

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV

CP (IB) No.2579/MB.IV/2019

Under section 7 of the Insolvency &  
Bankruptcy Code, 2016

*In the matter of*

Syndicate Bank

...Financial Creditor

Versus

Bothra Metals and Alloys Limited

[CIN: L27100MH2001PLC133926]

...Corporate Debtor

Order pronounced on 06.07.2020

*Coram:*

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)  
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

*Appearances:*

For the Financial Creditor : Mr Rohan Agrawal i/b Mr Nishit  
Dhruva, Mr Prakash Shinde & Ms  
Swati i/b MDP & Partners,  
Advocates  
For the Corporate Debtor : Mr Manmohan Rao a/w Ms  
Dipti Sawlani, Advocates

ORDER

*Per: Rajasekhar V.K., Member (Judicial)*

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) by Syndicate Bank (Financial

---

Creditor), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Bothra Metals and Alloys Limited (Corporate Debtor).

2. The Corporate Debtor is a listed public company limited by shares and incorporated on 09.11.2001 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is L27100MH2001PLC-133926. Its registered office is at No.6A, Ground Floor, Bothra House, No.5, Assembly Lane, Dadiseth Agyari Lane, Kalbadevi, Mumbai 400 002, within the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 04.07.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹44,18,69,698.53 (Rupees forty-four crore eighteen lakh sixty-nine thousand six hundred and ninety-eight and fifty-three paise only) as principal and ₹17,28,82,823.06 (Rupees seventeen crore twenty-eight lakh eighty-two thousand eight hundred and twenty-three and six paise only) as interest as on 02.09.2015, which is stated to be the date of default.
4. The case of the Financial Creditor is as follows: -
  - (a) The Financial Creditor had, *vide* its Sanction Letter dated 24.02.2014, agreed to take over the working capital facilities from ICICI Bank and State Bank of India, and provided additional fresh working capital loan to the Corporate Debtor, as follows (*para 1 at page 6 of the Petition*):
    - (1) Cash Credit of ₹22.00 crore

- (2) Letter of Credit/Buyers Credit: ₹23.50 crore
  - (3) Term Loan: ₹2.21 crore
  - (4) Forward cover: ₹23.50 crore.
- (b) The Corporate Debtor executed various security documents including Deed of Hypothecation, Working Capital Consortium Agreement, Composite Hypothecation Agreement, Agreement of Mortgage, Affidavits by Mr Sunderlal Bothra and other guarantors, and Master Joint Lenders Forum Agreement, which are listed at Exhibits 1-1 to I-9 of the Petition (*para 5 at page 11-12 of the Petition*);
- (c) Copy of the CIBIL Report in respect of the Corporate Debtor has been placed at Exhibit J to the Petition (*para 6 at page 12 of the Petition*);
- (d) Copies of entries in the bank account coupled with certificates under the Bankers Books Evidence Act, 1891, have been attached as Exhibit K to the Petition (*para 7 at page 12 of the Petition*);
- (e) Annual Returns of the Corporate Debtor for the Financial Year 2017-18 dated 29.09.2018 has also been attached as Exhibit L-4 to the Petition (*para 8 at page 13 of the Petition*).
5. Bank statements are also attached as Exhibit 'K' at pages 522-525. The total debt due and payable to the Financial Creditor is ₹61,47,52,521.59 (Rupees sixty-one crore forty-seven lakh fifty-two thousand five hundred and twenty-one and fifty-nine paise only), as mentioned at page 36 of the Petition.

- 
6. Mr Manmohan Rao a/w Ms Dipti Sawlani, Learned Counsel appeared on behalf of the Corporate Debtor and made his submissions.
7. In its reply dated 27.09.2019, the Corporate Debtor has submitted as follows:-
- (a) Even though the Financial Creditor took over the facilities from ICICI Bank and SBI in terms of sanction letter No.185/LCB/BMAL/2914 dated 24.02.2014, the Corporate Debtor did not accept the terms and conditions more particularly as buyers credit facility was not sanctioned and the same was requested to be considered. (*para 6.2 at page 6 of the Reply*);
- (b) The Financial Creditor stopped Buyers Credit Facility in December 2014 as a result of which the Corporate Debtor had to suffer loss. Further, the undue delay in obtaining approvals adversely affected the Corporate Debtor's working capital cycle, leading to heavy losses. The Corporate Debtor had to incur huge amount of demurrage and detention charges for import of raw materials. The fluctuation in the exchange rate of USD leading to steep decline in rupee value also proved detrimental. The Maharashtra Pollution Control Board issued an order against the Corporate Debtor leading to shut down of the Plant. All these processes affected manufacturing activity and also the contractual obligations towards buyers(*para 6.2 at page 7 of the Reply*);
- (c) The Financial Creditor wrongly classified the account as NPA on 03.12.2015, The Corporate Debtor did not have notice of the account having been declared as NPA before issue of notice under section 13(2) of the SARFAESI Act, 2002. The bank did not apprise the Corporate Debtor of the fact that the account had become NPA. No opportunity was given to upgrade the account, nor did the Financial Creditor considered any restructuring to

enable the Corporate Debtor to come out of the crisis (*para 6.7(b) at page 10-11 of the Reply*);

- (d) The Corporate Debtor has outstanding amounts payable to it from its customers, which, if recovered, would be sufficient to repay the debt of the Financial Creditor (*para 8 at page 11-12 of the Reply*);
- (e) The Corporate Debtor has long term loans and advances payable to it by the Income Tax Department, VAT and GST authorities, and security deposits with various service providers. These amounts, if realised, would enable the Corporate Debtor to repay the outstanding loan amount due to the Financial Creditor (*para 10 at page 12 of the Reply*);
- (f) The Financial Creditor, as consortium leader, had arbitrarily declared the account as NPA on 03.12.2015 (*para 13 at page 13 of the Reply*);
- (g) The Financial Creditor has initiated civil suits and also proceedings under the SARFAESI Act before various judicial fora. Therefore, the present petition is not maintainable (*para 15 at page 14 of the Reply*).;
- (h) The Financial Creditor's application is barred by limitation (*para 22 at page 18 of the Reply*);
- (i) The documents filed along with the petition are defective, inasmuch as the applicable rate of interest is not mentioned and it is left to the banks under the consortium to decide. The bank has debited interest @15% p.a. on the account, which is illegal (*para 25 at page 20 of the Reply*);
- (j) The Corporate Debtor has submitted One Time Settlement (OTS) proposals to the Financial Creditor on 02.07.2018, 26.03.2019, 19.08.2019, and Resolution Plans dated 20.11.2018 and

12.02.2019 to the Financial Creditor, but the Financial Creditor has not considered the same positively.

8. We have heard the arguments of both sides and perused the records. The Corporate Debtor has stated that the claim of the Financial Creditor is not valid primarily on the ground that the claim is barred by limitation.
9. This is a matter where the question of limitation will have to be considered, since the date of default is stated to be 02.09.2015 and the date of declaration as NPA is 03.12.2015.
10. Upon perusal of the documents on record, it is seen that there is acknowledgment of debt in the balance sheet of the corporate debtor all along. It is well-settled through various judgments of the Hon'ble Supreme Court now that an acknowledgement in the balance sheet of the company satisfies the requirements of section 18 of the Limitation Act, 1963, leading to a fresh period of limitation commencing from each such acknowledgement. Further, the reply also makes it clear that there is a debt due and payable to the Financial Creditor, which remains unsatisfied. Therefore, the aspect of limitation raised as one of the defences by the Corporate Debtor does not hold water.
11. As far as the other contentions are concerned, such as not being given Buyers Credit Facility on time, the fact that there was fluctuation in the exchange rate, the availability of raw materials, and initiation of proceedings in various other courts under other laws, outstanding amounts payable by the customers, security deposit realisable from various authorities, parties etc cannot be considered to be defences in a petition filed under section 7 of the IBC. Further, the fact that the

Corporate Debtor has itself submitted various OTS proposals to the Bank, is *ipso facto* an admission of the fact that there is a debt due and payable to the Financial Creditor.

12. The Financial Creditor has proposed the name of Mr Harish Kant Kaushik [Reg. No.IBBI/IPA-001/IP-P01469/2018-2019/12340] as the Interim Resolution Professional (IRP) of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
13. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
14. It is, accordingly, hereby ordered as follows: -
  - (a) The petition bearing CP (IB) No.2579/MB/C-IV/2019 filed by Syndicate Bank, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Bothra Metals and Alloys Limited [CIN: L27100MH2001PLC133926], the Corporate Debtor, is admitted.

- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
  - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) 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 (Sarfaesi) Act, 2002;
  - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
  - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator.
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority



approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mr Harish Kant Kaushik[Reg. No.IBBI/IPA-001/IP-P01469/2018-2019/12340], having address at Flat No.1904, Sapphire, Regency Towers, Kavesar, Ghodbundar Road, Thane (W) 400615 [email: harishkant2007@gmail.com, Mobile: +91-9819799455], is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (i) The Financial Creditor shall deposit a sum of ₹3,00,000/- (Rupees three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (j) In terms of section 7(5)(a) of the IBC, the Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- (k) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

Sd/-  
Ravikumar Duraisamy  
Member (Technical)

06.07.2020

Sd/-  
Rajasekhar V.K.  
Member (Judicial)