

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP/1006/IB/2018 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of ***M/s. G.K. Steels And Allied Industries Ltd.***

IFCI LIMITED

Reg. Office at:-
IFCI Tower, 61 Nehru Place,
New Delhi – 110 019

... Financial Creditor

-Vs-

M/s. G.K. STEEL AND ALLIED INDUSTRIES LTD.

1077, Avanashi Road,
Coimbatore,
Tamil Nadu – 641 018

... Corporate Debtor

Order Pronounced on 20th December, 2019

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Financial Creditor : Vidyalakshmi Vipin, Advocate

*For Corporate Debtor : E. Om Prakash, Senior Advocate
P. Elaya Rajkumar, Advocate
K. Ramesh, Advocate*

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. Under Adjudication is CP/1006/IB/2018 that has been filed by **IFCI Limited** (hereinafter referred to as '**Financial Creditor**') under Section 7 of the Insolvency & Bankruptcy

Code 2016 (in short, 'IBC, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. G.K. Steel and Allied Industries Limited** (hereinafter referred to as '**Corporate Debtor**'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. The Ld. Counsel for the Financial Creditor submitted that the Financial Creditor along with IDBI and ICICI sanctioned the Term loan in favour of the Corporate Debtor for an amount of Rs.695 Lakhs under Project Finance Participation Scheme (PFPS) on 11.03.1988 and in pursuance of the same a Loan Agreement was entered by the Consortium banks and the Corporate Debtor on 11.07.1988. It was further submitted that a Deed of Hypothecation of all movable including movable plant and machinery spares, tools and accessories, both present and future of the Corporate Debtor was executed in favour of the Consortium Banks on 11.07.1988.

3. The Ld. Counsel for the Financial Creditor submitted that a Joint Mortgage by deposit of title deeds on immovable properties of the Corporate Debtor was executed on

17.09.1989 by the Financial Creditor in order to secure its loan. It was further submitted that the Consortium of Banks have approved an additional loan amount of Rs.148 Lakhs to the Corporate Debtor on 25.07.1991 for the expansion of the unit of the Corporate Debtor and in pursuance of the same a Loan Agreement for the second loan was entered into between by the Corporate Debtor with the Consortium Banks on 11.03.1992. Further a Deed of Hypothecation on all movables of the Corporate Debtor was executed by the Corporate Debtor to the extent of Rs.148 Lakhs on 11.03.1992 and a Deed of guarantee was also executed by the Personal Guarantors of the Corporate Debtor for the sum of Rs.148 lakhs on 20.03.1992.

4. The Ld. Counsel for the Financial Creditor submitted that subsequent thereof, various documents were executed by the Corporate Debtor in favour of the Financial Creditor and the Consortium of bankers in order to secure its loan. It was further submitted that the Financial Creditor on 01.09.1997 issued a Loan recall notice to the Corporate Debtor calling upon them to pay the outstanding amount a sum of Rs.2,26,44,413/- as on 31.07.1997 and subsequently the Financial Creditor invoked the Personal guarantee and Corporate guarantees executed by the Corporate Debtor on



20.02.1998 and the Loan Account of the Corporate Debtor was declared as Non – Performing Asset (NPA) on 01.03.1998. Subsequent thereof, three banks have filed an OA No.910 of 1998 and the same was pending before the Debt Recovery Tribunal (DRT) and in the meantime the Board for Industrial and Finance Reconstruction (BIFR) passed an order on 06.01.1999 declaring the Corporate Debtor Company as sick. The Corporate Debtor filed an application under Section 15 of SICA bearing No.245 of 1998 in which BIFR ordered directing the issuance of show cause notice for winding up the Company on 04.07.2002.

5. Pursuant thereto, a writ petition was filed by the Labour Progressive Federation against the BIFR order and an interim order was passed by the Hon'ble High Court of Madras in W.P. No. 37678 of 2002 on 04.10.2002 thereby the proceedings before the BIFR was stayed till the disposal of the Writ Petition. Subsequently an appeal was filed by the Labour Progressive Federation against the BIFR Order dated 04.07.2002 before the AAIFR and in the meantime the OA filed before the DRT – I got transferred to DRT – II, Chennai and was renumbered as OA. No. 121 of 2007.



6. The Ld. Counsel for the Financial Creditor submitted that the Corporate Debtor offered one time settlement on 14.10.2009 to the Financial Creditor for Rs.25 Lakhs to be paid before 31.12.2009 and paid a sum of Rs.3 Lakhs on 30.03.2010 and in the meantime, the High Court disposed off the Writ Petition by dismissing the petition filed by the Labour Progressive Federation against the BIFR order and directed the AAIFR to hear the pending appeal. It was submitted that the AAIFR also dismissed the appeal filed by the Labour progressive Federation on 30.07.2010.

7. It was submitted by the Ld. Counsel for the Financial Creditor that the Financial Creditor has sent a reminder letter to the Corporate Debtor to pay the balance amount under the OTS on 06.08.2010 and since the Corporate Debtor did not comply with the OTS terms, the Financial Creditor sent its letter dated 15.12.2010 by stating that it revoked the OTS and resorted the original liabilities of the Corporate Debtor to the Financial Creditor. Again the Corporate Debtor submitted a OTS for the balance payment amount of Rs.12 Lakhs as per the earlier OTS letter and ensured that the said sum of Rs.12 Lakhs would be paid on or before 30.09.2011. It was submitted by the Ld. Counsel for the Financial Creditor that the Corporate Debtor has filed a Writ petition W.P. (MD) No.



13223 of 2011 before Madurai Bench of Madras High Court wherein an order was passed staying the BIFR proceedings, and the Financial Creditor herein was not impleaded as a party to the said proceedings and therefore the Financial Creditor has filed an Miscellaneous Petition in the said Writ Petition for impleading the IFCI and vacating the stay order dated 21.11.2011.

8. The Ld. Counsel for the Financial Creditor submitted that the OA filed by the three banks are still pending in the DRT and the Financial Creditor issued a notice under Section 13(2) of the SARFAESI Act to the Corporate Debtor on 15.11.2016 to pay a sum of Rs.58,85,71,830/- and subsequently the Corporate Debtor proposed one time settlement for Rs.26 lakhs on 17.01.2018 which came to be rejected by the Financial Creditor by its letter dated 27.04.2018 and thereby the Financial Creditor have filed the present application under Section 7 of the IBC, 2016.

9. The Ld. Counsel for the Financial Creditor submitted that the Corporate Debtor had written a letter dated 10.02.2018 to the Ministry of Finance to intervene in their One Time Settlement offer made on 17.01.2018 with the Financial Creditor



10. The Ld. Counsel for the Corporate Debtor submitted that the claim made by the Financial Creditor is clearly barred by limitation and as such the petition is not maintainable in law and on facts. It was further submitted by the Ld. Counsel for the Corporate Debtor that the Financial Creditor referred to clause 1 of the Part IV, the sanction of the Term Loan of Rs.174.80 Lakhs and Additional Term Loan of Rs.37.00 Lakhs and claim an outstanding amount in respect of both the loans as Rs.79,32,80,889.50/- while admittedly the principal is claimed only as Rs.48,22,000/-, Rs.62,87,000/- and Rs.20,62,200/- is shown in the calculation and the said claim are without any basis and untenable in law and on facts and there are absolutely no documents in support of such claims filed by the Financial Creditor.

11. The Ld. Counsel for the Corporate Debtor submitted that the documents filed with the petition are consortium documents in respect of the term loan availed from the consortium lenders, including the Financial Creditor herein for a Loan of Rs.175 Lakhs and Rs.37 Lakhs and the charge documents referred are entirely different and no charge is created in the favour of the Financial Creditor and as such all



claims made in Form I are apparently false and frivolous claims.

12. It was further submitted by the Ld. Counsel for the Corporate Debtor that the term loan sanctioned by the Financial Creditor was regularly repaid and substantially reduced the liability. It was contended that the IDBI and ICICI had recalled the loan on 01.07.1997 and 11.07.1997 respectively and had also rescheduled the loan accounts and the dues payable to IDBI was offered by way of settlement under the OTS and the same was sanctioned. It was also submitted by the Ld. Counsel for the Corporate Debtor that the ICICI Bank had assigned the debts to Standard Chartered Bank, which in turn had assigned the same to IARC.

13. The Ld. Counsel for the Corporate Debtor stated that the Company had stopped the operations long back after the same was declared as sick way back in 1998 and the Financial Creditor being fully aware had not made any claim or seek any leave to proceed for recovery and the claims have now become time barred and not recoverable. It was further contended by the Ld. Counsel for the Corporate Debtor that the Financial Creditor referred to an OA pending before DRT in Old O.A. No.910 of 1998 and new OA No.121/2007, but no



copy of the said OA is filed and as a matter of fact, the said OA was dismissed for default and later application for restoration was filed and there is no relevancy to the said claim in the OA and the outstanding claimed in the above petition.

14. *Per Contra*, it was submitted by the Ld. Counsel for the Financial Creditor that as to the aspect of limitation raised by the Corporate Debtor, a perusal of the letter addressed to the Ministry of State dated 10.02.2018 written by the Corporate Debtor would go on to show that the Corporate Debtor had acknowledged its dues and made clear its intention to settle the dues to the Financial Creditor under an OTS. The relevant portion of the letter addressed to the Ministry of State by the Corporate Debtor is extracted hereunder;

".....The Company offered One Time Settlement (OTS) to all financial institutions and banks. IDBI accepted and sanctioned the OTS in 2007.

The Company offered OTS to IFCI Limited at par with IDBI. The OTS offer dated 17 January 2018 to IFCI Limited is under consideration.

We humbly pray the Honourable Minister to kindly look into the matter and do the needful to resolve the issue that has been pending for a long period of time..."

By referring to the above letter, the Ld. Counsel for the Financial Creditor contended that the said letter written by the



Corporate Debtor is a conclusive proof of acknowledgment of dues.

15. Heard both sides, perused the pleadings including the documents placed on file. As to the contention raised by the Corporate Debtor that the Term Loan of Rs.174.80 Lakhs and Additional Term Loan of Rs.37.00 Lakhs was sanctioned by the Financial Creditor but they have claimed an outstanding amount in respect of both the loans to the tune of Rs.79,32,80,889.50/- while admittedly the principal is claimed only as Rs.48,22,000/-, Rs.62,87,000/- and Rs.20,62,200/-, without going into the merits of the case, it is seen that the Corporate Debtor is disputing the claim amount of Rs.79,32,80,889.50/- as claimed by the Financial Creditor. Eventhough the Corporate Debtor refutes that there is no debt on the part of the Corporate Debtor much less a default for initiation of the CIRP, it is evident from the records that there is a default on the part of the Corporate Debtor and the said default is more than Rs.1 Lakh, being the statutory minimum amount fixed under Section 4 of the IBC, 2016 for approaching this Tribunal by the creditors, in the instant case by Financial Creditor.



16. Further as consistently held by the Hon'ble Supreme Court both in **Innoventive Industries Ltd. -Vs- ICICI Bank and another (2018) 1 SCC 407** as well as **Mobilox Innovations Pvt. Ltd.. -Vs- Kirusa Software Pvt. Ltd. (2018) 1 SCC 353** after going through the Scheme of I&B Code, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor as compared to the one filed under Section 9 by an Operational Creditor, in relation to a Section 7 Application where there is an existence of a 'financial debt' and its default in excess of Rs.1,00,000/-, this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP) and in relation to a Section 7 Application defence of set off or counter claim put forth by the Corporate Debtor cannot be considered as a dispute in relation to the Financial debt and default in relation to it. In the present case, it is clear that there is a default on the part of the Corporate Debtor for a sum exceeding Rs.1 Lakh.

17. As to the aspect of limitation as raised by the Ld. Counsel for the Corporate Debtor, the Ld. Counsel for the Financial Creditor relied upon a letter dated 10.02.2018 written by the Corporate to the Ministry of State, whereby the Corporate Debtor had admitted that it has given an OTS



Proposal on 17.01.2018 to the Financial Creditor and required the intervention of the Ministry in considering the OTS by the Financial Creditor. Even otherwise, the Hon'ble NCLAT in **Sesh Nath Singh, -Vs- Baidyabati Sheoraphuli Cooperative Bank Ltd**, in *Company Appeal(At) (Insolvency) No.672 Of 2019, dated 22.11.2019*, has held that in computing the period of limitation, the time during which the Financial Creditor has been prosecuting with due diligence another civil proceedings against the corporate debtor for the same relief shall be excluded as per Section 14(2) of the Limitation Act, 1963. In the facts of the present case, the accounts of the Corporate Debtor was classified as NPA on 01.03.1998 and subsequent thereof, the banks have filed an OA No.910 of 1998 and the same came to be renumbered as OA No.121 of 2007 and the same is pending before the DRT – II, Chennai for adjudication and in the meantime, the present petition was filed by the Corporate Debtor before this Authority on 05.07.2018 and thereby, the petition filed by the Financial Creditor cannot be said to be time barred and falls well within the period of limitation.

18. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Application as filed by the Applicant –



Financial Creditor is required to be admitted under Section 7 (5) of the I&B Code, 2016.

19. The Financial Creditor has proposed the name of **J. Karthiga**, having Registration Number IBBI / IPA-001 / IP-P00752 / 2017 - 2018 / 11284, as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

20. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;



- (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 the possession of the Corporate Debtor."

21. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) 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."

22. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;



- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process

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."

23. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the Respondent above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order forthwith by the Registry.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond