

**IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

CP (IB) No. 46/Chd/Pb/2018

Under Section 7 of IBC, 2016

In the matter of:

Oriental Bank of Commerce
Having its Head Office at
Harsha Bhawan, E-Block,
Connaught Place,
New Delhi and

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

... Petitioner-Financial Creditor

Versus

M/s J.R.Agrotech Pvt.Ltd.
Having its registered office at
Village Awankha, Dodwan Road,
Dinanagar, Distt.Gurdaspur,
Punjab – 143531

... Respondent-Corporate Debtor

Judgment delivered on : 27.07.2018

**Coram: Hon'ble Mr.Justice R.P.Nagrath, Member (Judicial)
Hon'ble Mr.Pradeep R.Sethi, Member (Technical)**

For the Petitioner : Mr.Harsh Garg, Advocate

For the Respondent : Mr.Aalok Jagga, Advocate

Per: Pradeep R.Sethi, Member (Technical)

Judgment

The instant petition is filed in Form 1 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, the Rules). The petition is filed by Oriental Bank of Commerce (hereinafter referred as the petitioner) for initiating the corporate

*@aappa
Pradyumn*

insolvency resolution process in the case of M/s J.R.Agrotech Private Limited (hereinafter referred to as corporate debtor). The petition is signed and verified by Shri Binod Kumar Dobhal, Assistant General Manager, Oriental Bank of Commerce authorised to file the instant petition vide authority letter dated 30.12.2017 issued by General Manager, Oriental Bank of Commerce in exercise of powers conferred upon him by the Board resolution No.A-24 dated 16.12.2017 of the Oriental Bank of Commerce and vide power of attorney dated 04.09.2013 (Annexure 1/1 and Annexure 1/2 of the petition).

2. As per master data of the corporate debtor available at Annexure 1/3 of the petition, the corporate debtor was incorporated on 06/05/1998 having been allotted CIN U15312PB1998PTC021364. The registered address of the corporate debtor as per the master data is Village Awankha, Dinanagar, Distt. Gurdaspur, Punjab. Therefore, the matter lies within the territorial jurisdiction of this Bench of the Tribunal.

3. It is stated that the corporate debtor already availed financial facilities from a consortium of 6 banks and in 2016, to meet its further requirements, the corporate debtor approached the petitioner for grant of credit facilities in the form of Cash Credit limit which was disbursed on 31.03.2016 being cash credit limit of Rs.20 crores. It is stated that the financial facilities to the corporate debtor were sanctioned in principle with the understanding of the other members of the consortium of banks and on 11.08.2016 an inter se agreement between earlier members of consortium and petitioner was executed and the petitioner was taken as a part of the consortium and the corporate debtor executed fresh documents in respect of the financial facilities towards the newly formed consortium of the banks. It is stated that now the consortium consists of SBI, being the lead bank, Canara

Binod Kumar Dobhal
for signature

Bank, State Bank of Patiala, IDBI Bank, Union Bank of India, UCO Bank and the petitioner. The details of the guarantees and securities for the credit facilities are given in Part V.1 of the petition.

4. It is stated that since the corporate debtor defaulted in the payment of interest and principal amount, the account of the corporate debtor was classified as NPA on 30.08.2017 and that all other banks who were part of the consortium declared the account of the corporate debtor as NPA and a common notice dated 27.11.2017 under Section 13(2) of the SARFAESI Act, 2002 was issued by the lead bank of the consortium on behalf of all the members of the consortium to the corporate debtor as well as to the guarantors in the loan account of the corporate debtor demanding an amount of ₹283,62,49,468.73 as on 27.11.2017 along with future interest at the contractual rate along with incidental expenses and that the outstanding of the corporate debtor towards the petitioner was ₹21,16,32,118/- as on 31.10.2017. Bank account statement maintained as per the provisions of Bankers Books Evidence Act, 1891 are stated to be attached as Annexure I/6 (colly).

5. In Part III of form 1, Shri Dinesh Kumar Seth, Regn.No.IBBI/IPA-02/IP-N00014/2016-2017/10018 has been proposed as Interim Resolution Professional. The Form 2 is at Annexure II of the petition. In accordance with the provisions of Rule 9 of the Rules, Shri Dinesh Kumar Seth has agreed to accept appointment as Interim Resolution Professional and has affirmed that he is eligible to be appointed as a Resolution Professional in respect of the corporate debtor in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. He has also certified

Q. aepa

that there are no disciplinary proceedings pending against him with the Board or ICSI-IPA.

6. As required by Rule 4(3) of the Rules, the petitioner has dispatched a copy of the petition by speed post on 12.01.2018. The copy of the tracking report showing the delivery of the postal article to the corporate debtor on 15.01.2018 was filed during the course of proceedings on 27.02.2018. Vide order 27.02.2018, it was pointed out to the petitioner that the computation chart as required in Col.2 of Part IV of Form 1 was not filed and the defect was required to be removed within 7 days. The compliance was made by diary No.710 dated 12.03.2018 stating that the petitioner had already provided the duly certified copy which is as per the requirement of Bankers Books Evidence Act and that the total outstanding as on 30.08.2017 (date of declaring the account as NPA) was ₹20,69,37,204 and total outstanding as on 31.12.2017 including interest was ₹21,64,33,811.

7. Vide order dated 27.02.2018, notice of the petition to the corporate debtor to show cause as to why the petition be not admitted was directed to be issued. The corporate debtor filed reply by diary No.1729 dated 22.05.2018 stating that the petitioner represents about 8% of the total credit facilities which have been advanced to the corporate debtor and the remaining bankers, are not associated in the present petition and not arrayed as respondents and therefore, a minority creditor cannot take over the entire recovery process by unilaterally approaching the Tribunal.

8. It is stated that by agreement dated 11.08.2016 (Annexure I/54 of the petition), the entire action was to be taken in a consolidated manner and therefore, unilateral action on the part of a minority creditor who is a member of the

*Copy
Provision*

consortium cannot maintain the present petition without the consent of all. Reference has been made to Master Circular – Prudential Norms on Income Recognition, Asset Classification and Provisioning Pertaining to Advances issued by the Reserve Bank of India (RBI) on 01.07.2015 (Annexure R 1 of the reply). It is stated that as per the said Master Circular, especially in Part B, there is a provision for re-structuring of the advances. Reference is also made to Circular dated 12.02.2018 of the RBI (Annexure R 1/A of the reply) and it is stated that as per the circular, the bank is required to consider the re-structuring of the unit before it approaches the Tribunal. It is stated that the master circular is binding on all the banks and that in the consortium meeting dated 02.12.2017 (Annexure R 7 of the reply), it was mentioned that the corporate debtor had submitted a re-structuring proposal which was circulated amongst all the member banks including the petitioner and the said proposal was examined by the banks at a preliminary stage and on account of certain queries raised by the bank, it was decided and assured by the corporate debtor to re-submit the re-structuring plan by 09.12.2017 after modifying the same in view of the preliminary observations of the bank. It is further stated that the minutes of the meeting state that all the member banks had expressed their willingness for considering re-structuring of units only after submission of a viable proposal by the corporate debtor and the decision regarding filing of insolvency application before the Tribunal for recovery of dues was also discussed and the banks decided to defer the same till the approval from the respective competent authority is obtained.

9. It is further averred that the re-structuring proposal submitted is stated to be filed as Annexure R- 8 of the reply and a revised re-structuring proposal dated 11.01.2018 (Annexure R-9 of the reply) is stated to be submitted to the bank. It is

*@ app
pradip*

stated that a JLM meeting was scheduled to be held on 19.01.2018 and a copy of the minutes of the meeting were not provided to the corporate debtor but the revised re-structuring proposal was not considered since the petitioner contended that they have already approached the Tribunal. It is stated that banks must first take a decision on the re-structuring proposal and therefore, the present petition is not maintainable.

10. During the course of the arguments, the learned counsel for the petitioner stated that in its reply, the corporate debtor had not raised any objection to the completeness of the petition and to the occurrence of the default in payment of the principal and interest of the cash credit availed by the corporate debtor from the petitioner. In reply, the learned counsel for the corporate debtor argued that the instructions of RBI dated 01.07.2015 and 12.02.2018 were binding and before filing the petition for initiation of the corporate insolvency resolution process, the re-structuring proposal is required to be considered. It is argued that since the petitioner approached the Tribunal, the re-structuring proposal was not being considered by the other banks. Emphasis was placed on the consortium meeting held on 02.12.2017 in which the decision regarding filing of insolvency application before the Tribunal for recovery of dues was also discussed and the banks decided to defer the same till the approval from the respective competent authority is obtained. In rejoinder, the learned counsel for the petitioner referred to para 17.1.4 of the circular dated 01.07.2015 of the RBI and stated that this was only an enabling circular. As regards the circular dated 12.02.2018 of the RBI, the learned counsel for the petitioner pleaded that this circular was not applicable since the petition before the Tribunal was filed before that date.

*Copy
provision*

11. The learned counsel for the petitioner also referred to the minutes of the JLM meeting held on 02.12.2017 (Annexure R-7 of the reply) and stated that the revised re-structuring proposal was required to be re-submitted upto 09.12.2017. However, the corporate debtor submitted the proposal only much after the allowed time. The learned counsel for the petitioner referred to the minutes of the JLM meeting held on 16.09.2017 (Annexure R-4 of the reply) and stated that in respect of stock audit of the corporate debtor, the stock auditors refused to provide audit report citing non-cooperation from the company and therefore, a special investigative audit of the corporate debtor was directed. The learned counsel for the petitioner has stated that notice under Section 13(2) of SARFAESI Act was served on 27.11.2017 by SBI on behalf of all the banks under consortium (para No.4 of minutes of JLF meeting held on 02.12.2017 – Annexure R-7 of the reply) and argued that action for recovery of the loans was initiated by all the members of the consortium.

12. We have carefully considered the arguments of the learned counsels of the petitioner and the corporate debtor and have also perused the records.

13. The instant petition is filed under Section 7 of the Code in the prescribed Form 1 by the financial creditor – Oriental Bank of Commerce. The evidence of default has been furnished in Part IV of Form 1 and the account is stated to be classified as NPA on 30.08.2017. The bank account statements maintained as per the provisions of Bankers Books Evidence Act, 1891 are stated to be attached as Annexure 1/6 of the petition. The computation chart as required in Col.2 of Part IV of Form 1 has been filed by diary No.710 dated 12.03.2018 as discussed above. Therefore, this defect was also removed. The name of the resolution professional proposed to act as Interim Resolution Professional has been

*Copy
forwarded*

proposed in Part III of Form 1 and Form 2 has also been filed. As discussed above, the requirement of Rule 4(3) of the Rules regarding forwarding copy of the petition to the corporate debtor has also been met in the present case.

14. Section 7(5)(a) of the Code requires satisfaction of the Adjudicating Authority before admission of the petition on the following issues:

(i) a default has occurred, (ii) application under Section 7(2) of the Code is complete, (iii) no disciplinary proceedings are pending against the proposed resolution professional. As discussed above, all the three conditions are satisfied in the present case. Objections in this regard have also not been raised by the corporate debtor. The only objection of the corporate debtor is that the re-structuring proposal was required to be first considered before the application was filed by the petitioner before the Tribunal.

15. The learned counsel for the corporate debtor has placed reliance on Master Circular dated 01.07.2015 of the RBI on the subject of "Prudential Norms on Income Recognition, Asset Classification and Provisioning Pertaining to Advances" and to Part B thereof. The reading of the prudential guidelines on re-structuring the advances by the bank do not show that re-structuring is a must in all cases of loan default. In fact, para 17.1.4 of the Master Circular puts a restriction on accounts to be taken up for re-structuring by the banks. It is stated therein that the accounts taken up for re-structuring by the banks would be only such accounts in which the financial viability is established and there is a reasonable certainty of repayment from the borrower, as per the terms of the re-structuring package. As regards the circular dated 12.02.2018 of the RBI relied upon by the learned counsel for the corporate debtor, we find that the circular has been issued after the petition was

@ aya
provision

already moved to this Tribunal. Therefore, we agree with the learned counsel for the petitioner that the circular is not applicable in the present case.

16. We also find from the minutes of the JLF meeting held on 16.09.2017 (Annexure R-4 of the reply) that the director of the corporate debtor sought time upto 15.10.2017 for submitting requisite documents for re-structuring and that a re-structuring proposal was circulated amongst the member banks by the director of the corporate debtor in the JLF meeting held on 02.12.2017 (Annexure R-7 of the reply). However, the minutes note that various queries raised by the banks with regard to the revival plan were discussed with the representatives of the corporate debtor and in the absence of any suitable reply and few discrepancies in the re-structuring proposal, the director of the corporate debtor assured to re-submit the plan soon but not later than 09.12.2017. However, admittedly, the revised plan was not submitted by that date. Therefore, the compliance as per the minutes of the JLF meeting held on 02.12.2017 was not made by the corporate debtor within the time allowed.

17. The learned counsel for the corporate debtor has placed a lot of reliance on the last sentence of para 6 of the minutes of the JLF meeting held on 02.12.2017 that all the member banks have expressed their willingness for considering re-structuring of unit only after submission of viable proposal by the company. However, this sentence has to be seen in the context of the earlier discussion wherein discrepancies in the re-structuring proposal and absence of suitable reply by the representatives of the corporate debtor were noted. Therefore, the last sentence of para 6 only informs the corporate debtor that his proposal for re-structuring can be considered in case he submits a viable proposal. However, no proposal was submitted within the time limit given as discussed above. The

*Agreed
for signature*

contention of the learned counsel for the corporate debtor that the re-structuring proposal was required to be first considered does not have any basis, more so in the context of non-cooperation with the stock auditors and consequent reference to the special investigative audit (para 2 and 3 of the JLF meeting held on 16.09.2017 - Annexure R-4 of the reply).

18. The learned counsel for the corporate debtor has also referred to para 7 of the minutes of JLF meeting held on 02.12.2017 (supra) in which it is noted that the decision of filing application before the Tribunal by individual banks was deferred till approval from respective competent authority was obtained. There is no requirement under the Code that the approval of the JLF is required to be taken for initiating corporate insolvency resolution proceedings. In fact, Section 7 (1) of the Code provides that a financial creditor either by itself or jointly with other financial creditors may file an application i.e. it is not necessary that all the financial creditors should join together to file the application. Moreover, action was initiated by all the banks in the consortium through service of notice under Section 13(2) of the SARFAESI Act by the SBI on 27.11.2017 (para no.4 of minutes of JLF meeting held on 02.12.2017 – Annexure R-7 of the reply).

19. The learned counsel for the corporate debtor has mainly relied on **Mardia Chemicals Ltd. Vs Union of India 2004 AIR (SC)2371 and M/s Sardar Associates and Ors. Vs Punjab and Sind Bank and Ors. 2010 AIR (SC) 218** and has pleaded that the guidelines issued by the RBI are binding. We have already discussed above that the Circular dated 12.02.2018 of RBI is not applicable in the present case. As regards the circular dated 01.07.2015 of RBI (Annexure R-1 of the reply) it has been discussed above that the circular does not predicate that re-structuring in all cases will be done. We have also discussed that the re-structuring

@ vepa
fradysini

proposal submitted by the corporate debtor was examined in the JLF meeting held on 02.12.2017 and was not found to be in order and thereafter, the director of the corporate debtor assured to re-submit the plan sooner but not later than 09.12.2017 and the same was not done. Therefore, the issue of binding nature of RBI guidelines does not arise in the present case. It has been held in **M/s Innoventive Industries Ltd. Vs ICICI Bank and Anr. Company Appeal (AT) (Insolvency) No.1 & 2 of 2017** by the Hon'ble National Company Law Appellate Tribunal that the Adjudicating Authority is required to look into the satisfaction of the conditions under Section 7 of the Code and the Adjudicating Authority is not required to look into any other factor, including the question whether permission or consent has been obtained from one or other authority, including the JLF. Therefore, in view of the above discussion, the contention of the corporate debtor that the present petition is not maintainable and the re-structuring proposal is required to be first considered cannot be accepted.

20. We find that the application submitted by the operational creditor is complete in all respects and there is no defect pointed out by the corporate debtor. It is also proved that payment of the unpaid operational debt has not been made.

21. In this case the petitioner has also proposed the name of Resolution Professional to be appointed as Interim Resolution Professional in Part-III of the application in Form 5. The name of Mr.Dinesh Kumar Seth, registered Resolution Professional with IBBI having Regn.No.IBBI/IPA-02/IPN00014/2016-17/10018 has been proposed. It is certified by the authorised representative of the petitioner in Form 1 that to the best of his knowledge, Mr.Dinesh Kumar Seth is fully qualified and permitted to act as Insolvency Resolution Professional. Mr.Dinesh Kumar Seth has also furnished his written communication in Form 2 (Annexure-II of the

@ aaga
Pradyum

petition) disclosing all the necessary particulars certifying that there are no disciplinary proceedings pending against him with the Board or ICSI-IPA and he is not serving as an interim resolution professional/resolution professional/liquidator in any proceedings. Having perused the form, we find the same to be in order.

22. In view of the above, the instant petition deserves to be admitted. The petition under Section 7 of the Code is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code as amended:-

- 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.

23. It is further directed that the supply of essential goods or services to the corporate-debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The moratorium shall however not apply to such transactions as may be notified by the Central Government in consultation

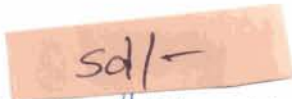
*Adya
Pradyum*

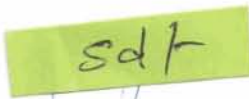
with any financial regulator and to a surety in a contract of guarantee to a corporate debtor.

24. 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 Bench approves the resolution plan under sub-section(1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

25. The matter be listed on 02.08.2018 for passing formal order to appoint Interim Resolution Professional with further directions.

Copy of this order be communicated to both the parties.


(Justice R.P.Nagrath)
Member (Judicial)


(Pradeep R.Sethi)
Member (Technical)

July 27, 2018
Subbu