

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

CP (IB) No. 250/Chd/Pb/2018

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

In the matter of:

Central Bank of India,
having its Central office at
Harsha Bhawan, E-Block,
Chandermukhi, Nariman Point,
Mumbai – 400021.

And

Branch Office at Mid Corporate Branch,
369, R.K. Road, Industrial Area A,
Ludhiana-141 003
through its Chief Manager,
Shri Mahendra Singh

...Applicant/Financial Creditor

Versus

M/s KSM Spinning Mills Limited,
having its registered office at
644, Aggar Nagar, B-Block Ludhiana
Punjab-141 012

...Respondent/Corporate Debtor

Judgement delivered on: 17.12.2019

**Coram: HON’BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON’BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Financial Creditor: 1). Mr. Pulkit Goyal, Advocate
2). Mr. Harsh Garg, Advocate

For the respondent : 1). Mr. Anand Chhibbar, Senior Advocate
2). Mr. Gaurav Mankotia, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGEMENT

The application in the prescribed Form No.1 is filed by Central Bank of India (hereinafter referred to as **Bank**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of KSM Spinning Mills Limited (hereinafter referred to as **Corporate Debtor**). The application is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**Code**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**Rules**). The application is signed by Shri Mahendra Singh, Chief Manager, Central Bank of India, presently posted as Branch Manager, Mid Corporate Branch, 369, R.K. Road, Industrial Area A, Ludhiana 141 003. His affidavit verifying the contents of the application is at page 36 of the petition. The Power of Attorney and Authority Letter in favour of Shri Mahendra Singh as constituted attorney for the Bank is at Annexure I-2 and I-1 of the petition.

2. The master data of the Corporate Debtor is stated to be filed at page 50 of the petition. The Corporate Debtor is stated to be incorporated on 28.09.2004 and the registered address is stated to be at 644, Aggar Nagar, B-Block Ludhiana, Punjab-141 012. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. It is stated in Part-IV of Form No.1 that the Corporate Debtor approached the financial creditor for grant of credit facilities and the following limits were granted by the petitioner-financial creditor:-

Nature of facility	Sanctioned Limit	Date of sanction letter	Account Number
CC (H)	7.00 crores	27.08.2012	3243252100
Term Loan I	8.00 crores	27.08.2012	3212534725
Term Loan II	17.50 crores	03.02.2014	3353074446

As per Part IV of Form 1, the total sanctioned credit limit is ₹32.50 crores as per sanction letter dated 03.02.2014. It is stated that the working capital limit is under consortium banking agreement and State Bank of India is the consortium leader. It is stated that the corporate debtor defaulted in the payment of interest and principal amount and consequently, the loan account of the corporate was declared NPA on 03.11.2015. The total outstanding as on 05.07.2018 including interest and expenses is stated to be ₹51,15,68,081.29.

4. In Part-V of Form No.1, the particulars of security held are given. It is stated that the credit facilities are secured by way of equitable mortgage first pari-passu charge on various lands and properties as mentioned in Part V of Form 1 located in District Ludhiana, plant and machinery of the company amounting to ₹41.86 crores located at factory situated at Village Mandiala Khurd, Ludhiana and current assets of the company including raw material, semi-finished and finished goods located at factory at Village Mandiala Khurd, Ludhiana. It is stated that the original title deeds have been deposited with the consortium leader SBI as a security in the account by the corporate debtor. It is also stated that the charge for the above mentioned properties was extended to other consortium members including the

petitioner-financial creditor on 17.08.2015. Copies of the title deeds have been appended with the petition as Annexure I-6 (Colly). Also, copies of ROC charge created on the secured assets are marked as Annexure I-7 of the petition.

5. Due to default in repayment of the instalment, the loan account of the Corporate Debtor was declared as NPA as per RBI guidelines on 03.11.2015. Further, demand notice under Section 13(2) of SARFAESI Act, 2002 dated 25.03.2016 was issued by the petitioner-financial creditor to the corporate debtor as well as to the guarantors in the loan account of corporate debtor demanding an amount of ₹36,04,69,262.08 as on 24.03.2016 alongwith future interest at the contractual rate alongwith incidental expenses. Also, notice under Section 13(4) of the SARFAESI was issued by the lead bank SBI on behalf of all consortium member banks on 24.08.2016. It is stated that the corporate debtor despite all these measures taken by the financial creditor has failed to repay the dues. Copy of the demand notices under the SARFAESI act have been found to be attached as Annexure I-55 and I-56 of the petition.

6. In Part-III of Form No.1, Mr. Nipan Bansal, Registration No.IBBI/IPA-001/IP-P00039/2017-2018/10100 has been proposed as Interim Resolution Professional (**IRP**). Form No. 2 dated 30.07.2018 submitted by the proposed IRP is stated to be attached as Annexure II of the petition.

7. The Corporate Debtor has filed reply vide diary No. 4859, dated 11.12.2018. It is submitted that the petitioner bank is only one of the member of the consortium of bank which had sanctioned various credit facilities to the corporate debtor and the corporate debtor was in the process

of settling the accounts of all the members of the consortium and meanwhile moved a settlement proposal with SBI (Lead Bank), Bank of Baroda and Central Bank of India (petitioner-financial creditor). It is also submitted that the settlement proposal of the corporate debtor is pending consideration with the petitioner bank and during its pendency the financial creditor has chosen to initiate proceedings under the Code.

8. It is also stated in the reply that the respondent is ready to pay the outstanding amount to the petitioner-financial creditor and the proposal in relation to the same has been moved and lying pending for consideration with the petitioner-financial creditor. It is also stated that the account of the corporate debtor is eligible for restructuring in view of the Master Circular issued by the Reserve Bank of India. It is also stated in Para No. 4 that the statement of account relied upon by the financial creditor is supported by the certificate as per Banker's Book Evidence Act, but the same is not as per the prevalent practice of the financial creditor and is incorrect certificate in view of provisions of the Code. It is also stated that no date of default has been mentioned in the petition and it is only the date of NPA has been given. It is stated that the account of the corporate debtor was regular on 17.08.2015 but the date of the NPA is mentioned as 03.11.2015, thereby intending that the account of the corporate debtor became irregular from past three months from the date of NPA.

9. Rejoinder was filed vide Diary No. 365 dated 24.01.2019 wherein the preliminary objections of the corporate debtor were stated as wrong and denied. It is submitted that the petitioner is one of the member of the consortium of banks and petitioner alone is to recover an amount of

₹51,15,68,081.29 as on 05.07.2018 from the corporate debtor. It is also stated that the corporate debtor has failed to comply with the terms and conditions of the One Time Settlement (OTS) letter and also failed to deposit an amount of ₹4 crores which was required to be deposited within a period of 7 days from the date of sanctioning OTS by the petitioner. Further, as per the OTS proposal, also an amount of ₹7.90 crores was required to be deposited upto 20.01.2019 which again the corporate debtor has failed to deposit. Consequently, OTS proposal got lapsed due to non-compliance of its terms and conditions on the part of corporate debtor.

10. Further, an additional affidavit was placed on record by the respondent vide Diary No. 4485 dated 02.09.2019. It is stated that the respondent company is one of the best yarn producing company in Punjab, having its plant at Village Mandiyal, District Ludhiana and the estimated time frame for the plant to generate revenue is approximately 1 to 3 years. It is also stated that respondent company has not defaulted in any of its statutory dues and has been able to retain all its management functionaries. It is further stated that on 27.08.2012, petitioner bank sanctioned fresh credit limit to the respondent company amounting to Rs. 15 crores and thereafter on 04.10.2012, petitioner bank modified the repayment schedule. Copy of the repayment schedule dated 04.10.2012 is attached as Annexure A-1 Colly (Diary No. 4485). It is also submitted that the petitioner bank then issued fresh term loan and revised the limit from Rs 15 crores to Rs. 32.50 crores. Copy of the sanction letter is appended with the additional affidavit as annexure A-2. It is also submitted that the respondent company was informed by the petitioner bank that the interest on term loan as per the new

sanction is 13.75 %, whereas the interest charged for February, and March, 2014 was at 14.75%. Copy of the letter is part is at Annexure A-3. It is also mentioned that the petitioner bank further intimated the outstanding due to the respondent and it is also stated that the petitioner bank further tried to classify the respondent as wilful defaulter. Annexure A-4 is the letter in this regard. It is submitted by the respondent company in reply to the above letter that the default is not intentional, deliberate and calculated, but the reasons for the delay in timely payment of the debt are beyond the control of the respondent. It was also submitted that the bad phase of the respondent company is over and now the company is able to settle the accounts with the petitioner bank. Further, the petitioner bank was pleased to sanction the compromise proposal in the account of the respondent for Rs.28.70 crores to be payable only in three months i.e. up to 20.30.2019. Annexure A-9 is the copy of the sanction letter dated 27.12.2018. It is further contended that on 20.03.2019, an email was received by the respondent by the petitioner bank that Respondent had only deposited Rs. 3,04,97,000 and since the terms of the sanction letter dated 27.12.2018 were not complied with, the compromise proposal has been cancelled accordingly. Copy of the email dated 20.03.2019 is attached as Annexure A-10 of the petition.

11. We have heard the learned counsel for the Bank and the Corporate Debtor and have also perused the record carefully.

12. Section 7(5)(a) of the Code is as follows:-

*“(5) Where the Adjudicating Authority is satisfied that—
(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings*

pending against the proposed resolution professional, it may, by order, admit such application.”

13. In the present case, the occurrence of default is evidenced by the details furnished by the bank including report of CIBIL, the copies of bank account statement maintained as per the provisions of Bankers Books Evidence Act, 1891 are placed at Annexures I-8 and I-5 (Colly) of the petition respectively.

14. It is evident from the contents of the petition that the Corporate Debtor has defaulted in the repayment of loan of the Bank. It is also observed that the corporate debtor in its reply has admitted its default in making the payment of sanctioned loan to the petitioner-financial creditor. The contention of the corporate debtor in its reply is that the present application is liable to be dismissed on the ground that the account of the corporate debtor is eligible for restructuring in view of the master circular issued by RBI. We shall not go into the question of that whether the account of the corporate debtor was eligible for restructuring or not as the same cannot be a ground under the scheme of IBC. It is also contended that a settlement proposal is lying pending with the financial creditor to which the financial creditor has replied in its rejoinder that the same stands lapsed due to non-compliance of the terms and conditions of the OTS proposal as stated in the letter dated 27.12.2018. It is also held that any pendency of OTS proposal is no way an impediment for initiation of proceedings under the Code. It is also stated in the reply of the corporate debtor that the account of the corporate debtor was regular on 17.08.2015 but the date of NPA is mentioned as 03.11.2015. But the respondent failed to substantiate the said

submission by cogent evidence. Thus, this petition deserves to be admitted as it is clear that both 'debt' and 'default' are proved beyond doubt here.

15. The application filed in the prescribed Form No. I is found to be complete.

16. The proposed Interim Resolution Professional, Mr. Nipan Bansal, Registration No. IBBI/IPA-001/IP-P00039/2017-2018/10100 has filed Form No.2 (Annexure II of the petition) certifying that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI. It is also stated that he is currently serving as a Resolution Professional in one matter by the name of M/s Rishi Ganga Power Corporation Pvt. Ltd. in which Resolution Plan has been approved and as a Liquidator in M/s Dunn Foods Private Limited which is on the last stage of the process.

17. The conditions provided for by Section 7(5)(a) of the Code being satisfied in the present case, we direct that the application for initiation of CIRP against M/s KSM Spinning Mills Limited be admitted. The directions regarding moratorium and appointment of IRP are given below.

18. 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.

19. 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.

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

21. The Law Research Associate of this Tribunal has checked the credentials of Mr. Nipan Bansal and there is nothing adverse against him. In

view of the above, we appoint Mr. Nipan Bansal, resident of 10-B, Udham Singh Nagar, Ludhiana-141001, having Registration No. IBBI/IPA-001/IP-P00039/2017-2018/10100 and email address irp@parshotamandassociates.com, Mobile No. 98764-45400 as an Interim Resolution Professional with the following directions:

- i) The term of appointment of Mr. Nipan Bansal shall be in accordance with the provisions of Section 16(5) of the Code;
- ii) 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;

- iii) 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 morality;
- iv) 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;
- v) 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;

- vi) 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
- vii) 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.

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

Sd/-
(Ajay Kumar Vatsavayi)
Member(Judicial)

December 17th, 2019
Yashpal