

In the National Company Law Tribunal,
Kolkata Bench,
Kolkata

Coram: Shri V. P. Singh,
Hon'ble Member(J)
&
Shri Jinan K.R.,
Hon'ble Member(J)

CP (IB) No.595/KB/2017

In the matter of:

The Insolvency and Bankruptcy Code, 2016;

An Application for initiation of Corporate Insolvency Resolution Process by Financial Creditor under section 7 of the Insolvency and Bankruptcy Code, 2016;

In the matter of

Allahabad Bank, a banking company constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 and having its Head Office at 2, Netaji Subhas Road, Kolkata- 700 001 and is Industrial Finance Branch at 19, R.N. Mukherjee Road, Kolkata- 700 001.

.....Applicant/Financial Creditor

-Versus-

SPS Steels Rolling Mills Limited, a company incorporated Under the Companies Act. 1956 and a Company within the Meaning of Companies Act, 2013 and having its registered

office at 224A, AJC Bose Road, Kolkata- 700 019.

.....Respondent/Corporate Debtor

Counsels appeared

- | | |
|----------------------------------|-----------------------|
| 1. Mr.Rahul Auddy, Advocate |] For Allahabad Bank/ |
| |] Applicant |
| 2. Mr. Rajarshri Dutta, Advocate |] |
| 1. Ms. Manju Bhuteria, Advocate |] For SPS Steel |
| 2. Ms. Smita Mukherjee, Advocate |] Rolling Mills Ltd./ |
| 3. Ms. Shivangi Thard, Advocate |] Respondent |

Order Delivered on 22nd December 2017

ORDER

Per V. P. Singh, Member (J)

This application has been filed by Allahabad Bank, the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (from now on referred to as I & B Code, 2016) read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against SPS Steels Rolling Mills Ltd., a Corporate Debtor.

2. The brief facts of the case, as stated in the application, are that Allahabad Bank is a banking company constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 having its Head Office at 2, Netaji Subhas Road, Kolkata - 700 001 and its Industrial Branch at 19, R.N. Mukherjee Road, Kolkata - 700 001, Identification No. is BLC386/87. Mr Nimain Charan Samal has filed this application on behalf of Allahabad Bank by authorisation letter dated 25/8/2017 and power of attorney of the Chief Manager of the applicant annexed with the application as Annexure A.

3. The Corporate Debtor SPS Steels Rolling Mills Ltd., Identification No. is L51909WB1981PLC034409. The name and registration number of the

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proposed interim resolution professional are Mr Vijay Kumar Iyer; Registration No. is IBBI/PPA-001/1P-P00261/2017-18/10490 and address is Deloitte Touche Tohmatsu India LLP, Indiabulls Finance Centre, Tower 3, 27th Floor, Senapati Bapat Marg., Elphinstone Road (West), Mumbai - 400 013 email viyer@deloitte.com.

4. The applicant has stated that at the request of the respondent the applicant granted term loan of Rs.24 crore to SPS Power vide sanctioned letter dated 3/5/2006 against the security of equitable mortgage created by SPS Power over its factory situated at Bilaspur, Himachal Pradesh. The said facilities were secured by the guarantees of the three directors and two group companies.

5. At the further request of SPS Power, the financial creditor reviewed its previous sanctioned limit and enhanced the credit facilities from Rs.53.65 crore to Rs.92.66 crore. Subsequently, SPS Power merged with the corporate debtor vide order of the Hon'ble High Court, Calcutta dated 30/10/2009, and under the merger, all the assets and liabilities of the SPS Power became the liabilities of the corporate debtor SPS Steels Rolling Mills Ltd.

6. Subsequently, in 2010 the corporate debtor approached three other banks, and all the four banks formed a consortium for the working capital facility and sanctioned credit facility of Rs.281 crore.

7. It is the case of the applicant that from 2013 the corporate debtor started defaulting in liquidating the outstanding dues under the credit facilities on account of interest as well as the principal amount and the account of the corporate debtor was declared as a Non-Performing Asset on 31/5/2013. The dues of the financial creditor as on 31/5/2013 are as follows:-

Term Loan	Rs.65,52,063/-
Cash credit	Rs.99,88,49,126/-

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Total Rs.100,54,01,189/-

The consortium members thereafter took steps under the SARFAESI Act, 2002 and auctioned the unit of the corporate debtor situated at Bilaspur, Himachal Pradesh and realised Rs.36.08 crore which was adjusted for full repayment of the term loan sanctioned by the financial creditor and the balance amount was adjusted with the outstanding under the cash credit facilities granted by the financial creditor and other consortium members on pari passu basis.

8. The outstanding amount to Rs.1,008,360,640 is due to the financial creditor which is appearing on the balance sheet dated 31/3/2016 of the corporate debtor.

9. It is the case of the applicant/financial creditor that vide demand notice dated 5/8/2017 called upon the corporate debtor to refund the entire outstanding amount of Rs.1,55,55,28,175/- including interest as well as amount outstanding under the non-fund based facilities which have devolved upon the fund based facilities. Copy of the demand notice dated 5/8/2017 is annexed with the application as Annexure E. Applicant further submits that after verification of the records of the financial creditor it has transpired that the due amount is Rs.1,91,59,49,081.41 as on 31/10/2017 inclusive of interest, additional interest and penal interest. As such the financial creditor is entitled to recover the Rs.1,91,59,49,081.41 total amount due on 31/10/2017 from the corporate debtor.

10. The corporate debtor has filed objection mainly on the ground that the application is filed in abuse of process. No default occurred which is a mandatory pre-requisite for initiation of the corporate insolvency process. The applicant and the respondent entered into a one-time settlement (herein after referred as "OTS") on 16/8/2016, and the respondent corporate debtor filed CS No.182 of 2017 before the Hon'ble High Court at Calcutta for specific performance of the contract.

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11. The corporate debtor has further submitted that the demand notice dated 5/8/2017 is wholly misleading, false and fraudulent. The respondent argued that it has fully complied with its obligation under the OTS and denied any amount due and payable to the applicant. The respondent is an adequately managed steel manufacturing industry, and one plant of the respondent at Bilaspur was coercively sold, and the same yielded less than Rs.40 crore.

12. Given the above circumstances, the corporate debtor prayed for dismissal of the application with exemplary costs.

13. In its supplementary affidavit, the corporate debtor has submitted that the Allahabad Bank and Oriental Bank of Commerce have been making regular cutbacks, on a day to day basis by directly debiting the accounts of the alleged corporate debtor out of all sums credits received in such account. Between 17/12/2016 till 13/12/2017 the debits have been made in the form of cutbacks, the total amount of debit is Rs.3,85,00,100.77.

14. In its rejoinder to reply of a corporate debtor, the applicant/financial creditor has reiterated what has been stated in its application.

15. Heard Ld. Counsel for the petitioner as well as the Ld. Counsel for the respondent at length and perused the record.

The instant application has been filed by the Financial Creditor, namely Allahabad Bank under section 7 of the I.B.C. 2016 against the Corporate Debtor, namely SPS Steels Rolling Ltd. allegedly on the ground of default on repayment of the credit facilities availed by the said Corporate Debtor from the Financial Creditor, Allahabad Bank.

The details of credit facilities which have been availed by the Corporate Debtor are given from page 2 to 12 and also at pages 21 to 39 of the C.P.

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Financial Creditor has sanctioned the credit facility like cash credit facility; letter of credit and bank guarantee which have been availed by the Corporate Debtor.

The accounts of the Corporate Debtor were declared as Non-Performing Asset on 31st May 2013. The particulars of the claim have been separately and shown explicitly in Schedule I appended to the Company Petition from pages 51 to 55.

Petitioner has stated that cash credit account no. 5000356136 that has been opened in the name of the Corporate Debtor, the limit of the said cash credit account was Rs.70 crore. Petitioner has stated that in the said account, a sum of Rs.171,87,23,904.97 is due. Petitioner has further stated that a Cash Credit A/c. no.50006392501 a sum of Rs.19,72,25,176.44 is due against the Corporate Debtor. The total outstanding amount which are payable by the Corporate Debtor to the Financial Creditor comes to Rs.19,72,25,176.44 and Rs.171,87,23,904.97, aggregating to Rs.191,59,49,081.41.

In support of his claim, petitioner has filed copy of the sanction letter, copy of the documentation with the Financial Creditor, Joint Consortium documents and statement of accounts, which are annexed with the petition from page 140 to 769 (Annexure-D), demand notice dated 5.08.2017 (Annexure-E), copy of certificate of Registration of Charge (Annexure-F), Statement of Accounts (Annexure-G).

The authorization letter has been filed in favour of Mr Nimain Charan Samal, Chief Manager, Allahabad Bank, which is Annexure "A", which shows that Shri Nimain Charan Samal, who is holding general Power of Attorney granted to him by the Bank vide letter dated 16th December, 2014, who has been authorized to file application under section 7 of the Insolvency Code by Shri Sanjay Agarwal, General Manager, Recovery and Law.

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Petitioner/Financial Creditor has claimed that on 31.10.2017, total outstanding balance against the Corporate Debtor was Rs.191,59,49,081.41, out of which 90,33,00,652/- has been claimed as the amount of default and total outstanding amount Rs.191,59,49,081.41 includes penal interest and uncharged interest regarding sanction letter.

Petitioner has further stated that Corporate Debtor has committed first default on 31.10.2013 and after that on 31.05.2013, the account has been declared as Non-Performing Asset. Petitioner has also noted that Corporate Debtor has committed default of 1,614 days delay up to 31st October 2017.

It is further stated in the petition that the Financial Creditor vide demand notice dated 5th August 2017 called upon the Corporate Debtor to refund the entire outstanding amount under the credit facilities including interest. Copy of the demand notice has been annexed as Annexure "E". The petitioner claims that total amount 191,59,49,081.41 was due up to 31st October 2017 against the Corporate Debtor.

Corporate Debtor has filed the objection against the petitioner, mainly on the ground that the Financial Creditor has suppressed the fact regarding Civil Suit No.181/2017 instituted by SPS Steels Rolling Mills Ltd. -Versus- Allahabad Bank. Financial Creditor has also contained the truth regarding the order of the Hon'ble High Court passed on 28th August 2017 in the proceeding mentioned above. Corporate Debtor has stated that Hon'ble High Court has given a specific order of injunction restraining the Allahabad Bank from taking any action in NCLT, but Financial Creditor has suppressed these facts. It is further stated in the Reply that the Corporate Debtor has contained the truth regarding approval of the one-time settlement by the Board of Allahabad. Corporate Debtor has also noted that present C.P. no.595 of 2017 and Hon'ble High Court CS No.182 of 2017 and A.P.O. no.431 of 2017 are between the same party in respect of the same alleged debt and in respect of the same alleged default involving adjudication as to whether the total amount payable by the alleged Corporate Debtor is Rs.102 crore as settled

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between the parties or Rs.191,59,49,081.41 as claimed in the present petition.

Ld. Sr. Counsel appearing on behalf of the Corporate Debtor has also emphasised the point that the information given in the prescribed Form-I of the petition is false. It has been submitted that in the column of "particulars of an order of a Court, Tribunal or Arbitral Panel adjudicating on the default if any (attach a copy of the order)", the Financial Creditor has not only suppressed the existence of the suit of the High Court and the order made therein but also has to it deliberately and willfully provided false and incorrect information in the Company Petition by stating –"Nil" in the column of Particulars of an order of the Court.

On this basis, the Ld. Counsel for the Corporate Debtor vehemently argued that action should be initiated against the Financial Creditor under section 75 of the Insolvency & Bankruptcy Code, 2016.

Regarding the allegation of suppression of the fact, Ld. Counsel for the Financial Creditor has argued that the point of institution of a suit for a specific performance of a contract by the Corporate Debtor against the Financial Creditor is neither material nor relevant for adjudication of the instant proceeding under section 7 of the Insolvency & Bankruptcy Code, 2016.

It is pertinent to mention that application under section 7 has been submitted in the Prescribed Format NCLT-I and in part V, column-2, detailed **Particulars of an order of a Court, Tribunal or Arbitral Panel adjudicating on the default**, if any, was to be mentioned and the petitioner has stated Nil in this Column. Ld. Counsel for the petitioner has argued that there was no any order from the Court, Tribunal or Arbitral Panel regarding the adjudicating of the default, so "Nil" has been mentioned in this column.

Ld. Counsel for the Corporate Debtor in its reply has filed an order of the Hon'ble High Court passed in G.A. No.2858 of 2017 with C.S. No.182 /2017 in case of SPS Steels Rolling Mills Ltd. -vs- Allahabad Bank dated 28th

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August 2017. In the order mentioned above, the Hon'ble High Court has passed an order that "in the event, any proceeding is filed before the NCLT by Allahabad Bank, the Bank shall not proceed with the said proceeding until this matter is disposed of". The above injunction order was passed by Single Judge Bench of the Hon'ble Calcutta High Court for two weeks, and there was a conditional extension of the injunction order on payment of Rs.2 crore to the Financial Creditor for a further period of 16 weeks. The Ld. Counsel for the Corporate Debtor has also filed an order of the Division Bench of Hon'ble Calcutta High Court passed under Appellate Jurisdiction which shows that Division Bench of Hon'ble High Court has vacated the earlier injunction order dated 28th August 2017 which was specifically related for not to approach the NCLT for the recovery of dues. Thus, it is clear that the stay order which was earlier granted by the Single Judge Bench of the Calcutta High Court was subsequently vacated by the Division Bench Order of the Calcutta High Court dated 1st November 2017. It is also important to point out that this Civil Suit pending before the Hon'ble High Court was not relating to adjudication of the default. So, there was no necessity to give details of this order in Part V column 2 of the application. Corporate Debtor has also filed the copy of the said Civil Suit. On perusal of this plaint, it is clear that this suit was for specific performance of the contract. Therefore, it cannot be said that the petitioner has filed a petition after suppressing the facts regarding the order of adjudication on the default.

Ld. Counsel for the Corporate Debtor has argued that injunction order of the Hon'ble High Court was subsisting in this case but it is clear from the Division Bench order of the Hon'ble High Court that Division Bench of Hon'ble High Court by its order dated 1st November 2017 has set aside the injunction order passed on 28th August 2017 by Single Judge Bench of the Hon'ble High Court.

Ld. Counsel for the Corporate Debtor has also objected to the agreement between the parties for the due amount. Corporate Debtor has

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stated that as one-time settlement of Rs.102 crore was to be given by the Corporate Debtor. Corporate Debtor has filed the document along with its reply regarding the one-time settlement. The documents filed by the Corporate Debtor consist of minutes of Consortium meeting dated 16th November 2016, which is at page no.111 and 112, wherein it is stated "Mr Bipin Kr. Bohra, CMD of the Company, stated that since about one year has passed, but approval from the required number and by amount is yet to be received, it may be dropped. He will approach individual banks for approval of OTS proposal and the banks may look into it". On perusal of the minutes of the consortium meeting dated 16th November 2016, it is clear that till that date one-time settlement was not finally approved and this proposal was dropped, and it was decided that individual banks will try for approval of one-time settlement. By documents filed by the Corporate Debtor regarding the one-time settlement, which is from page 85 to 130 of the Reply to the petition, it is clear that one-time settlement was under consideration, but it was not yet finally approved. Therefore, it can not be said that there was one-time settlement regarding the aforesaid due amount.

Ld. Counsel for the Corporate Debtor has also argued that the petition is not maintainable for want of proper authorisation given the judgment of Hon'ble NCLAT in the matter of Palogix Infrastructure Pvt. Ltd. -Vs- ICICI Bank Ltd. Ld. Counsel has further stated that power of attorney has been executed on 13th October 2014 before the existence of Insolvency & Bankruptcy Code, 2016. It is also stated that Mr Nimain Charan Samal was not authorised to initiate and file the petition for initiation of Corporate Insolvency Resolution Process.

In reply to the above objection, Ld. Counsel for the Financial Creditor has stated that power of attorney issued in the name of Mr Nimain Charan Samal, gives the holder thereof the authority to transact all ordinary business connected with the bank. This necessarily includes the power to lend and recover. The said power of attorney confers the power in the name of the

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bank to "ask demand, sue for, levy, recover and receive of and Debts". Such power necessarily implies that the deponent is authorised to file the instant petition in the light of law laid down by Hon'ble NCLAT in the case of Palogix Infrastructure (*supra*), In the judgement mentioned above, the Hon'ble NCLAT has held :

"38.. This apart, if an officer, such as Sr. Manager of a Bank has been authorized to grant loan, for recovery of loan or to initiate a proceeding for Corporate Insolvency Process against the person, who has taken loan, in such case, the Corporate Debtor cannot plead that the Officer has the power to sanction loan, but such Officer has no power to recover the loan amount or to initiate Corporate Insolvency Process in spite of default of debt.

39. If a plea is taken by the authorised Officer that he was authorised to sanction loan and had done so, the application under section 7 cannot be rejected on the ground that no separate or specific authorisation letter has been issued by the Financial Creditor in favour of such Officer designate."

The Financial Creditor has further laid emphasis on para 30 of the judgment of the Hon'ble Supreme Court in the case of Innovative Industries Ltd. -versus- ICICI Bank Ltd. in Civil Appeal No.8337-8338 of 2017 decided on 31st August, 2017 wherein it has been held that

"on the other hand, as we have seen, in the case of a Corporate Debtor, who commits a default of a financial debt, the Adjudicating Authority has merely to see the records of the Information Utility or other evidence produced by the Financial Creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is due, i.e., payable unless inter-dictate by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the Adjudicating Authority that the Adjudicating Authority may reject an application and not otherwise".

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Ld. Counsel for the Financial Creditor submitted that even if the debt is disputed, the Corporate Debtor cannot get away.

In this case, Financial Creditor has filed the power of attorney, on the basis of Board Resolution in favour of Shri Nimain Charan Samal, whereby he was authorized to initiate proceeding for insolvency of any person or party or winding up of any corporation, association or body corporate for and on behalf of Allahabad Bank and was also authorized to commence, prosecute and defend all legal proceedings of the bank to apply or file application for insolvency against any person, firm or company or to take all actions or legal process in relation thereof and to act as substitute for the bank.

Petitioner has also filed authorisation letter from General Manager, Recovery & Law of Allahabad Bank, whereby Shri Nimain Charan Samal was further authorised to initiate a proceeding under Insolvency and Bankruptcy Code against M/s. SPS Steels Rolling Mill Ltd.

By all the documents filed by the Financial Creditor, it is clear that the petitioner has filed a complete application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, M/s. SPS Steels Rolling Mills Limited, and by supporting documents, it is also clear that the Corporate Debtor has committed a default of Rs.1,91,59,49,081.41/- to the Applicant, i.e. Allahabad Bank. Therefore, the existence of default stands proved from the records above-referred. It also appears from the record that Shri Nimain Charan Samal, Chief Manager of Allahabad Bank was fully authorised to initiate Corporate Resolution Process against the Corporate Debtor. It is also necessary to point out that after receiving the notice, Vakalatnama has been filed on behalf of the Corporate Debtor along with the copy of Board Resolution of the Corporate Debtor. It is also evident that the Corporate Debtor's account has been declared as a Non-Performing Asset (NPA) on 31.05.2013.

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The company has also proposed the name of Mr Vijaykumar V. Iyer, to be appointed as Interim Resolution Professional, which is at Annexure-III of the application. By rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, Mr Vijaykumar V. Iyer has submitted his consent as stipulated in Form-2 of the NCLT Rules (Annexure-C at pages 137 to 139B to the petition). The details and registration number are given in Petition is as follows:

Mr Vijaykumar V. Iyer
Address: Deloitte Touche Tohmatsu India LLP,
Indiabulls Finance Centre, Tower 3,
27th Floor, Senapati Bapat Marg, Elphinstone
Road (West), Mumbai- 400 013, Maharashtra

Email ID: viyer@deloitte.com
Regn. No. IBBI/PPA-001/IP-P00261/2017-2018/10490

The applicant/petitioner has also certified the fact that Mr Vijaykumar V. Iyer is fully qualified and permitted to act as an Interim Resolution Professional by Code and the Associated Rules and Regulations. As per Annexure "C", it has been declared by Mr Vijaykumar V. Iyer, proposed Interim Resolution Professional, that no disciplinary proceedings are pending against him. In the circumstances, the application filed by the petitioner deserves to be admitted.

ORDER

It is thus clear that the application filed by the Applicant, i.e. Allahabad Bank under section 7 of the Insolvency & Bankruptcy Code, 2016 against the Corporate Debtor is complete in all respects. Therefore, the petition for initiation of Corporate Insolvency Process under section 7 of the Insolvency & Bankruptcy Code is admitted.

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Mr Vijaykumar V. Iyer is at this moment appointed as Interim Resolution Professional. He will initiate the process as per the Rules.

Moratorium under section 14 of Insolvency & Bankruptcy Code shall apply.

- (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 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 possession of the corporate debtor.*
- (2) 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.*
- (3) 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.*
- (4) The order of moratorium shall affect the date of such order till the completion of the corporate insolvency resolution process.*

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."

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Necessary public announcement as per section 15 of the IBC, 2016 may be made. Let the copy of the order be sent to the Applicant / Financial Creditor as well as Corporate Debtor and Interim Resolution Professional.

List the matter on 19.01.2018 for Progress Report.

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Jinan K.R.
Member (J)

Sd 12/12

V. P. Singh
Member (J)

Signed on this, the 22nd day of December, 2017