

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. No. (IB)- 46(PB)/2018

IN THE MATTER OF:

Oriental Bank of CommerceFinancial Creditor/Applicant
v.
M/s. Allied Strips Limited and Ors.Corporate Debtors

SECTION :

UNDER SECTION 7 of the Insolvency and Bankruptcy Code, 2016

Order delivered on 16.03.2018

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

S.K. MOHAPATRA
Hon'ble Member (T)

For the Petitioner(s) : Shri Balvinder Balhan, Advocate

**For the Respondent(s): Ms. Varsha Banerjee, Mr. Milan Singh
Negi and Mr. Kunal Godhwani,
Advocates**

**For the Intervener(s): Shri Pankaj Bhagat, Advocate for
Power2SME Private Limited**

JUDGMENT

M.M.KUMAR, PRESIDENT

The 'Financial Creditor'-Oriental Bank of Commerce has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to trigger the Corporate Insolvency Resolution Process in the matter of M/s Allied Strips Limited. It is appropriate to mention

that in the instant application Director/Guarantors of the Corporate Debtor as well as other consortium Banks have also been arrayed as respondents. The financial creditor is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (for brevity 'Banking Companies Act'). The 'financial creditor' has its Corporate office at Plot No. 5, Sector-32, Institutional Area, Gurugram-122001, Haryana and Registered office at Large Corporate Branch, E-Block, Harsha Bhawan, First Floor, Connaught Place, New Delhi-110001. It was incorporated on 15.04.1980 and was assigned Identification Number AAACO0191M.

2. Mr. Rakesh Chander Sharma, Assistant General Manager, has been authorized by the power of attorney dated 04.09.2003 (Annexure-A) to submit and sign the petition.

3. The Corporate Debtor-M/s. Allied Strips Limited is dealing in the manufacturing and supply of Cold Rolled Coils and Strips of varying sizes. It was incorporated on 05.08.1992. The identification number of the Corporate Debtor is U27105BL1992PLC049849 and its registered office is situated at Allied Mansion, 14 B, 1st Floor, Manohar Park, Rohtak Road, New

Delhi-110026. Its authorised share capital is Rs. 100 Crores and the paid up share capital is Rs. 69,13,84000/- as per the master data available on the website of Ministry of Corporate Affairs. A copy of certificate of incorporation dated 05.08.1992 of Corporate Debtor-M/s Allied Strips Limited with Registrar of Companies has been placed on record (Annexure-O).

4. The Financial Creditor has proposed the name of Shri Mohan Lal Jain, F-2/28, Sector-15, Rohini, New Delhi -110089, email id – ml jain@sumedhamanagement.com. A certificate of registration dated 27.07.2017 issued by the Insolvency and Bankruptcy Board of India has been placed on record (at page No. 41). He has registration No. IBBI/IPA-002/IP-N00006/2016-17/10006. He has also made declaration and sent a written communication dated 29.12.2017. According to the declaration, Mr. Mohan Lal Jain has no disciplinary proceedings pending against him nor he is a related party to 'Financial Debtor' namely M/s. Allied Strips Limited nor he is an employee of the M/s. Allied Strips Limited. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.



5. Facts which are material to the controversy raised may first be noticed. The pleaded case of the Financial Creditor is that initially it sanctioned various credit facilities to the Corporate Debtor on 01.08.2011 which were in the form of fund and non fund based. The credit facilities amounted to Rs. 105 crores and the details are as under:-

- (a) facility No. 1 - cash credit (Hyp.) – fresh for a limit of Rs. 60 Crores
- (b) facility No. 2 - letter of Credit (Import/Inland) for a limit of Rs. 45 crores.
- (c) facility No. 2 (A) - sub limit of ILC/FLC limit
- (d) facility No. 2 (B) - sub limit of ILC/FLC limit
- (e) facility No. 3 - Forward contract – fresh

A copy of the sanction letter dated 01.08.2011 has been placed on record (Annexure-C).

6. Thereafter vide sanction of Renewal-cum-Enhancement of Working Capital facilities dated 27.11.2012 the amount in aforesaid heads were increased. Lastly on 11.12.2013 the Corporate Debtor approached the Financial Creditor for fund and

non fund based financial facilities for setting up its project and for day to day operations and expansion of Business. Pursuant to the request of the Corporate Debtor, the financial creditor sanctioned the following financial facilities on 11.12.2013:-

- (a) A working capital term loan amounting to Rs. 83.50 Crores.
- (b) A Funded Interest Term loan amounting to Rs. 24.94 Crores.
- (c) A working capital fund based amounting to Rs. 40.76 Crores.
- (d) A working capital non fund based amounting to Rs. 17.82 Crores.

A copy of the sanction letter dated 27.11.2012 has been placed on record (Annexure-D).

7. The Corporate Debtor executed the Master Restructuring Agreement dated 30.09.2013, the Supplementary Master Restructuring Agreement dated 30.12.2013 and Second Supplementary Master Restructuring Agreement dated



10.01.2014 in favour of the Financial Creditor. Copies of these agreements have been placed on record (Annexure- F, G & J).

8. As per the averments of the 'Financial Creditor', the account of the Corporate Debtor was declared as Non-Performing Asset (NPA) on 31.03.2013 in its books. In view of the repeated defaults on the part of the Corporate Debtor to comply with the repayment of the principal and interest dues, the Financial Creditor was constrained to issue the recall notice dated 21.03.2016 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for amount totalling Rs.181.85 Crores as on 29.02.2016 but inspite of the notice they failed to clear the unpaid debt/liability. A copy of the recall notice has been placed on record (Annexure N).

9. It is also averred by the Financial Creditor that thereafter the Financial Creditor through Lead Bank namely Canara Bank initiated recovery proceedings against the Corporate Debtor under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 before the Learned Debt Recovery Tribunal-II, Delhi by filing Original Application No.

630/2017. In the said application the total amount claimed is Rs. 1049,41,87,153.76 in which the share of the financial creditor is Rs. 20929/- lacs. In the said proceedings the learned DRT-II, Delhi issued notices to the Corporate Debtor, mortgagors and guarantors, and same is pending adjudication.

10. In column 2 of part IV the amount claimed to be default and the date on which the default occurred have been stated to be Rs. 224,59,08,968.32 (Two Hundred Twenty Four Crore Fifty Nine Lac Eight Thousand Nine Hundred Sixty Eight and Paisa Thirty Two as on 30.11.2017.

11. The 'financial creditor' has placed on record an overwhelming evidence to prove the default. The details of the security held by the Financial Creditor from 11.12.2013 which is the date of sanction and disbursement of the facilities, have been given in Part V which are set out below:-

1. Hypothecated entire fixed and current assets (present and future) of the Corporate Debtor.
2. Equitable Mortgage of the property situated at



All that part and parcel of the property located at the Unit of M/s. Allied Strips Limited at Mauza Asaudha Tordan, Mandauthi, Basai Darapur near 42 KM Stone, Delhi Rohtak Road Bahadurgarh, Distt. Jhajjar, Haryana.

3. Hypothecated of Plant & Machinery, stocks, current assets etc. with the Applicant Banks.
4. First pari passu charge with other lenders of the Consortium.

12. The Corporate Debtor also executed the deed of hypothecation dated 30.12.2013 in favour of the Financial Creditor. A copy of the deed of hypothecation has been placed on record (Annexure -H).

13. The Corporate Debtor also issued Registration of Charge Form 8 in favour of the financial Creditor including the consortium Banks for the facilities availed by it on 03.01.2014. A copy of the Registration of Charge Form 8 has been placed on record (Annexure-K).



14. A record of default is also available with the Central Repository of Information on Large Credits (CRILC) as per its asset classification report of the Corporate Debtor based on latest two quarters (Annexure - P). Likewise, Entries in Bankers Book in accordance with the Bankers Books Evidence Act, 1891 has also been placed on record which relate to all Bank accounts (Annexure-Q).

15. There are then the balance and security confirmation letter dated 28.09.2013 by the Corporate Debtor demonstrating the overall debt profile post restructuring with respect to the Financial Creditor and other consortium Banks which has been placed on record (Annexure -L). It is pertinent to notice that said letter has been duly signed on behalf of the Corporate Debtor and a seal has also been put by the Corporate Debtor which reads as under:-

Overall Debt Profile post restructuring is as under:

Particulars	TL	WCTL	FITL	WC FB	WC NFB	TOTAL
Canara Bank (M1)	68.57	135.07	58.06	73.18	50.77	385.65
UCO Bank	42.84	69.62	31.71	36.99	21.07	202.23
Oriental Bank of Commerce	-	83.91	25.11	40.76	17.82	167.60

Dena Bank	29.16	18.32	13.96	20.73	9.36	91.53
Punjab National Bank		47.11	15.87	39.38	33.98	136.34
Total	140.57	354.03	144.71	211.04	133.00	983.35

16. The Financial Creditor subsequently by affidavit dated 13.02.2018 filed Balance sheets of the Corporate Debtor as on 31.03.2016 and another as on 31.03.2017 which is duly audited. In para viii of Annexure A of the said report the following figures have been shown which reads as under:-

“(viii) The company has defaulted in repayment of loans or borrowing to a financial institution, bank, Government or dues to debenture holders which are given below

Name of Bank	Amount (Rs. In Crores)
Canara	380.26
Dena	81.47
UCO	174.83
OBC	162.66
PNB	118.74
Total	917.95

17. The Corporate Debtor in reply affidavit to the instant application has admitted the aforesaid facilities/loans granted by the Financial Creditor. It further admits the sanction of renewal-cum-encashment of working capital facilities, master restructuring agreement and other relevant documents filed by the Financial Creditor.

18. The Corporate Debtor has submitted that owing to the adverse market conditions, the business of the Corporate Debtor was badly affected, leading to default in repayment of loan to the Financial Creditor. Accordingly, the account of the Corporate Debtor was classified as a Non-Performing Asset (NPA) by the Financial Creditor.

19. The Corporate Debtor further submits that as the net worth of the Corporate Debtor was completely eroded, the Corporate Debtor was registered as a sick industrial undertaking with the Board for Industrial and Financial Reconstruction ('BIFR') and the case of Corporate Debtor was registered as BIFR Case No. 16/2015. A copy of the letter dated 02.02.2015 issued by the Learned Registrar, BIFR has been placed on record (Annexure-B).



20. In view of the above submissions put forth by the Corporate Debtor, it is patent that the Corporate Debtor has not opposed the admission of the instant application.

21. We have heard the arguments in the matter and reserved the order on 16.02.2018. Subsequently the Power2SME Private Limited has filed an application C.A. No. 101(PB)/2018 dated 07.02.2018 for intervention under Order 1 Rule 10 (2), Section 151 Code of Civil Procedure. Thereafter we heard the arguments on that application and vide order dated 16.02.2018 directed the same to be added with the original file and shall be disposed of with the main case.

22. In the aforesaid application it is submitted by the applicant- Power2SME Private Limited that it is engaged *inter-alia*, in business of procuring and selling of raw material, operational supplies, industrial etc and providing the same to its customers against cash payment or on credit basis. It is further averred that the Corporate Debtor is also one of its customer against whom supply of steel raw material was made on credit basis. In this regard hypothecation of goods agreement dated 01.12.2016 and a

charge with the Registrar of Companies was created in favour of the applicant-Power2SME Private Limited. It is also averred that since the Corporate Debtor failed to pay the dues of the applicant-Power2SME Private Limited, it was mutually agreed between them that the Corporate Debtor would carry out the job work of the present applicant and the applicant would supply its raw material in the factory premises of the Corporate Debtor, and that the outstanding dues of the applicant company were to be recovered out of the job work charges. The raw material, finished goods, semi finished goods, work in progress and scrap remained in the exclusive ownership of the applicant company.

23. In the aforesaid application it is further averred that accordingly an agreement dated 19.07.2017 was executed between the applicant company and Corporate Debtor in which the Corporate Debtor has admitted that it owes a sum of Rs. 37.00 crores as outstanding towards supply made by the applicant company. It is further averred that the Corporate Debtor vide its letter dated 04.01.2018 admitted and confirmed that whatever material/stock are lying in the plant of the Corporate Debtor situated at 42 KM Stone, Bahadurgarh belongs to the applicant company and no one else. In the said letter it

was also admitted that as on 31.12.2017 a sum of Rs. 4698.92 lacs is due and payable by the Corporate Debtor to the applicant, besides the raw material and finished product lying in the said factory premises. Copies of the agreement dated 19.07.2017 and letter dated 04.01.2018 have been placed on record (Annexure A-5 & A-7).

24. It is further the contention of the applicant that it has filed a Civil Suit bearing No. 22/2018 against the Corporate Debtor before the learned Civil Court, Bahadurgarh praying for relief of permanent injunction. The learned Civil Court vide its order dated 18.01.2018 granted interim order in its favour restraining the Corporate Debtor from creating any kind of obstruction in the ingress and egress qua man and material belonging to the applicant company lying in the factory premises or at the gate or within the radius of 200 meters from the premises of the Corporate Debtor. A copy of order dated 18.01.2018 passed by learned Civil Court has been placed on record (Annexure A-8).

25. Mr. Balvinder Balhan, learned counsel for the petitioner has argued that all requirements of Section 7 for the initiation of Corporate Insolvency Resolution Process by a Financial Creditor

stand fulfilled. In that regard, he has submitted that the application as prescribed by Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 (2) of IBC has been filed. He has further submitted that the details of the default along with the dates have been clearly stated in part IV along with all the minute details. There is overwhelming evidence available in the shape of the default and name of the resolution professional has also been clearly specified.

26. Having heard the learned counsels for the parties and having perused the paper book with their able assistance it would be imperative to examine the provisions of Section 7 (2) and Section 7 (5) of IBC which read as under:-

“Initiation of corporate insolvency resolution process by financial creditor.

7 (1)

7 (2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

7 (3)

7 (4)

7 (5) Where 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; or

(b)"

27. A conjoint reading of the aforesaid provision would show that form and manner of the application has to be the one prescribed by the authorities. The application is required to be accompanied by the prescribed fee. It is evident from the record that the application has been filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of IBC. We are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete; and no disciplinary



proceedings are pending against the proposed Interim Resolution Professional. Thus, the application warrant admission.

28. As a sequel to the above discussion, this petition is admitted and Mr. Mohan Lal Jain, F-2/28, Sector-15, Rohini, New Delhi - 110089, email id - ml_jain@sumedhamanagement.com is appointed as an Interim Resolution Professional.

29. In pursuance of Section 13 (2) of IBC we direct that public announcement shall be immediately made by the Interim Resolution Professional with regard to admission of this application under Section 7 of IBC. We also declare moratorium in terms of Section 14 of IBC. The consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and 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;
- (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;
- (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.

30. 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 is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services.



31. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, inter alia, by Sections 15, 17, 18, 19, 20 & 21 of IBC. He must follow the best practices which are to apply at various stages of Corporate Insolvency Resolution Process. 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 IBC to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor. In case there is any violation 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 IBC and perform all his functions strictly in accordance with the provisions of IBC.

32. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim



Resolution Professional at the earliest but not later than seven days from today.

33. The intervener shall be at liberty to file its claim before the Insolvency Professional which shall be duly considered and disposed of in accordance with law. The Interim Resolution Professional/Resolution Professional also decide whether the intervener would be covered by Corporate Insolvency Resolution Process or it would stand excluded from its purview.

34. The Petition along with C.A. No. 101(PB)/2018 are disposed of in the above terms.

Sd/-

(M.M. KUMAR)
PRESIDENT

Sd/-

(S.K. MOHAPATRA)
MEMBER (TECHNICAL)

16.03.2018
Vineet