

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

**CP (IB) No. 276/Chd/Pb/2020**

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

**IN THE MATTER OF:**

Bank of India, Muktsar, Punjab  
(IFSC Code: BKID0006530)  
having its head office at  
Star House, C-5, "G" Block,  
Bandra Kurla Complex, Bandra (East),  
Mumbai 400 051

Through its authorized Officer  
Sh. Ranvir Singh, Assistant General Manager,  
SCO 49, Phase 9, SAS Nagar, Mohali

...Petitioner/Financial Creditor

vs.

Ekam Agro Private Limited  
Kalra's Complex  
Jalalabad Road, Muktsar  
Punjab -152026

....Respondent/Corporate Debtor

**Judgement delivered on: 20.02.2024**

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

**Present:**

For the Petitioner/Financial Creditor: Mr. K.P.S. Dhillon, Advocate  
For the Respondent/Corporate Debtor: Mr. Vishav Bharti Gupta, Advocate

**Per: Harnam Singh Thakur, Member (Judicial)  
Umesh Kumar Shukla, Member (Technical)**

## **JUDGEMENT**

The present petition has been filed, vide diary no. dated 18.03.2020 by **Bank of India**, Muktsar, Punjab (IFSC Code: BKID0006530), having its head office at Star House, C-5, G Block, Bandra Kurla Complex, Bandra (East) Mumbai (hereinafter referred to as the “**Petitioner/ Financial Creditor**”) through his Authorized Officer Sh.Ranvir Singh, Assistant General Manager, Mohali Branch under Section 7 of The Insolvency and Bankruptcy Code, 2016, (“Code”) read with Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process (‘CIRP’) against **Ekam Agro Private Limited**, (CIN No. U01400PB2012PTCO36864) (hereinafter referred to as the “**Respondent/ Corporate Debtor**”).

2. The Corporate debtor was incorporated, vide letter of incorporation dated 27.11.2012, issued by the Registrar of Companies, Punjab and Chandigarh under the Companies act 1956 and at present has its registered address at Kalra’s Complex, Jalalabad Road, Muktsar, Punjab. Therefore, the jurisdiction lies with this Adjudicating Authority.

### **FACTS OF THE CASE**

3. The facts of the case, as stated in the petition by the Financial Creditor, are as below:

- (i) The Petitioner on the request of Corporate Debtor sanctioned the credit facility by way of term loan amounting to Rs.11 crores and cash credit limit of Rs.4 crores vide sanction letter dated 22.02.2017 in favour of the Corporate Debtor.

- (ii) As per the terms and conditions of the sanction letter, the Corporate Debtor executed the security documents i.e. hypothecation-cum-loan-agreement, demand promissory notes, loan agreements, declarations, MCLR agreements and guarantee agreements by guarantors on 22.02.2017, which are annexed as Annexure 1-A(2) to 1-A(26) of the petition.
- (iii) Further on the request of the Corporate Debtor, the Petitioner issued the sanctioned letter dated 30.05.2019 for the following credit facilities-

Particulars		Existing	Proposed
<b>Fund based Limit (term loan)</b>			
1	Term Loan-I	5.87	4.69
2	Term Loan-II	3.86	3.43
3	FITL	-	0.91
4	WCTL	--	0.93
<b>Total Term Loan</b>		<b>9.73</b>	<b>9.96</b>
<b>WC Fund based Limit</b>			
1	CC-Stocks	14.00	14.00
2	CC-Book Debts upto 90 days	9.00	9.00
<b>Total/Max WCFB</b>		<b>14.00</b>	<b>14.00</b>
<b>Total FB(TL+WCFB)</b>		<b>23.73</b>	<b>23.96</b>
<b>NFBL</b>		<b>--</b>	<b>--</b>
<b>Total Aggregate/Max</b>		<b>23.73</b>	<b>23.96</b>

- (iv) The Corporate Debtor as per the terms and conditions of the sanction letter, executed the loan security documents and the guarantors also executed the guarantee agreements to secure the loan. The loan documents dated 31.05.2019 were executed consequent upon the sanction letter dated 30.05.2019 are annexed as Annexure 1-(A-27) to 1-(A-59) of the petition.

- (v) The Corporate Debtor also executed/ signed guarantee agreement with 15 persons/ corporate guarantors.
- (vi) The Corporate Debtor has failed to maintain the financial discipline and has also failed to repay the outstanding credit facilities despite making repeated commitments. Therefore, Financial Creditor issued the notice to the Corporate Debtor dated 09.09.2019 recalling all the facilities extended to the Corporate Debtor from time to time.
- (vii) The loan accounts of the Corporate Debtors were declared as NPA accounts on 31.08.2019 and consequently the Financial Creditor issued notice and as on the date of NPA the outstanding amount was Rs.24,64,45,263/- and as on 29.02.2020, the outstanding and claimed amount is Rs.24,66,36,938/-.
- (viii) The Corporate Debtor has failed to make good the financial default in the payment of the dues of the Financial Creditor and other members of the Consortium.
- (ix) The date of default and amount on the date of default, as mentioned in Part-IV of Form1 annexed with the petition, are 31.08.2019 (i.e. the date of NPA) and Rs.24,66,36,938.41 respectively.
- (x) The Corporate debtor has proposed Shri Mohit Chawla, an Insolvency Professional registered with Insolvency and Bankruptcy Board of India, having registration no. IBBI/IPA-001/IP-P00524/2017-2018/10948 as Interim Resolution Professional.

4. The Adjudicating Authority, vide its order dated 12.09.2022, has set the respondents as ex-parte.

5. Subsequently, IA No. 744/2023 was filed, vide diary no. 00397 dated 14.02.2023, by the Corporate Debtor under Section 60(5) of IB Code read with Rule 11 of the NCLT Rules seeking for setting aside the ex parte order dated 12.09.2022.

6. Adjudicating Authority, vide its order dated 24.08.2023, after hearing the submissions made by the counsel for both the parties and having considered the arguments and prayers made in the application, set aside the ex parte order dated 12.09.2022 and restored the matter to the normal records.

#### **REPLY OF THE RESPONDENTS**

7. The Respondent Company/ Corporate Debtor filed its reply supported with an affidavit vide diary no. 02225/2 dated 12.05.2022, wherein it is stated that the company is into the manufacturing of oil refinery. The financial debt as mentioned in the petition is admitted to the extent that the Financial Creditor bank has declared the account of the Corporate Debtor as NPA on 31.08.2019, wherein the amount of default is mentioned as Rs.24,66,36,938.41/- and total amount of default to be claimed as on 29.02.2020 is mentioned as Rs.25,97,10,987.35/- The Respondent has further stated that due to a financial crunch, it is unable to repay the alleged loan of the Financial Creditor.

#### **ANALYSIS AND FINDING**

8. We have heard the Ld. Counsels for both parties and gone through the facts and materials of the case available on record.

9. First point for determination is **“Whether the present petition is filed within limitation”**. The date of default as recorded in Part-IV of Form 1 annexed with the application is 31.08.2019 and present petition is filed on 18.03.2020 vide diary no. 2145. Thus, the present petition is within the limitation period of three years.

10. Next point for determination is **“Whether there is debt and default thereto”**. Bare perusal of the provisions under section 7 of IBC shows that in order to initiate CIRP under Section 7, the Applicant is required to establish that there is a financial debt exceeding Rs. one crore and that a default has been committed in respect of that financial debt. In the present case, the material on record (Form-I and the documents annexed with the application) clearly goes to show that Corporate Debtor had availed the loan and has committed default in repayment of the outstanding loan amount i.e Rs.24,66,36,938.41/- on the date of default. It is observed from the records placed before this adjudicating authority that the debt is disbursed to the Corporate debtor, as is evidenced from the copy of application for loan [Annexure 1A-(1)], Sanction Letter dated 22.02.2017 [Annexure 1A-(2)], Hypothecation-cum-Loan Agreement [Annexure 1A-(3),1A-(57)], Loan Agreement dated 22.02.2017 [Annexure 1A-(6),1A-(10), 1A-(14),1A-(18), 1A-(22),1A-(23), 1A-(46),1A-(56)], Statement of Account [Annexure-1A-(80) to 1A-(86)], and Deed of Guarantee dated 22.02.2017 [Annexure-1A-(11),1A-(49),1A-(59)]. The aforementioned financial records clearly establish that the disbursement was made to the Corporate debtor as a debt to be repaid to the financial creditor. Moreover, the Corporate Debtor has itself admitted to the existence of debt and the factum of default. As per the reply, the Corporate debtor has shown its inability to repay the loan due to financial crunch.

11. We are satisfied that the present application is complete in all respects and the Financial Creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

12. Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Mohit Chawla for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P00524/2017-2018/10948. The Proposed IP has a valid Authorisation for Assignment (AFA), which is valid up to 30.11.2024. The Law Research Associate of this Tribunal has checked the credentials of Mr. Mohit Chawla and there is nothing adverse against him.

### **ORDER**

13. This Adjudicating Authority is satisfied that a default has occurred and the application under sub-section (2) of section 7 of The Insolvency and Bankruptcy Code, 2016 is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, therefore, order admission of section 7 application filed by Bank of India for initiation of CIRP against Ekam Agro Private Limited.

14. Accordingly, this Adjudicating Authority, hereby appoints Mr. Mohit Chawla (Email:[ipservices@embeegroup.in](mailto:ipservices@embeegroup.in), Mobile:9888003303), to act as Interim Resolution professional, with the following directions:

- I. The term of appointment of Mr. Mohit Chawla shall be in accordance with the provisions of Section 16(5) of the Code, subject to his written consent to be filed within 7 days of this order;

- 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. A reference is made to the provisions of Section 128(5) of the Companies Act 2013, whereby every company should maintain its books of accounts for not less than eight financial years immediately preceding a financial year. Minutes and statutory records are the principal documents of the company that should be maintained and preserved since inception.

- VII. In view of the above mandatory provisions, the suspended directors of the board will ensure that the books of accounts for the eight previous financial years preceding the date of this order be made available to the IRP/ RP within 15 days of the initiation of the CIRP order. The statutory auditor is also directed to share the records maintained by him in the course of the audit of the accounts of the corporate debtor for the period of three years prior to the date of initiation of this CIRP order within the same period of 15 days.
- VIII. 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.
- IX. The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request 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.

- X. 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 constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and
- XI. The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

15. 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.

16. In terms of Section 14 of the code, we also order moratorium as below:

- (i) Moratorium under section 14 (1) for prohibiting all of the following, namely:
  - (a) 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;

- (b) transferring, encumbering, alienating or disposing off 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
- (ii) It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, concession, clearances or a similar grant or right during the moratorium period;
- (iii) The provisions of sub-section of section 14(1) shall not apply to such transactions, agreements or other arrangement, as may be notified by the Central Government in consultation with any financial sector regulator or any other authority; and also to a surety in a contract of guarantee to a corporate debtor.

- (iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances, as may be specified.
- (v) 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 the corporate debtor under Section 33 as the case may be.

17. The Financial Creditor is hereby directed to deposit a sum of ₹1,00,000/- (Rupees One Lakh 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.

18. The Registry 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, Punjab and Chandigarh at the earliest possible but not later than seven days from today. 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. Let a copy of the order be served to the parties.

19. Accordingly, the instant application filed under Section 7 of the Code, 2016 stands admitted.

*-Sd-*  
**(Umesh Kumar Shukla)**  
**Member (Technical)**

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

February 20, 2024

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