IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

COURT – IV

C.P. (IB) NO.: 659/ND/2021

[Under Section 7 of the Insolvency & 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

...APPLICANT/FINANCIAL CREDITOR

VERSUS

M/S. KARNAL AGRICULTURE INDUSTRIES LIMITED

...RESPONDENT/CORPORATE DEBTOR

CORAM:

SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)

Order Delivered on:10.12.2024

For the Applicant : Ms. Nishi Choudhary, Mr. Yashartha Gupta, Mr. Mayuresh Rishabh, Advs.

For the Respondent : Mr. Rishi Kapoor, Ms. Deboleena Dutta, Advs.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. The present Petition has been filed by Punjab National Bank (Financial Creditor) through Mr. Dinesh Kumar Gupta, Auhtorised Representative of the Petitioner herein in accordance with Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as '***Code***') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as well as other allied rules therein, for the alleged default by the Respondent herein in repayment of a financial debt amounting to INR 75,98,96,552/- (Rupees seventy-five Crores Ninety-eight Lakhs Ninety-six Thousand Five Hundred Fifty-two only) as on 15.03.2020.

2. The Financial Creditor/Applicant herein is a body corporate which had been constituted by and under the Banking Companies (Acquisitions and Transfer of Undertaking) Act, 1970; having its registered office at Plot no.:4, Sector-10, Dwarka, New Delhi-110075. The Applicant herein has filed the instant Application under the aforementioned section in order to initiate

corporate insolvency resolution process against the Corporate Debtor/Respondent herein.

3. The Corporate Debtor/Respondent herein is a company duly incorporated in the year 1991, under the provisions of the Companies Act, 1956; and is engaged into manufacturing agricultural disk blades along with diverse areas of agricultural developments. The Registered office of the Respondent herein is situated at BQ, 19, Shalimar Bagh, New Delhi-110088.

CONTENTIONS

4. The details of the transactions which have led to the filing of the instant Application, as averred by the Financial Creditor/Applicant herein, have been briefly summarized hereunder:

a. That the Corporate Debtor/Respondent herein had a regular account with the Applicant since long, which led to the Respondent's bank account with the Applicant becoming classified for the first time as 'Non-Performing Asset' (hereinafter referred to as 'NPA') in the year 2010 in accordance with RBI guidelines.

b. That it is being assumed, for the better understanding of the factual matrix as presented by the Applicant, that the Respondent herein, i.e., Corporate Debtor proposed for the restructuring of their debt *vis-à-vis* multiple banks, making way

for the constitution of a consortium of all lenders for a comprehensive debt restructuring agreement in favour of the Corporate Debtor.

c. That this request for overhauling the then debt facilities granted by multiple banks was considered by the competent authorities under the CDR mechanism and a final restructuring package was approved by the CDR EG in its meeting held on 25.06.2012. Under the same, overall financial facilities to the tune of Rs.135,82.22 Lakhs were sanctioned in favour of the Respondent herein, out of which the share of the Applicant herein amounted to Rs. 5,423 Lakhs. It is further noted that the Master Restructuring Agreement was signed on 17.12.2012.

d. That in accordance with the information provided by the Applicant herein, various categories of loans were disbursed by the Applicant herein in favour of the Corporate Debtor, the details of which have been tabulated as under:

Sr. No	Loan Type	Account No.	Date of Disbursement	Amount in Cr.	Amount Due as on
1.	CC Hypothecation		17.12.2012	Rs.15.04 Crores	
2.	CC (Book Debt) limit		17.12.2012	Rs.3.00 Crores	
3.	FOBNLC/FOUBNLC Limit		17.12.2012	Rs.10.00 Crores	
4.	Term Loan		17.12.2012	Rs.9.25 Crores	
5.	Working Capital Term Loan-I		17.12.2012	Rs.6.52 Crores	
6.	Working Capital Term-II		17.12.2012	Rs.4.44 Crores	
7.	FITL-I		17.12.2012	Rs.2.46 Crores	
8.	FITL-II		17.12.2012	Rs.3.52 Crores	

e. That thereafter, the accounts of the Respondent with the Applicant herein, became irregular once again; and as a result, the Applicant classified the aforesaid bank accounts as NPA on 30.09.2013. Subsequently, proceedings in accordance with Section 13(2) under SARFAESI Act, 2002 were initiated on 12.07.2017.

f. That the lead Bank from the consortium, i.e., State Bank of India as per the Master Restructuring Agreement had also filed an application bearing O.A. No.:3722/2017 under Section 19 of the Recovery of Debts and Bankruptcy Act before the Ld. Debt Recovery Tribunal, Chandigarh. The said case was decided vide Order dated 01.02.2019 whereby Recovery Certificate was issued for an amount of Rs. 152,34,49,097.05/- bearing R.C. No.:343 of 2019.

g. That the Respondent herein had further proposed One-Time-Settlement (hereinafter referred to 'OTS') dated 22.09.2019 amounting to Rs.45 crores against the aggregate outstanding amount which was rejected by the consortium due to meagre amount offered *vis-à-vis* total outstanding amount.

h. In the light of the aforesaid facts and circumstances, the Corporate Debtor had failed to pay the financial debts amounting to Rs.75,98,96,552/- as on 15.03.2020; as a result of which the Applicant has filed the instant Application under Section 7 of the Code to initiate the CIRP of the Respondent.

5. The Corporate Debtor has also filed its Reply in which several contentions have been elaborated upon, the said objections have been briefly reiterated hereinbelow:

a. That the present Application is said to be expressly barred by limitation by virtue of Section 238 of the Code. It has been highlighted that the bank account of the Corporate Debtor/Respondent herein with the Applicant was classified as Non-Performing Assets on 31.09.2013 as per RBI guidelines. In accordance with the settled position of law with respect to the Limitation Act, 1963; the date of classification of the account as NPA ought to be considered as the date of default for the computation of the limitation. Therefore, in the instant case, the time of three years lapses on 30.09.2016, making the instant application a time-barred debt.

b. That furthermore, the dates on which the OTS (One-Time Settlement) approvals or sanctions were granted, and which are to be regarded as extensions for the default, began in the year 2019, a period that falls beyond the prescribed limitation period.

c. That for the aforementioned reasons, even the Notice under Section 13(2) of SARFAESI Act, 2002 is not relevant for the purposes of extending or excluding the limitation under relevant laws.

d. That the Code is not to be used as an alternate mechanism for recovery of dues, which could lead to 'civil death' of the company, which otherwise, has not committed any default. It has been further pleaded that since the provisions of the Code are quite draconian in nature, therefore, they have to be interpreted strictly.

e. That the Respondent herein has been and is successfully running and manufacturing agricultural disks on a large scale and is presently a solvent company. Therefore, the instant application should be considered as yet another tactic for debt recovery and nothing else.

f. It is, thus, submitted that there is no financial debt payable by the Corporate Debtor to the Applicant herein; let alone any default with respect to re-payment of the same by the Corporate Debtor.

6. That the Applicant, vide its Replication on 13.05.2023 have made the following arguments against the objections raised by the Corporate Debtor:

a. That the debt was crystallized due to the classification of the Respondent's bank accounts as NPA; and subsequently, with the acknowledgement of debt vide the very first OTS Sanction letter dated 10.10.2016 signed amongst all parties to the tune of Rs.86 crores.

b. That thereafter, there had been several acknowledgements via OTS letter sanctioned as well as the Recovery Certificate that had been granted vide Order dated 01.02.2019, after which the Applicant herein had filed the instant Application under Section 7 of the Code. Nevertheless, the Respondent herein has acknowledged the debt via OTS letter dated 14.11.2017, 22.09.2019 as well as 04.11.2022.

7. We have heard the Ld. Counsels for both of the parties appearing for the Petitioner as well as Respondent and perused the averments as well as enclosures placed on record by both the parties. It was further directed to both of the parties to place their written submissions along with relevant judicial precedents on record vide Order dated 15.07.2024.

8. Consequently, we have thoroughly perused the contents of the all of the arguments placed on record via their written submissions as well. It is interesting to note that the written submissions thus filed by the Respondent have attempted to place new information on record, details of which have been reiterated hereinbelow:

a. The Respondent has allegedly claimed that there is contravention of Restructuring Proposal under CDR system dated 12.07.2012. The aforementioned Proposal requires that any event of default by the borrower must be reported by the CDR lenders to the CDR

(EG) within seven days in accordance with clause 11 of the aforesaid proposal. Therefore, the Applicant has the requisite authority to take action at their discretion.

b. The Respondent has further claimed that due to existence of *inter-se* agreement that authorizes another bank as the lead for the consortium thus formed, via letter of authority that has also been provided by the Applicant herein; therefore, the Applicant could not have acted independently in filing the present application under Section 7 of the Code.

ANALYSIS

9. We have examined as well as deliberated upon the contents of the averments placed on record by both of the parties. It has been sufficiently established by the Applicant herein that the outstanding amount to the tune of Rs. 75,98,96,552/- (Rupees seventy-five Crores Ninety-eight Lakhs Ninety-six Thousand Five Hundred Fifty-two only) has been admitted as the contended dues, which is to be categorised as the financial debt extended by the Applicant in favour of the Respondent herein.

10. A mere reading of the provision under Section 7 of the Code shows that in order to initiate the corporate insolvency resolution process under the aforementioned section, the Applicant is mandated to establish that there is financial debt and that a default in the nature of financial debt has

been committed by the Respondent. The Code further expressly requires the Adjudicating authority to ascertain and record satisfaction in a summary adjudication regarding the existence of default prior to the admission of default thereunder.

11. The Hon'ble Supreme Court, in the matter of *M. Suresh Kumar Reddy vs. Canara Bank, (2023) 8 SCC 387*, it has been held that once the Adjudicating Authority is satisfied that the default has occurred, the scope of discretion left the Adjudicating Authority to refuse admission of the application under Section 7 of the Code, is minimum. The relevant excerpt of the aforementioned judgment is reproduced hereinbelow:

> "*11. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under section 7. "Default" is defined under sub-section (12) of Section 3 of IBC which reads thus:*
>
> *3. Definitions — In this Code, unless the context otherwise requires —*
>
> ***
>
> *(12) "default" means non-payment of debt when whole or any part of instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;*

Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT fins that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application."

12. Furthermore, it has also been opined by the Hon'ble Supreme Court that the role of the Adjudicating Authority is confined to establishing that a Financial Debt exists and there has been default against the corresponding debt in the matter of *E.S. Krishnamurthy & Ors. vs. M/s, Bharath Hi-Tech Builders Pvt. Ltd., C.A. No.:3325 of 2020*. The germane portion from the said precedent has been reiterated as under:

"*The Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only courses of action which are open to the Adjudicating Authority in accordance with Section 7(5).*"

13. The date of default, in accordance with the documents placed on record by the Applicant herein, is concluded to be the date of classification of the Respondent's bank accounts as NPA by the Applicant on 30.09.2013. The same has been sufficiently established via the Demand Notice under Section

13(2) SARFAESI Act, 2002 which has been placed on record as Annexure-XX in the Application. Thereafter, the default has been acknowledged by the Respondent herein on several occasions, which are the reasons for the extensions granted to the aforementioned date of default for the purpose of the statute of limitation. There are two dates that need to be taken for consideration which have been established to sufficiently conclude that the extension on the alleged debt ought to be provided, being OTS proposal dated 31.07.2015 acknowledging the existence of non-payment of dues on part of the Respondent, attached as Annexure-A1 to the written arguments placed on record by the Applicant; second relevant acknowledgement is due to the Recovery Certificate granted vide Order dated 01.02.2019 after the adjudication of O.A. No.:3722/2017 before the Debt Recovery Tribunal, Chandigarh.

14. The settled position of law with respect to limitation statute for initiation of CIRP under Section 7 of the Code has been fittingly established through the landmark judgment by the Hon'ble Supreme Court in the matter of *Laxmi Pat Surana vs. Union Bank of India & Anr.; C.A. No.:2734 of 2020*. The relevant excerpt of the judgment is reproduced hereinbelow:

> "*37. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 of the Code. However, Section 7 comes into play when the corporate debtor commits "default". Section 7*

consciously uses the expression "default" — not the date of notifying the loan account of the corporate debtor person as NPA. Further the expression "default" has been defined in Section 3(12) to mean non-payment of "debt" when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transactions, the right of the financial creditor to initiate action against such entity being corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt. ***Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including fresh period of limitation due to (successive) acknowledgements, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act.*** *Section 18 of the Limitation Act gets attracted the moment acknowledgement in writing signed by the party against whom such right to initiate resolution process under Section 7 of the Code inures.* ***Section 18 of the Limitation Act would come into play every time when the principal borrower and/or corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgements, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgement of the debt, from time to time, for institution of proceedings under Section 7 of the Code.*** *Further, the acknowledgement must be of a liability in respect of which the financial creditor can initiate action under Section 7 of the Code."*

15. Therefore, the contention raised by the Respondent with respect to the limitation falls short and does not hinder the acknowledgement made thereunder, in order to establish the existence of default under Section 7 of the Code. The Respondent further attempts to allege that the Applicant has been trying to use the Code as a debt recovery mechanism with malicious intentions. However, due to lack of any corroboration supporting the said contention, it cannot be taken into consideration, provided that the Applicant has adequately met the requirements of the Section 7 of the Code with respect to the existence of financial debt and default.

16. It is interesting to note that the Respondent herein has attempted to raise new arguments vide their written submissions which is strictly against the relevant provisions of the Code as well as National Company Law Tribunal Rules, 2016. As a result, the argument reiterated herein would not be taken into consideration due to it being an afterthought on part of the Respondent herein, as this argument was never placed on record vide their Reply. Hence, we disregard the contention raised by the Respondent anew, concerning the contravention of clause 11 of the restructuring proposal under CDR system dated 12.07.2012.

17. Nevertheless, in any event, this particular contention cannot be considered due to the successive Master Restructuring Agreement dated

17.12.2012 that has been placed on record by the Applicant. Article VIII of the aforementioned Agreement dated 17.12.2012 explicitly dispenses discretion to the lenders therein, with respect to dealing with the failure of the Corporate Debtor to make payment. The relevant part of the Article VIII is reiterated hereinbelow:

8.2 **Right of Revocation**

Notwithstanding anything contained in any of the Restructuring Documents, upon the occurrence of any of the following events, in addition to all rights and remedies of the Lenders in the Restructuring Documents, the Lenders may revoke all or any part of the restructuring of the Existing Loans effectuated pursuant to this Agreement and the other Restructuring Documents:

(a) any failure by the Borrower or any other Person to make payment of any amount, on the due date thereof, to the Lenders under the Restructuring Documents;

(b) the infusion of funds by way of equity as per Article XII is not made within the time specified for the same;

(c) the Security Interests required to be created in favour of the Lenders pursuant to this Agreement are not created within the time specified in Section

(d) non-performance by the Borrower of any of its material obligations pursuant to the Transaction Documents (other than any events of default (whatsoever called) under the Existing Documents of the Non-Acceding Lender and/or breaches by the Borrower under the Project Documents existing as of the date of this Agreement in respect of which the time granted for curing the same as per the schedule agreed with the Lenders/ Monitoring Committee has not elapsed);

(e) any event of default (howsoever called) under this Agreement;

(f) breach of any material representations and warranties of the Borrower and any other Person (other than the Borrower) under the Restructuring Documents;

18. Subsequently, another contention raised by the Respondent vide their written submissions, is with regards to the existence of *inter-se*

agreement that levies responsibility on another Bank/Financial Creditor take action against the Respondent herein.

19. However, the Hon'ble National Company Law Appellate Tribunal; in the matter of *Asian Natural Resources (India) Ltd. vs. IDBI Bank Ltd., C.A. (AT) (Ins.) No.:60 of 2017*, has held that the consortium agreement being *inter-se* between the Banks, the Corporate Debtor cannot take benefit of the clauses of that agreement, and such a grievance can only be raised by the other banks, upon which the said agreement is binding. The relevant excerpt is reiterated hereinbelow:

> "*7. Apart from that the Inter-se Agreement between different banks is not binding in nature, the 'Corporate Debtor' not being signatories cannot derive advantage of such Inter-se Agreement. This apart, the 'financial creditors' having right to file application under Section 7 of I&B Code, individually or jointly on behalf of other 'financial creditors' as quoted below, the Inter-se Agreement between the 'financial creditors' cannot override the said provision, nor can take away the right of any Financial Institution to file application under Section 7 of I&B Code…*"

20. Resultantly, we are satisfied that the present application is complete in all respects and the Financial Creditor/Applicant herein is entitled to claim its outstanding financial debt from the Corporate Debtor and that there has

been default in payment of the Financial Debt which is duly admitted as well as acknowledged by the Corporate Debtor.

CONCLUSION

21. In light of the abovementioned facts as well as averments along with arguments on part of the parties involved, this Adjudicating Authority **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.

22. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

23. We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

> "*(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."

24. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force with effect from 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

25. We also declare a moratorium in terms of Section 14 of the Code. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this

Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

26. Sub-section (3) (b) of Section 7 of the Code mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof, the Applicant has proposed the name of **Mr. Arvind Kumar** having Registration No.: IBBI/IPA-001/IP-P00178/2017-18/10357. His e-mail ID is sankhyain@gmail.com. The Interim Resolution Professional, so appointed, shall file a valid AFA as well as disclosure about non-initiation of any disciplinary proceedings against him, within seven (7) working days from the pronouncement of this order. In the event of the compliance thereof, **Mr. Arvind Kumar** is appointed as IRP.

27. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/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 one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.

28. We direct the Applicant to deposit a sum of Rs. 2 lakhs with the appointed Interim Resolution Professional, namely Mr. Arvind Kumar 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 one week from the date of receipt of this order by the Financial Creditor. The amount, however, is subject to adjustment by the Committee of Creditors, as accounted for by IRP and shall be paid back to the Financial Creditors.

29. The Interim Resolution Professional shall perform all his functions contemplated, *inter-alia*, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority with a prayer for passing an appropriate order.

30. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

31. The Interim Resolution Professional, so appointed, is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

32. The office, in accordance with Section 7(7) of the Code, is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

33. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

34. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.

35. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Accordingly, the present petition bearing **C.P. (IB) No.:659 of 2021** is **admitted.**

Sd/-

(DR. SANJEEV RANJAN)
MEMBER (T)

Sd/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)