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IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Coram : (1) Shri Madan B. Gosavi, Hon'ble Member (J)
(2) Shri Virendra Kumar Gupta, Hon'ble Member(T)

CP (IB) No. 1726/KB/2018

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process 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:

Indian Overseas Bank, a body corporate constituted by and under the banking companies (Acquisition & Transfer of Undertakings) Act, 1970, having its Head Office at 763, Anna Salai, Chennai- 600 002 and carrying on business through its different branches including its branch office at Assets Recovery Branch 3, Chowringhee Approach, Kolkata- 700 072;

... Applicant/Financial Creditor

-Versus-

In the matter of:

R. D. Alloys Pvt. Ltd., having its registered office at 4, Middleton Street, Kolkata- 700 071, West Bengal
CIN: U27320WB1971PTC027983;

... Respondent/Corporate Debtor

Counsel appeared:

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|------------------------------------|--------------------------|
| 1. Mr. Ramesh Ch. Prusti, Advocate |] For Financial Creditor |
| 2. Ms. Mahuya Ghosh, Advocate |] |

1. Mr. Anuj Singh, Advocate]
2. Mr. Ritoban Sarkar, Advocate] For Corporate Debtor
3. Ms. Madhuja Barman, Advocate]

Date of Pronouncement of Order: 25.10.2019

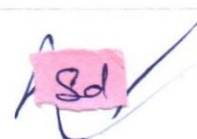
ORDER

Per Shri M. B. Gosavi, Member(J):

Indian Overseas Bank- the Financial Creditor filed this application under section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **R. D. Alloys Private Limited-** Corporate Debtor to start Corporate Insolvency Resolution Process (in short, "CIRP") of the Corporate Debtor as the Corporate Debtor committed default in paying the financial debt of Rs.10,16,90,510/-.

2. The following facts are not in dispute-

3. Initially, in the year 2002, the bank granted and disbursed in favour of the corporate debtor loan for sum of Rs.15 lakhs. Term of the repayment of the loan was extended from time to time. Bank has also enhanced the credit facility of the corporate debtor from time to time. Lastly, on 14.05.2015 the credit facility of the corporate debtor was enhanced to Rs.5.30 crores. The corporate debtor executed loan agreement, demand promissory note in favour of the bank having received the amount. Loan Account of the corporate debtor was declared NPA on 01.10.2015 for irregular payment of the loan instalment. On 02.01.2016, bank sent corporate debtor notice under section 13(2) of SARFAESI Act and recalled the credit facility. The bank called upon the corporate debtor to clear outstanding dues. Upon failure on the part of the corporate debtor to pay the debt, bank filed



recovery proceeding against the corporate debtor in DRT, Kolkata and it is pending. According to the financial creditor, as the corporate debtor committed default in paying the financial debt, this application is filed to start CIRP of the corporate debtor.

4. Financial Creditor suggested name of one Ms. Mamta Bihani, C/o- Mamta Binani & Associates, 2A Ganesh Chandra Avenue, Commerce House, Room No.6, 4th floor, Kolkata- 700 013 having registration no.IBBI/IPA-002/IP-N00086/2017-18/10227 and email id. mamtabinani@gmail.com for appointment of I.R.P. Proposed IRP has also submitted Written Communication dated Nil in Form- 2, wherein she has certified that there are no disciplinary proceedings pending against him with the Board or ICSI Insolvency Professional Agency.

5. Corporate debtor served with the notice. One of its directors, Mr. Manish Dhandhanian filed affidavit-in-reply. We perused reply. It is seen that corporate has taken two defences- (1) that application is not filed by properly authorised person and (2) time-barred debt is sought to be realised by the bank.

6. Corporate Debtor also gave history as to how the bank failed to disburse the loan in time and because of that reason, they suffered huge loss, etc. but in our considered view, in enquiry of this proceeding under section 7 of IBC, we have to see whether financial creditor established two facts- (1) that there is a debt due and payable by the corporate debtor of more than Rs.1 lakh (section 4 of I&B Code) and (2) whether corporate debtor committed default in paying the same and whether any disciplinary enquiry is pending against the proposed IRP [section 7(5)(a) and (b) of I&B Code].

7. In this case, there is no dispute as far as both facts are concerned. Corporate Debtor only contended that the officer filing the application is not properly authorised and the claim is time-barred.

8. We heard the Ld. Counsel, Mr. Ramesh Ch. Prusti for the Financial Creditor and Ld. Counsel for the Corporate Debtor, Mr. Anuj Singh. We have gone through the evidence on record.

9. This application is filed by one Mr. A.R.Kiran, Assistant General Manager of Indian Overseas Bank, Recovery branch. He has been authorised by General Manager, Mr. D. Palanaswamy and Mr. Palanaswamy was authorised to initiate such proceeding on behalf of the bank by the Board of Directors. One of the directors executed power of attorney in favour of Mr. Palanaswamy. On the basis of above evidence, we hold that Mr. A.R. Kiran, Assistant General Manager of the bank has been properly authorised to file this application.

10. Corporate Debtor also contended that it is time-barred claim. It is not under dispute that loan account of the corporate debtor became NPA on 01.10.2015. This proceeding is filed on 20.12.2018. It is seen from evidence on record that corporate debtor itself admitted that the amount became due and payable by them. Hence, firstly on 05.02.2016 and thereafter on 19.07.2019, they offered the bank to accept sum of Rs.6.5 crores as overall settlement to which the bank refused. In our considered opinion, the fact that corporate debtor offered the bank to pay Rs.6.5 crores towards One Time Settlement is valid acknowledgement of the debt within the meaning of section 18 Explanation (a) of Law of Limitation, 1963. Moreover, we are not considering recovery proceeding but we have to see whether Insolvency Resolution Process of the corporate debtor can be initiated against them, who committed the default in paying the debt. In our considered

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opinion, this is a fit case where CIRP of the corporate debtor is required to be initiated. Hence, we admit this application by the following order:

ORDER

- (i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process in respect of **R. D. Alloys Private Ltd.** Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.
- (ii) The 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 Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (iii) Moratorium under Sec.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;

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- 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 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 or suspended or interrupted during the 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 affect 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 Sec.31 or passes an order for liquidation of 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) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.



(ix) As per proposal given by the Financial Creditor, Ms. Mamta Bihani, C/o- Mamta Binani & Associates, 2A Ganesh Chandra Avenue, Commerce House, Room No.6, 4th floor, Kolkata- 700 013 having registration no.IBBI/ IPA-002/IP-N00086/2017-18/10227 and email id. mamtabinani@gmail.com is appointed as the Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

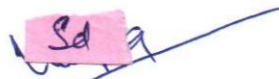
x) The Financial Creditor to pay to IRP a sum of Rs.1,00,000/- as payment of her fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.


xi) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016

xii) Registry is hereby directed under section 7(7) of the I&B Code, 2016 to communicate the order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post and also by email.

Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on **16.12.2019** for filing progress report.


(Virendra Kumar Gupta)
Member (T)


(Madan B. Gosavi)
Member (J)

Signed on this, the 25th day of October, 2019.