

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-I
KOLKATA**

CP (IB) No. 183/KB/2022

In the matter of:

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Indian Overseas Bank

...Financial Creditor

Versus

**Krish Ispat Company Limited
[CIN: U23101BR1999PLC009044]**

...Corporate Debtor

Order pronounced on: 07.12.2023

Coram:

Shri Rohit Kapoor	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (through hybrid mode):

For the Financial Creditor	:	Mr. Ritoban Sarkar, Advocate Mr. Barnik Ghosh, Advocate
For the Corporate Debtor	:	Mr. Shaunak Mitra, Advocate Ms. Joveria Sabbah, Advocate

ORDER

Per Rohit Kapoor, Member (Judicial)

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”) by Indian Overseas Bank, represented by **Mr. Saroj Kumar Panda**, authorized through a Letter

of Authority dated 04 August 2018 seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Krish Ispat Company Limited (“Corporate Debtor”).

3. The Corporate Debtor was incorporated on 18 November 1999, having CIN: U23101BR1999PLC009044. It’s registered office is D-217, 2nd Floor, Dumrao Place, Fraser Road, Patna, 800001. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 21 May 2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.83,92,18,604/- (Rupees Eighty Three Crore Ninety Two Lakh Eighteen Thousand and ix Hundred and Four only) as on 30 April 2022. The date of default has been mentioned as 31 March 2017.

Submission of learned Counsel appearing for the Financial Creditor

5. The learned Counsel submitted that the Financial Creditor had advanced a loan of Rs. 11,00,00,000/- (Rupees Eleven Crore only) in the form of cash credit facility, Rs. 2,75,00,000/- (Rupees Two Crore Seventy-Five Lakh only) on account of Term Loan I facility, Rs. 79,00,000/- (Rupees Seventy-Nine Lakh only) as Term Loan II facility *vide* Credit Sanction Advice dated 01 June 2012.
6. The loans were enhanced *vide* Credit Sanction Advice dated 12 September 2013, wherein cash credit facility was enhanced from Rs.11,00,00,000/- (Rupees Eleven Crore only) to Rs.20,00,00,000/- (Rupees Twenty Crore only). The Term Loan Facility I was reduced from Rs.2,75,00,000/- (Rupees Two Crore Seventy-Five Lakh only) to Rs. 2,01,00,000/- (Rupees Two Crore One Lakh only). The Term Loan Facility II was also reduced from Rs. 79,00,000/- (Rupees Seventy-Nine Lakh only) to Rs. 65,00,000/- (Rupees Sixty-Five Lakh only) and

- a Term Loan of Rs. 1,75,00,000/- (Rupees One Crore Seventy-Five Lakh only) (“Term Loan Facility III”).
7. The enhancement was also supported by a Board Resolution dated 10 October 2013 passed by the Board of the Corporate Debtor.
 8. Further on 06 October 2015, *vide* Credit Sanction Advice, the Cash Credit facility was enhanced from Rs. 20,00,00,000/- (Rupees Twenty Crore only) to Rs. 30,00,00,000/- (Rupees Thirty Crore only). The Term Loan Facility I was reduced from Rs. 8,88,00,000/- (Rupees Eight Crore Eighty-Eight Lakh only) to Rs. 71,00,000/- (Rupees Seventy-One Lakh only). The Term Loan Facility II was reduced from Rs. 1,12,00,000/- (Rupees One Crore Twelve Lakh only) to Rs. 28,00,000/- (Rupees Twenty-Eight Lakh only). The Term Loan Facility III was reduced from Rs. 1,75,00,000/- (Rupees One Crore Seventy-Five Lakh only) to Rs. 1,48,00,000/- (Rupees One Crore Forty-Eight Lakh only), a term loan facility IV for a sum of Rs. 2,60,00,000/- (Rupees Two Crore Sixty Lakh only) was also sanctioned.
 9. As per the last Credit Sanction Advice dated 06 October 2015 the applicable rate of interest for the credit facility extended to the Corporate Debtor was 14.05% monthly compounded, except Cash Credit of Rs. 30 Crore being given @13.65%. The Corporate Debtor was also liable to pay further 2% on overdue amount in case of any irregularity as per terms and conditions of the sanctioned loans.
 10. All these facilities have been duly secured by both movable, immovable and other securities. After adhering to the repayment schedule for more than a year, the Corporate Debtor stopped payment from 2017 as a result of which Financial Creditor was compelled to declare the account as a Non-Performing Asset (“NPA”) w.e.f from 31 March 2017.
 11. The Financial Creditor issued a notice under section 13(2) of the SARFAESI Act, 2002 on 06 April 2017 and published the same on 20

April 2017. A date of NPA is rightly considered to the date of the default pursuant to which the Corporate Debtor had stopped making payment and the account is downgraded.

12. The Financial Creditor filed a suit before the DebtsRecoveryTribunal,Patna and the DebtsRecoveryTribunal,Patna issued arecovery certificate dated 04February 2019 whereby the Corporate Debtor became liable to pay a sum of Rs.41,62,00,000/-. The said order attained finality and was notchallenged by the Corporate Debtor.

13. It is lastly submitted that the petition is within the period of limitation. The date of default is pleaded as 31 March2017. Subsequently, the Financial Creditor also filed a suit for recovery under the DRT Act, 1993 which led to a certificate of recovery dated 04 February2019. The said date would constitute tobe a fresh causeof action in order to enable the Financial Creditor toinstitute the present proceedings as has been held by the decisions of the Hon'ble Supreme Court in *Dena Bank v. Shiv Kumar Reddy (2021) 10 SCC 330*¹ and *Kotak Mahindra Bank v. A Balakrishnan (2022) 9 SCC 186*².

14. Further the Corporate Debtor has unequivocally admitted in the balance sheet that there is an amount due and payable to the Financial Creditor . Therefore, the present application being filed in the year 2022 i.e. within the period of three years and is not barred by laws of limitation.

15. It is further submitted that theAdjudicating Authority has to be satisfied that a default has occurred in respect of a debt which is payable in law or in fact. The moment the Adjudicating Authority is satisfied that a default has occurred, the petition must be admitted, unless it is incomplete.

16. The Financial Creditor has placed the following documents on record:

¹paragraphs 133, 135, 137, 141 and 142

² paragraphs 28, 53 and 55

- a. Copies of credit sanction letters along with term loan agreements. [**Annexure E @Pgs. 79-167of the Company Petition**]
 - b. A copy order of the Debt Recovery Tribunal. [**Annexure L @ Pgs. 326-340 of the Company Petition**]
 - c. Copy of CIBIL Report. [**Annexure N @Pgs. 342-361of the Company Petition**]
 - d. Copy of Financial Statements for the year 2020-2021. [**Annexure P @ Pgs. 370-461 of the Company Petition**]
17. The Financial Creditor has proposed the name of **Mr. Ajay Kumar Agarwal**, registration number IBBI/IPA-002/IP-N00608/2018-19/11859, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration³.

Submission of learned Counsel appearing for the Corporate Debtor

18. The learned Counsel appearing on behalf of the Corporate Debtor raised four contentions:
- a. Insurance policies availed by the Corporate Debtor through Financial Creditor's sister concern;
 - b. Floods of 2016, act of God;
 - c. Nexus between Financial Creditor and USGI;
 - d. Non-Cooperation by the Financial Creditor.

³Annexure B @Pp. 69-74 of CP

19. It is submitted that after the Corporate Debtor shifted the Cash Credit Facilities from Punjab National Bank to the Financial Creditor, the Corporate Debtor at the insistence of the Financial Creditor, availed insurance of limit being Rs.37.5Crore from Universal Sompoo General Insurance (“USGL”). USGL is the corporate agent of the Financial Creditor, which has been stated in the Credit Sanction Advice dated 01 June 2012.
20. The Corporate Debtor availed a Burglary Policy bearing No. 2913/52599460/05/800 valid from the period 20 October 2016 to 19 October 2017 for insuring its Plant and Machinery and Standard Fire and Special Perils Policy valid for the period 14 October 2015 to 13 October 2016 which was renewed for the period 20 October 2016 to 19 October 2017.
21. Owing to the joint venture between the Financial Creditor and USGL, all EMI’s and renewals of the insurance policy’s availed by the Corporate Debtor were being paid, maintained and taken care of by the Financial Creditor.
22. It is submitted that the Corporate Debtor was regularly paying off the loans until 20 August 2016.
23. It is submitted that the factory premises including manufacturing unit with its raw materials, finished goods, TMT bars, motor, electrical equipment, oil equipment, raw materials, furnace and other machinery and equipment were inundated by the waterlogging caused by flooding of the PunPun river during the months of July-August 2016.
24. The Corporate Debtor intimated the Financial Creditor, USGL and the Government of Bihar *vide* email dated 21 August 2016 giving due intimation and assessment of the loss suffered by the Corporate Debtor on account of the flood.

25. The damages sustained by the Corporate Debtor was inspected and recorded on 22 August 2016 by the Branch Head and the Credit Manager of the Financial Creditor and the officials of USGL. The Financial Creditor was following up with USGL and the Corporate Debtor which is evident from the email dated 22 August 2016.
26. The Corporate Debtor sought rehabilitation package through letters dated 17 September 2016 and by email dated 30 December 2016 to the Branch Head of the Financial Creditor. The learned Counsel submitted that the letter 17 September 2016 clearly indicated that the Corporate Debtor being insured by USGL as per the directions of the Financial Creditor, whereby the full settlement amount of the Insurance Claim would be adjusted with the existing as well as freshly sought loans by the Corporate Debtor.
27. The Corporate Debtor prepared its insurance claim through its Chartered Accountant and submitted its claim *vide* claim no. CLI6042863⁴ dated 19 September 2016, with USGL with a detailed calculation for a total sum of Rs.25,12,86,256/- (Rupees Twenty Five Crore Twelve Lakh Eighty Six Thousand Two Hundred and Fifty Six only) on account of various losses including loss of plant and machinery, finished goods and monthly losses, bank interest, labour payments etc.
28. Pursuant to the submission of claim, USGL instructed Cunningham Lindsey International Insurance Proclaim Insurance Surveyors and Loss Assessors to visit and survey the loss of the Corporate Debtor. The surveyor by its letter dated 30 September 2016, intimated the Corporate Debtor to provide documents to enable the Surveyor to issue report to USGL. The Corporate Debtor provided all the required documents to the Surveyors.

⁴Pages 207-212 of the reply

29. The Financial Creditor was well aware of the condition of the Corporate Debtor and had issued a letter dated 20 September 2016⁵ to USGL for consideration of the claims submitted by the Corporate Debtor.
30. It is submitted that owing to the absolute lack of assistance provided and further impediments created by the Financial Creditor in nexus with USGL, the Corporate Debtor was unable to adjust the full settlement amount of the Insurance Claim with the loans of the Financial Creditor. Further, the Financial Creditor continued to charge over the interest over the amount of loan and cash credit facility and labelled the account of the Corporate Debtor as Non-Performing asset on 31 March 2017.
31. The Surveyors and USGL sought documents from the Corporate Debtor on 4 May 2017 and the Corporate Debtor in its reply dated 10 May 2017 stated that the documents were already submitted to the Surveyors.
32. Further, on 10 August 2017, the Surveyors sought for original bills of plants and machineries installed in the unit⁶. The Corporate Debtor *vide* its letter dated 28 August 2017⁷ informed the Surveyor that the documents sought are in the possession of the Financial Creditor.
33. On 26 June 2017, 02 November 2017 and 07 November 2017, the Corporate Debtor wrote to the Financial Creditor seeking permission and assistance in disassembling the Plant and Machineries for actual assessment of losses, however, the Financial Creditor did not provide any assistance.

⁵Annexure R13 at page 206 of the reply

⁶Pages 235-236 of reply

⁷Pages 232-234 of reply

34. In the month of August 2017, there was a burglary in the premises of the Corporate Debtor and an FIR was lodged in the Fathua Police Station on 11 August 2017 bearing no. 334/17. The Corporate Debtor filed insurance claim bearing no. CLI7042257 with UGSL which was rejected on 19 February 2018.
35. The Corporate Debtor filed a complaint on 31 December 2018 before the National Consumer Disputes Redressal Commission seeking reliefs against the actions of the Financial Creditor and USGL.
36. It is submitted that the Financial Creditor was duty bound to provide USGL with the requisite documents required for claiming the insurance and adjusting the loan. The Financial Creditor is claiming an amount of Rs.83,92,18,604/- by levying exorbitant, usurious interest.

Submissions of the learned Counsel appearing for the Financial Creditor in rejoinder

37. The learned Counsel in rejoinder submitted that the insurance policy that was availed by the Corporate Debtor from the insurance company, was an independent and separate contract to which the Financial Creditor is no privy. It is further well established that an agent cannot personally enforce, nor be bound by contract on behalf of the principle unless presumption to the contrary is established, Financial Creditor cannot be held responsible for the negligence or omission if any, caused by the insurance company.
38. The fact that the Financial Creditor was acting as an agent and was not directly responsible for the contract between the Corporate Debtor and Financial Creditor would be also evident from the letter dated 20 September 2016.
39. Therefore, in view of the controversial facts and circumstances present in the instant case and considering the arguments of the Corporate

Debtor, the learned Counsel submitted that the ratio of *Vidarbha Industries Power Limited v. Axis bank Limited (2022) 8 SCC 352* is not applicable in the present case. It is submitted that in *Vidarbha Industries supra.*, an application in terms of the multi-year tariff Regulations in order to obtain certain subsidies/concessions because increase in fuel cost. The said application for subsidy duly rejected by an authority called MERC. Against the order of MERC, Vidarbha Industries Power Limited appeal before preferred ante APTEL which allowed the Vidarbha Industries Power Limited the actual cost of coal purchase for which Vidarbha Industries Power Limited was entitled to a sum of Rs. 1730 crores. The order attained finality.

40. It is in this facts and circumstances, that the Hon'ble Supreme Court of India came to a finding that Vidarbha Industries Power Limited was entitled to the said sum of Rs. 1730 crores which was realizable in its favour and once recovered would put Vidarbha Industries Power Limited at its own feet and would enable it to repay the outstanding dues.
41. Since the awarded decretal amount exceeded the amount of debt, the Supreme Court was of the view that the Adjudicating authority in such circumstances, can exercise its discretion under section 7(5)(a) of the Code to keep the admission of an application under Section 7. However, applying the ratio to the facts of the present case, no such decretal amount or award has come to an existence in favour of the Corporate Debtor which would render it the benefit of the ratio that has been applied by the Hon'ble Supreme Court of India.
42. In the present case, Corporate Debtor merely alleges that it is entitled to its insurance claim without having accrued any rights in its favour. This claim is now being pending for more than seven years.
43. There being sufficient material before the Adjudicating Authority that defaults have been committed by the Corporate Debtor and it is unable

to pay its debt. The present application should be allowed and no other circumstances is to be looked into by the Adjudicating Authority. The learned Counsel placed reliance on *State Bank of India Vs NS Engineering Projects Private Limited (Company Appeal) (AT) (Insolvency) No. 978 of 2022*⁸, subsequently affirmed by the Hon'ble Supreme Court of India in Civil Appeal No. 1403 of 2023 on 03 February 2022. The Financial Creditor in support of its contention placed reliance on *Innovative Industries Limited v. ICICI Bank & Anr. (2018) 1 SCC 407*⁹.

Analysis and Findings

44. Heard the learned Counsel appearing for the Financial Creditor and the learned Senior Counsel appearing for the Corporate Debtor and perused the record.
45. Before going into the merits and contentions of the Company Petition, there is no doubt that the law relating to insolvency in India for initiation of CIRP under Section 7 of the Code speaks of two conditions i.e. debt and default. In *Innoventive Industries Ltd. v. ICICI Bank*¹⁰, the Hon'ble Supreme Court observed that the Adjudicating Authority is required to determine the existence of default from the records of the Information Utility or on the basis of other evidence provided by the Financial Creditor upon receipt of an application under S. 7(2) of the Code.
46. The Hon'ble Supreme Court has reiterated its view in *M. Suresh Kumar Reddy v. Canara Bank & Ors*¹¹. has observed that:

⁸ Paragraphs 13, 14, 17, 24

⁹ Paragraph 28, 29

¹⁰(2018) 1 SCC 407

¹¹Civil Appeal No. 7121 of 2022, dated 11.05.2023

“10. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7.”

47. The case set out by the Corporate Debtor is its inability to pay the debt and default incurred by it due to the loss suffered on account of flood and non-settlement of insurance claims alleged on the basis of non-furnishing of all the documents by the Financial Creditor.
48. The Corporate Debtor has alleged that it is the fault of the Financial Creditor for not providing the documents to USGL but in view of the order of the Hon’ble NCLAT in *State Bank of India v. N.S. Engineering Projects Pvt. Ltd.*¹² such contention does not hold water.
49. There is no doubt that there is a debt, and the Corporate Debtor has committed a default in payment of the debt amount. Examining the argument of the learned Counsel for the Corporate Debtor on the basis of the law laid down in *N.S. Engineering Projects Pvt. Ltd. supra.* by the Hon’ble NCLAT and principle laid down by the Hon’ble Supreme Court in *Innoventive Industries supra.*, we deem it fit to allow the petition under section 7 of the Code.
50. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.
51. In the light of the above facts and circumstances, it is, hereby ordered as follows:-

¹²(2023) ibclaw.in 79 NCLAT

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- a. The application bearing *CP (IB) No. 183/KB/2022* filed Indian Overseas Bank, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against *Krish Ispat Company Limited*, the Corporate Debtor, is *admitted*.
- b. There shall be a moratorium under section 14 of the IBC.
- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Mr. Ajay Kumar Agarwal**, registration number IBBI/IPA-002/IP-N00608/2018-19/11859, email id. ajay_agarwal45@yahoo.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the 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 Code.

- f. 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 Directors, 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 opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- h. 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.
- i. The Financial Creditor shall deposit a sum of **Rs 3,00,000/- (Rupees Three 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).
- j. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- k. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Bihar, by

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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.

52. **CP (IB) No. 183/KB/2022** to come up on **18.01.2024** for filing the Progress report.
53. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

This order is pronounced on the 7th day of December 2023.

GGRB_LRA