

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

**CORAM : Shri Vijai Pratap Singh,
Hon'ble Member (J)**

C.P. (I.B.) No.361/KB/2017

In the matter of :

Insolvency and Bankruptcy Code, 2016;

And

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:

Electrosteel Steels Limited, a company registered under the Companies Act, 1956 with CIN: L27310JH2006PLC012663 and having its registered office at 801, Uma Shanti Apartments, Kanke Road, Ranchi- 834008 and Head Office at G K Tower, 19 Camac Street, Kolkata-700017;

State Bank of India, a body Corporate established under the State Bank of India Act, 1955 and having its corporate centre at State Bank Bhavan, Madam Cama Road, Mumbai- 400 021 and a branch office known as Corporate Accounts Group Branch among other places at 34, Jawaharlal Nehru Road, Kolkata- 700 071;

...**Applicant**

-Versus-

Electrosteel Steels Limited, a company registered under the Companies Act, 1956 with CIN: L27310JH2006PLC012663 and having its registered office at 801, Uma Shanti Apartments, Kanke Road, Ranchi- 834008 and Head Office at G K Tower, 19 Camac Street, Kolkata- 700017;

...**Respondent**

Counsels on Record:

- | | | |
|--|---|--------------------|
| 1. Mr. Rishav Banerjee, Advocate |] | |
| 2. Mr. Souvik Mazumdar, Advocate |] | For Petitioner/ |
| 3. Mr. Abhijit Das, Advocate |] | Financial Creditor |
| | | |
| 1. Mr. Sachchida Nand Pandey, Advocate |] | Respondent |

Date of Pronouncing the order : 21.07.2017

ORDER

The Financial Creditor, State Bank of India has filed 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 for initiation of Corporate Insolvency Resolution Process under the Code.

Brief facts of the case are that the Financial Creditor, State Bank of India is a Body Corporate established under the State Bank of India Act, 1955 and by Government Notification dated 22nd February, 2017, Associate Banks of SBI, i.e., State Bank of Hyderabad (S.B.H.), State Bank of Patiala (S.B.P.) State Bank of Travancore (S.B.T.) and State Bank of Mysore (S.B.M.) have merged into State Bank of India w.e.f. 1st April, 2017. Copies of the Gazettee Notification is annexed as **Annexure-1** of the petition. Permanent Account Number of the Financial Creditor is AAACS8577K and Shri S. P. Behera, acting as Assistant General manager with the Financial Creditor, State Bank of India is authorised to file this application, pursuant to Regulation 77 of the State Bank of India General Regulations, 1955 read with Gazette Notification dated 31st August, 2005 issued by the Order of the Executive Committee of the Central Board of SBI. The authorisation letter dated 31st August, 2005 is annexed as **Annexure-2**.

The Identification Number of the Corporate Debtor, Electrosteel Steels Limited is L27310JH2006PLC012663.

The Financial Creditor has stated that SBI (including the Associate Banks) had granted certain term loans and working capital facilities to the Corporate Debtor from time to time, which have been restructured on the terms and conditions set out under the Master Restructuring Agreement dated 21st December, 2013 entered into between the Corporate Debtor, SBI (including the Associate Banks) and certain other lenders (collectively, the "CDR Lenders"), as amended by a Supplemental Master Restructuring Agreement dated 24th

January, 2014 ("Supplemental MRA", together with the Original MRA, collectively referred to as the "MRA").

Pursuant to the terms of the Master Restructuring Agreement, (hereinafter will be referred to as the "MRA"), SBI including Associate Banks had also granted certain additional working capital credit facilities on the terms and conditions set out under the MRA and a Working Capital Consortium Agreement dated 6th September, 2014 as supplemented and amended by the First Supplemental Working Capital Consortium Agreement dated 24th November, 2014.

Copies of the Original MRA, the Supplemental MRA, the Principal WC Agreement and the Supplemental WC Agreement have been annexed as **Annexure 4 to 7**. Under the MRA, SBI's exposure to the Corporate Debtor is mentioned below:

- i) **Facility A1** (Restructured Term Loan), details of which are set out in Schedule IV of the Original MRA and Schedule II of the Supplemental MRA. The aggregate principal amount relating to SBI under Facility A1 is **Rs. 2415,10,00,000/-** (referred to in this Company Petition as "**SBI Facility 1**") and comprises:
 - Rs.1388,33,00,000 relating to SBI
 - Rs. 343,80,00,000 relating to State Bank of Hyderabad
 - Rs. 279,00,00,000 relating to State Bank of Patiala
 - Rs. 229,97,00,000 relating to State Bank of Travancore and
 - Rs. 174,00,00,000 relating to State Bank of Mysore
- ii) **Facility A2** (Funded Interest Term Loan), details of which are set out in Schedule IV of the Original MRA and Schedule II of the Supplemental MRA. The aggregate principal amount relating to SBI under **Facility A2** is **Rs. 584,46,00,000/-** (referred to in this Company Petition as "**SBI Facility 2**") and comprises:
 - Rs.339,57,00,000 relating to SBI
 - Rs. 82,48,00,000 relating to State Bank of Hyderabad

- Rs. 66,64,00,000 relating to State Bank of Patiala
- Rs. 54,69,00,000 relating to State Bank of Travancore and
- Rs. 41,08,00,000 relating to State Bank of Mysore

iii) **Facility B (Additional Term Loan)**, details of which are set out in Schedule IV of the Original MRA and Schedule II of the Supplemental MRA. The aggregate principal amount relating to SBI under Facility B is **Rs.490,64,00,000/-** (referred to in this Company Petition as "**SBI Facility 3**") and comprises:

- Rs.309,09,00,000 relating to SBI
- Rs. 64,41,00,000 relating to State Bank of Hyderabad
- Rs. 50,06,00,000 relating to State Bank of Patiala
- Rs. 39,46,00,000 relating to State Bank of Travancore and
- Rs. 27,62,00,000 relating to State Bank of Mysore

iv) **Facility C(Working Capital Credit Facilities)**, details of which are set out in Working Capital Consortium Agreement and modified and supplemented by the Supplemental WC Agreement, in respect of which the principal amount relating to SBI is **Rs. 695,00,00,000/-** (referred to in this Company Petition as "**SBI Facility 4**") and comprises:

- Rs.530,00,00,000 relating to SBI
- Rs. 64,00,00,000 relating to State Bank of Hyderabad
- Rs. 48,00,00,000 relating to State Bank of Patiala
- Rs. 28,00,00,000 relating to State Bank of Travancore and
- Rs. 25,00,00,000 relating to State Bank of Mysore

SBI Facility 1, SBI Facility 2, SBI Facility 3 and SBI Facility 4 shall hereinafter be collectively referred to as "**SBI Facilities**".

The Petitioner has stated that the defaulted amount including the principal and interest amount (under the SBI Facility 1 as on 31st May, 2017 is Rs.923,75,00,000/- which comprises

- Rs.530,41,00,000 relating to SBI

- Rs.131,54,00,000 relating to State Bank of Hyderabad
- Rs.107,12,00,000 relating to State Bank of Patiala
- Rs. 88,05,00,000 relating to State Bank of Travancore and
- Rs. 66,63,00,000 relating to State Bank of Mysore

The initial date of default by the Corporate Defaulter with respect of SBI Facility 1 is 30th April, 2015.

In respect of SBI Facility 2, the defaulted amount (including principal and interest) under the SBI Facility 2 as on 31st May, 2017 is Rs.262,15,00,000/-. The initial date of default by the Corporate Defaulter with respect of SBI Facility 2 is 30th April, 2015.

In respect of SBI Facility 3, the defaulted amount (including the principal and interest) under the SBI Facility 3 as on 31.05.2017 is Rs.218,24,00,000/-. The initial date of default by the Corporate Defaulter with respect of SBI Facility 3 is 30th April, 2015.

The computation relating to all the defaulted amounts and days of default in respect of SBI Facilities, along with the statement of accounts relating to each SBI Facility has been annexed as **Annexure 9**.

The petitioner has also given the details of security Pledge Agreement in favour of Financial Creditor in Part – IV of the petition. The petitioner has further stated that each SBI Facility including the principal amount, interest and all amounts are guaranteed by Personal Guarantees issued by Mr. Umang Kejriwal, Guarantor No.1 and Ms. Radha Kinkari Kejriwal as Guarantor No.2.

The petitioner has also filed the Guarantee Agreement, which are **Annexures 26 to 29** along with the registration of charges issued by the Registrar of Companies, which is **Annexure 30**. The petitioner has further stated that the estimated value of the aforementioned securities, except the Personal Guarantees, is approximately Rs.8894.76 crores. The petitioner has further mentioned the details of records of default as available with the credit

information companies, CRILC and CIBIL have been annexed as **Annexure 31 and 32.**

The petitioner has further filed the copies of entries in the bankers' book maintained by SBI relating to SBI Facilities in accordance with the Bankers' Books Evidence Act, 1891 have been annexed as **Annexure 33.** The petitioner has further filed statement of accounts relating to SBI Facilities, which is **Annexure 9.**

The petitioner has filed other documents to provide the existence of financial debt, the amount and date of default which contains the following:

- (i) the copy of letter dated 06.06.2017 issued by the Corporate Debtor, Electrosteel Steels Ltd. acknowledging the outstanding balance as on 31st March, 2017,
- (ii) the copy of statement of audited financial results, financial statements of Corporate Debtor for the Financial Year ending 31st March, 2017 as filed by the Corporate Debtor with BSE Limited and National Stock Exchange of India Ltd.
- (iii) The letter issued by the Reserve Bank of India dated 15th June, 2017 directing the Financial Creditor to initiate proceedings under the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor on account of defaults committed by it.

These documents are annexed with the petition as **Annexures 34 to 36** of the petition.

The petitioner has further mentioned that Mr. Dhaivat Anjaria, having registration number IBBI/IPA-001/IP-P00088/2017-2018/10184, is fully qualified and permitted to act as an Insolvency Professional in accordance with the Insolvency and Bankruptcy Code, 2016 and the associated rules and regulations.

The petition has been verified by Shri S.P.Behera, Assistant General Manager, State Bank of India, who is authorised to sign and verify this petition on behalf of the State Bank of India, Financial Creditor.

On the basis of documents filed by the Petitioner/Financial Creditor, it appears that the Corporate Debtor has committed default of Rs.923.75 crores from 30th April, 2015 till 31st May, 2017. There is a total delay of 762 days upto 31st May, 2017 in making payment of Rs.923.75 crores which includes principal along with interest.

It also appears from the record that regarding the State Bank of India Facility No.2, Corporate Debtor has committed default in making payment of Rs.116.72 crores principal amount, interest of Rs.145.43 crores and total defaulted amount is Rs.262.15 crores and default has started from 30th April, 2015 and total period of default was 762 days.

It also appears regarding State Bank of India Facility No.3, Corporate Debtor has committed default in making payment of principal sum of Rs.90.44 crores and interest amount of Rs.127.80 crores and total defaulted amount is Rs.218.25 crores. The first default was committed by the Corporate Debtor on 30th April, 2015 and upto 31st May, 2017, there was total 762 days default. The total amount due including the interest amount up to 31st May, 2017 is Rs.1404.14 crores. The details of defaults regarding all the Facilities is annexed as Annexure 9 (page nos.243 and 244) of the petition. The petitioner has also filed the bank statement relating to all the loan accounts which is from page nos. 245 to 398 of the petition.

The petitioner has also filed the Certificate under section 2A of the Bankers' Book of Evidence Act, 1891, which is Annexure 33 (page nos. 1616 and 1617) wherein the petitioner has certified all the Account Numbers of the Corporate Debtor for which the petitioner has filed the copy of the Bank statement. These bank statements are print out of original entries of Corporate Debtor accounts in the Bank Ledger. The petitioner has also filed the balance confirmation letter issued by the Corporate Debtor, which is Annexure 34 (page nos. 1618 to 1620). This shows the details in respect of all loans, principal amount, details of account numbers and the due amount along with the interest upto 31st March, 2017 in different accounts in State Bank of India.

On the basis of balance confirmation letter issued by the Corporate Debtor, it appears that the Corporate Debtor has accepted that the State Bank of India's dues including principal and interest as on 31.03.2017 was Rs.2449,83,00,026/- regarding the Term Loan Account. It also appears from the record that the loan advance in WC Facility, total outstanding amount as on 31.03.2017 was Rs.509,24,51,796/-. Similarly, State Bank of Travancore, which was an Associate Bank of SBI and which has been merged in State Bank of India, total Term Loan as on 31.03.2017 including interest was Rs.387,86,33,838/- and WC Facility, outstanding dues on 31.03.2017 was Rs.10,52,37,688/-.

Regarding State Bank of Hyderabad, term loan outstanding dues upto 31st March, 2017 was Rs.590,41,21,475/- and under WC Facility, outstanding dues as on 31.03.2017 was Rs.11,48,95,501/-

Outstanding dues of State Bank of Patiala, term loan account as on 31.03.2017 was Rs.477,94,96,050/-. Total term loan regarding State Bank of Mysore as on 31.03.2017 was Rs.289,88,08,705/-.

The Corporate Debtor has issued balance confirmation letter regarding all the above-mentioned accounts, which is Annexure 34.

The petitioner has also filed the Independent Auditor's Report on financial results of the Corporate Debtor, pursuant to Regulation 33 of SEBI, wherein it is mentioned that the Corporate Debtor company incurred a net loss of Rs.146348 lakhs during the year ended 31.03.2017 and as of that date, the company's current liability exceeded its current assets by Rs.555232.65 lakhs. Further, the Company's net worth has also been substantially eroded. Since full compliance of the sanctioned CDR package could not be met with and the lenders have invoked Strategic Debt Restructuring, pursuant to RBI circular dated 08.06.2015 and 24.09.2015.

In terms of directions issued by the NCLAT in case of Innoventive Industries Ltd., notice was issued and served on the Corporate Debtor. The

Financial Creditor has filed affidavit regarding service of notice on the Corporate Debtor with the postal receipt. It is also important to mention that on the date of hearing, Vakalatnama was filed by the Corporate Debtor and he made a submission that he is not opposing the petition. On the basis of documents including statement of accounts of different types of loan given to the Corporate Debtor by the State Bank of India and its Associate Banks, which have been merged into the State Bank of India and, on the basis of balance confirmation letter and details of default, it appears that the Corporate Debtor has committed default of 762 days of delay upto 31st March, 2017 and sum of Rs.1405.14 crores (principal sum and interest amount) are due on the Corporate Debtor..

The petitioner has also filed Credit Information Report of CRILC and CIBIL at Annexures 31 and 32, wherein default regarding the different loan have been recorded. It also appears from the record that the total principal amount regarding the Facility No.1 was Rs.2415,10,00,000/-, regarding Facility No.2, outstanding amount was Rs.584,46,00,000/-, regarding Facility No.3, total outstanding amount was Rs.490,64,00,000/- and regarding Working Capital Credit Facility (Facility No.4), principal amount was Rs.695,00,00,000/-

The petitioner has also proposed the name of Mr. Dhaivat Anjaria, as Insolvency Professional, whose particulars are given below:

Name : Mr. Dhaivat Anjaria
Address : PwC House, 252, Veer Savarkar Road,
Shivaji Park, Dadar, Mumbai- 400028
Reg. No. : IBBI/IPA-001/IP-P00088/2017-18/10184

Mr. Dhaivat Anjaria has submitted his consent in Form-2 under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

On the above basis, it is clear that the Corporate Debtor has committed default and sum of Rs.1405.14 crores are due on him. Therefore, the Financial

Creditor has filed an application under section 7 of the Insolvency & Bankruptcy Code, 2016 for initiation of Corporate Resolution Process, which deserves to be allowed.

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 and declare a moratorium and public announcement as stated in section 13 of IBC 2016.

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

Moratorium under section 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 Securitisation 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.*
- (2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

(3) 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.

(4) 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 section 31 or passes an order for liquidation of corporate debtor under section 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 section 15 of the IBC, 2016 may be made.

Mr. Dhaivat Anjaria, PwC House, 252, Veer Savarkar Road, Shivaji Park, Dadar, Mumbai- 400028, Registration No. is IBBI/IPA-001/IP-P00088/2017-18/10184 is appointed as Interim Resolution Professional for ascertaining the particulars of creditors, convening a Committee of Creditors for evolving a resolution plan and submit the resolution passed by the Committee of Creditors.

Let the copy of the order be sent to the Applicant / Financial Creditor as well as Corporate Debtor and I.R.P.

List the matter on 2/8/2017.

Sd/-
(Vijai Pratap Singh)
Member (J)

Signed on this, the 21st day of July, 2017