

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

**CP (IB) No.144/Chd/Hry/2018**

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

**In the matter of:**

Hero Fincorp Limited,

Having its registered office at 34, Community Centre,

Basant Lok, Vasant Vihar, New Delhi- 110057

...Petitioner-Financial Creditor

Versus

Agri Best India Limited,

Having its registered office at SCF-166, Second Floor,

Sector 9, Faridabad- 121006 (Haryana)

...Respondent-Corporate Debtor

**Judgment delivered on 20.02.2019**

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

For the Petitioner : Mr. Harsh Chopra, Advocate

For the Respondent : 1. Mr. Nahush Jain, Advocate  
 2. Mr. Sanchit Kumar, Practising Company Secretary

**Per: Pradeep R.Sethi, Member (Technical)**

**JUDGMENT**

The petition is filed under Section 7 read with Sections 14 and 33 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016

(hereinafter referred to as '**Code**') and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as '**Rules**'). The application in Form 1 is filed by M/s Hero Fincorp Limited (**financial creditor**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s Agri Best India Ltd. (**corporate debtor**). The petition is submitted on behalf of the Financial Creditor by Shri Jaspreet Singh Chawla, Associate-Legal & Secretarial. A copy of the Board Resolution dated 29.01.2018, authorizing Shri Vivek Pathak and subsequent letter of authority dated 20.04.2018, authorizing Shri Jaspreet Singh Chawla to submit the petition on behalf of the financial creditor is annexed as Annexure P-3 of the petition.

2. As per master data available at Annexure P-4 of the petition, the CIN of the corporate debtor is U01400HR2010FLC041224, date of incorporation is 15.09.2010 and the registered address is SCF-166, Second Floor, Sector 9, Faridabad- 121006. Therefore, the territorial jurisdiction lies with this Bench of the Tribunal.

3. It is stated in the petition that the petitioner is a non-banking financial company, *inter alia*, engaged in the business of financing apart from other portfolios/activities and that an amount of ₹2.5 Crores was sanctioned to the corporate debtor for which Master Facilities Agreement and Supplementary Agreement dated 11.08.2015 was executed between the financial creditor and the corporate debtor. The financial assistance is stated to be provided for the purpose of working capital requirements by way of discounting sales bills of Britannia Industries Ltd. It is stated that the financial

assistance was enhanced by ₹5 Crores, vide sanction letter dated 29.01.2016 and Master Facility Agreement and Supplementary Agreement dated 29.01.2016. The financial assistance is stated to be enhanced when the corporate debtor approached the financial creditor for financial assistance for dairy products, required to be provided by the corporate debtor to M/s Britannia Industries Ltd. and M/s Parle Biscuits Pvt. Ltd. It is stated that the copy of the bill register dated 23.03.2018 showing disbursement of the amounts in favour of the corporate debtor is enclosed as Annexure P-7 and the working for the computation of the amount in default i.e. ₹6,89,00,745.37 and dates of default in tabular form is enclosed as Annexure P-8. Certificate under Section 65B(4) of the Indian Evidence Act, 1872, certifying that the statement of account/bill register are true extracts of electronic records has been filed at Page 90 of the petition. A loan recall notice dated 19.04.2017 recalling the entire amount, advanced to the corporate debtor and for payment of ₹6,04,32,186.62 within 7 days from date of receipt of the recall notice, is stated to be enclosed as Annexure P-13. In Part III of Form 1, Shri Jitendra Bakshi, has been proposed as Interim Resolution Professional.

4. Notice of this petition was issued to the respondent-corporate debtor for 26.09.2018, to show cause as to why this petition be not admitted. Affidavit of service was filed by Diary No.3460 dated 13.09.2018. The respondent was duly served, but there was no representation from the respondent.

5. When the matter was listed on 14.11.2018, Mr. Gopal Sharma, Director of the corporate debtor, filed Resolution dated 22.09.2018, passed by the corporate debtor for representing the corporate debtor before the Tribunal and the same was taken on record. During the course of hearing on that date Shri Gopal Sharma, Director, referred to the bill register dated 23.03.2018 (Annexure P-7 of the petition) and stated that all the amounts of bill discounting were not received by the corporate debtor. However, Shri Gopal Sharma, Director, could not produce any detail of the amounts claimed to be not received. Mr. Gopal Sharma, Director, also submitted that they are trying to reconcile the account with the financial creditor, but this contention was opposed by the learned counsel for the financial creditor. It is stated in the order dated 14.11.2018 that there are no grounds for further adjournments. Arguments were heard and the order was reserved.

6. Thereafter, it came to notice that the letter of authority dated 20.04.2018 (Annexure P-3 of the petition) of Shri Vivek Pathak, Manager Legal of the financial creditor, authorizing Shri Jaspreet Singh Chawla, did not give any authorization for filing the application before this Tribunal. By order dated 05.12.2018, the matter was listed for re-hearing. Diary No.4860 dated 11.12.2018 was filed by the financial creditor, enclosing letter of authority dated 10.12.2018 given by Shri Shyam Lal, Senior Vice President-Finance of the financial creditor, to Shri Jaspreet Singh Chawla for filing application before this Tribunal and appearing on behalf of the financial creditor before the Tribunal. All the applications filed by Mr. Jaspreet Singh Chawla, before this Tribunal were also ratified. The authority letter dated 10.12.2018 (*supra*) is also accompanied by a copy of Board Resolution

dated 19.08.2017, giving authorization for initiating insolvency proceedings under the Code, *inter alia*, to Mr. Shyam Lal.

7. On 13.02.2019, Mr. Nahush Jain, Advocate, filed Power of Attorney along with Board Resolution and Memo of Appearance by Shri Sanchit Kumar, Company Secretary. It was argued that the initiation of CIRP in the present case would not be proper.

8. We have carefully considered the arguments of the learned counsel for the financial creditor and the corporate debtor as well as the submissions of Shri Gopal Sharma, Director, and have also perused the records.

9. The present petition is filed under Section 7 of the Code. The application is filed in the prescribed Form 1. As discussed above, the application was submitted on behalf of the financial creditor by Shri Jaspreet Singh Chawla, Associate-Legal and Secretarial. A copy of Board Resolution dated 29.01.2018, authorizing Shri Vivek Pathak and subsequent letter of authority dated 20.04.2018, authorizing Shri Jaspreet Singh Chawla, to submit the present application on behalf of the financial creditor were filed as Annexure P-3 (Colly) of the petition. As discussed above, subsequently, by Diary No.4860 dated 11.12.2018, copy of the Board Resolution dated 29.08.2017, has been filed, by which, *inter alia*, Shri Sham Lal, Chief Financial Officer and Shri Vivek Pathak, were given authorization for initiating insolvency proceedings under the Code. A letter of authority dated 10.12.2018, was also enclosed by which Shri Shyam Lal authorized Shri Jaspreet Singh Chawla, to *inter alia*, file application in this Tribunal and also

ratified all the applications filed by Shri Jaspreet Singh Chawla in this Tribunal. In view of the filing of the Board Resolution dated 29.08.2017 and letter of authority dated 10.12.2018, it is held that Form No.1 was submitted by duly authorized person of the financial creditor.

10. Section 7(5) of the Code provides for admission of the application where the Adjudicating Authority is satisfied that (a) a default has occurred; (b) the application under sub-section (2) of Section 7 is complete; (c) there is no disciplinary proceedings pending against the proposed Resolution Professional. The satisfaction of the three conditions is being examined below.

11. The first condition is that a default has occurred. We find that the financial creditor has brought on record sanction letters dated 23.07.2015 and 29.01.2016, granting financial assistance of ₹2.5 Crores initially and subsequently enhancing the limit to ₹7.5 Crores. The relevant Master Facility Agreement and Supplementary Agreement, were executed firstly on 11.08.2015 and thereafter, on 29.01.2016 and are enclosed as Annexures P-9 to P-12 of the petition. The copy of the bill register dated 23.03.2018, showing disbursement in favour of the corporate debtor, has been filed as Annexure P-7 of the petition. Certificate under Section 65B(4) of the Indian Evidence Act, 1872, dated 20.04.2018, has been filed at Page 90 of the petition. It is, *inter alia*, certified therein that the statement of account/bill register is a true extract of the electronic records. Annexure P-8 is a tabular working of the amount in default in respect of sale bills of Britannia Industries Ltd. and Parle Biscuits Pvt. Ltd., discounted and disbursed by the financial

creditor. The total amount claimed to be in default is ₹6,89,00,745.37. Loan recall notice dated 19.04.2017, recalling the entire amount advanced to the corporate debtor and calling for payment of amount of ₹6,04,32,186.62 within 7 days from the date of receipt of the loan recall notice is at Annexure P-13 of the petition. The loan recall notice was sent by speed post to the corporate debtor as well as to the two Directors/Guarantors. Vide Diary No.4059 dated 17.10.2018, copies of postal receipt for dispatch as well as the returned envelopes with refusal notings were filed.

During the course of hearing, it was contended by learned counsel for the respondent that all the bill discounting amounts, as per the bill register dated 23.03.2018 (*supra*) were not received by the corporate debtor. However, details of such amounts were not made available. The plea that reconciliation of the account was in progress, was objected to by the learned counsel for the financial creditor during the hearing on 14.11.2018. The corporate debtor has not brought any evidence on record to show that default as noted in Part IV of Form 1 has not occurred.

12. The second condition is that the application under Section 7(2) is complete. No objections in this regard, were raised during the hearing of the petition. We have discussed the contents of the application above and we conclude that the application is complete. There is even no reply to the petition by the respondent-corporate debtor.

13. The third condition is that there is no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, Shri Jitendra Bakshi, IBBI/IPA-001/IP-P00050/2017-18/10124, has been

proposed as interim Resolution Professional. Form 2 filed by the proposed Interim Resolution Professional is at Page 91 of the petition. Shri Jitendra Bakshi has certified that there are no disciplinary proceedings pending against him with the board or Indian Institute of Insolvency Professional of ICAI. He has also affirmed that he is eligible to be appointed as a Resolution Professional in respect of the corporate debtor in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporation Persons) Regulations, 2016.

14. In view of the satisfaction of the conditions provided for in Sections 7(5) of the Code, the petition for initiation of CIRP in the case of M/s Agri Best Limited is admitted

15. 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.

16. 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.

17. 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 passes an order for liquidation of corporate debtor under Section 33 as the case may be.

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

- i.) Appoint Mr. Jitendra Bakshi, D-175, Jhilmil Colony, New Delhi- 110095, having Registration No. IBBI/IPA-001/IP-P00050/2017-18/10124 and email address jitendra.bakshi@gmail.com, Mobile No.9891777688 as an Interim Resolution Professional;

- ii.) The term of appointment of Mr. Jitendra Bakshi, 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 moral;

- 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.

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 open Court.

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

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

February 20, 2019  
Mohit Kumar