

RAJIV CHAKRABORTY

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IP Regn. No. IBBI/IPA-001/IP-P00602/2017-18/11053

Ref no: June/2018/01
Date: June 29, 2018

To,
National Stock Exchange of India Ltd.,
Exchange Plaza, C-1, Block G,
Bandra Kurla Complex,
Bandra (E),
Mumbai – 400 051.
Scrip Code: UVSL

Subject: Appointment of Insolvency Resolution Professional

Sir,

We would like to inform you that pursuant to the order dated 26th June, 2018, the Hon'ble NCLT, Mumbai Bench ("NCLT") has admitted the insolvency application (CP/IB/MH No. 1830 of 2018) against Uttam Value Steels Limited ("**Company**") and has appointed the undersigned as the interim resolution professional ("**IRP**") for the Company. A copy of the said Order is enclosed.

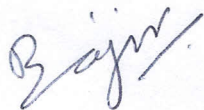
By virtue of the provisions of the Insolvency & Bankruptcy Code, 2016 ("**Code**"), I would like to inform you that from the date of appointment of IRP, i.e., 26th June, 2018 ("**Insolvency Commencement Date**"):

- a. The management of the affairs of the Company shall vest in the IRP;
- b. The powers of the board of directors shall stand suspended and be exercised by the IRP;
- c. The officers and managers of the Company shall report to the IRP and provide access to such documents and records of the Company as may be required by the IRP; and
- d. The financial institutions maintaining accounts of the Company shall act on the instructions of the IRP in relation to such accounts and furnish all information in relation to the Company available with them to the IRP.

I would request you to take note of the above appointment and also note that the powers of the Board of Directors of the Company stand suspended and are being exercised by the IRP effective from the Insolvency Commencement Date.

Yours sincerely,

Regards,



Name of the IRP: Mr. Rajiv Chakraborty

Interim Resolution Professional of Uttam Value Steels Limited

Registration No: IBBI/IPA-001/IP-P00602/2017-2018/11053

Encl: Order dated 26th June, 2018 passed by NCLT, Mumbai in CP/IB/MH No. 1830 of 2018

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

16.

C.P.(IB)-1830/(MB)/2017

CORAM :

Present :

SHRI M.K. SHRAWAT
MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY
LAW TRIBUNAL ON **26.06.2018**.

NAME OF THE PARTIES : State Bank of India (Financial Creditor)

V/s.

Uttam Value Steels Limited (Corporate Debtor)

SECTION OF THE COMPANIES ACT: Sec. 7 of Insolvency & Bankruptcy Code, 2016.

ORDER

1. Today's date is fixed for 'Pronouncement of Order'. However, from the side of the Respondent Debtor an email is placed stating that "Ziraat Bank" has addressed email to the Chairman of the Debtor Company disclosing therein that one of the distinguished Customer is interested in closing the purchase of ₹323 (*sic*) Crore of Uttam Mettalics Limited and ₹2217 Crore for Uttam Valve (*sic*) Steels Limited. It appears that the Ziraat Bank had issued this email without verifying the correct amount of proposal, as well as the correct name of the Company for which the impugned proposal has been made.

2. However, from the side of the Petitioner Bank, there is no positive response indicating any settlement. Moreover, the Corporate Debtor had also approached the Hon'ble NCLAT, New Delhi and vide Order of 25.06.2018 expressed not to interfere with the directions of the A.A. for the pronouncement of Order.

3. As a consequence, this email cannot be entertained at this stage.

Date : 26.06.2018

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SD/-
(M.K. SHRAWAT)
Member (Judicial)

Certified True Copy

Copy Issued "free of cost"

On 27-6-2018

Deputy Director

National Company Law Tribunal, Mumbai Bench

In the matter of

State Bank of India : Petitioner

V/s

Uttam Value Steels Limited : Respondent

Heard on : 15.06.2018

Order delivered on: 26.06.2018

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

For the Petitioner(s): : 1. Mr. Ameya Gokhale,
2. Ms. Meghna Rajadhyaksha and
3. Mr. Umang Singh, i/b
Shardul Amarchand Mangaldas & Co.

For the Respondent(s): : 1. Mr. J.P. Sen, Senior Advocate;
2. Mr. Mayur Khandeparkar, Advocate;
3. Mr. Dhiraj Mhetre,
4. Mr. Kanishk Kejriwal, i/b
Khaitan Legal Associates, Advocates.



Per M.K. Shrawat, Member (Judicial).

ORDER

1. A Petition has been filed on 29.12.2017 by State Bank of India in the capacity of 'Financial Creditor' U/s.7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter The Code), read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

1.1. The Petitioner is seeking the invocation of Insolvency Proceedings against 'Financial Debtor' M/s. Uttam Value Steels Limited, 4th Floor, Uttam House, P. D'Mello Road, Mumbai.

1.2. Requisite Form No.1 is submitted, therein vide Part-IV "Particulars of the Financial Debt" are described as, quote "The total principal amounts disbursed to the Corporate Debtor under all the facilities availed by it as set out in this Application ("Facilities") is

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₹400,00,00,000/- crores (sic) (Four Hundred Crores). Please see **Exhibit C** for the complete details." unquote.

1.3. However, the Financial Creditor is claiming the Debt in '**Default**' as under :-

"The total amount in respect of each of the Facilities, which is claimed in default (together with the principal amounts, accrued interest and penal interest, as applicable) as on 30th November, 2017 is ₹333,95,53,477/- Crores (sic) (Rupees Three Hundred Thirty Three Crores Ninety Five Lakhs Fifty Three Thousand Four Hundred Seventy Seven)"

1.4. The impugned requisite Form No.1 also contains "Particulars of Securities held, the date of its creation, its estimated value", as per the Creditor. The Securities are covering various types of Loan Facilities under the broad Headings as below:-

- a) Security for Term Loan Facility-A granted under "Rupee Facility Agreement" dated 25.09.2013;
- b) Security for Term Loan Facility-B (Corporate Loan) under "Rupee Facility Agreement" dated 25.09.2013;
- c) Security for "Letter of Credit Facility" granted for "Working Capital Facility Agreement" dated 25.09.2013;
- d) Security for "Bank Guarantee Facility" under "Working Capital Facility Agreement" dated 25.09.2013;



1.5 In addition to the above Securities there was an Undertaking dated 27.01.2014 executed by the "Corporate Debtor" for Non-disposal of Shares held in Dematerialized Form dated 5th December, 2017 executed by the sponsors of the Corporate Debtor namely First India Infrastructure Private Limited and Metallurgical Engineering and Equipments Limited.

1.6. Annexed with the Petition is a "Master Joint Lenders Forum Agreement" dated 27.10.2017 duly signed by all the Banks, except Vijaya Bank. It is worth to place on record that the Petitioner has placed on record an information that "Working Capital Facility Agreement" dated 25.09.2013 was again revived vide a latest **Sanction letter dated 18.07.2016.**

1.7. Time to time the **Registration of 'Charge'** in the records of RoC has been created such as pursuant to Deed of Hypothecation dated 25.09.2013, pursuant to Indenture of Mortgage dated 23.01.2014 and Modification of Charge on 15.07.2014 pursuant to execution of Tripartite Agreement between MIDC, Corporate Debtor and Access Trustee Services dated 14.07.2014.

1.8. Annexed with the Petition are the details and evidence of ancillary Security documents in respect of several Loan Facilities as described above. Deed of Personal Guarantee executed by one Mr. Rajendra Miglani, Anuj Miglani and Ankit Miglani dated 25.09.2013 is a part of the Compilation. Further, Inter-Creditor Agreement of 25.09.2013 is also on record. The Debtor had also obtained consent from Maharashtra Industrial Development Corporation (MIDC) dated 23.06.2014 in respect of a lease dated 10.03.1992 and 21.03.1992. Tripartite Agreements have also been executed between MIDC, Corporate Debtor and Access Trustee Services Limited in respect of Land in Industrial area.

1.9. General Information incorporated in the Petition is that, *"The Financial Creditor has filed this Application for initiating Corporate Resolution Process against the Corporate Debtor based on financial contracts executed by the Financial Creditor. The Financial Creditor also have other non-fund based facilities inter alia including letters of credit and bank guarantees issued on behalf of the Corporate Debtor which may be invoked during the course of the corporate insolvency process. The Corporate Debtor has not exhausted the outstanding under such non-fund based facilities. The Financial Creditor submits to this Hon'ble Tribunal that the non-fund based contingent liabilities may be converted into funded liabilities (net of margin money held by the Financial creditor) and the Financial Creditor may file updated claims for financial default in accordance with Sections 13 and 15 of the Insolvency and Bankruptcy Code, 2016 to enable the Interim Resolution Professional to perform his duties under Section 18(1)(b) and other relevant provisions of the Insolvency and Bankruptcy Code, 2016. This Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 is being filed without prejudice to the rights of the Financial Creditor and its subsidiaries available under Sections 13 and 15 of the Insolvency and Bankruptcy Code, 2016."*

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2. **PLEADINGS OF RESPONDENT DEBTOR : -** From the side of the Respondent Debtor Learned Senior Counsel has vehemently pleaded that this Petition of State Bank of India is premature and submitted in a hurry without considering the presentations made by the Respondent Debtor to the Consortium of the Lender Banks and to JLF. He has drawn the attention on the **gleaming background** of the Company that erstwhile it was **Lloyds Steel Industries Limited incorporated on 27.04.1970** promoted by "Gupta Family". The Uttam group took over the Management of the said Company in the year Dec. 2012 and thereupon changed the name to **"Uttam Value Steels Limited"** (in short **UVSL**) in March 2012-13. The Company is engaged in the manufacturing of various steel products. Hot molten metal, scrap and Direct Reduced Iron, which is used as the basic raw material for the production of steel through Electric Arc Furnace route and further processed through slab caster to produce steel slabs. The slabs are reheated and rolled to produce HR coils and plates. The HR coils are processed in the Cold Rolling Mill to produce CR coils. CR coils are further processed in the Galvanizing line to produce GP/GC coils & sheets. The Respondent's steel plant has an installed capacity to manufacture 1.00 MTPA of Hot Rolled (HR) coils, 0.38 MTPA of Cold Rolled (CR) COILS AND 0.25 MTPA of Galvanized Plain (GP)/Galvanized Corrugated (GC) products. It is stated that the Respondent's turnover for the financial year 2016-2017 was ₹3772 Crores. At the close of Financial Year 2017, the net fixed asset base of the Respondent was ₹2371 Crores. The Respondent has about 2000 employees and workers in its plant at Wardha. The Respondent has been actively and eagerly fulfilling its CSR obligations. For the Financial Years 2014-15, 2015-16 and 2016-17, the Respondent 's total contribution to the exchequer was projected at ₹750 Crores. It is vehemently pleaded that the Company had availed Term Loan of ₹304 Crores in the year 2013, however, as against that the Promoters have invested ₹2000 Crores in upgrading and modernisation of the Plant. The Promoters have set up a "Pig Iron" manufacturing unit adjacent to the existing unit. The Company is an ongoing unit having substantial potential as is evident from the turn over and the Fixed assets of last three years, reproduced below:-

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(All figures in Rs. Crores)

	2016-17	2015-16	2014-15
Turn Over	3772	3998	5406
Net Fixed Assets	2371	2510	2388

3. The argument is that RBI had issued a Circular on 30.06.2017 directing all the Banks to resolve the Debt with ₹5000 Crore threshold on or before 13.12.2017. It has also been directed in the said Circular to initiate Insolvency Proceedings in respect of the notified accounts on or before 31.12.2017. Hence it is vehemently pleaded that the Petitioner had filed this Petition on 29.12.2017 in a haste without applying proper Banking norms. Moreover, **RBI had never notified the Company for initiation of Insolvency Proceedings.** The Company was deprived of the opportunity to restructure the dues and to resolve the problem of outstanding Debt. The Respondent is unnecessarily dragged to NCLT even without having any explicit direction from RBI.

3.1. It is a case of granting of Loan availing Secured Credit Facilities from the Consortium of Lenders. There was a sharp slump in the business and the price of the commodity and the Steel had a sharp decline in Global Commodity prices. **Steel industry had witnessed a serious downturn because of recessionary global conditions.** Sluggish demands in the Indian steel industry was further adversely impacted by the dumping of steel products from China, Japan and South Korea. Consequently, the steel industry in India suffered a severe financial crisis and the Respondent could not have stayed immune to the same. Realising the precarious and disadvantageous position of the steel industry in the country, the Government of India, in September 2015, imposed a 20% safeguard duty on import of hot rolled coils. However, by the time the Government initiated steps to protect the steel market, steel product prices had already reached deep lows, and the Government measures did not provide any reasonable support to the Respondent to cope up with these challenges. Additionally, dumping of Chinese steel in Indian market in the Financial Year 2015-16 made matters worse for the Respondent, as a result, the Respondent could not resist the downward pressure any further and this eventually resulted in delayed payment to lenders.

3.2. It is informed that from April, 2016 the Company was making sincere efforts for restructuring of its Debts. Steps taken and meetings held on several dates are listed in the compilation submitted by the Debtor Company as below:-

- 4.1 By March 2017, the accounts of the Respondent became Non-Performing Asset ("NPA") by all the members of the Joint Lenders Forum.
- 4.2 The first official meeting of the Joint Lenders' Forum ("JLF") took place on April 13, 2016 and the Master Joint Lenders' Forum Agreement was subsequently executed on October 27, 2016. Hereto annexed and marked as **"Exhibit-B"** is a copy of the Master Joint Lenders Forum Agreement dated October 27, 2016.
- 4.3 In order to resolve the financial difficulty in the accounts of the Respondent, on or about April 1, 2016, the Respondent appointed Alvarez & Marsal India Private Limited (**Alvarez Marsal**) one of the leading firms in the field of debt restructuring. Further, Alvarez Marsal was to provide its services for arriving at a resolution and debt restructuring plan which would be in the best interest of the Petitioner.
- 4.4 Pursuance to formation of JLF, various meetings from time to time in the years 2016 and 2017 were convened for the purposes of deciding and implementing the corrective action plan.
- 4.5 From April 2016 until November, 2017, the Respondent held several meetings with the JLF wherein the Respondent, time and again, not only extended its full cooperation in implementing a corrective action plan, Strategic Debt Restructuring ("SDR") and other Debt Resolution alternatives under the extant guidelines prescribed by the RBI, but also presented reasonable resolution and debt restructuring plans to the Petitioner. Such efforts of the Respondent can be evidenced through the various presentations that were given by the Respondent to the Petitioner, inter alia, explaining in detail the revised proposals being submitted by the Respondent. Hereto annexed and marked as **Exhibit-C-1 to C-6** respectively are copies of the presentations given by the Petitioner.
- 4.6 Throughout the year 2016 and up until the year 2017, the JLF, led by the Petitioner, engaged in positive discussions with the Respondent for arriving at a resolution plan for the Respondent. The Respondent left no stone unturned to accommodate the requests of the JLF and, time and again, tweaked its proposals to suit the needs of the JLF.
- 4.7 In fact, the Respondent, along with the JLF, made consistent efforts to find a suitable investor for the Respondent to resolve its immediate financial difficulties. All the directions issued by the HLF during the various meetings were duly complied with. In addition to Alvarez Marsal, who has been appointed by the Respondent, the JLF had appointed SBI Capital Markets Limited ("**SBICAP**") on May 02, 2016 to assist in finding a suitable investor for the Respondent. Hereto annexed and marked as **Exhibit - "D"** is the engagement letter issued by SBICAP recording the terms of their engagement.
- 4.8 For the sake of brevity, the Respondent is not describing the details of each and every meeting of the JLF. The Respondent, however, craves leave to refer to and rely upon all the minutes of the meeting of the JLF.
- 4.9 In April 2016, the JLF appointed Mecon Limited ("**Mecon**") to provide the Techno Economic Viability Report on the business of the Respondent.

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- 4.10 On December 29, 2016, Mecon submitted a detailed Techno Economic Viability Report on the Respondent, inter alia, including examination of the technical feasibility and economic viability of the company through a review and validation of the long term financial projections of the Respondent and the economic life of all the assets of the company. The updated report which was submitted as recently as February 6, 2018 further reaffirmed the sustainable earning capacity and profitability of the company as well as confirming the life of the facilities for the next 25 years. Hereto annexed and marked as Exhibit - "E" is a copy of the updated Techno Economic Viability Report submitted by Mecon on February 6, 2018.
- 4.11 In the JLF Meeting dated June 27, 2016, the lenders also expressed their decision to invoke SDR to convert the debt owed by the Respondent into equity holding. For proceeding with the SDR, the lenders decided to perform a Forensic Audit of the Respondent's books of accounts and also asked Mecon Limited ("**Mecon**") to provide the Techno Economic Viability Report on the business of the Respondent.
- 4.12 In the JLF meeting held on October 27, 2016 it was noted that 88% of lenders by value and 83% lenders by number have approved the SDR. Thereafter, upon the insistence of the JLF members, the Respondent undertook the following steps towards implementation of SDR:
- Valuation of shares from 2 independent valuers;
 - Approval from BSE and NSE for allotment of shares to lenders pursuant to conversion of debt to equity;
 - Shareholders' approval for SDR implementation;
- 4.13 Upon completion of the entire process towards implementation of SDR, in the JLF meeting held on January 09, 2017, the lenders did not agree for implementation of SDR for reasons best known to them. It is pertinent to note that JLF had an option of converting debt into equity and the same would have given them additional time of approximately 17 months to find an investor without treating the account of the Respondent as NPA."



3.3. In the light of the above data the line of reasoning for rejection of attempt to declare the Company as Bankrupt is that the above proposals were offering substantial restructuring of the Debt to the extent of 37% i.e. ₹785 Crores out of the total Debt of ₹2118 Crores. Moreover, it was also suggested that unsustainable Debt be converted to "equity" so that NPV realization should improve significantly. The Promoters have agreed to pledge their unencumbered shares in the Company in favour of Lenders. There was adequate provisioning of all the Operational Debts. The personal guarantees of the Promoters were already provided to Lenders. There was an offer of the Promoters to provide "Cash-Sweep facility" and "Right to Recompose" so that on the basis of availability of the Cash, the Company by itself could supplement the Debts out of profit generation.

3.4. A Resolution Plan was submitted by the Company and subsequent to the said Plan, ICRA addressed a Letter dated 27.11.2017 to Respondent requesting to place consent

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for the appointment of ICRA. The Bank had not informed any decision made by CRA at any point of time. In fact, ICRA and India Ratings and Research were appointed by RBI but never disclosed their mandate, scope of work etc. The Petitioner had not given cogent reason for rejection of the Resolution Plan submitted before the GLF by the Respondent Debtor. One of the reasons later on given was that **"Resolution Plan was not compliant with the extant regulatory guidelines"**. Some of the important dates and events took place is referred as under :-

"October 27, 2017	:	The Resolution Plan was submitted
November 27, 2017	:	ICRA Limited and India Ratings & Research sought consent of the Respondent for obtaining documents etc.
December 8, 2017	:	The Resolution Plan of the Respondent was rejected by the JLF
December 22, 2017	:	The Respondent was informed of the rejection of the Resolution Plan
December 29, 2017	:	The Company Petition was filed"

3.5. So the objection of the Financial Debtor is that while the Respondent Company was making sincere efforts for Debt Resolution, on the other hand, the SBI has submitted Insolvency Petition which was not justifiable under any Law. The "Investment Grade Rating" had also not been judiciously taken into account by the SBI. The sustainable Debt to be serviced from the Cash Flow, NPV percent of the Company having higher offering of sustainable Debt on the ground of "Net Present Value" and the "Debt Service Coverage Ratio", all were ignored deliberately by the Bank Authorities. As a consequence, the Insolvency Proceedings initiated by the Petitioner is bad in Law, pleaded by the Learned Representative of the Petitioner. The reply of the Respondent Debtor contains several Letters addressed to Consortium and Minutes of JLF, viability report, etc. to corroborate that the Company had made *bona fide* attempts to resolve the high value Debt.

4. On the other hand, **in the Rejoinder Pleadings**, the Petitioner has informed that the JLF invoked Strategic Debt Restructuring (SDR) on 27.06.2016 but no viable proposal was made by the Debtor Company. No Strategic Investor had come for implementation of SDR. The Bank wanted to help the Debtor Company but due to lack of viable Investment proposals, the JLF in a meeting on 14.02.2017 informed the failure of SDR proposal. The JLF has proposed to explore recovery options. The Rejoinder contains the Minutes of the Meeting held on 14.02.2017 of JLF as an evidence. An argument was

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emphasised that as far as the submission for converting Debt into Equity, the same is the prerogative of the Lenders. The Resolution Plan had offered only 37% of the Sustainable Debt which was not acceptable to Lenders. Several correspondences were made from the side of SBI but the Debtor Company had not taken serious steps to resolve the problem. Rather, a Rating Agency had rated the Debtor Company as "below Investment grade". Since all efforts have failed, therefore, the Bank had no option but to initiate the Insolvency Proceedings.

5. FINDINGS :-

The Financial Creditor has undisputedly advanced Loan under various Facilities as discussed hereinabove which can further be ascertained from the following chart:-

(A) Description of Loan	(B) Reference Agreement (Term Loan/Corporate Loan/Capex Loan/SMC)	(C) Disbursed Amount of Loan	(D) Date of commencement of default in Repayment of interest	(E) Date of commencement of default in Repayment of Principal	(F) Aggregate Period of Default in repayment of interest - Calculated from (D) upto the Application Date (30.11.2017) (Without reference to the individual repayment defaults) (in No. of Days)	(G) Aggregate Period of Default in repayment of Principal Amount of Loan - Calculated from (E) upto the Application Date (30.11.2017) (Without reference to the individual repayment defaults) (in No. of Days)	(H) Principal Amount outstanding	(I) Drawing Power	(J) Principal Amount in Default as on the date of hereof	(K) Interest Amount in Default (including the default interest, additional interest and other interest) charges as per the Loan Agreement) as on the date of hereof	(L) Total exposure outstanding as on 30 th November, 2017	(M) Total default amount as on 30 th November, 2017
OVERDRAFT	Working Capital Facility Agreement dated 25 th September, 2013	NA	01-08-2016	12-07-2016	487	507	2,34,33,42,751.00	-	2,34,33,42,753.00	28,96,61,473.30	2,63,93,04,226.30	2,63,93,04,226.30
TERM LOAN	Rupee Facility Agreement dated 25 th September, 2013	75,00,00,000.00	01-08-2016	31-07-2016	487	488	74,12,50,000.00	68,87,50,000.00	5,25,00,000.00	18,18,70,910.93	92,91,70,910.93	23,43,70,910.93
CORPORATE LOAN	Rupee Facility Agreement dated 25 th September, 2013	75,00,00,000.00	01-08-2016	31-07-2016	487	488	47,05,34,323.00	11,25,00,000.00	35,80,34,323.00	10,78,44,017.15	57,83,78,340.15	46,58,78,340.15
LETTER OF CREDIT	Working Capital Facility Agreement dated 25 th September, 2013	2,10,00,00,000.00	NA									
BANK GUARANTEE	Working Capital Facility Agreement dated 25 th September, 2013	30,00,00,000.00	NA									
		4,00,00,00,000.00					3,55,51,27,076.00	80,12,50,000.00	2,75,88,77,076.00	58,58,76,401.38	4,14,08,03,477.38	3,33,95,53,477.38

5.1. A mandatory requirement of submission of "**Banker's Books Evidence**" has also been complied with by stating therein the description of various accounts maintained by the Corporate Debtor and the Loan Facilities availed through those accounts.

5.2. There was an Agreement of 25.09.2013 titled as "**Rupee Facility Agreement**" which was executed by several Banks and the Loan sanctioned was as under :-

Name of Lender	Sanctioned Amount (Term Loan A) (Rs. Cr.)	Sanctioned Amount (Term Loan B) (Rs. Cr.)

State Bank of India	75.00	75.00
Bank of Baroda	33.00	59.00
Andhra Bank	22.00	44.00
Allahabad Bank	17.00	33.00
Canara Bank	22.00	44.50
Corporation Bank	22.00	44.50
Indian Overseas Bank	22.00	N.A.
Oriental Bank of Commerce	22.00	N.A.
Punjab National Bank	33.00	N.A.
Union Bank of India	33.00	N.A.
Vijaya Bank	11.00	N.A.
Total	312.00	300.00



5.3. The said Consortium has also granted 'Working-Capital' vide Facility Agreement dated 25.09.2013 as under :-

Name of Lender	L.C. Facility (Rs. Cr.)	BG Facility (Rs. Cr.)
State Bank of India	220.00	30.00
Bank of Baroda	80.00	14.60
Andhra Bank	100.00	14.60
Allahabad Bank	80.00	14.60
Canara Bank	132.00	13.00
Corporation Bank	50.00	18.00
Indian Overseas Bank	130.00	14.60
Oriental Bank of Commerce	100.00	NA
Punjab & Maharashtra Co-operative Bank	23.00	NA
Punjab National Bank	200.00	14.60
Union Bank of India	75.00	21.40
Vijaya Bank	30.00	14.60
Total	1220	170.00

6. It is very interesting to note that our attention has been drawn on a Letter of 22nd of December 2017, annexed in the Compilation, with an explanation that through this Letter, the accounts of the defaulter were declared as **"Non-Performing Asset" (NPA)** stated to be classified with effect from 10th October, 2016. It has not been explained that how an account was declared NPA retrospectively ? Further a question has been raised that if an account was declared NPA in 2016 then why corrective measures have not been taken then and there ? It has also been questioned that why certain facilities have even been extended in the year 2016-17 when the Consortium of the Banks were aware that the Account of the Debtor Company is a "Non-Performing Account" ? Knowing fully well the default of non-payment, a "Master Joint Lenders Forum Agreement" was executed on 27.10.2016 for which the Banks have no acceptable explanation. At this juncture it also worth to place on record an important fact, which cannot be ignored, that bank authorities have not thought it proper to issue a 'Recall-Notice' suspending loan facilities. Rather SBI is answerable that after declaring NPA and undisputed continuance of default why a Recall-Notice was not issued ?

6.1. Records of the case have also revealed that the Bank had obtained two reports viz. CIBIL Report dated 21.12.2017 and CRILC Report dated 26.12.2017. Both these reports have not given satisfactory position and rated as "Doubtful" or "Substandard". Even at this place, as well, it is worth to make a comment that it appears the Loan Facilities were granted or extended even without *prima facie* due diligence. On the face of records it seems the profitability in this business has not matched with the quantum of Loan granted. It is not known that how the Banks have satisfied themselves that this Corporate Debtor would be able to serve the accounts not only by repaying the Loan but also payment of Interest. The rate of Interest agreed upon or the EMI fixed was such high that the Corporate Debtor ought to suffer erosion of capital. If on one hand this Corporate Debtor is to be blamed for default of non-payment, then simultaneously on the other hand it is fit to say that the Bank authorities have adopted lackadaisical approach.

6.2. As far as the 'Default' is concerned, an evidence is on record dated 18.01.2017 demonstrating the fact that the Corporate Debtor had confirmed the outstanding balance as on 31.03.2016. Finally, on 22.12.2017 JLF had conveyed the decision that the

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restructuring proposals was below the Investment grade as per rating report submitted by two Credit Rating Agencies. The Restructuring-Plan of the Company was rejected and communicated to explore the option of Debt Restructuring by filing a Petition before NCLT.

7. That the admitted factual position thus emerges that the '**Debt**' as defined **U/s 3(11) of The Code** under consideration have been classified as "Non-Performing Asset" by the Consortium of Banks, listed hereinabove and there was a "**Default**" as defined **U/s 3(12) of The Code** of non-payment. Therefore, the basic requirement of Admission of an Application **U/s 7 of The Code** stood fulfilled for initiation of 'Corporate Insolvency Resolution Process' (CIRP) . The Financial Creditor has furnished several evidences to establish the existence of the "Financial Debt" plus sufficient records to establish the occurrence of "Default". Rest of the conditions being satisfied, this Petition deserves "**Admission**".

8. The Financial Creditor has intimated the name of the **IRP Mr. Rajiv Chakraborty**, having Registration No. IBBI/IPA-001/IP-P00602/2017-18/11053, Address: First Floor, 12, Sukhdev Vihar, New Delhi-110025 Email: chakrabortyrajiv72@gmail.com. The proposed IRP has furnished the requisite Certificate in Form No.2 that no disciplinary proceedings is pending. On due consideration, the proposal of appointment of the IRP is hereby confirmed.

9. Upon "Admission" of the Application it is hereby pronounced the declaration of "**Moratorium**" as mandated in **Section 14 of The Code**. The declaration of Insolvency Process and commencement of "Moratorium" shall be made by Public Announcement immediately as prescribed **U/s. 13 read with Section 15 of The Code**. The appointed IRP shall perform the duties as an Interim Resolution Professional as defined **U/s. 18 of The Code i.e. "Duties of Interim Resolution Professional"** and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be. The IRP shall submit the Resolution Plan for approval as prescribed U/s. 31 of The Code on receiving the "Expression of Interest" in response to the Advertisement made.

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10. It is hereby pronounced that the **"Moratorium" as prescribed U/s. 14 of The Code** shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "Moratorium" period. This direction shall have effect from the date of this Order till the completion of Insolvency Resolution Process.
11. Accordingly, this **CP (IB)-1830(MB)/2018** stood **"Admitted"**.
12. The Corporate Insolvency Resolution Process is commenced from the date of this Order.

SD/-

(M.K. SHRAWAT)
Member (Judicial)

Date : 26.06.2018
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On 27-6-2018

Deputy Director
National Company Law Tribunal, Mumbai Bench