

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

Company Petition No. (IB)-275(ND)/2019

**Under Section 7 of the Insolvency and Bankruptcy Code,
2016**

In the matter of:

Central Bank of India

Applicant/Financial Creditor

Vs.

M/s Abhinav Steels and Power Limited

Respondent/Corporate Debtor

Judgment delivered on: 31.07.2019

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CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT

S. K. MOHAPATRA, MEMBER (TECHNICAL)

For Applicant/Petitioner: Mr. Gunjan Jadwani & Mr. Yash Tandon, Advs
For the Respondent(s): Mr. P. Nagesh, Mr. Ashutosh Gupta,
Mr. Gaurav Rana & Mr. Abhishek Aggarwal, Advs.



ORDER

S. K. Mohapatra, Member

1. Central Bank of India has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s Abhinav Steels and Power Limited, referred to as the corporate debtor.
2. The Respondent Company M/s Abhinav Steels and Power Ltd. (CIN No. U74899 DL 1987 PLC 029384) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 05.10.1987 having its registered office situated at 401, MahvirJi Complex, LSC, Rishabh Vihar, New Delhi - 110092. Since the registered office of the respondent corporate debtor is



in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. It is appropriate to mention that the applicant Central Bank of India is a body corporate incorporated under the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 and has its Registered Office at Chander Mukhi, Nariman Point, Mumbai-400021.
4. Shri Rakesh Sharma, Assistant General Manager and authorized representative of the applicant bank, has preferred the present application on behalf of the applicant for initiation of corporate insolvency resolution process against the respondent corporate debtor in terms of the provisions of the Code.
5. It is the case of the applicant that the applicant bank had entered into a consortium Agreement dated 21.11.2009 with respondent company, M/s Abhinav



Steels and Power Limited for an overall limit of Rs. 125,00,00,000/-, where the share of the applicant Financial Creditor was Rs. 31 Crores. The Consortium (referred to as PNB Consortium) consisted of Punjab National Bank, Oriental Bank of Commerce and Central Bank of India.

6. Subsequently applicant financial creditor approved enhanced sanction of Fund Based and Non-Fund Based Limits, comprising of — Total Cash Credit sanctioned to the tune of Rs. 14 Crores; total Term Loan sanctioned to the tune of Rs. 49,75,00,000/- and total Working Capital (non Fund based) sanctioned for Rs. 4,50,00,000/-, vide Sanction Letter dated 14.09.2012.
7. Thereafter, as the borrower M/s Abhinav Steel and Power Limited was unable to make repayment, on its request a Master Restructuring Agreement as well as the Working Capital Consortium/Agreement were entered into between the Corporate Debtor and consortium Members on 16.05.2013, wherein it was



agreed that the account of the borrower, being in default, shall be restructured.

8. Subsequently, the account of the M/s Abhinav Steel and Power Limited was restructured in accordance with the Corporate Debt Restructuring Scheme (CDR), sanctioned by the Applicant vide Letter dated 10.06.2013, wherein Cash Credit of Limit for Rs. 12,33,00,000/- was sanctioned and various Non-Fund based facilities were sanctioned to the tune of Rs. 5,85,00,000/- and WCTL-I for Rs. 6,79,00,000/- and WCTL-II for Rs 2,51,00,000/- and FITL for Rs 11,48,00,000/-.
9. It is submitted that a part of Master Restructuring Agreement was towards the 'Furnace & Rolling Division 1', while the remaining part was towards 'Power Division'. A copy of the letter sanctioning CDR Scheme for the corporate debtor dated 20.03.2013 has been placed on record.
10. It is alleged that the respondent corporate debtor defaulted and failed to make repayment as per the loan agreements. On account of continuous defaults,



the accounts of M/s Abhinav Steel and Power Limited was declared as "non-performing assets" (NPA) on 11.12.2014.

11. It is also alleged that despite notice dated 03.06.2015 under Section 13(2) of SARFAESI Act, 2002 issued to respondent M/s Abhinav Steel and Power Limited, the corporate debtor defaulted to pay the outstanding debts.

12. Subsequently a Scheme of Demerger was presented by M/s Abhinav Steels and Power Ltd., M/s RS Ingot and Billet Pvt. Ltd. and M/s Siddhartha Rolling and Energy Pvt. Ltd. before the National Company Law Tribunal, New Delhi, by which it was proposed to transfer '*Furnace and Rolling Division I*' of M/s Abhinav Steels and Power Ltd. to M/s RS Ingot and Billet Pvt. Ltd. and '*Rolling Divison 2*' of M/s Abhinav Steels and Power Ltd. to M/s Siddhartha Rolling and Energy Private Limited. It was also proposed that the '*Power Division*' of M/s Abhinav Steel and Power Limited will continue to remain with it, who shall be liable only for its Power Division.



13. The National Company Law Tribunal, New Delhi approved the said Scheme vide order dated 27.11.2017, pursuant to which all the assets and liabilities pertaining to '*Furnace and Rolling Division 1*' and '*Rolling Divison 2*' of M/s Abhinav Steel and Power Limited were transferred to the resulting companies respectively and only the '*Power Division*' of M/s Abhinav Steel and Power Limited continued to remain with the respondent corporate debtor. The '*Power Division*' accordingly continued to vest with the Corporate Debtor itself, along with assets and liabilities arising therefrom.

14. Therefore, as per the sanctioned Scheme the '*Power Division*' of the Corporate Debtor continued to remain with the respondent Corporate Debtor and all assets and liabilities arising only from the '*Power Division*' remained vested with the respondent.

15. It is further contended that by means of the present application the amount of default claimed by the applicant bank, pertains only and only to that part of default arising from the credit facilities sanctioned



for 'Power Division' which continued to remain with the respondent company.

16. It is submitted that the applicant bank has sanctioned various financial facilities aggregating to Rs.88.4 Crores, out of which facilities pertaining to 'Power Division' are set out at part IV of the application as below:

Sl. No.	Date of Sanction	Nature of Facility	Amount Sanctioned
1.	30.09.2019	Fund Based Term Loan	Rs. 31,00,00,000/-
2.	30.05.2011	i. Cash Credit ii. Term Loan – II	Rs. 5,00,00,000/- Rs. 6,25,00,000/-
3.	14.09.2012	Adhoc Cash Credit	Rs. 5,00,00,000/-
4.	10.06.2013	i. Working Capital Term Loan (WCTL – I). ii. Working Capital Term Loan (WCTL – II) iii. Funded Interest Term Loan. iv. Term Loan v. NonFund Based Working Capital. vi. Cash Credit	Rs. 6,79,00,000/- Rs. 2,51,00,000/- Rs. 9,97,00,000/- Rs. 36,94,00,000/- Rs. 5,85,00,000/- Rs. 8,28,00,000/-


17. As per part IV of the application it is claimed that a sum of Rs. 103,70,35,611/- (Rupees One Hundred Three Crores Seventy Lakhs Thirty-Five Thousand Six

Hundred Eleven Only) is due from the respondent company as on 30.11.2018.

18. As huge default persisted, demand notice dated 12.10.2018 was given to the respondent Corporate Debtor for repayment of the debt arising from 'Power Division' alone but the respondent Corporate Debtor failed to make any payment to the Applicant financial creditor.

19. On the ground that huge amounts are outstanding and as corporate debtor has committed default in repayment of the debt, it is prayed for initiation of corporate insolvency resolution process against the respondent company by admitting the present application.

20. The respondent corporate debtor has filed its reply on 09.01.2019. Respondent has disputed the demand of Rs. 103,70,35,611/- and interest thereon as unreasonable and not due and payable. It has been alleged that the demand is erroneous and arbitrary. The claim has also been disputed as barred by limitation. Another objection has been raised that the



petition has not been filed in the prescribed Format as brief facts cannot be given under Part V of the requisite Form-1. It is further alleged that the Form-2 submitted by the named IRP lacks proper disclosures as required under the Regulations and that he is not eligible for appointment of IRP. An objection has also been raised that there is no proof of default and there is no statement of account in the name of 'Power Division'. It is also the case of the respondent that the applicant is not a financial creditor in respect of the corporate debtor.

21. We have heard the learned counsels for the parties and have perused the case records.
22. The various objections raised by the respondent corporate debtor are discussed below.
23. Respondent corporate debtor has raised halfhearted objection that the applicant bank is not a financial creditor in respect of the respondent company.
24. The expressions "Financial Creditor" and "Financial debt" have been defined in Section 5 (7)



and 5 (8) of the Code and very precisely “Financial debt” is a debt along with interest, if any, which is disbursed against the consideration for time value of money.

25. In the present case applicant bank had sanctioned and disbursed the term loan amount recoverable with applicable interest by entering in to loan agreements with the respondent corporate debtor. Even after Demerger the 'Power Division' continued to remain with the respondent Corporate Debtor, whose liability continues towards all assets and liabilities arising only from the 'Power Division'. The debt in question pertains to the facilities granted to the respondent only for 'Power Division' as are set out at part IV of the application.

26. The corporate debtor had borrowed the credit facilities against payment of interest as agreed between the parties. The loan was disbursed against the consideration for time value of money with a clear commercial effect of borrowing. Moreover, the debt claimed in the present application includes



both the component of outstanding principal and interest. In that view of the matter not only the present claim comes within the purview of '*Financial Debt*' but also the applicant bank can clearly be termed as '*Financial Creditor*' of the respondent corporate debtor so as to prefer the present application under Section 7 of the Code.

27. Respondent has raised another objection that the application preferred in Form-1 is defective. It is contended that the petition has not been filed in the prescribed Format as brief facts cannot be given under Part V of the requisite Form-1. It is further alleged that the Form-2 submitted by the named IRP lacks proper disclosures as required under the Regulations and that the named insolvency professional is not eligible for appointment as IRP.

28. In this regard it is seen that the applicant has given brief facts of the case at Part-V of Form-1 *inter alia* to throw light on the Scheme of Demerger and to explain that the present claim pertains only towards the loan facility given for power Division of



the corporate debtor. Additional relevant facts have been incorporated at Part-V of the application Form for proper appreciation of the matter. Such insignificant technical objections are only to be iron out and cannot be a ground to reject the application filed under Section 7 of the Code.

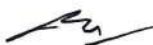
29. In connection with the objection that the application is incomplete and the financial creditor has failed to comply with the requirements of Section 7 of the Code; it is seen that the present application under Section 7 of the Code for initiation of Corporate Resolution Insolvency Process has been filed by petitioner financial creditor in Form-1 in terms of Rule 4 of Insolvency and Bankruptcy (application to Adjudicating Authority) Rules, 2016 accompanied with required information, documents and records as prescribed under the Rules.

30. The applicant bank *inert-alia* has annexed to the application detail particulars of 'financial debt' including documents, records and evidence of default as required under subsection 3 (a) of Section



7 of the Code. It is reiterated that the Form-1 filed in the present case under Section 7 of the Code read with Rule 4 of the Rules, shows that the Form is complete in all respect and there is no infirmity in the same.

31. As regards dispute on the appointment of IRP and allegation on incomplete Form-2; it is pertinent to refer to sub-section (3) (b) of Section 7 of the Code which requires the applicant financial creditor alone to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Shravan Kumar Vishnoi, for appointment as Interim Resolution Professional having registration number IBBI / IPA-002 / IP-P00040/ 2016-17 / 10079 resident of 406, 407, Shopping Square - II, Sector - D, Sushant Golf City, Ansal API, Lucknow - 226030. Mr. Shravan Kumar Vishnoi has agreed to accept the appointment as the interim resolution professional and has signed a communication dated 16.11.2018 in Form 2 in terms of Rule 9(1) of the Insolvency and



Bankruptcy (Application to Adjudicating Authority) Rules, 2016. As Form-2 filed earlier by the IRP was not complete in all respect, a new Form-2 dated 08.04.2019 was filed on 18.04.2019. It is seen that there is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. Sh. Vishnoi has also enclosed a declaration of eligibility certificate for appointment as IRP. In addition, further necessary disclosures have been made by Mr. Shravan Kumar Vishnoi as per the requirement of the IBBI Regulations. Accordingly, the objection cannot stand as all the requirement of Section 7 (3) (b) of the Code has been duly satisfied.

32. Respondent has further disputed the quantum of demand of Rs. 103,70,35,611/- as not due and payable. Respondent has claimed that the demand is unreasonable, erroneous and arbitrary. The claim has also been disputed as barred by limitation.



Besides it is alleged that there is no evidence of default.

33. In this regard it can be clarified that in an application filed under Section 7 of the Code, Adjudicating Authority is only to ascertain the existence of a 'default' and not the exact amount due.

34. Hon'ble NCLAT in the case of *Mr. Satyaprakash Aggarwal & Ors. Vs. Vistar Metal Industries Pvt. Ltd.* in Company Appeal (AT) (Insolvency) No. 136 of 2018 vide order dated 21.5.2018 at para 4 has made this aspect clear with the following observation:

4. Further, in a petition under Section 7 of the 'I&B Code', the Adjudicating Authority is required to decide whether the Form 1 along with documents is complete or not. The Adjudicating Authority is not required to decide as to what is the actual amount of claim and other details, which is required to be determined by the 'Resolution



*Professional' after initiation of 'Corporate
Insolvency Resolution Process'.*

35. The debt has also been challenged on the ground of limitation. In this regard there is no dispute that the loan account was restructured on 10.06.2013 and was secured by way of mortgage. Under Article 62 of the Limitation Act, when mortgage is created over immovable property and offered as collateral security for the loan, the limitation period is 12 years. Even otherwise it is seen that the Scheme of Demerger was approved on 27.11.2017 inter alia fixing the liability of respondent pertaining to 'Power Project'. It creates fresh period of limitation from 27.11.2017. In view of the continuous cause of action and also in view of Article 62 of the Limitation Act, the present claim is not barred by limitation.

36. Respondent has simply disputed the claim without pointing out as to how default as claimed has not occurred.

37. Even if a claim is disputed but if the amount payable is more than Rs. 1 Lakh (in the present case



more than 100 Crores), the application under Section 7 of the Code is maintainable.

38. Applicant bank has filed the relevant statement of accounts duly certified in accordance with Bankers' Books Evidence Act, 1891 as per the requirement of Form 1-part V column 7 of the application. Certified copy of statement of accounts pertaining to relevant loan facilities kept during the course of banking business basing on which the claim has been raised can be termed as sufficient evidence of the financial debt.

39. The applicant bank has also furnished copy of sanction letters, loan agreements executed from time to time and a copy of Report by CIBIL pertaining to the corporate debtor dated 14.09.2018 including a tabular chart providing details of the date of disbursements and the amount disbursed. Applicant financial creditor has also relied upon the Balance sheet and financial statements of the corporate debtor including independent auditors report in support of its claim.



40. It is thus seen that the applicant 'financial creditor' has placed on record voluminous and overwhelming evidence in support of the claim as well as to prove the default on the part of the respondent corporate debtor.

41. Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited V. Kirusa Software Private Limited* reported in AIR 2017 SC 4532 at Para 19 has observed that:

"Once the adjudicating authority / Tribunal is satisfied as to the existence of the default and has ensured that the application is complete and no disciplinary proceedings are pending against the proposed resolution professional, it shall admit the application.

42. An application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence of existence of default. What is material is that the default is at least 1 lakh. In view of Section 4 of the Code, the



moment default is of Rupees one lakh or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable.

43. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent has committed default in repayment of the outstanding loan amount.

44. In the facts it is seen that the applicant bank clearly comes within the definition of Financial Creditor. The material placed on record further confirms that applicant financial creditor had disbursed various loan facilities to the respondent corporate debtor and the respondent has availed the loan and committed default in repayment of the relevant outstanding financial debt. On a bare perusal of Form – I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is



also seen that there is no disciplinary proceeding pending against the proposed IRP. We are satisfied that the present application is complete in all respect and there has been default in payment of the financial debt.

45. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

46. Mr. Shravan Kumar Vishnoi having registration number IBBI / IPA-002 / IP-P00040/ 2016-17 / 10079 resident of 406, 407, Shopping Square - II, Sector - D, Sushant Golf City, Ansal API, Lucknow - 226030 is appointed as an Interim Resolution Professional.

47. We direct the Financial Creditor to deposit a sum of Rs.1 Lac with the Interim Resolution Professional namely Mr. Shravan Kumar Vishnoi to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate



Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said advance amount however be subject to adjustment towards Resolution Process cost as per rules and shall be paid back to the applicant Financial Creditor.

48. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

49. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:



“(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 Securitization 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.”



50. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

51. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the



Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

52. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at



the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

Sd/-

(M.M. KUMAR)
PRESIDENT

Sd/-

(S. K. MOHAPATRA)
MEMBER (T)

Deepak Kumar