

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

Coram: MR. AJAY KUMAR VATSAVAYI,
HON'BLE JUDICIAL MEMBER

MR. L. N. GUPTA,
HON'BLE TECHNICAL MEMBER

IA No. 259/JPR/2021
CP (IB) No. 49/7/JPR/2019

UNDER SECTION 7 OF THE INSOLVENCY

AND BANKRUPTCY CODE, 2016

IN THE MATTER OF

SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA

Add.: Jaipur Branch Office, First Floor,
Jeevan Nidhi Building II, LIC Complex,
Bhawani Singh Road, Ambedkar Circle,
Jaipur- 302005, Rajasthan

...Financial Creditor/ Petitioner

VERSUS

M/S NIRMAL INDUCTOMELTS PRIVATE LIMITED

CIN: U27310RJ2003PTC018285

Reg. Add.: F- 167, 168, 169, Udyog Vihar,
Jaitpura, Jaipur- 303704, Rajasthan

...Corporate Debtor/ Respondent

AND IN THE MATTER OF

IA No. 259/JPR/2021

SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA

Address: Ground floor Dremax Plaza

Sahkar Marg, C-Scheme,

Jaipur- 302015, Rajasthan

...Applicant

Versus

M/S NIRMAL INDUCTOMETELTS PRIVATE LIMITED

Registered Office at-
F- 167, 168, 169, Udyog Vihar,
Jaitpura, Jaipur- 303704, Rajasthan

...Respondent

For the Petitioner: Mr. Prabhansh Sharma. Adv.
For the Respondent: Mr. Naresh Kumar Sejvani, Adv.

Order Pronounced On: 30.09.2021**ORDER**

Per: Mr. Ajay Kumar Vatsavayi, Member (Judicial)

CP (IB) No. 49/7/JPR/2019

1. This petition is filed by Small Industries Development Bank of India, (for brevity “Petitioner”), claiming to be a Financial Creditor, through Mr. Chinmay Dholakia who is duly authorized to file this application against the Corporate Debtor, Nirmal Inductometals Private Limited (for brevity “Respondent / Corporate Debtor”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of the Corporate Insolvency Resolution Process (CIRP), pursuant to default in repayment of loan amount by the Corporate Debtor to the Petitioner.

2. The Petitioner is a corporation established by Small Industries Development Bank of India Act, 1989 and the PAN of the Petitioner Company is AABCS3480N. The Registered Office of the Company is at SIDBI Tower, 15 Ashok Marg, Lucknow- 226001 (Uttar Pradesh).
3. The Corporate Debtor is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 14.05.2003, duly registered with Registrar of Companies, Jaipur bearing CIN: U27310RJ2003PTC018285 and the Registered Office of the Corporate Debtor is at F-167,168,169, Udyog Vihar Jaitpura, Jaipur-303704 (Rajasthan). The Corporate Debtor is a manufacturer and supplier of UPVC furniture, aluminium furniture, casement windows & door, slider door etc.
4. It is the case of the Petitioner that the Respondent has availed financial assistance for Rs.1,75,00,000/- under a loan agreement dated 30.03.2016, repayable in 48 instalments as per the terms of agreement under the Growth Capital & Equity Assistance Scheme for MSME (GEM). The Respondent has repaid 16 instalments till 31.07.2018 and failed to repay subsequent instalments due from 10.08.2018 till 10.02.2019, amounting to Rs.35,97,498/- (with interest). The account of the Respondent has been classified as Non-Performing Asset (NPA) on 08.11.2018 and the same was intimated to the Petitioner vide letter dated 08.11.2018. Despite various letters/ notices issued to the

Respondent for repayment of outstanding dues, the respondent has neither replied nor repaid the overdue amount.

5. As a consequence, this application was filed. As claimed by the Petitioner, the Respondent is liable to pay an amount of Rs.35,97,498/- as on 10.08.2018 as an outstanding amount, as reflected in Part IV of the Form- 1 filed.

Part-IV

S. No.	Particulars of Financial Debt	
1.	Total amount of debt granted.	Rs.1,75,00,000/- Date of disbursement: 31.03.2016
2.	Amount claimed to be in default and the date on which the default occurred	Rs.35,97,498/- Date of first default: 18/08/2018

6. It is stated in Part-V of Form No.1 that there is a residual charge on all the movable assets (including current assets) of the Respondent-Corporate Debtor and such charges would be subservient to all the existing and prospective charges created/ to be created by the borrower on the said assets in favour of those banks/ Financial Institutions which have extended/ would extend business loans (viz. term loans for machineries, business premises and working capital) to the borrower for the same business for which SIDBI has extended this Sub-debt. It is also stated that all such aforesaid lenders would be referred to as

“Senior Secured Lenders”. Date of Creation of charge is stated to be 30.03.2016. In respect of Estimated Value, it is stated that as it is a residual charge, it is ascertainable only upon realization. Copy of certificate of Charge with Registrar of Companies, the Loan Agreement dated 30.03.2016 and CIBIL report are attached as Annexure A-2, A-3 & A-4 respectively of the application.

7. In Part-III of Form No.1, Mr. Prashant Sharma, Registration No. IBBI/IPA-001/IP-P00290/2017-18/10534 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 11.02.2019 submitted by the proposed IRP is found at Page Nos.185-186 of the petition.
8. The corporate debtor has filed reply vide Diary No.812 dated 02.03.2021. It is submitted that it is undisputed that the Financial Creditor has sanctioned and disbursed loan facility to corporate debtor and corporate debtor has also fulfilled part obligation and repaid 16 instalments and interest accrued till 31.07.2018 out of total 48 instalments. It is also stated that the Financial Creditor has erred in law to classify the corporate debtor as Non-Performing Asset as it has ignored the RBI Circular DBR No. BP.BC 100/21.04.2018 dated 07.02.2018 and as per circular, the account of corporate debtor can be classified only after 31.01.2019, whereas the financial creditor has classified the same on 08.11.2018.
9. It is also contended that the Financial Creditor is using pressure

techniques to realize the due amount, for which, the corporate debtor is not denying to the extent of principal overdue and interest accrued thereon. It is further stated that the amount of penal interest and further interest is subject matter of dispute as no calculation of the same has been provided by the financial creditor to the corporate debtor. It is submitted that the corporate debtor is seeking allowance of time to clear dues as it was requested by the directors of corporate debtor during their personal discussion with the officials of the Financial Creditor. Further, it is pointed out that the present petition has been filed by Mr. Chinmay Dholakia on behalf of SIDBI/ Financial Creditor, on the basis of the undated authorization given by Mr. C.V Arun Kumar, who is also an employee of SIDBI and whose authority for this authorization is also a subject matter of strict proof, bearing no rubber stamp of SIDBI and the copy of the same is attached as Annexure R-4 of Diary No. 812 dated 02.03.2021.

10. Rejoinder has been filed vide Diary No. 813, dated 02.03.2021. With respect to the averments made relating to the invalid authority letter as stated in reply filed above, it is stated that Shri Chinmay Dholakia, being Assistant General Manager of the Jaipur Branch of the petitioner is duly authorised official of the petitioner Bank to move this application/petition in terms of delegation of power (DoP) of the petitioner, which has come into force with effect from 31.08.2018 and

a copy of which has already been filed with the application (page No.200-202). It is further stated that the petitioner is a Corporation established under the Small Industries Development Bank of India Act, 1989 and as per the provisions of the Act, the Board of the petitioner is authorised to make regulations and accordingly, the Board has framed regulations, namely Small Industries Development Bank of India General Regulations, 2000. It is further stated that as per regulation 10, the Assistant General Manager of the petitioner is duly authorised to sign, verify and institution this application, sign pleadings, file documents for and on behalf of the petitioner. Copy of SIDBI General Regulations is attached as Annexure RA-3 of Diary No.813.

11. We have heard the learned counsels for the petitioner & the corporate debtor and have also perused the record carefully.
12. 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; or”...*

13. In the present case, the concurrence of default is evidenced by the details furnished by the petitioner including the Certificate of Registration of Charge (Annexure A-2), Copy of the Loan Agreement dated 30.03.2016 (Annexure A-3), CIBIL Report (Annexure A-4),

Letter dated 06.12.2018 for clearance of over dues with intimation of the account of the Respondent-Corporate Debtor turning NPA on 08.11.2018 to the respondent (Annexure A-5), Letter dated 13.12.2018 signed by the Corporate Debtor acknowledging debt due on 10.12.2018 (Annexure A-6), Letter dated 10.12.2018 acknowledging the debt as on 10.12.2018 & Letter dated 20.12.2018 for clearance of over dues to the respondent, and its directors with intimation to the SBI (Annexure A-8) of the petition. It could be seen that there is no dispute between the parties as to the disbursed loan facility to corporate debtor by the Petitioner- Financial Creditor and thereafter the default in repayment of the same by the corporate debtor as stated in the reply filed by the Corporate Debtor as discussed above. Therefore, it is evident from the contents of the petition as well as from the reply of the corporate debtor that the corporate debtor has defaulted in the repayment of amount to the financial creditor.

14. On the last date of hearing, Learned Counsel representing the Corporate Debtor submitted that the restructuring proposals are under consideration by State Bank of India and SIDBI and sought time in this matter. It was also submitted before this Tribunal that before 31.03.2020, decision will be taken by both the Financial Institutions in the matter. It was also recorded in the order that if no amicable resolution takes place, the matter will be proceeded further on priority

basis. It could be seen that no submissions in respect of any settlement/ amicable resolution has been placed before this Tribunal, despite granting sufficient time. Therefore, we are of a considered view that there is no embargo in admitting the present petition.

15. The application filed in the prescribed Form No.1 is found to be complete. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above ₹1,00,000/-, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- “(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.
- (e) 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.
- (f) 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.
- (g) 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.”

16. The Financial Creditor has proposed the name of Mr. Prashant Sharma, whose consent in Form 2 is on record. In view of the above, we appoint Mr. Prashant Sharma, Registration No. IBBI/IPA-001/IP-P00290/2017-18/10534, House No. 611, Arcade, 6th Floor, K 12, Malviya Marg, C Scheme, Jaipur-302001, Email: prashantfcaipur@yahoo.com, M: 9414055801, as the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under the IBC, especially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.
17. The Interim Resolution Professional shall after collation of all the claims received against 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. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.
18. A copy of order shall 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 e-mail address forthwith.

IA No. 259/JPR/2021

This instant IA is filed by Small Industries Development Bank of India, (for brevity “Applicant”) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking the following prayers:

- 1. This Tribunal in exercise of the powers conferred under Rule 11 of the 2016 Rules, may please restrain the respondent-corporate debtor and its Directors from alienating, encumbering or creating any third party interest on the assets or any legal right or beneficial interest therein.*
- 2. Moratorium shall be made applicable in order to safe guard the assets which shall not be alienated.*

Since the main CP has been admitted, this IA has become infructuous and is disposed of accordingly.

Sd/-
(L.N. GUPTA)
TECHNICAL MEMBER

Sd/-
(AJAY KUMAR VATSAVAYI)
JUDICIAL MEMBER

September 30th, 2021
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