IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT - IV

CP No.: IB 585(ND)/2023

(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:
Jammu and Kashmir Bank
...Financial Creditor / Applicant

VERSUS

M/s Gagar Metals Private Limited
...Corporate Debtor / Respondent

Pronounced on: 10.09.2024

CORAM:
SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

Present:

For Applicant	:	Adv. Syed Arsalan, Adv. Prateek Khaitan, Adv. Chatanya Sharma, Adv. Shitij Chakravarty
For Respondent	:	Adv. Amit Dhall

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. This Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by Jammu and Kashmir Bank ("**Applicant**"), seeking to initiate Corporate Insolvency Resolution Process ("**CIRP**") against M/s Gagar

Metals Private Limited [CIN: U27310DL1993PTC054001] (“**Corporate Debtor**”), being the Corporate Guarantor to the Financial Creditor for the credit facilities availed by Rathi Super Steel Limited (“Borrower”)

2. The Corporate Debtor was duly incorporated on 10.06.1993, under the provisions of the Companies Act, 1956. At the time of filing the present Application, its registered office was located at Flat No. 207, Vardhaman Mayur Market at CSC Mayur Vihar, Phase-III, Kondli Gharoli, Delhi East, Delhi. However, upon verification of the Master Data maintained by the Registrar of Companies and accessible via the Ministry of Corporate Affairs (MCA) website, it is observed that the current registered address of the Corporate Debtor is "A-19, Ground Floor, FIEE Complex, Suite #1161, Okhla Industrial Area Phase-II, Okhla Industrial Area Phase-I, New Delhi-110020."

3. It appears that the registered office address of the Corporate Debtor may have been changed subsequent to the filing of this petition. Nevertheless, this Bench retains the requisite jurisdiction to adjudicate upon this petition, irrespective of the updated address. The change in the registered office location, even if post-dated to the filing of this petition, does not affect the jurisdiction of this Adjudicating Authority, and we are duly empowered to proceed with the matter at hand.

4. The present petition was registered on 15.09.2023 with this Adjudicating Authority on the ground that the Corporate Debtor had defaulted in the payment of a total sum of Rs. **187,74,61,430/-** (Rupees One Hundred Eighty Seven Crores Seventy Four Lakhs Sixty One Thousand Four Hundred Thirty only). Bifurcation of this loan amount is as follows:

Sr. No.	Facility	Total amount due
1	Term Loan-I	Rs. 118,41,49,766.00
2	Term Loan-II	Rs. 41,90,31,878.00
3	Working Capital Facility (Cash Credit Facility)	Rs. 27,42,79,786.36
	Total	**Rs. 187,74,61,430.36**

Facts of the Case:

5. It is further averred in the Petition that the Financial Creditor initially sanctioned a Term Loan Facility (Term Loan-I) of ₹50 Crores to the Borrower, evidenced by the Sanction Letter dated 28.10.2010. In connection with this facility, the Corporate Debtor executed a Corporate Guarantee on 28.03.2011. Subsequently, a Working Capital Facility of ₹8 Crores was sanctioned to the Borrower, as per the Sanction Letter dated 08.09.2011, and the Corporate Debtor executed another Corporate Guarantee on 03.03.2012.

6. On 02.11.2012, the Financial Creditor sanctioned an additional Term Loan (Term Loan-II) of ₹25 Crores. Out of this amount, ₹18 Crores were allocated to the Borrower, designated for the ILC/FLC limit as a sub-limit of the Term Loan. To secure this loan, the Corporate Debtor executed a Corporate Guarantee on 24.11.2012. Later, the Financial Creditor enhanced the Working Capital Facility to ₹10 Crores, along with an ILC/FLC sub-limit of ₹5 Crores, as detailed in the Sanction Letter dated 05.08.2013. The

Corporate Debtor subsequently executed a Corporate Guarantee on 12.11.2013.

7. To rectify and incorporate changes in the finance documents executed on 12.11.2013, a Supplementary Agreement was executed by the Lenders, including the Financial Creditor, on 15.01.2014. On the same day, the Corporate Debtor executed an additional Corporate Guarantee.

8. In 2015, as part of the Corrective Action Plan (CAP) formulated by the Joint Lender Forum (JLF), the Financial Creditor refinanced the existing term loans and sanctioned a fresh working capital facility to the Corporate Debtor, as per the Sanction Letter dated 30.06.2015. However, the CAP was never implemented. The Loan Account of the Borrower was subsequently declared as a Non-Performing Asset (NPA) on 30.06.2015, in accordance with the RBI's Prudential norms on Income Recognition, Asset Classification, and Provisioning.

9. The Borrower acknowledged its liability towards the Financial Creditor in its Balance Sheets for the Financial Years 2017-2018 and 2018-2019. Despite this acknowledgment, the Borrower failed to repay its outstanding dues, leading to the issuance of a Guarantee Invocation Notice by the Financial Creditor to the Corporate Debtor *(i.e. Guarantor)* on 17.12.2021.

10. Furthermore, the Hon'ble NCLT, Principal Bench, New Delhi, passed a Liquidation Order against the Borrower Company on 19.06.2020. The Financial Creditor subsequently filed a claim of ₹153,05,45,825/- and as of 30.04.2023, the outstanding amount stands at ₹217,42,61,531/-.

11. <u>Ld. Counsel for the Applicant submitted that</u>:

11.1 The Learned Counsel for the applicant bank has strongly relied on the landmark judgment of the Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. v. Union of India*, Writ Petition (Civil) No. 99 of 2018. The Hon'ble Supreme Court in this case unequivocally held that in proceedings initiated under Section 7 of the Insolvency and Bankruptcy Code (IBC), the Adjudicating Authority's primary duty is to ascertain whether a debt exists and whether it is due. This Bench has been referred to the pertinent excerpt from the judgment, which highlights that the Financial Creditor may trigger the resolution process upon the occurrence of a default, and once triggered, the process is collective and aims to rehabilitate the Corporate Debtor. As per Section 7(4) and (5) of the IBC, if the Adjudicating Authority is satisfied with the evidence of default, it is bound to admit the application.

11.2 It has been submitted that the liquidation of the Principal Borrower does not absolve the Corporate Debtor, acting as a guarantor, from its liability. The amended Section 60(2) of the IBC explicitly provides that insolvency proceedings against the Corporate Guarantor can be initiated before the National Company Law Tribunal (NCLT), even if the Principal Borrower is under liquidation.

12. It is observed that the Corporate Guarantee invocation notice dated 17.12.2021 erroneously references the name "Ferrous Investments Private Limited." This Bench, vide its order dated 27.09.2023, directed the Applicant to clarify how the invocation of the Corporate Guarantee against M/s Ferrous Investments Pvt. Ltd. formed the basis for initiating the present application under Section 7 of the Insolvency and Bankruptcy

Code against M/s Gagar Metals Private Limited. In compliance with the said order, the Applicant Bank, through an affidavit dated 24.10.2023, has acknowledged that the reference to "Ferrous Investments Private Limited" was a result of an inadvertent error. The affidavit, now part of the record, clarifies this oversight. The relevant portion of the affidavit dated 24.10.2023 is hereby reproduced for reference.

5. I say that the Guarantee Invocation Notice dated 17.12.2021 issued by the Financial Creditor has been categorically addressed to Corporate Debtor wherein the Corporate Debtor has been arrayed as Noticee No.1. However, in the subject of the said notice, the name of the Gagar Metals Private Limited has been inadvertently written as Ferrous Investment private limited.

13. Futher, this Bench, vide order dated 04.03.2024, noted the Counsel appearing for the Respondent's failure to file the Vakalatnama and reply within the stipulated time, resulting in the closure of their right to do so. The Order dated 04.03.2024 is extracted below for reference:

PRESENT:
For the Applicant : Mr. Syed Arsalan, Adv, Mr. Prateek Khaitan, Adv, Mr. Shitij Chakravarty, Adv, Mr. Chatanya Sharma, Adv
For the Respondent : Mr. Amit Dhall, Adv.

ORDER

Learned Counsel for the applicant as well as Learned Counsel for the respondent are present through video-conferencing. Perusal of the file shows that on 14.02.2024 Learned Counsel for the respondent was present through video-conferencing and had submitted that they had received copy of the application today i.e. 14.02.2024 at 01.00 p.m. and they were not in a position to deal with the matter today and Learned Counsel for the respondent undertook to file Vakalatnama within three days and reply within a week. However, till today neither Vakalatnama on behalf of Learned Counsel for the respondent nor reply is filed. Therefore, the right to file reply on behalf of the respondent stands closed. Let this matter be posted to 13.03.2024 for arguments.

14. It is noted with concern that there is no document on record submitted by the Respondent, including the absence of a Vakalatnama authorizing Adv. Amit Dhall, who has been representing the Respondent in these proceedings. It is a fundamental principle of legal practice that an Advocate cannot appear on behalf of a party without first filing a Vakalatnama, which serves as the formal authority and record of the Advocate's engagement by the client. The failure to file this essential document is a serious procedural lapse and reflects poorly on the conduct of the Respondent's representation. This Bench deplores such a disregard for the established norms of legal procedure, which undermines the decorum of the court and the integrity of the judicial process. The absence of a Vakalatnama not only violates procedural requirements but also jeopardizes the Respondent's ability to effectively participate in the proceedings, as it calls into question the legitimacy of the representation before this Tribunal.

Findings and Analysis:

15. Considering the facts of the present case, we find that:

15.1 The Borrower's Loan Account was declared a Non-Performing Asset (NPA) on 30.06.2015, under RBI's Prudential norms. The Borrower acknowledged its liability in the Balance Sheets for the Financial Years 2017-2018 and 2018-2019. Despite this acknowledgment, the Borrower failed to repay its dues, leading to the issuance of a Guarantee Invocation Notice on 17.12.2021. Notably, the Hon'ble Supreme Court, in SMW(C) No. 03 of 2020, excluded the period from 15.03.2020 to 28.02.2022 from the limitation period. Given that the petition was filed on 15.09.2023, within the three-year statutory limitation period from either the date of default or acknowledgement of debt, in accordance with Article 137 of the Limitation Act, 1963, alongwith the precedent established in ***B.K. Educational Services Private Limited v Parag Gupta and Associates (Civil Appeal No. 23988 of 2017 MANU/SC/1160/2018)***, it stands as valid within the prescribed timeframe.

15.2 This being a petition under section 7 of IBC, 2016, there are few questions that need to be answered which is as to whether there is a debt which is due and is in default and whether there is time value of this debt *(Hon'ble Supreme Court in the case of **M. Suresh Reddy v. Canara Bank, 2023 SCC Online SC 608, (Para 10-13)***.

15.3 It is an established fact that the loan in question was initially extended to the Borrower, Rathi Super Steel Limited, by a consortium of banks led by Dena Bank. Upon the Borrower's default in repaying the loan, the lead bank, Dena Bank, initiated insolvency proceedings by filing an application, CP 1446(PB)/2018, before the NCLT Principal Bench. This application was duly admitted, and by order dated 12.06.2019, the Corporate Insolvency Resolution Process (CIRP) was commenced against the Borrower. Currently, the Borrower Company is undergoing liquidation, with the matter remaining sub judice before the NCLT Principal Bench.

15.4 Further, as the Respondent herein stood as a Guarantor against the loan facilities availed by the Borrower and the loan availed still remains unpaid, the Guarantor, by the virtue of the Deed of Guarantee is liable to pay the unpaid debt.

15.5 The liability of the Corporate Debtor, acting as a guarantor, is firmly established as coextensive with that of the Principal Debtor, in accordance with Section 128 of the Indian Contract Act, 1872. This legal provision underscores that the guarantor's obligation is equal to that of the principal debtor unless a contrary intention is expressly stipulated in the contract. The principle of co extensiveness means that the guarantor is equally responsible for the debt, including all associated liabilities such as interest, penalties, and any additional costs arising from the default of the principal debtor.

15.6 Importantly, the discharge of the Principal Debtor by operation of law, whether through insolvency, liquidation, or other legal mechanisms, does not absolve the guarantor of its responsibilities. The guarantor’s liability remains intact and enforceable despite the principal debtor’s discharge, as the guarantor’s commitment is an independent contract. This enduring liability of the guarantor serves to protect the interests of the creditor, ensuring that the creditor’s right to recover the debt is not diminished by the principal debtor's inability to pay. Thus, the legal framework ensures that the surety's obligations continue, providing a critical safeguard in financial transactions. This portrays the existence of debt which is due and payable by the Guarantor.

15.7 This Adjudicating Authority is mindful of the mandate under Section 4 of the IBC, 2016, and is not tasked with the precise quantification of the debt owed, but rather with determining whether said debt exceeds the threshold of Rupees One Crore. In the case at hand, it is pertinent to note that the defaulted amount by the Corporate Debtor stands at Rs. **187,74,61,430/-** (Rupees One Hundred Eighty Seven Crores Seventy Four Lakhs Sixty One Thousand Four Hundred Thirty only), surpassing the statutory limit as stated in Section 4 of the IBC, 2016.

15.8 Considering the above-cited judgements and facts of the present case, we are of the considered view that the Applicant is a Financial Creditor holding Financial Debt which is in default of payment by the Corporate Debtor. Therefore, we are satisfied that there exists debt and default and the same is corroborated by the averments made within the application.

16. In light of the above facts and circumstances, it is ordered as follows: -

10.1 The Application bearing **IB-585(ND)/2023** filed by the Applicant/(FC), under section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Corporate Debtor is **admitted**.

10.2 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, Adjudicating Authority, 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.
(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances 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, 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, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

10.3 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.

10.4 We also declare a moratorium in terms of Section 14 of the Code. 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 Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

10.5 The applicant has proposed the name of Ms. Chhaya Gupta as IRP. On perusal of the details of the IRP, it is found that Ms. Chhaya Gupta is having residential address of Indore, Madhya Pradesh, so her travelling to and fro for the company whose registered office is in Delhi to get the records of the company whose registered office is in Delhi zone, conduct meetings of CoC, and present himself before the Adjudicating Authority in physical hearings would add to the cost of CIRP as well as may delay the process of CIRP. We have perused that in some cases IRP has been appointed from a city different from the city of registered office of the Corporate Debtor but it is the solemn duty of the Adjudicating Authority to ensure that CIRP cost does not increase unnecessarily for the reason of IRP being located in a different city than the city of registered office of the Corporate Debtor and also quite far away from this Bench. Further, it's the solemn duty of this Adjudicating Authority to minimise delay in conducting CIRP proceedings. Hence, we have referred to the panel of Insolvency Professionals of NCLT, Delhi. We have also perused the panel of Insolvency Professionals given by IBBI for NCLT, Delhi and we find that the panels of IBBI have been prepared zone-wise and all the insolvency professionals in New Delhi zone are located in the Union Territory of New Delhi. In this view of the matter, we appoint **Mr. Pawan Kumar Singal** as IRP of the Corporate Debtor. The details of the IRP are as follows: Mr. Pawan Kumar Singal, IRP Registration No. **IBBI/IPA-001/IP-P01172/2018-2019/12229** having address: MP-114, Pitam Pura, New Delhi, National Capital Territory of Delhi, 110034 e-mail: pawansingal@gmail.com. The Interim Resolution Professional (IRP) of the Corporate Debtor is hereby appointed subject to submission of a valid Authorisation for Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 within two days of this order. The Interim Resolution Professional shall also file a 'Declaration Disclosure Statement' within two days from the date of this order.

10.6 In pursuance of Section 13(2) of the Code, we direct the IRP to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

10.7 During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.

10.8 The IRP shall perform all his functions as contemplated, interalia, by Sections 17, 18, 20 & 21 of the Code. He is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this

Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

10.9 The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

10.10 The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakh Only) with the IRP to meet the expense to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by IRP and shall be paid back to the Financial Creditor.

10.11 In terms of Section 7(7) of the Code, Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today.

10.12 The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.

10.13 The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.

10.14 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Accordingly, the present petition bearing CP No. **IB 585 (ND)/2023** is **admitted**. No order as to cost.

-sd-	**-sd-**
(DR. SANJEEV RANJAN)	**(MANNI SANKARIAH SHANMUGA SUNDARAM)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)