IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
KOLKATA

I.A. No. 973/KB/2022
In
CP(IB) No. 208/KB/2021

*A petition 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:

State Bank of India , having it's Registered Office at 16th Floor, Madam Cama Road, Mumbai- 400021 and the Branch office at State Bank of India, Stressed Asset Management Branch – II, Jeevandeep Building (1st Floor), 1, Middleton Street, Kolkata- 700001, in the state of West Bengal

.....Financial Creditor

Versus

SAV Steels Private Limited, a company constituted under the relevant provisions of the Companies Act, 1956, and being a company within the meaning of Companies Act, 2013, having CIN: U327109WB2006PTC109155 and having it's Registered Office at 5/53 Jagatipota, Krishan Market Road, P.O – Dhalua, Kolkata- 700152, in the state of West Bengal

.... Corporate Debtor

<u>I.A. No. 973/KB/2022</u>

*An Application under **section 60(5)** of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Comapany Law Tribunal Rules, 2016*

State Bank of India

.... Applicant

Versus

SAV Steels Pvt. Ltd.

....Respondent

Sd/-

Sd/-

Date of hearing: 21 September 2022

Date of pronouncing the order: 28 October 2022

Coram:

Shri Rohit Kapoor	:	**Member (Judicial)**
Shri Balraj Joshi	:	**Member (Technical)**

Appearances (via video conferencing/ physical):

For the Financial Creditor:
Ms. Trini Joarder, Advocate
Ms. Vedika Sureka, Advocate
Mr. Uttiyo Mullick, Advocate

For the State Bank, SAMB-II, Kolkata:
Mr. K. Bhattacharya
Mr. Chiy Mcayo

ORDER

Rohit Kapoor, Member (Judicial)

1. This Court convened through hybrid mode.

2. This Company Petition under section 7(1) of the Insolvency and Bankruptcy Code, 2016 (IBC) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has been filed by Mr. Kaushik Das on behalf of and authorised by **State Bank of India** *(hereinafter referred to as the Financial Creditor),* seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **SAV Steels Private Limited** *(hereinafter referred to as the Corporate Debtor).*

3. The Corporate Debtor is a private company incorporated on 04.05.2006. The authorised share- capital of the company is ₹5,00,00,000/- and the paid-up share- capital of the company is ₹1,49,00,000/-.

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4. The total amount claimed by the Financial Creditor is ₹159,57,15,936.60. The account of the Corporate Debtor became Non-Performing Asset (NPA) on 29.06.2013, as mentioned in page 10 of the petition.

5. The Affidavit verifying the petition is given on pages 21 and 22 of the petition. Further, the letter of Authorisation, authorizing Mr. Kaushik Das to file the instant petition, along with the State Bank of India General regulations, 1955 are given in pages 26 to 42 of the petition.

6. Part I of Form 5 of the instant petition mentions the particulars of the Applicant. Part II mentions the particulars of the Corporate Debtor. Part III mentions the particulars of the proposed Interim Resolution Professional (IRP). Part IV mentions the particulars of the Financial Debt. Part V mentions the documents, records and evidence of default.

7. ***Submissions on behalf of the Financial Creditor:***

5.1 The Financial Creditor is a statutory body constituted under the State Bank of India Act, 1955. The Corporate Debtor is a Private Limited Company incorporated under the relevant provisions of the Companies Act, 1955, and carrying on its business as a Dealer of Iron, Steels and Iron ores.

5.2 The case of the Financial Creditor is that the Corporate Debtor approached the Financial Creditor for availing a term loan with a credit limit of Rs. 28 Crores. Upon consideration of the said loan application, the Financial Creditor issued a sanction letter dated 16th September, 2009 for allocation of such term loan.

5.3 Thereafter, the Corporate Debtor approached the Financial Creditor to enhance the sanctioned credit limit to ₹34 Crore, the Financial Creditor, *vide* letter dated 13th September, 2010, sanctioned the same. In order to materialize the said enhancement of credit limit, the Directors of the Corporate Debtor stood as personal guarantors.

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5.4 After successive enhancement of credit limits till 2012, the total credit limit sanctioned to the Corporate Debtor stood at ₹55 Crore (the principal amount).

5.5 In spite of repeated demands and requests by the Financial Creditor regarding the repayment of the dues, the Corporate Debtor failed and neglected to make payments and maintain the said loan account. Accordingly, as per RBI guidelines, the said loan account was classified as Non- Performing Assets (NPA) on 29th June, 2013.

5.6 Thereafter, the Financial Creditor issued a notice under section 13(2) of the SARFAESI Act, 2002 dated 30th November, 2013 to the Corporate Debtor. In spite of the same, the Corporate Debtor failed to pay the outstanding dues to the Financial Creditor.

5.7 Afterwards, the Ld. Debt Recovery Tribunal- I, Kolkata (DRT), upon adjudicating the proceedings initiated on 12th January 2015, under the Recovery of Debts Due to Bank and Financial institutions Act, 1993, passed a final order dated 29th March 2022 whereby the Ld. DRT set the Corporate Debtor *ex parte* on 30th August 2019 and simultaneously allowed the recovery of a sum of ₹72,93,99,998.68 alongwith interest @14.25% from the date of filing of the proceedings before the Ld. DRT.

5.8 The instant petition has been filed by the Financial Creditor for initiating CIRP of the Corporate Debtor against the admitted debt and default to the tune of ₹1,59,57,15,936.60 as on 31st May 2021.

5.9 The Financial Creditor has relied on various documents to support its claims, including:

a. Memorandum of Deposit of Title Deeds and Memorandum related to deposit of Title Deeds for creation of charge for the Term Loan, being Exhibit "E";

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b. Sanction Letter for Commercial Advances dated 16th September 2019, being Exhibit "H";

c. Agreement of Loan cum Hypothecation dated 17th September 2009, being Exhibit "I";

d. Renewed sanction letter dated 6th March 2012 for overall credit limit of ₹55 Crore issued by the Financial Creditor, being Exhibit "W";

e. Supplemental Agreement of loan cum hypothecation for overall limit of ₹55 Crore dated 7th January 2012, being Exhibit "X";

f. CIBIL Report, being Exhibit "BB";

g. Statement of the account as on 31st May 2021, of the Corporate Debtor maintained with the Financial Creditor, being Exhibit "DD";

h. Notice under SARFAESI Act, 2002, dated 30th November 013, being Exhibit "EE";

i. Demand Notices dated 18th December 2014 and 5th January, 2015, being Exhibit "FF";

1. ***IA. 973/KB/2022 on behalf of the Financial Creditor:***

The instant interlocutory application has been filed by the Financial Creditor to put on record additional documents being the order dated 29th March 2022 passed by the Ld. Debt Recovery Tribunal- III, Kolkata as well as to seek the Amendment of the Petition, as indicated in Annexure 'B' of the interlocutory application.

2. ***Analysis and Findings:***

7.1 Notice in this petition was issued on 27th September, 2021 by this Adjudicating Authority. As per the Tracking Report of the Postal Department, the same was served upon the Corporate Debtor on 5th

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October, 2021. However, the Corporate Debtor did not appear and a fresh notice was issued on 21st April, 2022.

7.2 Again, on 5th May, 2022, notice was directed to be served upon the Corporate Debtor. On 23rd May, 2022 because of continuous non-appearance of the Corporate Debtor and its failure to file Reply Affidavit, the matter was set *ex-parte*.

7.3 On 8th June, 2022, further opportunity was sought by Financial Creditor to serve the Corporate Debtor by substituted service. Service Affidavit has been filed on behalf of the Financial Creditor, placing on record publication made in two newspapers i.e. '***Business Standard'*** and '***Ekdin***' whereby the publication was made for appearance of the Corporate Debtor. The Corporate Debtor despite publication has not appeared.

7.4 When this matter was pending, interlocutory application was filed by the Financial Creditor on 12th July 2022 wherein it is sought to bring on record the final order/judgment passed by the Ld. Debt Recovery Tribunal-I, Kolkata on 29th March, 2022 after filing of the instant petition under section 7 of the Code. Inadvertently this was not mentioned in the section 7 petition. Pursuant to the said final order /judgment passed by the Ld. DRT, the date of default is to be mentioned as 28th April, 2022 in Part-IV of this petition.

7.5 While arguing this application, reliance had been placed on judgment passed by the Hon'ble Supreme Court in the case of ***Dena Bank vs. C. Shivakumar Reddy and Anr.***[1]**,** paragraph 141, which is reproduced hereinbelow:-

"Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings Under Section 7 of the IBC for

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[1] 2021 SCC OnLine SC 543

initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid." (para 141)

7.6 In view of law laid down by the Hon'ble Supreme Court of India in the above referred judgement, ***IA No. 973/KB/2022*** filed by the Financial Creditor is ***allowed***.

7.7 Further, in view of the abovementioned judgment and in light of the order dated 29th March 2022 passed by the DRT, a fresh cause of action will arise from 29th March 2022. Accordingly, the date of default has been amended to 28th April, 2022 in the Form 1 of the petition. In view of the same, the instant petition is within the period of limitation.

7.8 We have heard the Ld. Counsel appearing for the Financial Creditor and perused the record.

7.9 Now coming to the merits of the case, it is observed that the overall amount sanctioned to the Corporate Debtor as on 6th March 2021 is ₹55 Crore (Exhibit W, pages 249-257 of the petition). It can further be seen from the CIBIL report that the Corporate Debtor availed various credit facilities from the Financial Creditor over the years and as such multiple loan accounts of the Corporate Debtor were open on the last reported date *i.e* 31st January 2016. As such a debt was due from the Corporate Debtor to the Financial Creditor and that the Corporate Debtor has defaulted in the repayments of the said debt.

7.10 Further, the DRT, *vide* order dated 29th March 2022, has admitted a sum of ₹72,93,99,998.68 along with interest @14.25% from the date of filing of the proceedings before the Ld. DRT, thereby making it further clear that a debt is still due from the Corporate Debtor to the Financial Creditor.

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7.11 No further payment of the debt or any part thereof has been put on record, further indicating that the Corporate Debtor has defaulted in the payment of its debt.

7.12 In view of the above facts and circumstances, this Adjudicating Authority is satisfied that the a debt is due from the Corporate Debtor and the Corporate Debtor has defaulted in the payment of the same and accordingly and as such it must be admitted into CIRP for revival. The IRP has been nominated by the Financial Creditor. As such, the petition is complete in all respects.

7.13 It is, accordingly, hereby ordered as follows:-

i) The application bearing **CP (IB) No. 208/KB/2021** filed by **State Bank of India** (*Financial Creditor*), under section 7 of the Code read with rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **SAV Steel Private Limited**, CIN: U27109WB2006PTC109155, the Corporate Debtor, is **admitted**.

ii) There shall be a moratorium under section 14 of the IBC.

iii) 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.

iv) 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.

v) **Mr. Uday Narayan Mitra**, registration number **IBBI/IPA-001/IP-P00793/2017-18/11360**, email: **udaynarayanmitra@yahoo.co.uk** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to

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carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, 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.

vi) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.

vii) 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.

viii) The Financial Creditor shall initially deposit a sum of ₹ _4,00,000______/- (Rupees Four 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). Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.

ix) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the

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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.

x) 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.

3. **CP (IB) No. 208/KB/2021** to come up on **15.12.2022** for filing the progress report.

4. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

Balraj Joshi
Member (Technical)

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Rohit Kapoor
Member (Judicial)

Signed on this, the 28th day of October, 2022

SM(LRA)