

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
C.P. NO.727/I & BP/NCLT/MAH/2017**

Coram: B.S.V. Prakash Kumar, Member (Judicial) &
V. Nallasenapathy, Member (Technical)

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).

1. Union Bank of India,
66/80, Mumbai Samachar Marg,
Fort, Mumbai. ...Financial Creditor/Applicant
2. Paramshakti Steels Ltd.,
304, Ashirwad Building,
Ahmedabad Street,
Carnac Bunder,
Masjid East,
Mumbai 400 009. Corporate Debtor/Respondent
- Counsel for the Financial Creditor: Mr. Nirman Sharma a/w
Ms. Ishita Advani i/b
Desai & Diwanji, Advocates
- Counsel for the Corporate Debtor: Mr. Jay Choksi

ORDER

(Pronounced on 03.07.2017)

Per: V. Nallasenapathy, Member (Technical)

Union Bank of India, the Financial Creditor herein, filed this Company Petition against the Corporate Debtor, Paramshakti Steels Ltd., under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, on the ground that the Corporate Debtor defaulted on 26.07.2016 in repaying a sum of

Rs.35,88,82,988/- plus interest amounting to Rs.4,55,68,672/- from 26.07.2016 to 31.03.2017.

2. The Financial Creditor vide letter dated 14.07.2014 addressed to the Corporate Debtor sanctioned Rs.50,00,00,000/- as Letter of Credit facility and Rs.25,00,00,000/- as Cash Credit facility, for a period of 12 months under consortium arrangement, on the security of pari passu charge on hypothecation of entire stock on book debts. The said credit facilities are collaterally secured by Land and Building, plant & machinery and FDR/Cash collateral belonging to the Corporate Debtor valued at Rs.113.53 crores and also on the personal guarantee of Mr. Vinod Garg, Director of the Corporate Debtor. Subsequently, on the request of the Corporate Debtor the Financial Creditor by a modification letter dated 11.08.2014 modified certain conditions of earlier sanction and the same was accepted by the Corporate Debtor. The Board of Directors of the Corporate Debtor in its meeting held on 16.09.2014 discussed about the above facilities sanctioned by the financial Creditor and resolved to borrow, provide securities as required by the Bank by affixing common seal of the Company in all the security documents as required in the presence of Mr. Vinod Garg, Director of the Company.

3. Accordingly, the Corporate Debtor executed the following security documents in favour of the Financial Creditor on 17.09.2014:

- a. Composite Hypothecation Deed.
- b. Promissory Notes, one for Rs. 25,00,000/- and another for Rs. 50,00,000/-.
- c. Letter of Personal Guarantee for Rs. 75,00,000/- executed by Mr. Vinod Garg, Director of the Company.
- d. Letter of Lien (deposit).

- e. Agreement on rate of interest, wherein it was agreed and understood that applicable rate of interest will be calculated as Bank's base rate plus the spread.

4. The Corporate Debtor by a letter dated 12.01.2016 addressed to the Financial Creditor referring the ad-hoc limit of Rs. 50,00,00,000/- of Letter of Credit stated that they are expecting N.O.C. and pari passu charge from the existing bankers within a period of 30 days and the Company will execute the pending personal guarantee documents by Mr. Sumit Ahuja and Mr. Pankaj Ranga, who are the Promoter Directors. The Corporate Debtor addressed another letter on 19.01.2016 agreeing to give upfront L.C. margin by way of FDR for Rs. 5,00,00,000/- and undertakes to bring NOC from the existing bankers within a period of 30 days failing which they will pay additional amount of Rs. 5,00,00,000/- by way of FDR as additional LC margin. The Board of the Corporate Debtor company on 19.01.2016 resolved to avail the ad-hoc limit of Rs. 50,00,00,000/-. On 21.01.2016 the Corporate Debtor executed a Promissory Note for Rs. 50,00,00,000/-, Letter of Lien (deposits) and two directors of the company executed a personal guarantee for Rs. 50,00,00,000/-. The Corporate Debtor on 25.01.2016 made an application to the Financial Creditor requesting to issue a Letter of Credit for Rs. 40,00,00,000/- along with the requisite application form for inland Letter of Credit. The Financial Creditor opened LC No.63040ILC000216, dated 27.1.2016 for Rs.40 crores in favour of M/s. Ratnesh Ispat Securities Pvt. Ltd. who is the seller of goods to the Corporate Debtor, and the LC period is 90 days which is due on 27.4.2016. On 9.5.2016, the Corporate Debtor requested for the extension of the above said LC for 90 days., wherein he has assured the Bank that the LC payment on next due date i.e. 26.07.2016 will be done on time. Accordingly, the Financial Creditor made payment on 26.07.2016 to State Bank of India, Mid-Corporate Branch, Mumbai for

the benefit of M/s. Ratnesh Ispat Services Ltd. on the basis of two Bills of Exchange dated 27.04.2016 drawn on the Corporate Debtor and a sum of Rs. 19,99,49,772/- and another sum of Rs. 19,99,96,080/- was debited to Over Draft Inland LC Bills Loan account of the Corporate Debtor on 26.07.2016. Subsequently, on 27.07.2016 the Financial Creditor informed the Corporate Debtor about the devolvement of LC and requested to make a payment of Rs. 35,88,82,988/- after adjusting the LC margin provided by the Corporate Debtor and also stated that the due date and devolvement of LC date is 26.07.2016. Thus, it is very clear that there is a debt which is on default from 26.07.2016. Even after several reminders the Corporate Debtor has not settled the dues.

5. The Counsel for the Corporate Debtor vehemently argued the Petition canvassing the following points:

a. The Power of Attorney executed by the Bank in the year 2003 in favour of Mr. Dinesh Kumar Gupta, who filed this application, does not contain the Registration number of Notary and the serial number of document as required under Notaries Act,1952 and hence the Power of Attorney cannot be considered as valid document. In support of his contention, he has quoted 3 decisions (i) V.R. Kamat vs. Divisional Controller, Karnataka State Road Transport Corpn. & Others (AIR 1997 Kant 275), (ii) KBC Pictures vs. A.R. Murgadoss & Ors. (2009 (111) Bom LR 598), (iii) H.K. Taneja & Ors. Vs. Bipin Ganatra (2009 (3) Bom CR 363). In these cases cited, the facts are totally different and it cannot be applied for the case on hand. In the Kamat case (supra) the Petition was filed by one person whereas the Vakalat and the Affidavit verifying the writ petition was signed by another person, in KBC Pictures case (supra) the defendant denied his signature on the agreement and the receipt and so the allegation is forgery and fabrication, in H.K. Taneja case (supra) the applicant filed an application under order 40 Rule 1(2) of CPC, saying that he was in

possession of the suit property and he should not be removed from the property , on the basis of an unregistered Leave and Licence agreement which was held as a bogus. Here the case of the Respondent is not that he has not borrowed from the bank or the bank has produced any bogus document. The Corporate Debtor utilized the funds for business and when the bank says that there is a default due to non-payment within the specified time, the respondent cannot take refuge on flimsy grounds. Another contention of the Corporate Debtor is that Board Resolution which is stated as annexed in Annexure 1, is not annexed but the fact is that the Annexure 1 is the Power of Attorney. Since the Power of Attorney executed by the bank is in operation from the 2003, this Bench, does not find any rhyme or reason for disbelieving the same.

b. It was contented that the amount was disbursed on 26.07.2016 for a credit period of 180 days for making payment. However, it was wrongly mentioned that the date of disbursement was January 2016 and the date of default as 26.07.2016. Since wrong date of default was given the application has to be dismissed. The contention of the Respondent that the LC has a credit period of 180 days is a misnomer. The Letter of Credit is a non-fund based facility and henceforth the beneficiary cannot actually enjoy it as a loan as if a fund based facility is sanctioned. Normally, the purchaser of goods applies to the Bank for opening of a Letter of Credit for payment / acceptance of beneficiary's invoice value payable at sight / a specified number of days from the date of Transport documents drawn on the LC issuing bank on account of the borrower. The borrower has to arrange funds for making payment to the seller by the LC issuing Bank. However, if the borrower is not arranging the fund, the Bank which issued the LC will pay for the commitment and debit the accounts of the borrower and the same becomes due on the date of payment. The Bank issuing the LC will

normally charge a commission from the date of issue till the date of payment and subsequently, if the borrower is not paying the commitment made by the Bank, he has to pay the applicable interest. This is the way in which the LC works. Hence, the contention of the Counsel that he has a credit period of 180 days after the honour of LC by the issuing Bank is not palatable and the letters dated 09/05/16 and 12/05/16 written by the Corporate Debtor to the bank says in no uncertain terms that due date of payment is 26/07/16. It was also contended that the account was wrongly classified as a Non-Performing Assets (NPA). This contention need not be given any regard in view of the facts that the Insolvency Resolution Process is triggered on the occurrence of default of debt and not on the basis of classification of an account as NPA.

c. To support the contention that penal interest is not compoundable, the Corporate Debtor Counsel, relied upon a decision of the Hon'ble Supreme Court in Punjab and Sind Bank vs. Allied Beverage Co. Pvt. Ltd. & Others, 2010(10) SCC 640. It appears to us that the Hon'ble Supreme Court has held that granting interest @14% per annum in respect of the period pendente lite and future interest with effect from the date on which the Bank filed application before DRT is reasonable but whereas in the given case it is not in respect to interest pendente lite or future interest, therefore, the ratio is not applicable to the interest calculated basing contractual arrangement before the filing of the case. In the case of an application by a Financial Creditor, this Bench need not go into the claims/counter claims in respect of penal interest charged and its compounding due to the fact that when the claim of the Financial Creditor is processed by the Resolution Professional, he/she will decide the validity or otherwise of the penal interest portion and if anybody is aggrieved for that they are statutorily

entitled to file an appeal before this Bench and hence that issue is not gone into at this stage.

d. There is an allegation that the statement of account given in annexure 20 is a false and fabricated document by the Bank, in view of the fact that the balance as on 30.09.2016 at page 191 is Rs. 37,12,47,558/- whereas the brought forward balance shown on page 193 on the same date is Rs. 36,57,48,176/-. A simple scrutiny of the statement of accounts reveals that the balance as on 30.09.2016 is Rs. 37,12,47,558/- on both the pages, whereas subsequent to the brought forward entry on 30.09.2016 there are two more interest debits on the same day for Rs. 48,52,927.84 and Rs. 6,46,454.16 and the ultimate balance as on 30.09.2016 is Rs. 37,12,47,558/- only as reflected at page 191. Hence, the theory of falsification and fabrication of accounts also fails.

e. There is a contention that LC facility granted by the Bank was an ad-hoc facility for which there was no hypothecation created. However, the sanction letter of the bank dated 14.07.2014 clearly stated that the proposed LC facility of Rs. 50,00,00,000/- is secured by pari passu charge on hypothecation of stocks procured under LC and book debts created out of it. Hence, the contention that the application of the Financial Creditor is incorrect, unfounded and baseless.

6. This Bench, on perusal of this documents filed by the Creditor, it is evident that the Corporate Debtor defaulted in making payment as mentioned above and he also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional, having this Bench noticed that default has occurred and there is no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of section 7 is taken as complete, accordingly this Bench hereby admits this

Application declaring Moratorium with the directions as mentioned below:

- i) That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- ii) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- iii) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- iv) That the order of moratorium shall have effect from 03.07.2017 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- v) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- vi) That this Bench hereby appoints C.A. Rajendra K. Bhuta, 1207 Yogi Paradise, Yogi Nagar, Borivali West, Mumbai 400 092, e-mail: rkbhuta@gmail.com, Registration No. IBBI/IPA-IP/00078/2016-

2017/1074 as interim resolution professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

7. Accordingly, this Petition is admitted.

8. The Registry is hereby directed to communicate this order to the Financial Creditor and the Corporate Debtor.

Sd/-
V. NALLASENAPATHY
Member (Technical)

Sd/-
B. S.V. PRAKASHKUMAR
Member (Judicial)