BEFORE THE HON’BLE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH AT KOLKATA

Company Petition (I.B.) No. /KB/ 2022

In the matter of:

The Insolvency and Bankruptcy Code, 2016

-And-

In the matter of:

 STATE BANK OF INDIA (Financial Creditor)

**GENERAL AFFIDAVIT VERIFYING PETITION**

 I, SAURAV KUMAR SHARMA, son of Sri SukhdeoLal Sharma, aged about 46years, by faith-Hindu, by occupation-Service, working for gain at State Bank of India, Stressed Assets Management Branch-II, Jeevan Deep Building, 1st Floor, 1, Middleton Street, Kolkata-700071, do hereby solemnly affirm and say as follows :-

 **Contd…..**

1. I state that I am the Assistant General Manager and CLO-I of State Bank of India, Stressed Assets Management Branch-II, Jeevan Deep Building, Floor,1st Floor, 1, Middleton Street, Kolkata-700071the petitioner in the above matter and I am duly authorized to act as “Authorized Representative“ within the meaning of Rule 2(6) of the National Company Law Tribunal Rules, 2016 read with Section 432 of the Companies Act, 2013 and Rule 10 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by the said petitioner Bank (Financial Creditor)to make this affidavit on its behalf.
2. I state that the statements made in the accompanying petition, now shown to me, are true to my knowledge, information and belief.

All that I stated above are true and correct.

**V E R I F I C A T I O N**

 I, SAURAV KUMAR SHARMA, son of Sri SukhdeoLal Sharma, aged 46 about years, being the Assistant General Manager and CLO-I of State Bank of India, Stressed Assets Management Branch-II, Jeevan Deep Building, 1st Floor, 1, Middleton Street, Kolkata-700071 the authorized representative of the petitioner in the above petition, do hereby state and declare that the averments made in the accompanying petition are true to the best of my knowledge, information and belief.

Place: Kolkata **D e p o n e n t**

Date: /02/2022

 Identified by Me

Advocate

FORM – 1

[Refer sub-rule (1) of Rule 4]

**(APPLICATION BY FINANCIAL CREDITOR(S) TO INITIATE CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER CHAPTER II OF PART-II/ UNDER CHAPTER IV OF PART-II OF THE CODE)**

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016)

 Dated : /02/2022

To,

THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,

5, ESPLANADE ROW (WEST),

TOWN HALL GROUND AND FIRST FLOOR,

KOLKATA-700001.

From:

Through

STATE BANK OF INDIA ,

STRESSED ASSETS MANAGEMENT BRANCH-II,

JEEVAN DEEP BUILDING, 1STFLOOR ,

1, MIDDLETON STREET,

KOLKATA-700071

In the matter of:

Sub: Application to initiate Corporate Insolvency Resolution Process (CIRP) in the matter of M/s. ATIBIR INDUSTRIES CO. LIMITEDunder the Insolvency and Bankruptcy Code, 2016.

Sir,

STATE BANK OF INDIA, being the Financial Creditorhereby submit this application to initiate a Corporate Insolvency Resolution Process (CIRP) in the matter of M/s. ATIBIR INDUSTRIES CO. LIMITED. The details for the purpose of this application are set out below:-

P A R T – 1

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| PARTICULARS OF APPLICANT (PLEASE PROVIDE FOR EACH FINANCIAL CERDITOR MAKING THE APPLICATION ) |
| 1. | Name of Financial Creditor | State Bank of India A body corporate constituted under the State Bank of India Act, 1955 |
| 2. | Date of Incorporation of Financial Creditor |  01.07.1955  |
| 3. | Identification number of Financial Creditor | The Financial Creditor is a banking company. However, its PAN No. is AAACS8577K |
| 4. | Address of the registered office of the Financial Creditor | Corporate Centre at State Bank Bhawan, Madame Cama Road, Mumbai-400021 and its Local head Office at SamriddhiBhavan, 1, Strand Road, Kolkata-700001 and branch office among other places at Giridih Bazar Branch, Whitti Bazar, Giridih, Jharkhand, Pin-815301 and thereafter the account transferred to Industrial Finance Branch,11 Dr.U.N Brahmachari Street, Kolkata 700017 and as per the internal policy guidelines for recovery follow up the said loan account has been transferred and maintained at present State Bank of India, Stressed Assets Management Branch-II, Jeevan Deep Building, 1st Floor, 1, Middleton Street, , Kolkata-700071 |
| 5. | Name and address of the person authorized to submit application on its behalf | Mr. Saurav Kumar Sharma, Assistant General Manager and CLO-I, Stressed Assets Management Branch-II, Jeevan Deep Building, 1st Floor, 1, Middleton Street, Kolkata-700071. A copy of the authorization letter, authorizing Mr. Saurav Kumar Sharma is attached herewith and marked as **Annexure-A** |
| 6. | Name and address of person resident in India authorized to accept the service of process on its behalf | Mr. Saurav Kumar Sharma, Assistant General Manager and CLO-IStressed Assets Management Branch-II, Jeevan Deep Building, 1st Floor, 1, Middleton Street, Kolkata-700071. A copy of the authorization letter, authorizing Mr. Saurav Kumar Sharma is given in **Annexure-A** |

**P A R T - II**

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| PARTICULARS OF THE CORPORATE DEBTOR  |
| 1. | Name of Corporate Debtor |  M/S. ATIBIR INDUSTRIES CO. LIMITED  |
| 2. | Identification number of Corporate Debtor | CIN No. **U003312B2000PLC118392** |
| 3. | Date of Incorporation of Corporate Debtor |  **07.08.2020** |
| 4. | Nominal share capital and the paid-up share capital of the Corporate Debtor and/or details of guarantee clause as per Memorandum of Association | Authorized Capital of Rs.40,09,80,000 (Rupees Forty Crore Nine Lacs Eighty thousand only)Paid up Capital Rs.31,80,59,340 (Rupees Thirty Crore Eighty Thousand Fifty Nine Thousand Three Hundred Forty only) |
| 5. | Address of the registered office of the Corporate Debtor | 20B, ABDUL HAMID STREET, 7TH FLOOR, BLOCK-7B, KOLKATA-700069 |
| 6. | Details of the Corporate Debtor as per the notification under section 55(2) of the codei) Assets and Incomeii) Class of Creditors or Amount of debtiii) Category of Corporate person (where application is under Chapter-IV of Part-II) | N.A.N.A.N.A. |

 **P A R T - III**

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| PARTICULARS OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL  |
| 1. | Name, address, e-mail address and the registration number of the proposed interim resolution professional | **SUMIT BINANI****Address** :Room No. 6, 4th Floor, Commerce House, 2A, Ganesh Chandra Avenue, Kolkata-700013**E. mail** :ip.sumitbinani@gmail.com**Mobile No**. 9830810003**Registration Number**- IBBI/IPA-001/IP-N0005/2016-17/10025  |

**P A R T - IV**

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| PARTICULARS OF THE FINANCIAL DEBT  |
| 1. | Total amount of debt granted date (s) of disbursement | 1. The financial Creditor’s 1stsanctioned the credit facilities of Cash Credit Account of Rs.0.8944 crores, Medium Term Loan of Rs.4,8857 crores an aggregate limit of Rs.5,7801 in favour of the Corporate debtor on 18.08.2003.
2. Subsequently the Financial Creditor enhanced and/or renewed sanction the credit facilities from time to time in favour of the Corporate debtor dated 19.10.2004, 05.02.2007, 01.09.2007, 26.02.2009, 09.03.2009, 11.07.2009, 29.09.2009, 06.07.2010, 28.09.2011, 29.02.2012, 05.12.2014, 05.02.2016, 31.01.2017, 20.03.2019 and 27.01.2020
3. The financial Creditor lastly renewed and/or enhanced/ sanctioned the credit facilities in favour of the Corporate debtor dated 14.09.2020 and 28.09.2020 in respect of FITL-I limit of Rs.12.45 crores, FITL-II limit of Rs.6.86 crores, FITL-III limit of Rs.1.38 crores, FITL-IV limit of Rs.6.59 crores an aggregate limit of Rs.27.28 crores.
 |
| 2. | Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and days of default in tabular form) | Total amount claimed to be in default is Rs. 341,57,84,535.81 as on 31.12.2021 The Date of FIRST Default of the Loan accounts are 17.01.2020 and 31.01.2020\_\_\_\_and the said loan accounts were classified as NPA on 16.10.2020 as per the RBI Guidelines and still continuing as NPA account and the Corporate debtor had admitted their liabilities under the said loan account and acknowledged the debt from time to time. For the workings and computation of the amount in default and the date of default, the Financial Creditor attached herewith ledger account of the Corporate Debtor with the Financial Creditor marked and annexed as **Annexure- ”F to F-8“.** |

**P A R T - V**

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| PARTICULARS OF FINANCIAL DEBT (DOCUMENTS, RECORDS AND EVIDENCE ON DEFAULT)  |
| 1. | Particular of security held, if any, the date of its creation, its estimated value as per the creditor. |
| 1. **Equitable mortgage of property as follows:**
2. All that piece and parcel of factory Land and Building Unit-I total Area 22.50 Acres, Manjhaladih, District- Giridih, State- Jharkhand being Title Deed No.11954, 11955, 8716, 1167
3. All that piece and parcel of factory Land and Building Unit-II total Area 13.33 Acres, (consisting of 28 Sub-Deed) Bhorandiha, District- Giridih, State- Jharkhand
4. Hypothecation charge on plant and machinery and other miscellaneous fixed assets of the company (except freehold land building and vehicles) both present and future;
5. Paripassu charge of equitable mortgage of immovable property (Factory land and building) having total Area 8.30 acres, Village/Town/City- Giridih, Dist- Giridih, State- Jharkhand, Pin-815301 being Title Deed No.13141, 2350 in the name of the Company.
6. Paripassu charge on Equitable Mortgage over landed property of area 11.3516 acre, in the name of the Company being title Deed No.13563 & 11 anothers on 25.11.2008.
7. STDR for Rs.4.00 crores in the name of the Company.
8. The date of the last creation of the above security modified on 05.06.2018 and 09.03.2021 and the date of the registration of the above security with the Registrar of Companies modified on 05.06.2018 and 09.03.2021
9. The estimated value of the security at the time of sanction and disbursement by the Financial Creditor was Rs.3246541402.00 for the said Credit Facility.
10. Copy of the particulars of charge filed with Registrar of Companies, West Bengal and modified on 05.06.2018 and 09.03.2021 are attached herewith and marked as **Annexure – “C “**
 |
| 2. | Particulars of an order of a Court, Tribunal or Arbitral panel adjudicating on the default, if any |
|  Not applicable  |
| 3. | Record of default with the information utility, if any |
| The CIBIL report of the corporate debtor in proof of default has been attached . |
| 4. | Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act,1925 (10 of 1925) |
|  Not applicable |
| 5. | The latest and complete copy of the financial contract reflecting all amendments and waivers to date. |
|  The details of the Financial contracts as below: As given in the brief synopsis attached with the instant application.. |
| 6. | A record of default as available with any credit information company. |
|  The report issued by CIBIL for M/s. ATIBIR INDUSTRIES CO. LIMITED is attached herewith and marked as **Annexure –“J “.** |
| 7. | Copies of entries in a bankers book in accordance with the Banker’s Books Evidence Act,1891 (18 of 1891) |
| Copy of the ledger account of the Corporate Debtor in accordance with the Banker’s Books Evidence Act, 1891 are attached herewith and marked as **Annexure –“F” to F-8 ”** |
| 8. | List of other documents attached to this application in order to prove the existence of financial debt, the amount and date of default  |
| 1. Copy of the Sanction letter dated 18.08.2003, 19.10.2004, 05.02.2007, 01.09.2007, 26.02.2009, 09.03.2009, 11.07.2009, 29.09.2009, 06.07.2010, 28.09.2011, 29.02.2012, 05.12.2014, 05.02.2016, 31.01.2017, 20.03.2019, 27.01.2020,14.09.2020 and 28.09.2020 stating details of the various credit facilities sanctioned by State Bank of India to the Corporate Debtor is attached herewith and marked as **Annexure-“D“, “D-1” and “D-2” respectively..**
 |

I, hereby certify that, to the best of my knowledge, Mr. SumitBinaniis fully qualified and permitted to act as an Insolvency Professional in accordance with the Insolvency and Bankruptcy Code, 2016 and the associated rules and regulations.

State Bank of India has paid the requisite fees of Rs.25,000/- (Rupees Twenty Five Thousands only) for this application through E. Filing portal by online internet banking through “BHARATKOSH PAYMENT GATEWAY” on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ favouring the “Pay & Accounts Officer, Ministry of Corporate Affairs, New Delhi”

Yours sincerely,

|  |  |
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| SIGNATURE OF PERSON AUTHORIZED TO ACT ON BEHALF OF THE FINANCIAL CREDITOR  |  |
| NAME IN BLOCK LETTER | SAURAV KUMAR SHARMA |
| POSITION WITH OR IN RELATION TO THE FINANCIAL CREDITOR  | ASSISTANT GENERAL MANAGER & CLO-I |
| ADDRESS OF PERSON SIGNINNG  | State Bank of India, Stressed Assets Management Branch-II, Jeevan Deep Building, 1st Floor,1, Middleton Street, Kolkata-700071 |

**BEFORE THE HON’BLE NATIONAL COMPANY LAW TRIBUNAL,**

**KOLKATA BENCH**

**Company Petition (I.B.) No. /KB/ 2022**

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016)

**IN THE MATTER OF:-**

STATE BANK OF INDIA, is a body corporate constituted under the State Bank of India Act, 1955, having its Corporate Centre at State Bank Bhawan, Madam Cama Road, Mumbai-400021 and one of its Local head Office at SamriddhiBhavan, 1, Strand Road, Kolkata-700001 and one of its branch office amongst other places at Giridih Bazar Branch, Whitti Bazar, Giridih, Jharkhand, Pin-815301 and thereafter transferred to Industrial Finance Branch,11 Dr.U.NBrahmachari Street, Kolkata 700017 and as per the internal policy guidelines for recovery follow up the said loan account has been transferred at present State Bank of India, Stressed Assets Management Branch-II, Jeevan Deep Building, 1st Floor, 1, Middleton Street, Kolkata-700071

 .........Petitioner (Financial Creditor)

Versus

M/s. ATIBIR INDUSTRIES COMPANY LIMITED, theCompany registered under the Companies Act, 1956, having its registered office at 20B, ABDUL HAMID STREET, 7TH FLOOR,BLOCK-7B, KOLKATA-700069

 ....... Respondent (Corporate Debtor)

**MEMO OF PARTIES**

STATE BANK OF INDIA ,

HAVING ITS HEAD OFFICE AT:

STATE BANK BHAWAN,

MADAM CAMA ROAD,

MUMBAI-400021

Through

STATE BANK OF INDIA ,

STRESSED ASSETS MANAGEMENT BRANCH-II,

JEEVAN DEEP BUILDING, 1ST FLOOR,

1, MIDDLETON STREET,

KOLKATA-700071

THROUGH ITS AUTHORIZED OFFICER

MR.SAURAV KUMAR SHARMA ,

ASSISTANT GENERAL MANAGER& CLO-I

STATE BANK OF INDIA ,

STRESSED ASSETS MANAGEMENT BRANCH-II,

JEEVAN DEEP BUILDING, 1ST FLOOR,

1, MIDDLETON STREET,

KOLKATA-700071 …………..FINANCIAL CREDITOR

VERSUS

M/s. ATIBIR INDUSTRIES CO. LIMITED, a limited Company limited, having its office at 20B, ABDUL HAMID STREET. 7TH FLOOR, KOLKATA-700069.

 ……….. CORPORATE DEBTOR

APPLICANT/ STATE BANK OF INDIA

Through

Ramesh Chandra Prusti

 Advocate,

High Court, Calcutta

6A, Kiran Shankar Roy Road,

Kolkata-700001

Phone : 6291665762

 E-mail :advrcprusti1@gmail.com

 Rcprusti291@gmail.com

 Mobile : 9230511824

Place : Kolkata

Dated : /03/2022

**BEFORE THE HON’BLE NATIONAL COMPANY LAW TRIBUNAL,**

**KOLKATA BENCH, KOLKATA**

**Company Petition (I.B.) No. /KB/ 2022**

**IN THE MATTER OF:-**

STATE BANK OF INDIA ……….Petitioner (Financial Creditor)

-Versus-

M/s. ATIBIR INDUSTRIES CO. LIMITED ......….. Respondent (Corporate Debtor)

**LIST OF DATES AND EVENTS**

That the present application is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘IBC’) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (hereinafter referred to as the ‘AA Rules’) by the Financial Creditor as defined in Section 5 (7) of the IB Code, 2016, against the above stated Corporate Debtor. The facts constituting the cause of action for filing the present application are asunder :-

|  |  |
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| DATES | EVENTS |
| 18.08.2003 | The Financial Creditor firstlysanctioned the credit facilities in respect of Cash Credit Account of Rs.0.8944 crores, Medium Term Loan of Rs.4,8857 crores an aggregate limit of Rs.5,7801 in favour of Corporate Debtor |
| 19.10.200405.02.200701.09.200726.02.200909.03.200911.07.200929.09.2009,06.07.201028.09.201129.02.201205.12.2014,05.02.201631.01.201720.03.2019 | The Financial Creditor renewed and/or enhanced sanction the credit facilities from time to time in favour of the Corporate Debtor.  |
| 27.01.2020 | The Financial Creditor sanctioned the credit facilities in respect of Cash Credit limit of Rs.5.00 crores and Bank Guarantee/Letter of Credit limit of Rs.15.00 crores an aggregate limit of Rs.20.00 crores in favour of Corporate Debtor |
| 14.09.202028.09.2020  | The Financial Creditor sanctioned the credit facilities in respect of FITL-I limit of Rs.12.45 crores, FITL-II limit of Rs.6.86 crores, FITL-III limit of Rs.1.38 crores, FITL-IV limit of Rs.6.59 crores an aggregate limit of Rs.27.28 crores in favour of Corporate Debtor |
| 09.03.2021 | The Corporate Debtor executed the documents in favour of the Financial Creditor i.e. * 1. Form-C-1: Agreement loan for Overall Limited dated 09.03.2021 of Rs.27.28 crores;
	2. Form C-2- Agreement of Hypothecation of Goods and Assets dated 09.03.2021 of Rs.27.28 crores
	3. Form-C-5- Letter regarding the grant of Individual limited dated 09.03.2021 limit of Rs.27.28 crores
 |
| 09.03.2021  | The Guarantor of the Corporate Debtor executed Guarantee document. |
|  | The Corporate debtor deposited their title deed to the continuing security to the Financial Creditor bank |
| 16.10.2020  | The financial Creditor declared as NPA as per norms of the RBI Guidelines |
| 31.03.2021  | The Corporate Debtor had acknowledged its liability to the Financial Creditor as per Audited Report and Statement of Account  |
| 17.01.2022 | The Financial creditor issued a Recall notice to the Corporate Debtor for payment the outstanding dues and the Corporate debtor failed to pay the outstanding dues. |
|  | Hence this petition |

Applicant/State Bank of India

Through

Ramesh Chandra Prusti

 Advocate,

High Court, Calcutta

6A, Kiran Shankar Roy Road,

Kolkata-700001

Phone-6291665762

E-Mail:-advrcprusti1@gmail.com

 rcprusti291@gmail.com

 Mob : 9230511824

Place : Kolkata

Dated : /03/2022

**BEFORE THE HON’BLE NATIONAL COMPANY LAW TRIBUNAL,**

**KOLKATA BENCH, KOLKATA**

**Company Petition (I.B.) No. /KB/ 2022**

**IN THE MATTER OF:-**

STATE BANK OF INDIA ……….Petitioner (Financial Creditor)

-Versus-

M/s. ATIBIR INDUSTRIES CO. LIMITED ......….. Respondent (Corporate Debtor)

**BRIEF SYNOPSIS**

That the present application is filed under Section 7 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘IBC’) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as the ‘AA Rules’) by the Financial Creditor being a Financial Creditor as defined in Section 5 (7) of IB Code, 2016, against the above stated Corporate Debtor. The facts constituting the cause of action for filing the present application are asunder :-

1. That the Financial Creditor is a body corporate constituted under the State Bank of India Act, 1955, having its Corporate Centre at State Bank Bhawan, Madame Cama Road, Mumbai-400021 and one of its Local head Office at SamriddhiBhavan, 1, Strand Road, Kolkata-700001 and one of its branch office amongst other places at Industrial Finance Branch,11 Dr.U.N Brahmachari Street, Kolkata 700017 and as per the internal policy guidelines for recovery follow up the said loan account has been transferred and maintained at present State Bank of India, Stressed Assets Management Branch-II, Jeevan Deep Building, 1st Floor, 1, Middleton Street, Kolkata-700071.
2. The present application is filed by the Financial Creditor through its authorized officer and constituted attorney Mr.Saurav Kumar Sharma , who is duly authorized and competent to, *inter alia*, sign, file, prosecute, pursue and do all other necessary and incidental acts *qua* the present petition. Copy of the Authorization letter executed in favour of Mr.Saurav Kumar Sharmais annexed herewith and marked as **Annexure-“A”**.
3. That the Corporate Debtor is a Public Limited Company within the meaning of the Companies Act, 1956, having its registered office at 20B, Abdul Hamid Street, 7TH Floor, Block-7B, Kolkata-700069and engaged in the business of Manufacturing products i.e.Sponge Iron, Pig Iron, MS. Ingot, M.S. Bar, M.S. Flat, M.S. Rod, TMT bars, Coil,  Wire & Nails.Copy of the Master Data obtained from the Official Website of the Ministry of Corporate Affairs, Govt. of India, showing registered address of the Corporate Debtor is annexed hereto and collectively marked as **Annexure-“B”.**
4. As per the terms and conditions of the sanction letter issued from time to time the Corporate Debtor executed various loan and banking documents in favour of the Financial Creditor and deposited the Title Deed for creation of mortgage towards repayment of the loan of the Corporate Debtor and charge was created with the Registrar of Companies, West Bengal. The copy of the Index of charge is annexed hereto and marked as **Annexure-“C”.**
5. At the request of the Corporate Debtor, The Financial Creditor sanctioned the credit facilities in respect of Cash Credit Account of Rs.0.8944 crores, Medium Term Loan of Rs.4,8857crores an aggregate limit of Rs.5,7801croreson terms and conditions as stipulated in the said sanction letter. The copy of the Sanction letter dated 18.08.2003 is annexed hereto and marked as **Annexure “D”.**
6. The financial Creditor enhanced and/or renewed/ sanctioned the credit facilities from time to time in favour of the Corporate debtor as per particulars follows:
7. **Dated 19.10.2004** - Cash Credit (Stocks) Account limit of Rs.204..00 lacs, Cash Credit (Book Debts) Account limit of Rs.18.00 lacs, Term Loan-I Account limit of Rs.488.57 lacs and Term Loan-II Account limit of Rs.350.00lacs an aggregate limit of Rs.1060.57 lacs
8. **Dated 05.02.2007** - Cash Credit (Stocks) Account limit Rs.158.00 lacs, Cash Credit (Book Debts) Account limit of Rs.142..00 lacs and Bank Guarantee limit of Rs.100..00 lacss an aggregate limit of Rs.400.00 lacs
9. **Dated 01.09.2007** – Cash Credit (Stock) Account limit of Rs.1100.00 lacs, Cash Credit (Book Debts) Account limit of Rs.400..00 lacs, Fresh Term Loan Account limit of Rs.5,000.00lacs an aggregate limit of Rs.6500.00 lacs.
10. **Dated 26.02.2009** – Cash Credit (Stock) Account limit of Rs.40.00 crores, Cash Credit (Book Debts) Account limit of Rs.8.00 crores, Term Loan (Sponge) Account limit of Rs.14.89 crores, Term Loan (New Project) limit of Rs.50.00 crores and Letter of Credit limit of Rs.13.60 crores and Bank Guarantee limit of Rs.1.00 crores.
11. **Dated 09.03.2009**-Fund Based Working Capital Limit of Rs.40.00 crores out of SBI share of Rs.48.00 pending full tie up of Rs.80 crores. From participating member of consortium.
12. **Dated 11.07.2009** -Cash Credit (Stock) Account limit of Rs.40.00 crores, Cash Credit (Book Debts) Account limit of Rs.8.00 crores, Letter of Credit limit of Rs.13.60 crores and Bank Guarantee limit of Rs.1.00 crores,
13. **Dated 29.09.2009** – Term Loan of Rs.50.00 crores is stipulated to be repaid in Rs.2.08 crores per quarter beginning from June 2010 for Financial year 2011, 2012, 2013 and Rs.3.125 crores per quarter for the year 2014 and 2015 respectively. The final installment of Rs.3.165 crores being due on March, 2015.
14. **Dated 06.07.2010** – Term Loan –III (Fresh) Account limit of Rs.25.00 crores, Letter of Credit limit of Rs23.00 crores, Bank Guarantee limit of Rs.7.00 crores, Forward Contract limit of Rs.8.30 crores an aggregate limit of Rs.63.3.crores.
15. **Dated 28.09.2011** – Cash Credit (stock) Account of Rs.76.00 crores, Cash Credit (Book Debts) Account of Rs.8.00 crores, Term Loan –II Account limit of Rs.42.08 crores, Term Loan-III Account Limit of Rs.25.00 crores, Letter of Credit limit of Rs.96.00 crores, Bank Guarantee limit of Rs.7.00 crores, Forward Contract Account Limit of Rs.8.10 croresan aggregate limit of Rs.262.18 crores.
16. **Dated 29.02.2012** - Cash Credit (stock) Account of Rs.76.00 crores, Cash Credit (Book Debts) Account of Rs.8.00 crores, Term Loan –II Account limit of Rs.42.08 crores, Term Loan-III Account Limit of Rs.25.00 crores, Letter of Credit limit of Rs.96.00 crores, Bank Guarantee limit of Rs.7.00 crores, Forward Contract Account Limit of Rs.8.10 crores an aggregate limit of Rs.262.18 crores,
17. **Dated 05.12.2014**– Cash Credit (Stocks) limit of Rs.108.00 crores, Cash Credit (Book Debts) limit of Rs.12.00 crores, SLC(FBWC) limit of Rs.18.00 crores, Adhoc limit of Rs.25.00 crores , Term Loan limit of Rs.6.01 crores, SME Car Loan limit of Rs.0.65 crores, Letter of Credit limit of Rs.144.00 crores, Bank Guarantee limit of Rs.7.00 crores, Derivative/FC/CEL( C) limit of Rs.10.33 crores total aggregate limit of Rs.330.99 crores.
18. **Dated 05.02.2016** – Cash Credit (Stocks) limit of Rs.108.00 crores, Cash Credit (Book Debts) limit of Rs.12.00 crores, SLC(FBWC) limit of Rs.18.00 crores, Letter of Credit limit of Rs.144.00 crores, Bank Guarantee limit of Rs.7.00 crores, Derivative/FC/CEL(C) limit of Rs.9.00 crores total aggregate limit of Rs.298.00crores.
19. **Dated 31.01.2017** - Cash Credit (Stocks) limit of Rs.108.00 crores, Cash Credit (Book Debts) limit of Rs.12.00 crores, SLC(FBWC) limit of Rs.18.00 crores, Letter of Credit limit of Rs.144.00 crores, Bank Guarantee limit of Rs.7.00 crores, Derivative/FC/CEL(C) limit of Rs.9.00 crores total aggregate limit of Rs.298.00 crores.
20. **Dated-20.03.2019** - Cash Credit (Stocks) Account limit of Rs.160.00 crores, Corporate Loan Account limit of Rs.20.00 crores, Letter of Credit limit of Rs.185.00 crores, Bank Guarantee limit of Rs.2.00 crores, Derivative/FC/CEL(C) limit of Rs.9.00 crores total aggregate limit of Rs.376.00 crores
21. **Dated 27.01.2020**–FBWC/Cash Credit limit of Rs.155.00 crores, Term Loan Account limit of Rs.16.80 crores, Letter of Credit limit of Rs.170.00 crores, Bank Guarantee limit of Rs.2.00 crores and Credit Exposure limit of Rs.9.00 crores total Aggregate limit of Rs.352.80 crores.

The copies of the series of sanction letters dated 19.10.2004, 05.02.2007, 01.09.2007, 26.02.2009, 09.03.2009, 11.07.2009, 29.09.2009, 06.07.2010, 28.09.2011, 29.02.2012, 05.12.2014, 05.02.2016, 31.01.2017, 20.03.2019, 27.01.2020alongwith Board Resolution are annexed hereto and marked as **Annexure “D-1”.**

1. The Financial Creditor lastly renewed and/or enhanced sanctioned the credit facilities in favour of the Corporate debtor dated 14.09.2020 and 28.09.2020 in respect of FITL-I limit of Rs.12.45 crores, FITL-II limit of Rs.6.86 crores, FITL-III limit of Rs.1.38 crores, FITL-IV limit of Rs.6.59 crores an aggregate limit of Rs.27.28 crores. The copy of the Sanction letter dated 14.09.2020 and 28.09.2020 are annexed hereto and marked as **Annexure “D-2”.**
2. At the request of the corporate Debtor, The Financial Creditor sanctioned the credit facilities and at the time of sanction the Corporate Debtor executed the following documents for availing the Credit facilities:
	1. Form-C-1: Agreement loan for Overall Limited dated 09.03.2021 of Rs.27.28 crores;
	2. Form C-2- Agreement of Hypothecation of Goods and Assets dated 09.03.2021 of Rs.27.28 crores
	3. Form-C-5- Letter regarding the grant of Individual limited dated 09.03.2021 limit of Rs.27.28 crores
	4. From “C-4” –Deed of Guarantee for overall limit for Rs.27.28 crores executed by guarantor of the Corporate Debtor.

Copies of the documents are annexed hereto and marked as **Annexure “D-3” to “D-6”** respectively.

1. The Corporate debtor had deposited their original title deeds with the applicant bank of the Financial Creditor from time to time with intent to create equitable mortgage of the immovable properties and as a continuing security for repayment of all indebtedness and liabilities of the Corporate debtor to the Financial Creditor and extended the said mortgage to cover the enhanced limit and/or liabilities of the Guarantor of the Corporate Debtor. The details of the mortgage are as follows:
2. All that piece and parcel of factory Land and Building Unit-I total Area 22.50 Acres, Manjhaladih, District- Giridih, State- Jharkhand being Title Deed No.11954, 11955, 8716, 1167
3. All that piece and parcel of factory Land and Building Unit-II total Area 13.33 Acres, (consisting of 28 Sub-Deed) Bhorandiha, District- Giridih, State- Jharkhand
4. Hypothecation charge on plant and machinery and other miscellaneous fixed assets of the compaly (except freehold land building and vehicles) both present and future;
5. Paripassu charge of equitable mortgage of immovable property (Factory land and building) having total Area 8.30 acres, Village/Town/City- Giridih, Dist- Giridih, State- Jharkhand, Pin-815301 being Title Deed No.13141, 2350 in the name of the Company.
6. Paripassu charge on Equitable Mortgage over landed property of area 11.3516 acre, in the name of the Company being title Deed No.13563 & 11 others on 25.11.2008.
7. STDR for Rs.4.00 crores in the name of the Company.

The copies of theMemorandum of Deposit of title deed alongwith Search report are annexed hereto and collectively marked as **Annexure- “E”.**

1. That although the Corporate Debtor availed the said credit facilities but failed to operate the loan accounts as per the terms of sanction, reason for which the said loan accounts became irregular in course of time. The Financial Creditor on several occasions have given reminders to the Corporate Debtor for regularizing the loan accounts but in spite of the said reminders, the Corporate Debtor failed to regularize the said accounts and in consequence whereof, the accounts of the Corporate Debtor became highly irregular in course of time and ultimately it was classified as Non-Performing Asset (NPA) on 16.10.2020 as per prudential norms of RBI guidelines.
2. That after giving due credit for all sums paid by or received on behalf of the Corporate Debtor in the said account and after appropriating all items of credit to the item of debit as are appropriate and applicable in the said loan accounts, there became due and is still due and owing by the Corporate Debtor to the Applicant/Financial Creditor aggregate sum of Rs.341,57,84,535.81 as on 31.12.2021. The copy of the Statement of Loan Accounts of the Corporate Debtor including Certificate under the Banker’s Books Evidence Act, 1891, are annexed hereto and marked as **Annexure-“F” to “F”-8”**as per particulars below**:**

**P A R T I C U L A R S**

Amount due in respect of:

|  |  |  |
| --- | --- | --- |
| Facility  | Account No. |  Outstanding  |
| Term Loan  | 37748374983 | 160000000.00 |
| Cash Credit  | 38405967749 | 2286675277.81 |
| WCTL | 39031624720 | 80000000.00 |
| WCTL | 39699340534 | 80944438.00 |
| WCTL | 39699346025 | 80944438.00 |
| WCTL | 39705637054 | 80944438.00 |
| WCTL | 39761419733 | 80944438.00 |
| WCTL | 39760937131 | 80944438.00 |
| WCTL | 39785083804 | 484387068.00 |
|  TOTAL  | **341,57,84,535.81** |
| Bank Guarantee (2) | 38406154110 | 110,37,750.00 |
|  |  |

It is stated that the applicant bank had issued the saidaforesaid Bank Guarantees (2) of Rs.1,10,37,750.00(Account No38406154110). At the request of the defendants in favour of the beneficiaries and the said bank guarantees is still in force and not invoked so far but these bank guaranteed are contingent liablity. Accordingly no claim has been lodged against the said Bank Guarantees by the beneficiary amount of the Bank guarantees has not been included in the claim amount. In case the said bank guarantees invoked in future and due to non payment of the same by the defendants the applicant reserved its right to amend claimed amount with due process and to amend the claim amount in the instant original application. The copy of the Bank Guarantee is annexed hereto and marked as **Annexure “F-9”,**

1. That the Financial Creditor sent a letter to the Corporate debtor for development of bills under Foreign/Domestic Ltd. and requesting to the Corporate debtor for regularize the account immediately, submit cash budget at least upto June 2020, submit invoice wise details of all debtors and submit detailed plan of the company to realize the outstanding from the debtor, streamline operation of the unit/account and also regulairse the account. The copy of the Financial Creditor letters dated 18.01.2019 and 17.03.2020 are annexed hereto and collectively marked as **Annexure “G”.**
2. The Financial Creditor also sent a Demand notice dated 17.01.2022 to the Corporate Debtor demanding a sum of Rs.**342,68,22,285.81** (Rs.341,57,84,535.81 + accrued interest + other charges due as on 16.12.2021 and Bank Guarantee outstanding of Rs.1,10,37,750.00) shall also fall due, as and when crystallized. The copy of the said Demand notice dated 17.01.2022is annexed hereto and collectively marked as **Annexure-“H ”.**
3. The Corporate Debtor enjoyed and utilized the said credit facilities as aforesaid but did not adhere to the terms and conditions of the said sanctions. Despite repeated requests the Corporate Debtor did not clear dues within the time specified in the terms and conditions connected with the aforesaid credit facilities and thus the aforesaid account became irregular although it entered transactions with the Financial Creditor from time to time and accepted and acknowledged the same by way of executing various banking documents and also acknowledged and accepted the same in its audited balance sheet as on 31.03.2021. In the said Audited Balance Sheet the Corporate Debtor had acknowledged its liability to the Financial Creditor. Copy of the Annual Audited Balance Sheet as on 31.03.2021is annexed hereto and marked as **Annexure-“I “.**
4. That the applicant Financial Creditor declared the Corporate Debtor and its Guarantors are willful defaulter as per the relevant provisions and guidelines of the Reserve Bank of India (RBI) and the said default has been registered with the Credit Information Bureau of India Limited (CIBIL)/National E-Government Services Limited. The copy of CIBIL Report of the Corporate Debtor and its Guarantors are annexed hereto and marked as **Annexure- “J “.**
5. As is clear from the aforesaid paragraphs, the Corporate Debtor has failed to discharge its admitted liability towards the Applicant Financial Creditor.
6. The applicant Financial Creditor submits that the Corporate Debtor is not in a position to repay its admitted debts and the affairs of the Corporate Debtor is not safe in the Hon’ble of the present margin and in addition to the monies payable to the Financial Creditor, the Corporate Debtor also owes huge amounts of money to other Creditors also. The Corporate Debtor is unable to pay its debts and it would be in the interest of the creditors at large that the Corporate Debtor is not allowed to incur any further debts. It would, therefore, be just, necessary and expedient for protecting interest of the creditors that this Hon’ble Tribunal be pleased to pass order as prayed for.
7. The applicant Financial Creditor submits that unless the aforesaid reliefs are granted, grave and irreparable loss and damage would be caused to the applicant Financial Creditor and the other *bona fide* creditors of the Corporate Debtor. Even the balance of convenience and equity weigh in favour of the grant of the aforesaid relief.
8. The Corporate Debtor has committed default as defined under Section 3(12) of the IB Code, 2016, with regard to the financial debt owed by it to the applicant Financial Creditor in excess of Rs.1 Lakh. The registered office of the Corporate Debtor is located in the state of West Bengal and this Hon’ble Tribunal has territorial as well as pecuniary jurisdiction to adjudicate upon the present application.

**Limitation:**

1. The Financial Creditor states that its claim is within the period of limitation as such the Corporate Debtor executed the last loan documents dated 09.03.2021. The Financial Creditor issued recall notice dated 17.01.2022 against the Corporate debtor within the period of limitation and the instant application under section 7 has been filed in February 2022within 3 years hence this application has been filed within the period of limitation as provided under the relevant provisions of the limitation Act as well as IBC, 2016.

 **JURISDICTION OF THE BENCH:**

1. The Corporate Debtor has its Registered Office in the State of West Bengal which is within the territorial jurisdiction of this Hon’ble Tribunal and, hence, this Hon’ble Tribunal has the necessary territorial jurisdiction to try and adjudicate upon the present Petition.
2. The applicant Financial Creditor has paid necessary Tribunal fees in accordance with the provisions of law and other documents and affixed he necessary court fees for filing fees in the instant petition.

Particulars of the Online netbanking evidencing payment of filing fees for the petition or application made:

NCLT Transaction ID :

Bank Transaction ID :

Transaction Date & Time :

Filing Number :

Amount in Rs.25,000/- (Rupees Twenty Five Thousand)Only.

(Signature /Signature of Authorised signatory)

Date:

Place: /03/2022

Applicant/State Bank of India

Through

Ramesh Chandra Prusti

 Advocate,

High Court, Calcutta

6A, KiranShankar Roy Road,

Kolkata-700001

Mob : 9230511824

E-Mail :- advrcprusti1@gmail.com ;

rcprusti291@gmail.com

Place: Kolkata

Dated: /03/2022

**BEFORE THE HON’BLE NATIONAL COMPANY LAW TRIBUNAL,**

**KOLKATA BENCH, KOLKATA**

**Company Petition (I.B.) No. /KB/ 2022**

**IN THE MATTER OF:-**

STATE BANK OF INIDA ……….Petitioner (Financial Creditor)

-Versus-

M/s.ATIBIR INDUSTRIES CO. LIMITED ......….. Respondent (Corporate Debtor)

Application on behalf of the petitioner seeking appointment of Interim Resolution Professional (IRP) of the respondent company under section 16 (2) of the insolvency and Bankruptcy Code, 2016

The Petitioner/ Applicants above named, most respectfully submits as under:

1. The Applicant Financial Creditor has filed the present petition for initiating Corporate Insolvency Resolution Process (CIRP) of the Respondent Company and the contents are not repeated herein for the sake of brevity but the Petitioner craves leave of this Hon’ble Tribunal to refer to the contents of the same.
2. The Corporate Debtor has committed default in the payment of financial debts to the Financial Creditor and as such the intentions of the Corporate Debtor as apparent on the face of it are *mala fide*.

1. It is possible that the Corporate Debtor may in order to avoid liability may proceed to either transfer its assets or create fictitious charges on the assets of the Company and the directors of the Company may cause such financial loss to the Company so as to enrich themselves thereby leaving the *bona fide* creditors to suffer without any payment.
2. It is a clear case where the Corporate Debtor is well aware of the insolvency resolution process to commence after service of notice on them and, therefore, there is every likelihood that in the event no restraint order is passed against the Corporate Debtor, the Applicant Financial Creditor may suffer irreparable loss. The balance of convenience is in favour of the Financial Creditor and against the Corporate Debtor and there is every likelihood for the applicant Financial Creditor to succeed in the present petition.

**PRAYER**

In the light of the above facts it is most respectfully prayed that this Hon’ble Tribunal may be graciously please to allow the present application and:-

1. Initiate a Corporate Insolvency Resolution Process (CIRP) in respect of ATIBIR INDUSTRIES CO. LIMITEDas aforesaid.
2. Appoint Interim Resolution Professional (IRP) to take control of the management of the Corporate Debtor’s business and all its records. Further to take into its possession and control all the properties, assets, effects, actionable claim, records and books of accounts of the Corporate Debtor to which the Corporate Debtor appears to be entitled to but not to distribute or part with the same without further order of this Hon’ble Tribunal; and
3. Pass any other order or directions as deemed fit and proper in the facts and circumstances of the case as may further be passed accordingly.

APPLICANT/STATE BANK OF INDIA

Through

Ramesh Chandra Prusti

 Advocate,

High Court, Calcutta

6A, KiranShankar Roy Road,

Kolkata-700001

Mob : 9230511824

E-Mail :- advrcprusti1@gmail.com;

rcprusti291@gmail.com

Place: Kolkata

Dated: /03/2022

**BEFORE THE HON’BLE NATIONAL COMPANY LAW TRIBUNAL,**

**KOLKATA BENCH, KOLKATA**

**Company Petition (I.B.) No. /KB/ 2022**

**IN THE MATTER OF:-**

STATE BANK OF INDIA ……….Petitioner (Financial Creditor)

-Versus-

M/s. ATIBIR INDUSTRIES CO. LIMITED ......….. Respondent (Corporate Debtor)

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**VOLUME-I**

BEFORE THE HON’BLE NATIONAL

COMPANY LAW TRIBUNAL

 KOLKATA BENCH AT KOLKATA

 Company Petition (I.B.) No. /KB/ 2022

 In the matter of:

 The Insolvency and Bankruptcy Code, 2016

 -And-

 In the matter of:

 STATE BANK OF INDIA (Financial Creditor)

 …Applicant (Financial Creditor)

 -Versus-

 M/s. ATIBIR INDUSTRIES CO. LIMITED

 …Respondent (Corporate Debtor)

 **A P P L I C A T I O N**

RAMESH CHANDRA PRUSTI,

 Advocate

 6A, Kiran Shankar Roy Road,

 2nd Floor, Kolkata-700001

Email:advrcprusti1@gmail.com

rcprusti291@gmail.com

 Mobile- 9230511824

**VOLUME-I**

 **Page No. to**

BEFORE THE HON’BLE NATIONAL COMPANY LAW TRIBUNAL

 KOLKATA BENCH AT KOLKATA

 Company Petition (I.B.) No. /KB/ 2022

 In the matter of:

An application under Section 7 of the Insolvency and Bankruptcy Code, 2016

 -And-

 In the matter of:

 STATE BANK OF INDIA

 …Applicant (Financial Creditor)

 -Versus-

 M/s. ATIBIR INDUSTRIES CO. LIMITED

 …Respondent (Corporate Debtor)

**ADVOCATE-ON-RECORD**

Ramesh Chandra Prusti

 Advocate

6A, Kiran Shankar Roy Road,

2nd Floor, Kolkata-700001

Email:advrcprusti1@gmail.com

 rcprusti291@gmail.com

Mobile- 9230511824

**BANK’S CERTIFICATE**

Bank’s Name : STATE BANK OF INDIA, SAMB-II

Account : WCTL Account No.39785083804

Certificate under Section 2A(a) of the Banker’s Books Evidence Act 1891 (as amended)

A printout of entry or a copy of printout referred to in sub-section (8) of Section 2 shall be accompanied by the following, namely:-

1. A certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager; and
2. A certificate by a person in-charge of computer system containing a brief description of the computer system and the particulars of --
3. the safeguards adopted by the system to ensure that data is entered or any other operation performed only by authorized persons;
4. the safeguards adopted to prevent and detect unauthorized change of date;
5. the safeguards available to retrieve data that is lost due to systemic failure or any other reasons;
6. the manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electro-magnetic date storage devices;
7. the mode of verification in order to ensure that data has been accurately transferred to such removable media;
8. the mode of identification of such data storage devices;
9. the arrangements for the storage and custody of such storage devices;
10. the safeguards to prevent and detect any tampering with the system; and
11. any other factor which will vouch for the integrity and accuracy of the system;
12. A further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and belief, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in questing represents correctly, or is appropriately derived from, the relevant date;

**BANK’S CERTIFICATE**

Bank’s Name : STATE BANK OF INDIA, SAMB-II

Account : BG Account No. 38406154110

Certificate under Section 2A(a) of the Banker’s Books Evidence Act 1891 (as amended)

A printout of entry or a copy of printout referred to in sub-section (8) of Section 2 shall be accompanied by the following, namely:-

1. A certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager; and
2. A certificate by a person in-charge of computer system containing a brief description of the computer system and the particulars of --
3. the safeguards adopted by the system to ensure that data is entered or any other operation performed only by authorized persons;
4. the safeguards adopted to prevent and detect unauthorized change of date;
5. the safeguards available to retrieve data that is lost due to systemic failure or any other reasons;
6. the manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electro-magnetic date storage devices;
7. the mode of verification in order to ensure that data has been accurately transferred to such removable media;
8. the mode of identification of such data storage devices;
9. the arrangements for the storage and custody of such storage devices;
10. the safeguards to prevent and detect any tampering with the system; and
11. any other factor which will vouch for the integrity and accuracy of the system;
12. A further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and belief, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in questing represents correctly, or is appropriately derived from, the relevant date;