

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-815/(ND)/2021

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

In the matter of:

M/s PAS Enterprise

Through Mr Anil Kumar

Resident of BA-18C, Ashok Vihar,
Phase-I, Saraswati Vihar,
New Delhi- 110052

...Applicant/Financial Creditor

Versus

M/s SGM Steels Pvt. Ltd.

Registered Office At:

F-73, First Floor, Prashant Vihar,
New Delhi 110085

...Respondent/ Corporate Debtor

Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)



SHRI. RAHUL BHATNAGAR, Hon'ble Member (Technical)

Counsel for Petitioner/Financial Creditor: Mr. Nilotpal Shyam,
Advocate

Counsel for Respondent/Corporate Debtor: Mr. Sail Ali, Advocate

ORDER

Per SHRI.RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date:22.03.2022

1. This is an application filed by M/s PAS Enterprise to initiate corporate insolvency resolution process ("CIRP") against M/s SGM Steels Pvt. Ltd. under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling an amount of Rs. 2,29,80,734 (Rupees Two Crores Twenty Nine Lakhs Eighty Thousand Seven Hundred Thirty Four Only) as on 30.09.2021. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- That the Financial Creditor advanced Rs. 1,05,90,200 as loan to the Corporate Debtor in form of various tranches



during the period commencing from 02.04.2014 till 24.03.2015 wherein the repayment date was agreed upon to be 31.03.2018. However, the Corporate Debtor failed to repay the loan amount on the said date.

- That the Corporate Debtor sought an extension of 3 months for the repayment of the loan vide letter dated 03.04.2019.
- That vide recall notice dated 25.09.2019, the Financial Creditor demanded the Corporate Debtor to repay the amount of loan advanced which was due and payable by the Corporate Debtor to the Financial Creditor.
- That the amount of the Financial Debt is recorded in the Balance Sheets of the Corporate Debtor. Accordingly, it is evident that the said Financial Debt was advanced against the time value of money and is a financial debt in terms of section 5(8) of the Insolvency and Bankruptcy Code, 2016.
- That despite Corporate Debtor's commitment to the above-mentioned financial debt, the Financial Creditor has not received the said amount from the Corporate Debtor.



- That the loan amount advanced to the Corporate Debtor was repayable on demand and disregarding the demand of the Financial Creditor amounts to default by the Corporate Debtor in terms of Section 3(12) of the Insolvency and Bankruptcy Code, 2016.
- That the upon calculation of the unpaid financial debt, the total outstanding dues including till 30.09.2021, repayable by the Corporate Debtor to the Financial Creditor amounts to Rs. 2,29,80,734.

2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions were made:

- That the Corporate Debtor is a trading company and has no business operations since the year 2015.
- That the Corporate Debtor had been experiencing severe financial crisis owing to continuous losses incurred during previous periods.
- That in absence of any business operation, the Corporate Debtor is unable to generate any kind of cash



flow and therefore could not make payment of outstanding dues to the Financial Creditor.

- That the Corporate Debtor is making every effort to get the financial support either from the Creditors or any investor or financial institutions to generate the cash flows and make outstanding payment of the Applicant in bona fide manner.
- That Corporate Debtor is ready to comply with the order of this Court.

3. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The applicant has claimed the default on part of the Respondent for the Loan amount of Rs. 2,29,80,734 (Rupees Two Crores Twenty Nine Lakhs Eighty Thousand Seven Hundred Thirty Four Only) as on 30.09.2021.

4. Mere plain reading of the provision under section 7 of IBC and decision (supra) shows that in order to initiate CIRP under Section 7 the applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt.



5. Vide daily order dated 10.03.2022, it has been noted that the Corporate Debtor has admitted its liability. The same is also evident from the reply filed by the Corporate Debtor.
6. In the light of the aforesaid facts, we find that the documents submitted by the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has indebted and defaulted the repayment of loan amount.
7. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.
8. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Akhil Ahuja, for appointment as Interim Resolution Professional having registration number IBBI/IPA001/IP-P-02072/2020-21/13213. Mr. Akhil Ahuja has agreed to accept the



appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

9. It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the code* stands satisfied as default has occurred, the present application filed under Section 7 is complete as no disciplinary proceeding against the proposed IRP is pending.
10. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the credit facilities and has committed default in repayment of the outstanding loan amount.



11. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.
12. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.
13. Mr. Akhil Ahuja, having registration number IBBI/IPA001/IP-P-02072/2020-21/13213, is appointed as an Interim Resolution Professional.
14. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
15. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:



“(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.

16. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to




the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

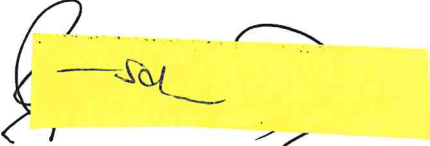
17. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-



directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

18. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.


(SHRI. RAHUL BHATNAGAR)
MEMBER (TECHNICAL)


(SHRI. P.S.N. PRASAD)
MEMBER (JUDICIAL)