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BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

C.P.(IB) 173 of 2019

Coram: MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE THE AHMEDABAD BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 15.04.2021

Name of the Company:

Punjab National Bank
V/s
Mithilanchal Glass Industries Pvt Ltd

Section:

7 of Insolvency and Bankruptcy Code, 2016

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Dated this the 15th day of April, 2021.

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

CP (IB) No.173/7/NCLT/AHM/2019

*[An application filed under Section 7 of the Insolvency and Bankruptcy
Code, 2016]*

In the matter of:

M/s. Punjab National Bank,
Surat Main Branch,
Having its registered Head Office at:
Plot No. 4, Dwarka
Sector 10, New Delhi – 110075.

... Petitioner/Financial Creditor

V/s.

M/s. Mithilanchal Industries Pvt. Ltd.
(CIN: U17120GJ2012PTC069998)
Having its registered office at:
Plot No.7311/1, Road No. 73B,
GIDC, Sachin,
Surat – 394230,
Gujarat, India.

... Respondent/Corporate Debtor

**Date of Hearing: 6th April, 2021
Date of Pronouncement: 15th April, 2021**

**Coram: Madan B. Gosavi, Member (Judicial)
Virendra Kumar Gupta, Member (Technical)**

Appearance:

Learned Counsel Mr. Ketan M. Parikh, for the Petitioner/
Financial Creditor.

Learned Counsel Mr. Sandip Bhatt, for the Respondent/
Corporate Debtor.



[Per: Madan B. Gosavi, Member (Judicial)]
(Through Video Conferencing)

1. M/s. Punjab National Bank, the Financial Creditor filed this application under Section 7 of the of the Insolvency and Bankruptcy Code, 2016 against M/s. Mithilanchal Industries Private Limited, the Corporate Debtor to initiate Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor on the ground that the Corporate Debtor committed default in paying the financial debt of Rs.5,99,73,482/-. The date of default is 27.12.2014.
2. The following facts are not in dispute.
3. The Financial Creditor/ Bank has granted and disbursed in favour of the Corporate Debtor the loan in the form of cash/ credit and over draft facilities dated 06.03.2013. The Corporate Debtor could not repay the installment as agreed. Hence, the Bank filed the recovery proceedings in Debts Recovery Tribunal -II, Ahmedabad against the Corporate Debtor. This proceeding is filed after the Government has promulgated and made applicable the provisions of Insolvency and Bankruptcy Code, 2016.
4. The Bank stated that since the Corporate Debtor committed default in paying the Financial Debt, it may be admitted in CIRP declaring to be insolvent.

5. Notice of this application was duly served upon the Corporate Debtor. It appeared through one of its authorized signatory, Mr. Vivekanand Jha. He filed affidavit-in-reply. According to the Corporate Debtor, as per notice under Section 13(2) of the SARFAESI Act, the Financial Creditor/ Bank stated that date of NPA of its loan account is 29.12.2014 whereas, in this application, the date of default is 27.12.2014. It is incorrect. This proceeding is not filed by properly authorized person by the Bank. The facts of the existence of the debt is that its default is not challenged by the Corporate Debtor firstly in DRT, DRAT and Hon'ble Bombay High Court in Special Civil Application No.14741 of 2017 dismissed the bank's appeal against order of Hon'ble Debts Recovery Tribunal, wherein it was held that the bank had wrongly declared the loan account of the Corporate Debtor to be an NPA. This proceeding is filed only to pressurize the Corporate Debtor. It is not maintainable. It is also contended that there are numbers of mistakes relating registered office of the Corporate Debtor. The Bank, in place of identification number, had stated its PAN Number. According to the Corporate Debtor, this application is not maintainable and the same may be rejected.

6. We have gone through evidence and the material on record. We heard the Learned Counsel Mr. Ketan M. Parikh, for the Financial Creditor and the

Learned Counsel Mr. Sandip Bhatt, for the Corporate Debtor at length.

7. At the outset, we note that there is no dispute of the fact that the Corporate Debtor has committed default in paying the financial debt more than rupees one lakh (i.e. the threshold limit of debt under Section 4 of the I.B. Code) to the Financial Creditor.
8. The Corporate Debtor contended that the Bank wrongly declared its loan account to be a Non Performing Asset and this fact has been established by the judgment of Hon'ble DIRT and Hon'ble Bombay High Court. We hold that we are not required to consider whether the loan account was rightly declared to be NPA or not because the competent tribunal already recorded its findings on this issue. However, we noted that provisions of Section 7(1) of the I.B. Code restrict us only to record findings whether - "default occurred?" or not.
9. The term "Default" is well defined under Section 3(12) of the I.B. Code as "non-payment of the debt as a whole or any part or installment of the amount as become due and payable and is not paid by the Corporate Debtor." In this case, it is not in dispute that the Corporate Debtor failed to pay the loan-installment as agreed, it has committed default in paying debt of more than

rupees one lakh. Hence, the Corporate Debtor has to be admitted in the CIRP.

10. The Corporate Debtor raised two technical and one substantial defense. The Corporate Debtor contended that the Bank officer, who filed this petition, was not duly authorized to do so. However, this defense is not sustainable for the simple reason that by way of general power of attorney dated 30.08.2016, Shri Swapnil Sharma has been properly authorized to file this application on behalf of the Bank. We reject this defense.
11. The Corporate Debtor further pointed out that in the application Bank did not state its identification number and instead mentioned its PAN number. There is a difference in mentioning dates and defaults etc. We hold such mistakes are too insignificant, more particularly, when the Corporate Debtor admitted the debt and its default.
12. Learned Counsel for the Corporate Debtor argued that the debt is time barred. According to him, as per the Bank's own statement, the date of default is 27.12.2014. This application is filed on 12.02.2019. It is filed beyond three (03) years from the date of default and it is time barred. He submitted that as per various rulings of the Hon'ble Supreme Court, right from the rulings of **B.K. Education Society and Others** up to the latest case of the Hon'ble Apex Court held that a

date of default does not shift and if the proceedings under the I & B Code is not filed within three years from the date of default, it cannot be entertained as barred by limitation as per the Article 137 of the Limitation Act. He further submitted that judgment of Hon'ble Apex Court in the case of **Sesh Nath Singh & Anr. Vs. Baidyabai Sheoraphuli Cooperative Bank Ltd. and Anr.** is not applicable in this proceeding on facts.

13. As against this, the Learned Counsel for the Financial Creditor submitted that even after date of default, i.e. 27.12.2017, the Corporate Debtor had approached the Bank each year and has been giving one time settlement ("OTS") proposals thereby admitting the debt. Such OTS proposal lastly was given on 29.01.2016. This application is filed within the three years from the date of last OTS proposal given by the Corporate Debtor. Hence, this proceeding is within limitation in view of Section 18 of the Law of Limitation.

14. Learned Counsel further submitted that Hon'ble Apex Court, in case of **Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Cooperative Bank Ltd. and Anr.** has held that if a bank had filed proceeding under SARFAESI Act in Debts Recovery Tribunal and then files proceeding under Section 7 in the National Company Law Tribunal, then the period during which the Bank's proceedings under SARFAESI Act was pending, has to be excluded



while reckoning the period of limitation as per Article 14 of Law of Limitation. In this case, if that period is excluded, then this application cannot be said to be a time barred. Moreover, Hon'ble NCLAT in case of **Kishanlal Likhmichand Bothra Vs. Canara Bank**, Civil Appeal No. 704 of 2020 has held that: "*Fresh period of limitation from the date of which acknowledgement is said shall start as per Section 18 of the Limitation Act.*"

15. We considered submissions of Learned Counsels for both the parties. We note that whether the period of limitation gets extended upon acknowledgement of debt or not is the point completely been answered by the Hon'ble NCLAT in case of **Kishanlal Likhmichand Bothra Vs. Canara Bank**. It has been held by Hon'ble NCLAT that:

***"13. Considering above judgment of the Hon'ble Supreme Court of India, we have no difficulty to state that Section 18 of the Limitation Act is applicable to proceedings under IBC and that if there is acknowledgement of debt in the balance sheets or the OTS proposal, the period of limitation would get extended if the acknowledgement is made before the period of limitation expires*"**

16. Keeping before our sight the above order of Hon'ble NCLAT, if we consider the facts in this case, we find that the date of default is 27.12.2014

thereafter by way of OTS, firstly on date 09.11.2015 and thereafter on 29.01.2016, the Corporate Debtor acknowledged the date (before expiry of period of three years from the date of default). This application is filed on 12.02.2019, i.e. three years from the last date of acknowledgement of the debt. Hence, we hold that it is filed well within the period of limitation.

17. The Financial Creditor established that an amount of debt of Rs.5,99,73,482/- is due and payable by the Corporate Debtor and the Corporate Debtor has committed default failed in paying the same. This application is defect filed within the limitation. Hence, we admit the Corporate Debtor in the Corporate Insolvency Resolution Process.

18. The Financial Creditor has suggested the name of one Mr. Pinakin Shah having registration number IBBI/IPA-002/ IP-00106/ 2017-18/ 10248 for appointment as the Interim Resolution Professional, against whom, no disciplinary proceedings are pending. This application is defect free. Hence, we direct the Corporate Debtor to be admitted in CIRP by following order:

ORDER

1. The Corporate Debtor, **M/s. Mithilanchal Industries Pvt. Ltd. (CIN: U17120GJ2012PTC069998)** is admitted in Corporate Insolvency Resolution Process under



Section 7 of the Insolvency and Bankruptcy Code, 2016.

2. The moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
 - a. 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;
 - b. transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c. 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 Act, 2002;
 - d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

3. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until

this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

4. We hereby appoint **Mr. Pinakin Shah, having Registration No. IBBI/IPA-002/ IP-00106/ 2017-18/ 10248, address: A-201, Siddhi Vinayak towers, B/h. BMW Showroom, Next to Kataria House, Opp. S.G. Highway, Makarba, Ahmedabad - 380051, email: cspinakinco@gmail.com, Mobile No:9227223377 to act as an Interim Resolution Professional** under Section 13(1)(c) of the Code. He shall conduct the Corporation Insolvency Resolution Process as per the provision of Insolvency and Bankruptcy Code, 2016 r.w. Regulation made thereunder.
5. The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or

any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

6. This Adjudicating Authority directs the IRP to make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.
7. It is further directed that the supply of goods/service to the Corporate Debtor Company, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
8. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Financial Creditor is directed to pay an advance of **Rs.2,00,000/- (Rupees Two Lakh Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First

Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

9. The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.
10. Accordingly, **CP(IB)No.173/7/NCLT/AHM/2019** stands admitted.


(Virendra Kumar Gupta)
Member (Technical)


(Madan B. Gosavi)
Member (Judicial)

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