

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

CP (IB) No.45/Chd/Hry/2018

**Under Section 7 of Insolvency and
 Bankruptcy Code, 2016**

In the matter of:

Allahabad Bank having its Head office at 2,
 Netaji Subhash Road, Kolkata
 and having its Asset Recovery Management Branch
 at SCO 49-50, IIIrd Floor, Bank Square,
 Sector 17-B, Chandigarh- 160017

...Petitioner-Financial Creditor

Versus

M/s Ganeshom Cereals Private Limited,
 having its Registered Office at Gonder Road,
 Nissing, District Karnal- 132024 (Haryana)

...Respondent-Corporate Debtor

Judgment delivered on 13.12.2018.

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL)
 HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

For the Petitioner : Mr. Nakul Sharma, Advocate

For the Respondent : Mr. Gaurav Mankotia, Advocate

Per: R.P.Nagrath, Member (Judicial)

JUDGMENT (Oral)

This petition has been filed by Allahabad Bank, the financial creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the '**Code**') for initiating Insolvency Resolution Process against the respondent-corporate debtor. The application

has been filed in Form 1, as prescribed in Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity the '**Rules**').

2. Allahabad Bank, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 with its Head Office at Kolkata and its Asset Recovery Management Branch (ARMB) at Chandigarh. The instant petition has been filed through Mr. Atul Kumar, Assistant General Manager of the Bank in whose favour the Bank has issued Power of Attorney dated 31.01.2014 (Annexure A-1). Under this attorney, the bank has authorized him to transact all ordinary business connected with the Bank at all its branches, as occasion may require to purchase, sell, negotiate and endorse as in manner required, Promissory Notes and Securities etc. and further authorized him to institute, prosecute and carry on such action or actions, making of applications/petition/proceedings for insolvency of any person or party and/or winding up of any Company, Corporation, Association or body corporate and being in execution of power for the requisite authority and to do all the necessary acts in the progress of the case.

3. Apart from this Power of Attorney, the financial creditor has also given authority dated 23.11.2017 (Annexure A-2) to Mr. Atul Kumar, Assistant General Manager of the Bank, the permission/approval for filing of this petition under the Code against the corporate debtor herein. It is further mentioned in this letter that Mr. Atul Kumar, being the Principal Officer/Branch Head of Asset Recovery Management Branch, Chandigarh, is duly authorized to file petition under the Code against the corporate debtor

through Bank's Panel Advocate. The contents of this application are also supported by the affidavit of Mr. Atul Kumar.

4. The respondent is a company incorporated under the Companies Act, 1956 on 19.05.2004 and is allotted CIN U51211HR2004PTC035387. The authorized share capital of the company is ₹ 3 Crores and its paid up capital is ₹1,10,79,800/-. It has its registered office at Karnal, in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

5. The facts of the case, briefly stated, are that the respondent-corporate debtor availed of Cash Credit Facilities to the tune of ₹85 Crores; WCTL/FITL of ₹8.76 Crores; Packing Credit Limit of ₹50 Crores, total amounting to ₹143.76 Crores in the year 2014 for which sanction letter dated 28.06.2014 was issued. The sanction letter is at Annexure A-6, which was acknowledged by the respondent-corporate debtor on 30.06.2014 and the said acknowledgement is at Annexure A-7. The respondent-corporate debtor passed a Resolution dated 04.07.2014 authorizing all Directors of the company and Mr. Amar Nath to execute and sign all the security documents of the bank relating to the credit facilities, granted to the company.

6. The respondent-corporate debtor in this regard executed demand promissory note dated 19.07.2014, Annexure A-9, for an amount of ₹ 143.76 Crores; hypothecation agreement, Annexure A-10; Term Loan Agreement, Annexure A-11, which are of even date.

7. For granting the credit facilities, the respondent-corporate debtor also created first charge by way of hypothecation of the entire current assets

of the company, including raw material, stocks-in-process and finished goods lying in the premises and anywhere else represented by documents of title to the goods. The equitable mortgage of the land measuring 11 Kanals 4 Marlas situated at Village Fatehpur, Tehsil Pundri District, Kaithal as per the Jamabandi for the year 2005-2006 was also created by Smt. Rekha Rani, W/o Vinod Kumar by depositing sale deed dated 11.06.2010 and the said property was bounded by details in Column 1 of Part V of the application form.

8. Equitable mortgage of 28 Kanals 4 Marlas of land being 564/2576 share out of total land measuring 128 Kanals 16 Marlas situated at Tehsil Pundri, District Kaithal, compounded by details in Part V of the application form was also created by Smt. Pooja, W/o Shri Parmod Kumar and Smt. Rekha Rani, aforesaid by deposit of sale deed dated 27.04.2010.

9. Equitable mortgage of 2 Kanal and 2 Marlas of land situated at Karnal-Kaithal Road, at Nissing, which is in the name of Lajpat Rai, Gulzari Lal, Kailash Chand, Kewal Krishan and others, was also created by deposit of title deed dated 27.06.2006.

10. 72 Kanal of land situated at Village Nissing was also equitably mortgaged by Parveen Kumar and others by deposit of title deed dated 29.12.2000. Land measuring 16 Kanal situated at Village Nissing in the name of Parveen Kumar and others; 16 Kanals of land in the name of Amar Nath and others in the same village; 16 Kanals of land in the name of Praveen Kumar and others, situated at same village; 16 Kanals of land in the name of

Vikas Goyal and others in the same village were also equitably mortgaged with the bank by deposit of title deeds dated 29.11.1994, 16.05.1995, 09.01.1996 and 08.06.1982, respectively. Similarly, details of various other immovable properties by depositing title deeds have been described in the application. In support of these mortgages, the petitioner-bank has relied upon the master data of the company, wherein the details of charge are reflected, Annexure A-4.

11. It is stated by the petitioner-bank in the application that the respondent-corporate debtor had defaulted in making the payment and total amount of debt as on 25.11.2017 including interest and expenses was ₹206,94,48,082.36. The petitioner-bank has filed statements of account in respect of different credit facilities granted to the corporate debtor duly maintained under Bankers Books Evidence Act, 1891, which are from Annexure A-13 to A-15. Apart from that, copies of statement of interest chart for these accounts are at Annexure A-16 to A-18, certified under Bankers Books Evidence Act, 1891.

12. When the matter was listed on 27.02.2018, it was noticed that the petitioner-bank has not filed the working for computation of the amount and the dates of default in tabulated form as required in Column No.2 of Part IV of Form 1, prescribed under Rule 4(1) of the Rules. Notice of this defect was given to the petitioner and learned counsel for the petitioner accepted the notice. At the same time, notice was directed to be issued to the respondent-corporate debtor to show cause as to why this petition be not

admitted. The petitioner had filed the computation of calculation in tabulated form as directed, along with the certificate under the Bankers Books Evidence Act, 1891 in respect of the accounts filed with CA No.86 of 2018 and the documents were taken on record. Again when the matter was listed on 03.04.2018, another defect was found in Column No.2 of Part IV of the Form as the date of default was not mentioned. This defect was removed by filing the affidavit vide Diary No.1087.

13. Vide order dated 24.04.2018, the service of the respondent was directed through substituted mode and it was observed in the order dated 05.06.2018 that the respondent was duly served, but there was no representation from the respondent. Thereafter, the arguments in the case were heard and the judgment was reserved. Later on an appearance on behalf of the respondent was made and CA No.225/2018 was filed for setting aside ex-parte proceedings against the respondent-corporate debtor, which was allowed on 03.08.2018.

14. Thereafter, the respondent sought couple of adjournments and the reply was filed by the respondent, vide Diary No.3828 dated 05.10.2018. In the reply, it is stated that the application is not complete and there is no record of the default with the information utility. On merits it is stated that the petitioner-bank itself has failed to fulfil its commitments with regard to lending of the amount and the petitioner is guilty of suppression of facts. It is submitted that the petitioner-bank has already filed proceedings before the Debt Recovery Tribunal, which are pending before Debt Recovery Tribunal Chandigarh and the respondent has filed the written statement in that case.

The amount claimed is stated to be in excess with exorbitant rate of interest. The bank has also not filed statement of accounts since the very inception of the facilitation till filing of the application before the Debt Recovery Tribunal.

15. It is further stated that the loan was initially obtained by the respondent from Punjab National Bank in the year 2009 and the debt was assigned to the petitioner-bank. However, the property of the respondent situated at Gondar is still reported with the Registrar of Companies under the Charge of Punjab National Bank.

16. It is stated that the petitioner-bank wrote a letter to the Punjab National Bank, the previous lender, to provide No Objection Certificate to the Petitioner-Bank in respect of the hypothecation, machinery and working capital and copy of the said letter dated 07.11.2013 is at Annexure R-4. It is also stated that the petitioner-bank had written another letter dated 07.11.2013 to the respondent-corporate debtor that the first charge with the Punjab National Bank is existing in the record of Registrar of Companies on the property of the corporate-debtor and that the respondent is liable to pay 1% of the extra interest in the defaulting amount, maintained with the petitioner-bank. Copy of that letter is Annexure R-5. In the reply, it is stated by the respondent-corporate debtor that it wrote a letter dated 08.11.2013 to the Punjab National Bank regarding the satisfaction of charge of the record of the Registrar of Company and that nothing was due to the Punjab National Bank from the respondent-corporate debtor. It is also stated that the real dispute is between both the banks and the respondent-corporate debtor is not at default.

17. The petitioner-company also filed the Rejoinder, vide Diary No.4165 dated 25.10.2018, reiterating the allegations made in the petition. It is admitted that initially the loan was granted by the Punjab National Bank and after that it was taken over by the petitioner. The debt was restricted for which reference is made to the sanction letter, Annexure A-6. Details of the facilities granted by the petitioner-bank, as stated in the application, have also been reiterated.

18. We have heard the learned counsel for the parties and have perused the record quite carefully.

19. The learned counsel for the petitioner has referred to the notice dated 02.12.2018 sent to the respondent-corporate debtor under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter to be referred as '**SARFAESI Act**') for the default committed by the respondent-corporate debtor and the property lying mortgaged with the bank has also been specified. In this notice, the details of the amount in default in respect of all the three accounts i.e. CC limit, WCTL Limit and Packaging Credit have been mentioned and the total amount then outstanding is stated to be ₹152,30,73,677/-. Details of all the properties which are mortgaged with the bank have also been mentioned in this notice. At Page 193 of the paperbook, which is part of the demand notice, it is stated that the account of the respondent-corporate debtor became NPA on 29.11.2014.

20. On occurrence of the default, the petitioner-bank has filed the Original Application before the Debt Recovery Tribunal, which is still stated to

be pending. The status of the said application pending before the Debt Recovery Tribunal, as obtained from the website of the Debt Recovery Tribunal is at Annexure A-5. The learned counsel for the petitioner contends that the next date fixed before the Debt Recovery Tribunal is 25.04.2019.

21. The application has been filed by the petitioner-bank through the Authorized Representative in Form 1 as prescribed in Rule 4(1) of the Rules and the petitioner-bank has therefore, satisfied the requirement of sub-section (1) and (2) of Section 7 of the Code.

22. Sub-section (3) of Section 7 of the Code, reads as under:-

“(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.”

23. One of the requirement of Clause (a) of Section 7(3) of the Code, is that the petitioner-bank is to either produce the evidence of default committed with the information utility or the other record of evidence of default. In this case, the petitioner-bank has adduced evidence in abundance, with regard to the sanction of the loan facilities and execution of various documents by the respondent, including the execution of the mortgage documents by the respondent in favour of the Punjab National

Bank which had assigned the loan/debt to the petitioner. The respondent has also executed the demand promissory note, Annexure A-9, which is at Page No. 53 of the paperbook. The promissory note is dated 19.07.2014 in respect of all the three facilities. The hypothecation deed is Annexure A-10; term loan agreement executed by the respondent is Annexure A-11 apart from the other documents. In fact the respondent has not denied in the written statement about the grant of loan and the facilities as per the documents relied upon by the bank and the learned counsel for the respondent-corporate debtor has fairly contended that the defects having been removed, the respondent-corporate debtor has not been able to show that the application filed under Section 7 of the Code is not complete.

24. The other important documents are the copies of the statement of account of the respondent-corporate debtor maintained under the Bankers Book Evidence Act, 1891. The copies of the statement of accounts along with the certificates under Section 2A of the Bankers Books Evidence Act, 1891, are from Annexure A-13 to Annexure A-15. The statements which are duly certified under the Bankers Books Evidence Act, 1891, carries the presumption of correctness, unless rebutted. Anyhow, if there is no discrepancy with regard to the calculation, it is for the Interim Resolution Professional or the Resolution Professional, as the case may be, to look into the matter.

25. As per Clause (b) of Section 7(3) of the Code, the financial creditor is required to propose the name of Resolution Profession to be appointed as Interim Resolution Professional. In the instant case the name of

Mr. Bhupesh Gupta, Resolution Professional, registered with the IBBI has been proposed and certificate of registration issued by the IBBI in his favour is Annexure A-3.

26. Mr. Bhupesh Gupta, has furnished the written communication in Form 2, which is at Page 33 of the paper book, giving all the necessary information and declaration. It is certified that he is currently serving as such in one proceeding of Supreme Text Mart Limited. It is further certified that there are no disciplinary proceedings pending against Mr. Bhupesh Gupta with the IBBI or ICSI Insolvency Professional Agency.

27. We have perused Form No.2, furnished by the said Resolution Professional and the same is found to be in order.

28. In view of the aforesaid, we admit the instant petition under Section 7 of the Code. The matter be now posted on 19.12.2018 for passing of formal order of declaration of moratorium and appointment of Interim Resolution Professional.

A copy of this order be communicated to both the parties.

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

Sd/-
(Justice R.P. Nagrath)
Member (Judicial)

December 13, 2018
Mohit Kumar