



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

IB-421/ND/2022

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:

Silver Bank Limited

(Formerly known as
Banyan Tree Bank Limited)

Having its registered office at:

13th Floor, Nexteracon 1, Cybercity,
Ebene, Mauritius.

...Petitioners/
Financial Creditor

Versus

M/s. Mideast Integrated Steels Limited

Having its registered office at :

B4/35, H-1, Zamrudpur Community Centre,
Kailash Colony, New Delhi — 110048

...Respondent/
Corporate Debtor



Coram:

Bachu Venkat Balaram Das) Member (Judicial)

Shri. Rahul Bhatnagar, Member (Technical)

Counsel for Petitioner: Mr. Amit Agarwal, Mr. Shwetabh Sinha, Ms. Radhika Yadav and Mr. Vatsara Pandey, Advs.

Counsel for CD: Mr. Rakesh Kumar, Mr. Aditya Nayyar and Mr. Rishabh Arora, Advs.

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 24.05.2023

1. This petition has been filed by Silver Bank Limited through Authorised Representative Mr. Rajendera Pawar, authorised vide board resolution dated 16th March 2022 to initiate corporate insolvency resolution process (hereinafter referred to as "CIRP") against M/s.

M/s. Mideast Integrated Steels Limited under Section 7
IB-421/ND/2022



of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as “the Code”) for the alleged default on the part of the Respondent in repayment of debt of Rs. 12,96,95,768.63/- (Rupees Twelve Crore Ninety-Six Lakh Ninety-Five Thousand Seven Hundred and Sixty-Eight Sixty-Three Paisa). The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That the Financial Creditor disbursed loan of USD 2,500,000 under a loan agreement dated 16th December 2014 (Hereinafter referred to as "First Loan Agreement") for expansion of their plant in Orissa. The First Loan Agreement was secured by personal guarantee of one of the Promoters, Mrs. Rita Singh. The repayment was agreed to be done by half yearly payments of USD 312,500 from December 2014 to December 2019. However, the Corporate Debtor defaulted in payment of principal amount from December 2018 and interest amount from 01st October 2019.



- ii. The Financial Creditor disbursed another loan of USD 400,000 under a loan agreement dated 08th June 2015 (Hereinafter referred to as "Second Loan Agreement") for expansion of their plant in Orissa. The repayment was agreed to be done by way of half yearly payments from December 2015 to 31 December 2019 as per the repayment schedule annexed to the Second Loan Agreement. However, the Corporate Debtor defaulted in payment of principal amount and interest amount.
- iii. The Financial Creditor disbursed another loan of USD 700,000 under a loan agreement dated 15th April 2017 (Hereinafter referred to as "Third Loan Agreement") for capital expenditure requirements of the Corporate Debtor. The repayment was agreed to be done in half yearly instalment of USD 58,333 commencing from September 2017 to March 2023. However, the Corporate Debtor defaulted in payment of



principal amount from March 2019 and interest amount from 01st October 2019.

- iv. That during the period of default in payment of outstanding sum, several discussions took place by between parties to refinance the loan and secure the loan with different collaterals as security. Subsequently, as the Corporate Debtor had defaulted in repayment of the loan, on 15th February 2020, an indicative term sheet was signed by Corporate Debtor and Financial Creditor to refinance the outstanding amount due in which it was agreed to create first fixed charge on a commercial property in Kailash Colony, New Delhi as a security. However, due to lockdown and Financial Creditor going into receivership, the charge was not created
- v. Thereafter, after multiple reminders and discussions, as the Corporate Debtor failed to repay the loan, the Financial Creditor instructed its advocate to issues demand notice under all



three loan agreements. The notices were sent on 20th December 2021.

vi. That even after serving them demand notice, no response was received nor did the Corporate Debtor repay any outstanding amounts. Thus, the Petitioner had no other choice but to file the present Company Petition.

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

i. That in the year 2017, the Hon'ble Supreme Court had passed the judgement dated 02.08.2017 titled as "*Common Cause vs. Union of India*" [*Writ Petition (Civil) No. 114 of 2014*] wherein the mining work carried out by some companies in Orissa were banned and certain penalties were imposed on all the companies which caused major set back in the business of the Corporate Debtor. In furtherance to the Judgment dated 02.08.2017 imposing a penalty amount of INR 924,75,24,283/- (Rupees Nine Hundred Twenty-Four Crores Seventy-Five



Lakhs Twenty-Four Thousand Two Hundred Eighty-Three) on the CD. It is a matter of record that the CD has already paid an amount of approximately INR 360 Crore out of the total aforesaid penalty imposed on the CD.

- ii. That some mining excavation material was lying at the mining sites of the CD. The CD has been seeking permission to sell the said mining material from the Hon'ble Supreme Court by filing various interim applications. The Hon'ble Supreme Court has been granting such permissions from time to time. It was only after selling of the said material, the CD was able to pay the aforesaid amount of approximately INR 360 Crores out of the total penalty imposed on the CD.
- iii. That the CD still has 12 lakh tons of material lying at the designated mining sites which has an approximate value of INR 600-700 Crores. The CD has filed interim applications before the Hon'ble Supreme Court to release the said material so that



it can sell the same and discharge the liability of its creditors.

- iv. That the CD has rights over the railway siding. The CD is expected to earn a revenue of INR 30,00,000/- (Rupees Thirty Lakhs) per month from the said railway siding license.
- v. That 16 petitions were filed against the Corporate Debtor to initiate the Corporate Insolvency Resolution Process (CIRP) of the CD. Out of these 16 petitions, the CD was able to settle 12 of them.
- vi. That the CIRP may be a death warrant for the C.D. The Resolution Professional may not handle the peculiar nature of the businesses of the CD with respect to its mining legal rights before the various forums.
- vii. That in view of the above, it is submitted that CD is a going concern, it is still discharging its liabilities to its operational and financial creditors. The major creditors of the CD were banks, which have been paid through OTS, not only that, various other liabilities of the CD have been



discharged. It is also contended that due to Covid-19 Pandemic, the manufacturing activities (save and except a few industries like Pharmaceutical etc.) were badly affected resulting in slowdown in the economy of the country and even the world at large. Consequently, the revival plans of the Corporate Debtor also got slowed down for almost two years (i.e. 2020-2022). However, now the situation is improving and the Corporate Debtor is confident to regain its past glory of debt free company. The CD is also committed to discharge the liability of the PC in a short span of time. In reference to the same it was contented that the CIRP is not the answer considering the facts and circumstances of the present matter, and in view of the Judgement of Hon'ble SC in the matter of *"Vidarbha Industries Power Limited vs. Axis Bank Limited"* [Civil Appeal No 4633 of 2021] this Tribunal may dismiss the present petition filed by the Financial Creditor.



3. We have heard the Ld. Counsel appearing for the Applicant and the Respondent and perused the averments made in the application and reply filed on behalf of the parties.
4. Mere reading of the provision under section 7 of IBC 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. 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 case of the Corporate Debtor is based upon the judgement of Hon'ble Supreme Court in the matter of *Vidarbha Industries Power Limited vs. Axis Bank Limited*" [Civil Appeal No 4633 of 2021] The relevant paragraph of the said judgement is reproduced herein below:

"77, On the other hand, in the case of an application by a Financial creditor who might even initiate proceedings in a representative capacity on be of all financial creditors, the Adjudicating



Authority might examine the expedience of initiation of CIRP, taking into account all relevant facts and circumstances, including the overall financial health and viability of the Corporate Debtor. The Adjudicating Authority may in its discretion not admit the application of a financial creditor.

5. However, very recently Supreme Court in the matter of *M. Suresh Kumar Reddy vs. Canara Bank and Ors.* (11.05.2023 - SC) : MANU/SC/0561/2023 held that There is no ground available to reject an application u/s 7 of IBC except NCLT finds that the debt has not become due and payable, the decision in 'Vidarbha Industries' cannot be read and understood as taking a view which is contrary to the view taken in 'Innoventive Industries' and 'E.S. Krishnamurthy' Relevant para of the aforesaid judgement is reproduced as under: -

10. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application Under Section 7. Default is defined Under Sub-section 12 of Section 3 of the IB Code which reads thus:

3. Definitions: In this Code, unless the context otherwise requires, -



.....

(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;

Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a Corporate Debtor. In such a case, an order of admission Under Section 7 of the IB Code must follow. If the NCLT finds that there is a debt, but it has not become due and payable, the application Under Section 7 can be rejected. Otherwise, there is no ground available to reject the application.

6. In the present case the material on record clearly goes to show that CD had availed the loan and has committed default in repayment of the outstanding loan amount. The Corporate Debtor has neither denied the existence of debt and nor the factum of default.
7. 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.

- 8.** In light of the above and in terms of the acceptance of the existence of debt and its default by the Corporate Debtor in its reply to the present application, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.
- 9.** 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. Atul Kumar Kansal for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P00035/2016-2017/10088. The Proposed IP has a valid AFA which is valid upto 17.11.2023. Accordingly, this Adjudicating Authority, hereby appoints Mr. Atul Kumar Kansal (Email – cakansal@yahoo.com), to act as Interim Resolution professional. He shall take such other and further steps as are required under the statute, more



specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

10. 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.

11. 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.”

12. 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.

13. 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 preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (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.

14. 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.

Let copy of the order be served to the parties.

Sd/-

(Rahul Bhatnagar)
Member (Technical)

Sd/-

(Bachu Venkat Balaram Das)
Member (Judicial)