

**NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.312/Chd/Hry/2018

**Under Section 7 of the
Insolvency & Bankruptcy
Code, 2016**

In the matter of:

Oriental Bank of Commerce
having its Head office at
Harsha Bhawan, E-Block,
Connaught Place, New Delhi

Also:

Corporate Office at
Plot No.5, Institutional Area,
Sector-32, Gurugram,
Haryana – 122001

Branch Office Large Corporate Branch at
First Floor, Harsha Bhawan,
E-Block, Connaught Place,
New Delhi - 110001

...Applicant/Financial Creditor

Versus

M/s Gupta Exim India Pvt. Ltd.,
Having its registered office at
144, DLF Industrial Area,
Phase-1, Faridabad,
Haryana - 121003

...Respondent/Corporate Debtor

Judgement delivered on: 29.10.2019

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Petitioner : 1. Mr. Harsh Garg, Advocate
2. Mr. Pulkit Goyal, Advocate

For the Respondent : 1. Mr. Manish Jain, Advocate
2. Ms. Divya Sharma, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGEMENT

The application in the prescribed Form No.1 is filed by Oriental Bank of Commerce (hereinafter referred to as **Bank**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of Gupta Exim India Private Limited. (hereinafter referred to as **Corporate Debtor**). The application is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**Code**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**Rules**). The application is signed by Shri Harmeet Singh Phillip, Chief Manager, Large Corporate Branch at E-Block, Harsha Bhawan, 1st Floor, Connaught Place, New Delhi - 110001. His affidavit verifying the contents of the application is at page 50 of the petition. The Authority Letter and General Power of Attorney in favour of Shri Harmeet Singh Phillip as constituted attorney for the Bank is at Annexure-I/1 (Colly) of the petition.

2. The master data of the Corporate Debtor is stated to be filed at Annexure-I/2 of the petition. The Corporate Debtor is stated to be incorporated on 16.01.1996 and the registered address is stated to be at 144, DLF, Industrial Area, Phase-1, Faridabad, Haryana – 121003. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. It is stated in Part-IV of Form No.1 that the Corporate Debtor was first sanctioned credit facilities on 01.10.1991 and followed by various types of other facilities with the last one on 21.03.2015. The respective dates of

disbursement are indicated in the statement of accounts thereof. The amount claimed to be in default along with the working of default for all the accounts of corporate debtor are as under:-

1.	Account Type	Cash Credit
2.	Account No.	06194010000060
3.	Amount of disbursement	5.00 Crore
4.	Date of default	31/03/2016
5.	Date of NPA	30.06.2016 w.e.f. 31.10.2013
6.	Applicable Rate of Interest	12.45% per annum compounded with monthly rests
7.	Total outstanding as on 12/09/2018 including interest, expenses and subjudice LCs	*' 38,51,26,884/-

* includes crystallization of export Bills (sanctioned limit '50 Crore)

1.	Account Type	Working Capital Term Loan
2.	Account No.	00077025005486
3.	Amount of disbursement	'2,83,62,46,500/-
4.	Date of default	31/03/2016
5.	Date of NPA	30.06.2016 w.e.f. 31.10.2013
6.	Applicable Rate of Interest	10.45% per annum compounded with monthly rests
7.	Total outstanding as on 12/09/2018 including interest, expenses and subjudice LCs	'3,67,79,66,711/-

1.	Account Type	Funded Interest Term Loan
2.	Account No.	00077025005791
3.	Amount of disbursement	'61,19,65,467/-
4.	Date of default	31/03/2016
5.	Applicable Rate of Interest	10.20% per annum compounded with monthly rests
6.	Total outstanding as on	'79,03,37,239/-

	12/09/2018 including interest, expenses and subjudice LCs	
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1.	Account Type	Term Loans
2.	Account No.	00077025005496
3.	Amount of disbursement	'55,16,61,302/-
4.	Date of default	31/03/2016
5.	Date of NPA	30.06.2016 w.e.f. 31.10.2013
6.	Applicable Rate of Interest	10.20% per annum compounded with monthly rests
7.	Total outstanding as on 12/09/2018 including interest, expenses and subjudice LCs	'71,24,32,927/-

As per Part-IV of Form No.1, the total amount due towards the corporate debtor as on 12.09.2018 is ₹5,56,58,63,761.40. It is stated that the loan accounts of the Corporate Debtor were declared NPA on 30.06.2016 w.e.f. 31.10.2013 due to the default in payment of the principle amount and interest.

4. In Part-V of Form No.1, the particulars of security held are given. It is stated that the credit facilities are secured by way of mortgage of lands, building, plant and machinery, all other fixed assets of the company including equitable mortgage land at Prithala, hypothecation of stock, current asset, receivables of the company and various other lands. It is further stated that the sanction letters dated 14.09.2006, 05.02.2009 and 21.03.2015 are filed at Annexures-I/10, I/32 & I/81 of the petition and that the terms and conditions of the sanction letters were duly acknowledged by the Corporate Debtor through its authorised Director(s)/signatories vide Board Resolutions of Corporate Debtor dated 14.09.2006 and 04.04.2015. These facilities were

enhanced time to time upon the request of the Corporate Debtor and Board Resolutions passed by the Corporate Debtor agreeing to the terms and conditions pertaining to these facilities. Also, copy of a Registration of Charge is attached as Annexure-I/6 of the petition. Annexure-I/7 are the Valuation reports, Annexure-I/5 (Colly) is the copy of Title Deeds and copy of the report of Credit Information Bureau India Ltd.(Cibil) dated 14.09.2018 is stated to be attached as Annexure-I/9 of the petition. The statement of account pertaining to the credit facilities duly certified under the Bankers Books Evidence Act, 1891 are stated to be attached as Annexure-I/3 of the petition. It is stated that the debts and securities stand acknowledged vide Board Resolutions dated 14.09.2006 and 04.04.2015 and Balance & Security Confirmation Letters being Annexures-I/17, I/22, I/31, I/44, I/50, I/65, I/72, I/80 & I/84.

5. It is also stated in Part-V of Form No. I that original application OA No.1069 of 2018 has been filed against the Corporate Debtor and other obligants with the Debt Recovery Tribunal (**DRT-II**), New Delhi. The matter is still pending adjudication before the DRT-II, New Delhi. Copy of the original application (OA No.1069 of 2018) is marked as Annexure-I/8 of the petition.

6. Due to the default in repayment of loan instalments, the Bank recalled notice dated 16.01.2018 as at Annexure-I/85 (Colly) under Section 13(2) of the SARFAESI Act, 2002. In this notice, it is informed to the corporate debtor that the operation and conduct of the financial assistance/credit facilities have become irregular and the debt has been classified as Non-Performing Asset (NPA) in accordance with the directives/guidelines of Reserve Bank of India. The outstanding amount as on 16.01.2018 was ₹5,20,04,32,414/- inclusive of interest as per this notice.

7. In Part-III of Form No.1 Mr. Vivek Raheja, Regn. No.IBBI/IPA-001/IP-P00055/2017-2018/10133 has been proposed as Interim Resolution Professional (**IRP**). Form No. 2 dated 29.08.2018 submitted by the proposed IRP is stated to be attached as Annexure-II of the petition.

8. While perusing the pleadings and record, a defect was noticed in Form No.2 (written communication by proposed Interim Resolution Professional) wherein two names i.e. Mr. Vivek Raheja, Resolution Professional & Mr. Sumat Kumar Gupta, Resolution Professional are found to be mentioned along with their IBBI Registration Numbers. Whereas in Part-III of Form No.1, Mr. Vivek Raheja is the one who is being proposed as Interim Resolution Professional. Further, when the matter was listed for re-hearing on 23.09.2019, the above defect was duly communicated to the learned counsel for the petitioner and an opportunity was given to cure this defect by furnishing a fresh written communication by the proposed Interim Resolution Professional.

9. In compliance to the above, learned counsel for the petitioner filed affidavit vide Diary No.5279 dated 01.10.2019 along with rectified Form No.2 (Annexure A-1) and the same was found to be in order and taken on record.

10. During the course of the hearing, the learned counsel for the Bank relied on the petition filed and stated that the requirements of Section 7 of the Code are satisfied and the petition be admitted.

11. We have carefully considered the submissions of learned counsel for the bank and the Corporate Debtor and have also perused the record.

12. When the matter was taken up for final hearing, the learned counsel appearing for the respondent-corporate debtor at the outset, submitted that though various grounds were raised in the reply, opposing the CP, but he is not pressing the same and as contended in the CP, the respondent-corporate debtor defaulted in payment of dues to the petitioner-bank as well as to various others and hence, the CP be admitted and the Corporate Insolvency Resolution Process may be initiated against the respondent-corporate debtor. In view of this, the contentions raised in the reply need not be adverted to.

13. Section 7(5)(a) of the Code is as follows:-

*“(5) Where the Adjudicating Authority is satisfied that—
(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”*

14. In the present case, the occurrence of default is evidenced by the details furnished by the bank including report of CIBIL, the copies of statement of accounts duly certified under the Bankers Books Evidence Act 1891, Balance & Security Confirmation letters placed at Annexures-I/17, I/22, I/31, I/44, I/50, I/65, I/72, I/80 & I/84.

15. The Corporate Debtor has not disputed the loan facilities granted by the petitioner-financial creditor and admitted the default in repayment of dues to the petitioner bank. The sum total as on 12.09.2018 payable by the corporate debtor to the petitioner-financial creditor in the loan accounts stated in the present petition is as follows:-

Sr. No.	Account No.	Principal Amount (₹ in Lakhs)	Interest (₹ in Lakhs) up till 12/09/18	Total outstanding (₹ in Lakhs)
1.	06194010000060	2564.11	1287.16	3851.27
2.	00077025005486	28362.47	8417.20	36779.67
3.	00077025005496	5516.61	1607.72	7124.33
4.	00077025005791	6119.65	1783.72	7903.37
	Grand Total			55658.64

16. The application filed in the prescribed Form No. I is found to be complete.

17. The proposed Interim Resolution Professional, Mr. Vivek Raheja has filed Form No.2 (Annexure-II of the petition) certifying that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.

18. The conditions provided for by Section 7(5)(a) of the Code being satisfied in the present case, we direct that the application for initiation of CIRP against Gupta Exim India Pvt. Ltd. be admitted. The directions regarding moratorium and appointment of IRP are given below.

19. We declare the Moratorium in terms of sub-section (1) of Section 14 of the code as under:-

- (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 Securitization 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.

20. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

21. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or pass an order for liquidation of corporate debtor under Section 33 as the case may be.

22. The following directions are also issued in respect of the appointment of the Interim Resolution Professional:-

- i) Appoint Mr. Vivek Raheja, resident of C/o JD-2C, Pitampura, Delhi - 110034 having Registration

No.IBBI/IPA-001/IP-P00055/2017-2018/10133 and email address vivek@vpgs.in , Mobile No.9811065170 as an Interim Resolution Professional;

- ii) The term of appointment of Mr. Vivek Raheja, shall be in accordance with the provisions of Section 16(5) of the Code;
- iii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;
- iv) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed

thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morality;

- v) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- vi) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vii) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying constitution of the committee

to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee; and

- viii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

23. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Pronounced in the open Court.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

Oct., 29, 2019
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