

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

IBA/265/2019

Under Section 10 r/w Rules 7 of the IBC, 2016

In the matter of

M/s. Marutham Steel Industries Private Limited
... Corporate Applicant

Vs

M/s. Indian Overseas Bank
..... Respondent/Financial Creditor

Order delivered on: 11.03.2019

Coram:

B.S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Applicant: *Shri. Thriyambak J. Kannan, Advocate*

For the Respondent: *Shri. Rajendran Raghavan, Advocate*

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Order pronounced on: 11.03.2019

This is an Application filed by the Corporate Applicant for initiating Corporate Insolvency Resolution Process under Section 10 of the Insolvency and Bankruptcy Code 2016 (In short, 'IB Code 2016') read with Rule 7 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for brevity, 'IB Rules 2016').

2. The Corporate Applicant is a Private Limited Company incorporated on 26.06.1996 under the Companies Act and engaged in the business of manufacturing steel. The Financial Creditor in the instant application is Indian Overseas Bank, a Nationalised Bank.
3. The learned counsel appearing on behalf of the Corporate Applicant submitted that the Applicant herein had approached the Bank for availing loans and the Creditor Bank granted loans between 29.09.2011 and 30.12.2013, details of which are mentioned in the application (*Page No.16 of typed set*). When the applicant failed to pay its debt, the Creditor Bank proceeded to recover its dues by issuing Demand Notice dated 26.07.2014 to the Corporate Applicant under Section 13(2) of the SARFESI Act, 2002 (*Page No.62*). It is submitted that the total debt raised from the Indian Overseas Bank is Rs. 9,86,00,000/- and the amount in default is Rs. 9,44,76,643/-. The learned counsel also gave the list of financial/operational creditors and debtors in respect of Corporate Applicant Company.
4. It is further submitted that the shareholding of the Directors of the applicant 50.33% (*Page 147*). The Board of Directors Meeting and Extraordinary General Meeting of the company were

held on 19.02.2019 at the Registered Office at No.16-D Lakshmipuram, Ganapathy, Coimbatore-641006. By a special resolution dated 19.02.2019 passed in the Extraordinary General Meeting, it was decided unanimously to permit the Applicant Company for filing a fresh application for initiation of Corporate Insolvency Resolution Process under Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Mr. R. Kulasekaran, Director of the Company was authorized to represent the company for initiating legal proceedings (*Page 151*).

5. The learned counsel for the Respondent/Financial Creditor (Indian Overseas Bank) submitted that the aforesaid credit facilities are secured by hypothecation of entire current assets of Corporate Applicant, viz., raw materials, stocks, finished goods, receivables, plant and machinery installed at the factory premises, factory land, factory building, book debts etc. Further, the credit facilities are also secured by the personal guarantee from (i) M. Veerappan, Promoter (ii) M. Kandasamy, Promoter (iii) M. Kathires, Promoter (iv) P. Parthiban, Director (v) P. Seralathan, Relative of Director and (vi) S. Boopathy, Relative of Director, on behalf of Corporate Applicant. It is submitted that the credit facilities are also

secured by equitable mortgage of various immovable properties belonging to Corporate Applicant Company.

6. He further submitted that the operations and conduct of the loan account by the Corporate Applicant was highly irregular and hence, the debt was classified as Non-Performing Asset (NPA) on 31.03.2014 (Page 63) in accordance with the directives/ guidelines relating to asset classification issued by RBI consequent to the default committed by the Applicant in repayment of the principle debt and interest thereon. It is submitted that since no payment was made against the outstanding debt, the bank invoked the provisions of the SARFAESI Act by issuing a demand notice under Section 13(2) to the Corporate Applicant and to all the guarantors and also put the Corporate Applicant/Debtor and the Guarantors to the notice, under section 13(13) of the SARFAESI Act as not to dispose of any of the secured properties.

7. It is pertinent to mention here that the Petition filed by Corporate Applicant herein earlier on 28.08.2018 before the NCLT, Chennai was dismissed on the ground that it was filed by *“disqualified Directors”* and gave liberty to file a fresh petition under Section 10 of I&B Code, 2016.

8. After hearing submissions of the counsel for the Corporate Applicant and Creditor Bank and having perused the record, this Adjudicating Authority is satisfied that the Corporate Applicant has placed books of accounts (*Page 78*), audited financial statements (*Page 80-108*) list of assets and liabilities (*Page-138*) and information relating to the resolution professional proposed to be appointed as an Interim Resolution Professional (IRP) and other documents as shown in Form-6 to prove that the Corporate Applicant has defaulted in making payment to the Creditor Bank as required under the provisions of the I&BC, 2016 (effective from 06.06.2018).

9. In the circumstances, this Bench is inclined to admit the instant application and order the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.

10. This Bench appoint Mr. Ravindranath Narayana Rao, as Interim Resolution Professional (IRP) as proposed by the Corporate Applicant. The IRP is directed to take charge of the Respondent/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 the copy of this order is received, and call for submissions of claim in the manner as prescribed.

I. We 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. We 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.*

II. 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.

III. 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.

IV. The Corporate Applicant 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.

V. The Registry is also directed to communicate this Order to the Respondent/Financial Creditor (Indian Overseas Bank).

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VI. The address details of the IRP are as follows:-

Mr. Ravindranath Narayna Rao

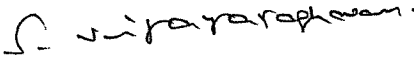
Regn. No: (IBBI/IPA-001/IP-P00645/2017-2018/11099)

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11. Accordingly, the application IBA/265/2019 stands admitted.


(S. VIJAYARAGHAVAN)
MEMBER (Technical)


(B.S.V. PRAKASH KUMAR)
MEMBER (Judicial)

TJS/KNP