

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) No.64/ALD/2022

In the matter of:

An application under section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

Punjab National Bank

having its Head Office at:

Plot No. 4, Sector 10,

Dwarika, New Delhi

interalia one of its Branch,

“Mall Road” Kanpur 208004.

...Applicant/Financial Creditor

Versus

M/s ABC Rail Road Products Pvt. Ltd.

having its Registered Office at:

HIG - IV, Wallmax House,

Sector -E Aliganj,

Lucknow- 226024

...Borrower/Corporate Debtor

Coram:

Shri Praveen Gupta. : Member (Judicial)

Shri Ashish Verma : Member (Technical)

Order pronounced on: 1st February, 2024

Appearances (through video conference):

For Financial Creditor : Sh. Madan Mohan Dixit, Adv.

For Corporate Debtor : Sh. Aman Kumar Dwivedi, Adv.

ORDER

1. The Present Application has been filed on 23.02.2021 by Punjab National Bank (hereinafter referred as “**Applicant/Financial Creditor**”) seeking initiation of the Corporate Insolvency Proceedings (hereinafter referred as “**CIRP**”) against M/s M/s ABC Rail Road Products Pvt. Ltd (hereinafter referred as “**Respondent/Corporate Debtor**”) under Section 7 of the Insolvency and Bankruptcy Code,2016 (hereinafter referred as “**I&BCode,2016**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016. During the course of hearing, it has been noticed that Part IV and V of Form 1 in which application was filed is not in prescribed format and therefore, the Applicant has been asked to file Part IV and V in prescribed format, which was filed on 16.09.2023. As per the application in Form 1 containing all the information as required in Part I, II, III, IV and V of the Form, the Corporate Debtor has defaulted in repayment of an outstanding sum of Rs. 19,37,84,558.71 since the date of default of 31.05.2018 as mentioned in the application.

2. The Financial Creditor i.e. Punjab National Bank is a body corporate constituted under the provisions of the Banking

Companies (Acquisition & Transfer of Undertakings) Act, 1970 having its Head Office at "Plot No. 4, Sector 10, Dwarka, New Delhi.

3. The Corporate Debtor i.e. M/s ABC Rail Road Products Pvt. Ltd is a company formed under the provisions of Companies Act, 1956 on 11.12.2006 with CIN U28112UP2006PTC032609 having registered office at HIG-IV, Wallmax House, Sector-E Aliganj, Lucknow-226024.

4. The Applicant/ Financial Creditor has sanctioned the application of loan and disbursed the credit facilities to the Corporate Debtor. Details of which are mentioned in the table below: -

S.NO	FACILITY	LIMIT (In Rs.)	INTEREST RATE
1.	Cash Credit	250 Lakhs	B.R + 4.50% i.e 13.50% with monthly rest at present and may be changed in future as per bank's instructions.
2.	Term Loan	305.11 Lakhs	B.R + 4.50% TP i.e 14.0% with Monthly Rest at Present and may be changed in future as per bank's instructions.
3.	Bank Guarantee	500 Lakhs	Commission as per bank's guidelines and Commission 10% (100% cash margin for disputed cases).
4.	Letter of Credit	200.00 Lakhs	Margin 15% (100% cash margin for disputed cash)

S. No.	Nature of Facility	Credit Limit	Facilities Sanctioned by PNB as per Sanctioned letter dated 08.03.2014	Facilities sanctioned by Allahabad Bank in terms of Sanctioned letter dated 27.12.2023
1.	Cash Credit	1100	660	440
2.	Bank Guarantee	1000	600	400
3.	Letter of Credit (ILG/FLG)	550	215	220
4.	TERM LOAN (Existing)	215	215	000
5.	Term Loan (NEW)	90	90	000
	TOTAL	2955	1895	1060

5. All the above loans were secured by hypothecation of goods, book debts, assets and personal guarantee given by the Promoters/Directors of the Corporate Debtor. These loans were enhanced/renewed from time to time. In addition to the above facilities, the Financial Creditor provided a term loan of Rs. 250 Lakhs and then a new term loan of Rs. 90 Lakhs.

6. The Financial Creditor later extended the existing credit facilities of the Corporate Debtor within the consortium framework involving Allahabad Bank, where the Applicant/Financial Creditor i.e. Punjab National Bank (PNB) became the Lead Bank. To streamline operations and establish clear rights among consortium members, PNB and Allahabad Bank have executed an inter-se agreement and a supplementary agreement dated

05.06.2012. These agreements outline the respective rights, covenants, and conditions for consortium members. In pursuant of which Allahabad Bank issued a letter of authority to PNB as the lead bank for enhanced coordination.

7. The above facility was renewed as per the terms and conditions mentioned in sanctioned letter dated 08.03.2014. Thereafter, the Corporate Debtor executed the loan and security document through its directors vide resolution dated 10.03.2014.

8. Upon the company's request, the bank was approached to convert non-fund-based limits totaling INR 930.00 lacs into a cash credit limit. On 28.06.2016, in accordance with a resolution passed by the company's directors, the applicant bank branch on Birahana Road, Kanpur, successfully converted and renewed the credit facilities. For securing the loan facilities, the borrower company executed relevant documents on 29th June 2016. The company extended the personal guarantee of its promoters and confirmed, through a letter of continuity dated 01.12.2016, the extension of the charge created by the company. Further, the company registered the charges with the Registrar of Companies (ROC), where both PNB and Allahabad Bank hold a pari passu charge on the entire current assets (present and future) and fixed

assets (present and future). Applicant Bank i.e PNB holds the first charge on the plant and machinery financed by it, while Allahabad Bank possesses a second charge on the same assets.

9. It is stated in the Application that the Corporate Debtor obtained financial credit facilities totaling Rs. 18.95 crore from the Financial Creditor i.e. PNB, encompassing both Fund Based and Non-Fund Based, within the consortium framework. To secure these facilities, the Corporate Debtor established a security and charge with the ROC in favor of the applicant bank. However, the Corporate Debtor failed in repaying the loan amount, leading to an account default on 31-05-2018. Thereafter, the account of Corporate Debtor became irregular due to no-payment of interest/default in repaying the dues of the Applicant/Financial Creditor and further Corporate Debtor failed to maintain financial discipline and did not regularize the loan accounts despite repeated requests by the Financial Creditor, therefore accounts of Corporate Debtor was classified as a Non-Performing Assets (NPA) on 24.08.2018. As inspite of service of demand notices sent from time to time, the Corporate Debtor continued defaulting in repayment of debts, the Applicant/Financial Creditor issued legal

notice of recall of loans to the Corporate Debtor on 04.06.2019 u/s 13(2) of SARFAESI Act 2002.

10. It is also stated that before filing the instant application under section 7 of the I&B Code,2016, the Financial Creditor filed an Original Application (OA) on 02.02.2019 titled as “**PNB V/S ABC RAIL ROAD PRODUCTS PVT LTD and 9 others (Guarantors)**” before Debts Recovery Tribunal at Allahabad bearing O.A. No 164 of 2019 under section 19 of the Recovery of Debt Due to the Bank and Financial Institutions Act, 1993. The DRT, Allahabad has allowed the application holding the default of the borrower for defaulting the payment of debts to the Banks vide order dated 23-09-2021 and issued Recovery Certificate on 11.11.2021 -RC No 317 of 2021 for the sum of 16,87,74085.29. (Outstanding on 02-02-2019 with the pendente lite and future interest and cost recoverable from 02.02.2019 i.e. from the date of filing of OA 164 of 2019. Recovery Certificate, RC 317 of 2021 dated 11.11.2021 has also been issued in compliance to this order.

11. The Applicant that the Corporate Debtor did not pay the dues of the applicant Bank /Financial creator despite issuance of several demands and notices. Therefore, due to non-repayment of the credit debt, Financial Creditor filed this application under

Section 7 of I&B Code, 2016 against the Corporate Debtor apart from taking action under SARFAESI Act 2002. The date of default mentioned in the Part-IV of the application is 31.05.2018 and outstanding debt is Rs. 19,37,84558.71 till March 2020 which has become due and payable. It is mentioned by the Applicant/Financial Creditor that the Corporate Debtor is further liable to pay the pendente-lite and future interest @ 14.80% per annum at monthly rest.

12. The above Application has been considered in the hearing held on 13.09.2022 in which Ld. Counsel of the Corporate Debtor accepted the notice and was asked to file Reply/Counter Affidavit to above Application within three weeks and next date of hearing was fixed on 28.11.2022. In the hearing held on 28.11.2022, the Ld. Counsel for the Corporate Debtor requested for further time to file Reply and he was given two weeks' time further to file the Reply and next date was fixed on 31.01.2023. Thereafter, despite giving several opportunities, no reply was filed and therefore, finally, vide order dated 24.07.2023, right to file reply by the Corporate Debtor has been struck off. However, the Ld. Counsel of the Respondent/Corporate Debtor has been allowed to make oral submission and also file written submission and the case has been

finally heard after hearing the Ld. Counsels of both Applicant as well as Respondents. The written submissions have been filed vide diary no.3147 dated 12.12.2023 by the Financial Creditor as well as diary no.3146 dated 12.12.2023 by the Corporate Debtor.

13. The Financial Creditor in its written submission has reiterated all the facts of the case as have already been discussed in the Application, emphasizing further that in support of proving the default and the contractual agreements, the applicant Bank has already filed an Affidavit of Evidence and referred duly attested copies of the various documents with statement of accounts duly certified under the Bankers Books Evidence Act duly supported with the Certificate Under Section 2A(b) and 2A(c) of Banker's Book Evidence Act 1891(As Amended). It is also stressed that the Corporate Debtor could not maintain financial discipline and has failed to repay the loan, interest, and other charges. The Corporate Debtor continuously acknowledged its liability of debts collectively filed and referred to as Exhibit A-66,67,68,69,70,71,72 and 73 on pages 618-631 of the Application. It is also pointed out that the Applicant Bank in its Application has proved the debts due to the Bank payable by the Corporate Debtor and default committed by the Corporate Debtor. Also, the present Application is within the

period of limitation as a default committed by the Corporate Debtor was held on 31.05.2018 and the present Application was filed on 23.02.2021 i.e. within the limitation prescribed under the Law. Therefore, it is prayed that in the interest of justice, the present application u/s 7 of I&B Code, 2016 may be allowed.

On the contrary, the Corporate Debtor in its written submissions, has contended that due to an unpredictable market environment and business losses, the Corporate Debtor was unable to repay the aforementioned loan amount to PNB/Applicant. Subsequently, Financial Creditor i.e. PNB Bank issued a Demand Notice dated 04.06.2019 under Section 13(2) of the SARFAESI Act, which was sent to the Respondent/Corporate Debtor. However, before the Corporate Debtor could arrange funds for payment, the nation was hit by the COVID-19 pandemic, causing a complete halt in the business activities of the Corporate Debtor. Amid the COVID-19 pandemic, market conditions went vulnerable which created an unprecedented situation for the Corporate Debtor. Consequently, payment towards the loan or restructuring became unfeasible due to the uncertainties and substantial financial losses incurred by the petitioner as a result

of the pandemic. Therefore, the petition filed by the Financial Creditor is liable to be dismissed.

FINDINGS AND ORDER

14. We have perused the materials available on record and heard the Ld. counsels of both the parties.

15. The Corporate Debtor availed the Financial Facility from the Financial Creditor in the form of Cash credit, term loan bank guarantee and letter of credit vide sanction letter dated 18.12.2010 which was later on modified by the Financial Creditor on the request of the Corporate Debtor vide sanction letter dated 29.05.2012. Again, the Corporate debtor requested to enhance and renew the facility which was approved vide sanction letter dated 08.03.2014. As the Corporate Debtor committed default since 31.05.2018 in payment of outstanding loan amount and interest thereon, the account was declared as NPA on 24.08.2018. It has also been pointed by the Counsel for the Applicant/Financial Creditor that the Corporate Debtor continuously acknowledged its liability of debts from time to time, which are collectively filed and referred to as Exhibit A-66,67,68,69,70,71,72 and 73 on pages 618-631 of the Application.

16. The Respondent in its defence has contended that the COVID-19 pandemic had a significant impact on market conditions, ultimately causing financial losses for the Corporate Debtor and, consequently, making it difficult for them to fulfill their loan obligations. In addition to this, the Corporate Debtor has acknowledged and admitted its debt in Balance Confirmation Letters dated 17.09.2011-29-AB803703, 13.04.2012-47AB526327, 06.04.2013-84AB798609, 15.04.2013-84AB987532, 07.04.2014-29AC851507, 17.04.2014-29AC851528, 17.04.2014-29AC851522, 08.04.2015-68AC992323, 08.04.2015-68AC992330, 08.04.2015-68AC992302, 02.04.2018-68AC980616 and 06.04.2018-68AC980618 which is duly signed by its authorized signatory.

17. The Respondent/ Corporate Debtor was set ex-parte vide order dated 24.07.2023 because of the reason that there has been continuous non-appearance on behalf of the Corporate Debtor on several occasion in the past. However, on 12.12.2023 since there was a representation on behalf of Corporate Debtor and the Ld. Counsel for the Corporate Debtor permitted to argue and made submission on behalf of the Corporate Debtor. However, the Ld. Counsel appearing for the Corporate Debtor could not put forward

any plausible argument or produce any credible evidence showing that the debt due to the applicant, which is found to be above the threshold limit of Rs. 1 crore, has not become due and payable for which default is clearly shown to have occurred.

18. Thus, on the basis of the averments made in the Petition and the documents placed on record, it stands established that the Petitioner has been able to establish the existence of financial debt above Rs. 1 crore (above the threshold) that has become due and payable in respect of which the default has been committed by the Corporate Debtor and further the Petition has been filed within the period of limitation.

19. In view of our above findings, we are satisfied that the Applicant/Financial Creditor has proved the “**debt**” and the “**default**”, which is more than the threshold limit of one crore rupees and hence, the application u/s 7 is found to be fit for initiation of the CIRP against the Corporate Debtor. The Application is also filed within limitation period and complete in all respect and a resolution professional is also proposed as per section 7(3)(b). Accordingly, the present application under Section 7, has been found fit to be admitted as per Section 7(5) of the I & B Code, 2016.

20. In Part III of Form 1, the Financial Creditor has proposed the name of Mr. Anuj Kumar Tiwari, as Interim Resolution Professional (hereinafter referred as “**IRP**”). His Registration Number is No. IBBI/IPA-002/IP-N00811/2019-2020/12555, and address is C-147 RAJA JI PURAM LUCKNOW, Lucknow, Uttar Pradesh ,226017, Email: anujtiwarics@gmail.com. He has duly given the consent in Form No.2 dated 23.01.2020 annexed as **Annexure CP-1** with the Application. The Law Research Associate of this Tribunal, Ms. Ankita Sharma, has checked the credentials of Mr. Anuj Kumar Tiwari, and found that there are no disciplinary proceedings pending against the proposed Resolution Professional and also there is nothing adverse against him. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 25 April 2024. After considering these details, we appoint Mr. Anuj Kumar Tiwari, Registration No. IBBI/IPA-002/IP-N00811/2019-2020/12555, as Interim Resolution Professional (IRP).

21. In view of our above findings, we are satisfied that the present application under Section 7, has been found fit to be admitted as per Section 7(5)(a) of the I & B Code, 2016 and hence, the application is admitted in terms of Section 7(5)(a) of the I & B Code,

2016 against the Corporate Debtor, M/S, **ABC Rail Road Products Private Limited** and accordingly, moratorium is declared in terms of Section 14 of the Code.

22. The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of I & B Code, 2016.

23. The IRP 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 (hereinafter referred as 'CoC') and shall file a report certifying the CoC to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the CoC within seven days of filing the report of CoC.

24. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- a. The institution of suits or continuation of pending suits or proceedings against the corporate debtor including

execution of any judgement, 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.
- e.** 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 the moratorium period.

- f.** 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.

25. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process (CIRP) or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

26. The CoC shall appoint a Resolution Professional as per section 22 of the I & B Code, 2016. A monthly progress report shall be filled by the Resolution Professional providing the details of work done in respect of completing the CIRP within the timeline as prescribed under the provision of section 12 of the I & B Code, 2016.

27. We direct the Financial Creditor to deposit a sum of Rs. 1,00,000/- with the Interim Resolution Professional, 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 amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

28. A certified copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a certified copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a certified copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

29. List the matter for 05.03.2024 for further proceedings.

-Sd-

(Ashish Verma)
Member (Technical)

Dated: 01.02.2024

-Sd-

(Praveen Gupta)
Member (Judicial)