IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.188/MB-IV/2021
Under Section 7 of the I&B Code, 2016

In the matter of:
Aditya Birla Finance Limited
[CIN: U65990GJ1991PLC064603]
…Financial Creditor/Applicant
V/s
Delta Iron and Steel Company Private Limited
[CIN: U27100MH1996PTC097025]
...Corporate Debtor/Respondent

Order Dated: 07.06.2022

Coram:

Mr. Rajesh Sharma Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s)	:	Mr. Rohit Gupta, Advocate.
For the Respondent(s)	:	Mr. Amey Hadwale, Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being C.P. (IB) No. 188/MB/C-IV/2021 filed by Aditya Birla Finance Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against

Delta Iron and Steel Company Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Application is filed by Mr. Nikhil Rodrigues, representative of the Financial Creditor vide its Board Resolution dated 30.01.2020, claiming total default of Rs.18,39,31,575/- (Rupees eighteen crore thirty-nine lakh thirty-one thousand five hundred seventy-five only) including interest @ 11.85 % p.a. from due date of invoice till 22.09.2020.

3. The Date of Default is 21.08.2019. The Petition is filed on 10.03.2021.

4. The case of the Financial Creditor is as under:

   a) The Financial Creditor has provided Finance Facility to the Corporate Debtor in January, 2018 to the tune of Rs.15,00,00,000/- (Rupees fifteen crore only). In July, 2018 upon request of the Corporate Debtor, the said Finance Facility was enhanced to Rs.25,00,00,000/- (Rupees twenty-five crore only).

   b) The said facility was obtained by the Corporate Debtor for the purpose of trade payments to be made to their supplier JSW Steel Ltd. Under the Facility Agreement and Revised Facility Agreement the Financial Creditor had agreed to finance the invoices issued by the Supplier in favour of Corporate Debtor up to the Loan Amount.

   c) The Corporate Debtor had agreed to make payment towards all such invoices financed by the Financial Creditor, along with financing charges on or before the expiry of the credit period as mentioned in the Facility Agreement, Revised Facility Agreement, Sanction Letter and Enhanced Sanction Letter.

d) The tenure of the Enhanced Sanction Letter and Revised Facility Agreement expired on 30.06.2019. As on the 22.11.2019, a sum of Rs.17,02,83,044.21 (Rupees seventeen crore two lakh eighty-three thousand forty-four and twenty-one paise only) was due and payable by the Corporate Debtor to the Financial Creditor.

e) Demand Notice dated 28.11.2019 was sent to the Corporate Debtor calling upon to pay Rs.17,02,83,044.21 (Rupees seventeen crore two lakh eighty-three thousand forty-four and twenty-one paise only) along with interest @ 11.85 % p.a. till date of realisation along with penal interest 2% p.a. The Corporate Debtor has not replied to the said Demand Notice.

f) The Corporate Debtor has pledged 19,42,577.412 units of Birla Sun Life Asset Management Company Limited in favour of the Financial Creditor.

5. The details of the unpaid invoices/principal amount outstanding are given at p.8 of the Petition and the same is as under:

Invoice Batch Date	Invoice No.	Invoice Date	Due Date	Invoice Amount	Invoice Allocate amount	Invoice Balance Amount
23.05.2019	94	23.05.2019	21.08.2019	20000000	2276966.11	1772303.89
24.05.2019	95	23.05.2019	21.08.2019	20000000	0	20000000
07.06.2019	96	07.06.2019	05.09.2019	10000000	0	10000000
14.06.2019	97	14.06.2019	12.09.2019	5000000	0	5000000
19.06.2019	98	18.06.2019	17.09.2019	10000000	0	10000000
19.06.2019	99	18.06.2019	17.09.2019	7500000	0	7500000
27.06.2019	100	21.06.2019	19.09.2019	10000000	0	10000000
24.06.2019	101	24.06.2019	23.09.2019	10000000	0	10000000
26.06.2019	102	26.06.2019	24.09.2019	10000000	0	10000000
28.06.2019	103	28.06.2019	26.09.2019	10000000	0	10000000
08.07.2019	104	08.07.2019	07.10.2019	20000000	0	20000000
08.07.2019	105	08.07.2019	07.10.2019	10000000	0	10000000
12.07.2019	106	12.07.2019	10.10.2019	10000000	0	10000000
15.07.2019	107	12.07.2019	14.10.2019	10000000	0	10000000

6. The Financial Creditor, vide order dated 08.12.2021, was directed to file the Ledger Accounts of the Corporate Debtor where the payment is by the Corporate Debtor to the Financial Creditor is reflected. The Financial Creditor has filed the Additional Affidavit dated 10.01.2022 stating that the Financial Creditor do not maintain a Ledger Account and therefore has annexed the excel sheet mentioning the details of the Invoices paid by the Corporate Debtor since the facility was availed by the Corporate Debtor.

Findings:

7. We have heard the arguments of the Learned Counsel for both the parties and perused the records.

8. The Corporate Debtor has not filed its Affidavit in Reply. The Bench has given several opportunities to the Corporate Debtor to file the Reply in the matter. However, the Corporate Debtor chose not to file the Reply and hence, the right to file reply of the Corporate Debtor was forfeited vide order dated 09.02.2022.

9. It is observed by the Bench that the Financial Creditor has provided Finance Facility to the Corporate Debtor. For this purpose, the Facility Agreement and Revised Facility Agreement were entered between Financial Creditor and Corporate Debtor.

10. After perusal of the material on record, this Bench is of considered view that the there is no reason to deny the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor as the Corporate Debtor himself has admitted its liability.

11. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor is liable to be admitted.

12. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established.

13. The Applicant has proposed the name of Mr. Bhaskar Shetty, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01285/2018-19/12003] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being C.P. (IB) No. 188/NCLT/MB/C-IV/2021 filed under Section 7 of I&B Code, 2016, filed by Aditya Birla Finance Limited, Financial Creditor/ Applicant against Delta Iron and Steel Company Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

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 possession of the corporate debtor.

II. That 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.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That 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 Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench appoints Mr. Bhaskar Shetty, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01285/2018-19/12003], E-mail: cabgshetty@gimail.com, as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution

Professional even by way of email or Whats App. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Kishore Vemulapalli
Member (Judicial)

Sd/-

Rajesh Sharma
Member (Technical)

07.06.2022