

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**  
**KOLKATA BENCH, KOLKATA**

**CP (IB) No.1400/KB/2018**

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process 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;

And

In the Matter of:

Stressed Assets Stabilization Fund, having its registered office at IDBI Tower, 3<sup>rd</sup> Floor, WTC Complex, Cuffe Parade, Mumbai - 400 005.

.....Applicant/Financial Creditor

And

In the Matter of:

Ispat Profiles India Limited, having its Registered Office at Park Plaza, 71, Park Street, Kolkata - 700 016.

..... Respondent/Corporate Debtor

Date of Hearing 21<sup>st</sup> November 2019

Order Delivered on 28<sup>th</sup> November 2019

**Coram:**

**Madan B Gosavi, Member (J)**

**Virendra Kumar Gupta, Member (T)**

For the Financial Creditor : 1. Mr. Ratnanko Banerjee, Sr. Counsel  
2. Mr. Shaunak Mitra, Advocate  
3. Mr. Saubhik Chowdhury, Advocate  
4. Mr. Dripto Majumdar, Advocate

For the Corporate Debtor : 1. Mr. Abhrajit Mitra, Sr. Counsel  
2. Mr. D.N. Sharma, Advocate  
3. Ms. Neha Somani, P.C.S.

**ORDER**

**Per Virendra Kumar Gupta, Member (Technical)**

*Sd*  
pd

This application has been filed under Sec.7 of Insolvency & Bankruptcy

*Sd*

Code, 2016 by the financial creditor, viz., Stressed Assets Stabilization Fund to initiate corporate insolvency resolution process against the corporate debtor, viz., Ispat Profiles India Limited. The amount of default has been stated in the application at Rs.29524031704/- and interest thereon.

2. The facts, in brief, are that the financial institutions viz. Industrial Finance Corporation of India (IFCI), Industrial Development Bank of India (IDBI), Industrial Credit and Investment Corporation of India (ICICI) had granted financial assistance to the corporate debtor by way of various loans and foreign currency loans for setting up its plant for manufacture of mild steel structural, allow steel, profiles etc. at Pune.

3. IFCI and IDBI had disbursed loans to the corporate debtor between April 1986 till July 1991. Subsequently, in March 1994 at the request of the corporate debtor IFCI, being a lead banker, along with other associate banks viz. IDBI and ICICI converted the loans into a non convertible debenture on the agreed terms and conditions. It was further agreed that the interest accrued on principal term loan/NCDs for the period April 1994 till March 1996 would be converted into Zero Rate Debentures (ZRDs) which were to be redeemed in three equal instalment on 31/3/1997, 31/3/1998 and 31/3/1999 respectively. In 1997 a Debenture Trust Deed was also executed between the corporate debtor and IFCI, being lead banker, whereby IFCI was appointed as Debenture Trustee in respect of NCDs/ZRDs) in favour of the bank. In June 1997, IFCI issued a letter to the corporate debtor requesting for redemption of two instalment of NCDs which fell due on 31/3/1997 and 31/3/1998. It was also requested simultaneously to issue fresh NCDs to the tune of Rs.1225.30 lakh. On 31/3/1998, IDBI in accordance with the directions issued by Reserve Bank of India classified the account of the corporate debtor as NPA. Again in January 1997 Debenture Trust Deed was executed whereby fresh NCDs with revised

interest rate including redemption schedule were issued in lieu of payment of instalments due between 31/3/1997 and 31/3/1998.

4. On 12/4/1999 IDBI issued a letter agreeing in principle to reschedule the instalment of NCDs and for redemption of ZRDs by issue of fresh NCDs of equivalent value on agreed terms and conditions. As per the agreed terms and conditions, corporate debtor was obliged to repay the outstanding sum in three annual instalment commencing from 31/3/2001 to 31/3/2004. Further, NCDs amounting to Rs.2732 lakh were also due for redemption on the said dates. The corporate debtor informed this development to IFCI.

5. On 30/9/2001 corporate debtor filed a reference before the BIFR under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 [SICA] informing that its net worth had turned negative in the year 2000. This reference was dismissed. Against such dismissal, corporate debtor filed an appeal before Appellate Authority for Industrial & Financial Reconstruction (AAIFR) and also filed fresh reference before BIFR. Appellate Authority for Industrial & Financial Reconstruction (AAIFR) remitted the matter back to BIFR for further consideration.

6. BIFR on 30/3/2006 declared corporate debtor as a sick company and directed the applicant IFCI to prepare a revival scheme. All the three references were disposed of through this order. This order was challenged before AAIFR who directed BIFR to review and modify direction vide its order dated 9/4/2007. The matter remained pending before BIFR and final order was passed on 4/11/2014 wherein BIFR held that corporate debtor was not likely to make net worth positive and there was no viability, hence, issued directions to interested parties to take over the management. Finally on 1/1/2014 BIFR passed an order confirming its opinion for winding up of the corporate debtor and made reference to High Court. On 20/5/2015 AAIFR dismissed the appeal filed

against this order as infructuous.

7. Writ petition filed by the corporate debtor against the order of AAIFR before the Hon'ble High Court was also dismissed on 29/1/2016. On 25/7/2016 the application filed by the corporate debtor before the Hon'ble High Court, Calcutta under the provisions of Companies Act, 1956 was also dismissed. However, the said order was remitted back by the Division Bench of the Hon'ble High Court, Calcutta on 20/4/2017 to get the views of the secured creditors on the reference of BIFR vide its order dated 1/1/2014 for winding up of corporate debtor which was pending for final consideration and approval before the Hon'ble High Court.

8. On 24/9/2004 Government of India created special purpose vehicle which acquired the stressed assets of IDBI including account of corporate debtor. Such Stressed Assets Stabilization Fund has filed the present application under Sec.7 Insolvency & Bankruptcy Code, 2016.

9. Ld. Sr. Counsel for the financial creditor narrated the sequence of events which have been stated herein before and contended that initial loans were converted into NCDs/ZRDs which were also renewed/reissued on aforesaid terms from time to time. Ld. Sr. Counsel contended that when a reference was filed under SICA before the BIFR on 30/9/2001 and it was registered, hence, by virtue of Sec.22(5) of this Act, the period of limitation starting from this date was to be excluded till end of proceedings thereunder. Apart from this, the corporate debtor in its audited account for 30/9/2001 admitted that NCDs were issued to IDBI which were redeemable in three instalment starting from 31/3/2002 and this admission amounted to acknowledgment of liability under Sec.18 of Limitation Act, 1963. Ld. Sr. Counsel further pleaded that it also amounted to an enforceable promise to pay under Sec.25 (3) of the Indian Contract Act,

1872.

sd

sd

10. Ld. Sr. Counsel further contended that NCDs amounting to Rs.4098 lakh were due of redemption by the corporate debtor on 31/3/2002, 31/3/2003 and 31/3/2004. It was further contended that date of default in the instant matter was 31/3/2004. Ld. Sr. Counsel further contended that from time to time starting from 5/7/2005 till 26/4/2016 there were several correspondences, claims/admission by the corporate debtor either in proceedings before the BIFR and/or AAIFR or otherwise which constituted acknowledgment of debt in terms of Sec.18 of Limitation Act, 1963 and a promise to pay under Sec.25 (3) of Indian Contract Act, 1872.

11. Ld. Sr. Counsel further emphasized on the fact that corporate debtor submitted an application under Sec.391 of the Companies Act, 1956 on 26/4/2016 by way of affidavit affirmed by one of its Directors and submitted a rehabilitation scheme wherein financial creditor had been admitted as a creditor of the corporate debtor. It was also submitted that on 9/8/2016 financial creditor issued a letter to the corporate debtor demanding payment of a sum of Rs.2077 crore approximately. Reply to this letter was given by the corporate debtor on 14/10/2016 in which it was claimed that financial creditor was not entitled to institute any further proceedings against the corporate debtor without leave of the Hon'ble High Court under Sec.446 of the Companies Act, 1956 in view of the fact that proceedings under Sec.391 were pending before the Hon'ble High Court, Calcutta. IFCI being a debenture trustee, also issued a notice under Sec.13(2) of SARFAESI Act, 2002 on 9/5/2017 which was replied by a letter dated 30/6/2017 wherein corporate debtor requested for submitting a proposal for rehabilitation. On 2/3/2018, corporate debtor issued a letter to the financial creditor for support from all lenders for the revival of the company and approval of the scheme proposed by the corporate debtor. He also placed reliance on the decision of the Kolkata Bench in the case of Rakesh Pandey vs.

sd

sd

JHV Distilleries and Sugar Mills Ltd. CP (IB) No.221/KB/2018 for the proposition that the acknowledgment of loan amount in the balance sheet constituted fresh cause of action and extended the period of limitation. However, nothing worked out. Ld. Counsel contended that based upon the above facts, it was clear that debt was not barred by limitation and application under Sec.7 of the Insolvency & Bankruptcy Code, 2016 had been filed within the time, hence, this petition was liable to be admitted.

12. Ld. Sr. Counsel appearing on behalf of the corporate debtor submitted that the account had become NPA on 31/3/2004 which was evident from para 3 of the Transfer Deed signed between IDBI and financial creditor on 30/9/2014, hence, debt was barred by limitation. It was also pleaded that in Form 1 Part IV date of default had not been mentioned and, therefor, it was a case of no default. It was an incurable defect and for this reason itself, the petition was liable to be dismissed.

13. Ld. Sr. Counsel further argued that default occurred in 1994 and referred to page 197A of Volume 2 in this regard. Hence, even before SICA was invoked, the debt claimed had become time barred. For this proposition, he relied on the decision of the Hon'ble High Court in the case of Gaurav Hargovindbhai Dave vs. Asset Reconstruction Company (India) Ltd. 2019 SCC OnLine 1239. Thereafter, Ld. Sr. Counsel referred to the provisions of Sec.22 of SICA and contended that proceedings of winding up were pending before Hon'ble High Court as per the reference of BIFR, hence, present application was not maintainable.

14. In the rejoinder, Ld. Counsel contended that debt was not barred by limitation in view of various renewals, occasions, conversions, revival/rehabilitation scheme proposed from time to time. It was ultimately contended

Sd

pd

Sd

that there existed continuous cause of action, hence, both debt as well as petition was not barred by limitation.

15. Ld. Sr. Counsel further placed reliance on the decision of the Hon'ble Supreme Court in the case of Jaipur Metals and Electricals Employees Organisation vs. Jaipur Metals and Electricals Limited (2019) 4 Supreme Court Cases 227 and referred to para 19 of the said order for the proposition that before any winding up order had been passed, petition filed under Sec.7 was maintainable, hence, mere pendency of reference by BIFR before Hon'ble High Court was not a limiting factor.

16. We have considered the submission made by both the sides and have also perused the materials on record. It is noted that the amount in question comprises of principal sum, interest and damages. It is also not in dispute that initially loans were disbursed by IFCI and IDBI to the corporate debtor from 1986 till 1991. On default by the corporate debtor in repayment of interest as well as principal sum, such loans were converted into NCDs. Again on default, fresh NCDs including zero rate debentures have been issued, reissued with revised terms and conditions and agreed repayment schedule. The last repayment date have been stated as 31/3/2004 and on the same date it has been classified as NPA. Thus, this is the date of default.

17. It has been pleaded by the corporate debtor that amounts were advanced much before that date and those were payable by 31/3/1994, hence, debt had become time barred before filing reference under SICA and consequently Sec.22(5) of the SICA was not applicable. However, the fact remains that there have been continuous acknowledgment of liability by the corporate debtor either by way of proposal for revival package, presentation in balance sheet or through various letters to the lenders wherein fact of loan/outstanding debt has been either directly or as a part of correspondence. There have been promises as well

Sd

Sd

to repay the loan. Thus, taking into consideration these aspects, we are of the considered opinion that this constitute an acknowledgment of debt, hence, for this reason the debt is not barred by limitation.

1. We also submit that various aspects relating to the acknowledgment of debt under Sec.18 of Limitation Act, 1963 have been considered by this Tribunal in a few cases recently. In the case of Hari Omm Transport vs. MSP Metallics Ltd. CP (IB) No.116/KB/2019 Order dated 15/10/2019 wherein the Tribunal has held as under:-

*"8. It is not in dispute that the Operational Creditor has supplied material during the Financial Year 2014-15. It is also not in dispute that there were agreed deduction out of the bills raised by the Operational Creditor to the tune of Rs. 12,43,281/- resulting into impugned sum remaining unpaid. It is also noteworthy that thereafter there have been no supplies or payment by the respective parties. As far as Corporate Debtor is concerned the main plea is that the debt is barred by limitation. For this purpose, the e-mail dated 19<sup>th</sup> April, 2016 has been claimed as not a proper acknowledgement of debt under Section 18 of Limitation Act, 1963. It has been claimed so far the reason that the said e-mail was addressed to Baba Gora Transport and not to the Financial Creditor. On perusal of the records, it is noted that the said e-mail is, in fact, has been addressed to mail ID i.e. [babagoratrtransport@gmail.com](mailto:babagoratrtransport@gmail.com) which is not of the Financial Creditor but statement of account of Financial Creditor has been attached. To express our view about the validity of such e-mail is an acknowledgement of that we consider it necessary to reproduce Section 18 of the Limitation Act, 1963 as under:*

*Section 18(1):*

*Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh*

Sd

Sd

period of limitation shall be computed from time when the acknowledgement was so signed.

Section 18(2):

Where the writing containing the acknowledgement is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (a of 1872), oral evidence of its contents shall not be received.

Explanation: for the purpose of this section,-

(a) an acknowledgement may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) The word 'signed' means signed either personally or by an agent duly authorised in this behalf; and

(c) An application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

9. From the perusal of Section 18(1), it is apparent that acknowledgement of liability must be made before expiry of limitation period for filing the suit. If limitation has already expired, it would not revive under section 18. In the present case, last payment has been made in July, 2015 and e-mail has been sent in April, 2016, which is well before the expiry period of three years. Hence, first hurdle is crossed. Now, we have to look whether such e-mail can be construed as acknowledgement of debt as it has been claimed that such mail has not been addressed to the Operational Creditor. From the perusal of the explanation (a) above, it is clear that the claim of the Corporate Debtor is not valid because such explanation clearly states that a communication may be addressed to a person other than a person related to the property or right. The Corporate Debtor has also not been able to produce any record to show that such person was not authorised to send such e-mail. Though such claim has been made, the e-mail ID contains particulars of the Corporate Debtor, hence, it cannot be said that e-mail has not been sent for and on behalf of the Corporate Debtor. Another aspect which needs to be considered is that

Bel

sd

*though said e-mail to statement of account has only sent and no other facts have been mentioned, hence, can it be said to be an acknowledgement of debt. This question again leads us to explanation (a) above wherein it has been stated that an acknowledgement may be sufficient though it omits to specify exact nature of property or right."*

18. In the case of Trinetra Eletronics Limited vs. McNally Bharat Engineering Co. Limited in CP (IB) No.1506/KB/2018 Order dated 16/10/2019, this Tribunal has held as under:-

*"5. We have considered submissions made by both sides and have also perused the materials on record. The question for our consideration arises is that (i) whether debt is barred by limitation or not; (ii) whether the letters dated 29/1/2018 and 30/7/2018 constitute acknowledgment as per provision of Sec.18 of the Limitation Act, 1963. It is not in dispute that these letters have been written by the corporate debtor regarding confirmation of outstanding balance of ICD as on 31/12/2017 and 30/6/2018 as per the books of account of Financial Creditor. The confirmation of outstanding balance is to be given to the statutory auditors of the corporate debtor. This exercise cannot be considered in a light manner because reliance on the accuracy of the books of account and financial statement is based upon such standard auditing practice. In the letter dated 29/1/2018 it has been clearly mentioned that such confirmation was in respect of amounts payable in respect ICD as on 31/12/2017 which by itself establishes the fact of acknowledgment of debt beyond any doubt. To deal with the contention of the corporate debtor that such emails do not constitute acknowledgment of debt within the meaning of provision of Sec.18 of the Limitation Act, 1963, we consider it necessary to reproduce the Sec.18 of the said Act as under:-*

*"Effect of acknowledgment in writing.*

*(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh*

Sd

Sd

period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed, but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

*Explanation:* For the purposes of this section,-

(a) An acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) The word "signed" means signed either personally or by an agent duly authorised in this behalf; and

(c) An application for the execution of a decree or order, shall not be deemed to be an application in respect of any property or right."

From perusal of the explanation (a) to the said section it can safely be concluded that such letters constitute acknowledgment of debt by the corporate debtor, as it is not necessary that the letter should be written to the financial creditor only. It is further noteworthy that explanation (a) takes into its ambit the generally accepted commercial practices of communication between the parties whereby acknowledgment of debt can be inferred as no specific format has been prescribed.

6. Having stated so, a question may arise that such communications are in respect of the debt outstanding in the books of account of corporate debtor as on 31/12/2017 and 30/6/2018 and have been sent on 29/1/2018 and 30/7/2018 respectively which are beyond three years period from 30/9/2014, hence, whether requirement of Sec.18(1) of Limitation Act, 1963 is complied with. To look into this aspect, we have to see whether presentation in the balance sheet by itself constitutes an acknowledgment of debt or not. Now, there have been catena of decisions of NCLT and NCLAT that presentation of debt in the balance sheet constitutes acknowledgment of debt. Since the corporate debtor, in the present case has asked for

sd

sd

confirmation of balance from the financial creditor as on 31<sup>st</sup> December 2017 and 30<sup>th</sup> June 2016 in respect of loan taken in 2014 which itself implies that such loan is continuously outstanding in the balance sheet of corporate debtor from earlier financial years ending on 31<sup>st</sup> March 2015, 31<sup>st</sup> March 2016 and 31<sup>st</sup> March 2017. Thus, this fact by itself goes against the corporate debtor and irrespective of these emails, there exists acknowledgment of debt due and payable which is not barred by limitation. This being so, hence, such emails also fall in the period specified for filing of suit as per provisions of Limitation Act, 1963 and, therefore, these comply with the requirements of Sec.18 of Limitation Act, 1963.

7. In the case of Jignesh Shah & another, Hon'ble Supreme Court in the order dated 25<sup>th</sup> September 2019 at para 19 of the order has held as under:-

"19. The aforesaid judgments correctly hold that a suit for recovery based upon a cause of action that is within limitation cannot in any manner impact the separate and independent remedy of a winding up proceeding. In law, when time begins to run, it can only be extended in the manner provided in the Limitation Act. For example, an acknowledgement of liability under Section 18 of the Limitation Act would certainly extend the limitation period, but a suit for recovery, which is a separate and independent proceeding distinct from the remedy of winding up would, in no manner, impact the limitation within which the winding up proceeding is to be filed, by somehow keeping the debt alive for the purpose of the winding up proceeding."

The above findings also support our view.

8. Having stated so, we also take into consideration the provision of Sec.238A of the Insolvency & Bankruptcy Code, 2016 which is reproduced as under:-

"The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be."

9. Before looking into the ambit and scope of this section, it is

stated that this provision was incorporated in Insolvency & Bankruptcy Code, 2016 with the object that stale claims cannot be made alive through the mechanism of Insolvency & Bankruptcy Code, 2016. This is also so because Insolvency & Bankruptcy Code, 2016 is not a recovery mechanism rather a comprehensive code for insolvency resolution old and stale claims cannot be considered as a source or detecting of signs impending insolvency at an early stage. Hence, for this reason also the necessity was felt to make provision of Limitation Act, 1963 applicable to Insolvency & Bankruptcy Code, 2016. It has been settled judicially that Sec.238A is applicable since the implication of Insolvency & Bankruptcy Code, 2016. It is evident that Sec.238A the word "as far as may be" have been used which means that the provisions of Limitation Act, 1963 would apply to the extent possible and any provision of Limitation Act, 1963 being inconsistent to the provisions of Insolvency & Bankruptcy Code, 2016 will not be applicable. Further, the technicalities of Limitation Act, 1963 would not be applicable as Insolvency & Bankruptcy Code, 2016 is an economic legislation and functions on the principles of summary procedure. As discussed earlier that explanation (a) of Sec.18 of Limitation Act, 1963 provides much flexibility and takes into consideration various factors/situations for explaining as to what would constitute acknowledgment and in view of Sec.238 and 238A of the Insolvency & Bankruptcy Code, 2016, such provision has to be read further in conjunction with the wider meaning given to the term "claim" in Sec.3(6) of the Insolvency & Bankruptcy Code, 2016 which includes right to payment even on equitable ground.

10. In view of above discussion, we hold that there is no merit in the claim of the corporate debtor that the said emails cannot be said to be an acknowledgment within the meaning of provision of Sec.18 of Limitation Act, 1963. Accordingly, we reject the same."

19. In the case of Asset Reconstruction Company (India) Ltd. vs. Dagcon (India) Private Limited, Order dated 20/11/2019 in CP(IB) No.1198/KB/2018, the Tribunal has held as under:-

"11. Coming to the aspect of limitation, we are of the view if

Sd

Sd

*averment made before a court of law or any statutory authority cannot be constituted as an acknowledgment of debt then that would render such averment meaningless. Legally such averment bind party making them. Doctrine of estoppel applies without any restriction in commercially and legally. Accordingly, we hold that such statement constitute acknowledgment. In this regard, we further take the assistance of the provision of explanation (a) of Sec.18(1) of Limitation Act, 1963 wherein scope of acknowledgment has been given in a widest possible manner. It is also to be noted that writ petition was filed within a period of 3 years from the date of issue of recall notice and, hence, for this reason also provisions of Sec.18 of the Limitation Act, 1963 are applicable. Even otherwise, in our considered view, such averments made before the Hon'ble High Court amount to promise within the meaning of provisions of Sec.25(3) of the Indian Contract Act, 1872 and, therefore, if such promise is made after expiry of original limitation period also, the limitation period gets extended as condition of acknowledgment before expiration exists only under Sec.18 of the Limitation Act, 1963."*

20. From the perusal of the above judicial decisions, it may be noted that the explanation (a) of Sec.18 of Limitation Act, 1963 is wide in scope and has to be interpreted in the background of the current commercial environment and in accordance with the nature of proceedings of Insolvency & Bankruptcy Code, 2016.

21. In this chain, lastly a proposal by way of application under Sec.391 of the Companies Act, 1956 has also been made on 26/4/2016. Hence, if counted from this date, the petition filed under section is also not barred by limitation. We are further of the view of such claims/proposals also amount to enforceable promise under Sec.25(3) of Indian Contract Act, 1872. Hence, for this reason also neither the claim nor application filed under section is barred by limitation. We are further of the view that in the present case continuous cause of action exists. Accordingly, we reject this claim of the corporate debtor.

22. We are further of the view that the decision of the Hon'ble Supreme Court in the case of Gaurav Hargovindbhai Dave (supra) is not applicable in the facts

Sd

Sd

and circumstances of the case, hence, it also does not help the cause of the corporate debtor.

23. As regards non enforce-ability of this petition because of reference of winding up being made by BIFR and which is pending for consideration of Hon'ble High Court, Calcutta, it is noted that no order of the Hon'ble High Court has been brought on record to show that winding up order has actually been passed before filing of petition under Sec.7 of Insolvency & Bankruptcy Code, 2016. It is now a settled proposition that mere pendency of a proceedings of winding up before any High Court would not preclude/prevent a creditor to file a petition under Sec.7 of Insolvency & Bankruptcy Code, 2016, hence, this contention of the corporate debtor is also rejected as provision of Sec.11 (d) of Insolvency & Bankruptcy Code, 2016 do not come into play in the present case.

24. It has been pleaded that no date of default has been mentioned in Part IV of the Form 1, hence, the application was defective. However, on perusal of column 4 at page 6 of the Paper Book, it is noted that a specific mention has been made in regard to the particulars of default by the corporate debtor and details of such default have been given in Annexure G and H, copies of the same have been placed at pages 45 and 46 of the Paper Book. Therefore, this contention of the corporate debtor is also found devoid of merits, hence, rejected.

25. As regards to authority of the applicant, it is noted that letter of authorisation has been enclosed. We are further of the view that in case of economic legislation such technical consideration cannot be given undue weight-age, particularly when no specific formats and procedures have been provided. Thus, we reject this contention as well.

26. The name of Shri Rajiv Kumar Agarwal, Registration No.IBBI/IPA-001/IP-00552/2017-18/10982, email address [rajiv@kvrassociates.in](mailto:rajiv@kvrassociates.in) as IRP has been

proposed which is mandatory in case of application filed under Sec.7 of Insolvency & Bankruptcy Code, 2016. Consent of such person has also been filed. It has been claimed that no disciplinary proceedings are pending against the proposed IRP. Thus, we approve his name as IRP. The application is otherwise complete and defect free. Accordingly, we admit the same and order as follows:-

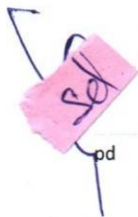
**ORDER**

- i. The application filed by the Financial Creditor under section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, Ispat Profiles India Limited is hereby admitted.
- ii. We declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii. Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The 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 Section 15 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;

sd  
pd


sd

- 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 (54 of 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.
- v. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during 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 have effect from 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 Sec.15 of the IBC, 2016 may be made.

  
pd



- x. Shri Rajiv Kumar Agarwal, Registration No.IBBI/IPA-001/IP-00552/2017-18/10982, email address [rajiv@kvrassociates.in](mailto:rajiv@kvrassociates.in) is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- xi. The Financial Creditor to pay a sum of Rs.3,00,000/- (Rupees Three lakh only) to IRP as advance fee as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill. In case further funds are required during Corporate Insolvency Resolution Process and if not provided by Committee of Creditors then IRP/RP can approach this Tribunal for that purpose.
- xii. The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xiii. Registry is hereby directed under section 7(7) of the I.B.Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.
27. List the matter on 14/1/2020 for filing of the progress report.
28. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

  
(Virendra Kumar Gupta)  
Member (T)

  
(Madan B Gosavi)  
Member (J)

Signed on 28<sup>th</sup> November 2019