

302

**In the National Company Law Tribunal
Kolkata Bench
Kolkata**

**CORAM: Shri Madan B. Gosavi, Member (Judicial)
Shri Virendra Kumar Gupta, Member(Technical)**

CP(IB)No.1172/KB/2019

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process 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, Stressed Assets Management Branch, 5th Floor, Zonal Office Building, Judges Court Road, Antaghat, Patna-800001, Bihar.

..... Financial Creditor

In the Matter of:

M/s Adi Ispat Private Limited, a company having its registered office at Dumri Road, P.O-Giridih Jharkhand – 815301.

..... Corporate Debtor

Counsels appeared:

For Financial Creditor

1. Mr. Uttiyo Mallick, Advocate
2. Mr. Dwaipayan Ghosh, Advocate

For Corporate Debtor

↑
sd
|

sd ✓

1. Mr. Basudeb Mukherjee, Advocate

Date of pronouncement of order: 22nd November, 2019.

ORDER

Per Shri M.B. Gosavi, Member (J):

1. This application under Section 7 of Insolvency and Bankruptcy Code, 2016 is filed by the Financial Creditor – **State Bank of India** to start Corporate Insolvency Resolution Process (in short "CIRP") of the Corporate Debtor – **M/s. Adi Ispat Private Limited** on the ground that the Corporate Debtor committed default in paying financial debt of Rs. 84,84,85,318/- (Rupees Eighty-Four Crore Eighty Four Lakh Eighty Five Thousand Three Hundred and Eighteen Only).
2. The following facts are not in dispute: -
 - 2.1. Initially in the year 2007, the Financial Creditor granted and disbursed in favour of the Corporate Debtor term loan and cash credit facilities accounted to Rs. 25 crore. The terms of the loan and cash credit facilities were extended and enhanced from time to time till 2014. On 29.08.2014, the Bank sent the Corporate Debtor notice under Section 13(2) of the SURFAESI Act, 2002 recalling the loan calling upon Corporate Debtor to clear this outstanding debt. The Petitioner filed recovery proceeding before Hon'ble DRT, Ranchi Jharkhand.
 - 2.2. This proceeding under Section 7 of Insolvency and Bankruptcy Code, 2016 is filed by the Petitioner on 26.06.2019 to start CIRP of the Corporate Debtor.
 - 2.3. Corporate Debtor suggested name of one Mr. Sanjay Kr. Agarwal having registration no. IBBI/IPA-001/IP-P00062/2017-18/10140 for appointment of IRP.

1
Sel
4

Sel

3. Corporate Debtor served with the notice of this application. It appeared though one Mr. Amit Kumar Sarawgi, Director of the Corporate Debtor. He filed affidavit in reply.

4. We have gone through that reply. Although reply is running in fifty pages but we find that no acceptable defense is raised to contest this application. In fact, at para C of the reply, Corporate Debtor contended that, "the Corporate Debtor on various occasion requested the applicant to take over factory, mortgage land and hypothecated machinery and plant and get release the amount by selling them etc.

5. It is now well settled that in inquiry of application under Section 7 of Insolvency and Bankruptcy Code, 2016, this Authority has to consider only two facts :-

- (i) Whether there is debt payable by the Corporate Debtor more than Rs. 1 Lakh.
- (ii) Whether the Corporate Debtor committed default in paying the same.

6. From the pleadings and more particularly contention of the Corporate Debtor as noted from his affidavit in reply, we find that there is no dispute about both relevant facts i.e. financial debt more than Rs. 1 Lakh is due and payable by the Corporate Debtor and the Corporate Debtor committed default in paying the same. In view of this we have to admit the Corporate Debtor in CIRP.

7. However, before that we have to see whether the claim raised by the Bank is within time.

8. In this case, the Corporate Debtor committed default in paying in the year 2014. This application is filed in the year 2019. However, Ltd. Counsel for the Petitioner pointed out that the Corporate Debtor in its balance sheet for the year ending March, 2015 admitted and acknowledged this debt. He also produced the OTS proposal dated

15.10.2019 submitted by the Corporate Debtor to the Bank wherein the debt is admitted. It appears to us from the above evidence that the Corporate Debtor has been admitting this debt throughout since 2014 to 2019. Hence, we hold that the claim is filed within time.

9. Financial Creditor suggested name of one Mr. Sanjay Kr. Agarwal having registration no. IBBI/IPA-001/IP-P00062/2017-18/10140 for the appointment of IRP against whom no disciplinary proceeding appears to be pending. The application is defect free. Hence, we admit the same by following order.

ORDER

- i) The application filed by the Operational Creditor under section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s Adi Ispat Pvt. Ltd.** is hereby admitted.
- ii) I declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP 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 Securitization 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 to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during 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 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) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

sd

sd

x) Mr. Sanjay Kr. Agarwal having registration no. IBBI/IPA-001/IP-P00062/2017-18/10140, E-mail ID: sanjaycal@hotmail.com is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

xi) The Financial Creditor to pay sum of Rs. 1,00,000/- (Rupees One Lakh Only) to IRP as advance fees as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.

xii) In case, further funds are required by IRP/RP and in the event of non-provision thereof, IRP/RP can approach this Tribunal so that CIRP would not be hampered for want of funds.

xiii) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

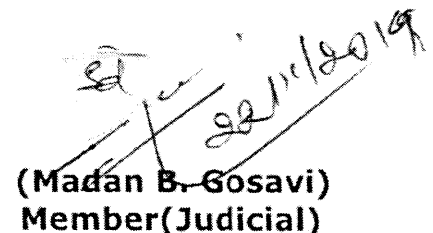
xiv) Registry is hereby directed under section 7(7) of the I.B. Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

List the matter on **09.01.2020** for the filing of the progress report.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Virendra Kumar Gupta)
Member(Technical)



(Madan B. Gosavi)
Member(Judicial)

Signed on 'this, the 22nd day of November, 2019.

Deekshastenoj