Part IV item 5 (C)	56,93,00,000	01-07-2016	30-06-2016	518	519	51,19,60,390	43,43,75,900	7,75,84,490	89941111.24	60,19,01,501.24	16,75,25,601.24
TERM LOAN	RTL-1 as per Part IV item 5 (A)	155,85,69,230	01-07-2016	-	518	-	155,55,50,444	155,85,69,230	0.00	26,92,77,286.65	1,82,48,27,730.65	26,92,77,286.65
INLAND BANK GUARANTEE	WCF as per Part IV item 5 (B)	22,50,00,000	N.A.	N.A.	N.A.	N.A.	1,48,59,000	N.A.	0.00	N.A.	1,48,59,000.00	0.00
LETTER OF CREDIT	WCF as per Part IV item 5 (B)	1,80,00,00,000.00	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
DERIVATIVES	WCF as per Part IV item 5 (B)	3,60,00,000.00	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
TOTAL	N.A.	4,61,38,69,230.00	N.A.	N.A.	N.A.	N.A.	4,24,68,82,975.53	1,99,29,45,130.00	2,24,20,97,631.53	82,64,10,713.08	5,07,32,93,688.61	306,85,08,344.61

3.2. The impugned requisite Form No.1 also contains "Particulars of Securities held, the date of its creation, its estimated value", as per the Creditor. The Securities are covering various types of Loan Facilities under the Broad Headings as below:-

"PARTICULARS OF THE SECURITY HELD BY THE FINANCIAL CREDITOR

S. NO.	PARTICULARS	DATE OF AGREEMENT	DATE OF ROC REGISTRATION
RUPEE TERM LOAN FACILITY OF Rs. 2434,00,00,000			
1.	Deed of Mortgage executed by the Corporate Debtor and First Wardha Steel Limited ("FWSL") creating first pari passu charge on the immovable properties owned by the Corporate Debtor and FWSL to inter alia securing an aggregate limit of Rs.2434,00,00,000/- (Rupees Two Thousand Four Hundred and Thirty Four Crores)	30 July 2015	7 August 2015 (Corporate Debtor & First Wardha Steel Limited)
2.	Unattested Deed of Hypothecation executed by the Corporate Debtor in favour of SBICAP Trustee Company Limited, creating inter alia: (i) a first pari passu charge over : (a) the Corporate Debtor's tangible movable properties (save and except current assets); (b) the Corporate Debtor's bank accounts pertaining to the Project (as defined under the Common Loan Agreement dated 10 October 2014) (ii) a second pari passu charge over the Corporate Debtor's current assets	10 October 2014	28 October 2014
3.	Deed of Personal Guarantee executed by Mr. Rajinder Miglani, Mr. Anuj Miglani and Mr. Ankit Maglani in favour of SBICAP Trustee Company Limited, guaranteeing the repayment of the rupee term loan facility of Rs. 2434,00,00,000/- (Rupees Two Thousand Four Hundred and Thirty Four Crores).	10 October 2014	N.A.
WORKING CAPITAL FACILITY OF RS. 994,10,00,000			
1.	Deed of Mortgage executed by the Corporate Debtor in favour of SBICAP Trustee Company Limited for creation of second charge over the immovable properties owned by the Corporate Debtor and First Wardha Steel Limited ("FWSL") to inter alia secure the Working Capital Facility of Rs. 994,10,00,000/- (Rupees Nine Hundred and Ninety Four Crores and Ten Lakhs).	12 May 2016	20 May 2016 (Corporate Debtor & First Wardha Steel Limited)
2.	Deed of Hypothecation executed by the Corporate Debtor in favour of SBICAP Trustee Company Limited for : (i) creation of first charge over its current assets; and (ii) creation of second charge over its fixed assets, Securing the due repayment of the working capital facility.	5 August 2015	17 August 2015

3.	Deed of Personal Guarantee executed by Mr. Ankit Miglani in favour of SBICAP Trustee Company Limited guaranteeing the repayment of the working capital facility of Rs.994,10,00,000/- (Rupees Nine Hundred and Ninety Four Crores and Ten Lakhs).	5 August 2015	N.A.
4.	Deed of Personal Guarantee executed by Mr. Anuj Miglani in favour of SBICAP Trustee Company Limited guaranteeing the repayment of the working capital facility of Rs.994,10,00,000/- (Rupees Nine Hundred and Ninety Four Crores and Ten Lakhs).	5 August 2015	
5.	Deed of Personal Guarantee executed by Mr. Rajinder Miglani in favour of SBICAP Trustee Company Limited guaranteeing the repayment of the working capital facility of Rs.994,10,00,000/- (Rupees Nine Hundred and Ninety Four Crores and Ten Lakhs).	5 August 2015	N.A.
<b>RUPEE TERM LOAN FACILITY OF RS.1158,81,00,000</b>			
1.	Deed of Mortgage executed by the Corporate Debtor in favour of SBICAP Trustee Company Limited for creation of first charge over the immovable properties owned by the Corporate Debtor and First Wardha Steel Limited ("FWSL") to inter alia secure the rupee term loan facility of ₹1158,81,00,000/- (Rupees One Thousand One Hundred and Fifty Eight Crores and Eighty One Lakhs).	12 May 2016	20 May 2016 (Corporate Debtor & First Wardha Steel Limited)
2.	Deed of Hypothecation executed by the Corporate Debtor in favour of SBICAP Trustee Company Limited, inter alia : (i) creating a first pari passu charge over all the tangible movable properties of the Corporate Debtor; (ii) creating a second charge over the current assets of the Corporate Debtor.	5 August 2015	17 August 2015
3.	Deed of personal guarantee executed by Mr. Rajinder Miglani, Mr. Ankit Miglani and Mr. Anuj Miglani in favour of SBICAP Trustee Company Limited guaranteeing the repayment of the Rupee Term Loan Facility of Rs.1158,81,00,000/- (Rupees One Thousand One Hundred and Fifty Eight Crores and Eighty One Lakhs).	5 August 2015	17 August 2015

3.3. Details of disbursement made against each Facility is on record, reproduced below:-

“DETAILS OF DISBURSEMENT

<b>RUPEE TERM LOAN FACILITY OF Rs.2434,00,00,000</b>	
Account No.- 35247275169	
DATE OF DISBURSEMENT	AMOUNT OF DISBURSEMENT (RS.)
24 September 2015	4,32,34,873/-
28 September 2015	2,93,30,016/-
09 November 2015	30,81,34,758/-
21 December 2015	40,02,75,000/-
29 December 2015	4,73,41,415/-
24 February 2016	43,81,077/-
26 February 2016	6,75,00,000/-
26 February 2016	46,00,131/-
11 March 2016	61,03,60,065/-
11 March 2016	46,00,131/-
16 March 2016	39,42,970/-
29 March 2016	3,00,49,608
13 April 2016	48,19,186
<b>TOTAL</b>	<b>155,85,69,230/-</b>
<b>RUPEE TERM LOAN FACILITY OF Rs. 1158,81,00,000 (REFINANCE)</b>	
Account No.- 35242129361	
DATE OF DISBURSEMENT	AMOUNT OF DISBURSEMENT (RS.)
22 September 2015	56,93,00,000/-
<b>TOTAL</b>	<b>56,93,00,000/-</b>

3.4. The estimated valuation of the Securities provided by the Corporate Debtor are as follows:-



- (a) The fair market valuation of the fixed assets of the Corporate Debtor and First Wardha Steel Limited as [per the Valuation Report dated 25 September 2017 prepared by Yardi Prabhu, Consultants & Valuers Private Limited is Rs. 4,186 Crores (Rupees Four Thousand One Hundred and Eight Six Crores).
- (b) The estimated value of the Current Assets of the Corporate Debtor as per the Annual Report for the Financial Year 2017-17 is Rs.806.43 Crores (Rupees Eight Hundred Six Crores and Forty Three Lakhs)
- (c) The net-worth of Mr. Rajinder Miglani, as per the net-worth statement provided under the Deed of Personal Guarantee dated 5 August 2015, is Rs.302.44 lakhs.
- (d) The net-worth of Mr. Anuj Miglani, as per the net-worth statement provided under the Deed of Personal Guarantee dated 5 August 2015, is Rs.6065.94 Lakhs.
- (e) The net-worth of Mr. Ankit Miglani, as per the net-worth statement provided under the Deed of Personal Guarantee dated 5 August 2015, is Rs.4974.26 Lakhs.

4. That the Particulars of the Debt and the Dates of Financial Facilities granted by the Financial Creditor to the Corporate Debtor are reproduced below:-

S. NO.	PARTICULARS	DATE
<b>A. RUPEE TERM LOAN FACILITY (RTL-1) OF ₹2434,00,00,000</b>		
1.	Sanction Letter bearing reference number AMT-4/2014-15/40 issued by the Financial Creditor sanctioning the grant of term loan facilities of Rs. 750 Crores	10 June 2014
2.	Common Loan Agreement executed between the Consortium Lenders including the Financial Creditor and the Corporate Debtor for grant of term loan facilities for an amount of Rs. 2434 Crores to the Corporate Debtor with the Financial Creditor's commitment of ₹ 750 Crores.	10 October 2014
3.	Inter Creditor Agreement executed by and amongst, inter alia, State Bank of India and other consortium lenders	10 October 2014
4.	Security Trustee Agreement executed inter alia between State Bank of India and SBICAP Trustee Company Limited	10 October 2014
The copies of the Sanction Letter dated 10 June 2014, the Common Loan Agreement dated 10 October 2014, Inter Creditor Agreement dated 10 October 2014 and Security Trustee Agreement dated 10 October 2014 are being annexed herein as <b>Annexure 8 (COLLY.)</b>		
<b>B. WORKING CAPITAL FACILITY (WCF) OF Rs. 994,10,00,000</b>		
1.	Sanction Letter bearing reference number CB:AMT-IV: 2013-14:4778 issued by Financial Creditor in favour of the Corporate Debtor sanctioning the grant of working capital facilities of Rs. 359.77 Crores	24 January 2014
2.	Sanction Letter bearing reference number AMT-4/2015-16/45A issued by the Financial Creditor in favour of the Corporate Debtor sanctioning the grant of working capital facilities of Rs. 248.60 Crore	6 May 2015
3.	Amended and Restated Working Capital Consortium Agreement entered into, inter alia, between the State Bank of India and the Corporate Debtor for grant of working capital facilities of an amount of Rs. 994.10 Crores with the Financial Creditor's commitment of Rs. 248.60 Crore.	5 August 2015
4.	Inter Se Agreement executed by and amongst, inter alia, the Financial Creditor and other consortium lenders.	5 August 2015
5.	Security Trustee Agreement executed inter alia between the Financial Creditor and SBICAP Trustee Company Limited.	5 August 2015
6.	Sanction Letter bearing reference number AMT-4/2016-17/49-K issued by the Financial Creditor sanctioning the grant of working capital facilities of Rs. 248.60 Crore.	30 April 2016
7.	Letter bearing reference number AMT-4/2016-17/461A issued by the Financial Creditor to the Corporate Debtor for continuation of the working capital facilities granted under the Working Capital Consortium Agreement dated 5 August 2015 with holding on operations	27 February 2017
The copies of the Sanction Letter dated 24 January 2014, Sanction Letter dated 6 May 2015, Sanction Letter dated 30 April 2016, Continuation Letter dated 27 February 2017 Amended and Restated Working Capital Consortium Agreement dated 5 August 2015, Inter Se Agreement dated 5 August 2015 and Security Trustee Agreement dated 5 August 2015 are being annexed herein as <b>ANNEXURE 9 (COLLY.)</b>		
<b>C. RUPEE TERM LOAN FACILITY (RTL-2) OF Rs. 1158,81,00,000</b>		
1.	Sanction Letter bearing reference number AMT-4/2015-16/23A dated 17 April 2015 issued by the Financial Creditor sanctioning the grant of a term loan facilities for re-financing existing project loan with the Financial Creditor's commitment for Rs. 67.09 Crore.	17 April 2015
2.	Common Loan Agreement executed by the Consortium Lenders including the Financial Creditor and the Corporate Debtor for grant of term loan facilities for re-financing existing project loan to the extent of Rs. 1158,81,00,000 with the Financial Creditor's commitment for an amount of Rs. 56.93 Crore to the Corporate Debtor.	5 August 2015
3.	Inter Creditor Agreement executed by and amongst, inter alia, Financial Creditor and other consortium lenders.	5 August 2015
4.	Security Trustee Agreement executed inter alia between Financial Creditor and SBICAP Trustee Company Limited.	5 August 2015
The copies of the Sanction Letter dated 17 April 2015, Common Loan Agreement dated 5 August 2015, Inter Creditor Agreement dated 5 <sup>th</sup> August 2015 and Security Trustee Agreement dated 5 August 2015 are being annexed here as <b>ANNEXURE 10 (COLLY.)</b>		



5. From time to time **Registration of "Charge"** in the records of RoC, Delhi has been created such as "to secure the amount of Rs.2434 Crore only (Charge Identification No. 10526641) dated 28.10.2014".

5.1. The Registrar of Companies, Delhi has issued a Certificate of Registration for **Modification of Charge** on 07.08.2015 according to which, Modification of Charge dated 10.10.2014 modified on 30.07.2015 made between Uttam Galva Metalics Limited (of the One Part) and SBICAP Trustee Company Limited (of the Other Part) has been modified, reproduced below:-

"In addition to earlier Security. A Mortgage Deed has been executed on 30.07.2015 between the Company and SBICAP Trustee Company Limited (STCL) acting as Security Trustee to secure the due repayment by the company to the lenders of the financial assistance aggregating to Rs.2434,00,00,000/- more particularly described in the Mortgage Deed."

5.2. Further, the Charge Identification No.10538654, modified for 'enhancement of Working Capital Limit from Rs.955.95 Cr. to Rs.994.10 Cr. sanctioned by Lenders & having 1<sup>st</sup> pari passu charge on the whole of Current Assets of the Company & 2<sup>nd</sup> pari passu charge on the Company's Movable Fixed Assets, both present and future, wherever situated, more particularly described in schedule of the Unattested Deed of Hypothecation on property situated at Bhugaon, Wardha Link Road, Wardha 442001, Maharashtra', has been registered in RoC, Delhi. The Charges made on 16.12.2014, modified on 12.05.2016 for Rs.994,10,00,000/- has been further modified on 20.05.2016 and registered in RoC, Delhi (Charge Identification No.10538654). In the like manner the "Charge" was modified by the concerned authorities time and again as is evidenced from the available records.

6. Annexed with the Petition are the details and evidence of ancillary Security documents in respect of several Loan Facilities as described above. The Facility (together with all interest, liquidated damages, fees, remuneration payable to be Security Trustee), costs, charges, expenses and other monies and all other amounts stipulated and payable to the lenders shall be secured by: (i) First pari-passu charge on all the present & future movable fixed assets and immovable properties including but not limited to plant & machinery, machinery spares, tools & accessories & other such assets of the Borrower;

(ii) Second pari passu charge on the current assets of the Company; (iii) All insurance contracts/ insurance proceeds on pari passu basis with all other lenders; (iv) Personal Guarantee of: (i) Mr. Rajinder Miglani, (ii) Mr. Anuj Miglani and (iii) Mr. Ankit Miglani. The said security will rank pari passu amongst the participating Lenders in the Facility and all other existing term lenders of the Company.

7. A record of Default available with the Central Repository of Information on Large Credits (CRILC) is placed on record, reproduced below:-

Source: CRILC – SMA-2 Reporting (weekly/ as and when)

Sr. No.	Date when the Borrower Classified as SMA-2 (DD/MON/YY)	Date of Reporting to RBI/CRILC	Name of the Reporting Lender	Changed Status (Latest)	Date of Changed Status	Amount Outstanding (Funded + Non-Funded) when the Borrower Classified as SMA-2	Total Limit Sanctioned (Funded + Non-Funded) when the Borrower Classified as SMA-2	Amount Outstanding (Funded + Non-Funded) as on date of changed status	Whether the Borrower was Classified as SMA-1 during the past one year (Y/N)	If 'Y' for previous column, then dates (at most three dates) (dd/mm/yyyy)*			Remarks
										Date 1	Date 2	Date 3	
1)	30-JUL-16	02-SEP-17	Corporation Bank			30053.22	34092.33		YES	30-JUN-16	27-MAY-16	27-NOV-15	
2)	31-MAR-17	07-APR-17	Allahabad Bank			6976.80	15156.00		YES	29-MAY-16	29-APR-16		
3)	28-MAR-17	30-MAR-17	Indian Overseas Bank			2756.00	10000.00		NO				
4)	17-MAR-17	24-MAR-17	Union Bank of India			24120.18	32427.00		YES	17-FEB-17			Loan Default
5)	18-NOV-16	05-DEC-16	Union Bank of India			22987.76	40127.00		YES	18-OCT-16			LOAN DEFAULT
6)	28-NOV-16	02-DEC-16	Dena Bank			10148.08	10000.00		YES	30-MAY-16			
7)	18-NOV-16	28-NOV-16	Union Bank of India			22987.76	40127.00		YES	18-OCT-16			LOAN DEFAULT
8)	19-SEP-16	27-SEP-16	Dena Bank			9947.00	10000.00		YES	01-MAR-16	30-MAY-16		
9)	30-AUG-16	09-SEP-16	State Bank of India			43459.00	117838.00		YES	31-JUL-16			
10)	28-AUG-16	29-AUG-16	RBL Bank Limited			8135.75	7997.65		NO				
11)	29-JUL-16	03-AUG-16	Punjab National Bank			34223.99	70501.98		YES	29-JUN-16			
12)	29-JUL-16	01-AUG-16	Allahabad Bank			6384.18	15156.00		YES	29-MAY-16	29-APR-16	29-MAR-16	
13)	28-JUN-16	05-JUL-16	Allahabad Bank			6318.24	15156.00		YES	29-MAY-16	29-APR-16	29-MAR-16	
14)	30-JUN-16	04-JUL-16	Dena Bank			9742.00	10000.00		NO				
15)	30-JUN-16	02-JUL-16	Bank of Baroda			24291.38	49829.79		YES	01-MAR-16	31-MAY-16		
16)	31-MAY-16	14-JUN-16	Indian Overseas Bank			2531.22	10000.00		NO				
17)	03-JUN-16	06-JUN-16	Andhra Bank			19515.55	20000.00		NO				
18)	01-JUN-16	04-JUN-16	Dena Bank			9647.00	10000.00		NO				
19)	31-MAY-16	03-JUN-16	South Indian Bank Ltd.			10316.76	10000.00		YES	31-MAR-16			
20)	30-MAY-16	03-JUN-16	IDBI Bank Ltd.			12460.39	13631.37		YES	31-MAR-16			
21)	27-MAY-16	03-JUN-16	Union Bank of India			30727.00	40127.00		YES	27-APR-16			LOAN DEFAULT
22)	31-MAY-16	03-JUN-16	Bank of Baroda			1987.5	3478.12		YES	30-APR-16			
23)	20-MAY-16	27-MAY-16	Canara Bank			26709.20	51059.00		YES	29-APR-16			ARREARS
24)	03-MAY-16	07-MAY-16	Oriental Bank of Commerce			18398.49	21382.00		YES	03-APR-16			
25)	01-APR-16	04-APR-16	Vijaya Bank			5838.32	6000.00		NO				

8. The Corporate Debtor issued a 'Balance Confirmation letter' dated 18<sup>th</sup> January, 2017, to the Petitioner (Financial Creditor), affirming the Balance position as on 31.03.2016 duly signed by the authorised signatory of UGSL.

9. **Vide a letter dated 04.07.2017**, the Financial Creditor intimated the Bombay Office of the Corporate Debtor that the Company's Loan accounts with them were running irregular, due to non-servicing of interest and instalment and devolvement of LCs, since June'16 and **the accounts have become NPA** and advised the position of Loan Accounts in default as on 30.06.2017 as under:-



(Rs. In crores)					
Account Nos.	Facility	Limit	DP	Outstanding	Overdue Amount
31010976116	CC	42.50	0.00	216.45	229.37
35242126361	Term Loan	56.93	44.92	51.75	11.77
35247275169	Project Loan	750.00	155.56	155.56	17.17

10. Details of '**Term Loan Facilities Availed**' from various Lenders are part of the Compilation, according to which, the Loans '**sanctioned**' and '**outstanding**' are as follows:-

10.1 **Refinance Loans** from State Bank of India, Union Bank of India, Punjab National Bank, Oriental Bank of Commerce, Canara Bank, Corporation Bank, Bank of Baroda, Allahabad Bank, Vijaya Bank, Andhra Bank and Dena Bank where **sanctioned** amount was totalling to **Rs.1158.81 Crores** and **Outstanding** amount **Rs.1092.15 Crores**. The Common Loan Agreement was executed on 05.08.2015.

10.2. **II Phase Loans** from State Bank of India, Union Bank of India, Punjab National Bank, Canara Bank, Corporation Bank, Bank of Baroda, Allahabad Bank, and Indian Overseas Bank where the **sanctioned** amount was total of **Rs.2434 Crores** and **Outstanding** Amount **Rs.405.58 Crores**. Common Loan Agreement was executed on 10.10.2014.

10.3. According to the '**Details of Working Capital Facilities availed**', annexed with the Petition, the sanctioned amount from various Lenders and the Amounts Utilised as on 31.03.2016 are as follows:-

Name of Lender	Sanction Amount (in Crores)	Amount Utilized as on 31-03-2016 (In Crores)
State Bank of India	248.60	225.14
Canara Bank	198.88	225.14 ( <i>sic</i> 166.92)
Corporation Bank	99.62	81.53
Union Bank of India	94.00	83.48
Oriental Bank of Commerce	152.00	121.00
Punjab National Bank	188.00	166.85
Vijaya Bank	13.00	0.00
Total	994.1	844.92

10.4. It is stated by the Corporate Debtor that the Original Working Capital Loan of Rs.370 Crores Charge created vide Working Capital Consortium Agreement executed on 25<sup>th</sup> November, 2009; Enhanced Working Capital Loan from Rs.370 Crores to Rs.850 Crores charge created vide First Supplemental Working Capital Consortium executed on



1<sup>st</sup> June 2012; Rs. 850 Crores to Rs. 955.95 Crores charge created vide Second Supplemental Working Capital Consortium Agreement executed on 3<sup>rd</sup> December, 2013; Enhanced Working Capital Loan from Rs. 955.95 Crores to Rs.994.10 Crores charge created vide Amended and Restated Consortium Loan Agreement executed on 5<sup>th</sup> August, 2015.

11. **PLEADINGS OF RESPONDENT DEBTOR:-**

11.1. The Respondent Debtor has vehemently pleaded that the Petitioner (SBI) contributed to the default of Uttam Galva Metalics Limited (UGML) by unfairly stopping disbursement of amounts under October, 2015 facility. Therefore, the expansion plan for UGML allegedly failed.

11.2. The Debtor further alleged that vide Circular dated 13.06.2017, the RBI was required to provide a framework for debt resolution of the other accounts for which a timeline of 6 months was given to Banks, however, RBI never released such a framework.

11.3. Respondent Debtor further alleged that the requirement of Credit Rating as provided under 28.08.2017 was never informed to UGML. Further argued that the Credit Rating is unfair and arbitrary on account of the parameters used to arrive at an investment grade rating.

11.4. Further stated that no Resolution could be arrived at and with the promoters' inability to bid, UGML is most likely to go into 'Liquidation'.

11.5. Respondent submits that the Resolution Plan offered by UGML was better than what the Lenders might be getting (statistically) under resolution as per the Insolvency Code.

11.6. Respondent also stated that the 'Liquidation Value' of UGML is not high enough for the lenders to appropriate their dues (resolution plan of UGML offered a better solution).

11.7. The Petitioner vehemently argued that the Petitioner was unfairly rejecting the offer of an Investor which was made to them in respect of UGML and UVSL.

12. The argument is that RBI had issued a Circular on 30.06.2017 directing all the Banks to resolve the Debt with ₹5000 Crore threshold on or before 13.12.2017. It has also been directed in the said Circular to initiate Insolvency Proceedings in respect of the

notified accounts on or before 31.12.2017. Hence it is vehemently pleaded that the Petitioner had filed this Petition on 29.12.2017 in a haste without applying proper Banking norms. Moreover, **RBI had never notified the Company for initiation of Insolvency Proceedings.** The Company was deprived of the opportunity to restructure the dues and to resolve the problem of outstanding Debt. The Respondent is unnecessarily dragged to NCLT even without having any explicit direction from RBI.

13. It is a case of granting of Loan availing Secured Credit Facilities from the Consortium of Lenders. There was a sharp slump in the business and the price of the commodity and the Steel had a sharp decline in Global Commodity prices. **Steel industry had witnessed a serious downturn because of recessionary global conditions.** Sluggish demands in the Indian steel industry was further adversely impacted by the dumping of steel products from China, Japan and South Korea. Consequently, the steel industry in India suffered a severe financial crisis and the Respondent could not have stayed immune to the same. Realising the precarious and disadvantageous position of the steel industry in the country, the Government of India, in September 2015, imposed a 20% safeguard duty on import of hot rolled coils. However, by the time the Government initiated steps to protect the steel market, steel product prices had already reached deep lows, and the Government measures did not provide any reasonable support to the Respondent to cope up with these challenges. Additionally, dumping of Chinese steel in Indian market in the Financial Year 2015-16 made matters worse for the Respondent, as a result, the Respondent could not resist the downward pressure any further and this eventually resulted in delayed payment to lenders.

13.1. It is informed that from April, 2016 the Company was making sincere efforts for restructuring of its Debts. Steps taken and meetings held on several dates are listed in the compilation submitted by the Debtor Company. So the objection of the Debtor Company is that while sincere efforts for Debt Resolution were in progress but on the other hand the Bank had moved this Insolvency Petition before NCLT which was not justifiable under any law.

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13.2. From the side of the Corporate Debtor Ltd. Senior Counsel has raised one more legal argument that in a situation when there is a difference of opinion between two professional reports then it is obligatory on the part of an authority to seek opinion from a third expert. It is explained that in this case RBI had directed the SBI to appoint two Credit Rating Agency (CRA) to ascertain the correct Investment Grade so that the Resolution Plan submitted had qualified for consideration. One of the CRA viz. ICRA had reported the Resolution Plan within Investment Grade, however India Rating & Research had classified the Resolution Plan as below the Investment grade. The said two different reports of the experts have duly been recorded in the JLF meeting held on 8/12/2017. No decision was taken on the Resolution Plan submitted by the Debtor or on the said two opinions, instead the Bank had decided to file the impugned Application under I & BC before NCLT. The argument is that in view of difference of opinion the matter ought to have been referred to a third CRA to ascertain the validity of the Resolution Plan. According to Ld. Counsel non-compliance with the mandate given by RBI to the Petitioner, this application thus became illegal.

13.3. Further elaborating this point it is informed that vide a letter dated 28/8/2017 a statutory mandate was issued by RBI in exercise of powers conferred by Sec. 35AB of Banking Regulation Act 1948. The Petitioner either have approached RBI for clarification or obtained an opinion from a third CRA so as to ascertain the viability of the Resolution Plan submitted by the Company. The decision of filing Insolvency petition was arbitrary hence deserves rejection.

13.4. Another legal argument raised is that Sec 7(5) confers plenary power of enquiry and investigation as to whether the Debt is not only "Due", but also "Payable". Further, AA is also to satisfy that there is an existence of "Default". The word "satisfied" is not merely a mechanical exercise of powers, but an objective assessment of all the facts of the case. Hence it is pleaded that before admission of an Application moved u/s. 7 of The Code, the AA is required to record a subjective "satisfaction". In this case it is not possible to record such "satisfaction" due to the fact that there were certain irregularities committed by the Bank while filing this Petition.

13.5. One more legal point has been raised that the Debt in question was neither "Due" nor it was "Payable". The Debt was not due because the Debtor had expressed willingness to repay the Debt as per the Resolution Plan submitted. Therefore, as a consequence, the Debt was also not payable. In view of this, it is unjustifiable to hold that the Company has committed "Default" of non-payment of Debt as prescribed u/s. 3(12) of The Code.

14. Before parting with the facts of the case, I consider it useful to reproduce certain opinions expressed in an Order passed in the case of this group viz. SBI Vs. Uttam Value Steels Limited (CP(IB)-1830/MB/2017) U/s. 7 dated 26.06.2018 as under:-

"6. It is very interesting to note that our attention has been drawn on a Letter of 22<sup>nd</sup> of December 2017, annexed in the Compilation, with an explanation that through this Letter, the accounts of the defaulter were declared as "**Non-Performing Asset**" (NPA) stated to be classified with effect from 10<sup>th</sup> October, 2016. It has not been explained that how an account was declared NPA retrospectively ? Further a question has been raised that if an account was declared NPA in 2016 then why corrective measures have not been taken then and there ? It has also been questioned that why certain facilities have even been extended in the year 2016-17 when the Consortium of the Banks were aware that the Account of the Debtor Company is a "Non-Performing Account" ? Knowing fully well the default of non-payment, a "Master Joint Lenders Forum Agreement" was executed on 27.10.2016 for which the Banks have no acceptable explanation. At this juncture it also worth to place on record an important fact, which cannot be ignored, that bank authorities have not thought it proper to issue a 'Recall-Notice' suspending loan facilities. Rather SBI is answerable that after declaring NPA and undisputed continuance of default why a Recall-Notice was not issued ?

6.1. Records of the case have also revealed that the Bank had obtained two reports viz. CIBIL Report dated 21.12.2017 and CRILC Report dated 26.12.2017. Both these reports have not given satisfactory position and rated as "Doubtful" or "Substandard". Even at this place, as well, it is worth to make a comment that it appears the Loan Facilities were granted or extended even without prima facie due diligence. On the face of records it seems the profitability in this business has not matched with the quantum of Loan granted. It is not known that how the Banks have satisfied themselves that this Corporate Debtor would be able to serve the accounts not only by repaying the Loan but also payment of Interest. The rate of Interest agreed upon or the EMI fixed was such high that the Corporate Debtor ought to suffer erosion of capital. If on one hand this Corporate Debtor is to be blamed for default of non-payment, then simultaneously on the other hand it is fit to say that the Bank authorities have adopted lackadaisical approach."

#### **FINDINGS :-**

15. Heard the submissions of both the sides in the light of the voluminous compilation filed by the Petitioner. In the above paragraphs discussed at length the nature of the Financial Debt, that too on due perusal of several evidences. Before I come to the conclusion about the "Admission" of this Petition it is worth to deal with the arguments raised by the Learned Senior Counsel. Admittedly there were two reports of Credit Rating



Agencies, but the fact remained that the existence of the Debt and the quantum of the Debt, both have not been disputed either by the Bank or by the Respondent Company. It is also not the case that the two CRAs have not concurred with the Debt in question. As a consequence, while deciding this case on the question of 'Admission', the scope is very limited that if the Debt amount is 'ascertainable' and 'Default' is in existence, a Petition deserves to be Admitted. There could be a difference of opinion at the time when the Resolution Plan was under consideration but that difference of opinion has not absolved the Debtor from the Financial Liability. Moreover, in my humble opinion it is always a prerogative of the Bank to accept or to reject a Resolution Plan. It is within the jurisdiction of a Bank to admit a proposal of restructuring of Debt or to discard the said arrangement. Merely on this technical ground it is not justifiable to hold that the Debt in question was not payable at the time when the Petition was filed. I am not in agreement with this argument of the Learned Counsel. Likewise, I am also of the conscientious view that while pronouncing a Judgment under the provisions of Section 7 of The Code, if the facts of the case are within the four corners of the said provision, the Petition is required to be "Admitted". The above paragraphs have been devoted firstly to examine the nature of the Debt and thereafter proceeded to affirm the "Default" of non-payment. The above paragraphs have thus recorded 'satisfaction', that too at length.

15.1. That the admitted factual position thus emerges that the '**Debt' as defined U/s 3(11) of The Code** under consideration have been classified as "Non-Performing Asset" by the Consortium of Banks, listed hereinabove and there was a "**Default" as defined U/s 3(12) of The Code** of non-payment. Therefore, the basic requirement of Admission of an Application **U/s 7 of The Code** stood fulfilled for initiation of 'Corporate Insolvency Resolution Process' ( CIRP ) . The Financial Creditor has furnished several evidences to establish the existence of the "Financial Debt" plus sufficient records to establish the occurrence of "Default". Rest of the conditions being satisfied, this Petition deserves "**Admission**".

16. The Financial Creditor has intimated the name of the **IRP Mr. Rajiv Chakraborty**, having Registration No. IBBI/IPA-001/IP-P00602/2017-18/11053, Address: First Floor, 12, Sukhdev Vihar, New Delhi-110025 Email:

chakrabortyrajiv72@gmail.com. The proposed IRP has furnished the requisite Certificate in Form No.2 that no disciplinary proceedings is pending. On due consideration, the proposal of appointment of the IRP is hereby confirmed.

17. Upon "Admission" of the Application it is hereby pronounced the declaration of **"Moratorium" as mandated in Section 14 of The Code.** The declaration of Insolvency Process and commencement of "Moratorium" shall be made by Public Announcement immediately as prescribed **U/s. 13 read with Section 15 of The Code.** The appointed IRP shall perform the duties as an Interim Resolution Professional as defined **U/s. 18 of The Code i.e. "Duties of Interim Resolution Professional"** and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be. The IRP shall submit the Resolution Plan for approval as prescribed U/s. 31 of The Code on receiving the "Expression of Interest" in response to the Advertisement made.

18. It is hereby pronounced that the **"Moratorium" as prescribed U/s. 14 of The Code** shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "Moratorium" period. This direction shall have effect from the date of this Order till the completion of Insolvency Resolution Process.

19. Accordingly, this **CP (IB)-2054(MB)/2018** stood **"Admitted"**.

20. The Corporate Insolvency Resolution Process is commenced from the date of this Order.

SD/-  
**(M.K. SHRAWAT)**  
Member (Judicial)

Date : 11.07.2018

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