

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH,
KOLKATA**

C.P. No.986/KB/2020

In the matter of

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

And

In the matter of:

ICICI Bank Limited, a company incorporated under the Companies Act, 1956, having its registered Office at ICICI Bank Tower, Near Chakli Circle, Old Padra Road, Vadodara 390007, Gujrat, India and Regional Office at ICICI Bank Limited, ICICI Bank House, 3A, Gurusaday Road, Kolkata-700019.

... Financial Creditor

Versus

In the matter of:

Narayani Steels Limited, a Company originally incorporated under the Companies Act, 1956, having its Registered office at 23A, N.S.Road, 7th Floor, Room No 31, Kolkata-700001.

...Corporate Debtor

Date of hearing : 16/03/2021

Order Pronounced on : 24.03.2021

Coram:

Mr. Rajasekhar V.K., Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

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|--------------------------------------|------------------------------|
| 1. Mr. Soorjya Ganguli, Sr. Advocate | } For the Financial Creditor |
| 2. Ms. Pooja Chakrabarti, Advocate | } |
| 3. Mr.Prithwish Roy Chowdhury,Adv. | |
| 4. Ms. Kiran Sharma, Advocate | |
| | |
| 1. Mr.Reetobrata Mitra, Advocate | } For the Corporate Debtor |
| 2. Ms. Ranjana Seal, Advocate | } |

ORDER

Per: Harish Chander Suri, Member (T)

1. This Company petition being CP (IB) No. 986/KB/2020, filed under section 7 of the Insolvency and Bankruptcy Code,2016 by **ICICI Bank Limited**, having its registered office at Vadodara, Gujarat, Regional office at Kolkata, through its authorised signatory Mr. Suman Mazumdar, Identification Number L65190GJ1994PLC021012 (hereinafter referred to as the Financial Creditor), against Narayani Steels Limited, a corporate entity, having its registered office at Kolkata, Identification Number L27109WB1996PLC082021 (hereinafter referred to as the Corporate Debtor) seeks initiation of Corporate Insolvency Resolution Process under the IBC Code,2016 against the Corporate Debtor.

2. It is submitted in the petition that the Corporate Debtor had entered into an agreement to purchase iron and steel products from Rashtriya Ispat Nigam Limited (RINL) and for the purposes of making payment to it, the Corporate Debtor availed financial assistance in the nature of over draft facility not exceeding Rs. 9,50,00,000/- (Rupees Nine Crores Fifty Lakhs) vide a Credit Arrangement Letter dated January 13,2017, which was extended till May 27,2019 vide a Transition Letter dated May 28,2018.

3. It is stated that the Financial Creditor had authorized Mr. Suman

Mazumdar, to file the present application, vide Power of Attorney dated May 04,2019.

4. The Corporate Debtor had authorised share capital of Rs.14,00,00,000/- (Rs. Fourteen Crore only) as per its Memorandum of Association. The Financial Creditor had granted Revolving line of credit in the nature of overdraft facility aggregating to a cumulative value of Rs. 9,50,00,000 (Rupees Nine Crores Fifty Lakhs only), to the Corporate Debtor.

5. The Financial Creditor has submitted that the amount in default under the facility as on July 31,2020 is Rs. 10,15,65,418.16 (Rs. Ten Crore Fifteen Lakhs Sixty Five Thousand Four Hundred Eighteen and Sixteen paise). It is stated that since the Corporate Debtor had committed various breaches, a Facility Recall Notice was sent to the Corporate Debtor on February 24,2020. A computation of amount of default has also been annexed by the Financial Creditor as (Annexure-F).

6. The Corporate Debtor has enclosed a copy of the record of default as submitted by NeSL in relation to the Corporate Debtor dated July 10, 2020 (Annexure-K), which indicates the date of default as 01/10/2019.The Financial Creditor has also filed supplementary affidavit for the purposes of bringing on record the transaction statements for the entire period and to supplement the statements contained in the Financial Creditor's original application under section 7 of the IBC.

7. The Financial Creditor has *inter aila* placed on record various documents to support its claim.

- a. A Credit Arrangement Letter dated January 13,2017 facilitating line of credit in the nature of OD facility upto sums in the aggregate not exceeding overall limits of Rs. 95.00 million (Annexure G)

- b. A Transaction Letter dated May 28,2018 extending the period of draws under the OD facility for a further period till May 27, 2019 (Annexure-H).
 - c. A copy of the document evidencing the details of the computation of amount of default is annexed at (Annexure-F). However, the Financial Creditor has filed the supplementary affidavit for the purposes of bringing on record the transaction statements for the entire period and to supplement the statements contained in Financial Creditors original application.
 - d. A copy of statement of accounts (summary) as on August 02,2020 available with the Financial Creditor (Annexure-I)
 - e. A copy of Deed of Guarantee dated January 25,2017(Annexure J3).
 - f. A copy of PDC Declaration by the Corporate Debtor dated January 20,2017(Annexure J4).
 - g. A copy of the postdated cheque issued as security and a copy of the cheque dishonor letter dated May 14, 2020 (Annexure J15).
 - h. A copy of the Facility Recall Notice issued by the Financial Creditor to the Corporate Debtor dated February 24,2020 alongwith proof of service (Annexure J13).
 - i. A copy of the letter dated February 26,2020 for invocation of personal guarantees by the Financial Creditor (Annexure J14).
 - j. A copy of the record of default as submitted and held by NeSL in relation to the Corporate Debtor for the financial debt under default since October 01,2019 (Annexure-K).
8. In spite of Facility Recall Notice dated 24th February, 2020, recalling the entire OD facility and demanding repayment, the Corporate Debtor has not paid its dues, thereby committing the default.
9. The Financial Creditor proposed the name of Mr. Krishna Komaravolu having Registration No. IBBI/IPA-002/IP-N00562/2017-2018/11699 to act as IRP in respect of Corporate Debtor. The Financial Creditor has also submitted

the authorization for assignment in Form B as mandated under By-laws 12A of the Insolvency Professional Agency with which the proposed IRP is registered.

10. The application filed by the Financial Creditor is otherwise complete and in proper form.

11. On being issued notice, the Corporate Debtor has filed reply through its authorized signatory Mr. Siddartha Bera. It is submitted in the affidavit in opposition filed by the Corporate Debtor that the allegations and detailed transactions mentioned in the petition are denied and disputed. The Corporate Debtor has further denied any transaction with the Financial Creditor except to the extent of an arrangement of purchasing iron and steel products from Rashtriya Ispat Nigam Limited (RINL). The Corporate Debtor has accepted the contract. It is stated that all payments were made by the Corporate Debtor and duly accepted by the Financial Creditor and that the transfer of amounts from the FD closure proceeds was also adjusted. It is stated that the question of the Corporate Debtor being liable to make any payment to the Financial Creditor on account is redundant and does not arise as due to the business assignments which got stalled as the World Health Organization (WHO) declared COVID 19 as a pandemic on March 11, 2020. The Government of India and the State Governments issued several advisory related to COVID 19 pandemic. On March 11, 2020, the Government of India issued an order under Section 69 of Disaster Management Act, 2005 delegated its power under Section 10 of the Act to the Secretary, Ministry of Health and Family Welfare, Government of India to enhance the preparedness and containment of COVID 19 and other ancillary connected matters. It is stated that as per the Government of India notification, the entire business transactions system collapsed due to pandemic, and the decision went to jeopardise the planning of the Corporate Debtor. It is further stated that the Ministry of Finance have already undertaken certain decision pertaining thereto on the NPA Accounts but the Corporate Debtors having no financial

assistance and for such reason, has not been able to take any decisions to settle the accounts. It is further stated that the allegations on account of default are denied and since there is no default, the question of invocation of the provisions of the IBC does not arise.

12. We have considered the petition and the reply affidavit and all other documents filed by the parties, we have also heard Ld. Counsel for the parties. During the course of arguments, Ld. Counsel for the Corporate Debtor however, candidly admitted that there is no defence at all in this case and he has no valid grounds to dispute the claim of the Financial Creditor and therefore submitted before this Adjudicating Authority may pass appropriate orders. It was, therefore, noticed that the arguments advanced in Court were somewhat against the averments made in the reply affidavit.

13. In these circumstances, we have no hesitation in admitting the application and in ordering initiation of CIRP against the Corporate Debtor.

14. In view of the observations and directions, we hereby admit the petition and pass the following Orders:-

O R D E R S

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor **Narayani Steels Limited** is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency

Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

- iv) Moratorium under Section 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 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.
- v) The supply essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.

- vi) 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.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) 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 the 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.
- ix) **Mr. Krishna Komaravolu**, registered with Insolvency and Bankruptcy Board of India, having Registration No. IBBI/IPA-002/IP-N00562/2017-2018/11699 is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Financial Creditor/Applicant is directed to deposit **Rs 5,00,000/-(Rupees Five Lacs)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the

preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

- xii) Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii) List the matter on **22/04/2021** for the filing of the **progress report**.
- xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rajasekhar V.K.)
Member (Judicial)

Order signed on 24.03.2021

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