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**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No.195/BB/2020
U/s 7 of IBC, 2016
R/w Rule 4 of I&B (AAA) Rules, 2016

Between:

**M/s. Small Industries Development
Bank of India**

SIDBI Towers, 15, Ashok Marg,
Lucknow - 226 001

... Financial Creditor

And

M/s. Shri Tubes & Steels Private Limited

Plot No. 75, Tarihal
Industrial Area, Gokul Road,
Hubli - 580 026

... Corporate Debtor

Pronouncement of Order: 31st March, 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Mr. Sharan A Kukreja

For the Respondent : Mr. Sunil.P.Prasad

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P (IB)No.195/BB/2020 is filed by M/s. Small Industries Development Bank of India U/s7 of the IBC, 2016,R/w Rule 4 of the I&B (AAA) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Shri Tubes & Steels Private Limited on the ground that it has committed default for total amount of Rs.29,22,88,404/- (Rupees



Twenty Nine Crores Twenty Two Lakhs Eighty Eight Thousand Four Hundred Four Only).

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

(1) M/s. Small Industries Development Bank of India (herein referred to as Petitioner/Financial Creditor) established as a statutory corporation on April 2, 1990 under the Small Industries Development Bank of India Act, 1989 having permanent account number AABCS3480N. It's Registered Office situated at SIDBI Towers, 15, Ashok Marg, Lucknow - 226001.

(2) M/s. Shri Tubes & Steels Private Limited (Respondent/Corporate Debtor) was incorporated on 26.04.2000 having CIN: U27109KA2000PTC026997 and having its registered Office situated at Plot No.75, Tarihal Industrial Area, Gokul Road, Hubli - 580026. Its Authorised Share Capital of Rs.4,85,00,000/- and Paid-up Share Capital of Rs.4,85,00,000/- .

(3) Earlier, the Financial Creditor had filed an Application bearing CP (IB) No. 37/BB/2018 U/s 7 of the Code before this Hon'ble Tribunal on 29.01.2018 seeking to initiate CIRP in respect of Corporate Debtor on the ground, that it has committed default for total amount of Rs.22,13,75,450/- . The Corporate Debtor filed a statement of objections to the same, wherein, while admitting debt and default in question, have raised various frivolous reasons for its inability to pay. During the pendency of the earlier CP, the Corporate Debtor, vide its letter dated 14.01.2019 offered One-time Settlement for Rs.11,50,00,000/- towards the dues owned by it to the Financial Creditor. Accordingly, the Financial Creditor gave an 'in-principle' acceptance to the OTS amount proposed to be paid, vide its letter dated 10.04.2019, subject to condition



that 20% of the OTS Amount i.e. Rs.2,30,00,000/- be paid within 30 days of the date of the said letter, and the balance of 80% be paid within six months i.e. by 09.10.2019. On April 16, 2019, another letter was issued by the Financial Creditor to the Corporate Debtor, modifying certain terms of the letter dated April 10, 2019, wherein it is stated that in case the one-time settlement payment period exceeded 30 (thirty) days, simple interest at a rate not less than prevailing PLR of SIDBI should be charged on 'reducing balance' basis from the date of the crystallization date. The promoters/guarantors were to submit an affidavit to ensure seriousness on part of the Corporate Debtor to settle its dues. Thereafter, the Corporate Debtor issued a letter dated May 2, 2019 to the Financial Creditor in acceptance of the terms set out in the letters dated April 10, 2019 and April 16, 2019. However, another letter dated May 9, 2019 was issued to the Financial Creditor, stating that it was not in a position to meet the condition of having to pay 20% of the OTS Amount, i.e.Rs. 2,30,00,000/- within a period of 30 (thirty) days and requested that this condition be modified to reduce the initial payment to 15% of the OTS Amount instead, i.e. Rs. 1,75,00,000/-. The Financial Debtor, in good faith and without prejudice, agreed to partially modify the terms of the one-time settlement and accepted the payment of Rs. 1,75,00,000/- towards the initial payment of the OTS Amount, *vide* its letter dated July 16, 2019.

- (4) Accordingly, subject to the compliance of the terms and conditions provided in the letters dated 10.04.2019, 16.04.2019 & 16.07.2019 by the CD, the Petitioner agreed to withdraw the earlier Company Petition. The terms of settlement were set out in a joint memo and the same was filed before this Hon'ble Tribunal on 02.08.2019 and the same was allowed by this Tribunal *vide* order dated 02.08.2019 by



directing the Corporate Debtor to strictly adhere to the terms and conditions of the joint memo, without fail, failing which the Petitioner was granted liberty to file a fresh Application U/s 7 of the Code.

- (5) On failure to adhere to terms of letters issued, the Corporate Debtor issued a letter to the Petitioner requesting an extension of time for paying the balance of the OTS amount. In response, the Petitioner issued letter dated 21.10.2019 stating that its acceptance of the TS stand automatically withdrawn, unless approved by the Petitioner otherwise. Further, the Petitioner called upon the Corporate Debtor to make immediate substantial payment towards the OTS amount, to enable it to examine the Corporate Debtor's request for additional time for making payment of the OTS Amount. However, the CD failed to make any such payment, due to which the Petitioner issued a letter dated 10.12.2019, formally withdrawing its acceptance of the OTS.
- (6) In the above circumstances, the Petitioner issued a letter dated 11.12.2019 to the Corporate Debtor, calling upon it to clear the default and outstanding debt of Rs.28,91,32,605/- as on 10.12.2019 on or before 18.12.2019. The Corporate Debtor failed to clear the outstanding debt by the said date and instead issued a letter dated 18.01.2020 requesting for an extension of time to pay the balance of the OTS amount and in response to that the Petitioner replied that its acceptance of the OTS had been withdrawn and informing the CD that the request made by it could not be considered by the Petitioner.
- (7) The amount in default as on 10.01.2020 is Rs.29,22,88,404/- It is pertinent to note that, in accordance to the terms agreed upon between the Financial Creditor and Corporate Debtor under the joint memorandum, this amount includes the outstanding amounts under the SIDBI Loan Agreements, along



with interest thereon till January 10, 2020. The amount of Rs.1,75,00,000/- paid by the Corporate Debtor as a part of the OTS Amount due stands adjusted to the total outstanding liability of the CD as on 10.01.2020.

3. The Respondent has filed Statement of objections dated 15.03.2021 by *inter alia* contending as follows:

(8) The proceedings are premature in nature and are contrary to the one time settlement policy of the Financial Creditor. The Corporate Debtor required funds for setting up manufacturing infrastructure to conduct its business, as such approached the Petitioner to fund a sum of Rs.20,60,00,000/-. However, the Petitioner had extended sum of Rs.13,50,00,000/- under the direct loan, Rs.1,50,00,000/- as subordinate debt under GEMS. The Financial Creditor after evaluating all the documents and analyzing the credibility of the Respondent Company had agreed to fund by way of direct loan, subordinate debt, Funded interest term loan and also cash credit facility to the Corporate Debtor. The Financial creditor sanctioned a sum of Rs.15,00,00,000/- towards terms loan, subsequently, Rs.1,48,00,000/- and Rs.13,40,123/- was sanctioned under afore mentioned facilities and Rs.2,10,00,000/- under Funded Interest Term Loan. As such a sum of Rs.18,71,40,123/- was sanctioned. The Corporate Debtor had paying principle and interest regularly to the Petitioner up to 2016 and thereafter could not make regular payments due to non-availability of working capital to service the term loan of the Petitioner and also due to the market recession and such other issues etc.

(9) Further the State Bank of India was providing working capital to the Corporate Debtor to the tune of Rs. 2,50,000 upto 2014 and the same was reduced to Rs. 1,45,00,000 due to market recession in automobile industry. The Corporate Debtor in



order to mobilize funds to keep the unit working and also to repay the dues of the Petitioner approached the private financial institution i.e. Montage Capital Markets Limited and the said institution agreed to fund the Corporate Debtor and same arrangement was discussed with the General Manager of the Petitioner on 11.07.2017 and the discussion was recorded in the minutes of meeting dated 17.07.2017. During the said meeting, the General Manager of the Petitioner insisted to submit a proposal in the said regard by following their standard process, which was compiled by the Corporate Debtor on 14.09.2017. However the Petitioner vide letter dated 20.09.2017 rejected the said proposal without any justification.

(10) The Corporate Debtor vide its letter dated 18.12.2017 requested the State Bank of India to extend financial support. The SBI in response dated 26.12.2017, rejected the said request. Further, since the SBI Bank did not extend any Financial support, having no other alternative, the Corporate Debtor approached HDFC Bank Limited for opening Current account to enable the Corporate Debtor to operate letter of credit and for which the HDFC Bank insisted for an NOC from the Financial Creditor. Accordingly, the Corporate Debtor requested the Petitioner vide letter dated 02.01.2018 and the same was rejected by the Financial Creditor on 30.01.2018. Even after putting so much effort, the Corporate Debtor did not get support for adequate working capital to generate fund to repay loan taken from the Petitioner.

(11) In the meantime, the Petitioner has initiated the CIRP against the Corporate Debtor in CP (IB) NO.37/BB/2018 before this Tribunal. Based on the joint memo dated 02.08.2019 filed by the Parties, the CP was disposed of by an order dated 02.08.2019. The Director of Corporate Debtor had



approached the Private organizations viz. Raising Sun Agencies and Hubli Cigarette Centre, seeking for financial assistance in order to settle the dues of the Petitioner. Both the organisations having considerable net worth was eligible to raise the funds for the purpose of discharging the liability of the corporate Debtor availed from the Financial Creditor as agreed under OTS Scheme. In order to help the Corporate Debtor and to overcome its liabilities, the organizations has come forward to extend its support to clear the outstanding of the Petitioner as per the OTS Scheme. The alternative arrangement made by the Corporate Debtor for clearing the OTS amount which has been captured in the letter dated 19.10.2016 it had agreed to pay a sum of Rs. 25,00,000 within 60 days from the date of the approval of extension of time by the Financial Creditor.

(12) The Petitioner being the Premier Banker for MSME ought to have extended its cooperation to the Corporate Debtor as it falls within the ambit of MSME and knowing fully well that the automobile and steel industry is facing a distress situation in the market, due to implementation of Goods and Service Tax, Demonetisation and recommendation of the Central Government to upgrade the Automotive Engines from BS4 to BS6 engine and Automotive Industry was also under confusion. The balance OTS amount could not be repaid for the reasons stated above which was beyond the control and the same was also brought to the notice to the Petitioner.

(13) The Corporate Debtor is ongoing concern and the Managing Director of Corporate Debtor is the first generation entrepreneur with his work in setting up manufacturing unit at Hubli despite facing various difficulties. The Unit was originally proposed to be set up at Tarihal Industrial Estate for which four plots of land at survey No. 68, plot No. 177, 178,



189 & 190 were allotted by KIADB. However, the land continues to be in adverse possession and KIADB has filed to handover possession to the Corporate Debtor, which is also given as collateral for the facilities extended by the Petitioner. Thereafter, the Corporate Debtor was constrained to identify another alternative property and obtain conversion and started its operating by setting up an infrastructure. The Machine is procured from Italy having very unique features specially configured for precision manufacturing tube only and the Corporate Debtor is the second in South India to import and install such machinery. The said machine was installed by the Italian technicians which took around 30 days for which huge cost has been incurred by the Corporate and the said machine once dismantled will have no value. Further, the Company is not a big corporate but husband and wife company and Promoter is technocrat. He is putting all his strength to keep the unit in running condition. The machines have lot of electronic components. If these electronic components are kept idle, then to restart the machines, lot of expense is involved for imported components and repairs.

- (14) The Corporate Debtor business is in business of manufacture and supply ERW steel tubes to automobile manufacturers. Post COVD-19, mass communications automobile vehicles are gone into heavy recession. As per the valuation of the Petitioner, the Realisable value of the plant and machinery is amounting to ts.3,15,81,900 and valuation with respect to plot no. 177, 178, 189 & 190 is of Rs.86,37,840/- and Building No.7/8C/D, MahendrakarChawal, Dharwad is Rs.56,25,000/-. The unit is ongoing concern and located in rural area employing more than 20 nearby village workers and pay about Rs.2 Crores and more every year as taxes as it was paying in 2011-2012.



4. Heard Shri.Sharan A Kukreja, learned Counsel for the Petitioner, and Shri Sunil.P.Prasad, learned Counsel for the Respondent. We have carefully perused the pleadings of both the Parties, and the extant provisions of the Code, the Rules made there under, and the law on the issue.
5. Shri.Sharan A Kukreja, learned Counsel for the Petitioner, while reiterating various averments made in the petition, as briefly stated supra, has further submitted that the debt and default in question are not in dispute and the Corporate Debtor was afforded amply opportunity to settle the claim but it failed to avail it. Hence, there is no other alternative for the Petitioner except to initiate CIRP. The petition is filed in accordance with law and also suggested a qualified Insolvency Professional namely Shri Srinivas Thatikonda, with Registration No. IBBI/IPA-002/IP-N00631/2018-19/11886, who has filed his written Consent in Form 2 by inter alia declaring that there is no disciplinary proceedings pending against him with the Board or the Indian Institute of Insolvency Professionals of ICAI.
6. Shri Sunil.P.Prasad, Learned Counsel for the Respondent, while reiterating averments made in the Reply, as briefly stated supra, has strongly opposed the Petition and urged the Tribunal to direct the Petitioner to extend one more opportunity to resolve the issue. However, he has not disputed the debt and default in question.
7. As stated supra, the Petitioner has earlier filed C.P (IB) No. 37/BB/2018 against the Respondent, which was disposed of as withdrawn by the Adjudicating Authority on 02.08.2019 by directing the Respondent to strictly adhere to the terms and conditions as mentioned in the joint memo dated 02.08.2019 without fail, failing which the Petitioner is at liberty to file fresh company petition in accordance with law. Since the Respondent



failed to adhere to terms of settlement as agreed upon, the instant Petition has been filed to initiate CIRP in respect of Respondent. The Petitioner has extended reasonable opportunity to the Respondent but it failed to avail it. The AA also granted sufficient time to the Respondent to explore the possibility of settlement of the claim in question.

8. The debt and default in question are prima facie proved as it was not opposed by the Respondent and it could not get sufficient resources to service the debt. And the instant Petition is filed in accordance with law, and a qualified Insolvency Professional is also suggested to appoint him as IRP, who is prima facie eligible to be appointed as such. Therefore, we are of the considered opinion that it is a fit case to admit by initiating CIRP by appointing IRP, and declaring moratorium etc., in respect of the Respondent.
9. In the result, by exercising powers conferred on this Adjudicating Authority, under provisions of Section 7 of the Code and other extant provisions of the IBC, 2016, we hereby admitted **C.P.(IB)No.195/BB/2020** by initiating Corporate Insolvency Resolution Process (CIRP) in respect **Shri Tubes & Steels Private Limited**, the Respondent/Corporate Debtor, with the following consequential directions:

- 1) **Shri Srinivas Thatikonda**, bearing **Registration No.** IBBI/IPA-002/IP-N00631/2018-19/11886, who is qualified Insolvency Professional, is hereby appointed as Interim Resolution Professional, in respect of the Respondent/Corporate Debtor namely Shri Tubes & Steels Private Limited to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;

The following moratorium is declared prohibiting all of the following, namely:



- a) the institution of suits or continuation of pending suits or proceedings against the Respondent/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 Securitisation 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) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;
 - f) 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;
 - g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
- 3) The IRP is directed to follow all extant provisions of the IBC, 2016, and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Adjudicating Authority from time to time.



- 4) The Board of Directors and all the staff of Respondent/ Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
- 5) Since name of IRP chosen by the Petitioner is not found in the list of Insolvency Professionals empanelled by the IBBI for Bengaluru Bench for duration January-June 2021, the Registry is directed to forward a copy of this order immediately to IBBI for his confirmation or otherwise of his appointment.
- 6) The Registry is directed to forward a copy of this order immediately to both the Parties and also IRP.
- 7) Post the case for report of IRP on **30th April, 2021.**

Sd/-

**(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL**

By



Sd/-

**(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL**

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OF THE ORIGINAL
for Deputy Registrar
National Company Law Tribunal
Bengaluru Bench
06/04