

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**PRINCIPAL BENCH**

**ITEM No. 102**  
**(IB)-1083(PB)/2019**

**IN THE MATTER OF:**

Bank of India

.... Applicant/petitioner

v.

M/s. Prominent Metal Pvt. Ltd.

.... Respondent

**Order under Section 7 of Insolvency & Bankruptcy Code, 2016**

**Order delivered on 25.07.2019**

**Coram:**

**CHIEF JUSTICE (RTD.) M. M. KUMAR**  
**HON'BLE PRESIDENT**

**SH. S.K MOHAPATRA**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENTS:**

For the Petitioner

Mr. Aditya Kumar, Adv.

For the Respondent

Mr. Rajat Jain, Adv.

**ORDER**

**M.M. KUMAR, PRESIDENT**

This petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 prays for initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor. The petition has been filed in accordance with the rules in the prescribed

proforma. In part 4 of Form-1 the total amount of unpaid debt along with the date of disbursement has been given and the total outstanding amount due to the bank-financial creditor is 17,24,62,591.04/- (as on 31.03.2019). In support of the claim the financial creditor has placed on record the statement of account showing that the last payment was made on 30.05.2019 amounting to Rs. 31,50,000/- and thereafter no payment was made. It has also been asserted that the proceedings under Section 13(2) of the SARFAESI Act, 2002 were also initiated by issuing notice and reply to the notice was received and thereafter symbolic possession was taken. Objections raised in the reply were disposed of and the symbolic possession of mortgaged property was taken.

2. The Corporate Debtor after protracted opportunity granted have filed the reply and have also paid the cost today. The principle objection raised by the Corporate Debtor in its reply is that there are multiple proceedings initiated by financial creditor under the SARFAESI Act and before the DRT which are pending. According to the averments made in the reply the financial creditor was required to pursue his remedy in accordance with the doctrine of election

and cannot have multiple remedies. The allegations have also been made that the penal interest has been capitalised in violation of the law laid down by the Supreme Court in its authority to the judgement rendered in the case of *Central Bank of India v. Ravindra & Ors.* [(2002) 1 SCC 367] and the RBI guidelines have been violated.

3. Having heard the Ld. Counsel we are of the considered view that the claims made by the financial creditor could not be successfully rebutted. Infact there is an admission that huge amount is due which is in any case more than the statutory limit of Rs. 1,00,000/- which is sufficient to answer the requirement of Section-4 of the Insolvency & Bankruptcy Code.

4. In so far as the objection with regard to doctrine of election is concerned the Hon'ble Supreme Court has opined that the proceedings initiated either under Securitization Act or before the DRT are in the nature of recovery proceedings whereas the present proceedings are preferably for resolution. In that regard we placed reliance on para 11 of the judgement rendered in the case of **Swiss**

***Ribbons Pvt. Ltd. & Anr. v. Union Bank of India & Ors. In Civil***

**Appeal No. 99/2018 decided on 25.01.2019.** In any case Section 238 of the Insolvency & Bankruptcy Code, 2016 is a non-obstante clause of wide amplitude and Insolvency & Bankruptcy Code is to be prevail despite the other remedies. The arguments with regard to application of doctrine of election would not be attracted to the present proceedings. Therefore, we don't find any substance in the objection raised.

5. The other objection with regard to the RBI guidelines would also not be sustainable as the RBI guidelines have to give the way to the provisions of the Insolvency & Bankruptcy Code as already observed in the preceding para by virtue of Section 238.

6. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process stand fulfilled and accordingly the present petition is admitted.

7. Having heard the learned counsels for the Financial Creditor and Corporate Debtor and having perused the paper book with their able assistance we find that the provisions of Section 7 (2) and



Section 7 (5) of IBC have been complied as discussed in detail in our Order dated 27.11.18 rendered in the of ECL Finance Limited vs. Digamber Buildcon Pvt Ltd (IB- 1039(PB)/2018).

8. The aforesaid discussion and the material placed on record would lead us to confirm that the petitioner-financial creditor has disbursed money to the respondent-corporate debtor. Though a considerable long period has lapsed the amount due has not been repaid back to the financial creditor- petitioner. It is accordingly held that the respondent-corporate debtor has committed default in repayment of the outstanding financial debt which exceeds the statutory limit of rupees one lakh.

9. In view of the above we admit the petition and initiate the Corporate Insolvency Resolution Process in respect of corporate debtor. CA Mr. Vivek Parti, having registration no. IBBI/IPA-001/IP-P00813/2017-2018/11376 and address A-166, 2<sup>nd</sup> Floor, Defence Colony, New Delhi-110024 who has filed his declaration in Form-2 and is proposed by the financial creditor, is appointed as an IRP.



10. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee to a corporate debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

11. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately (3 days) make public announcement with regard to admission of this application under Section 7 of the Code.

12. We direct the Financial Creditor to deposit a sum of Rs. 1 Lac with the Interim Resolution Professional namely CA Mr. Vivek Partito meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy

Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

13. Directions are also issued to the ex-management to provide all documents in their possession and furnish every information in the knowledge within a period of one week of the admission of the petition to the IRP, otherwise coercive steps to follow.

14. There is a general complaint received against the financial creditors, banks, NBFCs and Asset Reconstruction Companies that the amount claimed by them is far more than what is owed by the corporate debtor to them. Many a times the rate of interest is alleged to be exorbitant and allegations are levelled that a penal interest compounded monthly has been charged. We have no mechanism of rectification of claims made. However, the RPs ordinarily have professionals & experts at their disposal and in case

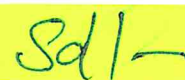


the ex-management raises any such issue then the RP must get it settled in order to avoid any injustice to the corporate debtor.

15. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than three days from today. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.



**(M.M. KUMAR)**  
**PRESIDENT**



**(S.K MOHAPATRA)**  
**MEMBER (TECHNICAL)**

25.07.2019  
Ritu Sharma