

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

**CP (IB) No. 59/Chd/Pb/2022
Under Section 7 of the
Insolvency & Bankruptcy
Code, 2016**

In the matter of:

**Canara Bank
through its Assistant General Manager
Sh. Arvind Kumar.**

Having its Head Office at 112,
J.C. Road, Bangalore, and
office at:

Asset Recovery Management Branch
Circle Office, Plot No.1, 4th Floor,
Sector 34, Chandigarh.

....Petitioner-Financial Creditor

Vs.

**M/s Rattan Poultries Pvt Ltd.
through its Managing Director.**

having its Registered Office at:
Village Sadatpur, Teshil Malerkotla
District Sangrur.

CIN No: U01222PB1999PTC022555

...Respondent-Corporate Debtor

Judgment delivered on: 07.02.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing:

For the Petitioner-Financial Creditor : Mr. Yogesh Kumar, Advocate

For the Respondent-Corporate Debtor : Proceeded *ex parte* vide
order dated 23.11.2022

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed by **Canara Bank** (hereinafter referred to as '**Petitioner/Financial Creditor**') through its Assistant General Manager Sh. Arvind Kumar under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **M/s Rattan Poultries Pvt Ltd.** (hereinafter referred to as '**Respondent/Corporate Debtor**'). The petition is signed by Mr. Arvind Kumar, AGM with the affidavit verifying the contents of the application appended thereto.

2. The Corporate Debtor is stated to be incorporated on 12.05.1999 under provisions of the Companies Act, 1956. The company having its registered address at having its Registered Office at Village Sadatpur, Teshil Malerkotla, District Sangrur. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is attached as Annexure-3 of the petition.

3. Brief facts of the case are that the corporate debtor was having a regular account with the petitioner since 2010. The corporate debtor ran into financial trouble and in the year 2015, the corporate debtor requested the petitioner for restructuring of loan facilities, including a working capital facility and an already existing term loan with fresh term loan. The financial creditor after verifying company records granted a financial facility of Rs.15,81,99,000/- in form of OCC of Rs.500 Lakhs, Term Loan-I of Rs.335 Lakhs, Term Loan-II of Rs.475 Lakhs, Term Loan-III of Rs.165 Lakhs, WTCL of Rs.106.99 Lakhs, DPN Agry Rs.100 Lakhs. The total liability as on 09.02.2022 was of Rs.1987.03 Lakhs. The terms

and conditions were conveyed to the corporate debtor vide Sanction Letter dated 30.06.2015. For the financial facility of Rs.15,81,99,000/- the corporate debtor executed the following documents:- Sanction Letter dated 30.06.2015, Debt Restructuring Agreement dated 04.07.2015, Debtor-Creditor Agreement dated 04.07.2015 & Letter of Undertaking for Restructuring of Loan dated 04.07.2015. The Directors of the corporate debtor gave their personal guarantees of Rs.15,81,99,000/-, vide guarantee agreement dated 04.07.2015. In the year 2018, the corporate debtor was further granted a DPN Facility of Rs.100 Lakhs, taking the overall financial facility to Rs.16,81,99,000/-. The corporate debtor became irregular in making payments and was classified as Non-Performing Asset on 09.02.2019. The proceedings under SARFAESI Act, 2002 were initiated on 12.02.2019 and 29.03.2019. The financial creditor filed Original Application No.1858 of 2019 before Debt Recovery Tribunal, Chandigarh on 27.06.2019. The corporate debtor still failed to repay the amount and Rs.1987.03 Lakhs is outstanding financial debt as on 09.02.2022.

4. It is stated in Part-IV of Form No.1 that the total amount claimed to be in default is Rs.19,87,03,000/- (Rupees Nineteen Crores Eighty-Seven Lakhs Three Thousand Only as on 09.02.2022 plus further interest and expenses from 10.02.2022) and the date of default is 10.11.2018 i.e. default in one of the Term Loan Accounts Bearing No.2112796000003 of the corporate debtor on 10.11.2018 and after that, all other facilities of the corporate debtor were classified as Non-Performing Asset by Canara Bank on 09.02.2019. Copy of Account statement (Annexure-5), CIBIL (Annexure-8), Loan Application (Annexure-9), Sanction letter (Annexures-10), Resolution (Annexures-11 & 17), Debt restructuring agreement (Annexure-12), debtor-creditor agreement (Annexures

-13), Guarantee agreements (Annexures - 15 & 20), Hypothecation agreement (Annexure-19) & Sale-Deed (Annexure-21) are attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor to show cause as to why this petition be not admitted. The Affidavit of service was filed vide Diary No. 00265/3 dated 22.08.2022. Vide order dated 28.09.2022, the last opportunity was granted to the respondent corporate debtor for filing the reply. But neither the reply was filed nor the respondent corporate debtor appeared, therefore, the respondent-corporate debtor proceeded against ex parte. The short written submissions were filed by the petitioner vide Diary No.00265/4 dated 10.11.2022.

6. We have heard the learned counsel for the petitioner and have also perused the record carefully.

7. 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.”*

8. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is 10.11.2018 i.e. default in one of the Term Loan Account Bearing No.2112796000003 of the corporate debtor on 10.11.2018 and after that, all other facilities of the corporate debtor were classified as Non-Performing Asset by Canara Bank on 09.02.2019. The present petition is filed vide diary No.00265 dated 18.02.2022 and was re-filed on 08.03.2022. The period from 15.03.2020 till 28.02.2022 stands excluded by virtue of an order dated 27.04.2021 passed by the Hon'ble Supreme Court in **“In Re: Cognizance for Extension of limitation registered as**

Suo-Moto Writ Petition (C) No. 3/2020. The operative portion of the order passed by Hon'ble Apex Court on 27.4.2021 is as follows:-

“We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant-public in all the states. We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.”

Further in M.A. 21 of 2022, Hon'ble Supreme Court held:-

“In continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings”.

Therefore, this Adjudicating Authority finds that this application is filed well within the time of limitation.

9. Another issue for consideration is whether there is a default in payment or not. It is observed from the record that in the present case, the default is evidenced by Account statement (Annexure-5), CIBIL (Annexure-8), Loan Application (Annexure-9), Sanction letter (Annexures-10), Resolution (Annexures-11 & 17), Debt restructuring agreement (Annexure-12), debtor-creditor agreement (Annexures -13), Guarantee agreements (Annexures - 15 & 20), Hypothecation agreement (Annexure-19), Sale-Deed (Annexure-21) are attached with the main petition. As per the financial records, it is evident that an amount of Rs.19,87,03,000/- (Rupees Nineteen Crores Eighty-Seven Lakhs Three Thousand Only as on 09.02.2022) is still amounts to default.

10. The application filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary proceedings pending

against the proposed Resolution Professional. In the present case, in Part III of Form 1, Mr. Sanjay Kumar Aggarwal has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 03.02.2022 along with the certificate of IBBI issued in favour of the proposed Interim Resolution Professional. Form-B had been filed vide Diary No.00265/5 dated 13.01.2023. The Law Research Associate of this Tribunal has checked the credentials of Mr. Sanjay Kumar Aggarwal, and there is nothing adverse against him. In view of the above, we appoint Mr. Sanjay Kumar Aggarwal, Registration No. IBBI/IPA-002/IP-N00126/2017-18/10295, Email: sanjayaggarwal.fcs@gmail.com, Mobile No. 98761-05414, the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Sanjay Kumar Aggarwal 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 the 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 morals;
- 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 Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained

under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital

Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

- viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the

first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and

- ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

11. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

- 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 Operational Assets and Enforcement of Security Interest Act, 2002; and
- 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.
- e) 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 the 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 operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

- f) 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 passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

12. We direct the Financial Creditor to deposit a sum of ₹2,00,000/- (Rupees Two Lakhs Only) with the Interim Resolution Professional, to meet out the expense 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 amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

13. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

14. The petition is admitted accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

February 07 , 2023

SD/TB

Sd/-
(Harnam Singh Thakur)
Member (Judicial)