In the National Company Law Tribunal
Mumbai Bench

C.P. (IB)- 4550(MB) of 2018

Application Under **Section 7 of the Insolvency and Bankruptcy Code,** 2016 read with Rule 4 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules,2016

In the matter of

Oriental Bank of Commerce

….Financial Creditor
(Petitioner)

V/s

Shree Bhimeshwari Ispat Pvt. Ltd

…. Corporate Debtor
(Respondent)

Registered Office No- Office No. 3, 4th Floor, The Metropole Building,
Next to Inox Theater, Bund Garden Road,
Pune, Maharashtra - 411001

Heard on: 06.11.2019
Date of Order : 28.11.2019

Coram: Hon'ble Shri M.K. Shrawat, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Petitioner : Advocates Anup Khaitan a/w Rohit R. Kanmurde

For the Respondent : Advocate Pankaj Pandey.

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. The Petitioner /Applicant viz. 'Oriental Bank of Commerce'(hereinafter as **Financial Creditor)** has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of **"Financial Creditor"** on 07.12.2018 by invoking the provisions of Section 7 of Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'M/s. Shree Bhimeshwari Ispat Private Limited " (hereinafter as **Corporate Debtor**) . The registered address of the Corporate Debtor is stated to be Office No. 3, 4th Floor, The Metropole Building, Next to Inox Theater, Bund Garden Road, Pune, Maharashtra - 411001.

2. In the requisite form, under the head **"Particular of Financial Debt"** the total amount claimed to be in default is stated to be Rs. 46,25,89,536.43 as on 05.10.2018. **The date of default as per Form I is mentioned as 31.01.2016.**

(A) Submission by the Financial Creditor

3. The Petitioner submits that Consortium members consist of Oriental Bank of commerce, **"PHOENIX ARC PVT. LTD (ASSIGNEE OF SOUTH INDIAN BANK LTD.) & ANDHRA BANK"** sanctioned and granted aggregate credit facility including working capital loan to the Corporate Debtor. The loan account of the Corporate Debtor initial sanctioned at the request of the Corporate Debtor by the current Financial Creditor was sanctioned on 27.09.2010. The Corporate Debtor pursuant to the sanction of the facilities has signed and deposited loaning and security document to the Petitioner. Subsequently, at the request of the Corporate Debtor the facilities were enhanced by the Financial Creditor on 12.07.2012. In lieu of enhanced sanctioned of the facilities additional loaning and security document were deposited by the Corporate Debtor in favour of the Financial Creditor. A list of all such security document has been provided by the Financial Creditor in its submission.
4. Again, at the request of the Corporate Debtor the loan facilities were enhanced/renewed by the Financial Creditor vide sanctioned letter 30.03.2015. The Financial Creditor mentions that the loan of the Corporate Debtor was running irregular and therefore, the Corporate Debtor had requested the petition from time to time as evident from the above to restructure the existing loan account. The Petitioner mentions that the loan account of the Corporate Debtor was restructured from time to time by initiating corrective measure.
5. The Petitioner mentions that contrary to the terms and conditions regarding Sanction/ Review/Renewal/enhancement, the Corporate Debtor failed to maintain financial Discipline and defaulted in making periodical repayment of the credit facilities advanced by the Financial Creditor, therefore as per the guidelines of the RBI, the account(s) of the Corporate Debtor were classified as Non-Performing Asset by the Financial Creditor on 30.04.2016.
6. The Corporate Debtor defaulted on 31.01.2016 and the Financial Creditor declare the account as NPA on 30.04.2016.
7. The Corporate Debtor as on 05.10.2018 has given computation of the total amount due which are as under:-

Sr.No.	Type of Loan	Account No	Period	Amount
1	Term Loan	01417021000244	31.03.2015-05.10.2018	15,77,55,127.00
2	Term Loan	01417021000145	31.12.2015-05.10.2018	56,809,330.65
3	Term Loan	01417021000237	31.03.2015-05.10.2018	53,799,521.00
4	Cash Credit	01414011000321	18.08.2011-05.10.2018	19,43,80,285.78
	Total			46,25,89,536.43

8. The Financial Creditor states that the Corporate Debtor has acknowledged the debt by executing balance and security conformation dated 18.02.2016. Since the present company application is filed on 06.12.2018 the company application is within three years and hence the same is under limitation.

(B) Submission by the Corporate Debtor

9. The Corporate Debtor is involved in steel manufacturing since 2008. The Corporate Debtor company has faced various issues because of recession as well as adverse market condition. The Corporate Debtor admits that the account of Corporate Debtor has turned NPA due to adverse market condition which in turn resulted into heavy losses.
10. In its reply the Corporate Debtor has agreed to the debt and also to the default. However, the Corporate Debtor in his reply has mentioned that the Petition is inadmissible on account of non-conduct of proper service, non- authorization of the person signing the petition. The Corporate Debtor also mentioned that the Ledger statement submitted by the Petitioner is inadmissible as evidence etc.
11. As recent as on 21.09.2019 the Corporate Debtor has through a letter addressed to Oriental Bank of Commerce has accepted the debt and the default as well as the loan account becoming NPA in 2016. In this letter the Corporate Debtor has again agreed to settle the dues if time is given.

Findings :-

12. On perusal of the argument of both the side this Bench as the Adjudication Authority is required to satisfy that under Sub-section (5) of Section 7 the following:
    - *(a) Whether a default has occurred;*
    - *(b) Whether an application is complete; and*
    - *(c) Whether any disciplinary proceeding* is *pending against the proposed Insolvency Resolution Professional.*

    Once the Adjudicating Authority is satisfied it is required to admit the case but in case the application is incomplete application, the financial creditor is to be granted seven days' time to complete the application.

    Therefore, while dealing the admission of Section 7 of IBC petitions, only two points are required adjudication, i.e whether there is an existence of ascertainable "Debt", and secondly, whether there is an existence of "Default".

13. It is clear from the record provided by the Financial Creditor that there exist a financial "debt" and there is a default in payment. It is also clear that the Corporate Debtor has dully availed of the said financial assistance.
14. It can also be borne out from the submissions that the Corporate Debtor defaulted in making periodical repayment of the credit facilities advanced by the Financial Creditor and, therefore, the loan account of the Corporate Debtor turned NPA on 30.04.2016 as per guidelines by the RBI.
15. Since the loan was granted as part of the consortium a recall notice dated 21.08.2017 was also issued by the consortium Members.

16. The Financial Creditor has also produced statement of account of the Corporate Debtor in accordance with "Bankers Books Evidence Act, 1891" which clearly points to debt amount due from the Corporate Debtor. Even the "CIBIL" Report dated 16.10.2018 of the Corporate Debtor provide record of default by way of total outstanding of the Corporate Debtor.
17. The balance and security conformation dated 18.02.2016 and conform the balance as on 17.02.2016 due towards the Financial Creditor.
18. The Corporate Debtor in its submissions have not contested the debt taken from the Financial Creditor and have neither contested the amount due. The Corporate Debtor have only mentioned that the reasons for their loan account turning into NPA is essentially on account of slow down due to economy not doing well and downturn in infrastructure and real estate sector.
19. On going through the facts and submissions of the petitioner and upon considering the same, it is concluded that the Financial Creditor has established that the loan was duly sanctioned and duly disbursed to the Corporate Debtor but there has been default in payment of Debt on the part of the Corporate Debtor.
20. Considering the above facts, we come to the conclusion the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that admittedly there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor.
21. As a consequence, keeping the admitted facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, I am of the conscientious view that this Petition deserves '**Admission'.**
22. Further that, I have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.
23. Hence, after perusal of the provisions of the Code and facts and circumstances of this case along with the submissions of the petitioner, it is hereby held that this Petition/Application is **Admitted.**
24. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, **Mr. Fanendra Harakchand Munot**, Mumbai office at Regus, 6th Floor, Mafatlal House Building, HT Parekh Marg, Backbay Reclamation, Mumbai-400020, and Pune Office at 101, Monoplex Palza, Deep Bungalow Chowk, Model Colony, Shivaji Nagar, Pune-411016, Mobile- +91-9822791945, Email Id: fhmunot@gmail.com, having Registration No. IBBI/IPA-001/IP-0515/2017-18/10916 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
25. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order shall be applicable by prohibiting institution of any Suit before a Court of Law,

transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

26. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

27. That the Interim Resolution Professional shall perform the duties as assigned under **Section 18** and **Section 15** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

28. The Petition is hereby **“Admitted**”. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

29. Ordered Accordingly.

SD/- **SD/-**

CHANDRA BHAN SINGH
Member (Technical)

M.K. SHRAWAT
Member (Judicial)

28.11.2019
Sushil