



**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

CP (IB) No. 1/CB/2023

In the Matter of:

An application 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.

-And-

In the Matter of:

Indian Bank, having its Corporate Office at Indian Bank Building, PB No. 5555, 254-260, Avvai Shanmugam Salai, Royapettah, Chennai-600014 and amongst its other places at its branch office at SAM Large Branch, 1st Floor, 14 India Exchange Place, Kolkata-700001.

...Applicant/Financial Creditor

-Versus-

KVR Steels Orissa Ltd (CIN NO. U271040R1987PLC001824), having its registered office at Baruan Shergarh, Balasore, Odisha- 756060 and also an office at 33/1, Netaji Subhas Road, Room No.444, Kolkata-700001.

...Respondent/Corporate Debtor

Appearances (through video conferencing)

For the Applicant : Mr. Ramesh Chandra Prusty & Associates, Adv.

For the Respondent : Mr. Gourav Mohanty, Adv.

Mr. Vivek Arun Das, Adv.

Mr. P. Anup Das, Adv.

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Kaushalendra Kumar Singh : Member (Technical)



Order reserved on: 31.10.2023
Order pronounced on: 29.11.2023

ORDER

1. This petition is filed to initiate Corporate Insolvency Resolution Process against the Corporate Debtor under Section 7 of Insolvency and Bankruptcy Code, 2016 R/w Rule 4 of Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016.

2. Brief facts of the petition are as follows: The original financial creditor Allahabad Bank now amalgamated with Indian Bank, filed this petition. The respondent/ corporate debtor is a limited company having registered office at Bhubaneswar engaged in manufacturing of iron and steel bar, pipe beams, etc. At the request of the corporate debtor the financial creditor sanctioned the following cash credit facilities viz:

(i). The Cash Credit facilities in respect of Cash Credit limit of Rs. 250.00 lakh, BG/LC limit of Rs. 100.00 lakh, and IBD of Rs. 500.00 lakh by sanction letter dated 13.08.2009. The Corporate debtor executed Relevant documents dated 21.08.2009 in favour of the Financial Creditor.

(ii) The Credit facilities in respect of Cash Credit limit of Rs. 300.00 lakh, BG/LC limit of Rs. 3.00 lakh and IBD of Rs. 200.00 lakhs sanction letter 31.12.2010. The Corporate debtor executed Relevant documents dated 31.12.2010 in favour of the Financial Creditor.

(iii.) The Credit facilities in respect of Cash Credit of Rs. 3.00 lakh, BG/LC limit of Rs. 2.00 lakh and IBD (against LC of Prime banks only) limit of Rs. 3.00 lakh sanction letter dated 31.08.2012. The corporate debtor executed Relevant documents dated 11.09.2012 in favour of the financial creditor.

(iv). The Credit facilities in respect of Cash Credit limit of Rs. 3.00 crores and LC/BG limit of Rs. 1.00 crores sanction letter dated 17.03.2014.



(v). The Credit facilities in respect of Cash credit limit of Rs. 3.00 lakh (Renewal), BG/LC limit of Rs. 1.00 Crores dated 09.05.2016 in favour of the corporate debtor.

3. The corporate debtor availed the credit facilities but failed to operate the account in proper perspective. In spite of several reminders the corporate debtor not regular in maintaining the amount, it leads to the account of the corporate debtor became a default loan account on 28.06.2018 and ultimately the account of the corporate was classified as NPA on 26.09.2018. The financial creditor issued notice dated 05.10.2018 under the SARFAESI Act 2002 and instituted Recovery suit before the DRT, Kolkata. As per the account a sum of Rs.3,70,25,405.15/- was due inclusive of interest payable to the petitioner/Bank as on 30.08.2022. The corporate debtor not cleared the dues in spite of repeated requests. The corporate debtor acknowledged and accepted the dues in its audited balance sheet as on 31.03.2021. The financial creditor issued a demand notice dated 05.10.2018 demanding the corporate debtor to pay the outstanding dues of Rs.3,05,00,282.54/- The corporate debtor submitted OTS proposal dated 30.04.2022 in respect of A/c No.50018125225, the financial creditor sent reply to the said proposal informing the corporate debtor to submit the OTS proposal with upfront amount by D.D. The corporate debtor sent a letter dated 02.09.2022 complaining against the Bank officials that they attempt to sabotage the one-time settlement. The corporate debtor in its letter dated 08.09.2022 question the financial creditor regarding the denial of OTS. The financial creditor declared the corporate debtor as willful defaulter. The corporate debtor has committed default in payment of financial debt availed from the financial creditor. Hence this petition.

4. **Brief facts of the reply are as follows:** The present petition is barred by limitation. The date of default mentioned in the petition as 18.04.2018 is incorrect and imaginary. No document has been produced to show that any payment was made from the year 2016 to 18.04.2018. The statement of account filed with the petition is defective and not in accordance with law. The annual statement of the corporate debtor is not an admission of any debt. There is no valid



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financial debt, the present petition is premature and ought to be quashed. The sale conducted by the Bank is challenged by the respondent before the DRT and several forums. That due to severe fall off demand of the products manufactured by the company, the company had been have suffered massive financial losses. The Bank wrongfully without any instrument and following the instruction transferred the amount of Rs.50,00,000/- to M/s Pawan Putra Advisory services Pvt Ltd. The two fixed deposits to the tune of Rs.28,63,394/- and Rs.18,33,626/- were irregularly liquidated without the knowledge of the applicant the deposits were adjusted against interest despite objections. The bank issued a notice under section 13(2) of SARFAESI Act 2002 dated 5.10.2018 demanding Rs.3,05,00,282.54/-, the respondent sent reply on 12.11.2018. The Bank also issued show cause notice dated 05.03.2022 to show why the respondent should not declared as willful defaulter. The respondent submitted reply and during the time of hearing the Bank officials suggested one time settlement for Rs.1.5 crore, the said suggestion was accepted by the respondent. The Bank did not send the minutes of the meeting, later the officials of the financial creditor deny any such settlement and said screening committee has no jurisdiction to grant any settlement. The respondent used to receive communication from the bank that for one time settlement upfront amount shall be deposited. No where it is mentioned that about the one-time settlement arrived at in the hearing dated 25.08.2022. The respondent preferred WPA.No.22233 of 2022 challenging the illegalities committed by the Bank, then only the financial creditor disclosed that already property in question had sold out by auction on 22.02.2022. It was replied that one time proposal was offered for the balance outstanding amount. The officials of Bank sabotage the one-time settlement. The alleged sale has been conducted against the principles of natural justice. The one-time settlement for Rs.1.5 crore towards the principal sanctioned loan of Rs.3 crores was arrived during the hearing held on 25.08.2022. The officers of the financial creditor are bound by the principle of promissory estoppel. In the situation that there is no debt to attract the provisions of IBC 2016 consequently the petition is liable to be dismissed.



The points for consideration are:

1. Whether the petition is barred by limitation?
2. Whether the defective certificate issued under the Banker Book Evidence Act 1891 is fatal to the petition?

Point No.1: The financial creditor submitted that the corporate debtor availed certain credit facilities and availed loan from the Allahabad Bank in pursuance of sanction order dated 13.08.2009 and executed promissory notes and deed of hypothecation on 31.12.2010. Later by Act of Central Government the Allahabad Bank amalgamated with the Indian Bank. The loan facilities were renewed on 11.09.2012, 17.03.2014 and 09.05.2016. The contention of the corporate debtor projected in its written submission and oral argument is the renewal agreement has been executed in the year 2016, but there is no document has been produced to overcome the period of limitation, since the annexure 'L' Form B notice issued only on 31.08.2022.

5. The loan was lastly renewed by *annexure 'G'* of the petition dated 09.05.2016. it is acknowledged and accepted by the corporate debtor on 10.05.2016. The loan account of corporate debtor became default on 18.09.2016 and was classified as NPA on 26.09.2018. On 03.10.2018 a sum of Rs.29,98,028/- has been credited in the loan account it is exhibited in calculation sheet *page 155* of the petition. This amount was credited before the expiry of three years from the date of last renewal of loan dated 09.05.2016, this payment made by the corporate debtor amounts to acknowledgment of debt as provided under section 19 of Limitation Act 1963 and extended the period of limitation. Further, the corporate debtor acknowledged the debt in its financial statements for the period 2020-2021 as on 31.3.2021 *page 185* of the petitions under the caption "Long term borrowings Cash credit from Allahabad Bank". This amounts to acknowledgement of debt and extended the period of limitation. Then the corporate debtor submitted OTS proposal dated 30.08.2022, and submitted a protest letter dated 02.09.2022 for non-consideration of OTS proposal and sabotage of the one-time settlement by the officials of the Bank. In



this situation, this petition filed on 26.12.2022 is within limitation. Even otherwise the corporate debtor made last payment towards loan amount on 03.10.2018, then the three years limitation period expires on 3.10.2021. The Hon'ble Supreme Court of India in *Suo Moto W.P.(C) No. 3 of 2020*, by order dated 10.01.2022 held as follows:

iii. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

As per the supra citation the period from 15.03.2020 till 28.02.2022 has to be excluded for the purpose of limitation.

6. In our case limitation starts from 3.10.2018 the day on which interest amount was paid and halted on 14.03.2020, after the expiry of one year, five months and 12 days. The remaining period is one year, six months and 18 days. The remaining period of limitation is more than 90 days, hence after the exclusion of period from 15.03.2020 to 28.02.2022, the petition has to be filed within the remaining period of limitation. From 01.03.2022 the remaining period of limitation one year, six months and 18 days expires on 19.09.2023. In this circumstance, petition filed on 26.12.2022 is within limitation. In this scenario, it is answered that the petition is not barred by limitation.

Point No.2: On the respondent side argued that certain loan documents are not stands in the name of the corporate debtor and in view of defective certificate of Banker's Evidence Act 1891 the petition is liable to be thrown out. Section 2A of Banker's Evidence Act 1891 is similar to section 65B of Indian Evidence Act 1872. In this case on the petitioner side filed the copy of certificate *page 157 of petition* under the Banker 'Books Evidence Act 1891. It is unfortunate instead of follow the



procedure laid down under the Act, merely reproduced Section 2A(a) and (c) of Act and is signed by the officer of the Bank. There is no pale of controversy that this is defective certificate, but the point is whether it leads to fatal to the petition. The Apex court in **Engineering Mazdoor Sabha vs Hind Cycles Ltd AIR 1963 SC 874** held that Tribunals are not bound by the strict and technical rules of Evidence, but their decision must nevertheless be consistent with the general principles of rules of natural justice.

7. The strict Rules of Evidence is applicable to the criminal trials, but such strict rules are not applicable to the Tribunals. However, the Bombay High Court at Goa observed in a criminal Trial case **Mrs. Sulekhabai Yeshwantrao Chowghule vs Shaik Vahid Jahangir alias Shaik Vaid** 2015 CRLJ 4824 Bom., that evidence cannot be brushed aside merely for the absence of the certificate as contemplated in the Banker' Book Evidence Act. In our case on hands, the respondent/corporate debtor not disputed the correctness of entries and account statements filed on the petitioner's side, but taken a plea only regarding admissibility of the documents because of the defective certificate. In the circumstances, the objection raised on the respondent side is turned down as unsustainable and answered to the point that the production of defective certificate under the Banker Book Evidence Act 1891 is not fatal to the petition.

8. The one another lame argument submitted on the corporate debtor side is that the loan account is not in the name of the corporate debtor hence the NeSL certificate is not pertaining to the corporate debtor. The Bank account number of the corporate debtor is No.50018125225. The loan documents are stands in the name of M/S KVR Steels Orissa Limited; the loan documents also executed by the corporate debtor represented by its directors. The corporate debtor also itself mentioned this Bank account No. 50018125225, in its all correspondence with the financial creditors. The Statement of Account is filed as *annexure 'J' page 146* of petition in this document the Account number is correctly given as No.50018125225, and the names of Sandeep Kabra/Maya Agarwal & Sanjeev Kabra/Vinod KR Agarwal are mentioned instead of corporate debtor's name. The



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above-named persons are directors of the corporate debtor. Taking the absence of name of the corporate debtor in the statement the counsel argued that the default is not pertaining to the corporate debtor. Except this document in all other documents and correspondences, the name of the corporate debtor's is mentioned. It is not disputed that the Account number is pertaining to the respondent. The respondent is having correspondence with the petitioner quoting this account number only. In the circumstances the discrepancy pointed out by the respondent side is immaterial, it will not tilt the case of the petitioner.

9. The corporate debtor committed default on 28.06.2018 and ultimately the account was classified as NPA on 26.09.2018. The corporate debtor sent notice under section 13(2) of the SARFEASI Act 2002 for the total due amount of Rs.3,05,00,282.54/- The Financial creditor filed the petition for recovery under section 19 of the Recovery of Debts and Bankruptcy Act 1993 before the DRT-Kolkata for total sum of Rs.3,31,02,423.06/- as on 30.06.2019. The immovable property given as security by the corporate debtor was sold in Auction for Rs.1,16,00,000/- on 16.03.2022 and sale certificate was issued on 02.05.2022. The sale proceed was given credit and deducted from the balance amount and filed this petition showing the due amount of Rs. (Principal Rs.1,63,15,614.08 + Interest Rs.1,49,02,241.00) 3,12,17,855.08/-

10. On the respondent side filed the detailed counter questioning the validity of sale of the immovable property by the Bank under the SARFEASI Act 2002 and refusal of OTS proposal of the corporate debtor, and application of promissory estoppel, the wrongful transfer of Rs.50/- lakhs, and the liquidation of two fixed deposits of the corporate debtor etc. This is not the forum to decide all these issues and these points are not germane to decide the section 7 IBC petition. The points to be determined here to decide the section 7 IBC petition are the existence of financial debt and default.

11. In these circumstances in view of the answers arrived to the points framed we inclined to admit the petition. The financial creditor has taken consent from **Mr.**



Rajesh Kumar Agrawal, registration No. **IBBI/IPA-001/IPP01023/2017-2018/11722**, having contact address, Room No.301, 3rd Floor. 1 Ganesh Chandra Avenue, Kolkata-700013, Email: rajesh521@yahoo.com Cell No.9830201612, an insolvency Professional to become interim Resolution Professional (IRP) of the Corporate Debtor in FormNo.2 and that no disciplinary proceedings are pending against him.

12. We therefore consider it a fit case for admitting the petition, and for initiation of the Corporate Insolvency Resolution Process in respect of the corporate debtor.

13. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders.

(i) The Corporate Debtor **KVR Steels Orissa Ltd**, is admitted in the Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.

(ii) The moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of section 14(1) of the Code.

(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 Securitisation 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.*



(iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this 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 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

(iv) As approved by the Financial Creditor, we appoint **Mr. Rajesh Kumar Agrawal**, registration No. **IBBI/IPA-001/IPP01023/2017-2018/11722**, having contact address, Room No.301, 3rd Floor. 1 Ganesh Chandra Avenue, Kolkata-700013, Email: rajesh521@yahoo.com Cell No.9830201612 to act as an Interim Resolution Professional (IRP) of the corporate debtor to carry out the functions as per the Code, subject to his possessing a valid Authorisation for Assignment (AFA) in terms of 7A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

(v) The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

(vi) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

(vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal



obligation under section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(viii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by section 20 of the Insolvency & Bankruptcy Code, 2016.

(ix) The Financial Creditor is directed to pay an advance of Rs.2,00,000/- (Rupees Two Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

(x) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and to the concerned Registrar of Companies, of IBBI after completion of necessary formalities, within three working days and upload the same on website immediately after pronouncement of the order.

(xi) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Trade Tax, and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employee's associations so that they are informed of the initiating of CIRP against the Corporate Debtor timely.

(xii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.



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14. Interim Resolution Professional shall file 1st Progress Report within six weeks from the date of this order.

15. Thus, the corporate debtor **KVR Steels Orissa Ltd**, CP (IB) No.01/CB/2023 is admitted into CIRP.

16. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

**KAUSHALENDR
A KUMAR SINGH** Digitally signed by
KAUSHALENDR KUMAR SINGH
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**Kaushalendra Kumar Singh
Member (Technical)**

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Date: 2023.11.29 15:32:54
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**P. Mohan Raj
Member (Judicial)**

Signed on this, 29th day of November, 2023.

Supriya_P.S