

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – I**

CP (IB) 690/MB/C-I/2020

Under section 7 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Punjab National Bank

Plot No.4, Sector 10, Dwarka, New Delhi-110075.

... Financial Creditor /Petitioner

Versus

Parental Drugs India Limited

[CIN: L24100MH1983PLC126481]

340, Laxmi Plaza, Laxmi Industrial Estate, New Link
Road, Andheri (West), Mumbai -400053.

... Corporate Debtor /Respondent

Order Delivered on :09.02.2023

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Financial Creditor : Mr. Sarosh Bharucha, Advocate
For the Corporate Debtor : Mr. Vijayesh Atre, Advocate

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. This Company Petition is filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Punjab National Bank**. (“the Financial Creditor”), seeking to initiate

Corporate Insolvency Resolution Process (CIRP) against **Parental Drugs India Limited** ("the Corporate Debtor").

2. The present Petition was filed on 16.01.2020 before this Adjudicating Authority on the ground that credit facilities of Rs.106,11,52,000/- (Rupees One Hundred Six Crores Eleven Lakhs Fifty-Two Thousand Only) were availed by the Corporate Debtor, the details of disbursal are as follow:

Date	Disbursement Amount (Rs.)
15.03.2007	3,00,00,000/-
08.01.2009	2,00,00,000/-
26.12.2012	27,00,00,000/-
26.12.2012	19,00,00,000/-
26.12.2012	10,50,00,000/-
31.12.2014	22,50,00,000/-
29.06.2015	14,03,00,000/-
26.06.2015	2,57,52,000/-
27.11.2015	1,50,00,000/-
09.06.2016	4,01,00,000/-
Total	106,11,52,000/-

3. The total amount claimed to be in default by the Financial Creditor is Rs.196,59,72,591 /- (Rupees One Hundred Ninety-Six Crore Fifty-Nine Lakh Seventy-Two Thousand Five Hundred and Ninety-One Only) upto 31.12.2019. The date of default stated to be is 31.03.2016. The Corporate Debtor has defaulted in repayment of the same. The Working Calculation has been placed as **“Annexure 2”**.
4. The Corporate Debtor is a public company limited by shares incorporated on 13.12.1983 under the Companies Act, 1956, with the Registrar of Companies, Mumbai. Its registered office is at,

340, Laxmi Plaza, Laxmi Industrial Estate, New Link Road, Andheri (West), Mumbai -400053. Therefore, this Bench has jurisdiction to deal with this petition.

Submissions advanced by the Financial Creditor:

5. The Financial Creditor submits up till May 2002, the Corporate Debtor had availed certain credit facilities of INR 34,00,00,000/- from the State Bank of India (SBI) and Dena Bank in a consortium arrangement, with SBI as the lead bank. An independent term loan facility of INR 5,00,00,000/- was also availed from SBI.
6. By December 2004, the Corporate Debtor had availed credit facilities of INR 40.35 Crores from the consortium of SBI, Dena Bank and erstwhile State Bank of Indore (which later merged into SBI) ("the SBI Consortium"). The Financial Creditor issued a Sanction Letter dated 23.02.2006 under a Multiple Banking Arrangement (MBA) sanctioning a total loan of INR 38.15 crores. By 08.12.2015, the Total Amount of INR 106,11,52,000/- was disbursed by the Financial Creditor to the Corporate Debtor. The details of the disbursement are more particularly described in Part IV of the Petition at Page 8-19.
7. The Corporate Debtor executed revival letters dated 18.06.2015 and 07.03.2018 whereby it revived the facilities granted to it by the SBI consortium for it to be considered an acknowledgement under the provisions of Section 18 of Limitation Act, 1963.
8. On 31.03.2016, accounts of the Corporate Debtor were declared NPA. On 31.03.2016, the principal amount in default was INR

99,04,93,584/- (Rupees Ninety-Nine Crore Four Lakh Ninety-Three Thousand Five Hundred Eighty-Four Only).

9. The Financial Creditor issued a demand notice dated 07.06.2018 to the Corporate Debtor, under the provisions of the SARFAESI. The Corporate Debtor having not responded to the demand notice, the Financial Creditor was constrained to file an Original Application (OA) against the Corporate Debtor and its Guarantors for recovery of their dues and for enforcing securities before the Hon'ble DRT, Jabalpur. The Corporate Debtor has failed to make any payments.
10. The Financial Creditor has attached copy of the CIBIL report at and copies of statement of accounts of the Corporate Debtor at Annexure 47 and 48 respectively of the Petition.
11. It is further submitted that the Corporate Debtor has admitted its liability and the same is recorded in balance and security confirmation letter dated 09.07.2009, 31.03.2010, 22.07.2011, 24.04.2012, 05.06.2013, 19.03.2015, 31.03.2017 and 03.05.2018 issue to the Financial Creditor placed at Annexures 43 (colly) of the Petition.
12. Order dated 29.07.2022 reveals that the Ld. Counsel appearing for the Corporate Debtor has chosen not to file its reply on record and sought time to amicably settle the matter out of court. Since, no settlement was arrived at, the matter is taken on merits.

Findings:

13. We have heard the Learned Counsel for the Financial Creditor and perused the records.
14. It is observed that the date of default is 31.03.2016, The date of filing of the Petition is 16.01.2020. The Financial Creditor has placed on record revival letters and balance confirmation letters of the year 2018 for the purpose of acknowledgement of debt under Section 18 of Limitation Act, 1963. Hence, the claim is within Limitation.
15. The present Petition is filed under Section 7 of the Code. It is useful to refer to the Judgment of the Hon'ble Apex Court in ***E.S. Krishnamurthy vs Bharath Hi-Tecch Builders (P) Limited 2022 3 SCC 161*** has held as under:

“24. On a bare reading of the provision, it is clear that both, Clauses (a) and (b) of sub-Section (5) of Section 7, use the expression “it may, by order” while referring to the power of the Adjudicating Authority. In Clause (a) of sub-Section (5), the Adjudicating Authority may, by order, admit the application or in Clause (b) it may, by order, reject such an application. Thus, two courses of action are available to the Adjudicating Authority in a petition under Section 7. The Adjudicating Authority must either admit the application under Clause (a) of sub-Section (5) or it must reject the application under Clause (b) of sub-Section (5). The statute does not provide for the Adjudicating Authority to undertake any other action, but for the two choices available.

25. In Innoventive Industries (supra), a two-judge Bench of this Court has explained the ambit of Section 7 of the IBC, and held

that the Adjudicating Authority only has to determine whether a “default” has occurred, i.e., whether the “debt” (which may still be disputed) was due and remained unpaid. If the Adjudicating Authority is of the opinion that a “default” has occurred, it has to admit the application unless it is incomplete. Speaking through Justice Rohinton F Nariman, the Court has observed:

“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of

Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted 24 unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be. [...]

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.” (emphasis supplied)

16. In the present case from the documents annexed with the Petition, it is seen that the Financial Creditors have disbursed the money against time value of money, hence there is debt and the Corporate debtor has defaulted in repayment of the same.

17. It is also pertinent to be noted that the Corporate Debtor has during the course of his submissions admitted that the debt is due and payable to the Financial Creditor. Thus, the present matter is a fit case for admission under Section 7 of the Code.
18. The application made by the Financial Creditors is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor
19. The Financial Creditor has proposed the name of Mr. Shantanu T Ray, Registration No. IBBI/IPA-002/IP-N00360/2017-2018/11055, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Though upon verification of validity of AFA it is observed that the AFA of the Mr. Shantanu T Ray (proposed RP) is not valid. Therefore, this Tribunal appoints RP from the list provided by the IBBI.
20. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing CP (IB) 690/MB/C-I/2020 filed by **Punjab National Bank**, the Financial Creditors, under section 7 of the IBC read with rule 4(1) of the Insolvency and

Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Parental Drugs India Limited [CIN: L24100MH1983PLC126481]**, the Corporate Debtor, is admitted.

- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:-
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

- (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Kairav Anil Trivedi, Registration No. IBBI/IPA-002/IP-N00728/2018-2019/12332**, having E-mail Id: kairavtrivedi2002@yahoo.co.in, Mob: 9987330793 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of

the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)

09.02.2023
SAM

Sd/-
JUSTICE P. N. DESHMUKH
Member (Judicial)