

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

**Coram:** Shri Jinan K.R.  
Hon'ble Member (J)

**CP (IB) No.643/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:**

Small Industries Development Bank of India (SIDBI), a Corporation established by Small Industries Development Bank of India Act, 1989 (39 of 1989), having its Head Office at SIDBI Towers, 15, Ashok Marg, Lucknow- 226001 and having a branch office, inter alia, at 4<sup>th</sup> floor, OCHC Building, near Ram Mandir, Janpath, P.S.- Kharvelanagar, Bhubaneswar- 751 001, Odisha.

.....**Petitioner / Applicant**

-Versus-

Bajrangbali Alloys Private Limited, a Company incorporated under The Companies Act, 1956 and having its Registered Office at Malgodown, P.O. College Square, District- Cuttack, Pin Code- 753003, Odisha

....**Corporate Debtor / Respondent**

**Counsels appeared:**

For the Petitioner	:	1. Mr. S. Chatterjee, Advocate 2. Mr. Vivek Basu, Advocate 3. Mr. M.K. Seal, Advocate
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Order pronounced on 15<sup>th</sup> February, 2018

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ORDERShri Jinan K.R., Member (J):

Petitioner, Small Industries Development Bank of India (in short, SIDBI) 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, Bajrangbali Alloys Private Limited. Petitioner has stated that corporate debtor has committed default in making payment of Rs.7,58,23,342/-(Rupees seven crores fifty eight lakhs twenty three thousand three hundred and forty two) only.

2. The brief facts of the case, as stated in the application, are that the petitioner, i.e. SIDBI is a Corporation established by the Small Industries Development Bank of India Act, 1989 (39 of 1989) having its registered head office at SIDBI Towers, 15, Ashok Marg, Lucknow- 226 001 and its branch office at 4<sup>th</sup> floor, OCHC Building, near Ram Mandir, Janpath within P.S. Kharvelanagar, Bhubaneswar- 751 001. The Identification No. of SIDBI is PAN-AABCS 3480N. Shri Timir Haran Rashmi Samad, Deputy General Manager, Bhubanwsvar branch has been authorized to sign and submit the instant application on behalf of the Petitioner/ Financial Creditor through a Notification dated November, 02, 2017, a copy whereof has been filed separately at the time of filing the petition. But on scrutiny, it is found that the authorization letter has not been filed. However, after the order of this Tribunal, the authorization letter has been filed through Supplementary Affidavit dated 5<sup>th</sup> February, 2018 and marked as Annexure "A" to the Supplementary Affidavit.

3. The Corporate Debtor, Bajrangbali Alloys Private Limited, having Identification No. U27101OR1993PTC003400 is a company incorporated under the Companies Act, 1956 on 3<sup>rd</sup> September, 1993. The registered office of the

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Company is situated at Malgodown, College Square, Cuttack- 753003. The authorized share capital of the company is Rs.10,00,00,000/- and paid up capital of the company is Rs.9,94,38,000/- and it is recorded as per the Company's Master Data available on the Ministry of Corporate Affairs website.

4. The name and registration number of the proposed interim resolution professional are Mr. Pinaki Sarkar, an Insolvency Professional registered with the ICSI Insolvency Professionals Agency having Registration No. IBBI/IPA-002/IP-N00063/2016-17/10141 of 31/7, N.C. Chowdhury Road, Kolkata- 700 042, Mob. 9830011159, E-mail cs.p.sircar@gmail.com. A written communication dated 26<sup>th</sup> September, 2017 in terms of Rule 9(1) of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed with this Tribunal. A declaration has also been made to the effect that no disciplinary proceedings is pending against him. Other disclosures as required under the aforesaid Rules have also been made by him.

5. The Petitioner/ Financial Creditor has stated that the total amount of debt granted by the Petitioner, Small Industries Development Bank of India to the Corporate Debtor is as follows: -

Sl. No.	Amount Disbursed	Date of disbursement
1.	Rs.50.00 lakhs	31.10.2008
2.	Rs.50.00 lakhs	03.03.2010
3.	Rs.150.00 lakhs	02.06.2010
4.	Rs.74.75 lakhs	07.03.2011
5.	Rs.111.09 lakhs	22.03.2012
<b>Total Rs.435.84 lakhs</b>		

6. The Petitioner/ Financial Creditor submits that the total amount of default as on 10/08/2012 is Rs.7,58,23,342/-. A copy of the statement of Accounts is annexed along with the application and marked as **Annexure A-8 from pages 541 to 574** of the application.

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7. It appears from the record that in between the years 1997 and 2007, the Corporate Debtor, the Company approached the petitioner and was provided with various credit facilities on the terms and conditions as agreed by and between the parties against securities, inter alia, both movable and immovable properties and such loans facilities stood closed in terms of settlement of the dues of the petitioner by the Corporate Debtor and accordingly the Respondent Company was treated to be a privileged customer of the Petitioner. The Corporate Debtor has approached the Petitioner for sanction of a Term Loan limit of Rs.50 lakhs and accepted the terms and conditions vide its letter dated 14.08.2008. In consideration of the said Term Loan Facilities and in acknowledgement of liability to be availed of as also for the security for the repayment of dues, the Corporate Debtor executed bank documents in favour of the applicant.

The Corporate Debtor had again approached the Petitioner for sanction of a Term Loan of Rs.50 lakhs and accepted the terms and conditions vide its letter dated 25.02.2010. In consideration of the said Term Loan Facilities and in acknowledgement of liability to the availed of as also for the security for the repayment of dues, the Corporate Debtor executed bank documents in favour of the petitioner.

Further, the Corporate Debtor made an application for credit facilities of Rs.100 lakhs on 06.03.2010 as working capital for commissioning its new mill and in terms thereof parties had exchanged and/or executed the necessary relevant documents.

On 03.08.2010, the Corporate Debtor further applied to the petitioner for sanction of credit limit of Rs.180 lakhs under MSME Receivable Finance Scheme and in terms thereof parties had exchanged and/or executed the necessary relevant documents.

On 01.03.2011, the Corporate Debtor approached the petitioner for granting a Term Loan of Rs.74.74 lakhs and in consideration of the said credit limit and in acknowledgement of liability to the availed of as also for the security

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for the repayment of dues, the parties exchanged and/or executed bank documents in favour of the petitioner. For the purpose of securing repayment of the credit facilities provided by the Financial Creditor, the Corporate Debtor has mortgaged immovable properties in favour of the Financial Creditor and has also executed various Deeds of Hypothecation and Deeds of Personal Guarantee. The documents referred to hereinabove have been made part of the petition as **Annexures 5 and 6 at pages 65 to 515** of the Application.

8. The Petitioner/ Financial Creditor further submits that the Corporate Debtor availed of such facilities and utilized the same but started committing defaults in respect of all the loans and/or credit facilities from on or about June, 2012 and consequently a sum of Rs.7,58,23,342/- became due and payable by the Corporate Debtor to the Financial Creditor. In spite of repeated requests and demands, the Corporate Debtor failed to repay the principal amount together with interest, further interest, penal interest and other moneys payable under the Agreement and/or regularize the account resulting ultimately, the account turned into a Non Performing Asset on 10.08.2012. The Applicant issued demand notice dated 21.05.2013 but despite such notice, the Corporate Debtor failed to clear the dues as demanded. The SIDBI through its Authorized Officer vide letter dated 14.08.2013 asked for handing over secured assets.

9. The Petitioner/ Financial Creditor further submits that since no payments were forthcoming, the Financial Creditor issued notices recalling the credit facilities under the provisions of the SARFAESI Act, 2002, which is at **Annexure 3 at pages 50 to 64** of the application. At this stage, the Corporate Debtor applied to settle the dues of the Financial Creditor through One Time Settlement (OTS). OTS offer of Rs.391 lakhs was sanctioned on 12.11.2013, which envisaged the clearance of the OTS amount by way of sale to a third party at Rs.333 lakhs and balance amount of Rs.58 lakhs payable by BAPL. This proposal was accepted by the Managing Director and other Directors of

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Corporate Debtor vide their Board meeting dated 09.12.2013. The Corporate Debtor failed to meet such obligation of repayment schedule and consequently the petitioner withdrew the OTS facility granted to BAPL on 30<sup>th</sup> April, 2014 and the same was advised to BAPL, vide SIDBI's letter dated 7<sup>th</sup> May, 2014. Later on, a notice for takeover of assets under SARFAESI Act, section 13(4) was issued on 28<sup>th</sup> May, 2014 and SIDBI took over the symbolic possession of the secured properties on 25<sup>th</sup> June, 2014.

10. As per provisions of SARFAESI Act, SIDBI had released the paper publication of possession notice within 7 days i.e. on 29<sup>th</sup> June, 2014. After paper publication of possession notice as above, BBBO had initiated process of sale of the secured assets. The sale of property of BAPL through e-auction was published on 17<sup>th</sup> September, 2014 in three leading newspapers in three languages viz., English, Hindi and Odia with last date of receipt of Earnest Money Deposit on 15<sup>th</sup> October, 2014. However, the sale of assets was cancelled by the Petitioner, the SIDBI on 20<sup>th</sup> October, 2014, since bids received were only for purchase of the plot where the plant and machinery were embedded.

11. In the meantime, SIDBI received a letter dated 10<sup>th</sup> October, 2014 from the Deputy Commissioner of Commercial Taxes, Cuttack Circle advising SIDBI to pay an amount of Rs.2,47,86,225/-, as per the provisions of section 51 of the Orissa Value Added Tax, 2004 without any delay. As section 55 of Orissa Value Added Tax Act, 2004 provides for statutory first charge on the property of the dealer, therefore, SIDBI did not proceed with auction of the property under SARFAESI Act.

12. However, all steps to recover the debt amount failed due to pending statutory dues against the company and finally the petitioner filed Recovery Application before the Debts Recovery Tribunal, Cuttack, Odisha in the year 2016 being O.A. No.336 of 2016 and the same is pending. DRT vide order dated



July 03,2017 has directed to file evidence on affidavit for depositing original legal documents in DRT by October 09, 2017.

13. The Petitioner/Financial Creditor further submits that the default committed by the Corporate Debtor in respect of the aforesaid loans will be evident from the Statement of Accounts certified under the Banker's Book of Evidence, which is annexed with the application as **Annexure-8 at pages 541 to 574.**

14. Classification report of the Corporate Debtor issued by TransUnion CIBIL dated 15<sup>th</sup> September, 2017 also demonstrates that the account of the Corporate Debtor has become "Doubtful" and the aforesaid report has been made part of the Petition as Annexure 7 at pages 506 to 540.

15. Moreover, the Corporate Debtor has admitted the default committed by it in the following documents.

- i) Acknowledgement of debt for the period 2012 till 2014 being Annexure 9 at pages 575 to 585;
- ii) Acceptance of the OTS Scheme by the Corporate Debtor being Annexure 9 at pages 591 to 599 and
- iii) Cancellation of OTS Scheme by the Financial Creditor owing to the defaults committed by the Corporate Debtor being Annexure 9 at pages 602 and 603.

16. In spite of service, the Corporate Debtor has failed to appear before this Tribunal. Since the Corporate Debtor was avoiding service, this Tribunal vide its order dated 11<sup>th</sup> December, 2017 directed the Petitioner/ Financial Creditor to serve the notice of admission by Speed Post as well as by e-mail. At the prayer of the Petitioner, this Tribunal further directed the Petitioner to publish notice in newspapers. Pursuant to the said order, the petitioner has served a copy of the notice of admission by way of Speed Post and e-mail on 18<sup>th</sup> December, 2017.

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Newspaper publication has also been made in Nava Bharat and New Indian Express on 21<sup>st</sup> December, 2017. The petitioner has duly filed an affidavit of service to such effect. By an order dated 11<sup>th</sup> January, 2018, this Tribunal has accorded its satisfaction to service affected by the Financial Creditor.

17. Heard the argument of Ld. Advocates of the Petitioner and perused the case records.

18. The Petitioner/Financial Creditor has filed the following documents in support of his claim:

Affidavit in support of the Application; Authorisation A-1; Vakalatanama A-2; Dates of Disbursement being Annexures A-3; A copy of Recall Notice being Annexure A-4; copy of Certificate of Registration being Annexure A-5; A copy of the statement of accounts certified under Bankers' Book of Evidence Act added with the petition being Annexure A-8, Copies of Loan Agreements/DoH being Annexure A-7; Copy of Balance Confirmation Certificate being Annexure A-9; Copy of report from the CIBIL dated 15/09/2017 attached with the petition as Annexure-7.

19. The Petitioner/Financial Creditor has also annexed the statutory notice dated 21/5/2013 under Sec.13(2) of the SARFAESI Act, 2002 of the financial creditor annexed with the application as **Annexure-3 at pages 50 to 64** of the petition.

20. By the admission of the Corporate Debtor, it is undisputed that corporate debtor has taken various financial credit facilities from the applicant/financial creditor and has withdrawn money from the Financial Creditor. Annexures 7,8 and 9 clearly demonstrate that default has been committed by the Corporate Debtor and the aggregate value of the Statement of Accounts being Annexure 8 in respect of the different loans obtained by the Corporate Debtor clearly show that a sum of Rs.7,58,23,342/- is due from the Corporate Debtor. The Petitioner

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has also filed the SARFAESI/ Loan Recall notice dated 21<sup>st</sup> May, 2013 being Annexure 4 at pages 50 to 64 of the petition through which the entire principal amount along with interest and other outstanding dues was recalled in respect of the said loans. Further by the letter dated 7<sup>th</sup> May, 2014, the One Time Settlement Scheme granted to the Corporate Debtor at its request was cancelled due to the defaults committed by the Corporate Debtor and the entire outstanding dues under the credit facilities was claimed.

21. The Petitioner has also annexed a copy of the Credit Rating Agency wherein the record of default is available and status classification report of the corporate debtor issued by CIBIL dated 15/9/2017 shows the account status of the corporate debtor as Doubtful.

22. The petitioner has also submitted that he claim of the Applicant is not barred by limitation, as the last Balance Confirmation Certificate and Acknowledgement of Debt being made by the Corporate Debtor was received on 09/10/2014 and the same have given rise to fresh period of limitation for three years and the instant proceedings is being filed well within such extended period of limitation. Hon'ble NCLAT has held in the case of Neelkanth Township and Construction Pvt. Ltd. Vs. Urban Infrastructure Trustees Ltd. [CA (AT) (Insolvency) No.44 of 2017] as under:

*"if there is a debt which includes interest and there is the default of debt and having a continuous course of action, the argument that the claim of money by the respondent is barred by Limitation cannot be accepted."*

23. Given the law laid down by the Hon'ble NCLAT in the case mentioned above it is clear that the petition under the I & B Code cannot be dismissed on the ground of limitation.

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24. By the documents which are certified under Banker's Books of Evidence Act, filed by the Financial Creditor, it is proved that the corporate debtor has committed default of Rs.7,58,23,342/-. The Petitioner/financial creditor has also filed a copy of the Credit Rating Agency wherein the record of default is available and status classification report of the corporate debtor issued by CIBIL dated 15/09/2017 shows the account status of the corporate debtor as Doubtful. The corporate debtor has failed to make payment of the outstanding debt amount.

25. It reveals from the record that the application filed by the petitioner/financial creditor is in the proper format as prescribed in I & B Code and Adjudicating Authority Rules which is complete.

26. The financial creditor has proposed the name of Mr. Pinaki Sarcar, Company Secretary and Insolvency Professional, who is competent to work as IRP. No disciplinary proceeding is pending against him. The details of the I.R.P. have already been mentioned above.

27. Section 7(5) provides where the Adjudicating Authority is satisfied that-

- a default has occurred and the application is complete and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or
- default has not occurred or the application is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application.

28. On the above basis, it is thus apparent that the application filed by the Financial Creditor under Section 7 of the I & B Code deserves to be allowed, as a default has occurred and the application is complete and there is no disciplinary proceedings pending against the proposed resolution professional.

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### 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. Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.

The moratorium is declared for the purposes referred to in Section 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 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 possession of the corporate debtor.

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The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the 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 affect the date of admission 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. Pinaki Sarkar, an Insolvency Professional registered with the ICSI Insolvency Professionals Agency having Registration No. IBBI/IPA-002/IP-N00063/2016-17/10141 of 31/7, N.C. Chowdhury Road, Kolkata- 700 042, Mob. 9830011159, E-mail cs.p.sircar@gmail.com is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of 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.

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Registry is hereby directed under section 7(7) of the I.B. Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P.

Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on 12<sup>th</sup> March, 2018 for the filing of the progress report.

Sd/

(Jinani K.R.)  
Member (J)

Signed on this, the 15<sup>th</sup> day of February, 2018