

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH**

Company Petition (IB)No.56/ALD/2019

(Under Section 7 of Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016)

IN THE MATTER OF:

M/s SHAHJAHANPUR EDIBLES PRIVATE LIMITED

AND

IN THE MATTER OF

CORPORATION BANK

..... *Applicant/Financial Creditor*

VERSUS

M/s SHAHJAHANPUR EDIBLES PRIVATE LIMITED

..... *Respondent/Corporate Debtor*

ORDER DELIVERED ON : 27.09.2019

CORAM :

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

For the Applicant/ Operational Creditor: Sh. Ankur Goyal, Advocate
For the Respondent/ Corporate Debtor: Sh. Rishi Bhushan Jauhari, Advocate

AS PER: Mr. Abni Ranjan Kumar Sinha, Member , Judicial.

Order

1. The present petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 by the petitioner/financial creditor *i.e. Corporation Bank* for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate debtor company *M/s Shahjahanpur Edibles Private Limited*.



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2. The Applicant "**Corporation Bank**" is a Banking Institution and corporate body constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 incorporated on 12.03.1906 having Identification Number AAACC7245E. **Sri. Jugal Kishor Srivastava, Senior Manager**, has been authorised to file this application on behalf of Financial Creditor. *(The Copy of the general power of Attorney is annexed as Annexure 1 of the application).*

3. The Respondent "**M/s Shahjahanpur edibles Private Limited**" is a private limited company duly incorporated on **12.03.2014** *(Having its Registered Office at, Rausar Kothi Road, Village- Mishripur, District- Shahjahanpur CIN U15400UP2014PTC063318)*. The authorised share capital of respondent is Rs. 1,80,00,00,00/- (Rupee Eighteen Crores Only) and Paid- Up share Capital is Rs. 1,80,00,00,00/- (Rupee Eighteen Crores Only).



4. Brief facts related to petition are as follows:

- i. The learned counsel for the applicant submitted that the corporate debtor vide its board resolution dated 25.03.2014 and 24.04.2014 resolved to avail cash credit and term loan facilities from the applicant bank. The corporate debtor company through its directors approached the applicant bank for grant of term loan facility and cash credit facility which was duly considered and sanctioned by the applicant bank vide its credit sanction intimation dated 23rd April, 2014 through which cash credit facility of Rs.3,00,00,000/- and term loan facility of Rs.7,00,00,000/-. All terms and conditions of the credit sanction

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intimation were accepted and acknowledge by the corporate debtor in writing.

- ii. Further submitted that in respect of the facilities granted by the applicant bank and availed, by the corporate debtor the authorised representative/directors of corporate debtor has executed and delivered to the applicant bank the following security on 17.05.2014.

A. Cash Credit Facility for Rs.3,00,00,000/- (Rupees Three Crores)

- a. Request letter for Overdraft facilities/cash credit limit (ID 12016)
- b. Demand Promissory Note for Rs.300 lakhs (ID 901)
- c. Take delivery letter to D.P.N (ID 902)
- d. General power of attorney for book debts & supply bills.



B. Term Loan Facility for Rs.7,00,00,000/- (Rupees Seven Crores).

- a. Agreement for term loans (ID-12014)
- b. Common deed of hypothecation of movables/assets/debts for Rs.1000 lakhs (ID 12004).
- c. Letters of undertaking/declaration from the borrowers (ID13001)

- iii. The learned counsel for the applicant also submitted that again the corporate debtor company through its directors approached the financial creditor/ applicant bank vide their loan application dated 27.05.2016 for enhancement in their existing credit facilities, which was duly sanctioned by the financial creditor/applicant bank vide its credit sanction intimation dated 24.06.2016 through which cash credit facility was enhanced from Rs.3,00,00,000/- (Rupees Three Crores) to

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Rs.6,00,00,000/- (Rupees Six Crores) and term loan facility was reviewed for Rs.5,11,74,000/- (Rupees Five Crores Eleven lacs Seventy Four Thousand) to the corporate debtor. All terms and conditions of the credit sanction intimation were accepted and acknowledge by the corporate debtor in writing.

- iv. In respect of the aforesaid facility enhanced by the applicant and availed by the corporate debtor, the authorised representative/director executed signed and delivered to the applicant bank the following security documents on 28.06.2016.

A. Cash Credit Facility for Rs.6,00,00,000/- (Rupees Six Crores)

- a. Demand Promissory Note for Rs.600 lakhs (ID 901)
 b. Take delivery letter to D.P.N (ID 902)
 c. General power of attorney for book debts & supply bills.

B. Term Loan Facility for Rs. 5,11,74,000/- (Rupees Five Crores Seventy Four Thousand)

- a. Agreement for term loans (ID-12014)
 b. Common deed of hypothecation of movables/assets/debts (ID 12004)
 c. Letters of undertaking/declaration from the borrowers (ID 13001)

- v. Further, the counsel for the applicant submitted that, to secure aforesaid credit facility of Rs.11,11,84,000/- availed by the corporate debtor, (1) Sri Shiv Kumar Agarwal, (2) Sri Ishwar Chandra Agarwal, (3) Mrs. Laxmi Devi Agarwal, (4) Mrs. Anita Agarwal, (5) Sri Sumat Prasad Jain, (6) Sri Samaksh Jain, (7) Mrs. Sharanjeet Jain, (8) Mrs. Madhu Jain have given their personal guarantees for repayment of



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repayment of aforesaid facilities together with stipulated interest availed by corporate debtor and inconsideration thereof have jointly executed, signed and delivered to the financial creditor/applicant bank Guarantee Agreement (ID-12001) dated 28.06.2016 acknowledging therein their liability to repay the same as equal and co-extensive with the principle borrower.

- vi. Further submitted that, after availing the aforesaid credit facilities from the financial creditor/ applicant bank as well as enhancement/ renewal of the same, the corporate debtor has failed and neglected to keep its accounts regular and in order as well as to pay stipulated instalments in its term loan account. Hence, as per prevailing practice, **the same was classified and declared as N.P.A. on 31.03.2018** as per RBI Guidelines/ norms and, accordingly, outstanding of both account were finally recalled by the financial creditor/ applicant bank by serving recall notice upon corporate debtor on 05.03.2018 requiring them to liquidate outstanding of their loan accounts plus applicable future rate of interest within stipulated period of seven days from the date of notice, but no heed was paid by the corporate debtor to the request of the applicant bank/ financial creditor and the accounts remain unliquidated till date.

- vii. Further submitted that the total sum of **Rs. 10,62,59,056.75/- (Ten Crore Sixty-Two Lakh, Fifty-Nine Thousand, and Fifty-Six and Seventy-Five paisa only)- plus interest w.e.f. 31.01.2019** is due as outstanding against the corporate debtor, which is being legally recoverable from it being amount of debt due against it to the applicant bank/ financial creditor, for which the present application is being filed before this Hon'ble Tribunal and thus prays to be admitted.



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viii. In the counter Affidavit, the learned counsel of the Corporate Debtor submitted that in the year 2014 the Company took loan from Corporation Bank and in May 2014 for the security of the loan taken by the company, the further charge was created over the property of Kisan Cold Storage, which was already mortgaged for the loan of Budhram Ishwar Chandra Firm. In the present company petition in part (V) the said property has been wrongly shown to have been mortgaged with the Financial Creditor and only further charge has been created by way of continuing security for the financial assistance given to the company and as such until and unless the loan taken by the firm Budhram Ishwar Chandra is repaid, no amount alleged to be due upon the company can be recovered from the said property and no R.P. can be appointed for managing the said property.



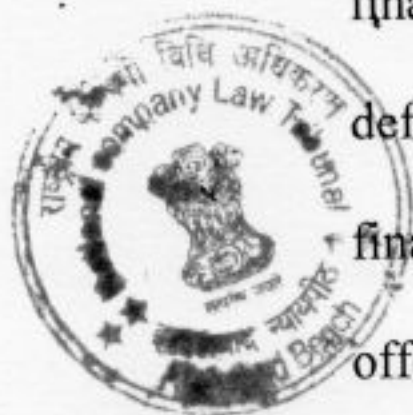
ix. Further stated, that the loan accounts became NPA and the Corporation Bank started proceedings under SARFAESI Act 2002 and the notice under Section 13 (2) was issued on 09.08.2018 and the possession notice was issued on 13.09.2018 regarding both the aforesaid properties. However, the same were withdrawn.

x. Further it is submitted in the counter affidavit by the counsel for the respondent that even after the filing of the present petition, in response to the reply of the Corporate Debtor with regard to the objection to the allotment of the account to the recovery agency, the Financial Creditor through letter dated 11.04.2019 has advised the Corporate Debtor to cooperate for settlement of account and the respondent company with the intention of settling the accounts, is ready to cooperate with the Financial Creditor however the Financial Creditor has wrongly

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mentioned that a sum of Rs. 10,62,59,056.75 is due upon the Corporate Debtor thus prays for the present petition to be dismissed.

- xi. Further submitted that, since the above mentioned amount is highly disputed and has not only been admitted by the respondent/ Corporate Debtor but the Financial Creditor has wrongly prepared the accounts and in connivance with the Mrs. Madhu Jain, Samksh Jain, Mrs. Sharangeet Jain, Sumat Prasad Jain filed the present Company petition.
- xii. In the reply to the counter affidavit, the learned counsel for the applicant submitted that as per IB Code, 2016 the directors of the company are not necessary and proper party as it relates only to financial creditor and corporate debtor and if there is any debt and default on the part of corporate debtor. He also submitted that the financial creditor has rejected the proposal on the ground that the offered amount is very less in comparison to the outstanding balance of the loan account. It is further submitted that the Corporate Debtor accepted the debt and default and on this ground alone prays for the present petition to be allowed with costs.



5. The Learned Counsel for the Financial Creditor submitted that in order to prove the Existence of the Financial Debt; they have annexed following documents:

- i. The Copy of the agreement of term loans dated 17.05.2014 and 28.06.2016 is *annexed as Annexure 12 and Annexure 26 of the Application respectively.*
- ii. The copy of board Resolution dated 25.03.2014, 24.04.2014 and 17.05.2016 are *annexed as Annexure 5 and 20 of the Application.*

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iii. The copy of letter of undertaking/ declaration from the borrowers dated 17.05.2014 and 28.06.2016 are *annexed as Annexure 14 and Annexure 28 of the Application respectively.*

iv. The Copy of the Demand promissory note dated 28.06.2016 is *annexed as Annexure 23* and copy of take deliver letter to Demand Promissory Note is *annexed as Annexure 24 of the application.*

v. The copy of the guarantee agreement executed by the Directors dated 17.05.2014 and 28.06.2016 are *annexed as Annexure 15 and Annexure 29 of the Application respectively.*

vi. The Copy of duly certified copies of statement of accounts are annexed as Annexure 33 of the Application.

vii. The copy of the valuation report and CIBI and CRILIC Report is *annexed as Annexure 34 and Annexure 35 of the Application respectively.*

6. I have gone through the contents of the petition , the counter affidavits filed by the respondent and reply to the counter affidavit filed by the petitioner and documents annexed there of.

7. Further, it is matter of record as per record of the financial creditor account of the corporate debtor was declared NPA on *31.03.2018* and Applicant/ Financial Creditor has filed this application on *14.02.2019*, which is within the limitaion period.

8. From the perusal of the counter affidavit filed on behalf of the respondent, I find that respondent has raised the question of maintainability on the ground referred in the counter affidavit. I have



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carefully examined the ground mentioned on counter affidavit along with the provisions contained Under Section 7 of IB Code. The relevant provision of Section 7 (1), (2), (3) as quoted below :

Section 7: Initiation of corporate insolvency resolution process by financial creditor:

(1) A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation. —For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

9. Mere plain reading of the provision shows that in order to make an application under Section 7 (1) the financial creditor / petitioner is required to establish:

- a. Whether there is duly established financial debt.
- b. Whether there is default in payment by the corporate debtor.
- c. Whether the documents attached with the applicant shows that there is default in payment of debt and name of resolution professional is proposed to act as IRP and no disciplinary proceedings are pending against the proposed resolution professional.



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10. The Hon'ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank* (2017)205 Comp Cas 57(SC) held :

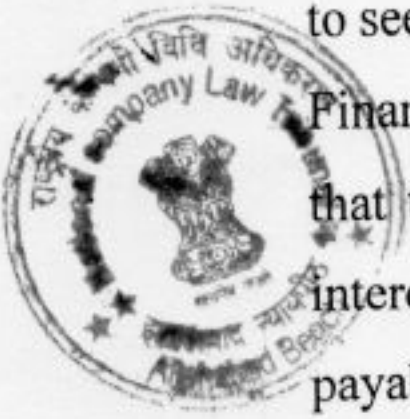
“The scheme of Sec 7 stands in contrast with the scheme under Sec 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in sec 8(1) of the Code. Under Sec 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in Sub Section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing –i.e., before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor goes out of the clutches of the Court.

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 further debt. It is only when this is proved to the satisfaction of the adjudicating authority may reject an application and not otherwise”.

11. In the case of *Ajay Agarwal vs. Central Bank of India* (2018) 208 Comp Cas 402 (NCLAT) Hon'ble NCLAT held :

“When in case a “Corporate Debtor” commits a default of 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. Other considerations, such as the existence a dispute or discrepancy are irrelevant, so long it has not been disputed the same debt is due and is payable to the financial creditor and the corporate debtor has defaulted.”

12. Therefore, in view of the aforesaid decisions, I would like to consider whether petitioner has succeeded in establishing the fact that there is financial debt or default in part of corporate debtor in making payment of debt.



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13. From the perusal of averments made in the application filed on behalf of petitioner, in counter affidavit filed by the respondent and reply to the counter affidavit filed by the petitioner, this adjudicating Authority finds, in Para 37 of the Counter affidavit that the Corporate Debtor admits that debt and offered to settle the amount and his only grievance is in respect of amount. According to the Corporate Debtor, the amount is wrongly mentioned and the Corporate Debtor has not disputed about the debt.

14. Hence, the application filed on behalf of financial creditor/Applicant under Section 7 of IBC is found complete. It further appears that there is default in non-payment of the debt owed by the corporate debtor, applicant has annexed sufficient evidence to show the default on behalf of the corporate debtor. Therefore application filed U/S 7 of IBC deserves to be admitted.

15. The Financial Creditor has proposed the name of **Mr Manish Agarwal, Registration Number IBBI/IPA-002/IP-N00223/2017-18/10904** for appointment as Interim Resolution Professional(IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. *(Copy of Form -2 is annexed as Annexure-2 of the Application)* and there is default in the payment of the financial debt which is more than Rs One Lakh. Therefore, as per section 7(5)(a)



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of the code, the present application filed U/s 7 of the IB Code is admitted.

16. **Mr Manish Agarwal, Registration Number IBBI/IPA-002/IP-N00223/2017-18/10904** is appointed as Interim Resolution Professional(IRP). Further, a moratorium under the provision of section 13 & 14 of the Code is declared prohibiting the following:

- i. *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 Act, 2002(54 of 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.*

It is further directed that:

- (i) *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period*



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(ii) The provision of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.

17. The IRP shall comply with the Provision of Section 13(2), 15,17 &18 of the Code. Further, the Directors, Promoters or any person associated with the Management of the Corporate Debtor are directed to cooperate to the IRP as prescribed under Section 19 and for discharging his function under a provision of section 20 of the Code.



18. The Registry is further directed to communicate the copy of this order to Financial Creditor and Corporate Debtor and IRP through email and speed post.

19. List on 15.10.2019 for the filing of the progress report.

Date : 27.09.2019

— SD —

Abni Ranjan Kumar Sinha
(Member Judicial)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

Ravinder Kumar
27/09/2019

Ravinder Kumar
Court Officer
National Company Law Tribunal
Allahabad.

Compared by me
Shikha
27/09/19

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