

**THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-II, HYDERABAD**

C.P. (IB) NO.10/7/HDB/2022

Under section 7 of the IB Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application Adjudicating Authority) Rules, 2016.

In the matter of
M/S FENOPLAST LIMITED

Between:

**M/S Canara Bank Limited,
R.P. Road Branch,
D. No. 5-2-69/3, Kandala Plaza,
Bible House, Secunderabad - 500003.**

FREE OF COST COPY

... Applicant
Financial Creditor

VERSUS

**M/S Fenoplast Limited,
306/308, Chenoy Trade Centre,
Parklane, Secunderabad, Telangana.**

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

... Respondent
Corporate Debtor

Date of Order: February 07, 2023

Coram:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
HONBLE MEMBER, JUDICIAL**

and

**SATYA RANJAN PRASAD
HONBLE MEMBER, TECHNICAL**

Counsel present:

For the Financial Creditor: Shri Manav Gecil Thomas, counsel

For the Corporate Debtor: Shri Y. Suryanarayana and
Smt. L. Madhavi Latha, counsels

Per : Bench

Under consideration is an Application filed by Canara Bank Limited, through its authorized representative (hereinafter referred to as "Financial Creditor"), under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code, 2016"), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP"), against M/S Fenoplast Limited (hereinafter referred to as "Corporate Debtor"), alleging default of a debt over Rupees One Crore by the Financial Creditor.

2. The Applicant extensively traced the history of the debt, since its inception in the year 1989, with its development over the decades. It may not be necessary to set out all the facts in detail and recounting facts in a nutshell, imperative for the purpose of this order, would be suffice. The brief facts of the case, as submitted by the Financial Creditor, are as follows:

3. The Applicant is a banking company, incorporated under the Companies Act, 1956, having its registered office at Bengaluru, Karnataka. On 14.02.1989, the Corporate Debtor was sanctioned an OCC

facility of Rs. 25,00,000/-, by a consortium of banks, originally consisting of the Applicant, the Syndicate Bank and the Lakshmi Vilas Bank (collectively referred to as “the Consortium”).

4. Thereafter, the credit facilities were enhanced from time to time, with loan agreements executed and, charges and securities created accordingly. The documents relating to the acknowledgement of debt were being executed from time to time, thereby keeping the debt alive. The latest acknowledgement of debt was on 15.02.2020.

5. The following table encapsulates the debt, as the credit facility was being enhanced from time to time:

Agreement Dated	Canara Bank (Applicant)	Syndicate Bank
08.06.1994	Rs. 4,70,00,000/-	Rs. 2,00,00,000/-
06.10.1995	Rs. 7,60,00,000/-	Rs. 3,15,00,000/-
22.05.1998	Rs.8,10,00,000/-	Rs. 3,38,00,000/-
19.02.2002	Rs. 10,20,00,000/-	Rs. 4,25,00,000/-
30.12.2002	Rs. 11,40,00,000/-	Rs. 4,25,00,000/-
24.12.2003	Rs. 13,77,50,000/-	Rs.6,12,50,000/-
02.03.2006	Rs. 14,04,00,000/-	Rs. 7,00,00,000/-
23.01.2007	Rs. 14,04,00,000/-	Rs. 9,00,00,000/-
28.07.2008	Rs. 21,02,00,000/-	Rs. 13,25,00,000/-
13.01.2010	Rs. 26,04,00,000/-	Rs. 6,06,00,000/-
11.06.2011	Rs.30,00,00,000/-	Rs. 15,00,00,000/-
06.03.2013	Rs.30,00,00,000/-	Rs. 20,00,00,000/-



12.06.2015	Rs.35,00,00,000/-	Rs.30,00,00,000/-
28.10.2016	Rs.36,00,00,000/-	Rs.32,00,00,000/-
05.03.2019	Rs.36,00,00,000/-	Rs.32,00,00,000/-

6. After multiple changes in the composition of the consortium, over time, the Applicant, the Syndicate Bank and the State Bank of India, currently form the consortium. Subsequently, the Syndicate Bank merged with the Applicant.

7. The Corporate Debtor failed to pay the instalments as per the repayment schedule, consequent to which, the account of the Corporate Debtor was classified as a 'non-performing asset' (NPA), on 22.03.2020. However, in view of the guidelines on moratorium, that were issued by the Reserve Bank of India, the Corporate Debtor was removed from the classification of NPA.



8. The account of the Corporate Debtor was classified as a NPA on 30.03.2021, on account of the non-payment of interest on working capital, which resulted in the dues increasing from the month of December, 2020.

9. Thereafter, on 08.04.2021, proceedings under the SARFAESI Act were initiated against the Corporate Debtor and symbolic possession of the properties of the Corporate Debtor was taken, on 14.06.2021.

10. While it was so, the Financial Creditor sanctioned an OTS vide Lr.No.SMCB/ 4929/FENOPLAST/078/ 2022-23/PSK, dated 12.07.2022, for Rs.68.40 crores towards full and final settlement of consortium dues, of which Rs.50.60 crores was towards the Financial Creditor's dues.

11. The salient features of the OTS are as following:

- a. Rs.34.84 crores would be payable by the Corporate Debtor by 31.07.2022.
- b. Rs.20.27 crores would be payable by the Corporate Debtor to the Respondent Bank by 31.10.2022.
- c. Balance Rs.13.29 crores to be paid by the Corporate Debtor by 31.12.2022.
- d. On receipt of the said Rs.34.84 crores, the Respondent/Financial Creditor was to release Unit I (Patancheru, Medak Dist.) with NOC to sell the same; and handover the physical possession of Units II & III (Nandigaon, Medak dist.) to the Corporate Debtor.

A copy of the OTS Letter dated 12.07.2022 is filed at page nos. 23 to 25 of the application.

12. As per Clause 8, further proceedings under SARFAESI/CMM/Civil Court/DRT/NCLT against the Corporate Debtor/Corporate Guarantor/Guarantors shall be deferred and to be withdrawn after full and final payment of the OTS amount. As the Corporate Debtor was unable to adhere to the timeline for the 1st and 2nd tranches, on 03.08.2022 the said OTS has been cancelled. However, 23.08.2022, the Financial Creditor informed the Corporate Debtor to pay delay period interest as per OTS sanction amount for activating the OTS 12.07.2022 as per earlier terms amounting to approximately Rs.25,38,100/- up to 30.08.2022 and also on 24.08.2022 communicated the No Lien Bank Account details for remittance of the said amount. The Corporate Debtor deposited an amount of Rs.32.91 crores in the non-lien



account, pursuant thereto on 29.08.2022, the Financial Creditor confirmed that the charge to the extent of its mortgage in respect of Unit I will be released after adjusting the amount. Further, on 01.09.2022, the Financial Creditor, requested State Bank of India, Consortium Member to issue No Objection Certificate as per OTS for release of Unit I property and handing over of physical possession of Units 2 & 3. The next/3rd tranche of payment was due on 31.10.2022 and the last date to make the total payment against the outstanding balance is 31.12.2022.

13. The Financial Creditor also filed the record of default held with the information utility, dated 15.03.2022, has been obtained from the National E-Governance Services Limited and is titled "Record of Default for Party M/S Fenoplast Limited (Debtor)". The record bearing Unique Debt Identifier: AAACC6106G_30341250000200, attached at Page No. 122, shows the default amount as Rs. 29,29,92,298.95/-. The record bearing Unique Debt Identifier: AAACC6106G_492971000011, attached at Page No. 142, shows the default amount as Rs. 1,84,92,617.79/-. The record bearing Unique Debt Identifier: AAACC6106G_0617256000366, attached at Page No. 130, shows the default amount as Rs.25,91,04,927.52/-.

14. While things stood thus, this Tribunal vide order dated 19.10.2022 has admitted the Company Petition and triggered Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, imposed moratorium and also appointed Ms. Kalpana G., as IRP. However, the Corporate Debtor filed IA No.1248 of 2022, praying to recall the above order, *inter alia*, contending that there was no default on the date when

the Corporate Insolvency Resolution Process has been ordered against the Corporate Debtor. The Tribunal, after hearing both the sides, vide order dated 15.11.2022, has set aside the order admitting the Corporate Debtor into CIRP, and further ordered that the matter be listed on 21.11.2022 for considering the correspondence/record relating to OTS dated 12.07.2022 in order to find whether or not default as pleaded by the financial creditor exists.

15. Therefore, in the above backdrop, since the existence of debt of a sum over rupees one crore due and payable by the Corporate Debtor stands established and accepted *unequivocally*, the only point that requires the consideration of this Tribunal, is:

Whether the Corporate Debtor *defaulted* in repayment of the debt of a sum over rupees one crore due and payable to the financial creditor?

16. We have heard Shri Manav Gecil Thomas, learned counsel for the Financial Creditor and Shri Y. Suryanarayana, learned counsel, who is assisted by Smt. L. Madhavi Latha, learned counsel for the Corporate Debtor. Perused the record and the written submissions.

17. Admittedly, on 12.07.2022, a One Time Settlement (OTS) has been sanctioned in favour of Corporate Debtor by the Financial Creditor.

18. The said OTS, even though has been cancelled by the Financial Creditor on 03.08.2022, the same has been later revived and the 3rd tranche of payment of Rs.20.27 crores was due and payable by 31.10.2022 and the entire remaining payment by 31.12.2022.

19. Hon'ble Supreme Court of India, in Dena Bank v. C. Shivkumar Reddy, (2021) 10 SCC 330, held that:

“Section 18 of the Limitation Act, 1963 gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate Resolution Process under Section 7 of IBC ensures. Section 18 of the Limitation Act would come into whenever the Principal Borrower and/or the Corporate Guarantor (Corporate Debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to 'acknowledgment of the debt', from time to time, for the institution of the proceedings under Section 7 of IBC. Further, the acknowledgment must be of a liability in respect of which the 'Financial Creditor' can initiate action under Section 7 of IBC. Hence, the Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act.”

[Emphasis is ours]

20. In the Written Submissions filed by the Financial Creditor it has been stated that the total amount outstanding on the date of the present application was Rs. 55,61,32,955.75/- and out of which an amount of Rs.34.84 crore has been received by the Financial Creditor as confirmed

by the Financial Creditor vide its letter dated 01.09.2022. The corporate debtor has defaulted the 3rd trench payment of Rs. 20.27 crores which was due and payable by 31.10.2022. As such, as on 22.11.2022 the total outstanding amount due and payable was Rs.30.65 crores. The Financial Creditor, therefore, *cancelled the OTS vide letter dated 01.11.2022*. A copy of which is enclosed at page 3 of Written Submissions dated 22.11.2022.

21. Therefore, from the aforementioned facts it is quite clear that the corporate debtor has once again *defaulted* in making the payments in terms of the revived OTS, as such the OTS dated 12/07/2022 has once again been cancelled on 1.11.2022. The corporate debtor has not placed any record of the compliance of the OTS before us. The Financial Creditor also filed the record of default held with the information utility, dated 15.03.2022, has been obtained from the National E-Governance Services Limited and is titled "Record of Default for Party M/S Fenoplast Limited (Debtor)". The record bearing Unique Debt Identifier: AAACC6106G_30341250000200, attached at Page No. 122, shows the default amount as Rs. 29,29,92,298.95/-. The record bearing Unique Debt Identifier: AAACC6106G_492971000011, attached at Page No. 142, shows the default amount as Rs.1,84,92,617.79/-. The record bearing



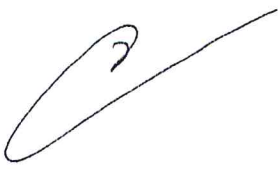
Unique Debt Identifier: AAACC6106G_0617256000366, attached at Page No. 130, shows the default amount as Rs.25,91,04,927.52/-.

22. Therefore, the only irresistible conclusion that can be arrived at is that the corporate debtor has defaulted in repayment of the debt of a sum over rupees one crore due and payable by the corporate debtor to the applicant.

23. We have already held that existence of debt of a sum over Rupees one crore is not at all in dispute in view of the fact that the Financial creditor has sanctioned an OTS for a sum of s Rs.68.40 crores towards full and final settlement of consortium dues, of which Rs.50.60 crores was towards the Financial Creditor's dues. Thus, the existence of a financial debt and its default by the corporate debtor have been firmly established.

24. We also find that the application is complete in all the aspects and the Interim Resolution Professional as suggested by the Financial Creditor does not suffer from any disqualification. Therefore, we are fully satisfied that this is a fit case to admit and order CIRP against the Corporate Debtor.

25. Hence, the Adjudicating Authority hereby, admits Corporate Debtor, **M/s Fenoplast Limited** into Corporate Insolvency Resolution



Process under section 7 of the Insolvency & Bankruptcy Code, 2016, declare moratorium for the purposes referred to in Section 14 of the Code, with following directions: -

(A) The 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 or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor.

(C) 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.

(D) Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government,

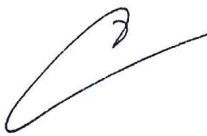


State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

(E) 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.

(F) That 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 Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

(G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.



(H) That this Bench hereby appoints **Ms. Kalpana G.**, having Registration No. IBBI/IPA-001/IP-P00756/2017-2018/11288 as Interim Resolution Professional, whose contact details are:

e-mail: kalpanagonugunta1[at]gmail[dot]com

Address: H.No. 16-11-19/4, G-1
Sri Laxmi Nilayam
Saleem Nagar Colony
Malakpet, Hyderabad,
West Marredpally
Telangana. PIN: 500036



as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

(I) Proposed IRP has filed Form-2 dated 21.12.2022. Her Authorisation for Assignment is valid till 19.10.2023. This information is also available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

(J) The Registry is directed to furnish certified copy of this order to the parties as per Rule 50 of the NCLT Rules, 2016.

(K) The petitioner is directed to communicate this order to the proposed Interim Resolution Professional.

26. Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.

27. Accordingly, this Petition is admitted. No costs.



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SATYA RANJAN PRASAD
MEMBER (TECHNICAL)

karim

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07/2/23
N.V. RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)

28/2/2023
Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER... (P/IB) No. 10/7/HDB/2022
निर्णय का तारीख
DATE OF JUDGEMENT... 7/2/23
प्रति तैयार किया गया तारीख
COPY MADE READY ON... 28/2/23