

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH – II, CHENNAI**

IBA/876/2020

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4
of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,
2016)*

*In the matter of **M/S. SELECT GALVA INDIA PRIVATE LIMITED***

STATE BANK OF INDIA

Stressed Assets Management Branch,
Red Cross Buildings, 2nd Floor,
No. 32, Montieth Road,
Egmore, Chennai - -600 008

... Financial Creditor

-Vs-

M/S. SELECT GALVA INDIA PRIVATE LIMITED

[CIN: U51420TN2006PTC59669]

No. 14/18, Sembudoss Street,
Broadway, Chennai - 600 001

Also at:

Door No. 10, 2B, Montieth Road,
2nd Floor, TAAS Mahal,
Chennai – 600 008

...Corporate Debtor

*Order Pronounced on **12th October 2022***

CORAM:

**BACHU VENKAT BALRAM DASMEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Financial Creditor : R. Sugumaran, Advocate
For Corporate Debtor : Dev Eshwaar, Advocate*

O R D E R

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This Application has been filed by **STATE BANK OF INDIA**,
Stressed Assets Management Branch (hereinafter referred to as
'Financial Creditor') on 10.08.2020 under Section 7 of the
Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 4 of
the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016, against **M/S. SELECT GALVA INDIA PRIVATE**

LIMITED (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part - I of the Application, it is seen that the Financial Creditor is a Bank. The registered office address of the Financial Creditor as per the Application is stated to be situated at State Bank Bhavan, Corporate Centre, Madame Cama Road, Nariman Point Mumbai, Maharashtra - 400 021 and the application is preferred through its Stressed Assets Management Branch, at Red Cross Buildings, 2nd Floor, No. 32, Montieth Road, Egmore, Chennai - -600 0008. Further, Part-I lays down the Authorized Signatory of the Financial Creditor to be one Mr. R. Rupalingappa, Assistant General Manager of the Financial Creditor. Verifying affidavit dated 03.08.2020 was filed for the same.

3. Part II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a Private limited company incorporated under the Companies Act, 1956 on 01.05.2006 with CIN: U51420TN2006PTC59669. The registered office of the Corporate Debtor as per the MCA master data is situated at No. 14/18, Sembudoss Street, Broadway, Chennai - 600 001.

4. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Ms. J. Karthiga, Reg. No. IBBI/IPA-001/IP-P00752/2017-18/11284.

5. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a debt amount of Rs.25,23,24,918.13/- (Rupees Twenty Five Crore Twenty-Three Lakh Twenty-Four Thousand Nine Hundred and Eighteen and Thirteen Paise Only) as on 28.02.2018 with further interest and other charges, less recoveries if any, which is due and payable by the Corporate Debtor. The date of default is averred in Part-IV of the Application as 29.11.2017.

6. Part V of the application describes the particulars of Financial Debt, list of documents filed in the typed set of the Application.

7. It is averred in the application that the Financial Creditor has sanctioned credit facilities on various dates and the last sanction was on 30.07.2016. The said facilities are stated to have been secured by hypothecation of Stocks, Receivables and all current assets of the Corporate Debtor.

8. It is averred that the account was classified as NPA on 29.11.2017. It can be seen that the Applicant had preferred an application before DRT – II in O.A. 200 of 2018 and that same was

disposed vide order dated 22.05.2019. Thereafter, Debt Recovery Certificate dated 23.01.2020 in DRC No. 80 of 2020 had been obtained by the Applicant Financial Creditor.

9. Counter was filed by the Respondent on 07.09.2022 under SR No. 5241 wherein it was contended that present application is hit by limitation, since the Applicant for the purpose arriving the date of default, has construed the date of classification of the Corporate debtor's account as NPA i.e. 29.11.2017. However, on perusal of the records, the present application has been filed on 10.08.2020 which is clearly not hit by limitation. The default in the present case is an admitted debt as per the notes to the Balance Sheet of the Corporate Debtor which is placed at page 79 of the Application. The same is extracted as below:

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SELECT GALVA INDIA PVT.LTD 14/80, SEMBUDOSS STREET, MANNADY, CHENNAI-600001. NOTES TO THE ACCOUNTS AS AS 31ST MARCH 2017		
	As at 31.03.2017	As at 31.03.2018
Note:2.2 RESERVES AND SURPLUS		
Profit and Loss:	66289498.70	62836022.40
Balance as per Last Balance Sheet	4247290.05	3653474.30
Add: Transfer from P&L Account for the year	70536747.35	66289498.70
	0.00	0.00
Balance of Profit / Loss	70536747.35	66289498.70
Less: Transfer to General Reserve	0.00	0.00
	70536747.35	66289498.70
Note:2.3 LONG TERM BORROWINGS		
Secured Loan from banks	0.00	-10509.33
Standard Chartered Bank - CC	5082254.00	
DHFL - Mortgage Loan	250063456.50	
State Bank of India- Cash Credit A/c		
Standard Chartered Bank-C.F		
HDFC Bank Ltd - C.F	171669139.32	158492203.68
YES BANK C.C 414		
YES BANK FIN .250		
	430819659.82	158481694.35
Unsecured Loans		
DBS BANK CHANNEL FINANCE	55190287.99	59993543.2
THIRUPATHY STEELS -LOAN A/C	55000000.00	260152858.5
TATA CAPITAL LIMITED	0	
Loans and Advance from related parties	43792517.86	42523357.93
Share Holders	584892445.54	153005052.28

4.30

10. Apart from the above, the Applicant had obtained the recovery certificate as late as 23.01.2020. At this juncture, it is relevant to refer the dictum of the Hon'ble Supreme Court in the case ***Dena Bank Vs. C. Shivakumar Reddy and Anr*** which is as follows:

"138. A final judgment and order/decreed is binding on the judgment debtor. Once a claim fructifies into a final judgment and order/decreed, upon adjudication, and a certificate of Recovery is also issued authorizing the creditor to realize its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decreed and/or the amount specified in the Recovery Certificate.

139. The Appellant Bank was thus entitled to initiate proceedings under Section 7 of the IBC within three years from the date of issuance of the Recovery Certificate...."

Thus, following the ratio of the Apex Court, the limitation stands refreshed upon obtaining the Recovery Certificate. Thus, in any case, the argument of the Respondent on limitation does not survive.

11. It is also the contention of the Respondent that the Agreement of Loan cum Hypothecation and Guarantee Agreement suffer certain infirmities as to its admissibility, however this Adjudicating Authority is not inclined to test the admissibility of the said documents since the respondent has not disputed the debt. Further, a perusal of the Application would reveal and that there is

a *prima facie* admission of debt by the respondent in their balance sheet as stated above. The Respondent having not succeeded in the recovery proceeding before the Debt Recovery Tribunal is therefore estopped from raising such objection before this Tribunal.

12. In view of the facts of the case, we are convinced that there is undoubted debt and default on the part of the Corporate Debtor and this Tribunal inclined to initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

13. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

14. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) 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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
- (b) a surety in a contract of guarantee to a corporate debtor.

15. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

16. The Financial Creditor has proposed the name of **Ms.J.Karthiga (Email ID: karthigasri@hotmail.com), Reg. No. [IBBI/IPA-001/IP-P00752/2017-2018/11284]** as the Interim Resolution Professional (IRP) who, has also filed their consent in Form – 2 and also upon verification from the IBBI website, it is seen that the said insolvency professional hold valid Authorization for Assignment till 20.02.2023.



17. **Ms. J. Karthiga** is appointed as the IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

18. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

19. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions.

20. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

21. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

22. Post this IBA/876/2020 for hearing on **28.11.2022**.

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SAMEER KAKAR
MEMBER (TECHNICAL)

-sd-

BACHU VENKAT BALRAM DAS
MEMBER (JUDICIAL)

V.Shreekumar