

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

**Company Petition No. (IB)-563(PB)/2018**

In the matter of:

Andhra Bank

.....Applicant/Financial Creditor

Vs

Kalptaru Steel Rolling Mills Ltd. ....Respondent/Corporate Debtor

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

*Judgment delivered on: 14.08.2018*

**Coram:**

**DR. DEEPTI MUKESH  
HON'BLE MEMBER (JUDICIAL)**

**S. K. MOHAPATRA  
HON'BLE MEMBER (TECHNICAL)**

For the Applicant

: Mr. N. P. Gaur, Advocate

For the Respondent Company: None

## ORDER

**S. K. Mohapatra, Member**

1. Andhra Bank, claiming as the financial creditor, 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 Kalptaru Steel Rolling Mills Limited, referred to as the corporate debtor.

2. The Respondent Company M/s Kalptaru Steel Rolling Mills Limited (CIN No. U27108 DL 2002 PLC 223458) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 22.10.2002 having its registered office at 121, First Floor, Vardhman market, Outer Ring Road, Vikas Puri, New Delhi – 110018. 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 Andhra Bank is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act 1980 (no. 40 of 1980) having Head Office at 5-9-11, Dr. Pattabhi Bhavan, Saifabad, Hyderabad – 500 004 with its specialized asset recovery management branch at 1<sup>st</sup> Floor, Andhra Bank Building, Sultan Bazar, Koti, Hyderabad – 500095.
4. Mr. G. Nagesh, Asst. General Manager of the applicant Bank and the principal officer of the applicant bank branch has relied upon the Power of Attorney dated 28.12.2017 of the applicant bank wherein he was appointed as true and lawful attorney of the applicant bank to do and transact the matters mentioned therein for and on behalf of the applicant. Accordingly, Mr. G. Nagesh, Asst. General Manager of the applicant bank on the strength of the authority has filed the present application for initiation of corporate insolvency resolution process in terms of the provisions of the Code.

5. The applicant has proposed the name of Shri Prabhakar Nandiraju, for appointment as interim resolution professional having registration number IBBI/IPA-002/ IP-N00361/2017-18/11030 resident of D. No. 11-12-7, Road no. 1, Income Tax Colony, SRK Puram, Hyderabad - 500102, with email-ID pnandiraju26@gmail.com. Shri Prabhakar Nandiraju has agreed to accept appointment as the IRP and has signed a communication dated 01.05.2018 in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Shri Prabhakar Nandiraju as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.
6. The applicant bank has filed an affidavit on 04.06.2018 *inter alia* affirming that on 31.05.2018 at about 2:30 PM one Mr. Vikrant Kapoor, Manager (Law) of SARM Branch of Andhra Bank along with Mr. Vijay Kumar, clerk of the counsel visited the registered office

of the corporate debtor at 121, First Floor, Vardhman Market, Outer Ring Road, Vikas Puri, New Delhi 110018 to serve the notice of the present petition and found that the corporate debtor is not having any office at the said address. In a subsequent affidavit dated 25.07.2018 it has been affirmed that in compliance of order dated 12.06.2018 notice has been served by the applicant/financial creditor to the respondent company through email on 28.06.2018 as per company's email-Id as shown in its master data.

7. In addition, the applicant bank has also published notice in newspaper that is in Financial Express of Hyderabad edition and Delhi edition on 10.07.2018. Copy of both the publications have been placed on record. In view of the substituted service through paper publication, it was observed in the order dated 26.07.2018 that the service is complete. Despite service of notice through paper publication as no one appeared on behalf of the respondent, it was directed on 12.06.2018 to proceed ex-parte against the respondent company.

8. The matter was finally heard on 07.08.2018 in the absence of the respondent and the application was reserved for orders.
9. It is the case of the applicant that on the request of the respondent company, the Applicant Bank had sanctioned OCC limit of Rs.2.50 crores and ILC limit of Rs.2.50 crores vide sanction letter dated 26.08.2009 subject to the terms and conditions mentioned therein.
10. It is submitted that the Respondent accepted the said terms and conditions stipulated in the sanction letter and in token thereof acknowledged the said letter. Moreover the Board of Directors of the respondent company vide resolution dated 27.08.2009 resolved to borrow OCC limit of Rs.2.50 crores and ILC limit of Rs.2.50 crores from the Applicant Bank.
11. In order to support the loan facilities the following loan documents were executed on 03.09.2009.

*i. Composite agreement executed by the Respondent for Rs.5.00 crores promising to repay the working capital limits within one year. The Respondent also agreed to pay overdue interest @ 2% in case of default in repayment of the amount on the due date.*



- ii. *Demand promissory Note for Rs.5.00 crores promising to repay the same with interest with 11.50% per annum being 0.50% over and above banks bench mark PLR (BMPLR) compounded with monthly rests.*
- iii. *Undertaking letter executed by Respondent*
- iv. *Consent letter to disclose to CIBIL executed by Respondent in case of its default in repayment of the loan amount.*

**12.** Thereafter, Respondent Company again approached in January, 2010 for sanction of term loan of Rs.12.00 crores for establishment of Rerolling Mills, OCC limit of Rs.7.50 crores (enhancement from 2.50 crores) towards working capital purpose and ILC/FLC (renewal) Limit of Rs.2.50 crores for procurement of raw material. At the request of the Respondent company, the Applicant Bank sanctioned the said limits totaling Rs. 22.00 crores subject to the terms and conditions mentioned in the sanction letter dated 03.02.2010.

**13.** The Respondent accepted the said conditions and in token thereof acknowledged the sanction letter. Besides the Resolution dated 18.02.2010 of the Board of Directors of the Respondent company has been

placed on record to show that the corporate debtor had resolved to borrow Fund Based and Non-Fund based limit of Rs.22.00 crores from the Applicant Bank and also to create mortgage to secure the loan. In addition applicant has submitted that in the Extra Ordinary General Meeting of the shareholders held on 08.02.2010 under Section 293 (1) (a) and 293 (1) (d) of the Companies Act, it was resolved to borrow in excess of the paid up capital and free reserves of the company and to mortgage on the assets of the Respondent.

**14.** The respondent corporate debtor has further executed the following loan documents on 06.03.2010.

*i. Composite agreement executed by the Respondent for Rs.22.00 crores promising to repay the working capital limits within one year and the Term Loan in 20 quarterly installments commencing from 30.04.2011. The Respondent also agreed to pay interest at the applicable PLR 12%+/spread of 1% on Term Loan. The Respondent also agreed to pay overdue interest @2% in case of default in repayment of the installment on the due date.*

- ii. *Demand promissory note for Rs.10.00 crores (for OCC & ILC Limits) promising to repay the same with interest with @12.5% per annum being 0.50% over and above banks benchmark PLR (BMPLR) compounded with monthly rests.*
- iii. *Undertaking letter executed by Respondent*
- iv. *Consent letter to disclose to CIBIL executed by Respondent in case of its default in repayment of the loan amount.*

**15.** It is submitted that with an intention to keep as security for due repayment of the liability, the respondent company offered vide letter dated 05.03.2010 by depositing on 05.03.2010 with the applicant bank the registered sale deed No.1528/2008 and 2160/1996, registered lease cum sale agreement No.45/1988, Regd. Release of Mortgage deed No.1389/2010 and other connected documents in respect of property and created mortgage over the said property. The Respondent vide letter dated 06.03.2011 confirmed the creation of the mortgage and the same was registered in Sub Registrar Office, Hindupur on 06.03.2010 as document No.1397/2010.

**16.** It is submitted that the Andhra Pradesh State Financial Corporation (APSFC) vide letters dated 21.07.2010, 13.10.2010, 23.11.2010 allowed 2nd charge in favour of the Applicant Bank on properties mortgaged to them by the Respondent. It is also submitted that the APSFC vide letter dt.13.10.2010 conceded 2nd charge in favour of the Applicant Bank on the properties mortgaged to them by M/s Sasa Metal Private Limited and M/s Hindupur Ispat Limited.

**17.** It is submitted that the Respondent with intent to secure the repayment of the amount due, deposited with Applicant Bank on 22.11.2010, the document of title and created mortgage. The Respondent vide letter dated 29.11.2010 confirmed the creation of mortgage over the property and the said memorandum was registered with Sub Registrar Office, Hindupur on 29.11.2010 as document No.8528/2010.

**18.** Subsequently, the Respondent again vide loan application dated 27.11.2010 approached the Applicant Bank for enhancement of the OCC limit from 7.50 crores to Rs.25.00 crores and renewal of ILC/FLC limit of Rs.5.00 crores. At the request of Respondent, the Applicant Bank sanctioned the OCC limit of Rs.20.00

crores and ILC/IFC limit of Rs. 5.00 crores subject to the terms and conditions mentioned in the sanction letter dt. 25.02.2011.

**19.** It is submitted that the following loan documents were again executed on 11.03.2011.

*1. Composite agreement executed by the Respondent for Rs.25.00 crores promising to repay the working capital limits within one year. The Respondent also agreed to pay overdue interest @2% in case of default in repayment of the amounts on the due date.*

*2. Demand Promissory Note for Rs.20.00 crores (for OCC limit) promising to repay the same with interest with 14.25% per annum being 4.75 % over and above banks Base rate compounded with monthly rests.*

*3. Demand Promissory Note for Rs.25.00 crores (OCC limit & ILC limits) promising to repay the same with interest compounded with monthly rests.*

4. Demand promissory note for Rs.5.00 crores (for ILC Limit).

5. Consent letter executed by Respondent to disclose to CIBIL.

**20.** It is submitted that the Respondent vide letter dated 11.03.2011 confirmed the extension of mortgage to secure the aforesaid further loan facilities.

**21.** It is also the case of the applicant bank that the charges of the applicant are duly registered with Registrar of Companies in terms of the provisions of the Companies Act.

**22.** It is thus seen that the applicant 'financial creditor' bank has placed on record voluminous and overwhelming evidence in support of the claim as well as to prove the default.

**23.** It is further case of the applicant bank that the Respondent committed default in repayment of the installment and interest in the Term Loan and requested the Applicant Bank to restructure the Term Loan and sanction of Funded Interest Term Loan of Rs.1.75 crores towards the irregular portion in the Term Loan and postponement of the second installment in Term Loan and the Applicant Bank vide sanction letter

dated 16.09.2011 sanctioned the FITL loan of Rs.1.75 crores and postponed the payment of second installment.

**24.** It is submitted that the Board of Directors of Respondent vide resolution dated 19.09.2011 resolved to borrow Fund Based limit of Rs.38.75 crores from the Applicant Bank.

**25.** It is submitted that the following loan documents were again executed on 27.09.2011.

*i. Funded Interest Term Loan & Amendatory Agreement executed by Respondent for FITL of Rs.1.75 crores agreeing to repay the same in 24 monthly installments of Rs.7,30,000/- per month commencing from 01.10.2012 with interest @16.25% with monthly rests.*

*ii. Supplemental and Amendatory (for reschedulement of the loan) executed by Respondent for re-schedulement of Term Loan of Rs. 10.80 crore promising to repay the same in 22 with interest commencing from 30.10.2012. quarterly installments @ Rs.49,10,000/- per quarter.*

**26.** It is submitted that out of the OCC limit of Rs.20.00 crores, the Respondent requested the applicant to avail a sub limit of Rs. 2.00 crores with Banswsadi branch, Bengaluru of the Applicant Bank, and the same was permitted and the Respondent availed the facility.

**27.** It is submitted that the Respondent committed default in repayment of the Term Loan amount of APSFC and by virtue of the powers conferred under Section 29 of SFC Act, the APSFC seized properties charged to them on 17.06.2013 and the current assets of the Respondent which are hypothecated to the Applicant Bank are lying with the respondent company.

**28.** It is submitted that as per the clause in the composite agreement, the Respondent was required to remit the sale proceeds of the hypothecated assets and route the transaction through the Applicant Bank. It is alleged that the Respondent has been selling the hypothecated assets since April, 2013 but not remitting the sale proceeds into the account. There are no operations in the loan account since April, 2013. As per the terms of composite agreement, Applicant Bank is empowered to seize, to sell the hypothecated assets and

appropriate the sale proceeds to the loan accounts and is also empowered to sell the hypothecated assets even without intervention of the court. It is alleged that the Respondent represented by its Directors with malafide intention to obtain unlawful gain have been adopting unfair trade practices and misappropriating the sale proceeds of the hypothecated assets. It is submitted that the Respondent failed to pay the loan amounts in accordance with the agreed terms and as such the Applicant bank was constrained to classify the account of the Respondent as NPA with effect from 30.06.2013 and invoked the provisions of SARFAESI Act and issued demand notice dt. 01.07.2013 demanding the payment of liability from Respondent and guarantors.

**29.** It is further alleged that after receipt of the demand notice, the Respondent represented by its Directors started removing the hypothecated assets and when it came to the knowledge of the Applicant bank, immediately the Applicant Bank lodged a complaint dt.30.07.2013 with Station House Officer, Hindupur Rural Police Station. It is submitted that in order to overcome the complaint lodged by the Applicant Bank and to cover up their illegal activities and to terrorize the

officials of the Applicant Bank, the Respondent addressed a letter to the Head Office of the Applicant's Bank and local police officials, as if, the Applicant Bank's officials have break open the locks of the factory and shifted the hypothecated assets.

**30.** It is also the case of the applicant that the said premise was under the custody and watch and ward of the security personnel of Respondent and the outsiders are not allowed inside without permission of security. It is alleged that the Respondent and its Directors have already removed major part of hypothecated assets from the factory premises.

**31.** It has been emphasized that the Respondent company availed the loan facilities and committed default in repayment of the dues to the Applicant Bank. The Applicant Bank opened accounts and the same were operated by Respondent regularly from time to time. Certified copies of statement of account relating to the said limits availed by the Respondent from time to time, duly certified as per the provisions of Bankers' Book Evidence Act, has been placed on record. It is submitted that as per the agreement/covenants entered into with the Applicant Bank by the Respondent, the

Applicant Bank is entitled to capitalize the interest payable by the Respondent so as to amalgamate/form into the principal amount. It is submitted that in view of non-payment of the liability, the Applicant Bank classified the account as NPA with effect from 30.06.2013 and stopped application of interest as per the prudential norms of the RBI. However, the Applicant Bank is entitled to recover the interest in full and accordingly claimed the debt including interest calculated till the date of application for recovery as per the statement of accounts filed. It is further contended that in view of the introduction of Section 21 A in Banking Regulation Act, the Applicant Bank is entitled to claim interest at contractual rate till the date of realization.

- 32.** As per Part IV of the application it has been claimed that the Respondent corporate debtor is liable to pay a sum of Rs 86,07,72,488.43/- under Term Loan, FITL, OCC limit (Including the ILC liability) as on 30.04.2018 as detailed hereunder:

**TERM LOAN LIMIT:**

As per statement of account as on 30.04.2018 —  
Rs 25,63,38,260.60 (Rupees Twenty five crores

sixty three lakhs thirty eight thousand two hundred sixty and paise sixty only).

**FITL LIMIT:**

As per statement of account as on 30.04.2018-Rs. 3,86,17,800.00 (Rupees Three crores eighty six lakhs seventeen thousand eight hundred only)

**OCC LIMIT.**

As per statement of account as on 30.04.2108—Rs 51,99,70,580.83 (Rupees Fifty one crores ninety nine lakhs seventy thousand five hundred eighty and paise eighty three only)

**OCC Sub-Limit (Account with Banaswadi Branch)**

As per statement of account as on 30.04.2018-Rs 4,58,45,847.00 (Rupees Four crores fifty eight lakhs forty five thousand eight hundred forty seven Only)

Total amount of debt i.e. (TL+FITL+OCC+Sub Limit of OCC) due from the respondent company as claimed in the application comes to Rs 86,07,72,488.43/- (Rupees Eighty six crores seven lakhs seventy two thousand four hundred eighty eight and paise forty three Only)

**33.** We have heard the Learned counsel of the applicant bank and have perused the case records. Despite service of notice neither any one appeared on behalf of the respondent company nor any objection has been filed disputing the claim of the applicant bank.

**34.** 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.

**35.** 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 “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.

**36.** The expressions “Financial Creditor” and “Financial debt” have been defined in Section 5 (7) and 5 (8) of the Code. Precisely “Financial debt” is a debt along with interest, if any, which is disbursed against the consideration for time value of money. In the present case applicant bank had sanctioned and disbursed various loan amounts recoverable with applicable interest by entering in to various loan agreements with the corporate debtor. The corporate debtor had borrowed the credit facilities against payment of interest as agreed between the parties. The loan was disbursed against the consideration of time value of money with a clear commercial effect of borrowing. Needless to say, that the debt/claim in question includes both the component of outstanding Principal and interest. In that view of the matter not only the present claim will come within the purview of ‘*Financial Debt*’ but also the applicant bank can clearly be termed as ‘*Financial Creditor*’ so as to prefer the present application under Section 7 of the Code.

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



1. *Default has occurred.*
2. *Application is complete, and*
3. *No disciplinary proceeding against the proposed IRP is pending*

**38.** 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)

**39.** In the case in hand applicant has produced Board resolution and also special resolution of the respondent company in order to establish availment of various loan facilities by the respondent company. It has been shown that the respondent company through its several letters accepted the terms and conditions of respective sanction letters. In addition, respondent has executed various loan agreements and created mortgage and charge in order to secure the loan facilities. Besides respondent had signed demand promissory notes and undertaking letters promising to repay the loan with applicable interest. Applicant bank has also placed on record various guarantee deeds and mortgage documents and charges created to secure the facilities availed by the respondent corporate debtor.

**40.** The applicant bank has also filed the relevant statement of accounts duly certified in accordance with Banker Books Evidence Act, 1891 as per requirement of Form 1 Part V column 7 of the application. The detailed outflow and disbursements made from the accounts pertaining to respective loan facilities are reflected in the relevant bank statements. Respondent company utilized and enjoyed the loan facility and due

to non-payment and non-refund of the outstanding dues, the account of the corporate debtor was declared NPA. The applicant bank has also placed CRILC report in order to show that accounts of corporate debtor was reported as loss and doubtful account. It has been shown that the company has defaulted in repayment of the loan to the applicant and that huge debts are outstanding as reflected in the statement of accounts of the company. Certified copy of statement of account kept during the course of banking business basing on which the claim has been raised can be termed as sufficient evidence of financial debt.

- 41.** The material placed on record clearly goes to show that respondent corporate debtor has availed the loan facilities and has committed default in repayment of the loan amount. 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.

**42.** 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. Moreover, the application of the financial creditor is complete and there is no disciplinary proceeding pending against the proposed IRP. We are satisfied that the present application is complete and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been a default in payment of the financial debt.

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

**44.** Shri Prabhakar Nandiraju, having registration number IBBI/IPA-002/ IP-N00361/2017-18/11030 resident of D. No. 11-12-7, Road no. 1, Income Tax Colony, SRK Puram, Hyderabad – 500102, email [pnandiraju26@gmail.com](mailto:pnandiraju26@gmail.com) is appointed as an Interim Resolution Professional.

**45.** 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 Regulations) with regard to admission of this application under Section 7 of the Code.

**46.** 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). 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

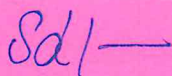
*(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”*

**47.** 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) Ordinance, 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.

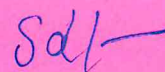
**48.** The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the ‘Code’, Rules and Regulations. It is further 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, 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.

- 49.** The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest possible but not later than seven days from today.



**(S. K. MOHAPATRA)  
MEMBER (T)**



**DR. DEEPTI MUKESH  
MEMBER (J)**