

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. V, MUMBAI BENCH

CP No. 3823/(IB)-MB-V/2019

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 r.w. Rule 4 of
the Insolvency and Bankruptcy
(Application to Adjudicating
Authority) Rules, 2016

In the matter of

State Bank of India

Having its Registered Office at:
State Bank Bhavan, Madame Cama
Road, Nariman Point, Mumbai,
Maharashtra-400021

Also at,

Stressed Assets Management Branch at
no. 2nd Floor, Office Complex, LHO
Campus, No. 65, St. Marks Road,
Bangalore, Karnataka- 560001

.... Petitioner/ Financial Creditor

Vs.

RPA Ferro Industries Private Limited

Having its Registered Office at:

303, SVP Road, Khetwadi, Mumbai
40004

.... Corporate Debtor/Respondent

Order Reserved On: 16.02.2022

Order Pronounced On: 15.03.2022

Coram:

Hon'ble Suchitra Kanuparthi, Member (Judicial)

Hon'ble Anuradha Sanjay Bhatia Member (Technical)

Appearances (Via Video Conference):

For the Petitioner : Ms. Nishita Nambiar Adv.

For the Respondent : Mr. Sushant Agarwal

Per: Anuradha Sanjay Bhatia Member (Technical)

ORDER

1. The Petitioners/Applicant viz. 'State Bank of India' (hereinafter as Petitioner) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code 2016, (hereinafter as Code) against 'M/s RPA Ferro Industries Private Limited.' (hereinafter as 'Corporate Debtor').
2. In the requisite Form-1, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be Rs. 22,91,96,876/-, and the amount claimed to be in default is Rs. 56,62,22,171/- along with interest. An Original Application being OA No. 913/2014 filed before the Debts Recovery

Tribunal, Mumbai, and vide an order dated 27.08.2016 this Tribunal issued Recovery Certificate dated 02.01.2017.

BRIEF HISTORY OF THE CASE

3. The Corporate Debtor had approached the Petitioner and requested to grant Financial Facilities. Subsequently, the Petitioner had entered into an agreement of loan for overall limit which were sanctioned to the Corporate Debtor vide Sanction Letter dated 22.07.2008.
4. Thereafter, Petitioner had entered into an Agreement of Mortgage dated 26.08.2008, Agreement of hypothecation of goods and assets dated 23.07.2008 and on 09.10.2010, a letter regarding the grant of individual limits within the overall limit, dated 23.07.2008, executed by the Corporate Debtor in favour of the Petitioner.
5. The Corporate Debtor had issued Deed of Guarantee for overall limit dated 23.07.2008 executed by the Corporate Debtor in a favour of the Petitioner. Thereafter the Corporate Debtor had issued an enhancement of credit facilities dated 26.07.2010, which was sanctioned to the Corporate Debtor vide Sanction Letter dated 25.09.2010 and 08.10.2010.
6. The Corporate Debtor defaulted in repaying the above referred financial facilities which has resulted into the aforesaid loan accounts getting classified as Non-Performing Asset (NPA) on 10.08.2011, in accordance with the guidelines issued by the Reserve Bank of India (RBI) in this regard. As per Reserve Bank of India, an account becomes NPA when-
 - Interest and Installments of principal remain overdue for a period of more than ninety days in respect of a term loan.
 - The account remains 'out of order' for a period of more than ninety days, in respect of an Overdraft/ Cash Credit.

- Any amount to be received remains overdue for a period of more than ninety days in respect of other accounts.
7. The Petitioner vide letter DGM/SAMB/569 dated 09.10.2012 had informed the Corporate Debtor that their accounts had been classified as NPA with effect from 10.08.2011. The Status of the Corporate Debtor's account had throughout continued to remain NPA and the Corporate Debtor failed in undertaking efforts to upgrade the account.
 8. The Petitioner was left with no choice but to initiate proceedings to recover the dues and issued a statutory notice under Section 13(2) of the Securitization of Asset and Reconstruction of the Financial Asset and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) on 02.08.2013.
 9. The Corporate Debtor had issued Link Letter dated 09.10.2010, Revival Letter dated 25.06.2013, Balance confirmation dated 13.06.2011 and 25.06.2013, OTS letters dated 13.09.2017, 21.08.2018, 11.03.2019 and 21.05.2019 and Letter dated 20.02.2019 and 13.05.2019.
 10. The Petitioner/Applicant filed an Original Application OA913/2014 before the Debts Recovery Tribunal, Bangalore on 19.12.2013, stating that the Corporate Debtor owed the Petitioner huge sums of money, which the Corporate Debtor had defaulted in repaying. The Petitioner had considered requests of the Corporate Debtor for restructuring. However, the Corporate Debtor had failed to comply with the stipulations and failed to clear the dues. Therefore, this necessitated the Petitioner to take action against the Corporate Debtor and seek relief before the Debt Recovery Tribunal. Furthermore, after filing of the Original Application, summons was sent and served on the

Corporate Debtor through RPAD and the Corporate Debtor had been called out during Recovery Proceedings. However, the Corporate Debtor chose to remain absent and thus an ex-parte order was passed on 27.08.2016 by Debt Recovery Tribunal, Bangalore. The relevant portion of the order is reproduced:

“Present OA stands allowed with costs. Defendants shall pay entire OA amount together with current and future interest, costs, etc., as sought by the Applicant Bank in the OA.”

“Office is directed to issue Recovery Certificate as sought by the Applicant Bank in the OA and do the needful as required under law forthwith”

11.Account Statements of the Petitioner along with the Interest calculation sheet as on 22.09.2019 was provided with respect to the facilities.

12.Hence, due to nonpayment of debts, the Petitioner filed this Petition u/s 7 of the IBC, as a Financial Creditor, for initiating the Corporate insolvency Resolution process (CIRP).

SUBMISSIONS BY THE CORPORATE DEBTOR:

13.The Corporate Debtor filed the reply. The contentions of the Corporate Debtor are as follows:

- I. The Corporate Debtor submits that there was the ban on iron ore mining and transportation, imposed at the first instance by the Karnataka State and later by the Hon’ble Supreme Court of India, which was neither in the control of the Petitioner bank nor the Corporate Debtor. In this process of ban, many entrepreneurs, who were not in any manner privy to the illegal

iron ore mining and transportation indulged in by certain influential people in Karnataka, were innocent victims without they are being, in any manner, implicated or incriminated in the criminal cases registered in that behalf.

- II. The Respondent being one such innocent victim of the ban on iron ore mining and transportation activities, the Respondent approached the Hon'ble High Court of Karnataka in W P No. 44390/2013 where in the Hon'ble High Court of Karnataka taking cognizance of this fact of adversity, faced by the Respondent, while orally indicating to the Petitioner Bank that its recovery action in the face of constraints which were even beyond the Petitioner Bank's control, by order dated 19.11.2014 ordered consideration of "Compromise Settlement". Instead as late as on 15.02.2019, the bank, submitted to the Hon'ble High Court, that it would look into the matter and clarify. The non-compliance with the orders of the Hon'ble High Court, submitting to the Hon'ble High Court of offering to clarify the compliance – all indicate that Petitioner Bank has an hidden agenda of private interests in the matter, which is ostensible from the fact that despite the order dated 19.11.2014 of the Hon'ble High Court of Karnataka, the Applicant Bank has obtained ex-parte order from the learned Debts Recovery Tribunal, Bangalore a recovery order dated 27.08.2016, which this Corporate Debtor has come to know now on receipt of notice of the present proceedings and the Corporate Debtor is taking steps for recalling the ex-parte order of the learned DRT, Bangalore.

- III. Independent of the above, it is humbly submitted that consequent to the imposition of ban on iron ore mining and transportation, though the

Respondent is not a privy or beneficiary in the mining scam, the project of the Respondent's crumbled, not at the instances of the Petitioners but at the instances of the State Government and Hon'ble Supreme Court banning the iron ore mining operations and transportation, whereby this Respondent is entitled to the benefit "doctrine frustration" under Section 56 of the Indian Contract Act, 1872, which provides that a contract to an act, when it becomes impossible to perform, the contract becomes void whereby the Respondent is entitled to the benefit of "doctrine frustration."

- IV. The State Government and Hon'ble Supreme Court before banning the iron ore mining operations and transportation failed to make sufficient provision, to protect the interest of those entrepreneurs who were neither parties nor beneficiaries in the iron ore mining scam, but in exercise of their Fundamental Rights under Articles 14, 19(1(g) and 21 were not eking out their living but also generating revenue to both Union Government and State Government besides providing employment to several workmen whereby their family welfare, their children's education etc., were all taken care of. Thus, the banning of the iron ore mining operations and transportation by the State Government and Hon'ble Supreme Court, violated the Respondent's Fundamental Rights. Hence, the Respondent is entitled to be redressed in that behalf by not initiating insolvency proceedings as sought by the Petitioner Bank.

REJOINDER BY THE PETITIONER:

14. The Petitioner had undertaken several measures to ensure that the Corporate debtor emerged out of their financial difficulties, which are listed below:

- i. The Petitioner permitted 'Holding Operations' in the account of the Corporate Debtor from December 2011, which allowed the Corporate Debtor to use 95% of the amount credited in their loan account for running business and use remaining 5% towards reducing the liability, thus enabling the Corporate Debtor to continue with their business and commercial activities.
- ii. The Petitioner in an attempt to help the Corporate Debtor out of its financial difficulties, despite the account being classified as 'NPA', agreed to refer the case of the Corporate Debtor to their Consultancy Cell for re-examination vide their letter dated 15th January 2013. Copy of Letter dated 15th January 2013 is annexed to the Petition.
- iii. Furthermore, the Petitioner vide letter dated 04.05.2013 had explored the possibility of restructuring, for which Techno Economic Viability study was conducted and the report suggested a restructuring, subject to infusion of capital of Rs. 3.50 crores by the Corporate Debtor. However, the Corporate Debtor did not satisfy the requirement. Furthermore, the Corporate Debtor had expressed their inability to bring in the capital during his personal visits. Copy of the letter dated 04.05.2013 is annexed to the Petition.

15. Pursuant to Ex-parte order dated 27.08.2016, the Debt Recovery Tribunal issued a Recovery Certificate dated 2nd January 2017 for realization and recovery of the amount by the Petitioner. Further, it is pertinent to mention that neither order dated 27.08.2016 nor the Recovery Certificate dated 02.01.2017 issued by the Hon'ble Debt Recovery Tribunal, was ever

challenged. Thus, the objections raised by the Corporate Debtor, in its reply, that the Corporate Debtor was unaware of the recovery proceedings before the learned Debt Recovery Tribunal, Bangalore is without any basis.

16. Thereafter, the Corporate Debtor approached the Hon'ble High Court of Karnataka in WP NO. 44390/2013 challenging the statutorily notice issued by the Applicant and also classification of the account (Assets) as "NPA". The Corporate Debtor had cited the financial adversity faced by them due to the ban on iron ore mining and transportation imposed at the first instance by the State of Karnataka and later by the Hon'ble Supreme Court of India. As admitted by the Corporate Debtor in their Reply to the Application filed under Section 7, these circumstances were beyond the control of the Applicant Bank. However, the Hon'ble High Court of Karnataka didn't grant any interim stay on the operation of the statutory notice or granted any other interim order staying any legal or regulatory action by the Applicant. Instead, the Hon'ble High Court of Karnataka, by order dated 19th November 2014, permitted the Corporate Debtor to make an application to the Applicant for settlement of the dispute either under OTS/Compromise. The Hon'ble High Court further directed the Applicant to consider the same, without prejudice to its contentions in the Writ Petition. The relevant portion of the order is reproduced below:

"The Petitioner is permitted to make an Application before the Respondent-Bank for settlement of the dispute either under OTS/Compromise without prejudice to his contentions in the writ petition. If such a representation is filed, the Respondent-Bank is directed to consider the same, without prejudice to its contentions."

17. The Petitioner has vide letters dated 13th September, 2017 and 21st August, 2018 proposed a scheme of One Time Settlement, for which the Applicant deemed the Corporate Debtor eligible for settlement under the SBI Scheme for One Time Settlement of NPAs & AUCAs for the year 2017 and 2018 respectively. However, the Corporate Debtor had not responded to the said offer of the Applicant. Copy of letter dated 13.09.2017 and 21.08.2018 is annexed and marked as Exhibit “W”, page no. 517-527 to the Application.
18. The Corporate Debtor has approached the Applicant with offer for One Time Settlement through Letters dated 20th February 2019 and 13th May 2019. However, the offers were unacceptable as the settlement proposed was very low, against the underlying value of the securities and the total dues and hence has been deemed as inadequate and were declined by the Applicant through letters dated 11th March 2019 and 21st May 2019 respectively.
19. The Petitioner has also received a One Time Settlement offer from the Corporate Debtor on 25th November 2019, post filing of the Application for compromise settlement for an amount of Rs. 7 crores towards the outstanding dues along with applied and unapplied interest and penalties. However, the same was deemed as unacceptable to the Petitioner and thus rejected. Therefore, the Petitioner has tried its best throughout the years to help the Corporate Debtor to emerge out of its financial crisis by providing them several alternatives. However, the Corporate Debtor has taken no firm steps to attempt to repay their dues and have had a very lackadaisical and casual approach towards the recovery proceedings for an account which was classified as NPA as far back on 10th August 2011.

FINDINGS: -

20. Upon perusal of the Petition and hearing both the parties, it is an undisputed fact that the Petitioner has extended financial facilities, vide Sanction Letter dated 22.07.2008, to the Corporate Debtor, wherein the money of Rs. 22,91,96,876/- was disbursed by the Petitioner. However, the Corporate Debtor was not able to repay the amount and an amount of Rs. 56,62,22,171/- (Inclusive of Interest) is due and outstanding.
21. The Respondent, RPA Ferro Industries Private Limited has filed its reply, where *inter alia*, he has mentioned that in the alternates to await the decision of settlement, as directed by the Hon'ble High Court of Karnataka in Corporate Debtor's writ Petition No. 44390/2013, and this Tribunal should reject the company Petition filed by the Petitioner.
22. The Bench is of the view that the pending Hon'ble High Court Writ Petition proceeding in Hon'ble High Court of Karnataka has no bearing on this Bench to admit or reject this Petition.
23. It is evident that the Petitioner has been reasonable in considering the requests of the Corporate Debtor and the Petitioner has taken efforts to help the Corporate Debtor, in restructuring of their account, to help repay the dues owed to the Petitioner that the Corporate Debtor is bound to pay. However, the Corporate Debtor has failed to repay the same.
24. The Contentions of the Corporate Debtor that Miscellaneous Application No 497 of 2020 is pending before the DRT for recall of the ex-parte order dated 27.08.2016, has no bearing on admitting this Petition and is untenable

25. This Bench relies on the Judgement of Hon'ble Supreme Court in the case of *Dena Bank V. C. Shivkumar Reddy (Civil Appeal No. 1650 of 2020) (2021) 10 Supreme Court Cases 330*, wherein it was held that issuance of Recovery Certificate by DRT gives a fresh cause of action and extends the Limitation Period. Para 128 and 130 of the Judgement are reproduced below:

128. In effect, this Court speaking through Nariman J., approved the proposition that an application under Section 7 or 9 of the IBC may be time barred, even though some other recovery proceedings might have been instituted earlier, well within the period of limitation, in respect of the same debt. However, it would have been a different matter, if the applicant had approached the Adjudicating Authority after obtaining a final order and/or decree in the recovery proceedings, if the decree remained unsatisfied. This Court held that a decree and/or final adjudication would give rise to a fresh period of limitation for initiation of the Corporate Insolvency Resolution Process.

130. We see no reason why the principles should not apply to an application under Section 7 of the IBC which enables a financial creditor to file an application initiating the Corporate Insolvency Resolution Process against a Corporate Debtor before the Adjudicating Authority, when a default has occurred. As observed earlier in this judgment, on a conjoint reading of the provisions of the IBC quoted above, it is clear that a final judgment and/or decree of any Court or Tribunal or any Arbitral Award for payment of money, if not satisfied, would fall within the ambit of a financial debt, enabling the creditor to initiate proceedings under Section 7 of the IBC.

26. On going through the submissions made by the Learned Counsel for the both the sides and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt. The Corporate Debtor has acknowledged the disbursement of financial facilities and its liability to repay the same. However, the Corporate Debtor failed to pay. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be moved u/s 7 of the Insolvency & Bankruptcy Code.

27. Considering the above facts, we come to conclusion that the nature of Debt is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of ‘debt’ and ‘default’, for admission of a petition under section 7 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation.

28. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves **‘Admission’**.

29. Further that, we have also perused the Form – 2 i.e., written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.

30. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Kumar Rajan, having registration No. IBBI/IPA-002/IP-N00658/2018-2019/12116, having address at Flat No. 702, Wing 3, Ahad Euphria, Sarjapur Main Road, Chikkanalli, Bangalore, Karnataka-560035 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

31. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with

effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

32. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

33. That the Interim Resolution Professional shall perform the duties as assigned under Section 15 and Section 18 of the Code and inform the progress of the Resolution Process 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.

34. In view of the above, the Bench “**Admitted**” the Company Petition No. **3823/(IB)-MB-V/2019** u/s.7 initiating CIRP against the Corporate Debtor RPA Ferro Industries Private Limited. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

35. Ordered Accordingly.

Sd/-
Anuradha Sanjay Bhatia
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)