

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

(IB)-108(PB)/2022

IN THE MATTER OF:

CFM Asset Reconstruction Pvt. Ltd. Financial Creditor
v.	
Micro Stock Holdings Pvt. Ltd. Respondent

ORDER UNDER SECTION 7 OF INSOLVENCY & BANKRUPTCY
CODE, 2016

Judgment delivered on 11.05.2022

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner	Mr. P. Nagesh, Sr. Adv. with Mr. Arijit Mazumdar, Mr. Akshay Sharma & Ms. Akanksha Kaushik, Advs.
For the Respondent	None

ORDER

PER SH. AVINASH K. SRIVASTAVA, HON'BLE MEMBER (TECHNICAL)

This application has been filed by the Financial Creditor (FC) namely CFM Asset Reconstruction Pvt. Ltd. under Section 7 of IBC on 03.02.2022 seeking to initiate Corporate Insolvency Resolution Process in the matter of Micro Stock Holding Private Limited, the Corporate Debtor (CD). The application has been filed in the prescribed Form-1 as per Rule 4 of the IBC

(Application to Adjudicating Authority) Rules, 2016. As per the petitioner there is a total outstanding of about ₹ 1025.53 Crore (including interest of about ₹ 485.53 Crore) against the borrower M/s. Action Ispat & Power Private Limited; the Corporate Debtor is one of the guarantors of the financial facilities availed by the borrower. The petitioner is an assignee of the debt owed by the CD to the State Bank of India (SBI). The applicant has attached particulars of security held namely certificate of registration of charge issued by Ministry of Corporate Affairs dated 31.10.2013, 13.06.2015 (in favour of SBICAP, Trustee Company Limited) and for modification of the charge in favour of CFM Asset Reconstruction Pvt. Ltd., the FC which has acquired the loan facilities from SBI with underlying Security Interest vide Assignment agreement dated 18.01.2021. The FC has appended the deed of guarantee vide which the CD has provided corporate guarantee to the borrower for the loan facilities which has since been invoked by the SBI. Since 2007 the borrower had availed various credit facilities from SBI and other banks. However around 2013 the borrower was unable to repay its debts. On the request of the borrower, Master Restructuring Agreement was entered on 30.09.2013 in which interalia SBI was appointed as lead bank of the consortium. As the borrower continued to default, SBI on 31.03.2017 declared the account of the borrower as Non-Performing Assets w.e.f. 31.03.2017. SBI issued demand letters dated 29.08.2017 to the borrower and CD to repay the amount, thereafter SBI invoked the guarantee provided by the guarantors including the CD and issued notice dated 20.09.2017

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under Section 13(2) of SARFAESI Act, 2002 upon the borrower and CD.

2. SBI also filed an application being OA No. 189/2018 before DRT, New Delhi under Section 19 of Recovery of Debts and Bankruptcy Act, 1993 against the borrower and the guarantors including the CD (the Corporate Guarantor). The same is pending. In this OA, the guarantors of the borrower including the CD have filed a written statement claiming that the banks did not honour their OTS agreement, steel industry has been going through Global recession on account of dumping by China and Russia, the banks did not make available the loan amounts as per the OTS agreement etc. and have filed a counter claim of ₹ 819 Crore along with interest @15% from March, 2018.

3. It is further submitted that CIRP has already been initiated against the borrower namely M/s. Action Ispat & Power Private Limited by this Adjudicating Authority on 23.03.2022 in CP. No. (IB)-1096(PB)/2018.

4. On the application filed by the FC on 03.02.2022, this Tribunal issued notice on 22.02.2022 by all means to Micro Stock Holdings Pvt. Ltd., the CD (In the order dated 22.02.2022, it is erroneously mentioned that this notice to be sent by petitioner/operational creditor under NCLT Rules. The words Operational Creditor may be substituted by the words Financial Creditor). Thereafter the matter was listed on 02.03.2022, 01.04.2022 & 22.04.2022. The affidavit of service has also been placed by the petitioner before us. However, the respondent-CD did not appear and has not submitted any written reply.

5. We have heard Mr. P. Nagesh, Ld. Sr. Counsel for the applicant and peruse the documents available in the file. Ld. Sr. Counsel has submitted that the FC is the assignee of debt owed by the CD to the SBI vide assignment agreement dated 18.01.2021 (Annexure-44 @ Pg. 1398, Vol. VII). The borrower namely Action Ispat and Power Pvt. Ltd. availed credited facility of ₹ 926 Crores from consortium of banks including SBI on 05.02.2007. The restructuring of debt was approved on 24.09.2013 at the request of the borrower and subsequently, Master restructuring agreement for an amount of about ₹ 568 Crore (Pg. 537, Vol. III) was entered between the borrower and the consortium of banks. As per the relevant clause 3.1.1(C)(b) of Master restructuring agreement, Micro Stock Holding Pvt. Ltd. (CD) agreed to provide its corporate guarantee (Pg. 488, Vol. III). Accordingly, various deeds of guarantee dated 30.09.2013, 01.10.2014 and 12.06.2015 were executed by the CD. The CD also issued a revival letter of acknowledgement dated 16.07.2016 in favour of SBI to the fact that these deeds of guarantee are valid and fully enforceable against the CD for sums not exceeding at any one time in the aggregate the sum of Rs. 196.54 Crore (pages 1014-15, Vol. VI). The FC has placed demand letter of SBI dated 29.08.2017 to the borrower and CD to repay the amount of ₹ 672 Crores (page 1023, Vol. VI). Further, Applicant has placed a true copy of loan account statement with this application along with working sheet and copies of the Master restructuring agreement, Security Trustee Agreement, deeds of guarantee, a copy of letter of authority by the lenders in favour of SBI as Lead Bank, true copy of assignment agreement dated 18.01.2021. It has also been

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submitted by the Ld. Sr. Counsel for the FC that the legal position has been established that in the matter of guarantee, CIRP can proceed against the principal borrower as well as corporate guarantor. As regards limitation, the period from 15.03.2020 to 28.02.2022 is excluded for the purpose of calculation of limitation period by virtue of Hon'ble Supreme Court order dated 10.01.2022 in *Suo Motu WP of 3/2022*.

6. In view of the above, we are inclined to admit the application under Section 7 of IBC. Accordingly the application is admitted.

7. 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 from 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

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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.

8. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the IBC, 2016. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP, as stipulated under Section 19 for discharging his functions under Section 20 of the IBC, 2016.

9. 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 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.

10. As a consequence of the application being admitted in terms of Section 7 of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1) of IBC shall follow in relation to the

Corporate Guarantor as per proviso (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.

11. We direct the Applicant to deposit a sum of Rs. 2,00,000, with the Interim Resolution Professional 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, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Applicant.

12. The registry is directed to communicate a copy of the Order to the Applicant, the Corporate Debtor, 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 his website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.



(RAMALINGAM SUDHAKAR)
PRESIDENT



(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)