

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

**Coram : (1) Shri Madan B. Gosavi, Hon'ble Member (J)
(2) Shri Virendra Kumar Gupta, Hon'ble Member(T)**

CP (IB) No. 140/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:

Punjab National Bank, having its Corporate Office Plot No.4, Sector-10, Dwarka, New Delhi-110 005 through Punjab National Bank, Large Corporate Branch, 44, Park Street, Kolkata-700016;
... **Operational Creditor**

-Versus-

In the matter of:

M/s. Prithvi Ferro Alloys Private Ltd., having its registered office at CF 361, Sector-I, Salt Lake City, Kolkata- 700 0064
CIN : U27100WB2008PTC121962;

.... **Corporate Debtor**

Counsel appeared:

- | | |
|----------------------------------------|----------------------------|
| 1. Ms. Aparajita Rao, Advocate |] |
| 2. Ms. P. Gandhi, Advocate |] For Operational Creditor |
| | |
| 1. Mr. Ashok Kr. Dhandhaniya, Advocate |] For Corporate Debtor |
| 2. Mr. Tapas Kr. Das, Advocate |] |

Date of Pronouncement of Order: 08.08.2019

ORDER

Per Shri M. B. Gosavi, Member(J):

Punjab National Bank – the Financial Creditor filed this application under section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **M/s. Prithvi Ferro Alloys Private Limited** – Corporate Debtor to start Corporate Insolvency Resolution Process (in short, "CIRP") of the Corporate Debtor as the Corporate Debtor committed default in paying the financial debt of Rs.64,44,18,035/-.

2. It is not in dispute that term loan, cash credit facilities were granted by the Financial Creditor in favour of the corporate debtor. The corporate debtor utilised the loan amount. They did not repay the loan as agreed. Hence, this proceeding under section 7 of I&B is filed.

3. Corporate Debtor filed affidavit-in-reply. They contended that the debt amount of Rs. 64,44,18,035/- is highly exaggerated and inflated. Their account may not be set to be NPA. This application under section 7 is not maintainable, which may be rejected.

4. We perused the record. We heard the Ld. Counsel appearing for the Financial Creditor as well as the Corporate Debtor at length.

5. It is not in dispute that the Financial Creditor granted and disbursed loan in favour of the corporate debtor. It is not in dispute that the corporate debtor committed default in paying the financial debt of more than Rs.1,00,000/-. Although the corporate debtor contend that their account may not be treated as NPA but they did not point out any evidence as to how much amount they paid back towards the financial debt. In our considered opinion, this application is

required to be allowed. Ld. Defence Counsel submitted that when consortium of joint lenders granted the loan, one Member of the Consortium, i.e. Punjab National Bank herein cannot file application under section 7 IBC. We do not accept this submission. Section 7 IBC allows the financial creditor to file application either by itself or jointly with other financial creditors of the corporate debtor. We hold that on this ground, the application cannot be rejected.

6. Another defence taken by the corporate debtor is that Mr. Upendra Dehury, the Officer of the Punjab National Bank is not properly authorised to file this application. We hold that the submissions of Ld. Counsel for the Corporate Debtor are *de hors* of the evidence of facts on record. Mr. Dehury produced on record the power of attorney dated 27.11.2017 whereby he was duly authorised to file and verify this petition.

7. In this case, the financial creditor established two crucial facts, (i) there is a financial debt payable by the corporate debtor to the financial creditor is more than Rs.1 lakh and (ii) corporate debtor committed default in paying that debt. The Financial Creditor suggested the name of Mr. Samir Kumar Bhattacharyya (Mobile No. 8584947677) having registration no.IBBI/IPA-002/IP-N00273/2017-2018/10831 and email address skb.resolution@gmail.com for appointment as IRP. We find Mr. Bhattacharyya is not facing any disciplinary proceeding at present. The application is defect-free. We admit the same and pass the following order:

ORDER

- (i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Resolution Process in respect of M/s. Prithvi Ferro Alloys

Private Limited. Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.

- (ii) The 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 Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (iii) Moratorium under Sec.104 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 judgement, 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 (54 of 2002);
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

- iv) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- v) 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.
- vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
- vii) 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 Sec.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.
- viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.
- (ix) Mr. Samir Kumar Bhattacharyya (Mobile No. 8584947677) having registration no. IBBI/IPA-002/IP-N00273/2017-2018/10831 and email address skb.resolution@gmail.com is appointed as the Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan. IRP is directed to submit his consent along with written Communication in Form-2 within two weeks of the order.

- x) The Operational Creditor to pay to IRP a sum of Rs.50,000/- as advance fees, which amount shall be adjusted at the time of final payment.
- xi) As per the amended provision of the I&B Code, he has to finalise the Resolution Plan on or before 105 days from the date of admission of CIRP.
- xii) Registry is hereby directed to communicate the order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post and also by email.

Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on **20.09.2019** for filing progress report.

Sd/-
(Virendra Kumar Gupta)
Member (T)

Sd/-
(Madan B. Gosavi)
Member (J)

Signed on this, the 8th day of August, 2019.