



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP NO.32/ALD/2024

*(An application under Section 7 of
the Insolvency & Bankruptcy Code,
2016 read with Rule 4 of Insolvency
& Bankruptcy (Application to
Adjudicating Authority) Rules,
2016)*

IN THE MATTER OF:

SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA

THROUGH ITS AUTHORIZED REPRESENTATIVE

Sh. Rahul Singh

Having its Corporate Centre at:

SIDBI Tower, 15 Ashok Marg,
Lucknow-226001, U.P.

Also at:

1, Tolstoy Marg, Atma Ram House,
New Delhi- 110001.

Email Id: sarb_newdelhi@sidbi.in

PAN Card Details: AABCS3480N

.....**FINANCIAL CREDITOR**

Versus

HI TECH FERROUS & NON-FERROUS INDIA PVT. LTD.

Having Registered Office At:

Plot No.106, Chanderpuri,
Ghaziabad – 201001, Uttar Pradesh.

.....**CORPORATE DEBTOR**

Order pronounced on 10th October, 2024

Coram:

Mr. Praveen Gupta : Member (Judicial)

Mr. Ashish Verma : Member (Technical)



Appearances:

Sh. Sushant Chandra, Adv. : For the Financial Creditor

Sh. Sanjeev Panda Adv. : For the Corporate Debtor

ORDER

1. This Application has been filed on 05.04.2024 by Small Industrial Development bank of India as the Applicant/Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “**IBC**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 against M/s Hi Tech Ferrous and Non Ferrous India Private Limited (hereinafter referred as “**Respondent/Corporate Debtor**”) in Form 1 containing all the information as required in Part I, II, III, IV and V of the Form showing a total financial debt of Rs. 23,07,21,576.62 (as on 22.03.2024), with the date of default as specified in the application being 26.01.2023 as per the Information Utility Report issued by the NeSL.
2. The Corporate Debtor i.e M/s HI TECH FERROUS & NON FERROUS INDIA PRIVATE LIMITED with CIN No. U28112UP2009PTC037895 is having registered office at 106 Chander Puri, Ghaziabad-201001 and therefore, this tribunal has jurisdiction to decide this application.



3. As per the details provided in Part-IV of the Application, the Corporate Debtor availed various Financial Facilities from the Financial Creditor details of which are given below:

- a.** Term Loan of Rs. 1080 Lakhs (Rupees One Thousand and Eighty Lakhs Only) under the Direct Credit Scheme (DCS) and Soft Loan of Rs. 20 Lakhs (Rupees Twenty Lakhs Only) vide accepted Letter of Intent dated 06.10.2016 and Loan Agreement dated 07.10.2016.
- b.** Working Capital of Rs. 1500 Lakhs (Rupees Fifteen Hundred Lakhs Only) vide Letter of Intent dated 22.01.2020, modified Letter of Intent dated 20.08.2020 which was further reduced to Rs. 1300 Lakhs (Rupees Thirteen Hundred Lakhs Only) vide renewed Letter of Intent dated 25.03.2022.
- c.** Term Loan of Rs. 423 Lakhs (Rupees Four Hundred and Twenty- Three Lakhs Only) under the Timely Working Capital Assistance to Revitalize Industries in times of Corona Crisis (TWARIT-Emergency Credit Line Guarantee Scheme (ECLGS) vide accepted Letter of Intent dated 16.09.2020 and Agreement for Term Loan Hypothecation & General Conditions Rupee Loan –GC-2014 dated 18.09.2020.
- d.** Term Loan of Rs. 212 Lakhs (Rupees Two Hundred and Twelve Lakhs Only) under Timely Working Capital Assistance to Revitalize Industries in times of Corona Crisis (TWARIT 1.0 Extension) Emergency Credit Line Guarantee Scheme (ECLGS) vide accepted Letter of Intent dated 27.10.2021 and Agreement for Term Loan cum Hypothecation & General Conditions Rupee Loan - GC - 2014 dated 27.10.2021.



4. As submitted by the Applicant in the Application that the Corporate Debtor has failed to maintain financial discipline with respect to all the financial facilities and consequentially, all the loan accounts were classified as Non-Performing Assets (NPA) on 26.01.2023.
5. The Financial Creditor had recalled all the loan facilities vide loan recall notice dated 13.02.2023 and issued notice under section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act, 2002) was issued on 02.06.2023.
6. The Corporate Debtor in response to this notice, gave representation dated 29.07.2023 against Section 13(2) which was disposed of by the Financial Creditor vide reply dated 11.08.2023.
7. It is also submitted by the Applicant that the Corporate Debtor submitted proposal for rescheduling of the financial facilities to the Financial Creditor vide email dated 26.06.2023. However, the same was also rejected by the Financial Creditor vide its letter dated 11.08.2023. The Corporate Debtor again vide e-mail dated 14.08.2023 reiterated its request for rescheduling of the financial facilities.



8. In response to this, the Financial Creditor sought from the Corporate Debtor the upfront payment of Rs. 1.27 crores, and month wise sales figures as a pre-requisite in order to consider the request of the corporate debtor for rescheduling of the financial facilities vide an email dated 20.09.2023. There was spate of reminder mails sent by the Financial Creditor vide e-mail dated 25.09.2023, 06.10.2023, 10.10.2023, 11.10.2023 and the last reminder was sent on 03.11.2023.
9. The date of default mentioned in Record of Default in Form-D of the information utility is 26.01.2023 under sub-regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017) thereby constituting a 'financial debt', as defined under Section 5(8) of the Code.
10. On account of the constant default in repayment of Financial Facilities, the Financial Creditor proceeded with filing this application seeking initiation of CIRP against the Corporate Debtor.

REPLY ON BEHALF OF THE CORPORATE DEBTOR

11. In response to the aforesaid application, the Corporate Debtor has filed its reply vide dairy no. 1942 dated 24.9.2024 wherein it has raised the following contentions: -



- i.** The Corporate Debtor has submitted that the financial distress faced by the company is due to its customer, Nipman Fasteners Pvt. Ltd., which owed approximately 38 Crores. Unfortunately, Niprnan Fasteners is undergoing CIRP vide order dated 21.04.2023 in CP (IB) No. 908/ND/2022 passed by the NCLT, Court III, Delhi.
- ii.** It is also submitted by the Corporate Debtor that The management has been running and maintaining the Respondent company's venture with dedication and professionalism, consistently generating a sufficient profit after covering all dues and liabilities each year since its inception. However, this performance was impacted by nationwide challenges such as de-monetization and the COVID-19 pandemic, which affected the entire nation, including the auto industry.
- iii.** Further, the prohibition on usage of BS4 compliant vehicles aggravated the problems. Due to all these factors the production of the company was adversely affected.
- iv.** The Respondent has placed reliance on Judgment passed by the Hon'ble Supreme Court passed in M/s S.S Engineers vs. Hindustan Petroleum Corporation Ltd & Ors.-Civil Appeal No. 4583 of 2022 wherein it was held that this Tribunal is not a substitute for a recovery forum/trial court.
- v.** It is further submitted by the Respondent that proposal was given for rescheduling the financial facilities availed by the respondent, however the same was rejected by the Applicant.



REJOINDER ON BEHALF OF THE APPLICANT

- 12.** The Applicant has filed rejoinder vide dairy no. 1872 dated 17.09.2024 wherein it is submitted by the Applicant that a notice under section 13(2) of SARFAESI Act was issued to the Corporate Debtor on 02.6.2023 along with representation dated 29.7.2023 under section 13-3(A) of the SARFEASI Act. Financial Creditor vide letter dated 11.8.2023 disposed of the same.
- 13.** Further, the Corporate Debtor vide letter dated 26.06.2023 submitted the proposal of re-scheduling the financial facilities availed and Financial Creditor convened a meeting with the Corporate Debtor wherein it sought month wise sale figures and upfront payment of Rs. 1.27 crores as a pre-requisite for rescheduling the financial facilities.
- 14.** The Corporate Debtor failed to comply with the aforesaid requirements despite giving reminders vide emails dated 20.9.2023, 25.09.2023, 06.10.2023, 10.10.2023 and 11.10.2023.
- 15.** Furthermore, the Financial Creditor has denied the averment raised in para 10 of the Reply and contends that Corporate Debtor has misinterpreted the judgement passed by the Hon'ble Supreme Court M/s S.S. Engineers vs Hindustan Petroleum



Corporate Ltd. & Ors -CA No. 4583 of 2022. This Judgment is not applicable in the instant case as this application is not filed under Section 9 and debt is not disputed.

FINDING AND ORDER

16. We have heard the Ld. Counsels of both parties and also perused the records and examined the pleadings filed before us. The main issues which are before us to be decided in respect of the present Application u/s 7 are:

- (i)** Whether the application is filed within the period of limitation.
- (ii)** Whether there is debt and default within the meaning of the I &B Code, 2016.

17. With regard to the first issue, it is stated in Part-III of the Application that the total outstanding debt is Rs. 23,07,21,576/- (Rupees Twenty-Three Crores Seven Lakhs, Twenty-One Thousand Five Hundred and Seventy-Six) stating the date of default as 26.01.2023. These details are also reflected in the RoD issued by the NeSL. The same has not been disputed by the Corporate Debtor. This application was filed on 05.04.2024 which is well within the period of limitation.

18. With regard to the existence of debt and default, it is stated that the Respondent has averred that due to COVID-19 Pandemic it



faced financial constraints and is making efforts to improve its financial condition. for this purpose, it sought additional time to make repayment of its outstanding debt. In additional to this The Corporate Debtor also placed a request before the Financial Creditor for rescheduling its Financial Facilities. This implies that debt is due and payable.

19. During the course of hearing on 07.10.2024, the Ld. Counsel representing the Corporate Debtor has submitted that an OTS proposal has been sent to the Financial Creditor. On the other hand, Ld. Counsel representing the Financial Creditor states that he does not have any instructions whatsoever with respect to any settlement/OTS being proposed or under consideration at the end of the Financial Creditor.

20. Thus, in view of the aforesaid analysis, the Applicant / Financial Creditor has proved that there is a 'debt' and 'default' on the part of the Corporate Debtor. Hence, as per Section 7(5) of IBC, 2016, the present application is found to be fulfilling all the conditions for admissions of the Application and initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor i.e Hi Tech Ferrous & Non Ferrous India Pvt. Ltd.



21. In view of our above findings, we are satisfied that the Applicant/Financial Creditor has proved the debt and the default, which is more than the threshold limit of Rs. 1 crore applicable at present. The application is also filed within limitation period and complete in all respect and a resolution professional is also proposed as per section 7(3)(b). Accordingly, the present application under Section 7, has been found fit to be admitted as per Section 7(5) of the I & B Code, 2016.

22. The Financial Creditor has proposed the name of IRP in Part-III of the Application, the Financial Creditor has proposed the name of Mr. Rakesh Kumar Jindal as Interim Resolution Professional. His Registration Number is IBBI/IPA-002/IP-N01148/2021-2022/13963, R/o H. No. 3656/6, Gali No. 6, Narang Colony, Tri Nagar ,Near Rose Garden ,North West, National Capital Territory of Delhi ,110035, Email: iprakesh.jindal@gamil.com. He has duly given the consent in Form No. 2 dated 16.08.2023 annexed as **Annexure- E** with the Application. The Law Research Associate of this Tribunal, Ms. Ankita Sharma, has checked the credentials of Mr. Rakesh Kumar Jindal, and found that there are no disciplinary proceedings pending against the proposed Resolution



Professional and also there is nothing adverse against him. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 18 December 2024. After considering these details, we appoint Mr. Rakesh Kumar Jindal having registration No. IBBI/IPA-002/IP-N01148/2021-2022/13963, as Interim Resolution Professional (IRP).

- 23.** In the given facts and circumstances of the case as per our above findings, the present application u/s 7 being complete in all respect and having established the default in payment of the Financial Debt for the default amount being above the threshold limit and an IRP also having been appointed as per above para 32, the application is admitted in terms of Section 7(5) of the I & B Code, 2016 against the Corporate Debtor and accordingly, moratorium is declared in terms of Section 14 of the Code.
- 24.** The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of IBC, 2016.
- 25.** The Suspended Board of Directors is directed to give complete access to the Books of Accounts of the corporate debtor



maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation



by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empaneled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- 26.** The IRP is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities/institutions/ others pertaining to the Corporate Debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to



the IRP to enable him to conduct the CIR Proceedings as per law.

27. The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every month.

28. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- (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;
- (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.
- (e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.
- (f) The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- (g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.”

29. We direct the Financial Creditor to deposit a sum of Rs. 1,00,000/- with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in



accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

- 30.** A certified copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a certified copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a certified copy of this order to the Interim Resolution Professional at his e-mail address forthwith.
- 31.** List the matter on 13.11.2024 for filing of the progress report/further proceeding.

-Sd-
(Ashish Verma)
Member (Technical)

Date- 10th October, 2024

-Sd-
(Praveen Gupta)
Member (Judicial)