IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 1281/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, Stressed Assets Management Branch, 5th Floor, Zonal Office Building, Judge Court Road, Antaghat, Patna – 800001.

... Applicant

-Versus-

IN THE MATTER OF:

M/S. SRI BIR ISPAT PVT. LTD., Dumri Road, P.O. Giridih-1, District: Giridih, Jharkhand – 815301.

... Corporate Debtor

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

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

Counsel on Record:

1. **MR. UTTIYO MALLICK, Adv.**] **For Financial Creditor**
   India Law LLP

Sd/- Sd/-

1. **MR. Basudeb Mukherjee, Advocate] For Corporate Debtor.**

Date of pronouncement of Order: 06/01/2020

ORDER

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

1. This application under Section 7 of the Insolvency & Bankruptcy Code read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has been filed by **State Bank of India,** the Financial Creditor through its Authorised Representative Mr. Dilip Kumar Pathak, Chief Manager & Case Lead Officer, authorized vide authority letter dated 29th July, 2019, seeking initiation of Corporate Insolvency Resolution Process against **M/s. Sri Bir Ispat Private Limited**, a Corporate entity, having its registered office at Jharkhand, hereinafter referred to as the "Corporate Debtor."

2. It is submitted in the application that on the request of the Corporate Debtor, which is engaged in the trading of Iron and steel materials mainly ingot, TMT bar, rod wire and other allied products of Iron. The Financial Creditor vide its letter dated 2nd August, 2011 for grant of term loan and other credit facilities for Rs. 3.59 crores. The Financial Creditor granted loans and various creditor facilities to the Corporate Debtor vide sanction letter No. 14/846 dated 17th August, 2011 to the tune of Rs. 3,59,00,000/- (Rupees Three Crores Fifty Nine Lacs Only).

Sd Sd

3. It is further submitted that the Corporate Debtor had confirmed in their Board Meeting dated 25th August, 2011 and accepted the terms and conditions of the loan agreement, Agreement Cum Loan Hypothecation dated 26th August, 2011 along with the Guarantee Agreement executed between the Guarantors for the Corporate Debtor and the Financial Creditor.

4. It is submitted that the Corporate Debtor failed to comply with the terms and conditions of the Loan agreements and thus committed default vide balance confirmation letter dated 19th May, 2014 to the tune of Rs. 3,62,71,790/- as on 31.03.2014. On their failure to make the payments of its dues, several letters and reminders were sent to the Corporate Debtor but, the Corporate Debtor did not make any payment and, therefore, the account was declared as NPA on 23rd November, 2014. A legal notice was also issued to the Corporate Debtor to the Promoters and the guarantors, on 02nd May, 2015 calling upon them to make the repayment of dues along with interest.

5. It is submitted that the loan account was subsequently transferred from State Bank of India, SME Branch Giridih to State Bank of India, SAMB, Patna for its recovery and resolution and for realization of the legitimate dues of the Corporate Debtor. It is further submitted that a demand notice under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SRFAESI) Act, 2002, was issued to the Financial Creditor on 23rd June, 2015 and a reply

Sd Sd

was received from the Corporate Debtor vide its letter dated 1st September, 2015 followed by a letter by the Financial Creditor dated 18th September, 2015 to the Corporate Debtor. Possession notice under Section 13(4) was also served on 1st December, 2015 and an application under Section 14 of the SRFAESI Act, 2002 was filed. Proceedings before the Debts Recovery Tribunal (DRT) was initiated on 20th July, 2015 being O.A. No. 371 of 2015 and a Recovery Certificate was issued on 17th May, 2017 for a sum of Rs. 4,02,64,296.75 (Rupees Four Crores Two Lac Sixty Four Thousand Two Hundred Nine Six and Seventy Five paisa only) in favour of the Financial Creditor and the recovery is still pending before the DRT, Ranchi.

6. It is submitted that in order to substantiate the default of the Corporate Debtor, the Financial Creditor has enclosed copy of statement of accounts, AUCA Statements, CIBIL Report and the Provisional and Audited Balance Sheet of the Corporate Debtor.

7. The Financial Creditor has proposed the name of one Mr. Sanjay Kumar Agarwal, an Insolvency professional, who has also given his consent to accept the appointment in the event this application is admitted.

8. It would be seen from the application that the Financial Creditor had secured its loan by executing various documents like Agreement of Loan Cum Hypothecation, Guarantee Agreements with the guarantors and has enclosed all the relevant documents with the application.

9. In the reply affidavit filed through one of its Directors Mr. Amit Kumar Sarawgi, the Corporate Debtor disputed and denied all the allegations and submitted that the application is not maintainable and might be dismissed. It is submitted in the reply affidavit that the Financial Creditor had sanctioned a mortgage loan to the tune of Rs. 3.59 crores to the Corporate Debtor on 17th August, 2011.

10. It is submitted that on 24th September, 2011, the Financial Creditor transferred and adjusted the sanctioned amount of the Corporate Debtor in the account of Harshit Power & Ispat Pvt. Ltd.(HP&IPL) to reduce the dues of the Harshit Power & Ispat Pvt. Ltd. and the adjustment was done without any intimation and consent of the Corporate Debtor.

11. It is submitted that on 5th March, 2014, the Corporate Debtor wrote a letter to the Financial Creditor informing that a mortgage loan to the tune of Rs. 3.60 crores was sanctioned by the Financial Creditor asking the Corporate Debtor to pledge all the available lands and the same mortgage loan of Rs. 3.59 crores was instantly adjusted to the NPA account of HP&IPL and that in spite of the receipt of the said letter, the Applicant did not send any reply to the Corporate Debtor.

12. It is stated that by adjusting the said loan amount in some other loan account, the Financial Creditor has totally spoiled the entire business of the Corporate Debtor. It is stated that the Financial Creditor

Sd/ Sd/

has failed to clarify the same whether it is a cash credit or mortgage loan facility.

13. It is stated that the Bank forcibly took the signatures of the directors of the company on blank paper and forms and now the Financial Creditor is sending copies of the forms filled up as per their interest and will, which shows the ulterior motive and mala fide intentions of the Bank. It is stated that due to the highhandedness attitude and ulterior motives, the Corporate Debtor had suffered huge losses. It is stated that the claim of the Financial Creditor is exorbitant and without any basis and that the Financial Creditor is not entitled to get any amount as claimed.

14. We have heard the Ld. Counsel for the parties at length. Having gone through all the documents placed on record by the Financial Creditor, we find that the Financial Creditor has been able to prove its case. The Ld. Counsel for the Financial Creditor has taken us through all the documents placed on record. It has been shown from the record that the recovery certificate to the tune of Rs. 4,02,64,296.75 was issued by the DRT, Ranchi in favour of the Financial Creditor on 17th May, 2017 in the O.A. No. 371 of 2015 filed on 20th July, 2015 after the date of NPA dated 23rd November, 2014. The Financial Creditor had pursued its legal rights and remedies without any delay and the present petition was filed on 2nd August, 2019.

Sd/- Sd/-

15. The Ld. Counsel for the Corporate Debtor, however, submitted very brief argument and very candidly admitted the averments made in the application and did not oppose the contents of the petition and also the arguments of the Financial Creditor. In view of the fact that the claim of the Financial Applicant have already been crystalised by DRT in its proceedings and the Recovery Certificate issued as aforesaid, followed by admission of the claim by the Ld. Counsel appearing on behalf of the Corporate Debtor, we have no hesitation in admitting the petition and initiating Corporate Insolvency Resolution Process against the Corporate Debtor. We, therefore, pass the following:-

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. SRI BIR ISPAT PRIVATE LIMITED** is hereby **admitted.**

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:-

Sd/- Sd/-

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.

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.

Sd/- Sd/-

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. Sanjay Kumar Agarwal,** of "Draupadi Mansion, 3rd Floor, 11, Brabourne Road, Kolkata 700001, an Insolvency Professional having Registration No. **IBBI/IPA-001/IP-P00062/2017-18/10140**, Email ID: sanjaycal@hotmail.com , Mobile No. 9830946380, 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.

Sd Sd

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 **21.02.2020** 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.

Sd

(Harish Chander Suri)
Member (T)

Sd

(Jinan K.R.)
Member (J)

Signed on this, the 6th day of January, 2020.

VC