

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-II

CP (IB) 2808/MB/C-II/2018

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

In the matter of

Pegasus Assets Reconstruction Private Limited

[CIN: U65999MH2004PTC144113]

...Financial Creditor
(Petitioner/Applicant)

Versus

Panche Aluminium Extractions Private Limited

[CIN: U27101PN2009PTC138957]

...Corporate Debtor (Respondent)

Order Delivered on 31.12.2019

Coram:

Hon'ble Member (Judicial) : Mr. M.K. Shrawat
Hon'ble Member (Technical) : Mr. Chandra Bhan Singh

Appearances:

For the Financial Creditor : Mr Rohan Agrawal, Mr Prakash Shinde Advocates i/b MDP & Partners

For the Corporate Debtor : Mr Pratap Sampat a/w Ms Aarti Suvarna Advocates

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This is a Company Petition filed by the Petitioner/Applicant i.e. Dena Bank. The Petitioner has furnished Form 1 under Rule 4 (Application to Adjudicating Authority Rules 2016) under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC), in the capacity of Financial Creditor on 24.07.2018. However, the Financial Creditor after filling the Company Petition under section 7 of IBC



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04.01.2019, assigned and transferred account of the Corporate Debtor to Pegasus Assets Reconstruction Private Limited (ARC). This substitution of Dena Bank with Pegasus Assets Reconstruction Private Limited ("the Financial Creditor") was allowed by this Bench vide Order dated 24.07.2019. The Financial Creditor is seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Panche Aluminium Extractions Private Limited ("the Corporate Debtor").

2. In the requisite Form, Under the Head Particulars of "Financial Debt" a total amount of claim of Rs.34,29,13,199.91 (Rupees thirty-four crore twenty-nine lakh thirteen thousand and one hundred and ninety-nine and paise ninety-one only) as on 09.07.2018 has been mentioned this is inclusive of a rate of interests of 13.75% p.a. for Cash credit component and of 14.25% p.a. for Term Loan component at a penal interest of 2%. The date of default of this loan is stated to be 01.11.2014. Details of default and computation of total amount as follows:

Particulars of Loans	Uncharged Interest form 01.10.2014 to 30.06.2018	Penal Interest from 01.10.2014 to 30.06.2018	Total Claim amount
Cash Credit @13.75% p.a.	14,10,69,986.89	1,01,90,414.00	24,29,74,410.89
Term Loan @14.25% p.a.	5,57,95,622.02	51,82,153.00	6,09,77,775.02
Legal Charges			15,00,000.00
Total			34,29,13,199.91



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3. The Corporate Debtor is a Private company limited by shares and incorporated on 26.08.2009 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U27101PN2009PTC138957. Its registered office is at Survey No. 187, Plot No. 1, Shivaji Nagar Road, Village – Ahire, Taluka – Khandala, Khandala - 412802. Therefore, this Bench has jurisdiction to deal with this petition.
4. **Submissions made by the Financial Creditor: -**
 - 4.1 The Financial Creditor had on 17.02.2010 sanctioned First Working capital loan of Rs.10,00,00,000/- (Ten crore only) and a Term loan facility of Rs.15,00,00,000/- (Fifteen crore only).
 - 4.2 The Financial Creditor had on 15.10.2013, enhanced Cash Credit facility from Rs. 8.68 Crore to Rs. 14.25 Crore. The Corporate Debtor defaulted on 01.11.2014 in repayment of the interest as well as the principal as per the schedule of repayment.
 - 4.3 Thereafter on 29.02.2016 a Notice was sent by the Financial Creditor to Corporate Debtor for recalling the Credit/Loan facility demanding Rs.25,72,44,083.83 (Rupees twenty-five crores seventy-two lacs forty-four thousand and eighty-three and paise eighty-three only). Thereafter, vide letter dated 10.06.2016 the financial creditor informed the Corporate Debtor that the date of Non-Performing Assets (NPA) is 31.01.2015.
 - 4.4 Agreement of Hypothecation (Goods, Bookdebts and other Movable Assets) dated 04.08.2010 had also been executed by the Corporate Debtor.
 - 4.5 The Directors of the Corporate Debtor had also executed personal guarantees dated 26.10.2013.



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- 4.6 Certificate under section 2A(a) & 2A(b) of the Bankers' Books Evidence Act, 1891, has been placed on record.
- 4.7 The Financial Creditor in furtherance of his case has enclosed copies of CIBIL Report of the Corporate Debtor which clearly testifies to the "Debt" and also "Default" on the part of the Corporate Debtor exists in the books of the Bank for the Cash Credit and Term Loan extended.

Submissions made by the Corporate Debtor: -

5. In its reply dated 23.09.2019, the Corporate Debtor has set up the following defence: -
- 5.1 The Corporate Debtor company is MSME company engaged in the business of manufacturing aluminium section for multiple application. The company was running under losses and therefore, the Financial Creditor had invoked provisions of SARFAESI Act and DRT Act and that, the Financial Creditor has taken symbolic possession as security, the factory premises. The subject matter is under litigation before the DRT Mumbai in SA No. 131 of 2016 and OA No. 883 of 2016, pending such litigation, the Financial creditor filed the Present application under the IBC Code.
- 5.2 Further, the Corporate Debtor submits that the Company has sufficient assets base and is operating their factory with over 100 workers. The Corporate debtor mentioned that no economic purpose will be served in giving relief under IBC Code by appointing an insolvency resolution professional at this stage.
- 5.3 The Corporate Debtor further submits that while in process of adjudicating the said application, the Corporate Debtor made several proposals to the Bank for settlement of their account on the basis of the guidelines given by the RBI. However, the bank has rejected the said proposals without considering the fact of



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the business exigencies as also the directions of the RBI in settling the accounts of the Micro, Small and Medium Enterprises (MSME).

Findings: -

6. The Bench heard the arguments of the Financial Creditor and perused the records.
7. It is noted from the CIBIL report that the Corporate Debtor is in "Debt" and also "Default" of the bank. The Corporate Debtor further submits that it was not in a position to repay the debt due to loss in business.
8. Upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the Corporate Debtor having availed the Cash Credit and Term Loan facility from the Financial Creditor. The Corporate Debtor has also submitted that it could not repay the same due to loss in business.
9. While it is admitted by the Financial Creditor that Restructuring and Settlement proposals have been submitted by the Corporate Debtor, the same has been rejected by the Financial Creditor During the hearing of the petition, the Counsel for the Financial Creditor submitted that the Financial Creditor has duly considered the proposals submitted in the light of RBI's circular on MSME and have found the same to be unacceptable.
10. The Financial Creditor has proposed the name of **Mr Anuj Bajpai**, Registration No. IBBI/IPA-001/IP-P00311/2017-2018/10575, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.



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11. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
12. The petition bearing CP (IB) 2808/MB/C-II/2018 filed by **Pegasus Assets Reconstruction Private Limited**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Panche Aluminium Extractions Private Limited [CIN: U27101PN2009PTC138957]**, the Corporate Debtor, is **admitted**.
13. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - i. 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;
 - 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 (SARFAESI) Act, 2002;



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- iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
14. Notwithstanding the above, during the period of moratorium: -
- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
15. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
16. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
17. **Mr Anuj Bajpai**, Registration No. IBBI/IPA-001/IP-P00311/2017-2018/10575, having address at 1006, Raheja Centre, Nariman Point, Mumbai - 400021, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.



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18. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
19. The Financial Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
20. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
21. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.
22. Ordered accordingly.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

31.12.2019
SAM



Sd/-
M.K. SHRAWAT
Member (Judicial)

Certified True Copy
Copy Issued "free of cost"
On 02/01/2020


Assistant Registrar

National Company Law Tribunal Mumbai Bench