IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
COURT- I
KOLKATA

C.P(IB) No. 127/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:

Shubh Mohini Enterprises Private Limited, a Private Non- Government Company, Limited by Shares, registered under the provisions of the Companies Act, 1956, bearing CIN: U32109DL1998PTC148221, having its registered office at X37, Pratap Street, Gandhi Nagar, Delhi East-110031.

… Financial Creditor

Versus

Naman Ispat Private Limited, a Private Non- Government Company, Limited by Shares, registered under the provisions of the Companies Act, 1956, bearing CIN: U27109WB2005PTC101589, having its registered office at 235/2A, AJC Bose Road, Kolkata- 700020, West Bengal.

… Corporate Debtor

Date of Hearing: 31/08/2022

Date of Pronouncement: 11 /11 /2022

Appearances (through hybrid mode) :

1. Mr. Shaunak Mitra Advocate } For Financial Creditor
2. Mr. Shaleen Dubey, Advocate }

1. Ms. Urmila Chakraborty, Advocate } For Corporate Debtor
2. Mr. Aniket Chaudhury, Advocate }

Coram: Shri. Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

O R D E R

Per: Rohit Kapoor, Member (Judicial)

1. The Court convened via hybrid mode.

2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 ('the Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Shubh Mohini Enterprises Private Limited** ('Financial Creditor'), by Mr. Dileep Kumar Thakur, being one of the Directors, duly authorized vide a Board Resolution dated 25th April, 2021[1] for initiation of Corporate Insolvency Resolution Process ("CIRP") against **Naman Ispat Private Limited** ('Corporate Debtor').

3. The present Petition was filed on 06 May 2021 before this Adjudicating Authority on the ground that the Financial Creditor had granted a business loan to the Corporate Debtor.

4. The total amount to be claimed in default by the Financial Creditor is Rs.8,39,74,661/- (Rupees Eight Crore Thirty-Nine Lakh Seventy-Four Thousand Six Hundred Sixty-One only) including interest as on 14 April, 2021.

5. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is Rs.1,00,00,000/- (Rupees One Crore only) with paid up Capital as Rs.97,36,000/- (Rupees Ninety-Seven Lakh Thirty-Six Thousand only).

6. ***Submissions by the Ld. Counsel on behalf of the Financial Creditor***

6.1. The Corporate Debtor *vide* a letter dated 15 March 2009 had approached the Financial Creditors for a business loan of Rs.3,20,00,000/- (Rupees Three Crore Twenty Lakh Only). Pursuant to the above request, the

[1] Page 56 of the Petition

Financial Creditor had sanctioned the said credit facility in the form of Unsecured loan for a period of 4 years @ 12% per annum *vide* a sanction letter dated 27.03.2009.

6.2. Subsequently, the Financial Creditor confirmed the said credit facility by issuing a Disbursement letter, Promissory Note and Loan Agreement dated 14.04.2009 to the Corporate Debtor.

6.3. The Financial Creditor *vide* letter dated 02 February 2013 intimated the Corporate Debtor about the last date for repayment of the loan.

6.4. The Corporate Debtor started defaulting in repayment of loan alongwith interest.

6.5. Thereafter the Financial Creditor sent various demand letters demanding repayment of the said credit facility, lastly on 07 December 2013.

6.6. The Corporate Debtor *vide* letter dated 04 March 2014 requested the Financial Creditor to restructure the Loan and the Financial Creditor accepted the request for Restructuring the Loan with certain modalities and entered into a Restructuring Loan Agreement dated 15 April, 2014 with the Corporate Debtor for Rs. 2,37,00,000/- for 5 years i.e., till 14 April, 2019.

6.7. The Financial Creditor issued a recall notice to the Corporate Debtor on 18 April 2019.

6.8. Further, the Corporate Debtor vide a letter dated 05 May 2019 requested the Financial Creditor to extend the time for repayment for another six months. Thereafter again on 07 November 2020, the Corporate Debtor requested to provide a further 45 days' time, but no amount was repaid.

6.9. The date of default is on 14 April 2019 i.e., the date on which the debt fell due as per the Restructuring Loan Agreement.

6.10. The Financial Creditor finally on 20.02.2021 issued a demand letter and recalled the loan given by them and has filed the instant application.

6.11. The Corporate Debtor's investments are more or less bad assets as its investments in the followings (?) companies are most likely not recoverable/encashable.

Sl.No.	**Name of Company**	**Current Status**	**Amount in Rs.**
1	Balgopal Distributors Pvt Ltd	Under Liquidation	18,80,000
2	Deepraj Vinimay Pvt Ltd	Under CIRP	74,37,605
3	Indradev Goods Pvt Ltd	Liquidated	19,70,000
4	Janpragti Commodities Pvt Ltd	Under CIRP	1,99,25,898
5	Kohinoor Paper & Newsprint Pvt Ltd	Under Liquidation	1,54,80,000
6	Kohinoor Power Pvt Ltd	Under Liquidation	16,69,70,000
7	Kohinoor Pulp & Paper Pvt Ltd	Under Liquidation	54,01,24,800
8	Kohinoor Steel Pvt Ltd	Under CIRP	4,40,00,000
	Total		**79,77,88,303**

6.12. The Financial Creditor has proposed the name of **Mr. Sudipta Ghosh**, **registration number IBBI/IPA-001/IP-P00484/2017-18/10872,** as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016.

6.13. The Financial Creditor has placed the following documents on record:

a) A copy of the letter dated 15.03.2009 whereby the Corporate Debtor approached the Financial Creditor for business loan. **[Annexure- C @ Page 22 of the Company Petition]**
b) A copy of the sanction letter dated 27.03.2009 **[Annexure- D @ Page 23 of the Company Petition]**
c) Copy of the disbursement letter dated 31.03.2009, Promissory Note dated 01.04.2009, Payment Confirmation Letter dated 31.03.2009 and Loan Agreement dated 14.04.2009 **[Annexure- E @ Page 24 to 29 of the Company Petition]**
d) Copy of the letters dated 02.02.2013, 07.08.2013 and 07.12.2013 through which the Financial Creditor intimated the Corporate Debtor regarding its dues **[Annexure- F @ Page 30 to 32 of the Company Petition]**
e) A copy of the letter dated 04.03.2014 through which the Corporate Debtor requested the Financial Creditor for Restructuring the Loan **[Annexure- G @ Page 33 of the Company Petition]**
f) A copy of the Restructuring Loan Agreement dated 15.04.2014 **[Annexure- H @ Pages 34 to 39 of the Company Petition]**
g) A copy of the recall notice dated 18.04.2019 issued by the Financial Creditor to the Corporate Debtor **[Annexure- I @ Pages 40 to 41 of the Company Petition]**
h) Copy of the letters dated 05.05.2019 and 07.11.2020 by the Corporate Debtor seeking extension of time for repaying the debt **[Annexure- J @ Pages 42 to 43 of the Company Petition]**

i) A copy of the final demand letter dated 20.02.2021 by the Financial Creditor **[Annexure- K @ Pages 44 to 46 of the Company Petition]**

j) Copy of a table showing the debt due by the Corporate Debtor, confirmation of Corporate Debtor's account, Bank Statement from 31.03.2009 to 31.03.2021 **[Annexure- L @ Page 47 of the Company Petition, Annexure- M @ Pages 48 to 49 of the Company Petition and Annexure N @ Pages 50 to 55 of the Company Petition]**

7. ***Submissions by the Ld. Counsel on behalf of the Corporate Debtor***

7.1. The Corporate Debtor has alleged that the deponent of the instant application has does not have authority to institute CIRP against it. ***[Para 4(b), Page 3 of the Reply]***

7.2. The Corporate Debtor states that it is a solvent company and is carrying on its business as a going concern. ***[Para 4(i), Page 4 of the Reply]***

7.3. The Corporate Debtor denies that any sum fell due or any default has occurred on its part. ***[Para 9, Page 6 of the Reply]***

7.4. The Corporate Debtor, in compliance of the order of this Adjudicating Authority dated 14.07.2022 has filed a Supplementary Affidavit on 17.08.2022 to place on record its Balance Sheets for the Financial Years 2017-2018, 2018-2019, 2019-2020, 2020-2021 and 2021-2022.

Analysis and Findings:

8. Heard the learned Counsel for the Financial Creditor and learned Counsel for the Corporate Debtor and perused the record.

9. There is no dispute that the Financial Creditor has sanctioned unsecured loan to the Corporate Debtor on 27 March 2009 which was restructured in the year 2013 and further extension was given to the Corporate Debtor to

make the payment. Hence, there is existence of debt between the Financial Creditor and the Corporate Debtor.

10. The first defense raised by the Corporate Debtor is that the Authorised Representative does not have proper authority, on perusal of the Company Petition, the Authorised signatory has been authorised through a Board Resolution dated 25 April 2021, therefore the Company Petition is maintainable as a specific authority has been given through a Board Resolution.

11. The Corporate Debtor has raised the defence that it is a solvent company but on perusal of the Balance sheet filed by the Corporate Debtor for the year ending 31 March 2017, 31 March 2018, 31 March 2019, 31 March 2020 and 31 March 2021, the Corporate Debtor has Nil income/revenue from Operations and has been facing loss.

12. The Corporate Debtor *vide* letter dated 07 November 2020 sought for further extension of time for repayment of loan and has further requested to waive off the interest. On perusal of the letter, it is clear that the Corporate Debtor is not in a position to pay the debt.

13. The Corporate Debtor has submitted by Supplementary Affidavit dated 16 August 2022, its Financial Statements for FY 2016-17 to 2020-21. On bare perusal of the same, it is evident that the substratum and net worth of the Corporate Debtor stand totally eroded. it is evident that the Corporate Debtor has no operations since at least last 5 years and is a loss-making company.

14. The Corporate Debtor has defaulted in payment of the debt, hence, the present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the

minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time

15. In the light of the above facts and circumstances, it is, hereby ordered as follows:-

15.1. The application bearing ***CP (IB) No. 127/KB/2021*** filed by Shubh Mohini Enterprises 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 ***Naman Ispat Private Limited***, the Corporate Debtor, is ***admitted***.

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

15.3. 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.

15.4. 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.

15.5. **Mr. Sudipta Ghosh,** registration number IBBI/IPA-001/IP-P00484/2017-18/10872, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to 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.

15.6. 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. There shall be no future opportunities in this regard.

15.7. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.

15.8. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

15.9. 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).

15.10. In terms of 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.

15.11. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, 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.

15.12. **CP (IB) No. 127/KB/2021 to come up on 21.12.2022** for filing the periodical report.

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

(Balraj Joshi)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

This order is pronounced on 11th day of November, 2022.

GGRB (LRA)