

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 182/KB/2022

A Petition filed 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:

INDIAN OVERSEAS BANK	... Applicant/Financial Creditor
	verses
APEX STEEL PRIVATE LIMITED (CIN: U27310BR1999PTC008912)	... Respondent /Corporate Debtor

**Date of Hearing: October 04, 2023
Date of Pronouncement: October 10, 2023**

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

Appearance:

For Applicant/ Financial Creditor:

- 1. Mr. Ritoban Sarkar, Adv.**
- 2. Mr. Barnik Ghosh, Adv.**

For Respondent/ Corporate Debtor:

- 1. Mr. Shaunak Mitra, Adv.**
- 2. Joveria Sabbah, Adv.**

ORDER

Per D. Arvind, Member (Technical):

- 1. This Court is congregated through hybrid mode.**
- 2. This instant application has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, for brevity "IBC" read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by the Indian Overseas Bank, Financial Creditor against the Apex Steel Private Limited, Corporate Debtor for initiation of Corporate Insolvency Resolution Process (for brevity "CIRP") of the Corporate Debtor.**
- 3. The Corporate Debtor is a private limited company, incorporated on July 19, 1999, bearing CIN: U27310BR1999PTC008912, having authorized share capital**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Apex Steel Private Limited
Company Petition (IB) No. 182/KB/2022

of Rs. 3,00,00,000/- and the Paid-up Capital of Rs. 3,00,00,000/-, registered address at 106, Ashiana Towers Exhibition Road Patna 800001, Bihar.

4. Total Amount claimed to be in default is Rs. 28,05,65,910/- (Twenty-Eight Crore Five Lakh Sixty-Five Thousand and Nine Hundred and Ten) only including unapplied interest as on 30.04.2022 and the date of default is 31.03.2017 which got extended to 4/2/2019 by virtue of an order passed by DRT in an appeal filed by the financial creditor herein.

5. **Brief facts of the case:**

5.1. Indian Overseas Bank, the Applicant (Financial Creditor) herein, has advanced loan and various credit facilities around Rs.12 Crores, the loan account bearing no.148402000005176, for the principal amount of Rs. 12,64,08,553/-. Further, another loan account bearing no.12460000000103 for a principal amount of Rs. 3,80,742/- was granted. Dates of disbursements are detailed in Annexure "C" to the application made by the applicant, which is reproduced below: -

Date of Disbursement	Amount (in Crores)
04/04/2011	5.00 (Enhanced from 3.10)
30/05/2012	7.00 (Enhanced from 5.00)
10/12/2014	12.00 (Enhanced from 7.00)

5.2. The first credit sanction was made on 04/04/2011 for an amount of Rs.5 Crore with interest @13.75 and the same is annexed at page 69 of the application. The same was enhanced to Rs. 7 Crore on 30/05/2012 by way of Credit Sanction Advice by the Financial Creditor and the same is annexed at page 78 of the application and again to Rs.12 Crore on 10/12/2014 from Rs. 7 Crore was made by way of Credit Sanction Advice, which is annexed at page 99 of the application.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Apex Steel Private Limited
Company Petition (IB) No. 182/KB/2022

- 5.3.** Disbursements have been made as mentioned in the Table above which is not disputed by the Corporate Debtor. When the Corporate Debtor started defaulting in making EMI payments from August, 2016, the Financial Creditor declared the facilities given as “NPA” on 31/03/2017 and even this is undisputed.
- 5.4.** After adding interest from the “date of default” the Financial Creditor has arrived at an amount of Rs. 28,05,65,910/-, which includes interest up to 30/04/2022. Since NPA was declared on **31/03/2017**, the original date of default was 31/03/2017.
- 5.5.** Since the Corporate Debtor defaulted in making payments, recovery proceedings were taken up by the Financial Creditor by way of application to the Debt Recovery Tribunal, Patna (“DRT, Patna”).
- 5.6.** On **04/02/2019**, the DRT, Patna passed an order that the Corporate Debtor has to pay an outstanding amount of Rs.14,27,93,337/- with interest @10% till the date of payment from 17/03/2018. This order has been challenged before the Hon’ble High Court, Patna but **no stay order has been granted by the High Court till date.**
- 5.7.** Since the default continued till date, the Financial Creditor has filed this application under Section 7 of IBC seeking CIRP of the Corporate Debtor.
- 6. Arguments advanced by the Ld. Counsel for the Applicant:**
- 6.1.** Ld. Counsel for the applicant (Financial Creditor) brought to our notice that the default amount is Rs. 28,05,65,910/-, the date of default is 31/03/2017 consequent to the declaration of the said facilities extended to the Corporate Debtor as ‘NPA’ on 31/03/2017 which got extended to 4/2/2019 due to recovery certificate issued by DRT on 4/2/2019 by virtue of an order. It is brought to our attention the various sanction letters which are forming part of the application at pages 69, 78 and 99, amounting to Rs. 12 Crore. Ld. Counsel submitted that consequent to default in payment from August, 2016, the applicant filed an appeal before the DRT, Patna and the DRT,

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Apex Steel Private Limited
Company Petition (IB) No. 182/KB/2022

Patna was pleased to pass an order on 04/02/2019 wherein it was held that the Corporate Debtor has to pay an outstanding amount of Rs.14,27,93,337/- with interest @ 10% till the date of payment from 17/03/2018. A copy of the judgement is annexed as **Annexure-M**. This judgment was not challenged before the Hon'ble Debt Recovery Appellate Tribunal ("DRAT"), although it was challenged in a writ before the Hon'ble High Court, Patna and no stay order has been granted.

- 6.2. Ld. Counsel also brought to our attention that the Balance Sheet of the Corporate Debtor in the year ending on 31/03/2019 has accepted the loan amount in its balance sheet, thus making this application filed within the period of limitation. Moreover, the order of the DRT dated 04/02/2019 has recorded the debt of the Financial Creditor and, therefore, the application is being filed within the limitation period, as held in the judgment cited.
- 6.3. The judgment in **Civil Appeal No. 689 of 2021** in the case of **Kotak Mahindra Bank Limited -vs- A. Balakrishnan & Anr., of the Hon'ble Apex Court** referred by the Ld. Counsel in paragraph 84 held as under: -

"84. To conclude, we hold that a liability in respect of a claim arising out of Recovery Certificate would be a "financial debt" within the meaning of clause (8) of Section 5 of the IBC. Consequently, the holder of the Recovery Certificate would be a financial creditor within the meaning of clause (7) of Section 5 of the IBC. As such, the holder of such certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate."

(Emphasis Added)

Therefore, he submitted that all ingredients for Section 7 application under IBC existed in this case, such as default, default amount exceeding the threshold limit and the petition filed within the period of limitation. In view of above, the Ld. Counsel for the Applicant contends that the same may be admitted to initiate CIRP of the Corporate Debtor.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Apex Steel Private Limited
Company Petition (IB) No. 182/KB/2022

6.4. Ld. Counsel for the Financial Creditor has proposed the name of **Mr. Ajay Kumar Agarwal, Registration no IBBI/IPA-002/IP-N00608/2018-2019/11859, Address: Plot No. 11D/31/1, Street No. 111 (Beside City Centre – 2) PS QUBE, Unit Number – 1015A, 10th Floor, Kolkata 700135, Email ID: ajay_agarwal45@yahoo.com / cs.aaa.2014@gmail.com, Contact: +91 9883362775** for appointing as **Interim Resolution Professional (“IRP”)**

7. Arguments advanced by the Ld. Counsel for Respondent:

7.1. Ld. Counsel for the Respondent did not dispute the default or the amount of default or for that matter that the application for initiation of CIRP u/s. 7 of the IBC is filed within the period of limitation. His main contention is that the applicant while advancing loans/various credit facilities has arranged for the issue of Insurance Policies without the consent of the Corporate Debtor and the premium was debited from the Corporate Debtor’s account. He also pointed out that the Insurance Company is a joint venture between the applicant and Universal Sompo General Insurance Co. Ltd. (“USGICL”).

7.2. It was submitted that due to a heavy flood, the factory got submerged in August, 2016, consequent to which the factory of the Corporate Debtor was unable to function for a very long period , which caused immense damage and loss of materials and machinery for which a claim was made to USGICL, the Insurance Company, and till this date the said Insurance Company has not taken any decision to process the claim due to which the Corporate Debtor defaulted in repayment of loan amount to the applicant.

7.3. Ld. Counsel for the Respondent has argued that if the Insurance Company (USGICL) had settled the genuine claim of the Corporate Debtor, the default would not have occurred. Ld. Counsel further submitted that as the Insurance Agent, the applicant should have made efforts for the settlement of the insurance claim made by the Corporate Debtor, but the agent did not

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Apex Steel Private Limited
Company Petition (IB) No. 182/KB/2022

take any steps or render any assistance for processing the claim made by the Corporate Debtor, with the Insurance company.

- 7.4.** Ld. Counsel for the Respondent also brought to our attention Regulation 2 relating to the conduct of an agent under IRDA Regulations and contended that the Insurance Agent (the applicant) did not act in consonance with the said Regulation 2. He also contended that in the entire petition filed by the applicant, there is no word about the flood, insurance, pendency of dispute relating to insurance claim before the appropriate Consumer Forum, Insurance Regulator etc.
- 7.5.** Ld. Counsel has also submitted that it is a case where both the applicant and the insurance company, which is a sister concern of the applicant, are in hand and gloves to recover the dues of the applicant without settling the amount of insurance claim made by the Corporate Debtor with the Insurance Company.
- 7.6.** Ld. Counsel for the Respondent has also invoked section 60(5) of the IBC and stated that the applicant has initiated this petition for CIRP fraudulently with malicious intent for a purpose other than resolution and therefore, it is claimed that the instant application under Section 7 of IBC in hand is liable to be dismissed. According to him there is no need for a CIRP, once the Insurance claim is settled by the Insurance company which is a joint venture company of the applicant.

8. Analysis and Findings:

- 8.1.** We have heard the rival contentions and documents placed before us.
- 8.2.** For admitting an application under section 7 of the IBC, Adjudicating Authority's role is limited to examining whether there was default, the defaulted amount is in excess of the threshold limit fixed in section 5(8) of the IBC, and that the application is filed within the period prescribed under the Limitation Act, 1963 as per section 60(6) of the Code and the application is complete in all respect as required under the Code. If above

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Apex Steel Private Limited
Company Petition (IB) No. 182/KB/2022

criteria are met, then the Adjudicating Authority has to admit the petition filed under section 7 of IBC for initiating CIRP of the Corporate Debtor.

- 8.3.** In the given case, there is no denial from the respondent about the default, the defaulted amount, which is in excess of the threshold limit and the application being filed well within the period prescribed under the Limitation Act, 1963 as per section 60(6) of the Code. There is also no dispute about the application being, complete in all respects.
- 8.4.** The only grievance of the respondent is that the applicant is a contributor to the default and hence the application filed by the applicant is not maintainable
- 8.5.** We are of the view that the loan agreement and the credit facilities pursuant to the agreement between the applicant and the Corporate Debtor is a separate contract and should not be linked with the insurance contract made by the Corporate Debtor with the insurance company, Universal Sompo General Insurance Co. Ltd. Admittedly, there is no agreement between the parties linking these two contracts.
- 8.6.** The non-processing of the insurance claim made by the Corporate Debtor till date, has been disputed already with the Insurance Regulator and Consumer forums and the outcome of the same could seal the matter relating to the Insurance Claim. However, as adjudicating authority involved in summary proceedings under IBC, we cannot use it as reason to reject the application under section 7 of the IBC when it meets all the criteria for admission.
- 8.7.** The Hon'ble Apex Court has had occasion to examine the section 7 application reported in *(2018) 1 SCC 407 Innoventive Industries Limited -vs- ICICI Bank and Anr., (paras 28 and 29)*. Accordingly, in the light of the observations of the Hon'ble Apex Court, this Adjudicating Authority is satisfied that the default has occurred unless it is proved by the Corporate Debtor that there was no default. This judgment of the Hon'ble Apex Court

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Apex Steel Private Limited
Company Petition (IB) No. 182/KB/2022

has been referred to in great detail in the order passed by the Hon'ble NCLAT in the matter of *State Bank of India -vs- N.S. Engineering Projects Pvt. Ltd. in Company Appeal (AT) (Insolvency) No.978 of 2022.*

- 8.8.** Further, it is evident that the Applicant has claimed the date of classifying NPA to the Corporate Debtor as the Date of Default. We rely upon the judgement passed by the Hon'ble Apex Court in the case of *Laxmi Pat Surana v. Union Bank of India* reported in (2021) 8 SCC 481: MANU/SC/0221/2021 that

“37. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action Under Section 7 of the Code...”

(Emphasis Added)

Thus, the Date of Default on December 31, 2017, is rightly claimed by the Applicant **which got further extended by the Order of the Ld. DRT to February 04, 2019.** The Ld. Counsel for the Applicant has claimed that the order of the DRT dated February 04, 2019, has recorded the debt of the Financial Creditor and, therefore, the application is being filed within the limitation period.

Further, we rely upon the judgment in the case of *Kotak Mahindra Bank Limited -vs- A. Balakrishnan & Anr., in Civil Appeal No. 689 of 2021,* referred by the Ld. Counsel, where the Hon'ble Apex Court in para 84 laid down that: -

“84. To conclude, we hold that a liability in respect of a claim arising out of Recovery Certificate would be a “financial debt” within the meaning of clause (8) of Section 5 of the IBC. Consequently, the holder of the Recovery Certificate would be a financial creditor within the meaning of clause (7) of Section 5 of the IBC. As such, the holder of such certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate.”

(Emphasis Added)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Apex Steel Private Limited
Company Petition (IB) No. 182/KB/2022

Hence, the claim of the Ld. Counsel of the applicant regarding the “Financial Debt” and “Limitation Period” is proper and not prejudiced.

8.9. In the light of the facts stated in the petition and the evidence placed on record and the discussion hereinabove, we have no hesitation in admitting this application filed under **Section 7 of I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by the **Indian Overseas Bank (Financial Creditor)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution Process** in respect of **Apex Steel Private Limited (Corporate Debtor)**.
- ii.** Moratorium Order is passed for a public announcement as stated in Section 13 of the Insolvency & Bankruptcy Code, 2016.
- iii.** The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The Interim Resolution Professional (IRP) shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in Clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016, shall be made immediately.
- iv.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following:
 - 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;

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Apex Steel Private Limited
Company Petition (IB) No. 182/KB/2022

- b)** Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its asset 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 (54 of 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.
- v.** The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- vi.** The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii.** The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
- viii.** Provided that where at any time during the Corporate Insolvency Resolution Process period. if the 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, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix.** Necessary public announcement as per Section 15 of the Insolvency & Bankruptcy Code, 2016 may be made by the Resolution Professional upon receipt of the copy of this Order.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Apex Steel Private Limited
Company Petition (IB) No. 182/KB/2022

- x. As per proposal given by the Financial Creditors, **Mr. Ajay Kumar Agarwal, Registration no IBBI/IPA-002/IP-N00608/2018-2019/11859, Address: Plot No. 11D/31/1, Street No. 111 (Beside City Centre – 2) PS QUBE, Unit Number – 1015A, 10th Floor, Kolkata 700135, Email ID: ajay_agarwal45@yahoo.com / cs.aaa.2014@gmail.com, Contact: +91 9883362775** for appointing the “IRP”, is appointed as the **Interim Resolution Professional** of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.
- xi. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 Seven Days from the date of receipt of this Order, in default of which coercive steps will follow. No separate notice for cooperation by the suspended management should be expected.
- xii. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- xiii. In terms of section 7(5)(a) of the Code, the Court Officer of this Court is hereby directed to communicate this Order to the Financial

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Apex Steel Private Limited
Company Petition (IB) No. 182/KB/2022

Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.

- xiv.** Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. 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.
- xv.** The Financial Creditors shall be liable to pay to IRP a sum of Rs. **3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.
- xvi.** The Resolution Professional shall conduct CIRP in time time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- 9.** Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.
- 10.** Post the matter on **22/ 11/ 2023** for filing the Periodical Progress Report.

Sd/-

**D. Arvind
Member (Technical)**

Sd/-

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 10th Day of October, 2023.

Bose, R. K. [LRA]/ hb.