

**In the National Company Law Tribunal
Single Bench, Chennai**

CP/552/(IB)/CB/2017

Under Section 7 of the IBC, 2016

In the matter of

Asset Reconstruction Company (India) Limited

V/s

M/s. SMM Steel Re-Rolling Mills Private Limited

Order delivered on: 15.09.2017

For the Petitioners/OC: Ms. V. Kamala Kumar, Advocate

For the Respondent/CD: Shri R. Vidhyashankar, Advocate

Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)

ORDER

1. Under Consideration is a Company Petition filed by Asset Reconstruction Company (India) Limited (in short, 'Petitioner/Financial Creditor') against M/s. SMM Steel Re-Rolling Mills Private Limited (in short, 'Respondent/Corporate Debtor') under section 7 of the Insolvency and Bankruptcy Code 2016 (In short, 'IB Code 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, 'IB Rules 2016').
2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.

3. Ms. V. Kamala Kumar, the learned counsel appearing on behalf of the petitioners/FC submitted that the petitioner is an assignee under an assignment agreement dated 31.03.2015 whereby the City Union Bank Limited, assignor, has assigned the loans disbursed to the corporate debtor together with all its rights, title, interest, pledges and guarantees in respect of the said loan. It is further submitted that the CD vide its letter dated 15.12.2015 had submitted financials for final settlement of loan to the petitioner to a tune of Rs. 75 Crores in respect of all the loans availed.
4. It is further submitted that the petitioner vide its letter dated 29.12.2015 had considered the request for settlement of dues provided there was an upfront payment of Rs. 10.20 Crores to be paid on or before 31st March, 2016 and the final sanction letter shall be issued only upon payment of Rs. 10.20 Crores on or before 31st March, 2016.
5. The learned counsel submitted that the above said condition as admitted by the CD was not adhered to and the CD had defaulted in conforming to the terms as agreed, hence the final sanction letter was not issued. It is also submitted that a letter dated 02.05.2017 from the petitioner to the CD clearly indicated that the restructuring scheme had failed therefore,

the petitioner proceeded to recover its dues as fell due on 30.04.2017 with further interest thereon.

6. The learned counsel finally submitted that when the Corporate Debtor was unable to pay its Financial Debt which became due and payable on 30th January 2017, then petitioner, having been left with no other option approached this Adjudicating Authority claiming the payment of Rs. 40,05,41,313/- towards the Corporate Debtor in capacity of a Financial Creditor under the provisions of the IB Code 2016 and prayed to initiate Corporate Insolvency Resolution Process against the Respondent/CD.
7. Shri R. Vidhyashankar, the learned counsel for the Respondent/CD caused appearance and submitted that the petition should be dismissed on the grounds of technical laches as there are some serious defects in the Application in Form- I filed by the petitioner and the amount in default and the principal outstanding amount shown is grossly erroneous. He submitted that in terms of Clause 1 of Part V of Form I, the Financial Creditor is required to give an estimated value of assets held by the financial creditor as security for the claim and the plant and machinery relating to SMM Re-Rolling Mills Private Limited Unit- I is hypothecated to the financial creditor, the value of which has been totally omitted to be

reckoned and is excluded in the valuation submitted by the financial creditor. Apart from this, the valuation even for the other assets held as security has been given by the petitioner by their own admission based only on a valuation report taken in November.

8. He further submitted that in respect of an industrial estate land granted on lease to Paragon Steels Private Limited by District Industries Centre, Palakkad, Kerala, which is incapable of alienation, the asset is shown as own land in Form - 1. It is further submitted that the mandatory requirement of serving notice of the application on the Corporate Debtor under Rule 4 of the IB Rules 2016 was not complied with. Moreover, the Annexures attached to Form- 1 was not served on the Corporate Debtor.
9. The learned counsel finally submitted that without prejudice to the foregoing, even if this Adjudicating Authority is inclined to admit the Application of the Financial Creditor, the appropriate directions to preserve the value of the undertaking to ensure continued operations of the undertaking and to permit the continued involvement of promoters in the operations of the companies is absolutely imperative and placed his reference to section 20 of the IB Code 2016 whereby IRP is obligated to preserve & protect the value of

the property and manage the operations of the Corporate Debtor as a going concern. In this regard he placed his reliance on a judgement passed by the Hon'ble NCLT, Principal Bench in MANU/NC/0702/2017 wherein and whereby a specific direction was given to ensure preservation of the value of the asset and to ensure operation as a going concern.

10. With regard to the prayer made in relation to specific directions to IRP, the learned counsel for the petitioner company has not made any objection and submitted that the prayer made by the counsel for the respondent in relation to specific directions to IRP may be decided appropriately.

11. As per the submission of the counsel for the petitioner, the Petitioners have complied with all the requirements as stipulated under the provisions of the IB Code, 2016 and the rules formed thereunder.

12. After hearing submissions of the counsel for the petitioner and respondent and having perused the record, this Adjudicating authority is satisfied that the petitioner has proved by placing overwhelming evidence that default has occurred which the Corporate Debtor was responsible to pay. In relation to the technical laches as pointed out by the counsel for respondent, it is pertinent to mention that the petitioner has established clearly that the amount in default is genuine and is

supported by the documentary evidence placed by her. Therefore, I am of the opinion that the said objection is not a valid ground of rejection of the instant petition. In the circumstances, I am inclined to admit the instant application.

13. Therefore, the instant petition is admitted and I order the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.

14. I appoint R. Venkatakrishnan as Interim Resolution Professional (**IRP**) proposed by the Financial Creditor. There is no disciplinary proceedings pending against the IRP and his name is reflected in IBBI website. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

15. I declare the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. I order to prohibit 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 (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.*

16. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

17. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his

functions under Section 20 of the I&B Code, 2016.
Accordingly, the application is admitted.

18. The IRP is further directed to protect and preserve the value of the property of the Corporate Debtor as a going concern as a part of its obligation imposed under section 20 of the IB Code 2016 and perform all his duties strictly in accordance with the provisions of the IB Code 2016.

19. The Petitioner/FC as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

20. The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.

21. The address details of the IRP are as follows: -

R. Venkatakrishnan
Regn. No: (IBBI/IPA-01/IP-00115/2017-2018/10250)
1/4th Rangas, 4th Main Road, R A Puram, Chennai- 28



K. ANANTHA PADMANABHA SWAMY
Member (J)

RLS