

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

**CORAM : Shri V. P. Singh, Hon'ble Member (J)**  
**&**  
**Shri K.R. Jinan, Hon'ble Member(J)**

**C.P. (I.B.) No.387/KB/2017**

**In the matter of :**

The Insolvency and Bankruptcy Code, 2016;

-And-

**In the matter of :**

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, State Bank Bhavan, Madame Cama Road,  
Nariman Point, Mumbai, Maharashtra- 400021, Branch at  
Corporate Accounts Group Branch, Sribriddhi Bhavan, 2<sup>nd</sup> floor,  
34, Jawaharlal Nehru Road, Kolkata, West Bengal- 700 071;

...**Applicant**

-And-

**In the matter of:**

Adhunik Alloys & Power Limited, a company incorporated under the  
provisions of Companies Act, 1956 having its registered office  
at Link Road, Cuttack- 753012, site office at Arjeepalli, via  
Chatrapur, Ganjam- 761 020;

...**Respondent**

**Counsels on Record:**

- |                                    |   |                             |
|------------------------------------|---|-----------------------------|
| 1. Mrs. Manju Bhuteria, Advocate   | ] |                             |
| 2. Mr. Niloy Sengupta, Advocate    | ] |                             |
| 3. Mr. Siddhartha Sharma, Advocate | ] | For the Corporate Debtor    |
| 4. Ms. Namrata Basu, Advocate      | ] |                             |
|                                    |   |                             |
| 1. Ms. Suhani Dwivedi, Advocate    | ] | For the Financial Creditor/ |
| 2. Ms. Prapa Ganguly, Advocate     | ] | Petitioner                  |

Date of Pronouncing the order : .08.2017



**Authored by Shri K.R.Jinan, Hon'ble Member(J)**

**ORDER**

The applicant, State Bank of India has filed this petition under section 7 of Insolvency & Bankruptcy Code (hereinafter be referred to as the I.B. Code), 2016 for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, M/s. Adhunik Alloys & Power Limited, CIN : U27104WB2003PLC096616.

Brief facts are mentioned below.

The petitioner has stated that a loan of Rs.3,686,100,000/- was granted to the Corporate Debtor. Complete details of the loan sanctioned in different accounts and date of disbursement of loan is given in Annexure 'D' at page 100 of the petition. The petitioner has stated that a total outstanding exposure (with the principal amounts, accrued interest and penal interest) as on 30<sup>th</sup> June, 2017 was Rs.3,299,277,414.71. The details of outstanding dues along with date of default committed by the Corporate Debtor is also given in Annexure 'D'. The petitioner has further stated that the Corporate Debtor has committed total default of Rs.302,42,86,418.96 paise up to 30<sup>th</sup> June, 2017 and total outstanding amount on 30<sup>th</sup> June, 2017 along with the accrued interest comes to Rs.329,92,77,414.71. Details of total outstanding amount and accrued interest are mentioned in Annexure 'D'.

The petitioner in support of its claim has also filed copy of Bank statement certified under a Banker's Book of Evidence Act in Annexure 'E' (page 101 to 181); Common Loan Agreement dated 23<sup>rd</sup> September, 2011 in Annexure 'F' (page nos. 182 to 258); Agreement of Corporate Loan dated 20<sup>th</sup> February, 2014 in Annexure 'G' (page 259 to 280); Agreement of Corporate Loan dated 24<sup>th</sup> September, 2015 in Annexure 'H' (page 281 to 306); Master Joint Lenders Forum Agreement dated 3<sup>rd</sup> March, 2015 in Annexure 'I' (page 307 to 323); Inter-creditor Agreement dated 9<sup>th</sup> May, 2016 in Annexure 'J' (page 324 to 352); Working Capital Consortium Agreement dated 9<sup>th</sup> April,



2013 in Annexure 'K' (page 353 to 385); 1<sup>st</sup> Supplemental Working Capital Consortium Agreement dated 26<sup>th</sup> February, 2015 in Annexure 'I' (page 386 to 416); Inter-se Agreement dated 26<sup>th</sup> February, 2015 in Annexure 'M' (page 417 to 426); Agreement of Loan for Overall Limit dated 30<sup>th</sup> November, 2015 in Annexure 'N' (page 427 to 460) to prove the fact of different type of loans disbursed to the Corporate Debtor along with outstanding dues as on 30<sup>th</sup> June, 2017.

The petitioner has also filed the balance confirmation letter dated 31<sup>st</sup> March, 2017 which has been annexed with the petition as Annexure 'EE' (page 571 to 572) which shows that the Corporate Debtor, M/s. Adhunik Alloys & Power Ltd. has issued the balance confirmation letter in favour of the Financial Creditor, State Bank of India, acknowledging the outstanding balance in different accounts as on 31<sup>st</sup> March, 2017.

The Applicant/Financial Creditor has filed this application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor in Form-I of Insolvency & Bankruptcy Code (Application to Adjudicating Rules), 2016 (hereinafter be referred to as the Adjudicating Authority Rules). The petitioner has also filed an affidavit certifying the contents of the petition which is on page 56 and 57 of the petition.

The petitioner has also filed the Gazette Notification dated 22.02.2017 which is Annexure 'A' (page nos. 58 to 81) of the petition which shows that by Government of India Notification dated 22.02.2017, the State Bank of Bikaner & Jaipur has been merged into State Bank of India.

The petitioner has also filed the Authorisation Letter dated 16<sup>th</sup> June, 2017, which is Annexure 'B' to the petition, which shows that the Chairman, State Bank of India authorised all officers on whom sanctioning powers have been conferred by the Notification dated 27<sup>th</sup> March, 1987 issued by the State Bank of India Central Office for initiation of Corporate Insolvency Resolution Process before National Company Law Tribunal on behalf of State Bank of India. The petitioner has also filed the copy of Government Gazette Notification



dated 2<sup>nd</sup> May, 1987 whereby bank has given the signatory powers to its officers, which is Annexure 'B' (page 82 to 99) attached to the petition.

The petitioner has also filed the CIBIL Report dated 29<sup>th</sup> June, 2017, which has been attached as Annexure 'DD' (page 562 to 570) of the petition which shows that the Corporate Debtor has committed default in making payment of the outstanding dues. So different accounts of the Corporate Debtor have been classified as sub-standard.

On the basis of documents filed by the petitioner and going through all the papers, it is clear that the Corporate Debtor has committed default in making payment of Rs.329,92,77,414.71 paise.

The applicant has also proposed the name of Shri Sumit Binani as Interim Resolution Professional in Form 2 and has certified that he is fully qualified and permitted to act as an Insolvency Resolution Professional. Shri Sumit Binani, the proposed Resolution Professional has given consent in Form 2, which has been annexed as Annexure 'HH' (page 586 to 589) of the petition.

On the basis of documents submitted by the petitioner, it appears that the Corporate Debtor, M/s. Adhunik Alloys & Power Limited has committed default in making payment of Rs.329,92,77,414/- and the application filed by the petitioner is in proper format as prescribed under Adjudicating Authority Rules. The applicant has proposed the name of Shri Sumit Binani as Interim Resolution Professional, who has also given his consent in Form 2 and he has given declaration that no disciplinary proceeding is pending against him. It also appears from the record that after filing the petition, the petitioner has served the copy of the petition through Speed Post and the petitioner has filed affidavit of service, which shows that the application submitted in NCLT was sent to the Corporate Debtor. In compliance with the law laid down by the Hon'ble NCLAT in Innoventive Industries Ltd., notice issued by the Registrar was again served on the Corporate Debtor and the petitioner has filed the Affidavit of Service to that effect.



On the above basis, it is clear that the petitioner has filed complete application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, M/s. Adhunik Alloys & Power Limited and on the basis of supporting documents, it is also clear that the Corporate Debtor has committed a default of Rs. 329,92,77,414/- to the Applicant, i.e. State Bank of India. It also appears from the record that Shri Partha Sen, A.G.M. & Relationship Manager of State Bank of India was fully authorised to initiate Corporate Resolution Process against the Corporate Debtor. It is also pertinent to mention that after receiving the notice, Vakalatnama has been filed on behalf of the Corporate Debtor along with the copy of Board Resolution of the Corporate Debtor but no objection has been filed by the Corporate Debtor. It is also clear that the Corporate Debtor's account has been declared as Sub-standard in CIBIL Report dated 29<sup>th</sup> June, 2017. In the circumstances, the application filed by the petitioner deserves to be admitted.

#### ORDER

It is thus clear that the application filed by the Applicant, i.e. State Bank of India under section 7 of the Insolvency & Bankruptcy Code, 2016 against the Corporate Debtor is complete in all respects. Existence of default stands proved from the records above-referred. So also Annexure HH shows that no disciplinary proceedings is pending against the proposed Resolution Professional, Shri Sumit Binani. Therefore, the petition for initiation of Corporate Insolvency Process under section 7 of the Insolvency & Bankruptcy Code is admitted.

Shri Sumit Binani is appointed as Interim Resolution Professional.

Moratorium under section 14 of Insolvency & Bankruptcy Code shall apply.

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

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

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

Signed on this, the 23<sup>rd</sup> day of August, 2017