

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

CP No.416/7/HDB/2018

U/s 7 of the IBC, 2016 and Rule 4 of I&B
(Application to Adjudicating Authority) Rules, 2016

**In the matter of KUMAR'S METALLURGICAL CORPORATION
LIMITED,**

IFCI LIMITED,

Registered Office situated at:

IFCI Tower, 61, Nehru Place,

New Delhi – 110019.

...Petitioner/ Financial Creditor

Versus

Kumar's Metallurgical Corporation Limited,

Registered Office is situated at:

Vattimarthy Village, Chityal Mandal,

Nalgonda District,

Telangana – 508114.

...Respondent/Corporate Debtor

Order delivered on: 28.11.2018

Parties Present:

For the Financial Creditor: Mr B. Praveen Kumar, Advocate

For the Corporate Debtor: Mr. S.Y Sajjad, Advocate.

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Per: K. Anantha Padmanabha Swamy, Member (Judicial)

ORDER

1. Under Consideration is a Company Petition filed by IFCI LIMITED (in short, “**Petitioner/ Financial Creditor**”) against Kumar’s Metallurgical Corporation Limited, (in Short, “**Respondent/Corporate Debtor/ Corporate Debtor**”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short, “**IB Code 2016**”) r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, ‘**IB Rules 2016**’).
2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.
3. The Petitioner/Financial Creditor is a Limited Company incorporated and registered under the Companies Act, 1956, having its registered office at IFCI Tower, 61, Nehru Place, New Delhi – 110019. Whereas the Respondent/Corporate Debtor Company/CD is a Limited Company incorporated and registered under the Companies Act, 1956, having its registered office at Vattimarthy Village, Chityal Mandal, Nalgonda District, Telangana – 508114.
4. The Present Petition is filed for a total Claim of Rs.1,534,40,00,184/- (Principal of Rs.18,34,64,422/-, Interest of Rs.1,473,30,67,092/-, other charges Rs. 73,744/- and Accrued Interest from 15.04.2018 to 31.05.2018 Rs. 42,73,94,926/-).

5. The Learned Counsel appearing on behalf of the Petitioner/FC submitted that submitted that the Respondent/Corporate Debtor approached the Petitioner/Financial Creditor for credit facility for the purpose of meeting of various requirements of funds for setting up a 60,000 tpa capacity coal based sponge iron plant and for implementation forward integration scheme for manufacture of 1.25 lakhs tpa long steel products through EAF route and captive power generation facility with an installed capacity of 12 mw at Vattimarthy Village, Chityal Mandal of Nalgonda District. Accordingly the Petitioner/Financial Creditor along with other two financial institutions sanctioned credit facility as under:

Sl No.	Amount of Sanction	Facility
01	Rs.650 Lakhs	First Rupee Loan under PFPS
02	Rs.50 Lakhs	Second Rupee Loan under PFPS
03	Rs.50 Lakhs	Third Rupee Loan under PFPS
04	Rs.147 Lakhs	Fourth Rupee Loan under PFPS
05	Rs.1500 Lakhs	Sixth Rupee Loan

Aggregating Rs.2397 Lakhs for setting up a 60,000 tpa capacity coal based sponge iron plant and for implementation of forward integration scheme for manufacture of 1.25 lakhs tpa long steel products through EAF route and captive power generation facility with an installed capacity of 12 mw At Vattimarthy Village, Chityal Mandal of

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Nalgonda District. For which the Respondent/Corporate Debtor executed the First Rupee Loan Agreement dated 31.01.1991.

6. It is submitted that under the said First Rupee Loan Agreement inter-alia agreed to create First charge by way of mortgage of immovable property in favour of the Petitioner/Financial Creditor. The Respondent/Corporate Debtor agreed to repay the credit facility with interest on normal loan @ 14% p.a. and 15% p.a. on concessional loan @12.50% p.a. and 13% p.a., Under the First Rupee Term Loan. Respondent/Corporate Debtor and Petitioner/Financial Creditor executed a Joint Deed of Hypothecation, thereby creating a First Charge on all its a movable properties.
7. It is submitted that at the request of the Respondent/Corporate Debtor, the Petitioner/Financial Creditor agreed and sanctioned further Rupee Term Loan of Rs.50 Lakhs for the said project of the Respondent/Corporate Debtor. The Respondent/Corporate Debtor executed the Rupee Loan Agreement and in terms and conditions contained in the Rupee Loan Agreement dated 01.07.1992 executed by the Respondent/Corporate Debtor in favour of Petitioner/Financial Creditor. The Respondent/Corporate Debtor also executed Joint Deed of Hypothecation dated 01.07.1992.
8. It is submitted that on 03.06.1993 the Petitioner/Financial Creditor sanctioned further rupee loan i.e., Third Rupee Loan to the Respondent/Corporate Debtor on their request, accordingly, executed

necessary documents such as Third Rupee Loan Agreement dated 03.06.1992.


9. It is submitted that, at the request of the Respondent/Corporate Debtor the Petitioner/Financial Creditor lend and advanced the Respondent/Corporate Debtor the Rupee Term Loan of Rs.147 Lakhs under the Forth Rupee Loan Agreement dated 30.10.1993. The Respondent/Corporate Debtor created necessary charge of the properties which was already mortgage with the Petitioner/Financial Creditor.

10. It is submitted that at the request of the Respondent/Corporate Debtor the Petitioner/Financial Creditor had agreed to lend and advance to the Respondent/Corporate Debtor Rupee Term Loan of Rs.1500 Lakhs under Sixth Rupee Loan for the said project proposed by the Respondent/Corporate Debtor on the terms and conditions contain in the Rupee Loan Agreement dated 26.12.1995. The Respondent/Corporate Debtor executed Hypothecation in favour of Petitioner/Financial Creditor. The Respondent/Corporate Debtor has agreed to repay the Sixth Rupee Loan outstanding from time to time with interest @19% p.a., payable quarterly in each year in 28 equated quarterly instalments commencing from 15.04.2000 to 15.01.2007 as per the repayment scheduled contained in the Sixth Rupee Loan Agreement dated 26.12.1995 the Respondent/Corporate Debtor also agreed to pay liquidated damage @ 2.1% p.a. on the defaulted amount.

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The Petitioner/Financial Creditor disburse Rs.10,56,60,422/- out of sanctioned amount of Rs.1500 Lakhs and cancelled the undisbursed amount as the Respondent/Corporate Debtor did not avail the same.

11. It is submitted that the properties mortgaged to the Petitioner/Financial Creditor as fully described in the schedule were duly registered with the Registrar of Companies, Hyderabad and that the charges created by the Respondent/Corporate Debtor in favour of the Petitioner/Financial Creditor for securing the said Rupee Loans on Pari-passu basis. The Respondent/Corporate Debtor committed default and approached the Petitioner/Financial Creditor for certain concession which were consider by the Petitioner/Financial Creditor and reschedule the payment of instalments in respect of the said credit facility under Rupee Loan vide the Petitioner/Financial Creditor letter dated 14.11.1995 despite the Respondent/Corporate Debtor didn't choose to fulfil the commitment. The Respondent/Corporate Debtor No.1 failed and neglected to repay the due amount to the Petitioner/Financial Creditor and also failed and neglected to comply with the terms and conditions of the Rupee Loan Agreements and the Petitioner/Financial Creditor withdrawn the concession and reschedule granted to the Respondent/Corporate Debtor No.1 while the letter dated 14.11.1995 and issued withdrawal of consent vide letter dated 09.02.2001.



12. The Petitioner/Financial Creditor filed an OA before Debt Recovery Tribunal Hyderabad while OA No.945/2001 which was pending for disposal.

13. The Petitioner/ Financial Creditor in support of its claim has placed several documents evidencing the default as stated below:

- a. Form No. 8 (Charge Created by Company)
- b. Statement showing Loans outstanding as on 31.05.2018
- c. Default cum outstanding statement as on 11.07.2018.
- d. Certificate under Bankers Book of Evidence Act, 1981.
- e. Loan Agreement
- f. Deed of Hypothecation
- g. Deed of Guarantee
- h. Letter issued by lead bank
- i. Letters addressed by the Petitioner/Financial Creditor

And various other documents in support of its claim against the amount due from the Corporate Debtor.

14. Petitioner/Financial Creditor filed an Affidavit stating that the Corporate Debtor had approached the Financial Creditor on several occasions and issued One Time Settlement (OTS) letter dated 03.05.2017 and 07.05.2018. it is further submitted that the Section 18 of the Limitation Act, 1963 stipulates that the period of Limitation is extended in the event of an acknowledgment of liability made by the debtor before the expiration of the period of limitation to initiate the

recovery process. U/s 25(3) of the Indian Contract Act, 1872
“A promise made by debtor to pay in whole or in part, a time barred debt i.e., a debtor makes a promise after the expiry of the period of Limitation. Both the provisions of law put a new life into the creditor to sue the debtor.”

15. It is further submitted that the letter dated 03.05.2017 & letter dated 07.05.2018 are categorically showing endorsement of the liability to make the payments under OTS and thus, indicate the existence of jural relationship between the parties as debtor and creditor and it could be treated as an implied promise to pay. The letters issued by the Corporate Debtor are in nature of promise to pay. Therefore, the debt is within the limitation.

16. Respondent/Corporate Debtor in its counter stated that the Corporate Debtor approached Financial Creditor and other Financial Institutions for One Time Settlement (OTS) of the dues to the Financial Institutions between February, 2015 and May, 2018 and gave proposals to the Institutions for settlement of their outstanding. In this regard, Joint meetings were held with the Financial Creditor and other Financial Institutions to consider One Time Settlement Proposal (OTS) and decision was taken in the meetings to revalue the assets of Corporate Debtor based on which a revaluation report dated 07.09.2015 was submitted by Corporate Creditor which was generated

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by the Institutions through their approved Valuer and got issued on 02.11.2015 to the Corporate Debtor Company.

17. The Learned Counsel for the Corporate Debtor submitted that the company was passing through very difficult times and the factory has been closed for more than 18 months and facing problems from the permanent workmen, procurement of quality raw material, commercial viability of operations, in numerous technical problems with the Plant and Machinery as it is more than 25 years old, non-upgradation and non-working of the pollution control equipments, huge disputed and undisputed liabilities with Statutory Departments, etc. Therefore, there is no possibility to restart the Company and meet its expenses, unless Rs.10 to 15 Crore further investment is made in technical upgradation, installation of new pollution control equipments as per the requirements of Pollution Control Board, Working Capital to run the factory in full swing etc. The Company became NPA for reasons beyond the control of management.

18. Heard both the parties and perused the documents.

19. Taking into consideration the all, the issue arise before this Adjudicating Authority is that whether the Petitioner/Financial Creditor has made out the case under IB Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process. It is clear from the counter of the Corporate Debtor that there is no denial of Debt in the Counter filed by the Respondent but only stated their inability to

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pay the debt. Section 18 of Limitation Act, 1963 which states “Acknowledgement’ generally means acceptance or admission of something that exists. Section 18 of the Limitation Act, 1963 uses the term ‘acknowledgement’ to mean an admission of an existing liability in lieu of which the period of limitation is extended”.

20. It is clear from record that the Respondent/Corporate Debtor vide its letters dated 07.09.2015 & 02.11.2015 acknowledged its Debt and has not objected the present Petition on Limitation aspect. It is also on record that the Petitioner/Financial Creditor has initiated proceedings against the Principal Borrower before the DRT and Respondent/Corporate Debtor had also duly acknowledged its default vide letters dated 07.05.2018 and 03.05.2017.

21. It is appropriate here to rely on the Judgement of Hon’ble NCLT, Mumbai Bench in the matter of Bell Finvest (India) Limited Vs Luthra Water Systems Private Limited where in it is observed that “*Further that, as far as the question of churned amount is concerned we are of the opinion that, this Tribunal is not to decide the quantum of amount in default but, this Tribunal is merely to decide whether there is Default under S. 3(12) of the Code or not? And as already said there is Default under S. 3(12) of the Code on the side of the Corporate Debtor. We are of the opinion that, the quantum of claimed amount is to be decided by the Resolution Professional, so appointed*”. Even in the present case the quantum amount of Debt claimed by the Petitioner

against the Corporate Debtor is to be decided by the Resolution Professional and not by this Adjudicating Authority as it is clear from the record that there is a Debt and default of Debt by the Corporate Debtor which is not denied by Corporate Debtor.

22. After hearing submissions of the Counsel for the Petitioner/FC and Counsel for Respondent/CD and having perused the record, this Adjudicating Authority is satisfied that the Petitioner has clearly made out a case by establishing that the Corporate Debtor has defaulted on payment. Also, the petitioner has proved by placing overwhelming evidence viz., Sanction Letter, Facility Agreement, Deed of Hypothecation, Escrow Agreement etc., which reveal that default have occurred for which the Corporate Debtor was responsible to pay and the Present Petition is also not barred by the Limitation as the Respondent/Corporate Debtor on various occasions acknowledged its Debt. In the Circumstances, having satisfied with the submission put forth by the learned counsel for the Petitioner, I am hereby inclined to admit the Instant Petition.

23. Accordingly, the Instant Petition is admitted and this Tribunal Order the Commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day of this order is passed.

24. I appoint Mr. G. Raghu Babu, (IBBI/IPA-002/IP-N00025/2016-17/10053) as Interim Resolution Professional (IRP) proposed by the Financial Creditor. That there is no Disciplinary proceedings pending

against the IRP and his name is reflected in IBBI website. The IRP is directed to take charge of the Respondent/Corporate Debtor/ Corporate Debtor's Management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date of copy of this order is received and call for submissions of claims in the manner as prescribed.

25. I declare the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. I order to prohibit all of the following, namely:

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 (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.

26. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

27. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016. Accordingly, the application is admitted.
28. The Petitioner/FC as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
29. The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
30. The address details of the IRP are as follows:—
Mr. G. Raghu Babu,
(IBBI/IPA-002/IP-N00025/2016-17/10053)
T- 202, Technopolis, 1-10-74/B,
Above Ratnadeep Super Market,
Chikoti Gardens, Begumpet,
Hyderabad – 500016, Telangana.
Email:- raghu@rna-cs.com


K. Anantha Padmanabha Swamy
Member Judicial