

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**C.P. No. IB-945(PB)/2020**

*SECTION: Under Section 7 of The Insolvency and Bankruptcy Code, 2016, read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules')*

**IN THE MATTER OF**

Punjab National Bank

.... Petitioner/Financial Creditor

**VERSUS**

M/s Bansal Diamonds Private Limited

.... Respondent/Corporate Debtor

**Order Pronounced on: 10.05.2022**

**JUSTICE RAMALINGAM SUDHAKAR**  
**HON'BLE PRESIDENT**

**SH. AVINASH KUMAR SRIVASTAVA**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant : Ms. Akansh Singh, Vivek Jain, Mr. Aastha  
Tiwari, Advocates.  
Mr. Sudhir Kr. Singh, Adv. for PNB/Applicant  
For Respondent : Mr. Deepak Garg, Advs. for Corporate Debtor

**MEMO OF PARTIES**

**Punjab National Bank**

**Through Sh. Pawan Gupta (Authorised Representative)**

Having its Registered Office at:

ARMB, 1<sup>st</sup> Floor,  
Rajendra Bhawan, Rajendra Place,  
New Delhi – 110125.

.... Applicant/Financial Creditor

**Versus**

**M/s Bansal Diamonds Private Limited**

Having its Registered Office at:

2502, Gurudwara Road,  
Near Post Office  
Karol Bagh,  
New Delhi – 110005.

.... Respondent/Corporate Debtor

As

## ORDER

**PER- SH. AVINASH KUMAR SRIVASTAVA HON'BLE MEMBER (T)**

1. The present Application is filed on 20.03.2020 (as per e-portal) under section 7 of Insolvency and Bankruptcy Code, 2016 ('for brevity IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by the Petitioner/ Financial Creditor Punjab National Bank.
2. The Applicant has submitted that M/s Bansal Diamonds Private Limited, the Respondent /Corporate Debtor (CD) is indebted to the Financial Creditor, for a sum of Rs. 96,59,24,446 (Rupees Ninety Six Crores Fifty Nine Lakh Twenty Four Thousand Four Hundred Forty Six only) as on 15.03.2020, based on the total amount of debt including interest in relation to the loan sanction letter dated 29.04.2013 (Annexure-P7, pages 91-99) and Working Capital Consortium Agreement dated 30.08.2013 (Annexure-P8, pages 100-134).

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3. The Corporate Debtor is a company engaged in the business of Gold & Diamond jewellery and gems stone having its showrooms located at key jewellery market in New Delhi.
4. The Corporate Debtor was under obligation to make timely repayment towards the Principal and the interest thereon within the stipulated period to the Financial Creditor without any delay. But the Corporate Debtor failed to honour its obligation, as a result the account of the Respondent was classified as a Non Performing Asset (NPA) on 30.06.2014.
5. The applicant bank issued demand notice under Section 13(2) of the SARFAESI Act 2002 dated 07.07.2014 for an amount of Rs. 38.06 crore but the Respondent failed to pay the outstanding debt. Thereafter, Notice u/s 13(4) of SARFAESI Act, 2002 dated 24.03.2015 was sent to Respondent but no effort was made to pay the debt. In terms of the provisions of SARFAESI Act, the officers of the Consortium of Banks took symbolic possession of all the mortgaged immovable properties of the Respondent (CD) on 24.03.2015 and thereafter took physical possession on 04.02.2016 and 18.04.2019 of the mortgaged properties. These properties were put to auction by

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the Consortium of Banks but the auction failed as no bids were received.

6. As the Corporate Debtor is not able to pay its debt, therefore, the Financial Creditor has submitted that the Corporate Debtor is liable to be declared as insolvent. Further moratorium be declared as per provisions of Section 14 of the IBC, 2016, as the applicant apprehends that the Corporate Debtor will alienate / dispose of its assets including secured assets.
7. The applicant has further submitted that the application is within the period of limitation as there is a continuing cause of action and the Corporate Debtor has acknowledged its debt towards the Financial Creditor in its balance sheet for the financial year 2018-19 (Annexure P-22 at Page 195-287), which has the effect of extending the period of limitation under Section 18 of the Limitation Act, 1963.
8. During the course of hearing, it was submitted by Ld. Counsel for applicant that entries in books of account and/or balance sheets of the Corporate Debtor would amount to an acknowledgement of debt under Section 18 of the Limitation

Act in the light of the Judgment of Hon'ble Supreme Court in ***Dena Bank (now BOB) vs C. Shivakumar Reddy & anr.*** in Civil appeal No. 1650/2020 decided on 04.08.2021 in Para 118 which reads as follows:

*“118. It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. In Asset Reconstruction Company (India) Limited v. Bishal Jaiswall and Anr. (supra) authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff,<sup>18</sup> [“Bengal Silk Mills”] and in Re Pandem Tea Co.19 Ltd., the judgment of the Delhi High Court in South Asia Industries (P) Ltd. v. General Krishna Shamsher Jung Bahadur Rana<sup>20</sup> and the judgment of Karnataka High Court in Hegde Golay Ltd. v. State Bank of India <sup>21</sup> and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt.”*

9. Notice was issued to the Respondent on 24.09.2020. The Corporate Debtor filed its reply on 28.11.2020 and written submission on 11.01.2021. In the written submission, he has

raised the preliminary objection as regard to the limitation. It is submitted that the date of default occurred during the financial year 2013-14 and the account was classified as NPA on 30.06.2014 and Corporate Debtor never acknowledged the debt thereafter whereas the present petition has been filed during the year 2020, this is much the beyond the period of limitation of 3 years. Further, in its reply dated 28.11.2020 and written submission dated 11.01.2021, it is stated that Part-IV of the application does not give amount of debt granted and date of the disbursement of credit facilities. The bank has failed to give details of disbursement, hence cannot justify computation of interest in Part-V "Particulars of Financial Debt (document/records and evidence of default)".

- 10.** It is also submitted that the bank has failed to attach copy of certificate of registration of charge issued by ROC and also in Part – V, the Financial Creditor fail to furnish particulars of orders of Court/Tribunal adjudicating of default. The Bank has mentioned not applicable (NA) whereas the bank has filed OA bearing no. 248 of 2016, which is currently pending.

- 11.** We have heard Ld. Counsels for both the parties and perused the documents. The applicant has submitted that Balance Sheet of the Corporate Debtor for the financial year 2018-19 at Annexure P22 (pages 195-287) shows acknowledgement of debt by the Corporate Debtor. On perusal of the same it is seen that at page 230 it is stated that the company has default in the repayment of dues of banks and the banks have filed suit before DRT for following dues including inter alia due of Rs. 34,82,63,123 to PNB, the Financial Creditor.
- 12.** Further the Financial Creditor has filed certificate alongwith Bank Statement under Section 2A of the Bankers' Books Evidence Act 1891 and containing the transactions relating to the account of Corporate Debtor from 01.01.2014 to 15.03.2020 which is evidence of default as per Section 7(3)(a) r/w Regulation 2A of IBBI (Resolution Process for Corporate Persons) Regulation, 2016.
- 13.** We are therefore inclined to accept this application,
- 14.** In view of the above this application under Section 7 is admitted and Corporate Insolvency Resolution Process is

hereby ordered to be initiated against M/s Bansal Diamonds Private Limited, the Corporate Debtor.

**15.** The petitioner has proposed the name of Interim Resolution Professional (IRP), Mr. Reetesh Kumar Agarwal, having registration no. IBBI/IPA-001/IP-P000878/2017-18/11475, and the E-mail carkagarwal@gmail.com. A written communication sent by him in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record. There is a declaration made by him that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India or ICSI. In addition, further necessary disclosures have been made by Mr. Reetesh Kumar Agarwal as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code. Hence, we appoint Mr. Reetesh Kumar Agarwal as the IRP of the Corporate Debtor.

**16.** In pursuance of Section 13 (2) of the Code, we direct the IRP to make public announcement immediately with regard to admission of this Petition under Section 7 of the Code. The

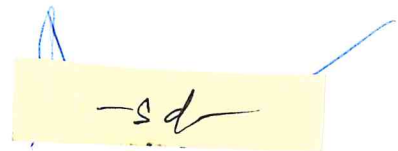
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expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

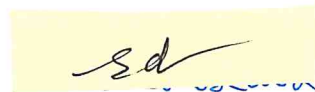
- 17.** As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent as per provisos (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.
- 18.** The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the IBC, 2016. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP, as stipulated under Section 19 for discharging his functions under Section 20 of the IBC, 2016.
- 19.** We direct the petitioner to deposit a sum of Rs. 2 lacs with the IRP Mr. Reetesh Kumar Agarwal to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person)

Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Petitioner. The amount however, will be subject to adjustment by the Committee of Creditors as accounted for by IRP and shall be paid back to the Petitioner.

- 20.** The registry is directed to communicate a copy of the order to the Petitioner, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.



**RAMALINGAM SUDHAKAR  
(PRESIDENT)**



**AVINASH KUMAR SRIVASTAVA  
MEMBER (TECHNICAL)**