

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

CP (IB) No. 580/KB/2020

In the matter of:

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

CFM Asset Reconstruction Private Limited

... Financial Creditor

Versus

MSP Metallics Limited

[CIN: U27109WB1996PLC082138]

... Corporate Debtor

Coram:

Shri Rajasekhar V.K. : Member (Judicial)
Shri Harish Chander Suri : Member (Technical)

Date of hearing: 13.09.2021
Order pronounced on: 25.11.2021

Appearances (through video conference)

For the Operational Creditor :
1. Mr. Joy Saha, Senior Advocate
2. Ms. Suhani Dwivedi, Advocate
3. Mr. Deepanjan Dutta Roy,
Advocate

For the Corporate Debtor :
1. Ms. Urmila Chakraborty,
Advocate
2. Mr. Jasbinder Singh, Advocate

ORDER

Per Rajasekhar V.K., Member (Judicial)

1. This court convened through video conferencing.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, the Code) initially by Central Bank of India, subsequently *vide* order dated 22.07.2021, the Central bank of India was substituted by CFM Asset Reconstruction Private Limited (hereinafter, the Financial Creditor) seeking to initiate Corporate Insolvency Resolution Process (hereinafter, CIRP) against MSP Metallics Limited (hereinafter, the Corporate Debtor).
3. The Corporate Debtor was incorporated on 29.11.1996, having CIN: U27109WB1996PLC082138, under the Companies Act, 1956, with the Registrar of Companies, West Bengal, Kolkata. Its registered office is at 1, Crooked Lane, Ground Floor, Kolkata- 700069, within the State of West Bengal. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 27.01.2020 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 19.74Crore under CBI Facility 1 Rs.15.61Crore under CBI Facility 2, Rs.6.17Crore, Rs.26.49Crore under CBI Facility 5 as on 10.01.2020. The date of default is 29.10.2015 and the account was classified as NPA on 29.01.2016.
5. The Central Bank of India assigned the entire facilities to CFM Asset Reconstruction Private Limited by way of a Deed of Assignment dated 04.06.2021.
6. The learned Counsel for the Financial Creditor stated as follows:-

- a. Central Bank of India had granted term loan and working capital facilities to the Corporate Debtor which were restructured on the terms and conditions under the Master Restructuring Agreement¹ (hereinafter MRA) dated 30.03.2015.
- b. Under the MRA, the Financial Creditor gave the following facilities to the Corporate Debtor:
 - i. Facility A1: Existing Term Loan of Rs.12,80,00,000/- (Rupees Twelve Crore and Eighty Lakh only) in respect of which the principal amount owed is Rs.12,76,00,000/- (Rupees Twelve Crore and Seventy-Six Lakh only).
 - ii. Facility A2: Working Capital Term Loan-I of Rs.10,15,00,000/- (Rupees Ten Crore and Fifteen Lakh only) in respect of which the principal amount is Rs.10,12,00,000/- (Rupees Ten Crore Twelve Lakh only).
 - iii. Facility A4: Funded Interest Term Loan of Rs.5,89,00,000/- (Rupees Five Crore Eighty-Nine Lakh only) in respect of which the principal amount is Rs.4,18,00,000/- (Rupees Four Crore Eighteen Lakh only).
 - iv. Facility D (hereinafter Facility 5): Fund based working capital facilities of Rs.15,78,00,000/- (Rupees Fifteen Crore Seventy-Eight Lakh only) in respect of which the principal amount is Rs.14,85,00,000/- (Rupees Fourteen Crore Eighty-Five Lakh only).

¹ Exhibit 3 at Pages 30-87

7. Apart from the aforementioned documents, the Financial Creditor has placed the following documents on record:
- a. Details of disbursements by the Financial Creditor, is annexed to the petition and marked as Exhibit 4 at page 88.
 - b. Details of computation of defaulted amount and date of default, is annexed with the petition and marked as Exhibit 5 at pages 89-90.
 - c. Copy of certificate of registration of charge, annexed with the petition at page 142.
 - d. Copies of report from CRIF Report, annexed with the petition and marked as Exhibit 10 at pages 149-247.
 - e. Copy of Certificate under section 2-A of Banker's Books Evidence Act, 1891, annexed with the petition as Exhibit 11 at pages 248-249.
 - f. Copy of letter informing the Corporate Debtor that the account of the Corporate Debtor as NPA, annexed with the petition and marked as Exhibit 12 at pages 250-251.
 - g. Copies of financial statements of the Corporate Debtor for the Financial Year ended on 31.03.2018, annexed with the petition and marked as Exhibit 13 at pages 252-369
8. Notice had been served on the Corporate Debtor on and the Corporate Debtor filed its reply on 15.12.2020.

Arguments of the learned Counsel appearing on behalf of the Corporate Debtor.

9. The learned Counsel appearing on behalf of the Corporate Debtor submitted that the Petitioner is one of the twelve Bankers who have advanced money in terms of the Inter Creditor Agreement (“ICA”) between the Bankers. It is submitted that as per the ICA, any resolution plan agreed by the lenders with 66% or more shares in the aggregate exposure is binding on other lenders and the Petitioner holds only 2.78% of share.
10. The learned Counsel for the Corporate Debtor further submitted that at a Joint Lenders Forum meeting held on 17.01.2019 eight out of the 12 Bankers with 81.94% of share gave their approval for resolution plan for change of management under Swiss Challenge method. It is further submitted that all the Bankers have given their approval for the change in management which is noted in the Joint Lenders Meeting held on 08.07.2019.
11. It is further submitted by the learned Counsel that the resolution process has not been concluded as deduced from the email dated 07.09.2020 sent from the State bank of India.

Rejoinder to the submissions of the learned Senior Counsel for the Corporate Debtor

12. The learned Senior Counsel for the Financial Creditor submitted that the Corporate Debtor has acknowledged the debt in its Financial Statements for the financial year ended on 31.03.2018. The learned Counsel has placed reliance on the judgment of the Hon’ble Supreme Court in *Asset Reconstruction Company (India) Limited v. Bishal Jaiswal and*

*another*² wherein it was held that entries made in a balance sheet of a Corporate Debtor would amount to an acknowledgment of liability under section 18 of the Limitation Act, 1963.

13. It is further submitted that it is a settled law that an Inter-se Agreement between different Banks is not binding in nature, the Corporate Debtor not being signatories cannot derive advantage of such Inter-se Agreement to which he is not a party. Reliance has been placed on *Oriental Bank of Commerce v. Ruchi Global Limited*³ and *Asian Natural Resources (India) Limited v. IDBI Bank Limited*⁴ wherein the Hon'ble NCLAT has held that the Inter-se Agreement does not bar the Financial Creditors from filing an application under section 7 of the Code.
14. The petition made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of the minimum amount of one lakh rupees as stipulated under section 4(1) of the Code at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the petition. In view of this, this Adjudicating Authority admits this petition and orders initiation of CIRP against the Corporate Debtor.
15. The Financial Creditor has proposed the name of Mr. Dipti Ranjan Nath, registration number IBBI/IPA-001/IP-P00976/2017-2018/11606, residing at #2504, Pioneer CHS, Opp. Vartak Nagar Police Station, Vartak Nagar, Thane, West- 400006, as the Interim Resolution Professional (IRP) of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2

² 2021 SCC Online SC 321, dated 15.04.2021

³ 2020 SCC Online NCLAT 499, dated 31.01.2020

⁴ 2017 SCC Online NCLAT 225, dated 11.08.2017

as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and has filed a valid Authorisation of Assignment in terms of 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 valid till 12.02.2022.

16. It is, accordingly, hereby ordered as follows:-

- a. The petition bearing CP (IB) No. 580/KB/2020 filed by CFM Asset Reconstruction Private Limited, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against MSP Metallics Limited (CIN: U27109WB1996PLC082138), the Corporate Debtor, **is admitted**.
- b. There shall be a moratorium under section 14 of the IBC.
- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Mr. Dipti Ranjan Nath**, registration number IBBI/IPA-001/IP-P00976/2017-2018/11606, residing at #2504, Pioneer CHS, Opp. Vartak Nagar Police Station, Vartak Nagar, Thane, West- 400006, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code. The fee

payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h. The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- i. In terms section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- j. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance

report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

17. **C.P. (IB) No. 580/KB/2020** to come up on 28.01.2022 for filing periodical report.

18. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

25.11.2021

GGRB_LRA