

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

**CP (IB) No.575/KB/2017**

In the matter of:

An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

And

In the matter of:

Punjab National Bank .....Applicant/Financial Creditor

-Versus-

Vasudev Ispat Pvt. Ltd. ....Respondent/Corporate Debtor

**Order Delivered on 15<sup>th</sup> February 2018**

**Coram:**

**Jinan K.R., Member (J)**

For the Applicant/Financial Creditor : 1. Ms. Aparajita Rao, Advocate  
2. Ms. Pallavi Gandhi, Advocate

For the Respondent/Corporate Debtor : 1. Mr. Avik Banerjee, Advocate  
2. Mr. Rakesh Sankar, Advocate

**ORDER**

**Per Jinan K.R., Member (J)**

Petitioner has filed this application under Sec.7 of the Insolvency and Bankruptcy Code, 2016 (from now on referred to I & B Code, 2016) for initiating corporate insolvency process read with Rule 4 (1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against the respondent/ corporate debtor, Vasudev Ispat Pvt. Ltd. Petitioner has stated that corporate

debtor has committed default in making payment of Rs.19.03 crore as on 31/7/2017.

2. The brief facts of the case, as stated in the application, are that Punjab National Bank is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its Nachan Road Branch at City Centre, N-36, Shahid Khudiram Sarani, P.S. Durgapur, Durgapur-713 216. The Identification number of the applicant/financial creditor is AAACP0165G. Mr. Sadhan Chandra Mondal, Chief Manager has filed this application on behalf of the applicant/financial creditor on the basis of General Power of Attorney dated 8/11/2001 annexed with the application and marked as Annexure A-1.

3. The Corporate Debtor, Vasudeb Ispat Pvt. Ltd., Identification No. is U27109WB2003PTC096154.

4. The name and registration number of the proposed interim resolution professional is Mr. Pradeep Kumar Goenka; Registration No. is IRBI/IPA-002/IPN00294/2017-2018/10851 of Bajrang Kunj, Room No.412 and 413, 2B, Grant Lane, 4<sup>th</sup> Floor, Kolkata – 700 012.

5. The case of the applicant is that the respondent/corporate debtor is engaged in the business of production and trading of iron and steel approached the applicant bank for sanction of credit limits for setting up a re-rolling mill for production of TMT Bars. Relying on the representations of the respondent company, the applicant sanctioned as follows: -

- (i) Term Loan for Rs.4,90,00,000/- on 12/3/2009;
- (ii) Term Loan for Rs.2,83,00,000/- on 21/3/2011 and
- (iii) Cash Credit for Rs.2,40,00,000/- on 21/3/2011.

In order to avail the credit facility, the respondent executed the following documents in favour of the applicant:

Sd/



a) Deed of Hypothecation for Rs.4,90,00,000/- dated 1/8/2009 by way of first pari passu charge over all its plant and machinery and other assets.

b) Hypothecation of assets to secure term loan.


6. Applicant has annexed a copy of the statement of account on and from 29/12/2011 to 26/7/2012 annexed with the application and marked as Annexure

A 5. Particulars of amount due as on 2/7/2012 are as under: -

Cash Credit	Rs.24000000
Term Loan	Rs.79930269
Total	Rs.103930269

Particulars of interest up to 8/3/2015 are as under: -

Cash Credit	Rs.9816821
Term Loan	Rs.34314711
Grand Total	Rs.148061801

7. It reveals from the record that  the applicant/financial creditor had filed the application before the Debts Recovery Tribunal - II, Kolkata being case number OA/92/2015. A copy of the OA is annexed with the application and marked as Annexure A 8.

8. Applicant/financial creditor has also annexed with the application report of CIBIL marked as Annexure A 10 wherefrom it appears that the account of the respondent/corporate debtor is doubtful.

9. Applicant/financial creditor has annexed with the application copy of the ledger account certified under Banker's Books of Evidence Act as Annexure A 5.

10. Applicant/financial creditor had sent Demand Notice dated 6/2/2017 demanding the total outstanding dues annexed with the application at page 546 to 547.

11. Respondent/corporate debtor filed objection and submitted that the registered office of the applicant mentioned in Part I is wrong and actual address is 159, Rabindra Sarani, Room No.4D, 4<sup>th</sup> Floor, Kolkata - 700 007 which will be

evident from the master data downloaded from the Registrar of Companies website. Respondent further submitted that the application has not been filed in proper form, as such the application filed is not maintainable.

12. The respondent further submitted that the applicant has suppressed material facts that the respondent has filed SARFAESI proceedings before the Debts Recovery Tribunal and the proceedings is still pending adjudication. In view of such suppression of material facts amounting to fraud no relief should be granted to the applicant.

13. The respondent further submitted that the application filed by Mr. Sadhan Chandra Mondal on the basis of power of attorney executed on 8/11/2001 whereas the application is filed in 2017. There is no recent power of attorney or Board resolution authorizing a person to present the application on behalf of the applicant/financial creditor. As there being no power of attorney, the application should be dismissed. The performance of the respondent company is satisfactory and the respondent company cleared all its debts to the applicant bank. The respondent has also submitted a revised proposal.

14. The respondent further submitted that the accounts submitted by the applicant is not certified as per Bankers' Book Evidence Act, 1951 and in view of non-compliance of Sec.4 the said application be dismissed.

15. Respondent further submitted that the application is false, frivolous, mala fide and vexatious proceedings filed with ulterior motive only to harass and prejudice the rights of the respondent/corporate debtor.

16. Applicant/financial creditor has also filed rejoinder wherein it has reiterated the said facts what has been narrated in its application for corporate insolvency process.

17. Heard arguments of Ld. Counsel for the applicant/financial creditor as well as Ld. Counsel for the respondent/corporate debtor. Perused the records.



18. In spite of notice, the corporate debtor has failed to make payment and thereby committed default. Petitioner has filed this application in the proper format as prescribed in I & B Code and Adjudicating Authority Rules which is complete.

19. The corporate debtor mainly raised a contention in its reply challenging the legality of the proceedings initiated by the applicant/financial creditor on behalf of the consortium under SARFAESI Act, before the Debts Recovery Tribunal (DRT) and attempted to stress an argument that entire SARFAESI action is illegal. The documents annexed to the reply are not at all helpful to prove that the proceedings initiated by the applicant/financial creditor in the case in hand is illegal or not maintainable. So also, no supporting documents produced to prove its contention that corporate debtor's liability was cleared by the guarantors as alleged in the reply. The above said facts proves that the attempt of the respondent/corporate debtor is an attempt to evade payment which is found liable to pay to the applicant/financial creditors. Corporate debtor's attempt that this petition is not maintainable because of suppression facts regarding proceedings pending before DRT is also found unsuccessful. Despite demands, reminders made by the financial creditor the corporate debtor has failed to repay the debt outstanding in its name.

20. One another contention is that the power of attorney being executed in the year 2001, it does not give any special power for the petitioner to file the petition before this adjudicating authority, is found devoid of any merit. The petitioner, who signed and verified the petition is one Mr. Sadhan Chandra Mondal, Branch head and Chief Manager of the applicant/financial creditor. He has produced Letter of Authority dated 11.10.2017 in addition to the copy of Power of Attorney. So, the petitioner succeeds in proving special authority to file a petition of this nature. The above said objection of the respondent is, therefore, found not sustainable.

21. The next contention that because the applicant/financial creditor has already initiated proceedings before DRT under SARFAESI Act, a proceedings under section 7 of the I & B Code is not maintainable is also found not sustainable. Initiation of proceedings under SARFAESI Act is not at all bar initiation of insolvency proceedings under I & B Code, in view of overriding effect given to section 238 of the Code. Section 238 of the Code overdrive other laws and hence the Code takes precedence over the DRT Act and SARFAESI Act. Therefore, the above said objection also is found devoid of any merit.

22. As held in *Innoventive Industries Ltd. v. ICICI Bank* [2017] 139 CLA 335 by the Hon'ble NCLAT, this adjudicating authority is satisfied that there is occurrence of default and the application filed is complete the application filed under section 7 of the I & B Code is liable to be admitted. Here, in this case, none of the objections of the corporate debtor is found sustainable under law.

23. The financial creditors have also proposed the name of Interim Resolution Professional, Mr. Pradeep Kumar Goenka, who is competent to work as IRP. No disciplinary proceeding is pending against him. Therefore, an application filed by the applicant/financial creditor under Sec 7 of I & B Code deserves to be allowed.

### **ORDER**

The petition filed by the applicant/financial creditor under Sec.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 Sec.13 of the I & B Code, 2016.

The 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 sub-section (1) of Sec.15 of the 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.

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. Pradeep Kumar Goenka; Registration No. is IRBI/IPA-002/IPN00294/2017-2018/10851 of Bajrang Kunj, Room No.412 and 413, 2B, Grant Lane, 4<sup>th</sup> Floor, Kolkata – 700 012 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.

24. Let the certified copy of the order be issued upon compliance with requisite formalities and a copy of the order may also be sent to the Applicant/Financial Creditor as well as Corporate Debtor and IRP through email.

25. List the matter on 13<sup>th</sup> March 2018 for filing of the progress report.

  
**Jinan K.R.**  
**Member (J)**

Signed on 15<sup>th</sup> February 2018