

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

CP/582/(IB)/CB/2017

Under Section 10 of the IBC, 2016

In the matter of

Brilliant Alloys Private Limited

Order delivered on: 28.09.2017

For the Petitioner/CD: Shri P.H. Arvindh Pandian, Sr. Advocate

For the Objector: Shri K. Chandrasekaran, Advocate

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

ORDER

1. This is a Company Petition filed by Brilliant Alloys Private Limited (in short, '**Petitioner/Corporate Debtor**') under section 10 of the Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**') r/w Rule 7 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, '**IB Rules 2016**') for initiating Corporate Insolvency Resolution Process (in short, '**CIRP**') in respect of the Corporate Debtor itself on grounds of inability to pay debt.
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. The Petitioner/CD is a Company incorporated under the Companies Act 1926 engaged in the business of ferrous or non-ferrous metal, melting furnaces etc. The Objector in the instant petition is State Bank of India, a nationalised bank.
4. Shri P.H. Arvinth Pandian, the learned Senior Counsel appearing on behalf of the Petitioner/CD submitted that the petitioner approached to the Objector-Bank for availing loans and the Objector Bank granted loans, details of which are mentioned in the petition.
5. The learned Senior counsel further submitted that when the petitioner failed to pay its debt, the Bank proceeded to recover its dues under the SARFESI Act before the Debt Recovery Tribunal (in short, 'DRT). He submitted that total debt raised from the State Bank of India is Rs. 24,91,00,000/- and the amount in default is Rs. 20,49,33,361.95. The learned counsel finally prayed to initiate the Corporate Insolvency Resolution Process under section 10 of the IB Code on grounds of default of payment by the Corporate Debtor towards the Bank.
6. Shri K. Chandrasekaran, the learned counsel for the Objector vehemently opposed the contentions raised by the counsel for petitioner and submitted that the instant petition is false,

vexatious and not maintainable in law and in facts and the same is liable to be rejected in limine.

7. He further submitted that the aforesaid credit facilities are secured by hypothecation of entire current assets of Petitioner/CD, viz., raw materials, stocks, finished goods, receivables, plant and machinery, installed at the factory premises etc. Further, the credit facilities are also secured by the personal guarantee of D.S. Rajkumar, Director, S. Rajendra Kumar, Director. R. Inderjeeth, Director, R. Arihant, Director. R. Siddharth, and Corporate Guarantee of Kavery Alloy Castings Pvt Ltd., and VDSR Rolling Mills (Partnership Firm). It is submitted that the credit facilities are also secured by equitable mortgage of various immovable properties belonging to D.S. Rajkumar, R. Inderjeeth, R. Arihanth and R. Siddharth.
8. He further submitted that the operations and conduct of the loan account by the Petitioner/CD was highly irregular and hence, the debt was classified as Non-Performing Asset on 30.9.2016 in accordance with the directives/ guidelines relating to asset classification issued by RBI consequent to the default committed by the Applicant in repayment of the principle debt and interest thereon.

9. It is submitted that since no payment was made against the outstanding amount, the bank on 29.04.2017 invoked the provisions of the SARFAESI ACT by issuing a demand notice under Section 13(2) of the SARFAESI ACT by demanding the outstanding amount. The demand notice was also sent to all the guarantors. The demand notice also put the Corporate Debtor and the Guarantors to the notice, under section 13(13) of the SARFAESI ACT as not to dispose of any of the secured properties.

10. He further submitted that the petitioner in its objection dated 04.07.2017 and 15.07.2014 submitted as follow:-

“thus it is clear that the classification of the account as NPA on 30.09.2016 is absolutely wrongful and therefore, the further actions taken by the Bank should be immediately withdrawn”

Further, the petitioner in Para 19 of the objection stated that *“without prejudice to herein before and hereinafter stated, we state that there is no default on our part and you have wrongly classified the so called debt as a non-performing asset”*

11. He further submitted that, by the aforesaid objections made by the petitioner, it is an admitted fact that the petitioner has

denied that there is a financial default and now initiated the insolvency proceedings with malafide intention.

12. It is submitted that since the petitioner had not made any payment of the outstanding due amount, therefore, the Bank has taken possession of the properties as provided for in section 13(4) of the SARFAESI ACT on 10.8.2017 r/w rule 8(11) of the Security Interest (Enforcement) Rules 2002. The possession notice was further published in two newspapers.

13. It is also submitted that State Bank of India has filed an application in OA No. 166 of 2017 before the Debts Recovery Tribunal – 1, Chennai against the Applicant and its guarantors for recovery of a sum of Rs. 23,43,31,103/- as on 4.6.2017 together with subsequent interest and cost and after having been left with no any other option, this petition has been filed only to circumvent the process already initiated by the bank under SARFAESI Act, 2002, and E- auction which is schedule to be held on 3.10.2017 after following due process of law. After knowing everything about the issue, the Petitioner has filed this petition, that too at the eleventh hour with malafide intention.

14. He further submitted that the loans in question were availed by the Applicant in the year 2012, which are collaterally

secured by Registered Mortgage and loans in question are classified as NPA on 30.09.2016. The Sarfaesi proceedings as detailed supra are initiated, which are in advanced stage of e-auction and the instant Petition has been filed only to scuttle the SARFAESI proceedings. He further submitted the present application is filed on frivolous and on mischievous ground with malafide intention to take advantage of the provisions of the IBC 2016. Therefore, it is not a fit case to admit and finally prayed to dismiss the petition with cost in the interest of justice and equity.

15. With regard to the above submissions, the learned counsel for the petitioner submitted that there are a catena of judgements passed by the Hon'ble Supreme Court wherein it has been held that the DRT is not a "court" thus the proceedings before the DRT cannot be considered a "suit" and moreover, the present proceeding initiated by the petitioner is nowhere connected to the SARFAESI proceedings initiated by the Bank. Therefore, the Adjudicating Authority has to adjudicate the matters keeping in view the inherent power entrusted and principle of natural justice. It is further submitted that suit filed before the DRT and the petition filed before this Adjudicating Authority are on different footing as the OA filed before the DRT relates

to recovery proceedings whereas the instant petition before this Adjudicating Authority pertains to initiation of Corporate Insolvency Resolution Process and declaring the Corporate Debtor insolvent. Moreover, if such a peculiar situation is permitted then the very authority of insolvency code will come at stake and there will be no finality of judgment. The learned Senior counsel finally submitted that in view of the above, the IB Code would prevail over SARFAESI Act, 2002 and there is no bar if the Corporate Insolvency Resolution Process is initiated in respect of Corporate Debtor.

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

17. After hearing submissions of the counsel for the petitioner and objector and having perused the record, this Adjudicating authority is satisfied that the petitioner has proved by placing overwhelming evidence viz. Personal Guarantee, Credit Facility Sanction Letter dated 15.04.2015, Demand Notice under SARFAESI Act, Possession notice etc. that the Corporate Debtor has defaulted in making payment to the Objector. Therefore, I am of the opinion that the objections

raised by the counsel for Objector are not a valid ground of rejection of the instant petition.

18. Moreover, the Objector- Bank, no doubt, has preferred the OA before the DRT. If the reasoning of the learned counsel for the objector, that a concurrent proceeding before DRT and NCLT should not be allowed, are to be affirmed, then a peculiar situation would be permitted where an Adjudicating Authority, exclusively created by the legislature to decide insolvency matters filed by the Financial/Operational Creditors would have to await decisions of other tribunals/courts, thus frustrating the very purpose of parliamentary intention at quick resolution of insolvency matters. The public purpose underlying the creation of Adjudicating Authority would thus be easily countenanced and such a decision cannot be plainly approved. It is also pertinent to mention a recent judgement passed by the Hon'ble Supreme Court in *M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr., Civil Appeal Nos. 8337-8338 of 2017* wherein and whereby it was held that the IB Code 2016 would prevail over the Maharashtra Act, 1956. In the circumstances, I am inclined to admit the instant application.

19. 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.

20. I appoint Shri Martin S. K. Golla 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.

21. 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.

22. 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.

23. 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.

26. The Petitioner/CD 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.
27. The Registry is also directed to communicate this Order to the Corporate Debtor and the Objector.
28. The address details of the IRP are as follows: -

Shri Martin S. K. Golla
Regn. No: (IBBI/IPA-002/IP-N00095/2017-2018/1023)
1704, Tower- 3, Raheja Tipco Heights
Rani Sati Marg, Malad (East), Mumbai- 400097
E-Mail- martingolla@hotmail.com



K. ANANTHA PADMANABHA SWAMY
Member (J)

RLS