

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

C.P (IB) No.1782/KB/2019

State Bank of India

.... Financial Creditor

-Versus -

M/s Jupitar Spun Pipes & Castings Private Limited

.....Corporate Debtor

Coram: Mr. Rohit Kapoor, Hon'ble Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

C O R R I G E N D U M O R D E R

- 1.** In the order dated 03/11/2021 at pages. 1,2 and 4, the word “Jupitar” and at pages 1 & 2 the word “Private” was inadvertently typed as “Jupiter and Pivate”.The same is corrected as **“JUPITAR AND PRIVATE”**.
- 2.** In Header portion the word “Jupitar and Private” was inadvertently typed as “Jupiter and Pivate”. The same is corrected as **“JUPITAR AND PRIVATE”**.
- 3.** In the orders portion at page 10, sub para (xii), the word “Operational”, should be read as **‘Financial’**.
- 4.** At page 11 last line “Order signed on, this 3rd day of **September**, 2021, should be read as “Order signed on, this 3rd day of **November**, 2021”
- 5.** The rest of the order shall remain unchanged.

**(Harish Chander Suri)
Member (Technical)**

**(Rohit Kapoor)
Member (Judicial)**

Order Signed on 17/11/2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,

KOLKATA

C.P (IB) No.1782/KB/2019

In the matter of

An application 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.

And

In the matter of:

STATE BANK OF INDIA, SBI PAN NO. AAACS8577K, State Bank Bhawan, 14th Floor, Corporate Centre, Madame Cama Road, Nariman Point, Mumbai-400021, Maharashtra.

... Financial Creditor

Versus

In the matter of:

M/s JUPITER SPUN PIPES & CASTINGS PRIVATE LIMITED, CIN U27310WB1999PTC089915, having its Registered Office at KB-21, 3RD Floor , Salt Lake City, Kolkata -700098, West Bengal.

...Corporate Debtor

Date of hearing : 26/10/2021

Order Pronounced on :03 /11/2021

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Ajay Gaggar, Adv. } For the Financial Creditor
2. Mr.Uttiyo Mallick, Adv.

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This 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 has been filed by **STATE BANK OF INDIA**, SBI PAN NO. AAACS8577K, having its registered office at State Bank Bhawan, 14th Floor, Corporate Centre, Madame Cama Road, Nariman Point, Mumbai-400021, Maharashtra, through its Assistant General Manager & CLO-II namely Mr. Bablu Das (hereinafter referred as the Financial Creditor) seeking initiation of corporate insolvency resolution process against **M/s JUPITER SPUN PIPES & CASTINGS PRIVATE LIMITED**, CIN **U27310WB1999PTC089915**, a corporate entity, having its Registered Office at KB-21, 3RD Floor , Salt Lake City, Kolkata -700098, West Bengal,(hereinafter referred as the Corporate Debtor).
3. The Financial Creditor has proposed the name of **Mr. Binay Kumar Singhania**, to act as an IRP having Registration No. **IBBI/IPA-001/IP-P00041/2017-18/10102**, who has consented vide his affidavit and Form-2 submitted that he has agreed to accept the appointment as IRP if an order admitting the present application is passed by this Adjudicating Authority. He has further submitted that no disciplinary proceedings are pending against him with the Board or Institute of Insolvency Professionals of ICAI.
4. It is submitted that on the request of the Corporate Debtor, the Financial Creditor had sanctioned Credit Facilities vide Letter No. OBK/CPC/07-08/350 dated 24.12.2007 along with the minutes of meeting dated 27th

December, 2007 annexed as **Annexure-VI**.

5. It is further submitted that Credit Facilities were sanctioned to the Corporate Debtor vide Letter No. OBK/RM-II/09-10/489 dated 22.10.2009 along with the minutes of meeting dated 29th October, 2009 annexed as **Annexure-VIA**. Similarly on the request of the Corporate Debtor, the Financial Creditor had sanctioned Credit Facilities vide Letter No. OBK/RM-II/11-12/49 dated 17.05.2011 annexed as **Annexure-VII**.
6. It is stated that the Financial Creditor had also sanctioned Credit Facilities vide Letter No. OBK/RM-II/12-18/66 dated 14.05.2016 annexed as **Annexure-VIII** and another sanction of Credit Facilities vide Letter No. OBK/AMT III/12-13/275 dated 17.12.2012 is annexed as **Annexure-IX**.
7. It is submitted that the Corporate Debtor failed to discharge its liabilities and a sum of Rs.307,65,67,155.50/- (Rs. Three Hundred Seven Crore Sixty Five Lakhs Sixty Seven Thousand One Hundred Fifty Five and Fifty paise only) remained outstanding and the Corporate Debtor committed default in payment of the amount as on 05/12/2012 when the account of the Corporate Debtor was declared as an NPA. It is submitted that the amount includes interest upto 31st August, 2019. Copy of computation of amount, days of default in tabular form is enclosed with the petition as **Annexure-X**.
8. To secure its loan, the Financial Creditor had got various documents executed from the Corporate Debtor which include, Primary Security: Hypothecation of stocks (RM/SIP/FG and stock-in-trade) of the company including stocks at sea ports, stocks at company's stockyard (go-down) goods in transit, goods with Company's agents/ representatives, Sundry

Debtors and receivables and all other current assets, both present and future, pari-pasu with Union Bank of India.

9. It is further stated that the Financial Creditor also took Collateral Security :

Extension of EM on entire land & building and hypothecation charge on all the plant& machinery, and other assets, both present and future of the company. Copy of the Form No.8/CHG-1 of M/s Jupiter Spun Pipes and Search Report on the Charges from 22/07/1999 to 30/08/2019 are enclosed as Annexure-XI to the petition.

10. In addition to the above, the Corporate Debtor further executed and submitted the following in favour of the Financial Creditor:-

- i. Copy of agreement of loan for overall limit dated 4th January, 2008 is annexed as Annexure-XIII.
 - ii. Copy of Joint Deed of Hypothecation dated 4th January, 2008 is annexed as Annexure-XIV.
 - iii. Copy of Agreement of pledge of goods & assets dated 4th January,2008 is annexed as Annexure-XV.
 - iv. Copy of Deed of guarantee for overall limit dated 4th January,2018 is annexed as Annexure-XVI.
 - v. Copy of letter regarding grant of individual limit within over all limit dated 4th January, 2008 is annexed as Annexure-XVII.
 - vi. Copy of Supplemental Agreement of loan for increase in the overall limit dated 15th February, 2010 is annexed as Annexure-XVIII.
 - vii. Copy of Supplemental agreement of hypothecation of goods and assets for increase in the overall limit dated 15th February, 2010 is annexed as Annexure-XIX.
 - viii. Copy of supplemental agreement of pledge of goods and assets for increase in the overall limit dated 15th February, 2010 is annexed
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as Annexure-XIVA

- ix. Copy of Supplemental deed of guarantee for increase in overall limit dated 15th February,2010 is enclosed as Annexure-XIX AA.
 - x. Copy of Letter regarding grant of individual limit dated 15th February, 2010 is annexed as Annexure- XIX AAA.
 - xi. Copy of Supplemental Agreement of loan for increase in the limit dated 24th May, 2011 is annexed as Annexure-XX.
 - xii. Copy of Supplemental Agreement of hypothecation of goods and assets for increase in the overall limit dated 24th May, 2011 is annexed as Annexure-XXA.
 - xiii. Copy of supplemental agreement of pledge of goods and assets for increase in the overall limit dated 24th May, 2011 is annexed as Annexure-XXB.
 - xiv. Copy of Supplemental Agreement of loan for increase in the overall limit dated 27th June, 2101 is annexed as Annexure-XXI.
 - xv. Copy of Supplemental Agreement hypothecation of goods and assets for increase in the overall limit dated 27th June, 2012 is annexed as Annexure-XXI.
 - xvi. Copy of Supplemental Agreement of pledge of goods and assets for increase in the overall limit dated 27th June, 2012, is annexed as Annexure-XXIII.
 - xvii. Copy of Supplemental deed of guarantee for increase in overall limit dated 27th June, 2012 is annexed as Annexure-XXIV.
 - xviii. Copy of Letter regarding grant of individual limit within the overall limit dated 27th June, 2012 is annexed as Annexure-XXV.
 - xix. Copy of Corporate Guarantee executed in favour of the Corporate Debtor is annexed as Annexure-XXVI.
11. It is submitted that the Copy of the CIBIL Report enclosed with the petition is marked as Annexure- XXVII and the copy of the entries in
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the Bankers' book in accordance with Bankers' Books Evidence Act are also enclosed as Annexure- XXVIII to the petition.

12. It is submitted that the loan was recalled Notice vide letter no. OB/AMT-III/2013-14/115 is enclosed as Annexure- XXIX.
13. The Financial Creditor further submitted that OA No. 464/2013 was also filed before the DRT-I Kolkata (Annexure-XXX). The Financial Creditor has further supported its case by filing balance confirmation executed by the Corporate Debtor on 18th December 2012 enclosed as Annexure –XXXI.
14. Notice of this application was sent to the Corporate Debtor on 24th October, 2019 which was returned back with the remarks "Addressee is moved". In these circumstances, notices were directed to be published in the Newspapers having wide circulation on 6th February, 2020 on that day it was thus informed that the notice was published but in spite of that, nobody has appeared on behalf of the Corporate Debtor. The Corporate Debtor was thus ordered to be proceeded ex parte. The matter was adjourned to 4th March, 2020. On that day the Ld. Counsel for the Financial Creditor sought some time to file more documents by way of supplementary affidavit. Even, thereafter, on 8th December, 2020, 13th January, 2021, 15th February, 2021, 24th March, 2021, 13th July, 2021, 24th August, 2021 and on 26th October, 2021, nobody turned up on behalf of the Corporate Debtor.
15. In the backdrop of these facts, the matter has been heard today. During the course of arguments, Ld. Counsel for the Financial Creditor has taken us through the application and all the documents placed before us which go to show beyond doubt that the sum of Rs.307,65,67,155.50/- being a financial debt is due and payable, for

which the date of default has been stated to be 5th December, 2012.

16. It is further submitted that the Financial Creditor filed proceedings before the DRT-I Kolkata. Copy of which has also been placed on record as O.A No. 464/2013.
17. The Financial Creditor has filed a supplementary affidavit on 22nd April, 2021 wherein it is stated that **“ I say that the Financial Creditor in the light of the recent judgment passed by the Hon’ble Supreme Court of India in Civil Appeal No. 9198 of 2019, Sesh Nath Singh & Anr. –Versus- Baidyabati Sheoraphuli Co-Operative Bank Ltd. & Anr., is annexing the case status report and the orders passed by the Ld. Debts Recovery Tribunal-I, Kolkata obtained from the official website of the Ld. Debts Recovery Tribunal in respect of proceedings instituted by the Financial Creditor against the Corporate Debtor on 26th December, 2013 under section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 being OA/464/2013 pending adjudication”**.
18. It is stated that in the case status that the Original Application No. 464/2013 was filed on 26th December, 2013 and the same is still pending as on date with the DRT.
19. After hearing the Ld. Counsel for the Financial Creditor, we are convinced and are satisfied that there was outstanding debt payable by the Corporate Debtor to the Financial Creditor and the default was committed in payment thereof on 05/12/2012 and thereafter the Financial Creditor timely moved the DRT and that proceedings are still pending before the DRT. So, there is no question of any delay in approaching the appropriate Forum by the Financial Creditor.
20. Having considered all the facts, documents place on record and the law

on the point, we are satisfied that this is a fit case for admission.

21. The application is otherwise complete in all respects. We, therefore, order as under:-

ORDERS

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - a) 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;

- b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the

moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

- ix) **Mr. Binay Kumar Singhania**, registered with Insolvency and Bankruptcy Board of India, having Registration No. IBBI/IPA-001/P00041/ 2017-18/10102, Email binaysinghania@aaainsolvency.com is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Financial Creditor/Applicant is directed to deposit **Rs. 3,00,000/- (Rupees Three Lakh only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- xii) Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii) List the matter on 12/01/2022 for the filing of the progress report.
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xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on, this 3rd day of September, 2021

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