

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, SPECIAL BENCH, COURT No. II**

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CP (IB) 920/MB/C-I/2020

A Petition under section 7 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 4 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

In the matter of

State Bank of India

... **Petitioner**

Versus

Uttam Galva Steel Limited

[CIN: L27104MH1985PLC035806]

Uttam House,

69, P D Mello Road, Mumbai - 400 009,

Maharashtra.

... **Respondent**

Order Delivered on 01.10.2020

Coram:

Janab Mohammed Ajmal, Hon'ble Member (Judicial)

Mr. Ravikumar Duraisamy, Hon'ble Member (Technical)

Appearance:

For the Petitioner : Mr Soli Cooper, Senior Counsel
with Ms Meghna Rajadhakshya, Advocate

For the Respondent : Mr Dhiraj Mhetre, Advocate

Per: Janab Mohammed Ajmal, Hon'ble Member (Judicial)

ORDER

This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) by the Petitioner, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the Respondent alleging default in payment of a financial debt.

2. The facts are as follows. The Respondent is a Public Company limited by shares and incorporated on 29.03.1985 under the Companies Act, 1956,

with the Registrar of Companies, Mumbai, Maharashtra. The Petitioner had granted an external commercial borrowing facility to the tune of US\$ (United States Dollar) 50 Million (the “**ECB Facility**”) to the Respondent in terms of a Foreign Currency Facility Agreement dated 17.05.2013 entered into between them. The ECB Facility has been secured by immovable property and movable fixed assets of the Respondent, carrying an interest @ 14.85% and penal interest as applicable. Thereafter, upon default in payment by the Respondent in respect of various loans extended by the Petitioner, as on 29.12.2017, it came up with a Petition State Bank of India Vs Uttam Galva Steels Limited CP No. (IB) 1829/MB/2017 under Section 7 of the Code to initiate CIRP of the Respondent before this Tribunal (the “**First CIR Application**”).

3. While the First CIR Application was pending, pursuant to the order of the Hon’ble Supreme Court of India dated 04.10.2018 in ArcelorMittal India Private Limited Vs Satish Kumar Gupta & Ors. (Supreme Court) Civil Appeals No. 9402-9405 of 2018, at the instance of ArcelorMittal, the default portion of ECB Facility of the Respondent aggregating to US\$ 32,393,091.86 (Thirty-Two Million Three Hundred and Ninety-Three Thousand and Ninety-One Decimal Eighty-Six Only) was transferred to Citibank, London Branch, such that the amount of the Respondent no more remained a Non Performing Asset (NPA) in the books of the Petitioners (“**AM Settlement**”). Subsequently, upon AM settlement, this Tribunal allowed withdrawal of the First CIR Application in terms of order dated 01.11.2018.
4. After the AM Settlement, the amounts owed by the Respondent to the Petitioner in respect of its ECB facility was reduced to US\$ 25 Million. Thereafter, on 29.11.2019, the Respondent defaulted in payment of US\$6,674,943.46 (Six Million Six Hundred and Seventy-Four Thousand Nine Hundred and Forty-Three Decimal Four Six Only). SBI sent reminder letter dated 03.01.2020, to the Respondent demanding payment of the amount. The Respondent in its letter dated 17.01.2020, did not oppose the fact of default. It however, expressed its inability to pay on

account of bad financial condition. Thereafter, SBI sent letters dated 20.02.2020 and 26.02.2020 reminding of the occurrence of the event of defaults due to the non-payment of dues and breach of financial covenants, and indicating that the account of Respondent would become 'Sub Standard' on 27.02.2020 if the dues were not paid. Thereafter, SBI issued letter dated 03.03.2020 indicating that account of Respondent has become 'Sub Standard' in its books.

5. In Form No. 1, under the head "Particulars of Financial Debt" is mentioned as total amount of claim as on 29.11.2019 US\$ 8,368,636.76 (Eight Million Three Hundred and Sixty-Eight Thousand Six Hundred and Thirty-Six decimal Seven Six only) equivalent to INR 63,51,79,530.08 (Rupees Sixty-Three Crore Fifty-One Lakh Seventy-Nine Thousand and Five Hundred and Thirty paise Eight only).
6. The date of default is stated to be 27.02.2020. The loan account was declared substandard on 03.03.2020. As on 06.03.2020 total principal amount of ECB Facility outstanding was US\$ 12,500,000.00 which is constituted the principal of Rs. 94,87,50,000/- (Rupees Ninety-Four Crore Eighty-Seven Lakh Fifty Thousand Only). Including interest, the total ECB Debt outstanding as on that date was US\$ 14,618,636.76 (Fourteen Million Six Hundred and Eighteen Thousand Six Hundred and Thirty-Six decimal Seven Six only) i.e. INR 110,95,54,530.08 (Rupees One Hundred and Ten Crore Ninety-Five Lakh Fifty-Four Thousand and Five Hundred and Thirty paise Eight only). The Petitioner thus came with the present petition on 12.03.2020. The copy of the Petition had been served on the Respondent vide letter dated 11.03.2020. Necessary Proof in this regard have been placed on record.
7. The Respondent appeared through his Counsel. It however did not file any reply to the Petition. During the hearing, the learned Counsel advanced oral arguments on behalf of the Respondent. The learned Counsel for the Petitioner submitted that the Respondent committed default in payment of a financial debt. The Counsel appearing for the Respondent accepted the

liability and submitted that, the Respondent is unable to make any payment due to its poor financial condition. The Respondent, therefore, has nothing more to say in its defence.

8. We have heard the arguments from the Counsel for both the sides and perused the records. The Petitioner in order to prove the debt, has attached Foreign Currency Facility Agreement dated 17.05.2013 entered into between the parties and the extract of CIBIL report of the Respondent. The amount defaulted is corroborated by the Statement of Accounts of the Petitioner as on 29.11.2019. The Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors.* [Writ Petition (Civil) No. 99 of 2018] upholding the Constitutional validity of the Code, held that as soon as a 'debt' and 'default' are proved, the adjudicating authority is bound to admit the petition.
9. From the facts and materials placed as well as the submissions of the parties, it is clear that, the Petitioner has established that the loan was duly disbursed to the Respondent and that the latter defaulted in repayment of a debt due and payable. The default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the Code. The Petition is otherwise complete as required by law. The default has been satisfactorily established. The Petition therefore can be admitted.
10. The Petitioner has proposed Mr Ajay Joshi, Registration No. IBBI/IPA-003/IP-N00019/2017-2018/10166, as the Interim Resolution Professional of the Respondent. He has filed his written consent in Form-2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (the Rules) along with a copy of his Certificate of Registration. We however propose to appoint one from Mumbai, the registered office of the Respondent being in Mumbai and in terms of the IBBI letter dt. 25.06.2020. Hence ordered.

ORDER

The Company Petition be and the same is admitted without contest. The Corporate Insolvency Resolution Process of the Respondent shall commence from this date and shall be completed in terms of section 12 of the Code.

- i. Mr. Milind Kasodkar (Registration No. IBBI/IPA-002/IP-N00116/2017-18/10285), having office at 11-B Daryanagar House, 1st Floor, 67/69 Maharshi Karve Road, Marine Lines, Mumbai 400002; e-mail ID: milind.kasodekar@kmdscs.com Mobile No. +91-9822394380 is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending/proposed against him as per the IBBI website. His fees, or as the case may be, of the RP, shall be guided by such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI).
- ii. He is directed to take charge of the Respondent/Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18, 20 and 21 of the Code and Rules made there under.
- iii. Moratorium under Section 14 of the Code in respect of the Respondent namely Uttam Galva Steel Ltd is hereby declared.
- iv. The Directors, Promoters or any other person(s) associated with the management of Respondent shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for effectively discharging his functions under the Code.
- v. The Petitioner shall deposit a sum of Rs. 3,00,000/- (Rupees three lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims etc. These

expenses shall be subject to approval by the Committee of Creditors (CoC).

- vi. The Registry is directed to forthwith communicate this Order to the Petitioner, the Respondent and the IRP by Speed Post and email.
- vii. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Respondent. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

Sd/-
MOHAMMED AJMAL
Member (Judicial)

Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)

01.10.2020
SAM