

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P. (IB) No. 213/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:

M/S. STATE BANK OF INDIA, through its Stress Assets Management Branch – (SAMB-II), 1, Middleton Road Street, Jeevan Deep Building, 1st floor, Kolkata 700071.

... Financial Creditor

VERSUS

In the matter of:

M/S. MACKEIL ISPAT & FORGING LIMITED, having its registered office at 5A/1A, Lord Sinha Road, Amarsudha Building, 2nd Floor, Kolkata 700071, West Bengal.

... Corporate Debtor

Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &

Shri Harish Chander Suri, Hon'ble Member (Technical)

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Counsel on Record:

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| 1. MR. RATNANKO BANERJI, Sr. Advocate |] |
| 2. MS. SUHANI DWIVEDI, Advocate |] For Financial Creditor |
| 3. MR. DEEPANJAN DUTTA ROY, Advocate |] |
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| 4. MR. RAJESH CHAUBEY |] Representative of SBI |
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| 1. MR. PRADIP KUMAR TARAFDER, Advocate |] |
| 2. MR. SAMBUDDHA DUTTA, Advocate |] For Corporate Debtor |

Date of pronouncement of Order: 03/02/2020

ORDER

Per Shri Harish Chander Suri, Member (Technical).

1. This petition under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **M/s. STATE BANK OF INDIA** through one of its authorized officers Ms. Shobha Mittal, one of the Assistant General Manager, authorised by the Chairman vide authorisation dated June 16, 2017 for seeking Corporate Insolvency Resolution process against **M/S. MACKEIL ISPAT & FORGING LIMITED**, having its registered office at Kolkata, West Bengal, hereinafter referred to as the Corporate Debtor.
2. It is submitted that Rs.83.00 crores (Rupees Eighty Three crores only) ("Term Loan Consortium Facility") was sanctioned to Mackeil Ispat & Forging Limited ("Corporate Debtor") by a consortium of lenders consisting of the Applicant as the lead bank, (erstwhile State Bank of Saurashtra, erstwhile State Bank of Patiala, erstwhile State Bank of

Travancore, each of them now stands amalgamated with the Applicant i.e. State Bank of India), Indian Overseas Bank and City Union Bank, with the Applicant's proportionate share being Rs.58.00 crores (Rupees Fifty Eight Crores Only), under a common rupee loan agreement dated August 05, 2008, as amended vide common rupee loan amendment agreement dated November 29, 2008 to include the loan facility extended by Andhra Bank and further amended vide common rupee loan amendment agreement August 05, 2009 to include Allahabad Bank whereby the aggregate loan amount increased to Rs. 94.83 crores (Rupees Ninety Four Crores and Eighty Three Lakhs), along with other transaction documents and security documents.

Additionally, working capital facilities were also extended by consortium of lenders comprising of the Applicant, Indian Overseas Bank, erstwhile State Bank of Travancore, City Union Bank Limited, Andhra Bank and Allahabad Bank vide a working capital consortium agreement dated March 06, 2010 for an aggregate amount of Rs.41.38 crores (Rupees Forty One Crores and Thirty Eight Lakhs), with the Applicant's proportionate share being Rs.19.08 crores (Rupees Nineteen Crores and Eight Lakhs) ("WC Facilities") (the Term Loan Consortium Facilities and the WC Facilities are hereinafter together referred to as the "Credit Facilities").

Since, the Corporate Debtor failed to discharge its financial obligations properly and the account became irregular, at the request of the Corporate Debtor, the Credit Facilities were restructured vide Master Restructuring Agreement dated March 21, 2012, pursuant to the MRA, the facilities extended by the Applicant were as follows ("Restructured Facilities"):

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- a) Term loan facilities (existing) aggregating to Rs.56,28,00,000/- (Rupees Fifty Six Crores and Twenty Eight Lacs):
- b) Term Loan facilities (priority) aggregating to Rs.7,33,00,000/- (Rupees Seven Crore and Thirty Three Lakhs);
- c) Working capital term loan Rs.8,06,00,000/- (Rupees Eight Crores and Six Lakh);
- d) Funded interest term loan facility of Rs.13,64,00,000/- (Rupees Thirteen Crores and Sixty Four lakhs);
- e) Working Capital facilities of Rs.17,82,00,000/- (Rupees Seventeen Crores and Eighty Two lakhs only)

However, due to failure on the part of the Corporate Debtor to make timely payments, the accounts of the Corporate Debtor were declared as non-performing asset with effect from March 31,2013. Consequently, the Restructured Facilities were recalled, and all the amounts thereunder were declared due and payable forthwith vide demand and recall letter dated February 25,2015 issued to the Corporate Debtor as well as to the guarantors by the Applicant. However, the Respondent has not made any payments pursuant to the aforesaid recall letter and a total debt of Rs.217,42,97,170.42 (Rupees Two Hundred Seventeen Crores Forty Two Lakh Ninety Seven Thousand One Hundred and Seventy and Forty Two Paise only) is due and payable by the Respondent as on January 19,2018.

Consequently, since the default amount, as mentioned above is greater than Rs.1,00,000 (Rupees One Lakh Only) (Section 4 of the Code), this present application has been filed under Section 7(1) of the Code.

3. The Financial Creditor has proposed the name of Mr. Siba Kumar Mohapatra, for being appointed as the Interim Resolution Professional, in

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case of admission of the application. Mr. Siba Kumar Mahapatra vide his letter dated 31st January, 2019 written to this Tribunal, agreed to accept the appointment as IRP, if the present application is admitted.

4. The Financial Creditor has also filed CIBIL Report in respect of the Corporate Debtor which classifies the account of the Corporate Debtor as ("doubtful"). It is submitted in the application that the Financial Creditor herein i.e. State Bank of India had acquired by way of amalgamation the business including the assets and liabilities of State Bank of Saurashtra vide order dated 13th August, 2008 and similarly also acquired by way of amalgamation the business including the assets and liabilities of the following Associate Banks viz., State Bank of Bikaner & Jaipur, State Bank of Hyderabad, State Bank of Patiala and State Bank of Travancore vide Gazette notification dated 13th August, 2008 and Gazette notification dated 22nd February, 2013 (Annexure 'A' to the petition).

5. It is submitted that to secure the loan and other facilities granted to the Corporate Debtor, various security documents had been executed, which are part of the petition. It is submitted that O.A. No. 103 of 2015 in the matter of State Bank of India v. Mackeil Ispat & Forging Limited & Others is pending before the Hon'ble Debt Recovery Tribunal-II, Kolkata. The Hon'ble Tribunal vide its order dated June 08, 2018, has held that since the Corporate Debtor has approached the Applicant bank for settlement of the accounts for Rs.60 crores (Rupees Sixty crores), this is the specific admission of a part of the amount of debt due, to the Applicant bank despite the rejection of the settlement proposal by the Applicant bank and to the extent of the debt due admitted by the Corporate Debtor, the Hon'ble Tribunal is empowered to issue a recovery certificate. A copy of

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the said order dated June 08, 2018 has been annexed marked as Annexure 'F'.

6. According to the Financial Creditor a total sum of Rs.217,42,97,170.42 (Rupees Two hundred Seventeen Crores Forty Two Lakhs Ninety Seven Thousand One Hundred Seventy and Paise Forty Two Only) is due from the Corporate Debtor and the Corporate Debtor has committed default in payment there-of in spite of repeated requests and reminders.
7. In reply to the application, the Corporate Debtor has submitted that material facts have been suppressed by the Financial Creditor, the application of the Financial Creditor is barred by law of limitation as well as principles of waiver, estoppels, acquiescence and principles analogous thereto. It is stated that there are no admitted dues or debts for any particular payment and there are pre-existing disputes between the parties especially the suit for damages being C.S. No. 202 of 2014 filed in the High Court of Kolkata. It is submitted that pursuant to term loan sanctioned on 25th June, 2008 and agreement executed on 5th August, 2008 by the Corporate Debtor, disbursal of whole amount of the term loan was not made by the Financial Creditor. The loan was disbursed in driblets and there was enormous delay of 20 months which adversely affected the operational and financial viability of the project of the Corporate Debtor. It is submitted that the purported NPA accounts of the Corporate Debtor were not really NPA and were very much operational even after the alleged debt of NPA being 31st March, 2013.

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8. It is submitted that even on 4th December, 2013 Rs.30.00 crores of further fresh Working Capital Loan was sanctioned by the Financial Creditor in favour of the Corporate Debtor which indicates that the account of the Corporate Debtor was not NPA and the business of the Corporate Debtor was still financially viable with adequate financial assistance from the Banks. However, this sanctioned amount of Rs.30.00 crore loan was never disbursed by the Financial Creditor which directly resulted in worsening of the debt position of the Corporate Debtor. The Financial Creditor approached this Tribunal on 1st February, 2019, even while they were in negotiation of OTS proposal with the Corporate Debtor till 7th & 14th February, 2019 and Corporate Debtor had submitted substantial sums towards such settlement. The Corporate Debtor has denied that the principal amount was disbursed to the Corporate Debtor under various facilities to the tune of Rs.100,41,97,000/- (Rupees Hundred Crores Forty One Lakhs Ninety Seven Thousand Only) or that the amount claimed to be in default is a sum of Rs.217,42,97,170.42 (Rupees Two Hundred Seventeen Crores Forty Two Lakhs Ninety Seven Thousand One Hundred and Seventy and Forty Two Paise Only).
9. In the rejoinder to the reply affidavit, the Financial Creditor has submitted that the contents of the application might be treated as a part and parcel of the rejoinder affidavit as well. It is submitted that this application under Section 7 of the Code is complete in all respects, and a default has occurred which has been set out in detail in the application because due to failure on the part of the Corporate Debtor to make timely payment, the facilities were recalled and all the amounts there-under were declared due and payable, forthwith vide demand and recall letter

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dated 25th February, 2015 issued to the Corporate Debtor as well as by the Guarantor by the applicant.

10. It is submitted that in O.A. No. 103 of 205 filed by the applicant against the Corporate Debtor, the Hon'ble DRT-2 has held in its order dated 8th June, 2018 that since the Corporate Debtor has approached the applicant for settlement of the accounts for Rs.60,00,00,000/- (Rupees Sixty Crores Only), this would qualify as specific admission of debt due to the applicant, despite the rejection of the settlement proposal by the Applicant bank and to the extent of the debt due admitted by the Corporate Debtor, the Hon'ble DRT is empowered to issue a recovery certificate.
11. It is submitted that there was stay of recovery proceedings by way of orders passed by the Hon'ble High Court of Calcutta vide its order dated 19th September, 2014 wherein it was observed that "till the decision is communicated to the Petitioner, no coercive action shall be taken by the Respondent against the Petitioner".
12. It is submitted that the said matter was finally decided by the Hon'ble High Court of Calcutta on 2nd November, 2016 when it was directed that the order dated 29th September, 2014 stands vacated. Since the order had been passed after around 2 years and 2 months, the said period shall be excluded from the period of limitation and thus there is no question of the debt being barred by time as alleged by the Corporate Debtor. The application of the applicant is well within the time as the present application has been filed on 05/02/2019.

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13. We have gone through the Ld. Counsel for both the parties. The Financial Creditor has referred to and relied upon the judgment in the case of **Gouri Prasad Goenka vs. Punjab National Bank & Ors** reported in **Company Appeal (AT) (Insolvency) No. 28 of 2019 dated 8th November, 2019**. The relevant extract of the said judgment is reproduced as under:-

“That apart, there is acknowledgment of the outstanding debt on the part of the Corporate Debtor, a fact not disputed by the Corporate Debtor. This comes to fore from the letter dated 4th August, 2018 emanating from the Corporate Debtor and addressed to the Financial Creditor wherein the Corporate Debtor agreed to settle all outstanding dues of the Financial Creditor on One Time Settlement (OTS) basis (refer pages 692-693 Vol. III of the Appeal Paper Book). This is a clear acknowledgment of the outstanding debt in writing and the Corporate Debtor cannot wriggle out of the liability so acknowledged. It is not in controversy that on the date of such acknowledgement the debt was not time barred and the Insolvency Resolution Process was triggered within the period of limitation in terms of Article 137 of the Limitation Act, computed from such date. Admittedly, the OTS proposal was rejected by the Financial Creditor on 30th October, 2018. Superadded to it is the fact emerging from the impugned order that the Corporate Debtor was ready to settle the dispute for a sum of Rs.31 crores on the basis of value of the security held by the Financial Creditor. This offer, reflected in para 15 of the impugned order, was not entertained having regard for the fact that the previous OTS proposal approximately to the tune of Rs.51 crores had already been rejected by the Financial Creditor. Viewed in this context, it is manifestly clear that the ‘financial debt’ in respect whereof default was committed by the Corporate Debtor, was not barred by limitation. Contention raised on this score is accordingly rejected.”

14. The Financial Creditor has referred to and relied upon the judgment in the case of **Shalini Publicity Creative Pvt. Ltd. vs. Dena Bank** reported in **Company Appeal (AT) (Insolvency) No. 153 of 2019 dated 18.02.2019**. The relevant extract of the said judgment is reproduced as under:-

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“The Adjudicating Authority taking note of the fact that the One Time Settlement (OTS) proposal made by the Corporate Debtor had been rejected by the Financial Creditor and that the ‘debt’ and ‘default’ was established, proceeded to admit the application thereby initiating Corporate Insolvency Resolution Process against the Corporate Debtor.”

15. We have gone through the pleadings of the parties and all the documents placed on record, and also heard the Ld. Counsel for both the parties at length. The Ld. Counsel for the Financial Creditor has taken us through all the documents filed along with the application and the rejoinder. The judgments referred to above cited by the Financial Creditor are fully supportive to the Financial Creditor. The application is complete in all respect and the financial debt and default thereof is fully proved on record. The Corporate Debtor has failed to repay its debt owed to the financial Creditor. On the other hand, the Ld. Counsel for the Corporate Debtor has unsuccessfully argued on the various points raised in the reply which have not been found to be convincing. The net result, therefore is that in the aforesaid facts and circumstances proves undoubtedly default in repayment of the debt found due and payable by the corporate debtor, the present application of the Financial Creditor deserves to be admitted with the following orders:-

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, **M/S. MACKEIL ISPAT AND FORGING LIMITED** is hereby **admitted**.

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- ii) 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.
- iii) 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 judgement, 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.


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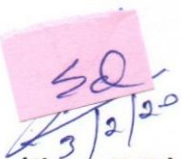
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- iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- vii) 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.
- viii) **Mr. Siba Kumar Mohapatra**, of E/402, Baishnav Vihar, Boimikhal, Near Durga Mandap, Bhubaneshwar – 751010, an Insolvency Professional registered with the Indian Institute of Insolvency Professional of ICAI, having registration number **IBBI/IPA-001/IP-P00837/2017-18/11421**, **E-mail id: sibmohapatra@yahoo.co.in** is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.
- ix) 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.

- x) The Registry is hereby directed under section 7(7) of the Insolvency and Bankruptcy 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.
- xi) The matter be listed on 04.03.2020 for filing of the progress report.
- xii) 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 (T)


(Jinan K.R.)
Member (J)

Signed on this, the 3rd day of February, 2020.

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