

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**SPECIAL BENCH, NEW DELHI**

**C.P. NO.IB-494(PB)/2019**

**IN THE MATTER OF:**

Syndicate Bank

....Petitioner

Vs.

Him Steel Pvt. Ltd.

....Respondent

**SECTION: Under Section 7 of the Insolvency and Bankruptcy Code, 2016**

**Order delivered on: 15.07.2019**

**Coram:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**

**Hon'ble President**

**Dr. Deepti Mukesh**

**Hon'ble Member (Judicial)**

**PRESENTS:**

For Petitioner

: Mr. Sumit Shukla, Advocate

For Respondent

: Mr. Anurag Bhatt, Mr. Lokesh Pathak and  
Ms. Ishita Srivastava, Advs.

**ORDER**

**M.M.KUMAR, PRESIDENT**

The Petitioner claiming to be financial creditor has filed the instant Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution



Process in respect of respondent Him Steel Private Limited (for brevity the 'corporate debtor'). It is appropriate to mention that the 'financial creditor' is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.

2. The Corporate Debtor – Him Steel Pvt. Ltd. was incorporated on 03.05.2011 under the provisions of the Companies Act, 1956. The identification number of the Corporate Debtor given is CIN U27205DL2011PTC218461.
3. The petitioner has placed on record the summary of the various credit facilities sanctioned to the corporate debtor and the same is depicted in tabular form as follows:

<b>Sr. No.</b>	<b>Facility Name</b>	<b>Limit Granted (Amount in INR)</b>
1.	Cash Credit	350,000,000.00
2.	Term Loan 1	350,000,000.00
3.	Term Loan 2	800,000.00
4.	Debit Balance in Current Account	100,000,000.00
5.	Letter of Credit	50,000,000.00
	<b>Total</b>	<b>850,800,000.00</b>

It is submitted by the financial creditor that the facility was first granted to the corporate debtor on 28.09.2015 and then on 13.12.2016. The petitioner has also placed on record a sanction letter dated 23.11.2016 **(Appendix A6)**.

4. The petitioner states that the account of the respondent-corporate debtor was classified as NPA on 30.10.2017 and the Bank had also issued a notice under section – 13(2) of the SARFAESI Act, 2002 on 30.01.2018 and further issued a notice under Section-13(4) of the SARFAESI Act, 2002 on 14.11.2018 **(Appendix A5)**. It is also submitted that charge was created on the various properties and the same was registered with the Registrar of Companies **(Appendix A26-Colly)**.
5. The precise case of the Petitioners is that the total amount in default due to the financial creditor by the corporate debtor as on 31.01.2019 is Rs. 81,59,01,954.04/- . A tabular chart depicting detailed computation of the amount in default is annexed **(Appendix A3 as amended by additional affidavit dated 05.03.2019)**.



6. The Financial Creditor has proposed the name of CA Reshma Mittal as the Insolvency Professional and her address is C-51, RDC, Raj Nagar, Ghaziabad - 201002, Mobile No. 8860441411 and E-mail-id is -careshmamittal@gmail.com. Her registration number is IBBI/IPA-001/IP-P00297/2017-18/10541. She has filed her written communication which satisfies the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration (**Annexure-II**).
7. In Part-IV of the Petition, the Financial Creditor has given the details of the total amount of the financial debt along with the dates of disbursement. In Column 2 of Part-IV of the Application the Financial Creditor has mentioned the amount claimed in default and the date of the default.
8. In Part V of the Petition the Financial Creditor has mentioned the particulars of the documents and records that substantiate that loan disbursed, the Corporate Guarantees, list of the properties mortgaged, etc. The petitioner- financial creditor has placed on record a copy of the CERSAI report indicating the charge created in its favour (**Appendix A25**)



**Colly).** The petitioner- financial creditor has also placed on record CIBIL Report and a statement of account along with the Bankers Certificate under the Bankers Book Evidence Act **(Appendix A24 Colly).**

9. A reply to the petition was then filed by one Mr. Ashok Raja, being the Director of the Respondent- Corporate Debtor and also a Rejoinder to the Reply has been filed by the Petitioner- Financial Creditor.

10. In the Reply the Respondent-Corporate Debtor has admitted the disbursement of Loan by way of various facilities sanctioned along with the securities by way of guarantee and mortgage, but has disputed the amount of facilities sanctioned as mentioned by the petitioner in Part-IV of Form- 1.

The objection raised with regard to the amount of facilities granted has been controverted by the petitioner – financial creditor. It is submitted that the corporate debtor has not taken into account the pre-existing term loan facility of Rs. 35 Crores sanctioned on 28.09.2015. The same has been mentioned in the sanction letter dated 23.11.2016 and

acknowledged by the corporate debtor vide letter dated 28.08.2018. Both the letters are placed on record along with the main petition.

The objection raised is wholly unwarranted as the amount in default is more than the statutory prescribed limit of Rs. 1 Lakh and the same is rejected.

11. The preliminary objection raised by the Respondent-Corporate Debtor is that the present Petition is not filed under proper authorisation as mandated by the Code. Further it is also pointed out that the relevant disclosures have not been made by the proposed IRP.

However the objections raised have been put to rest by the petitioner-financial creditor by placing on record the authorization letter dated 06.05.2019 by the Stressed Asset Management Branch of the Bank in respect of Mr. Rajender Pal Chandel (**Exhibit A1**) and the Form 2 duly signed by the proposed IRP along with relevant disclosures (**Exhibit A2**). Therefore the objections raised would not sustain and the same are hereby rejected.

12. In view of the aforesaid, we find that advancement of loan and default stand admitted. Even Otherwise there is

overwhelming documentary evidence on record which support those findings. The name of the IRP has been proposed and there are no disciplinary proceedings pending against the proposed Interim Resolution Professional.

13. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process stand fulfilled and accordingly the present petition is admitted.

14. Having heard the learned counsels for the Financial Creditor and Corporate Debtor and having perused the paper book with their able assistance we find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied as discussed in detail in our Order dated 27.11.18 rendered in the of ECL Finance Limited vs. Digamber Buildcon Pvt Ltd (IB- 1039(PB)/2018).

15. The aforesaid discussion and the material placed on record would lead us to confirm that the petitioner-financial creditor has disbursed money to the respondent-corporate debtor.

Though a considerable long period has lapsed the amount



due has not been repaid back to the financial creditor-petitioner. It is accordingly held that the respondent-corporate debtor has committed default in repayment of the outstanding financial debt which exceeds the statutory limit of rupees one lakh.

16. As a sequel to the above discussion, this petition is admitted and CA Reshma Mittal is appointed as the Interim Resolution Professional.
17. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee to a corporate debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



18. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately (3 days) make public announcement with regard to admission of this application under Section 7 of the Code.
19. We direct the Financial Creditor to deposit a sum of Rs. 2 Lacs with the Interim Resolution Professional namely CA Reshma Mittal 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 needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.
20. There is a general complaint received against the financial creditors, banks, NBFCs and Asset Reconstruction Companies that the amount claimed by them is far more than what is owed by the corporate debtor to them. Many a



times the rate of interest is alleged to be exorbitant and allegations are levelled that a penal interest compounded monthly has been charged. We have no mechanism of rectification of claims made. However, the RPs ordinarily have professionals & experts at their disposal and in case the ex-management raises any such issue then the RP must get it settled in order to avoid any injustice to the corporate debtor.

21. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than seven days from today. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.



**(M.M.KUMAR)  
PRESIDENT**

15.07.2019



**(DR. DEEPTI MUKESH)  
MEMBER (JUDICIAL)**

15.07.2019  
(VIDYA)