

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

Company Petition No. (IB)-274(PB)/2019

**Under Section 7 of the Insolvency and Bankruptcy Code,
2016**

In the matter of:

Central Bank of India

Applicant/Financial Creditor

Vs.

M/s RS Ingot & Billet Private Limited

Respondent/Corporate Debtor

Judgment delivered on: 31.07.2019

CORAM

CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT

S. K. MOHAPATRA, MEMBER (TECHNICAL)

For Applicant/Petitioner: Mr. Yash Tandon,
Ms. Gunjan Jadwani, Advocates.
For the Respondent(s): Mr. P.Nagesh, Mr. Ashutosh Gupta,
Mr. Gaurav Rana, Mr. Abhishek Agarwal, Advs.



ORDER

S. K. Mohapatra, Member

1. Central Bank of India has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s RS Ingot and Billet Private Limited, referred to as the corporate debtor.
2. The Respondent Company M/s RS Ingot and Billet Private Limited. (CIN No. U27100 DL2012 PTC 240299) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 16.08.2012 having its registered office situated at 401, Mahavir Ji Complex, LSC, Rishabh Vihar, New Delhi - 110092. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial



jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. It is appropriate to mention that the applicant Central Bank of India is a body corporate incorporated under the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 and has its Registered Office at Chander Mukhi, Nariman Point, Mumbai-400021.
4. Shri Rakesh Sharma, Assistant General Manager and authorized representative of the applicant bank, has preferred the present application on behalf of the applicant for initiation of corporate insolvency resolution process against the respondent corporate debtor in terms of the provisions of the Code.
5. The precise case of the applicant is that it sanctioned various loan facilities from time to time to one M/s Abhinav Steel and Power Limited. However, the borrower M/s Abhinav Steel and Power Limited



defaulted and failed to make repayment as per the loan agreements. On account of continuous defaults, the accounts of M/s Abhinav Steel and Power Limited was declared as "non-performing assets" (NPA) on 11.12.2014.

6. It is alleged that despite notice dated 03.06.2015 under Section 13(2) of SARFAESI Act, 2002 issued to M/s Abhinav Steel and Power Limited, the said company defaulted to pay the outstanding debts.

7. Subsequently a Scheme of Demerger was presented by M/s Abhinav Steels and Power Ltd., M/s RS Ingot and Billet Pvt. Ltd. and M/s Siddhartha Rolling and Energy Pvt. Ltd. before the National Company Law Tribunal, New Delhi, by which it was proposed to transfer '*Furnace and Rolling Division I*' of M/s Abhinav Steels and Power Ltd. to M/s RS Ingot and Billet Pvt. Ltd. and '*Rolling Divison 2*' of M/s Abhinav Steels and Power Ltd. to M/s Siddhartha Rolling and Energy Private Limited. It was also proposed that the '*Power Division*' of M/s Abhinav



Steel and Power Limited will continue to remain with it, who shall be liable only for its Power Division.

8. The National Company Law Tribunal, New Delhi approved the said Scheme vide order dated 27.11.2017, pursuant to which all the assets and liabilities pertaining to '*Furnace and Rolling Division 1*' of M/s Abhinav Steel and Power Limited stood transferred to M/s. RS Ingot and Billet Pvt. Limited.
9. It is submitted that consequent upon the sanction of the Scheme, all the assets and liability in respect of '*Furnace and Rolling Division 1*', the demerged under taking of the original borrower M/s Abhinav Steel and Power Limited stood transferred to the respondent corporate debtor, M/s. RS Ingot and Billet Private Limited. In other words, the liability to repay the loan pertaining to '*Furnace and Rolling Division 1*' got transferred to the respondent corporate debtor.
10. It is further contended that by means of the present application, the applicant bank is claiming only that part of default arising from the credit



facilities sanctioned for 'Furnace & Rolling Division 1', which has since stood transferred to the respondent Corporate Debtor pursuant to the sanction of the Scheme of Demerger.

11. As per part IV of the application it is claimed that a sum of Rs. 21,60,57,478/- (Rupees Twenty-One Crores Sixty Lacs Fifty-Seven Thousand Four Hundred Seventy-Eight Only) is due from the respondent company as on 30.11.2018.

12. In support of the financial debt, it is submitted that the applicant bank had entered into a consortium Agreement dated 21.11.2009 with the original borrower, M/s Abhinav Steel and Power Limited for an overall limit of Rs. 125,00,00,000/-, where the share of the applicant Financial Creditor was Rs. 31 Crores. The Consortium (referred to as PNB Consortium) consisted of Punjab National Bank, Oriental Bank of Commerce and Central Bank of India.

13. Subsequently applicant financial creditor approved enhanced sanction of Fund Based and Non-Fund Based Limits, comprising of — Total Cash Credit



sanctioned to the tune of Rs. 14 Crores; total Term Loan sanctioned to the tune of Rs. 49,75,00,000/- and total Working Capital (non-Fund based) sanctioned for Rs. 4,50,00,000/-, vide Sanction Letter dated 14.09.2012.

14. Thereafter, as the original borrower M/s Abhinav Steel and Power Limited was unable to make repayment, on its request a Master Restructuring Agreement as well as the Working Capital Consortium/Agreement were entered into between the Corporate Debtor and consortium Members on 16.05.2013, wherein it was agreed that the account of the borrower, being in default, shall be restructured.

15. Subsequently, the account of the M/s Abhinav Steel and Power Limited was restructured in accordance with the Corporate Debt Restructuring Scheme (CDR), sanctioned by the Applicant vide Letter dated 10.06.2013, wherein Cash Credit of Limit for Rs. 12,33,00,000/- and various Non-Fund based facilities like Working Capital Term Loan, Funded Interest Term Loan, etc. were sanctioned.



16. Out of the aforesaid sanction, Rs 4.05 Crores Cash Credit (restructured from Rs 4.00 Crore of Furnace Division) and Term Loan of Rs. 6,00,00,000/- (Rupees Six Crores Only) and Funded Interest Term Loan of Rs 1,51,00,000/- (Rupees One Crore Fifty one Lakhs only) was sanctioned for 'Furnace and Rolling Division-1' and Term Loan of Rs. 6,50,00,000/- (Rupees Six Crores Fifty Lakhs Only) was sanctioned for Rolling Division 1.

17. Accordingly, the credit facilities sanctioned towards the 'Furnace and Rolling Division 1' and recoverable from the Corporate Debtor, as set out at Part-IV, are enumerated below:

Sl. No.	Date of Sanction	Nature of Facility	Amount Sanctioned
1.	14.09.2012	i. Cash credit (Furnace Division). ii. Term Loan - IV (Furnace) iii. Term Loan - III (Rolling Division - I)	Rs. 4,00,00,000/- Rs. 2,50,00,000/- Rs. 10,00,00,000/-
2.	10.06.2013	i. Term Loan . ii. Term Loan (Rolling Division-I) iii. Funded Interest Term Loan Iv. Cash Credit Rs. 4.00 cr. Sanctioned on 14.09.2012 restructured to Rs. 4.05 cr.	Rs. 6,00,00,000/- Rs. 6,50,00,000/- Rs. 1,51,00,000/- Rs. 4,05,00,000/-

18. As huge default persisted, demand notice dated 12.10.2018 was given to the Corporate Debtor for repayment of the debt but the respondent Corporate Debtor failed to make any payment to the Applicant financial creditor.
19. Applicant has submitted that the Corporate Debtor has defaulted in fulfilling his obligations under the order dated 27.11.2017 passed by this Hon'ble Tribunal sanctioning the Scheme of Demerger, and has defaulted to make any payments to the Financial Creditors. It is alleged that the Corporate Debtor has committed a default in repayment of amount aggregating to Rs. 21,60,57,478/- (Rupees Twenty-One Crores Sixty Lac Fifty-Seven Thousand Four Hundred Seventy-Eight Only) as on 30.11. 2018.
20. Accordingly the applicant has prayed for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor for its default in repayment of credit facilities granted for '*Furnace and Rolling Division 1*' of M/s Abhinav Steels and Power Limited, liability of which stands transferred to the



Corporate Debtor pursuant to order dated 27.11.2017 passed by the Tribunal sanctioning the Scheme of Demerger.

21. The respondent corporate debtor has filed its reply on 19.12.2018. Respondent has disputed the demand of Rs. 21,60,57,478/- and interest thereon as not due and payable. It has been alleged that the demand is erroneous and arbitrary. The claim has been disputed as barred by limitation. Another objection has been raised that the petition has not been filed in the prescribed Format as brief facts cannot be given under Part V of the requisite Form-1. It is further alleged that the Form-2 submitted by the named IRP lacks proper disclosures as required under the Regulations. An objection has also been raised that there is no proof of default and there is no statement of account in the name of 'Furnace and Rolling Division-1'. It is also the case of the respondent that the applicant is not a financial creditor in respect of the corporate debtor.



22. We have heard the learned counsels for the parties and have perused the case records including the rejoinder to the reply filed by the applicant on 16.01.2019.

23. Admittedly in the instant matter loan was disbursed to a different company namely M/s Abhinav Steel and Power Limited and loan agreements were executed with the said borrower company. However, there is no denial that a Scheme of Demerger was approved, where by the Demerged undertaking 'Furnace and Rolling Division-1' of the original borrower M/s Abhinav Steel and Power Limited was merged in the resulting respondent company along with its liability.

24. A copy of the order dated 27.11.2017 approving the Scheme of Demerger has been placed on record. There has been a clear direction in the order dated 27.11.2017 that all liability in respect of 'Furnace and Rolling Division-1' (Demerged undertaking No.1) of M/s Abhinav Steel and Power Limited shall be transferred to M/s. RS Ingot and



Billet Private Limited respondent herein under Section 230 and 232 of the Companies Act, 2013. Consequently, the respondent company has stepped in to the shoe of the borrower as far as the demerged undertaking 'Furnace and Rolling Division-1' is concerned.

25. Therefore, consequent upon the sanction of the Scheme all the liabilities, loans etc. towards 'Furnace and Rolling Division-1' of M/s Abhinav Steel and Power Limited *are recoverable from the respondent corporate debtor.*

26. In fact, the respondent company has admitted the liability in its letter dated 19.11.2018 (Annexure 19) which is reproduced below.

"Sub: Request for Loan Documentation as per Demerger Scheme of ASPL.

Sir,

In continuation of our various letters and meeting, we again request you do the necessary documentation as per demerger order dated 27.11.2017 of the National Company Law Tribunal,



Principal Bench, New Delhi through a company's petition No. 100(PB)/201. As per the said order, the Furnance & Rolling – I situated at plot no. A 18-19-21-22-25-26-27 SIDA Industrial Are, Satharia, Distt. Jaunpur, UP (eartwhile unit name of demerged company ie. Abhinav Steels and Power Limited) is transferred to RS Ingot and Billet Private Limited (RSIBPL). The necessary ROC Formalities of said NCLT order are already done and required form no. SH-7, PAS-3, and Dir-12 filed.

We are submitting you the Audited BS alongwith notes and accounts of RSIBPL for the FY 2017-18. The assets and liability of Furnace & Rolling -I are transferred as on 31.03.2018 which are as per order of NCLT dated 27.11.2017.

Your Following loans are transferred to the RSIBPL:

Rs. In Crores.

<i>O/s As on 31.03.2018</i>	<i>RSIBPL</i>			
	<i>PNB</i>	<i>OBC</i>	<i>CBI</i>	<i>Total</i>
<i>TL</i>	<i>7.46</i>	<i>11.59</i>	<i>12.06</i>	<i>31.11</i>
<i>CC</i>	<i>13.24</i>	<i>11.80</i>	<i>0.21</i>	<i>25.24</i>



<i>WCTL</i>	<i>5.67</i>	<i>2.00</i>	<i>0</i>	<i>7.67</i>
<i>FITL</i>	<i>3.84</i>	<i>0.82</i>	<i>1.52</i>	<i>6.17</i>
<i>Overdue Interest</i>	<i>11.24</i>	<i>15.66</i>	<i>7.77</i>	<i>34.69</i>
<i>LC</i>	<i>4.50</i>			<i>4.50</i>
<i>BG</i>	<i>0.06</i>			<i>0.06</i>
<i>Total</i>	<i>46.03</i>	<i>41.86</i>	<i>21.55</i>	<i>109.44</i>

We once again request you to do the needful at earliest.

Thanking you,

For RS Ingot and Billet Private Ltd.

Authorized Signatory

Encl: a/a" (emphasis given)

27. It is seen from the letter that respondent has clearly admitted that the assets and liabilities of 'Furnace and Rolling 1' has been transferred to it as on 31.03.2018 and that loans of consortium banks including applicant bank's loan for Rs. 21.55 Crores have been transferred to the respondent company.

28. It is pertinent to mention here that the scheme of the Code provides for triggering the insolvency resolution process by three categories of persons namely,

- a) Financial creditor
- b) Operational creditor, and
- c) Corporate debtor itself.

29. The procedure in relation to the initiation of Corporate Insolvency Resolution Process by the “Financial Creditor” is delineated under Section 7 of the Code, wherein only “Financial Creditor” / “Financial Creditors” can file an application. As per Section 7(1) of the Code, an application could be maintained by a Financial Creditor either by itself or jointly with other Financial Creditors.

30. The expressions “Financial Creditor” and “Financial debt” have been defined in Section 5 (7) and 5 (8) of the Code and precisely “Financial debt” is a debt along with interest, if any, which is disbursed against the consideration for time value of money.

31. In the present case applicant Central Bank of India had sanctioned and disbursed several loan facilities by entering in to loan agreements with the original borrower, which are recoverable with



applicable interest. The corporate debtor had undertaken the liability of the borrower in respect of the demerged undertaking including the liability to pay relevant interest. The loan was clearly disbursed against the consideration for time value of money with a clear commercial effect of borrowing. Moreover, the debt claimed in the present application includes both the component of outstanding principal and interest. In that view of the matter not only the present claim comes within the purview of '*Financial Debt*' but also the applicant bank can clearly be termed as '*Financial Creditor*' of the respondent corporate debtor so as to prefer the present application under Section 7 of the Code.

32. The application filed by the applicant financial creditor under sub-section 5 (a) of Section 7 of the code, has to be admitted on satisfaction that:

I. *Default has occurred.*

II. *Application is complete, and*



III. No disciplinary proceeding against the proposed IRP is pending.

33. An application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence of existence of default. What is material is that the default is at least 1 lakh. In view of Section 4 of the Code, the moment default is of Rupees one lakh or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable.
34. In the present case the respondent corporate debtor has admitted in its letter dated 19.11.2018 that it owes Rs. 21.55 Crores to the applicant Central Bank of India. Besides applicant has filed relevant agreements with chart of debt and disbursements in respect of 'Furnace and Rolling 1' totaling to Rs. 21,60,57,478/-. Applicant bank has also relied upon the mortgage documents, charge certificates including CIBIL Report dated 13.12.2018.



35. In addition, applicant bank has filed the relevant statement of accounts duly certified in accordance with Bankers' Books Evidence Act, 1891 as per the requirement of Form 1-part V column 7 of the application. Certified copy of statement of accounts pertaining to various loan facilities, kept during the course of banking business basing on which the claim has been raised can be termed as sufficient evidence of the financial debt.

36. The applicant bank has additionally furnished a copy of the Balance sheet and financial statements of the corporate debtor including independent auditors report in support of its claim.

37. It is thus seen that the applicant 'financial creditor' has placed on record voluminous and overwhelming evidence in support of the claim as well as to prove the default on the part of the respondent corporate debtor.

38. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as



to the occurrence of default before admitting the application. The material on record including the admission letter clearly goes to show that respondent has committed default in repayment of the outstanding loan amount.

39. As a sequel to the aforesaid discussion the objection of respondent that applicant is not a financial creditor and that there has been no default on their part cannot sustain. Respondent has raised another objection that the application preferred in Form-1 is defective.

40. There is no dispute that the applicant has given brief facts of the case at Part-V of Form-1 *inter alia* to throw light on the Scheme of Demerger where by though respondent was not the borrower, part loan liability pertaining to the demerged unit has been transferred to it and therefore recoverable from the respondent. Additional relevant facts have been incorporated at Part-V of the application Form for proper appreciation of the matter. Such insignificant technical objections are only to be iron out and



cannot be a ground to reject the application filed under Section 7 of the Code.

41. Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited V. Kirusa Software Private Limited* reported in AIR 2017 SC 4532 at Para 19 has observed that:

“Once the adjudicating authority / Tribunal is satisfied as to the existence of the default and has ensured that the application is complete and no disciplinary proceedings are pending against the proposed resolution professional, it shall admit the application. The adjudicating authority / Tribunal is not required to look into any other criteria for admission of the application.” (Emphasis given)

42. There is also an objection that the financial creditor has failed to comply with the requirements of Section 7 of the Code. In this connection it is seen that the present application under Section 7 of the Code for initiation of Corporate Resolution Insolvency



Process has been filed by petitioner financial creditor in Form-1 in terms of Rule 4 of Insolvency and Bankruptcy (application to Adjudicating Authority) Rules, 2016 accompanied with required information, documents and records as prescribed under the Rules.

43. The applicant bank *inert-alia* has annexed to the application detail particulars of 'financial debt' including documents, records and evidence of default as required under subsection 3 (a) of Section 7 of the Code. It is reiterated that the Form-1 filed in the present case under Section 7 of the Code read with Rule 4 of the Rules, shows that the Form is complete in all respect and there is no infirmity in the same.

44. Sub-section (3) (b) of Section 7 of the Code further mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Shravan Kumar Vishnoi, for appointment as Interim Resolution Professional having registration number IBBI / IPA-002 / IP-P00040/ 2016-17 /



10079 resident of 406, 407, Shopping Square - II, Sector - D, Sushant Golf City, Ansal API, Lucknow - 226030. Mr. Shravan Kumar Vishnoi has agreed to accept the appointment as the interim resolution professional and has signed a communication dated 16.11.2018 in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. As Form-2 filed earlier by the IRP was not complete in all respect, a new Form-2 dated 08.04.2019 was filed on 18.04.2019. It is seen that there is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. Sh. Vishnoi has also enclosed a declaration of eligibility certificate for appointment as IRP. In addition, further necessary disclosures have been made by Mr. Shravan Kumar Vishnoi as per the requirement of the IBBI Regulations. Accordingly, the requirement of Section 7 (3) (b) of the Code has been satisfied.



45. In the aforesaid background it is seen that the applicant bank clearly comes within the definition of Financial Creditor. The material placed on record including the letter of respondent showing transfer of liability confirms that the respondent corporate debtor committed default in repayment of the financial debt. On a bare perusal of Form – I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed IRP. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

46. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.



47. Mr. Shravan Kumar Vishnoi having registration number IBBI / IPA-002 / IP-P00040/ 2016-17 / 10079 resident of 406, 407, Shopping Square - II, Sector - D, Sushant Golf City, Ansal API, Lucknow – 226030 is appointed as an Interim Resolution Professional.

48. We direct the Financial Creditor to deposit a sum of Rs.1 Lac with the Interim Resolution Professional namely Mr. Shravan Kumar Vishnoi to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said advance amount however be subject to adjustment towards Resolution Process cost as per rules and shall be paid back to the applicant Financial Creditor.

49. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the



Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

50. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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.”

51. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.



52. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the



property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

53. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.


(M.M. KUMAR)
PRESIDENT


(S. K. MOHAPATRA)
MEMBER (T)

Deepak Kumar