

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

CP No. (IB) 3080/ MB/ 2019

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

In the matter of

Punjab National Bank

Having its Registered Office at: Plot No.
4, Sector- 10, Dwarka, New Delhi- 110
075 and branch at PNB House, P.M.
Road, Fort, Mumbai- 400 001.

..... **Financial Creditor**

Vs.

Arshiya Northern FTWZ Limited

Having its Registered Office at: 302,
Level 3, Cee Jay House, F-Block, Shiv
Sagar Estate, Dr. Annie Besant Road,
Worli, Mumbai- 400 018.

..... **Corporate Debtor**

Order delivered on:- 23.12.2022

Coram:

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

Appearances:

For the Financial Creditor : Ms. Tajashree Choudhary, Advocate
For the Corporate Debtor : Mr. Adesh Agarkar, Advocate

ORDER

Per: Shyam Babu Gautam, Member Technical

1. This Company Petition is filed by *Punjab National Bank* (hereinafter called “Financial Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Arshiya Northern FTWZ Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate Debtor committed default in making payment to the Financial Creditor. This Petition has been filed by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “IBC”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present Petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of an **aggregate amount of Rs. 193,24,35,350/-** (Rupees One Hundred Ninety-Three Crores Twenty-Four Lakhs Thirty-Five Thousand Three Hundred and Fifty Only) as on 13th August 2019 including the consolidated **Principal amount of Rs. 103,26,02,926/-** (Rupees One Hundred and Three Crores Twenty-Six Lakhs Two Thousand Nine Hundred and Twenty-Six Only) and interest and other charges forming part of the Financial Debt.
3. The Corporate Debtor is a subsidiary of Arshiya Limited and is a Free Trade Warehousing Zone (FTWZ) developer with pan-India operations. Various financial facilities were obtained by the Corporate Debtor from a consortium of banks (of which, the

Financial Creditor is the Lead Bank) for the purpose of construction of a FTWZ at Khurja District in the state of Uttar Pradesh. For the development of the same, the Corporate Debtor availed loans under the following heads from the Financial Creditor:

Sr. No.	Particulars	Amount
1.	Sanction Letter dated 15 th October 2009	Term Loan of Rs. 100 Crores (Rupees One Hundred Crores)
	and 27 th November 2010	ILC sub limit of Rs. 20 Crores within Term Loan
2.	Sanction Letter dated 26 th November 2012	Working Capital limits of Rs. 20 Crores (Rupees Twenty Crores)
		Non-Fund based of Rs. 5 Crores (Rupees Five Crores)

These limits were subsequently restructured vide Master Restructuring Agreement dated 28th September 2013.

4. Subsequently, the amounts were disbursed and the Corporate Debtor defaulted on making the repayments from time to time. As a result of the continuous defaults, the Financial Creditor declared the account of the Corporate Debtor as a Non-Performing Asset (NPA) on **30th September 2014**. The Financial Creditor issued a Notice under Section 13(2) of the SARFAESI Act, 2002 vide **Letter dated 14th October 2015** and initiated proceedings for recovery of the outstanding debt in the Debt Recovery Tribunal at New Delhi on **22nd December 2017**. The Financial Creditor has also annexed a “**Balance and**

Security Confirmation Letter” dated **12th September 2016** to this Petition wherein the Corporate Debtor acknowledged their liability to repay the outstanding amounts. Meanwhile, no repayments were made by the Corporate Debtor despite admission of their obligation and the Financial Creditor initiated proceedings under Section 7 of the Code and filed this Petition on **16th August 2019**.

5. The Corporate Debtor approached the Financial Creditor with an OTS proposal on **12th September 2019** i.e. after the filing of this Petition. The Financial Creditor approved the same vide Letter dated 7th November 2019 and issued the Sanction Letter on 25th November 2019. Under the said arrangement, it was agreed that the Corporate Debtor would make payment of the first instalment of Rs. 7 Crores and Rs. 3 Crores by 30th November 2019. However, due to operational difficulties and lack of liquidity, the Corporate Debtor was unable to meet this obligation and consequently the Financial Creditor cancelled the OTS Sanction granted previously.
6. The Corporate Debtor filed a **Reply to this Petition dated 3rd March 2020** and contends that this Petition is barred by limitation since admittedly, the date of NPA has been mentioned as 30th September 2014 by the Financial Creditor. Since the Petition has been filed in 2019 which is beyond 3 years from the date of NPA, it is not maintainable. Further, it is submitted that the Financial Creditor has not specified the date of default and there are several irregularities in the authorisation granted to the officer who represents the Financial Creditor in

the present Petition. It is also argued that the Financial Creditor incorrectly cancelled the OTS proposal sanctioned by them without giving any due explanation. Based on these grounds, the Corporate Debtor prays for dismissal of the instant Petition.

FINDINGS

7. We have heard the submissions of the Counsel appearing for the Financial Creditor and the Counsel appearing for Corporate Debtor. On perusal of the Petition and the documents annexed, it is evident that the Corporate Debtor had availed the said loan facilities from the consortium of banks and had subsequently committed default in repaying the same. We note that the Corporate Debtor has admitted their liability to repay in the **“Balance and Security Confirmation Letter”** dated **12th September 2016** in the following words:

“We hereby confirm the correctness of the balances of the consortium banks (PNB, State Bank of India & Axis Bank) as under as borrower/ guarantor as on 12.09.2016 with further unapplied/ recorded interest for the rest period from 01.04.2014 onward as mentioned from PNB.....

We acknowledge our liability for the same and future unapplied/ recorded interest after the date up to which interest has been charged.”

8. In view of the said admission, the limitation period, in effect, was extended from the date of such admission i.e. from 12th

September 2016 onwards until 12th September 2019. Since this Petition was filed on 16th August 2019, it is filed within the limitation period. Therefore, we are of the opinion that the Financial Creditor has satisfactorily established the existence of debt of Principal Loan Amount of **Rs. 103,26,02,926/-** and default of the outstanding dues aggregating to **Rs. 193,24,35,350/-** including interest.

9. The Financial Creditor has thus successfully demonstrated and proved the debt and default in this case. It is noted that the Corporate Debtor admits the said outstanding debt. Therefore, this Bench is of the view that that this Petition satisfies all the necessary requirements for **admission** under Section 7 of the Code.
10. For the foregoing reasons, the instant Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:
 - a. **The above Company Petition No. (IB) -3080 (MB)/2019 is hereby allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Arshiya Northern FTWZ Limited**.
 - b. This Bench hereby appoints **Mr. Nitin Vishwanath Panchal**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00777/2017-2018/11350 as the Interim Resolution Professional having address at 1204, Maker Chamber V, Nariman Point, Mumbai-

400 021 and email id as nitin@waterfallip.com having contact number as +91- 9821884172 to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of Rs.2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to the IRP immediately.

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

JUSTICE P. N. DESHMUKH
(MEMBER JUDICIAL)

Anusha
23.12.2022