

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – IV**

CP (IB) 884/MB/2023

Under section 7 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Yes Bank Limited

... Financial Creditor/ Applicant
Versus

Indrajit Power Private Limited

... Corporate Debtor/ Respondent

Order Delivered on: **01.02.2024**

Coram:

Ms. Anu Jagmohan Singh

Mr. Kishore Vemulapalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor : Mr. Vishnu Shriram i/b Khaitan
& Company.

For the Corporate Debtor : Mr. Dhiraj Mhetre a/w Mr.
Shreyas Lele i/b Khaitan Legal
Associates.

ORDER

1. This Company Petition is filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Yes Bank Limited** ("the Financial Creditor") herein the “Applicant”, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Indrajit Power Private Limited** ("the Corporate Debtor").

2. The Corporate Debtor is a private company limited by shares incorporated on 20.09.1994 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is Uttam House, 69 P D Mello Road, Carnac Bunder Mumbai-400009. Therefore, this Bench has jurisdiction to deal with this petition.

3. The present Petition was filed on 31.08.2023 before this Tribunal for claiming an Amount for a sum of INR 3,31,41,16,590/- (Rupees Three Hundred and Thirty-One Crore Forty-One Lakh Sixteen Thousand Five Hundred and Ninety only) as on 22.05.2023 including the outstanding principal and interest. The Date of Default as part IV is 14.10.2021 (being the date on which the Corporate Debtor defaulted in payment of instalment in respect of Term Loan 1 and Term Loan 2 and FITL Facility) & 21.11.2021 (being the date on which the Corporate Debtor defaulted in payment of instalment in respect of the WC Facility). NeSL evidencing the loan and default showing authenticated is annexed to the petition.

Submissions made by the Financial Creditor:

4. The Financial Creditor submits that in the year 2016, the CD (Corporate Debtor) approached the FC (Financial Creditor) for availing financial assistance by way of two term Loans Facilities. For Term Loan I for the principal amount of INR 90 Crores and For Term Loan II for the principal amount of INR 185 Crores which was sanctioned to the CD vide facility letter dated 27.06.2016 and that the Loan agreement entered and executed between the FC & CD on 14.09.2016. Subsequently, principal

amount under Term Loan I was revised to INR 89.10 crores and Term Loan II was revised to INR 183.25 crores. The important terms of sanction with respect to the facilities are set out below:

- a. For the Purchase of coal/reimbursement of capex/ future capex/ maintenance capex.
 - b. Tenure of the Loan is 156 months (13 years).
 - c. Repayment in 50 quarterly structured instalments.
 - d. Availability period 31.10.2016.
5. It is submitted that the above loan facilities were secured by the following: -
- a. First pari passu charge on all the movable and immovable fixed assets of power plant including land there on except Inventory charged to working capital bankers.
 - b. Exclusive First charge on entire receivables from sale of power of Borrower.
 - c. Assignment of Borrowers rights under the PPA (Power Purchase Agreement) with Uttam Value Steels Limited "UVSL".
 - d. Pledge of 30% equity shares of the Borrower & 70% Shares under NDU arrangement to be kept in YBL Demat A/c.
 - e. Exclusive mortgage on 115 Acres of Agriculture Land at Panvel.
 - f. Exclusive mortgage on 9 Acres of Land at Madh.
 - g. Exclusive mortgage on Kalamboli property.
 - h. Exclusive mortgage on 10,000 sq. ft Commercial office in Navi Mumbai.
 - i. Subservient Charge on 24.20-acre Vadodara Land held in group company Tensile Steel Ltd.

- j. Exclusive charge over Miglani family's rights to receive profits in redevelopment project undertaken by an associate company Platinum Infrastructure Development Pvt. Ltd.
6. The Financial Creditor submits that pursuant to and as per the terms and conditions of the said Facilities, the Financial Creditor, other security providers and Corporate Debtor entered into the following financing and security documents/agreements:
 - a. Loan agreement dated 14th September 2016.
 - b. Demand Promissory Note dated 14th September 2016.
 - c. Letter of Continuity for Demand Promissory Note dated 14 September 2016.
 - d. Deed of Guarantee dated 14th September 2016 executed by Mr. Rajinder Miglani, Mr. Anuj Miglani and Mr. Ankit Miglani.
 - e. Deed of Guarantee dated 14th September 2016 executed by Archisha Steels Pvt. Ltd.
 - f. Deed of Mortgage dated 8th February 2017 executed between the Financial Creditor through its Security Trustee Vistra ITCL (India) Ltd. and the Corporate Debtor.
 - g. Supplementary Deed of Mortgage dated 29th March 2017 executed between the Financial Creditor through its Security Trustee Vistra ITCL (India) Ltd. and the Corporate Debtor.
 - h. Unattested Deed of Pledge dated 13th October 2017 executed between Grow Well Mercantile Pvt. Ltd and the Financial Creditor.
 7. The Financial Creditor and Corporate Debtor entered into various addendums to the facility letter by which certain terms of the loans

such as revision of facility amount, facility fees and interest rates in respect of Term Loan 1 and Term Loan 2 were modified. Details of the addendums to the facility letter are as follows:

- a. Addendum facility letter dated 29.09.2017.
 - b. Addendum facility letter dated 11.10.2017.
 - c. Renewal of credit facilities dated 11.05.2018.
 - d. Addendum facility letter dated 27.06.2018.
 - e. Addendum facility letter dated 29.10.2018.
 - f. Addendum facility letter dated 22.06.2021.
8. It was submitted that thereafter during onset of COVID-19 on 15.01.2021 the financial Creditor granted a Working Capital facility of INR 47 Crores in terms of a loan agreement dated 21.01.2021. This facility was availed by the Corporate Debtor under the Emergency Credit Line Guarantee Scheme (“ECLGS”) of the National Credit Guarantee Trustee Co. Ltd for a period of 5 years from the first disbursement.
9. The Working Capital Facility was secured by the following:
- a. The second charge on security was created in respect of Term Loan I and Term Loan II.
 - b. Exclusive charge on the assets financed through Working Capital Facility.
 - c. 100% credit guarantee by National Credit Guarantee Trustee Co. Ltd.
10. It was further submitted that Corporate Debtor due to non-payment of his accrued interest obligation under Term Loan I and Term Loan II had requested the Financial Creditor to convert his accrued interest obligation into Fund based facility, in terms of the Credit Facility letter dated 21" January 2021 issued by the

Financial Creditor, the Borrower was allowed additional time for repayment of the accrued interest obligation of INR 46,695,627.09 in relation to Term Loan I and INR 91,965,199.65 in relation to Term Loan II (together, "FITL Facility"), as per the repayment schedule annexed to the said letter and subject to acceptance of additional terms and conditions set out in the said letters including but not limited to the payment of interest on the said accrued interest obligation for the additional time period provided for repayment thereof.

11. It is submitted that on 22nd June 2021, the Financial Creditor issued an addendum facility letter to the addendum facility letter dated 15th January 2021 in terms of the Working Capital Term Loan Facility whereby the drawdown/availability period in respect of the facility was extended from 30th June 2021 to 31st December 2021 and the entire disbursement of the Working Capital Facility has to be concluded by 31st December 2021. Pursuant thereto, (a) a Second Supplemental Mortgage deed dated 21st February 2022 has been executed between the Financial Creditor through its Security Trustee Vistra ITCL (India) Ltd. and Corporate Debtor. (b) Supplemental Unattested Deed of Pledge dated 26th August 2022 executed between Grow Well Mercantile Pvt. Ltd and the Financial Creditor
12. The Financial Creditor submits that as the Corporate Debtor started defaulting in repayment of the loan facilities to which the account of Corporate Debtor was declared as NPA by the Financial Creditor as on 12.01.2022.

13. In view of the NPA, the Financial Creditor issued a loan recall notice dated 13th May 2022 bearing letter no. YBL/SAM/22-23/128, calling upon the Corporate Debtor to make repayment of an aggregate outstanding debt amount of INR 286,02,54,642/- as on 11th May 2022 to the Financial Creditor towards loan facilities f.e., Term Loan I, Term Loan II and the Working Capital Facility (collectively referred to as "Facilities"), failing which the Corporate Debtor was put to notice that the Financial Creditor would be constrained to initiate appropriate legal action against the Corporate Debtor.

14. It was further submitted that the Financial Creditor also initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFEASI Act"). The Financial Creditor vide notice of demand u/s 13(2) of SARFAESI Act, 2002, dated 29th August 2022, called upon the Corporate Debtor to make the repayment of an aggregate outstanding debt amount of INR 286,02,54,642/- (Rupees Two Hundred Eighty-Six Crore Two Lakhs Fifty-Four Thousand Six Hundred and Forty-Two Only) due and payable as on 11th May 2022 under the loan facilities within 60 (sixty) days from the issuance of the said notice of demand. The Corporate Debtor failed to make repayment of the outstanding amounts under the loan facilities in terms of the notice of demand dated 29th August 2022. The Financial Creditor also filed an Original Application bearing No. TA/226 of 2022 before the Debts Recovery Tribunal II, New Delhi seeking recovery of outstanding debt amounts under the loan facilities against the Corporate Debtor and other guarantors.

15. In view of the above facts and circumstances, the applicant has filed the present application against the corporate debtor.

Submissions made by the Corporate Debtor:

16. The Corporate Debtor submits that the Petitioner has not filed the present petition in the format required by the Insolvency & Bankruptcy Code, 2016 and that the petition is incomplete and defective on the basis that it does not disclose the date of default and details of disbursement.
17. The Corporate Debtor submits that the petitioner has raised legal proceedings before the DRT under section 19 of the Recovery of Debt and Bankruptcy Act, 1993, viz. T.A No.226 of 2022 against the Corporate Debtor, prior to the filing of the Present Company Petition. The same is currently pending adjudication before the DRT New Delhi.
18. The Corporate Debtor submits that the Respondent entered into a Power Purchase Agreement (PPA 1), with Lloyds Steel for the supply of electricity. In the year 2012, Lloyds Steel was renamed as Uttam Value Steel Limited (UVSL). It was further submitted that in the year 2017, a petition was filed by State Bank of India against UVSL, viz. C. P NO. 1830 of 2017 under section 7 of the code, which came to be admitted by this Hon'ble Tribunal by order dated 26.06. 2018. That by an order dated 06.05.2020 the Resolution Plan was approved by this Tribunal and was implemented on 29.12.2020. Under the terms of Resolution Plan, the PPA previous entered into stood terminated.

19. It was submitted that owing to the above termination of PPA, the Respondent entered into another agreement with UVSL being PPA 3 dated 07.09.2021. Under the terms of PPA 3, the UVSL had the right to make payment of the consideration due and payable under PPA 3, directly to the creditors. That in the year 2022, pursuant to the approval of the Resolution Plan, UVSL was renamed as Evonith Value Steel Limited (EVSL). It is pertinent to note that the only source of Income of the Respondent was the Power Plant. The Respondent was entirely dependent on EVSL for income generation for making payments to its creditors, including the Petitioners.
20. The Corporate Debtor submits that UVSL/EVSL holds 26% shareholding in the Respondent. Moreover, vide the Order dated May 06, 2020, the Resolution Plan submitted by the Successful Resolution Applicant in respect of a sister company of the Respondent, viz Uttam Galva Metallics Limited ("UGML"), was also approved by this Tribunal. At that time, UGML held 10% shareholding in the Respondent. After the approval of the Resolution Plan, UGML was renamed as Evonith Metallics Limited ("EML"). Hence, considering that effectively, EVSL and EML collectively hold 36% shareholding in the Respondent, the Power Plant is solely utilized for EVSL and the day-to-day operations of the Power Plant is, in fact, run by EVSL. Therefore, under PPA 3, EVSL has continued to make bare minimum payments to the Respondent for procurement of coal, meeting its fixed expenses, etc., however, payments for servicing the debts of the Respondent have not been made. Moreover, since inception, UVSL held 26% shares in the Respondent, which is the minimum

threshold required under Rule 3 of the Electricity Rules, 2005, for a plant to have the status of a captive power plant. This demonstrates that since inception, the Power Plant was operated as a captive power plant for UVSL.

21. It is submitted that the above facts are within the Petitioner's knowledge. In fact, there has been considerable correspondence exchanged between the parties in this regard, where the Respondent has informed the Petitioner, inter alia, about the reduction in payments being made by UVSL to the Respondent. This also demonstrates that the Petitioner was at all times aware that the loan was serviced as per the terms of PPA 1 and PPA 2. Furthermore, the Resolution Applicant entered into a fresh PPA 3.
22. It is submitted that in Part IV of Form 1 in the present Company Petition, while the credit facilities were advanced in the year 2016, admittedly, the Respondent had been servicing the credit facilities till the year 2021 and only after the execution of PPA 3, the default, if any, also occurred, and that too, for reasons beyond the control of the Respondent and therefore, is not attributable to it.

Findings:

23. Heard the Ld. Counsel for the Financial Creditors and the Ld. Counsel for the Corporate Debtor and perused the records.
24. The following facts are not in dispute:
 - 24.1 At the request of the Corporate Debtor, there were initially two Term Loan facilities for an aggregate amount of Rs.

2,750,000,000/- (Two Hundred and Seventy-Five Crore Only) which were sanctioned to the Corporate Debtor vide a facility letter dated 27.06.2016 to which the said facilities were revised from time to time.

24.2 A loan agreement was also executed between the Financial Creditor and Corporate Debtor on 14.09.2016. Furthermore, a Deed of Personal Guarantee and Corporate Guarantee were also Executed.

24.3 A Demand Promissory Note was also executed on 14.09.2016 for an aggregate amount of Rs. 2,750,000,000/- (Two Hundred and Seventy-Five Crore Only) on behalf of the Corporate Debtor and letter of continuity for Demand Promissory Note was executed on 14.09.2016.

24.4 The said amount was extended to the Corporate Debtor for a consideration in time value of money and hence is a Financial Debt within the meaning of Section 5(8) of the IBC.

24.5 There is no dispute over the fact that the Corporate Debtor defaulted in paying the financial debts of more than Rs. 1 Crore (as per Section 4 of the IBC). From evidence and material on record, we also hold that the application is filed by properly authorized person.

25. The Corporate Debtor has raised objection that the Petitioner has initiated SARFAESI proceedings before the DRT also. However, it is well settled law that there is no bar for filing petition under IBC despite pendency of similar proceedings in other courts.

26. The other plea raised by the Corporate Debtor that due to certain circumstances beyond its control the Corporate Debtor could not repay the loan hold no grounds as debt and default is established.
27. We also consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018]* upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.
28. Upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the fact that the Corporate Debtor owes debt to the Financial Creditor. Hence, the debt due and default is established. Hence, this CP is liable to be admitted.
29. The Financial Creditor has proposed the name of **Mr. Bhuvan Madan**, Registration No: IBBI/IPA-001/IP-P01004/2017-2018/11655, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
30. 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 stipulated under section 4(1) of the

IBC. Therefore, the debt and 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.

31. It is, accordingly, hereby ordered as follows: -

- (a) The petition bearing **CP (IB) 884/MB/2023** filed by **Yes Bank Limited**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Indrajit Power Private Limited [CIN: U45200MH1994PTC081267]**, the Corporate Debtor, is **Admitted**. We are hereby directing the Suspended Board of Director to Co-operate with the RP/IRP for smooth functioning of CIRP proceeding with providing necessary documents/information as required by the RP/IRP.
- (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:
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- (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. Bhuvan Madan, Registration No: IBBI/IPA-001/IP-P01004/2017-2018/11655**, having address at A-103 Ashok Vihar Phase-3 (Behind Laxmi Bai College), New Delhi, National Capital Territory of Delhi, 110052, 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 issued/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 Financial Creditor shall deposit a sum of Rs. 5,00,000/- 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).

- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order 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/-
ANU JAGMOHAN SINGH
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)