

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

Company Petition No. (IB)-274(PB)/2019

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

In the matter of:

Central Bank of India

Applicant/Financial Creditor

Vs.

M/s RS Ingot & Billet Private Limited

Respondent/Corporate Debtor

Judgment delivered on: 31.07.2019

CORAM

**CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT
S. K. MOHAPATRA, MEMBER (TECHNICAL)**

For Applicant/Petitioner: Mr. Yash Tandon,
Ms. Gunjan Jadwani, Advocates.
For the Respondent(s): Mr. P. Nagesh, Mr. Ashutosh Gupta,
Mr. Gaurav Rana, Mr. Abhishek Agarwal, Advs.

2. The Respondent Company M/s RS Ingot and Billet Private Limited. (CIN No. U27100 DL2012 PTC 240299) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 16.08.2012 having its registered office situated at 401, Mahavir Ji Complex, LSC, Rishabh Vihar, New Delhi - 110092. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial

1. Central Bank of India 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 RS Ingot and Billet Private Limited, referred to as the corporate debtor.

S. K. Mohapatra, Member

ORDER



- 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 Central Bank of India is a body corporate incorporated under the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 and has its Registered Office at Chander Mukhi, Nariman Point, Mumbai-400021.
4. Shri Rakesh Sharma, Assistant General Manager and authorized representative of the applicant bank, has preferred the present application on behalf of the applicant for initiation of corporate insolvency resolution process against the respondent corporate debtor in terms of the provisions of the Code.
5. The precise case of the applicant is that it sanctioned various loan facilities from time to time to one M/s Abhinav Steel and Power Limited. However, the borrower M/s Abhinav Steel and Power Limited

defaulted and failed to make repayment as per the

loan agreements. On account of continuous defaults,

the accounts of M/s Abhinav Steel and Power Limited

was declared as "non-performing assets" (NPA) on

11.12.2014.

6. It is alleged that despite notice dated

03,06.2015 under Section 13(2) of SARFAESI Act,

2002 issued to M/s Abhinav Steel and Power Limited,

the said company defaulted to pay the outstanding

debts.

7. Subsequently a Scheme of Demerger was

presented by M/s Abhinav Steels and Power Ltd., M/s

RS Ingot and Billet Pvt. Ltd. and M/s Siddhartha

Rolling and Energy Pvt. Ltd. before the National

Company Law Tribunal, New Delhi, by which it was

proposed to transfer 'Furnace and Rolling Division I' of

M/s Abhinav Steels and Power Ltd. to M/s RS Ingot

and Billet Pvt. Ltd. and 'Rolling Division 2' of M/s

Abhinav Steels and Power Ltd. to M/s Siddhartha

Rolling and Energy Private Limited. It was also

proposed that the 'Power Division' of M/s Abhinav

only that part of default arising from the credit present application, the applicant bank is claiming 10. It is further contended that by means of the debtor.

Division 1 got transferred to the respondent corporate repay the loan pertaining to *Furnace and Rolling Billet Private Limited*. In other words, the liability to the respondent corporate debtor, M/s. RS Ingot and Abhinav Steel and Power Limited stood transferred to demerged under taking of the original borrower M/s respect of *Furnace and Rolling Division 1*, the sanction of the Scheme, all the assets and liability in 9. It is submitted that consequent upon the

transferred to M/s. RS Ingot and Billet Pvt. Limited. of M/s Abhinav Steel and Power Limited stood liabilities pertaining to *Furnace and Rolling Division 1* 27.11.2017, pursuant to which all the assets and approved the said Scheme vide order dated 8. The National Company Law Tribunal, New Delhi

it, who shall be liable only for its Power Division. Steel and Power Limited will continue to remain with



Fund Based Limits, comprising of — Total Cash Credit

approved enhanced sanction of Fund Based and Non-

13. Subsequently applicant financial creditor

Commerce and Central Bank of India.

consisted of Punjab National Bank, Oriental Bank of

The Consortium (referred to as PNB Consortium)

of the applicant Financial Creditor was Rs. 31 Crores.

overall limit of Rs. 125,00,00,000/-, where the share

borrower, M/s Abhinav Steel and Power Limited for an

Agreement dated 21.11.2009 with the original

that the applicant bank had entered into a consortium

12. In support of the financial debt, it is submitted

respondent company as on 30.11.2018.

Hundred Seventy-Eight Only) is due from the

Crores Sixty Lacs Fifty-Seven Thousand Four

that a sum of Rs. 21,60,57,478/- (Rupees Twenty-One

11. As per part IV of the application it is claimed

Scheme of Demerger.

Corporate Debtor pursuant to the sanction of the

which has since stood transferred to the respondent

facilities sanctioned for 'Furnace & Rolling Division I';

- sanctioned to the tune of Rs. 14 Crores; total Term Loan sanctioned to the tune of Rs. 49,75,00,000/- and total Working Capital (non-Fund based) sanctioned for Rs. 4,50,00,000/-, vide Sanction Letter dated 14.09.2012.
14. Thereafter, as the original borrower M/s Abhinav Steel and Power Limited was unable to make repayment, on its request a Master Restructuring Agreement as well as the Working Capital Consortium/Agreement were entered into between the Corporate Debtor and consortium Members on 16.05.2013, wherein it was agreed that the account of the borrower, being in default, shall be restructured.
15. Subsequently, the account of the M/s Abhinav Steel and Power Limited was restructured in accordance with the Corporate Debt Restructuring Scheme (CDR), sanctioned by the Applicant vide Letter dated 10.06.2013, wherein Cash Credit of Limit for Rs. 12,33,00,000/- and various Non-Fund based facilities like Working Capital Term Loan, Funded Interest Term Loan, etc. were sanctioned.

Sl. No.	Date of Sanction	Nature of Facility	Amount Sanctioned
1.	14.09.2012	i. Cash credit (Furnace Division). ii. Term Loan - IV (Furnace) iii. Term Loan - III (Rolling Division - I)	Rs. 4,00,00,000/- Rs. 2,50,00,000/- Rs. 10,00,00,000/-
2.	10.06.2013	i. Term Loan . ii. Term Loan (Rolling Division-I) iii. Funded Interest Term Loan iv. Cash Credit Rs. 4.00 cr. Sanctioned on 14.09.2012 cr. restructured to Rs. 4.05 cr.	Rs. 6,00,00,000/- Rs. 6,50,00,000/- Rs. 1,51,00,000/- Rs. 4,05,00,000/-

Part-IV, are enumerated below:

17. Accordingly, the credit facilities sanctioned towards the 'Furnace and Rolling Division I' and recoverable from the Corporate Debtor, as set out at

for Rolling Division I.

16. Out of the aforesaid sanction, Rs 4.05 Crores (Rupees Six Crores Only) and Funded Interest Term Loan of Rs 1,51,00,000/- (Rupees One Crore Fifty one Lakhs only) was sanctioned for 'Furnace and Rolling Division-I' and Term Loan of Rs. 6,50,00,000/- (Rupees Six Crores Fifty Lakhs Only) was sanctioned

initiation of Corporate Insolvency Resolution Process against the Corporate Debtor for its default in repayment of credit facilities granted for 'Furnace and Rolling Division 1' of M/s Abhinav Steels and Power Limited, liability of which stands transferred to the

20. Accordingly the applicant has prayed for

Hundred Seventy-Eight Only) as on 30.11.2018.
One Crores Sixty Lac Fifty-Seven Thousand Four aggregating to Rs. 21,60,57,478/- (Rupees Twenty-committed a default in repayment of amount Creditors. It is alleged that the Corporate Debtor has has defaulted to make any payments to the Financial Tribunal sanctioning the Scheme of Demerger, and the order dated 27.11.2017 passed by this Hon'ble Debtor has defaulted in fulfilling his obligations under 19. Applicant has submitted that the Corporate

financial creditor.

18. As huge default persisted, demand notice dated 12.10.2018 was given to the Corporate Debtor for repayment of the debt but the respondent Corporate Debtor failed to make any payment to the Applicant

Corporate Debtor pursuant to order dated 27.11.2017 passed by the Tribunal sanctioning the Scheme of Demerger.

21. The respondent corporate debtor has filed its reply on 19.12.2018. Respondent has disputed the demand of Rs. 21,60,57,478/- and interest thereon as not due and payable. It has been alleged that the demand is erroneous and arbitrary. The claim has been disputed as barred by limitation. Another objection has been raised that the petition has not been filed in the prescribed Format as brief facts cannot be given under Part V of the requisite Form-1. It is further alleged that the Form-2 submitted by the named IRP lacks proper disclosures as required under the Regulations. An objection has also been raised that there is no proof of default and there is no statement of account in the name of 'Furnace and Rolling Division-1'. It is also the case of the respondent that the applicant is not a financial creditor in respect of the corporate debtor.

24. A copy of the order dated 27.11.2017 approving the Scheme of Demerger has been placed on record. There has been a clear direction in the order dated 27.11.2017 that all liability in respect of 'Furnace and Rolling Division-1' (Demerged undertaking No.1) of M/s Abhinav Steel and Power Limited shall be transferred to M/s. RS Ingot and

23. Admittedly in the instant matter loan was disbursed to a different company namely M/s Abhinav Steel and Power Limited and loan agreements were executed with the said borrower company. However, there is no denial that a Scheme of Demerger was approved, where by the Demerged undertaking 'Furnace and Rolling Division-1' of the original borrower M/s Abhinav Steel and Power Limited was merged in the resulting respondent company along with its liability.

16.01.2019.

22. We have heard the learned counsels for the parties and have perused the case records including the rejoinder to the reply filed by the applicant on

Billet Private Limited respondent herein under

Section 230 and 232 of the Companies Act, 2013.

Consequently, the respondent company has stepped

in to the shoe of the borrower as far as the demerged

undertaking 'Furnace and Rolling Division-1' is

concerned.

25. Therefore, consequent upon the sanction of

the Scheme all the liabilities, loans etc. towards

'Furnace and Rolling Division-1' of M/s Abhinav Steel

and Power Limited are recoverable from the

respondent corporate debtor.

26. In fact, the respondent company has admitted

the liability in its letter dated 19.11.2018 (Annexure

19) which is reproduced below.

"Sub: Request for Loan Documentation as per

Demerger Scheme of ASPL.

Sir,

In continuation of our various letters and meeting,

we again request you do the necessary

documentation as per demerger order dated

27.11.2017 of the National Company Law Tribunal,

RSIBPL				O/s As on
				31.03.2018
CC	13.24	11.80	0.21	25.24
TL	7.46	11.59	12.06	31.11
	PNB	OBC	CBI	Total

Rs. In Crores.

Your Following loans are transferred to the RSIBPL:

of NCLT dated 27.11.2017.

transferred as on 31.03.2018 which are as per order

The assets and liability of Furnace & Rolling - I are

notes and accounts of RSIBPL for the FY 2017-18.

We are submitting you the Audited BS alongwith

SH-7, PAS-3, and Dir-12 filed.

NCLT order are already done and required form no.

(RSIBPL). The necessary ROC Formalities of said

transferred to RS Ingot and Billet Private Limited

company ie. Abhinav Steels and Power Limited) is

Jaunpur, UP (earwhile unit name of demerged

21-22-25-26-27 SIDA Industrial Are, Satharia, Distt.

Furnance & Rolling - I situated at plot no. A 18-19-

petition No. 100(PB)/201. As per the said order, the

Principal Bench, New Delhi through a company's

27. It is seen from the letter that respondent has clearly admitted that the assets and liabilities of 'Furnace and Rolling 1' has been transferred to it as on 31.03.2018 and that loans of consortium banks including applicant bank's loan for Rs. 21.55 Crores have been transferred to the respondent company.
28. 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,

We once again request you to do the needful at earliest.
Thanking you,
For RS Ingot and Billet Private Ltd.
Authorized Signatory
Encl: a/a" (emphasis given)

WCTL	5.67	2.00	0	7.67
FCTL	3.84	0.82	1.52	6.17
Overdue Interest	11.24	15.66	7.77	34.69
LC	4.50			4.50
BG	0.06			0.06
Total	46.03	41.86	21.55	109.44

- a) Financial creditor
- b) Operational creditor, and
- c) Corporate debtor itself.
29. 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 only "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.
30. The expressions "Financial Creditor" and "Financial debt" have been defined in Section 5 (7) and 5 (8) of the Code and precisely "Financial debt" is a debt along with interest, if any, which is disbursed against the consideration for time value of money.
31. In the present case applicant Central Bank of India had sanctioned and disbursed several loan facilities by entering in to loan agreements with the original borrower, which are recoverable with

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- I. *Default has occurred.*
- II. *Application is complete, and*

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

The applicant bank can clearly be termed as 'Financial Creditor' of the respondent corporate debtor so as to prefer the present application under Section 7 of the Code.

In that view of the matter not only the present claim comes within the purview of 'Financial Debt' but also the applicant bank can clearly be termed as 'Financial Creditor' of the respondent corporate debtor so as to prefer the present application under Section 7 of the Code.

Moreover, the debt claimed in the present application includes both a clear commercial effect of borrowing. The loan was clearly disbursed against the consideration for time value of money with pay relevant interest. The demerged undertaking including the liability to undertaken the liability of the borrower in respect of applicable interest. The corporate debtor had

34. In the present case the respondent corporate debtor has admitted in its letter dated 19.11.2018 that it owes Rs. 21.55 Crores to the applicant Central Bank of India. Besides applicant has filed relevant agreements with chart of debt and disbursements in respect of 'Furnace and Rolling 1' totaling to Rs. 21,60,57,478/-. Applicant bank has also relied upon the mortgage documents, charge certificates including CIBIL Report dated 13.12.2018.

33. 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.

III. No disciplinary proceeding against the proposed IRP is pending.

35. In addition, applicant bank has filed the relevant statement of accounts duly certified in accordance with Bankers' Books Evidence Act, 1891 as per the requirement of Form 1-part V column 7 of the application. Certified copy of statement of accounts pertaining to various loan facilities, kept during the course of banking business basing on which the claim has been raised can be termed as sufficient evidence of the financial debt.
36. The applicant bank has additionally furnished a copy of the Balance sheet and financial statements of the corporate debtor including independent auditors report in support of its claim.
37. 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 on the part of the respondent corporate debtor.
38. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as

40. There is no dispute that the applicant has given brief facts of the case at Part-V of Form-1 *inter alia* to throw light on the Scheme of Demerger where by though respondent was not the borrower, part loan liability pertaining to the demerged unit has been transferred to it and therefore recoverable from the respondent. Additional relevant facts have been incorporated at Part-V of the application Form for proper appreciation of the matter. Such insignificant technical objections are only to be iron out and

39. As a sequel to the aforesaid discussion the objection of respondent that applicant is not a financial creditor and that there has been no default on their part cannot sustain. Respondent has raised another objection that the application preferred in Form-1 is defective.

to the occurrence of default before admitting the application. The material on record including the admission letter clearly goes to show that respondent has committed default in repayment of the outstanding loan amount.

Handwritten mark

Code for initiation of Corporate Resolution Insolvency that the present application under Section 7 of the Section 7 of the Code. In this connection it is seen creditor has failed to comply with the requirements of There is also an objection that the financial

42.

given)

admission of the application.” (Emphasis required to look into any other criteria for adjudicating authority / Tribunal is not professional, it shall admit the application. The pending against the proposed resolution complete and no disciplinary proceedings are default and has ensured that the application is Tribunal is satisfied as to the existence of the “Once the adjudicating authority /

observed that:

Limited reported in AIR 2017 SC 4532 at Para 19 has Innovations Private Limited V. Kirusa Software Private Hon'ble Supreme Court in the case of Mobilox

41.

under Section 7 of the Code. cannot be a ground to reject the application filed

44. Sub-section (3) (b) of Section 7 of the Code further mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Shrawan Kumar Vishnoi, for appointment as Interim Resolution Professional having registration number IBBI / IPA-002 / IP-P00040/ 2016-17 /

43. The applicant bank *inert-alia* has annexed to the application detail particulars of 'financial debt' including documents, records and evidence of default as required under subsection 3 (a) of Section 7 of the Code. It is reiterated that the Form-1 filed in the present case under Section 7 of the Code read with Rule 4 of the Rules, shows that the Form is complete in all respect and there is no infirmity in the same.

Rules.
 documents and records as prescribed under the Rules, 2016 accompanied with required information, Bankruptcy (application to Adjudicating Authority) in Form-1 in terms of Rule 4 of Insolvency and Process has been filed by petitioner financial creditor

10079 resident of 406, 407, Shopping Square - II, Sector - D, Sushant Golf City, Ansal API, Lucknow - 226030. Mr. Shравan Kumar Vishnoi has agreed to accept the appointment as the interim resolution professional and has signed a communication dated 16.11.2018 in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. As Form-2 filed earlier by the IRP was not complete in all respect, a new Form-2 dated 08.04.2019 was filed on 18.04.2019. It is seen that there is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. Sh. Vishnoi has also enclosed a declaration of eligibility certificate for appointment as IRP. In addition, further necessary disclosures have been made by Mr. Shравan Kumar Vishnoi as per the requirement of the IBBI Regulations. Accordingly, the requirement of Section 7 (3) (b) of the Code has been satisfied.

45. In the aforesaid background it is seen that the applicant bank clearly comes within the definition of Financial Creditor. The material placed on record including the letter of respondent showing transfer of liability confirms that the respondent corporate debtor committed default in repayment of the financial debt. On a bare perusal of Form – I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed IRP. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

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

direct that public announcement shall be made by the

49. In pursuance of Section 13 (2) of the Code, we
Financial Creditor.

rules and shall be paid back to the applicant
adjustment towards Resolution Process cost as per
said advance amount however be subject to
of receipt of this order by the Financial Creditor. The
needful shall be done within three days from the date
Process for Corporate Person) Regulations, 2016. The
Bankruptcy Board of India (Insolvency Resolution
accordance with Regulation 6 of Insolvency and
expenses to perform the functions assigned to him in
namely Mr. Shравan Kumar Vishnoi to meet out the
of Rs.1 Lac with the Interim Resolution Professional
48. We direct the Financial Creditor to deposit a sum

Professional.

226030 is appointed as an Interim Resolution
Sector - D, Sushant Golf City, Ansal API, Lucknow -
10079 resident of 406, 407, Shopping Square - II,
number IBBI / IPA-002 / IP-P00040/ 2016-17 /
47. Mr. Shравan Kumar Vishnoi having registration

Interim Resolution Professional immediately (3 days

as prescribed by Explanation to Regulation 6(1) of the
IBBI Regulations, 2016) with regard to admission of

this application under Section 7 of the Insolvency &

Bankruptcy Code, 2016.

50. 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) of the Code. 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;

51. 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) Act, 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.

(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;

(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.”

52. 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 committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, 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.

53. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

(M.M. KUMAR)
PRESIDENT

(S. K. MOHAPATRA)
MEMBER (T)

Deepak Kumar