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IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Before Shri Madan B. Gosavi, Hon'ble Member (J)

C.P.(IB) No.754/KB/2017

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:

Asset Reconstruction Co. India Ltd., having its registered Office at The Ruby, 10th Floor, 29, Senapati Bapat Marg, Dadar (West) Mumbai- 400028, Maharashtra, India;

...Financial Creditor

-Versus-

M/s. Sunil Ispat & Power Limited having its registered office at 45A, New Alipore Residency, Buroshibtala Main Road, Kolkata – 700 038, West Bengal;

....Corporate Debtor

Counsels appeared:

For the Financial Creditor :] 1. Mr. Victor Dutta, Advocate
] 2. Mr. P. Dutta, Advocate

For the Corporate Debtor :] None appeared

Order pronounced on 31.07.2018



ORDER

This petition under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short, I&B Code) is filed by the Financial Creditor, Asset Reconstruction Co. India Ltd. against the Corporate Debtor, namely M/s. Sunil Ispat & Power Limited (formerly known as Sunil Sponge Ltd.).

2. The facts, in short, are that in the year 2005, State Bank of India had provided credit facility of Rs.18.30 crores to the Corporate Debtor. It was enhanced from time to time. The Corporate Debtor executed various loan agreements. They also created equitable mortgage on their immovable properties against the loan.

3. The Corporate Debtor utilised the entire credit limit but they failed to repay them in time and thereby committed breach of contract. When substantial amount became due for payment, the bank filed proceeding against the Corporate Debtor under section 19 of Recovery of Debt due to Banks and Financial Institution Act, 1993 before the Debts Recovery Tribunal for recovery of a sum of Rs.25,75,25,402.26 (inclusive of interest). On 18.07.2014. State Bank of India has assigned its debt against the Corporate Debtor to the Financial Creditor by entering and executing the deed of assignment. As per that agreement, the Corporate Debtor was required to pay debt of Rs.37,53,66,081.00. They committed default in paying the debt. The accounts of the Corporate Debtor now declared to be Non-Performing Assets. Since the default is made in paying the debt, this CIRP is filed against the Corporate Debtor.

4. Notice of this petition was initially served on the Corporate Debtor but none appeared on their behalf. Thereafter, the Financial Creditor filed the application to produce fresh power of attorney in the name of one Mr. Dibyendu Mukherjee as the earlier power of attorney was having some defects. Thereafter, this Authority directed the Financial Creditor to serve



notice to the Corporate Debtor afresh. Accordingly, notice was served on the Corporate Debtor but again none appears for them. Hence, hearing of this petition proceeded **ex parte** against them.

5. I heard the Ld. Advocates appearing for the Financial Creditor. I have gone through the record. Section 5(7) of the Insolvency & Bankruptcy Code, 2016 defines the Financial Creditor as, "Financial Creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to."

6. Here, in this case, the State Bank of India had granted loan to the Corporate Debtor. Later on, debt is assigned to Financial Creditor by Deed of Assignment dated 18.07.2014 (copy of agreement is produced on record). By virtue of this agreement, the Financial Creditor got a right to claim recovery of debt due and payable by the Corporate Debtor to State Bank of India. It is averred in the petition that there is a default in paying the debt for a sum of Rs.27,70,07,062/- plus interest thereon @17.25% p.a. from 29.11.2017. This fact has not been controverted by the Corporate Debtor as they did not choose to contest this petition. I accept the contention of the Financial Creditor.

7. The Financial Creditor has also proposed the name of Mr. Arun Kumar Gupta (Mob. No.9830124481), P-15, Bentinck Street, Kolkata- 700 001, email id. guptaarunkumar2001@yahoo.com and having IP Registration no.IBBI/IPA-001/IP-P00013/2016-17/10037 as the Interim Resolution Professional. In this context, a written communication dated 29.11.2017 in Form 2 from the proposed IRP has also been annexed at page nos. 577 to 579 to the application, wherein it has been declared that there is no disciplinary proceedings pending against the proposed IRP and also there is no pecuniary relationship with the Corporate Debtor.

Sd

8. Section 7(5) of I&B Code states that when the Adjudicating Authority is satisfied that:

- (a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application;

9. In this case, I have found there is a proof to show that the Corporate Debtor committed default in paying the debt of more than Rs.1 lakh. The application is complete in all respects and there is no disciplinary proceedings pending against the Interim Resolution Professional. Thus, this application is maintainable for initiating CIRP against the Corporate Debtor and to be allowed under section 7 of the I&B Code. Accordingly, I pass the following order:

ORDER

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

- ii) 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.

iii) 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 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 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.

iv) 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.

v) 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.

vi) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.

vii) 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.

viii) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.


ix) Mr. Arun Kumar Gupta (Mob. No.9830124481), P-15, Bentinck Street, Kolkata- 700 001, email id. guptaarunkumar2001@yahoo.com and having IP Registration no.IBBI/IPA-001/IP-P00013/2016-17/10037 is appointed as the Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

x) The Interim Resolution Professional should convene the meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors. As per the amended provision of the I&B Code, he has to finalise the Resolution Plan on or before 105 days from the date of admission of CIRP.

xi) The copies of the order is to be communicated to the financial creditor, corporate debtor and IRP by the Speed Post and/or email immediately.

xii) Certified copy of the order may immediately be issued to the Financial Creditor, Corporate Debtor and IRP upon fulfilling of necessary formalities, as per the rules.

List the matter on **31st August, 2018** for submission of progress report by IRP.


(Madan B. Gosavi)
Member (Judicial)

Signed on this, the 31st day of July, 2018