

**In the National Company Law Tribunal,
Kolkata Bench,
Kolkata**

Before Shri Jinan K.R., Hon'ble Member (J)

CP (IB) No.176/KB/2018

In the matter of:

An application under section 7 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

State Bank of India, having its registered Office at 12, Waterloo Street, Kolkata- 700 069 represented by its authorized signatory Mr. Sanjay Kumar Sharma

... **Financial Creditor**

-Versus-

Impex Metal and Ferro Alloys Ltd. at 12, Hemant Basu Sarani, 2nd floor, Kolkata – 700 069.

.... **Corporate Debtor**

Counsels appeared:

For the Financial Creditor : 1. Mr. Siddhartha Datta, Advocate
2. Mrs. Isha Sinha, Advocate
3. Ms. Prapa Ganguly, Advocate

For the Corporate Debtor : 1. Mr. Pranit Bag, Advocate
2. Mr. Snehashis Sen, Advocate

Order pronounced on 09 March, 2018

ORDER

State Bank of India, the Financial Creditor has filed this application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (from now

on referred to I & B Code, 2016) for initiating Corporate Insolvency Resolution Process read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against the Corporate Debtor, Impex Metal & Ferro Alloys Ltd. in Form-I. The Financial Creditor has stated that the Corporate Debtor has committed default in making payment of Rs.469,29,69,983.63 (Rupees four sixty nine crores twenty nine lakhs sixty nine thousand nine hundred eighty-three and paise sixty three) only as on 31.12.2017.

2. The Financial Creditor, State Bank of India was constituted under the statutory enactment of State Bank of India Act, 1955 incorporated on 1st July, 1955 vide Notification No.S.R.O. 1077 dated May 14, 1955. The registered office of the Company is situated at Industrial Finance Branch, 1st floor, Constantia Building, 11, Dr. U. N. Brahmachari Street, Kolkata, West Bengal- 700 017 and Corporate Office is situated at State Bank Bhawan, Madame Cama Road, Nariman Point, Mumbai- 400021.

3. The Corporate Debtor, Impex Metal & Ferro Alloys Limited, having Identification No. U27101WB1991PLC051901 is a company incorporated under the Companies Act, 1956 on 31st May, 1991. The registered office of the Company is situated at 35, C. R. Avenue, Kolkata- 700 012, West Bengal. The authorized share capital of the company is Rs.15,00,00,000/- and paid up share capital of the company is Rs.10,90,50,000/-.

4. The Financial Creditor has proposed the name and registration number of the interim resolution professional as Mr. Subodh Kumar Agarwal, an Insolvency Professional registered with the Agency of Institute of Chartered Accountants of India having Registration No. IBBI/IPA-001/IP-P00087/2016-2017/10183 of 1, Ganesh Chandra Avenue, 3rd floor, Kolkata – 700 013 Mob. 9432207517, E-mail subodhka@yahoo.com. A written communication dated 15th January, 2018 in terms of Rule 9(1) of

Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and consent in Form 2 have been filed before this Tribunal. A declaration has also been made to the effect that no disciplinary proceedings is pending against him. Other disclosures and eligibility under rule 9(2) as required have also been made by him.

5. The Applicant has also affirmed in the petition that Mr. Bishwatosh Misra, Assistant General Manager and Relationship Manager, State Bank of India has been authorized, whose address is State Bank of India, Industrial Finance Branch, Kolkata, 1st floor, Constantia Building, 11, Dr. U.N. Bramhachari Street, Kolkata- 700 017 and Email id: bishwatosh.misra@sbi.co.in. He has been empowered in accordance with Regulations 76 and 77 of the State Bank of India General Regulations, 1955 read with the Gazette notification dated March 27, 1987 issued by the SBI Central Office. The Copies of the same have been submitted and annexed with the petition as **Annexure "B"**. Chairman, State Bank of India, vide Board Resolution dated 16th June, 2017 has specifically authorized all officers on whom signing powers have been conferred to sign applications, reply, affidavit, counter affidavit, rejoinder and generally all pleadings and file applications for initiation of CIRP under the provisions of Insolvency and Bankruptcy Code, 2016 on behalf of the Bank or in connection with any proceedings. The copy of the same has been annexed and marked as **'Annexure B'**.

6. The brief facts of the case, as stated in the application, are that the corporate debtor had taken a loan amounting to Rs.469,29,69,983.63 (inclusive of principal amount, accrued interest and penal interest as on 31.12.2017 from the financial creditor. In this connection, a copy of the statement of accounts of the corporate debtor maintained by State Bank of India and certified in terms of the bankers' book Evidence Act,1891

evidencing the amount paid to the corporate debtor has been filed and collectively annexed as **Annexure-'E'**.

7. The applicant has stated that the Financial Contracts for the Term Loan Facilities of SBBJ and SBP aggregating upto Rs.98 crores and the latest and complete copy of the financial contract reflecting all amendments and waivers till date and sanction letter dated 3rd March, 2010 issued by SBP for term loan of Rs.34 crores have been submitted and marked as **Annexure-'F'** to the petition. The copy of Sanction letter dated 28th September, 2011 issued by State Bank of Patiala for enhanced term loan of Rs.49 crores has been annexed and marked as **Annexure "G"** to the petition. The copies of sanction letters dated 30th October, 2009 and 25th April, 2011 issued by the State Bank of Bikaner and Jaipur for term loan of Rs.34 Crores and additional term loan of Rs.15 crores have been submitted and marked as **Annexure "H"** and **Annexure "I"** to the petition. Copy of Common Loan Agreement dated 29th February, 2012 regarding Term Loan Facilities aggregating Rs.98 crores has been submitted and marked as **Annexure "J"** to the petition. Copy of Agreement of Loan for Overall Limit dated 3rd March, 2010 in respect of term loan facility of Rs.34 crores by State Bank of Patiala (SBP) has been submitted and marked as **Annexure "K"** to the petition. Copy of Inter-Se Agreement dated 29th February, 2012 has been submitted and marked as **Annexure L** to the petition. In addition to the above, the applicant has also submitted the following documents:

- i) Copy of sanction letter dated 4th May, 2016 as **Annexure-"O"**
- ii) Copy of sanction letter dated 30th March, 2015 as **Annexure-P**
- iii) Copy of Restructuring Agreement dated 30th March, 2015 as **Annexure-Q**

- iv) Copy of certificate of registration of modification of charge dated 29th May, 2015 by the Corporate Debtor for creation of charge as **Annexure-R**.
- v) copy of sanction letter dated 9th October, 2014 as **Annexure-S**
- vi) copy of Agreement of Overall Limit dated 29th October, 2014 as **Annexure "T"**
- vii) Copy of certificate of registration of modification of charge dated 29th November, 2014 annexed as **Annexure-U**
- viii) copy of sanction letter dated 25th April, 2012 issued by the State Bank of India for working capital facilities of Rs.108.18 crores has been submitted and marked as **Annexure -V**.

Moreover, the applicant has submitted all the copies of relevant documents along with the petition.

8. The applicant has further stated that the liability of the Corporate Debtor has been duly admitted by them by the copies of entries in a Bankers Book in accordance with the Bankers Book of Evidence Act, 1891 has been submitted and marked as **'Annexure-E'**.

9. The Applicant has submitted the details of Facilities provided to the Corporate Debtor, Total Exposure outstanding as on 31.12.2017 and total amount in Default with date as on 31.12.2017 in **Annexure-"C"**, and Dates of disbursements and amounts disbursed as **Annexure-"D"**.

10. Upon such default, the applicant has the right to proceed against the corporate debtor for repayment of the loans disbursed to the Corporate Debtor. As per **'Annexure A-IX'** annexed with the petition, the total outstanding due/default on the account as on 31/12/2017 is Rs.469,29,69,983.63.

11. The Applicant in his application at Part V page 9 has described the particulars of security documents and the record of default with the information Utility for the loan granted to Impex Metal & Ferro Alloys Limited, who is the corporate debtor.

12. The corporate debtor has filed reply/objection denying and disputing each and every submission made by the Financial Creditor. The Corporate Debtor contended that the Applicant of the said application does not have any authority to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor as the authorization, which is general in nature instead of being specific and it has not been duly made. Hence, the application deserves to be dismissed and not maintainable.

13. The corporate debtor has stated that the petitioner/Financial creditor has failed to show any default on the part of the corporate debtor in making the repayment of the debt. The Applicant has failed to disclose that there is any debt as allegedly calculated by the applicant.

14. The corporate debtor also submitted that there are seriously disputed issues pertaining to the common loan agreement and the petitioners claim is barred by statute of limitation as the time barred claim cannot be the subject matter of the present proceedings.

15. The corporate debtor also stated that the date of default as allegedly indicated by the petitioner is March 31, 2016 but no corresponding figures of the alleged outstanding amount as on the said date of default have been indicated by the petitioner nor has the petitioner disclosed as to how such date of default has been determined by the petitioner. Moreover, he added that during the course of the arguments the dates on which the accounts of the respondents were declared as non-performing assets are not uniform between the petitioner and its associated banks.

16. The corporate debtor also contends that the applicant has also failed to disclose the correct amount of default and the term loan account of SBBJ and SBP have been deliberately inflated by an amount of Rs.57.06 Crores. The corporate debtor further stated that the common loan agreement based on which the instant application is filed is insufficiently stamped and as such, inadmissible as evidence before this Adjudicating authority.

17. Heard both sides and perused the records.

18. Upon hearing the arguments and on perusal of the records the point that arises for consideration is whether default occurred as alleged by the Financial Creditor?

19. This is a petition filed by a financial creditor under section 7 of the I & B Code. In a case of this nature what is to be looked into is settled by the Hon'ble Supreme Court in *Innoventive Industries Ltd. vs. ICICI Bank & Anr.* The Hon'ble NCLAT has laid down that ".....for initiation of corporate resolution process by financial creditor under sub Sec.(4) of Sec.7 of Insolvency and Bankruptcy Code, 2016 the adjudicating authority on receipt of the application under sub Sec. (2) is required to ascertain existence of the default from the records of information utility or on the basis of other evidence furnished, the financial creditor under sub-section (3), under sub-section (5) of Sec.7 adjudicating authority is required to satisfy where a default has occurred, whether an application is complete and whether any disciplinary proceeding against the proposed Insolvency Resolution Process. Once it is satisfied it is required to admit the case..... "

20. Bare in mind the above said proposition, let me see whether the petition is complete. As per sub-section 3 of section 7 of the I&B Code, the

financial creditor shall, along with the application furnish the documents as per section 7 (3) (a), (b) and (c). it read as follows:-

- 7 (3)(a) record of the default recorded with the information utility or such other record or evidence of default as may be *specified*;
- (b) the name of the resolution professional proposed to act as an interim resolution professional; and
- (c) any other information as may be ***specified*** by the Board.

21. A computation statement showing the date of default and total exposure of the debt due, coupled with Annexure-E has been annexed and marked as **Annexure "C"**. A certified copy of statement of account produced on the side of the petitioner is sufficient enough to prove the default of the loan admittedly availed by the corporate debtor. These documents satisfy the requirement as provided under section 7(3) (a) of I & B Code.

22. The Financial creditor has also proposed the name of Mr.Subodh Kumar Aggarwal, Registration No.IBBI/IPA/001/IP-P0087/2016-17/10183 of Ganesh Chandra Avenue,3rd Floor,Kolkata-700013, to act as an interim resolution professional whose details are mentioned above. As per record no disciplinary proceeding is pending against him. Annexure XX, is Form 2 with the consent of the above referred insolvency professional. This document satisfy the requirement as per section 7(3) (b) of the I & B code.

23. As per section 7 (3) (c) any other information as may be *specified* by the Board is to be produced. However, none specified by the Board as on today. So the petitioner in the case in hand succeeds in proving that the petition filed under sub section 3 of section 7 is complete.

24. In the above said background, let me see whether the objections raised on the side of the respondent is sustainable. At the outset I would say that the objections raised are vague and inconsistent with that of the documents admittedly executed by the corporate debtor. The petitioner produced **Annexure-"B"** proving the authority given to the Asst. General Manager Mr. Bishwatosh Misra for signing a petition like this nature. The above said authorisation was issued by the Chairman, SBI as per notification dated 2nd May 1987. As per clause A in the notification all officers in the grade of SMGS IV and above are empowered to do business of the Bank in respect of all matters coming in discharge of functions of the posts held for the time being. **Annexure -B** proves special authority to file a petition before NCLT also. So the petitioner has got the authority to file a petition like the petition in hand. The contention of the corporate debtor that petitioner has no authority is therefore found devoid of any merit.

25. **Annexure- "C"** is the calculation of the amount due from the corporate debtor. It shows that total outstanding due on the corporate debtor on 31/12/2017 is Rs.469,29,69,983.63 /-. As per Annexure C the date of default in regards cash credit and term loan is on 31.03.2016. It is also clear that corporate debtor has committed default as alleged by the petitioner. The total outstanding as on 31.12.2017 is Rs. 469,29,69,983.63, which include interest, penal interest which the corporate debtor failed to pay. The contention that the calculation of the amount in default is wrong also found without any supporting data.

26. The next contention on the side of the corporate debtor is that the claim is barred by limitation. The acknowledgment of liability evidently found executed by the corporate debtor i.e. Annexure LL dated 2nd April 2016, Annexure MM, dated 19th August 2017, Annexure NN date 2nd May, 2017 and Annexure OO dated 7th April, 2017 are evidently executed by the

corporate debtor. Therefore, the corporate debtor being confirmed the balance amount outstanding as per the above referred documents the claim is not at all barred by limitation as alleged. None of the contentions on the side of the corporate debtor being found sustainable under law and being found that the petition is complete in all respects as held in the above referred judgment, this petition is liable to be admitted.

ORDER

The petition filed by the financial creditor under Sec.7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Resolution Process and declare a moratorium and public announcement in accordance with Sec.13 and 15 of the IBC, 2016.

Moratorium is declared for the purposes referred to in Sec.14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Sec.15 Insolvency & Bankruptcy Code, 2016 shall be made immediately.

Moratorium under Sec.14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

- 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 Securitization 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.

The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.

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.

The order of moratorium shall have effect from 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 Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

Necessary public announcement as per Sec.15 of the IBC, 2016 may be made.

Mr. Subodh Kumar Agarwal, Registration No.IBBI/IPA/001/IP-P0087/2016-17/10183 of 1, Ganesh Chandra Avenue, 3rd Floor, Kolkata-

700013, is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.

Certified copy of the order may immediately be issued to the Financial Creditor, Corporate Debtor and IRP.

List the matter on 25-4-2018 for submission of progress report by IRP.

Sd/-
(Jinan K.R.)
Member(J)

Signed on this the 9th day of March 2018