

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD
COURT 1

TP 127 of 2019 [CP(IB) 34 of 2019]

Coram: Hon'ble Mr. MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)
Hon'ble Mr. VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE
INDORE BENCH AT AHMEDABAD OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.07.2020

Name of the Company:

Corporation Bank
V/s
Kapil Steels Ltd

Section:

Section 7 of Insolvency and Bankruptcy Code, 2016

ORDER

No one appeared for the Operational Creditor as well as for the Corporate Debtor.

The case is fixed for pronouncement of order. The order is pronounced in the open Court vide separate sheet.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

Dated this the 27th day of July, 2020

PC

(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD**

CP (IB) No.34/7/NCLT/AHM/2019

In the matter of :

Corporation Bank
63, M.G. Road, Singapore Market,
Regal Square,
Indore,
M.P.(India)
Through its Director
(Mr. Manish Malaviya)

..Financial Creditor

Versus

Kapil Steels Limited
CIN:U27105MP1987PLC003834
Registered Office at :
101-103. Indore Trade Centre,
3/2 South Tukoganj,
Indore-452 001.

..Corporate Debtor

Date of Pronouncement of Order 28th July, 2020

Coram: HON'BLE MR. MADAN B. GOSAVI, MEMBER(J)

HON'BLE MR. VIRENDRA KUMAR GUPTA, MEMBER (T)

Appearance:

Learned Counsel Mr. Anand Prabhawalker for the Financial
Creditor.




Learned Counsel Mr. Rajat Lohia for the Corporate Debtor.

ORDER

[Per: HON'BLE MR. MADAN B. GOSAVI, MEMBER(J)]

1. Corporation Bank – Financial Creditor has filed this application under Section 7 of the Insolvency and Bankruptcy Code, 2016 against Kapil Steels Limited having CIN No. U27105MP1987PLC003834 and Registered Office at 101-103, Indore Trade Centre, 3/2 South Tukoganj, Indore-452001 to initiate Corporate Insolvency Resolution Process of the Corporate Debtor on the ground that the Corporate Debtor has committed default in paying the financial debt of Rs.39,45,91,882/-.
2. The following facts are not in dispute.
3. On 30.05.2015, bank granted and disbursed to the Corporate Debtor a loan of Rs. 30 crores. On 08.08.2016, the loan account is declared to be NPA for irregular repayment of the loan by the Corporate Debtor. On 01.10.2016, bank served upon the Corporate Debtor notice under section 13(2) of the SARFAESI Act, 2002 and filed recovery proceedings in DRT Jabalpur (Madhya Pradesh). This application under Section 7 of the Insolvency and Bankruptcy Code, 2016 is filed on 10.12.2018.



4. The bank stated that since the Corporate Debtor committed default in paying the financial debt. This application is filed to start Corporate Insolvency Resolution Process of the Corporate Debtor.
5. Notice of this application was duly served on the Corporate Debtor. The Corporate Debtor appeared in this proceedings through one of its Director Mr. Manish Malviya filed affidavit in reply.
6. As pointed above, he did not dispute two material facts i.e. (i) that bank granted and disbursed in favour of the Corporate Debtor a loan of Rs. 30 crores & (ii) Corporate Debtor committed default in paying the same. However, to contest this application, he raised three defence i.e (i) application is defective and cannot be admitted (ii) Officer filing this application on behalf of bank has not been properly authorized & (iii) Since the Larsen & Tubro Limited, its one of the customers did not clear the bills, default has occurred.
7. We heard Learned Counsel Mr. Anand Prabhawalker for the bank. No one appeared on behalf of the Corporate Debtor. However, we have gone through the written notes of submission filed on behalf of the Corporate Debtor.
8. As far as third defence is concerned, it is strictly matter in between the Corporate Debtor and Larsen & Tubro



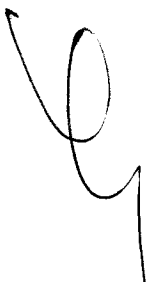
Limited, Financial Creditor has nothing to do with that dispute (if any). The fact remains to be proved on record is that the Corporate Debtor committed default in paying financial debt.

9. The Corporate Debtor contends that the application filed by the bank under Rule 4 of Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 is defective.
10. We have perused the bank application filed under above Rule. We note with certainty that it is correctly filed in proper forms prescribed under the said Rule. All required information is disclosed in the application and application is not defective at all. Hence, this defence raised by the Corporate Debtor is not sustainable.
11. The Corporate Debtor contends that the application is not filed by duly authorized officer of the bank. For this, we note that Mr. Shaik Fayaz Ahmed, Chief Manager has been duly authorized to initiate this proceeding.
12. By separate affidavit dated 23.09.2019, bank produced on record the resolution dated 12.12.2017 passed in meeting of Board of Directors of the Bank authorizing all the officers of the bank in the Rank of Scale-IV and above are duly authorized to file the proceeding under Insolvency and Bankruptcy Code, 2016 on behalf of the Bank. It is

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needless to mention that Chief Manager of the Bank – signatory herein, is duly authorized to file this application.

13. Moreover, the Hon'ble Hon'ble NCLAT in case of Palogix Infrastructure (P) Ltd. Vs. ICICI Bank Ltd [2017] 86 taxmann.com 81 (Hon'ble NCLAT) has held that “*this apart, if an officer, such as Senior Manager of a Bank has been authorized to grant loan, for recovery of loan or to initiate a proceeding for ‘Corporate Insolvency Resolution Process’ against the person who have taken loan, in such case the ‘Corporate Debtor’ cannot plead that the officer has power to sanction loan, but such officer has no power to recover the loan amount or to initiate ‘Corporate Insolvency Resolution Process, inspite of default of debt.’*”
14. For all above reasons, we hold that the Corporate Debtor is required to be admitted in Corporate Insolvency Resolution Process as per Section 7 of the Insolvency and Bankruptcy Code, 2016.
15. In view of the above facts and applicable legal provisions of law, we are of the considered view that this Application needs to be admitted. It is otherwise complete, defect free and complies with the requirement(s) of relevant provisions of Insolvency & Bankruptcy Code, 2016 r.w. Regulations made thereunder.

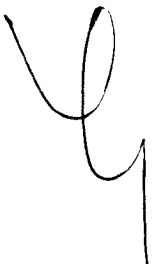


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16. The name of proposed IRP with requisite consent of such person is on record. It is also noted that no disciplinary proceedings are pending against such person. In view of the above facts, this Adjudicating Authority hereby admit IB application filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, for initiation of Corporate Insolvency Resolution Process, in respect of the Corporate Debtor with the following directions:

ORDER

1. Corporate Debtor Kapil Steel Ltd is admitted in CIRP in Insolvency and Bankruptcy Code, 2016.
2. We appoint Mr. Mangesh Vitthhal Kekre, registration no. IBBI/IPA-001/IP-P00539/2017-2018/10964, having address 607, Chetak Center, RNT Marg, Nr. Hotel Shreemaya, Indore, Madhya Pradesh- 452001, e-mail : ca.mangesh@gmail.com under section 13(1) (c) of the IB Code as IRP.
3. That the Moratorium under Section 14 of the Code shall come to effect from 28.07.2020 till the completion of 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.

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4. That the Bench hereby prohibits the institution of suits or continuation of pending suit 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(s), transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; 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 SARFAESI Act, 2002 the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
5. Further, litigation or any application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to pronouncement of this order such proceedings are expected to be dealt with in accordance with law r.w. Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.
6. That the supply of essential goods or services to Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium, period. The Corporate Debtor to provide effective



assistance to the IRP as and when he takes charge of the Corporate Debtor.

7. The IRP so appointed shall make Public announcement of Corporate Insolvency Resolution Process (CIRP) be made immediately as specified under Section 13 of the Code and by calling for submissions of claim under Section 15 of the Code.
8. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
9. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation



imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

10. We direct the Financial Creditor / Applicant to pay the IRP a sum of Rs.1,00,000/- (One Lakh) as fees & expenses till the COC decides about his fees / expenses of the RP.
11. The Registry is directed to communicate a copy of this order to the Petitioner-Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on website immediately after pronouncement of the order.
12. The commencement of Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.
13. CP(IB) No. 34/7/NCLT/AHM/2019 is allowed and stands disposed of.

Virendra Kumar Gupta
28/7/2020

(VIRENDRA KUMAR GUPTA)
ADJUDICATING AUTHORITY &
MEMBER (T)

Madan B. Gosavi
28/7/2020

(MADAN B. GOSAVI)
ADJUDICATING AUTHORITY &
MEMBER (J)

Signed on this, the 28th day of July, 2020.

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