

**THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No.68/2020 And
CP (IB) No. 274/Chd/J&K/2018**

**Under Section 7 of Insolvency and
Bankruptcy Code, 2016**

In the matter of :
Jammu & Kashmir Bank Ltd.,
Registered office at M.A. Road, Srinagar,
Jammu & Kashmir-190001

And branch office at Phase 2,
Sector 54, Mohali, Punjab-160055

And LassiPora, Pulwama,
Jammu & Kashmir.

... Applicant-Financial Creditor

Versus

Mir Steel Rolling Mills Private Limited,
Having its registered office at
G.M. Complex, NH-1,
Kadlabal, Pampore, Pulwama,
Jammu & Kashmir-192122.

...Respondent-Corporate Debtor

Judgement delivered on: 20.03.2020

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Pradeep R. Sethi, Member(Technical)**

For the applicant : Mr. Mayank Mathur, Advocate

For the respondent : 1. Mr. Aalok Jagga, Advocate.
2. Mr. A.P.S. Madaan, Advocate

Per: Pradeep R. Sethi, Member(Technical)

JUDGEMENT

IA No.68/2020

This application is filed for condonation of delay of 7 days in filing the rejoinder. In view of the reasons given therein, the delay is condoned and IA No.68/2020 is disposed of.

The instant application is filed in Form 1 by Jammu & Bank Kashmir Bank Ltd. (**J&K Bank**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the matter of Mir Steel Rolling Mills Pvt. Ltd. (**Mir Steel**). The application is signed by Shri Mohd. Hanif Kirmani, Assistant Vice President (Law), Attorney Holder/Authorised Officer of J & K Bank. His affidavit verifying the contents of the application is at page 22 to 24 of the petition. Special Power of Attorney of J & K Bank dated 30.03.1994 appointing Mr. Mohd. Hanif Kirmani as true and lawful attorney of the Bank is at Annexure P-1 of the petition.

2. As per the certificate of incorporation at Annexure P-2 of the petition, the registered office of Mir Steel is in Pampore, Jammu & Kashmir. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. In Part IV of Form 1, it is stated that sometime in 2010, Mir Steel approached J&K Bank for availing a term loan facility (Term Loan I) of ₹8.5 crores and cash credit facility of ₹5.14 crores for setting up a rolling mill and also meeting various working capital requirements. It is stated that the credit facility was sanctioned vide letter dated 26.02.2010 and disbursed on 30.03.2010 and a loan agreement dated 30.03.2010 was executed between Mir Steel and J&K Bank. Subsequently, additional term loan of ₹5.4 crores is stated to be sanctioned vide letter dated 11.11.2010 and vide sanction letter dated 28.09.2011, the cash credit facility was enhanced to ₹24 crores and later on 30.03.2015, the same was reduced to ₹20.00 crores. An additional ad hoc cash credit facility of ₹5.00 crores is stated to be availed by Mir Steel for a period of 90 days vide extension agreement dated 30.09.2015.

4. It is submitted that in September, 2014, the State of Jammu & Kashmir was engulfed in devastating floods resulting in a huge loss to the economy and in relation to the same, J&K Bank formulated a rehabilitation scheme and under that scheme, Mir Steel availed a fresh working capital term loan (Term Loan II) of ₹14.00 crores vide sanction letter dated 30.03.2015 and rehabilitation/restructuring agreement dated 31.03.2015 for the purpose of funding various existing credit facilities.

5. It is stated that after availing the aforesaid credit facility, the account of Mir Steel became NPA and continued to be irregular and that J&K Bank did not receive any payment from Mir Steel and was thus left with no other alternative but to declare the account of Mir Steel as NPA on 31.03.2016. Recall notice is stated to be issued on 20.04.2016.

6. The total outstanding balance as on 30.06.2018 is stated to be ₹72,39,61,277.74 and the statement of account depicting the outstanding balance as on 30.06.2018 is stated to be annexed as Annexure P-10. The certificate under Section 2(A)(a) and Section 2(A)(b) of the Bankers Books Evidence Act, 1891 is stated to be submitted at Annexure-19 of the petition.

7. It is submitted that Mir Steel is liable to pay ₹72,39,61,277.74 along interest from 30.06.2018 onwards.

8. In Part V of Form 1, it is submitted that the primary security is hypothecation of stocks of raw material, stock in process, finished goods, stores and spares, consumables, receivables, and other moveable current assets of Mir Steel, present and future. The details of collateral securities are given as under:-

1. *Mortgage of a commercial complex, comprising of land admeasuring 17 marlas and 5 sarsai with a commercial structure thereupon housing 28 shops in ground floor and 1st Floor, office blocks etc. in the 2nd Floor, situated at national highway Pampore standing in the name of Mr. GhMohidin Mir R/O KadalBal, Pampore. The property is valued at Rs.2.07 crores as per valuation of M/s J.S. Consultants.*
2. *Mortgage of leasehold rights of land measuring 25 kanals situated at IGC Kassipora leased out in favour of the lessee vide deed dated 13.11.2009, along with the civil structures to be raised thereupon estimated value of Rs.16.78 Crs as per valuation report by M/s Regal Engineers & Consultants dated 22.04.11.*
3. *Mortgage of land at Pampore valuing not less than Rs.2.00 crores.*
4. *Extension of charge on the following securities with aggregate value of Rs.3.26 Crs already charged to the Bank against CC limit of Rs.2.07 crores of M/s Mir Sales Corporation.*

**Double storied residential house at KadalabalPampore along with land measuring 1 kanal and 6 Marlas having valued at Rs.1.28 crores.*

**Land measuring 1 kanal and 3 Marlas valued at Rs.0.60 Crs.*

**1 kanal of land at KandalabalPampore valued at Rs.0.58 Crs.*

5. *Extension of charge on the securities held by the bank in respect of M/s S.A. Gold Ispat Pvt. Ltd. with aggregate value of Rs.9.20 Crs (the company is availing CC limit of Rs.6.00 crores from BULD, Sgr.*
6. *Additional security in the shape of immovable property having market value not less than Rs.2.00 Crs.*

9. In Part III of Form 1, J &K Bank has proposed the appointment of Shri Neeraj Bhatia as Interim Resolution Professional (**IRP**). His written communication in Form 2 of the Insolvency and Bankruptcy Board of India

(Application to Adjudicating Authority) Rules, 2016 is stated to be filed as Annexure-17 of the petition.

10. Vide order dated 14.12.2018, notice of the petition was directed to be issued to Mir Steel. Mir Steel filed reply vide Diary No.729 dated 27.01.2020. Rejoinder thereto was filed by J&K Bank vide Diary No. 1194 dated 13.02.2020.

11. We have carefully considered the arguments and submissions made during the course of the hearing by the learned counsel for Mir Steel and J&K Bank and have also perused the record. The learned counsel for Mir Steel has pleaded that there was concealment of material facts by J&K Bank in its petition regarding One Time Settlement (**OTS**) dated 05.08.2017. It has been pleaded that in view of the OTS, no default occurred and that the OTS was wrongly and illegally revoked by J&K Bank. It is stated that prior to the acceptance of OTS, an agreement to sell dated 14.04.2017 was executed by the then promoters of Mir Steel with the current Directors namely Shri Bilal Hassan Anim and Shri Safdar Ali Wani partners of M/s Builttech Industries-Unit 1 and as per this agreement, it was predominately decided between the parties that the three companies which are also a subject matter of the present proceedings, shall be taken over by the two parties, through their firm and the deal was finalised for ₹125 crores. Reference was also made to Civil Original Suit filed by Mir Steel and Others vs. J&K Bank and Others *inter alia* for illegal and unilateral termination of OTS by J&K Bank and to the order dated 26.06.2018 of the Pr. District Judge, Pulwama *inter alia* restraining any kind of action vis-a-vis recovery of the outstanding loan. Reference was made to order dated 22.02.2019 of Sub Judge, Special Mobile Magistrate, Pulwama

directing the parties including J&K Bank to maintain status quo on spot with regard to three business units Mir Steel Rolling Mills Pvt. Ltd., Mir Kings, Industries Pvt. Ltd. and Mir Kings Tube Mill Pvt. Ltd. till the next date of hearing and to the stay of operation of the order vide order dated 16.03.2019 of Pr. District Judge, Pulwama.

12. We note that in the reply, Mir Steel has stated that there was group account which had availed credit facilities from J& K Bank and that this group included Mir Steel and Mir Kings Industries Pvt. Ltd. (**Mir Kings Industries**). Application under Section 7 of the Code for initiation of CIRP was filed by J&K Bank in the matter of Mir Kings Industries also. Vide order dated 22.01.2020 of this Bench, the petition for initiation of CIRP in the case of Mir Kings Industries was admitted. The submissions made by Mir Kings Industries were on similar terms as in the present case. With reference to the submissions, the discussion in para Nos. 19 to para 23 made in the order dated 22.01.2020 *supra* is as follows:-

“19. The respondent-corporate debtor mainly contended that there was a pre-existing dispute between the parties, basing on two civil suits, pending against the applicant-bank. It was further contended that in view of the interim orders passed in the said suits, the petitioner cannot initiate the instant CIRP proceedings. The Civil Original Suit filed by the respondent-corporate debtor (Plaintiff No.4 in the suit) along with Mir Steel Rolling Mills Pvt. Ltd. and others (Annexure R-11 at Page 45 of the reply) was filed seeking a declaration that the revocation of sanction of OTS proposal is null and void and for other consequential reliefs. Firstly, it is to be seen that the said suit was filed not for a declaration that respondent-corporate debtor is not liable to pay the debt due to the applicant-bank but on the other hand to compel the bank to accept its OTS proposal, which is more than ₹1 lac. Even by way of the said suit, the respondent-corporate debtor admitted its liability to pay the debt to the applicant-bank, which is more than ₹1 lac. Therefore, in our view, the pendency of the said suit cannot be a predicament to initiate CIRP against the respondent-corporate debtor.

20. *In Karan Goel Versus M/s Pashupati Jewellers and Another; CA (AT) (INS) No.1021/2019, dated 01.10.2019, the Hon'ble National Company Law Appellate Tribunal, held that "merely because a suit has been filed by the appellant and pending, cannot be a ground to reject the application under Section 7 of the I&B Code. Pre-existing dispute cannot be a subject matter of Section 7, though it may be relevant under Section 9 of the I&B Code.*

21. *Further, the other contention raised by the respondent-corporate debtor that the stay order dated 26.06.2018 passed in the above referred suit (Annexure R-12 Page 56 of the reply) is a bar to this adjudicating authority to entertain the instant CP, is also unacceptable. The Court of Principal District Judge, Pulwama, in the above suit, restrained the applicant-bank from taking any kind of action vis-à-vis recovery of the outstanding loan and not to take any coercive measures and to make any publication of the names of the plaintiff-company, promoters, directors, guarantors and co-borrowers to their person and property in the print and electronic media.*

22. *As held by the Hon'ble NCLAT, in Binani Industries Limited Versus Bank of Baroda; CA No.82 of 2018 "CIRP is not a money claim nor a suit or litigation." Hence, the interim order dated 26.06.2018 cannot come in the way of this Adjudicating Authority in initiation of CIRP against the respondent-corporate debtor, if all other requirements of the Code are satisfied.*

23. *With regard the Suit (Annexure R-13 and R-14 of the Written Statement) filed by Bilal Hassan Anim and Another, the said suit was not for any declaration that the respondent-corporate debtor was not liable to pay any amount more than ₹1 lac to the petitioner. Further, since, admittedly, the interim order dated 22.02.2019 was stayed by the Principal District Judge, Pulwama, in an appeal filed by the applicant-bank and also for the above referred reasons, the pendency of the said suit also cannot be treated as a predicament to initiate CIRP."*

13. Therefore, for the reasons given in the order dated 22.01.2020 *supra* the contentions/objections raised by Mir Kings are rejected.

14. Section 7(5)(a) of the Code is as follows:-

"5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”

15. Three conditions are therefore provided in Section 7(5)(a) of the Code i.e. default has occurred; application is complete; no disciplinary proceeding is pending against the proposed IRP.

16. The occurrence of the default is well proved in the present case in which the J&K Bank has granted credit facility, accounts became irregular and had to be declared as NPA on 31.03.2016. Further, recall notice dated 20.04.2016 (Annexure P-9 of the petition) is stated to be issued by J&K Bank. In their reply, the contention of Mir Steel is that no default has occurred because the dispute between the parties came to be settled by way of OTS dated 05.08.2017. However, Mir Steel has not been able to show that the payments as per the terms of the OTS were made.

17. The Hon'ble Supreme Court In Innoventive Industries Ltd. Vs. ICICI Bank (2018) 1 SCC 407 has held as under:-

“When it comes to a financial creditor triggering the process, [Section 7](#) becomes relevant. Under the explanation to [Section 7\(1\)](#), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under [Section 7\(2\)](#), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V.

Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor.

The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important.

This it must do within 14 days of the receipt of the application. It is at the stage of [Section 7\(5\)](#), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.

Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”

18. Mir Steel and 5 others filed Civil Original Suit against J&K Bank and Others before Principal District and Session Judge, Pulwama alleging that J&K Bank illegally and unilaterally terminated the OTS and is adamant to take coercive measures against the plaintiff. Vide order dated 26.06.2018, the defendants/respondents were *inter alia* restrained from taking any kind of action vis-a-vis recovery of the outstanding loan and not to take any coercive measures. This suit as well as another suit have been discussed in order dated 22.01.2020 of this Bench of the Tribunal in the case of Mir Kings *supra*. It was concluded that the pendency of the suits cannot be a predicament to initiate CIRP against the respondent/corporate debtor. Therefore, the pendency of the suits does not make the debt as not payable in law or in fact. The judgement of Hon'ble Supreme Court in Innoventive Industries Ltd. Vs. ICICI Bank is

clearly applicable. It is concluded that default has occurred in the present case.

19. No objections have been raised in the reply by Mir Steel to the completeness of Form No.1. We have discussed the contents of Form No.1 above and find the application to be complete.

20. In Form No.2 filed by Shri Neeraj Bhatia, proposed IRP, it is certified that there are no disciplinary proceeding pending against him with the Board or Institute of Insolvency Professionals.

21. We conclude that the conditions provided for by Section 7(5(a) of the Code are satisfied in the present case. We therefore, admit the application for initiation of CIRP in the case of Mir Steel Rolling Mills Ltd. Directions with regard to moratorium and appointment of IRP are discussed below.

22. We declare the Moratorium in terms of sub-section (1) of Section 14 of the Code as under:-

- (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.

23. 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 moratorium period. 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.

24. 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 corporate debtor under Section 33 as the case may be.

25. The Law Research Associate of this Tribunal has checked the credentials of Mr. Neeraj Bhatia and there is nothing adverse against him.

26. The following directions are issued in respect of the appointment of the Interim Resolution Professional:-

- i) Appoint Mr. Neeraj Bhatia, registered insolvency professional bearing Registration No. IBBI/IPA-001/IP-P00824/2017-18/11400; address: P-27, 1st Floor, Malviya

Nagar, New Delhi-110017, email ID: nbtrace1@yahoo.com
as Interim Resolution Professional.

- ii) The term of appointment of Mr. Neeraj Bhatia shall be in accordance with the provisions of Section 16(5) of the Code;
- iii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;
- iv) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance

with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

- v) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- vi) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vii) The Interim Resolution Professional 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 constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the

committee within seven days of filing the report of constitution of the committee; and

viii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

27. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

28. Accordingly, the petition No.274/Chd/J&K/2018 is admitted.

Pronounced in open court.

Sd/-

(Ajay Kumar Vatsavayi)
Member (Judicial)

Sd/-

(Pradeep R. Sethi)
Member (Technical)

March 20, 2020.
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