

NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD BENCH

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD BENCH,
ALLAHABAD**

(In Company Petition (IB) No. 23/Ald/2017)

Dated Tuesday, the 11th Day of April, 2017

Quorum: Mr. H. P. Chaturvedi, Member-Judicial

IN THE MATTER UNDER SECTION 10 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016 READ WITH RULE 7 OF THE INSOLVENCY AND
BANKRUPTCY (APPLICATION TO ADJUDICATING AUTHORITY) RULES, 2016

AND

M/s Raman ISPAT PVT. LTD. *Corporate Applicant/Debtor*

Claim: (a) To admit the Company Petition No. 24/Ald/2017; and pass an order
for initiating Corporate Insolvency Resolution Process u/s 10 of "The Insolvency
And Bankruptcy Code, 2016"

(b) To cause a public announcement of the initiation of Corporate Insolvency
Resolution Process.

(c) To declare moratorium in the terms of Section 14 of the Code

(d) Pass any such further order(s)/ which the Tribunal deems fit and proper in
the facts and circumstances of the case.

Applicant's Counsel: CA Ms. Ritu Rastogi

ORDER

(Per Mr. H. P. Chaturvedi, Member-Judicial)

The present Application is filed on behalf of the Corporate
Applicant/ Corporate Debtor under Section 10 of Insolvency and
Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and
Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

The Corporate Applicant / Debtor has stated that a debt of 7, 50 lacs
has been raised by it (i.e. Raman Ispat) from the Union Bank of India
but such could not be paid . Thus there is default of amount of 948
lacs (inclusive of interest). It is also informed that a demand notice
was issued by the Union Bank of India to the Corporate Applicant
vide its notice dated 14.09.2015 and by calling upon the notice to

make payment of Rs.500 lacs; Rs.250 lacs towards L.C and further Rs.10 lacs towards audi limit, other loan facilities availed by the Corporate Debtor.


The Bank in its notice has stated that the borrower /Corporate Debtor has executed necessary security document in favour of the Bank by creating mortgage of assets charges were registered with Registrar of Companies. However, above mentioned loan accounts became irregular since 31 August, 2015 because the Corporate Debtor did not deposit any amount towards its loan liability.

The Bank there fore has alleged that such conduct of the borrower tantamount to breach of trust of its loan liabilities.

The corporate Debtor/ applicant enclosed a communication dated 28.09.2015 received from the Authorised officer of Union Bank Of India intimating the initiation of the proceeding under SARFASEI Act, 2002 wherein a statutory notice under Section 13(2) of the Act was issued to the Corporate Debtor enforce its securities interest , such notice states that if Corporate Debtor fails to make payment of its dues within stipulated period then bank would excise all its right under the act by making sale of the secured assets and will realise the debt amount from the sale proceeds.

Pursuant thereto the bank proceeded further by taking statutory action to take possession of the secured assets and by fixing appointed date 08.12.2015 and 14.12.2016 for such purpose authorised officer of the Bank has issued possession notice under the SARFESI Act for taking possession of the Scheduled Property as security given to the Bank.

In view of the above stated facts and circumstances, the Corporate Applicant has prayed for the triggering the process of Insolvency Resolution Process and to appoint Interim Resolution Professional. It is also matter of record that Corporate Applicant/ Debtor had also filed reference on 26.08.2015 before Board for Industrial & Financial Reconstruction under the relevant provisions of Sick Industrial Companies (Special Provisions) Act, 1985. Later on being subsequent development took place due to statutory change after enactment of



Insolvency & Bankruptcy Code, 2016 the proceeding before BIFER stood abated. hence, the Corporate Applicant has submitted present Application.

We examine the contents of application and perused the document on record. It is matter of record that during the filing of present application, registry of this Bench pointed out some defects to be cured in the present Company Petition. Therefore, having heard the Learned Chartered Accountant for the corporate applicant this tribunal communicated to Corporate Applicant on 30 March, 2017 in response thereto Corporate applicant has removed such defect on 5th April, 2017 and thereafter the matter was taken up on 10 April for hearing and the order was reserved for today.

The corporate debtor has submitted a written communication from the proposed interim resolution professional stating that that he agrees to accept the appointment and also declared that there are no disciplinary proceedings pending against him.

The Corporate Applicant in support of the application has also filed Balance Sheets which discloses that liabilities of the company are more than assets.

In view of the above stated factual and legal position of the case we find that the corporate debtor has complied with provision of Section 10 of the Code, for declaration of moratorium under section 14 of the Code, which is reproduced as below:

Section 14 Moratorium

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: —

- (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.

In the light of above discussion, the Petition deserved to be allowed. Hence, we admit the petition for declaring Moratorium with Consequential Directions given as under:

1. That the order of moratorium u/s 14 shall have effect from 17.03.2017 till the completion of corporate insolvency resolution process or until this Bench approves the resolution plan under subsection (1) of Section 31 or passes an order for liquidation of corporate debtor under section 33 as, the case may be.
2. That the Bench hereby prohibits the institution of suits or continuation of pending suit 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; 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 SARFESI 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.


3. That the supply of essential goods or services to corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium period.
4. That the provisions of Section 14 sub - section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
5. **That this Bench hereby appoints Mr. Praveen Bansal , Email.Id pkbansal100@gmail.com , Registration No. IBBI/IPA-001/IP--00164/2016-17/1179, Address : J- 347 , Sarita Vihar , New Delhi -110076 as Interim Resolution Professional to carry the functions as mentioned under Insolvency and Bankruptcy Code.**
6. That the public announcement of corporate insolvency resolution process be made immediately as specified under Section 13 of the code and calling for submissions of claim under Section 15 of the Code.

Notwithstanding above it is further made clear that this order on admission of present application is delayed and could not be passed within period prescribed in the Insolvency & Bankruptcy Code, 2016. That apart the issue relating to Jurisdiction of this Tribunal to pronounce an order on admission after elapse of the period prescribed in the Code, is already subjudice before Hon'ble National Company Law Appellate Tribunal in another matter, therefore this order of admitting the present petition is subject to the legal position as settled by Hon'ble NCLAT. At this stage this Tribunal declares that the petition is maintainable but the

admission is subject to final outcome of pending appeal before the Hon'ble NCLAT.

An authentic copy of this order be issued to parties including Interim Resolution Professional after the completion of necessary formalities.

With the above stated observation the present Application is admitted and accordingly stand disposed of.



H.P. CHATURVEDI, MEMBER-JUDICIAL

Dated 11 April, 2017