

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

CP/IB/38/CHE/2021

*(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. CPS Steel India Private Limited***

City Union Bank Limited

149, T.S.R. Big Street,
Kumbakonam, Tanjore - 612001
Represented by its Chief Manager
Mr. G. Viswanathan

...Financial Creditor

-Vs-

M/s. CPS Steel India Private Limited

CIN: U27104TZ2003PTC010552
Reg. Off:-
102, P.N Palayam Road,
K.R Puram, Ganapathy, Coimbatore,
Tamil Nadu – 641006

...Corporate Debtor

Order Pronounced on 25th April 2022

CORAM :

**Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Financial Creditor : Dr.K.S.Ravichandran, PCS
For Corporate Debtor : No Representation

O R D E R

Per: Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)

Under Adjudication is CP/IB/38/CHE/2021 that has been filed
by **City Union Bank Limited** (hereinafter referred to as
'**Financial Creditor**') under Section 7 of the Insolvency &
Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 4 of

the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. CPS Steel India Private 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. Part I of the application, sets out the details of the Financial Creditor from which, it is evident that the Financial Creditor is a Scheduled Commercial Bank. As per Part II of the application, the Corporate Debtor is a Private Limited Company with Corporate Identification Number U27104TZ2003PTC010552 incorporated on 11.04.2003 and registered office of the Corporate Debtor as per the Application is stated to be at 102, P.N Palayam Road, K.R Puram, Ganapathy, Coimbatore, Tamil Nadu 641006. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. C.V. Madhusudhanan, Registration Number: IBBI/IPA-002/IP-N00243/2017-18/10694 as the Interim Resolution Professional.

3. Part IV of the application signifies the amount of debt to the tune of ₹9,12,12,771.34/- (Rupees Nine Crores Twelve Lakhs Twelve Thousand Seven Hundred and Seventy One and Thirty Four Paise Only) and the date of default is mentioned as 31.03.2018.

Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default as described below :

- i. Record of Default with National E-Governance Services Limited (NeSL) Information Utility.
- ii. SARFAESI Demand Notice under Section 13(2) of the SARFAESI Act, 2002 dated 29.05.2019.
- iii. Correspondence through letters on OTS Settlement between CPS Steel and CUB dated 06.06.2019, 25.06.2019, 29.07.2019, 14.08.2019, 24.09.2019 and 07.11.2019.
- iv. Tender cum Auction Sale Notice under SARFAESI Act, 2002, dated 16.08.2019 and 18.11.2019.

4. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor is a Company incorporated under the Companies Act, 1956 and is engaged in the business of manufacturing of steel. It was submitted that the Corporate Debtor had availed various financial assistance from the Financial Creditor by way of term loan and Secured Overdrafts.

5. The Learned Counsel for the Financial Creditor submitted that the Financial Creditor had sanctioned a secured overdraft facility for a sum of Rs. 8,15,00,000/- repayable on 31.03.2019 and a term loan of Rs. 25,00,000/- repayable in 24 months, the period of which ended on 31.03.2020. These were evidenced by various documents mentioned in para 8 of part V of the Application filled by the Financial Creditor in Form 1 as per Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Financial Creditor had marked the aforesaid accounts of the Corporate Debtor as Non Performing Assets (NPA). In respect of

both of the above accounts the date of default was marked as 31.03.2018 as the Corporate Debtor became irregular and erratic in repayment and the default was evidenced by the Report filed with Information Utility.

6. The Learned Counsel for the Financial Creditor submitted that prior to filing the instant application, the financial creditor had issued a legal notice on 29.04.2019 informing the Corporate Debtor on classification of its accounts as NPA. Further, a notice under Section 13(2) of the SARFAESI Act dated 29.05.2019 was also issued to the Corporate Debtor. To this the Corporate Debtor had replied on 06.06.2019 wherein the Corporate Debtor had categorically admitted the amounts due and had sought twelve months' time for an amicable settlement of the dues.

7. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor despite acknowledging dues, have not bothered to take steps towards repayment of the outstanding dues and since nothing materialized the Financial Creditor had filed this Application on 02.02.2021.

8. In relation to the Corporate Debtor, it is seen from the record of proceedings that there was no appearance on behalf of the Corporate Debtor and this Adjudicating Authority vide its daily order dated 20.07.2021 noted that a notice to the Corporate

Debtor was issued by the Registry and inspite of the receipt of notice, there was no representation for the Corporate Debtor and directed the Financial Creditor to send notice to the Corporate Debtor. On 06.09.2021 the Adjudicating Authority after taking into consideration that the Financial Creditor had filed an Affidavit of Service on 06.08.2021, before this AA, ordered that as the Corporate Debtor was absent, they were set aside ex-parte. The daily order dated 06.09.2021 is extracted herein below:

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NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 06-09-2021 AT 2.36 P.M THROUGH VIDEO
CONFERENCING:

PRESENT: SMT. R. SUCHARITHA, MEMBER (JUDICIAL)
SHRI B. ANIL KUMAR, MEMBER (TECHNICAL)

APPLICATION NUMBER	:	
PETITION NUMBER	:	CP(IB)/38(CHE)/2021
NAME OF THE PETITIONER	:	CITY UNION BANK LTD
NAME OF THE RESPONDENTS	:	CPS STEEL INDIA PVT LTD
ORDER SECTION	:	SEC 7 RULE 4 OF IBC, 2016

ORDER

Ld. Counsel Ms. Sruthi for the Petitioner is present. There is no representation for the Respondent.

Affidavit of Service has been filed in the Registry on 06.08.2021 vide S.R. No.3359. Notice has been served on the Respondent. However, there is no representation for the Respondent today. Hence, the Respondent is called absent and set ex-parte.

List this matter on 20.09.2021 for hearing and disposal.

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

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

9. We have heard the submission made by the Learned Counsel for the Financial Creditor and perused the records. From the averments made in the Application it is seen that the Corporate Debtor has committed default in repayment and the Financial Creditor has proved that there exist a 'debt' between the parties



and the said debt qualifies to be a 'financial debt' as defined under 5(8)(c) of IBC, 2016.

10. It has also been 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/-,(now increased to Rs.1 Crore on and from 24.03.2020) this Adjudicating Authority 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 or 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. Thus, it is clear that there is a default on the part of the Corporate Debtor for a sum exceeding Rs.1 Crore.

11. Under the said circumstances, this Adjudicating Authority is left with no other option than to proceed with the present case and

initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

12. Also the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor cannot seek shelter under Section 10A of IBC, 2016.

13. Thus taking into consideration the facts and circumstances of the case as well as the settled position of Law, we are of the view that this Application as filed by the Financial Creditor is required to be admitted under Section 7 (5) of the I&B Code, 2016.

14. It is also seen from the records that the Financial Creditor has proposed a name of an Insolvency Professional. However, it is seen from the IBBI website that the proposed Insolvency Professional does not possess a valid AFA as on date. Under these circumstances, from the panel of Insolvency Professionals prepared by the IBBI for the period January 2022 to June 2022 **Mr. Palanigounder Eswaramoorthy, with Registration Number: IBBI/IPA-002/IP-N00284/2017-18/10842 (email id: eswarfcs@gmail.com)** is appointed as the Interim Resolution Professional (IRP). The proposed IRP who is appointed shall 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 CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

15. 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 respondent 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 respondent 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 respondent 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 respondent.*

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, shall not be suspended or terminated 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 or a similar grant or right during moratorium period;

16. 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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

17. 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.

18. 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 Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

Sudhir