

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(IB)-1096/PB/2018

IA-3615/2021

IA-3355/2021

IA-2347/2021

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

STATE BANK OF INDIA

State Bank Bhavan, 14thFloor,
Madame Cama Road, Nariman Point,
Mumbai-400021

Also, at:

SBI STRESSED ASSETS MANAGEMENT BRANCH-II

SBI House II & III Floor,
18/4, Arya Samaj Road, Karol Bagh,
New Delhi-110005 Financial Creditor

Vs.

M/S. ACTION ISPAT AND POWER PRIVATE LIMITED

PlotNo.44A Khasra No.589/333,

Shahzada Bagh, Old Rohtak Road,
New Delhi- 110035

.... Corporate Debtor

Order delivered on: 23.03.2022

Coram:

**JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA,
HON'BLE MEMBER (TECHNICAL)**

Appearance

For the Applicant: Mr. Ramji Srinivasan, Sr. Adv.,
Mr. Arijit Mazumdar, Mr. Shupriya gale, Ms.
Akansha Kaushik, Ms. Rajshree Choudhary,
Advs. Mr. Ayush Beotra, Advocate

For Respondent : Mr. Alok Dhir, Ms. Varsha Banerjee, Ms.
Gaurav Singh, Advs.

ORDER

PER: ORAL ORDER: RAMALINGAM SUDHAKAR, PRESIDENT

1. This is an application, filed by State Bank of India on 13.08.2018 under Section 7 of the Insolvency and Bankruptcy



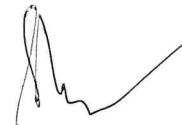
Code, 2016 (IBC), r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (Adjudicating Authority Rules), for initiating the Corporate Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Process (IRP), against the Corporate Debtor viz., M/S. Action Ispat and Power Private Limited (Corporate Debtor).

2. As per the application, M/s. Action Ispat & Power Pvt. Ltd., (Corporate Debtor,CD) is a steel manufacturer and has steel plant in Jharsuguda, Odisha for manufacturing billets, sponge iron and ferro alloy. In 2007, the Corporate Debtor approached the State Bank of India to avail various credit facilities.

3. As per the application, there is total outstanding amount of Rs. 722,75,802,815.10 (Rupees Seven Hundred Twenty-Two Crore Seventy-Five Lakh Eighty Thousand Eight Hundred and Fifteen Rupees and Ten Paisa) as 30.06.2018.

4. This Adjudicating Authority issued notice in the application on 31st August, 2018. Thereafter Applicant filed IA-481/2021. praying for substitution of SBI with CFM Asset Reconstruction Pvt. Ltd. for the debt payable to SBI was assigned to the Asset Reconstruction Company through assignment deed dated 18.01.2021. Vide order dated 09.02.2021 in IA-481/2021, the same was allowed directing the applicant to file fresh memo of parties before next date of hearing.

5. The matter was heard today. Mr. Ramji Srinivasan Sr. Counsel appeared for the Applicant and submitted arguments for admitting the application. Mr. Alok Dhir Advocate appeared for the Corporate Debtor and submitted the objections.



6. In this case, the Respondent/Corporate Debtors' objection is as follows:

A. The Date of NPA is 31.03.2013, for a sum of Rs. 722,75,80,815.10/- (Rupees Seven Hundred Twenty-Two Crore Seventy-Five Lakh Eighty Thousand Eight Hundred and Fifteen Rupees and Ten Paisa), if that is taken as relevant date, the Petition which has been filed on 13.08.2018, will invoke the limitation and therefore, this is an incurable defect. In support of the issue of limitation, he also pleaded that assuming without admitting that there is a Master Restructuring Agreement dated 30th September 2013 (page-1031;vol-VI), Second Supplemental Master Restructuring Agreement dated 12th June 2015 (page-1137;vol-VI), the Third Supplemental Master Restructuring Agreement dated 7th September 2015, (page-1148; vol-VI) and the revival by the Corporate Debtors acknowledging liability vide revival letter dated 16th July 2016 (Page 1548 -Vol-VIII), in terms of the RBI circular, the date of default will be 31.03.2013 and not 16.07.2016 and therefore, the plea of the petitioner that the petition is within the limitation is false.

7. As per contra, Sh. Ramji Srinivasan appearing for the Petitioner pleaded that the letter dated 16.07.2016, of the Corporate Debtor acknowledging liability is very clear in terms of the limitation and we extract this letter:

"To,
The Deputy General Manager
State Bank of India



*Industrial Finance Branch
1-Tolstoy Marg, New Delhi*

Dear Sir,

With reference to the several credit facilities for sums not exceeding at any one time in the aggregate the sum of Rs. 909,97,00,000(Rupees Nine hundred nine crores and ninety-seven lacs only) granted and/or agreed to be granted to me/us on the terms and conditions specified and contained in an Term Loan Agreement dated the 30th day of September 2013, and in respect of which I/we have executed various other documents, more particularly:

Security Documents executed on 30.09.2013:

1. *Master Restructuring Agreement*
2. *Trust and Retention Account Agreement*
3. *Inter Se agreement*
4. *Letter of Authority to Lead bank*
5. *Deed of Guarantee*

We do hereby confirm that all the Security Documents executed by us in favour of you in respect of such facilities are subsisting, valid and effective and are fully enforceable against us.

I/We acknowledge for the purpose of Section 18 of the Limitation Act, 1963 and any like limitation law in order to



preclude any question of limitation law, that I/We am/ are liable to you for the payment of all outstandings with interest costs, charges and expenses and other monies due and payable by me/us to you in respect of the said credit facilities granted and/or to be granted under the said documents or in any other manner and which said documents shall remain in full force with all relative securities, agreements and obligations.

Authorised Signatory For and The common seal of M/s Action on behalf of

For M/s Action Ispat & Power a Resolution passed by the Private Ltd.

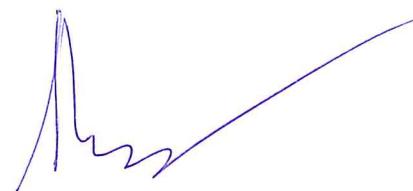
Dated the 16.07.2016

Ispat & Power Private Ltd. has been hereby affixed pursuant to a Resolution passed by the Board of Directors of the Company at its Meeting held on dated 01.06.2016 in the presence of Sh. Naresh Kumar Aggarwal, Director of the Company.”

8. We also refer to Section 238A of the IBC and sub-section 1 of Section 18 of the Limitation Act, 1963 and the extract of both Sections is as under:

IBC

“238A. Limitation. –



The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be

Limitation Act, 1963

18. Effect of acknowledgment in writing. —

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. ”

9. A plain reading of both these provisions makes it clear that when the Corporate Debtor has clearly acknowledged the debt, the sub-section (1) of Section 18 of the Limitation Act 1963, provides for extending the period of limitation. The letter dated 16.07.2016, was signed by the Corporate Debtor, there is no case for the Corporate Debtor to raise objection on limitation. Accordingly, the **plea of the Corporate Debtor** is hereby **dismissed**.

10. Another plea taken by the Ld. Counsel for the Corporate Debtor is that extension of limitation has not been pleaded by the Financial Creditor in its application. The Ld. Advocate for the

Financial Creditor has pointed that the application has been filed in the prescribed Form-1 and there is a mention of the revival letter dated 16.07.2016. Hence we hold that the objection of the Corporate Debtor is not sustainable; the proceedings in IBC are quasi-judicial in nature and the strict procedure of CPC do not apply.

11. The Petition for initiating CIRP against the Corporate Debtor/Respondent is **admitted**. All the associated IAs are disposed of in terms of this order.

12. The applicant has proposed the name of Mr. Deepti Ranjan Nath as IRP. On perusal of the details of the IRP, it is found that Mr. Deepti Ranjan Nath is having residential address of Thane, so his travelling to and fro for the company whose registered office is in Delhi to get the records of the company whose registered office is in Delhi zone, conduct meetings of CoC, and present himself before the Adjudicating Authority in physical hearings would add to the cost of CIRP as well as may delay the process of CIRP. We have perused that in some cases IRP has been appointed from a city different from the city of registered office of the Corporate Debtor but it is the solemn duty of the Adjudicating Authority to ensure that CIRP cost does not increase unnecessarily for the reason of IRP being located in a different city than the city of registered office of the Corporate Debtor and also quite far away from this Bench. Further, it's the solemn duty of this Adjudicating Authority to minimise delay in conducting CIRP proceedings. Hence, we have referred to the panel of Insolvency Professionals of NCLT, Delhi. We have also perused the panel of Insolvency Professionals given by IBBI for

NCLT, Delhi and we find that the panels of IBBI have been prepared zone-wise and all the insolvency professionals in New Delhi zone are located in the Union Territory of New Delhi. In this view of the matter, we appoint Ms. Maya Gupta as IRP of the Corporate Debtor. The details of the IRP are as follows:

Ms Maya Gupta, IRP Registration No. IBBI/IPA-002/IP-N00363/2017-2018/11061 having address: **3685/7, Narang Colony, Tri Nagar, New Delhi, NCT of Delhi -110035** e-mail: fcsmayagupta@gmail.com. This is subject to the consent of the IRP who shall be asked to give the consent on the date when the order regarding the appointment of IRP is passed.

13. In pursuance of Section 13 (2) of the Code, we direct the IRP to make public announcement immediately with regard to admission of this application under Section 7 of the IBC. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

14. As a consequence of the application being admitted, moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent as per sub-clause (a) to (d) of Section 14(1) of the IBC. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the IBC, shall come in force.

15. We direct the applicant to deposit a sum of Rs. 2,00,000 (Rupees Two lakhs) with the IRP i.e., Ms. Maya Gupta, 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 applicant. The amount however be subject to adjustment by the Committee of Creditors as accounted for by the IRP and shall be paid back to the applicant.

16. The registry is directed to communicate a copy of the Order to the Applicant, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi, at the earliest 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.

17. The commencement of the Corporate Insolvency Resolution Process is Ordered which ordinarily shall get completed within 180 days, reckoning from the day this Order is passed.


RAMALINGAM SUDHAKAR
PRESIDENT


AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)