

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.986/MB-IV/2020

Under Section 7 of the I&B Code, 2016

In the matter of:

Punjab National Bank

[PAN: AAACP0165G]

...Financial Creditor/Applicant

V/s

Mak Glit Chem (India) Pvt. Ltd.

[CIN: U24412MH1994PTC081486]

...Corporate Debtor/Respondent

Order pronounced on: 05.01.2023

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Ms. Mahima Shah, Advocate i/b
Intra Legal

For the Respondent(s) : Mr. Manoj Mishra, Advocate

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being C.P. (IB) No. 986/NCLT/MB/C-IV/2020 filed by Punjab National Bank, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against

Mak Glit Chem (India) Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Application is filed by Mr. Dharmesh Mani Dwivedi, authorized by the Financial Creditor vide Authorization Letter dated 11.03.2020, claiming default amount of Rs.8,35,17,237.15 (Rupees Eight Crore Thirty-Five Lakhs Seventeen Thousand Two Hundred and Thirty-Seven and Fifteen Paisa) as on 13.03.2020.
3. The date of Default is 31.07.2018. The petition is filed on 16.03.2020.
4. The case of the Financial Creditor is as under:
 - a) It is submitted that the Corporate Debtor/Respondent approached the Financial Creditor/Petitioner for grant/sanction of Term Loan of Rs.4.80 Crores and Cash Credit Limit of Rs.2.00 Crores, total credit facility to the extent of Rs. 6.80 Crores. The Financial Creditor considered the request of the Corporate Debtor and granted/sanctioned the Term Loan of Rs.4.80 Crores and Cash Credit Limit of Rs.2.00 Crores vide sanction letter dated 09.02.2016 enclosed as '*Exhibit-B*' to the Petition.
 - b) To secure the aforesaid credit facilities, the Corporate Debtor alongwith its Directors and Personal Guarantors executed various loan and security (mortgage) documents on 11.02.2016 in favour of the Financial Creditor. The details of documents are reproduced hereunder: -
 - i. Term Loan Agreement;
 - ii. Agreement of Hypothecation to secure Term Loan;
 - iii. Hypothecation of Goods and Book Debts to secure Cash Credit Limit

iv. Deed of Mortgage

- c) The Corporate Debtor availed and enjoyed the aforesaid credit facilities but failed to repay the dues despite repeated requests as a result of which the loan accounts of the Corporate Debtor were classified as Non-Performing Assets (NPA) on 30.06.2017 as per Reserve Bank of India prudential norms. The Corporate Debtor issued Notice u/s 13 (2) of the SARFAESI Act of 2002 thereby demanding and recalling the Corporate Debtor to repay the entire outstanding dues within 60 days. Despite receipt of said Demand Notice, the Corporate Debtor neither replied to the said Demand Notice nor repay the outstanding dues.
- d) The Financial Creditor has enclosed the Statement of Accounts for the aforesaid credit facilities granted to the Corporate Debtor which shows that the amount claimed in the Petition is in consonance with the Statement of Account. The Petitioner has also enclosed the CIBIL report, NESL report and Certificate under the Banker Book Evidence Act, 1891. Hence this Petition.

Reply by the Corporate Debtor

5. The Corporate Debtor through its Director filed affidavit in reply thereby denying each and every allegation of the Petition and submits that the Petitioner has not come with clean hands, therefore, this Company Petition is liable to be dismissed on certain grounds.
- a. The default by the Corporate Debtor has arisen merely due to the default in disbursement committed by the Financial Creditor;
- b. The Financial Creditor has illegally created mortgage in respect of the assets which does not belong to the Corporate Debtor even the

Financial Creditor did not even bother to carry out the search of title deed of the property before mortgaging the same. Due to such illegal activities on the part of the Financial Creditor by mortgaging certain properties which were not even in the name of the Corporate Debtor nor were in the possession of Corporate Debtor, the Corporate Debtor got entangled into a number of litigations with the actual owners;

- c. The Financial Creditor has managed the account of the Corporate Debtor and inefficient manner so that Corporate Debtor suffered the loss of entire business due to inefficient handling of the facility by the Financial Creditor;
- d. The Financial Creditor failed to honour its commitment for the full disbursement of Rs. 4.80 Crores. Due to its failure, the Corporate Debtor could not complete its project and resulted into the scrap of entire project and the total disbursement took place for the following amounts only;

Sr. No.	Date	Amount (in Rupees)
1.	11.02.2016	1.50 Crores
2.	26.02.2016	0.15 Crores
3.	26.02.2016	0.35 Crores
4.	17.03.2016	1.04 Crores
5.	18.03.2016	0.32 Crores
6.	30.03.2016	0.40 Crores
7.	30.03.2016	0.40 Crores
	Total	4.16 Crores

- e. The Financial Creditor, since beginning had acted absolutely against the business of the Corporate Debtor. As per sanction letter dated 09.02.2016, it is clear that repayment was to take place in 60 monthly instalments of Rs.8 Lakh each commencing after moratorium of 1

year from the date of disbursement. In this case, the disbursement took place till 30.03.2016 whereas the Financial Creditor started charging penal interest w.e.f. 31.03.2016 itself, this itself shows that the charging of penal interest right from the date of disbursement will affect the Corporate Debtor to start the business.

- f. The financial creditor has not complied with the requirement of section 7(3) of the Code. In this case, the record of default has not been furnished.
- g. The account of the Financial Creditor has declared NPA on 30.06.2017, whereas the default has occurred more than one year after NPA on 31.07.2018. This must be a unique, rare and illegal classification of the NPA absolutely against the guidelines of Reserve Bank of India.
- h. The consent form of the Resolution Professional in Form-2 is not in the prescribe form as required by the Insolvency Bankruptcy Code, 2016 and the authorization is also valid only till 20.01.2021, which is expected to expire very soon.

Findings: -

- 6. We have heard the Ld. Counsel for both the sides at length and also prudently gone through the pleadings available on records.
- 7. The Financial Creditor granted/sanctioned the Term Loan of Rs.4.80 Crores and Cash Credit Limit of Rs.2.00 Crores aggregating to the extent of Rs. 6.80 Crores. To secure the aforesaid credit facilities, the Corporate Debtor alongwith its Directors and Personal Guarantors executed various loan and security (mortgage) documents on 11.02.2016 in favour of the Financial Creditor. The Corporate Debtor availed and enjoyed the

aforesaid credit facilities but failed to repay the dues despite repeated requests as a result of which the loan accounts of the Corporate Debtor were classified as Non-Performing Assets (NPA) on 30.06.2017 as per Reserve Bank of India prudential norms. The Financial Creditor issued Notice u/s 13 (2) of the SARFAESI Act of 2002 thereby demanding and recalling the Corporate Debtor to repay the entire outstanding dues within 60 days. Despite receipt of said Demand Notice, the Corporate Debtor neither replied to the said Demand Notice nor repay the outstanding dues.

8. The Corporate Debtor objected to the Petition and claimed that this Petition is liable to be dismissed in *limine*. The only contention of the Corporate Debtor is that the Financial Creditor failed to disburse the sanctioned amount in full, due to this the Business of the Corporate Debtor was affected and the account became classified as NPA. However, the Corporate Debtor in its reply also acknowledges that Rs.4.16 Crores has been disbursed in the account of the Corporate Debtor. It clearly shows the liability on the part of Corporate Debtor for repayment of its dues. Thus, there is a clear debt and default on the part of the Corporate Debtor. This Bench is satisfied with the Application as required under Section 7(5)(a) of the Code and hence Petition deserves to be admitted.
9. The Petition is filed on 16.03.2020 and the date of default of is 31.07.2018. The Petition is filed well within the period of limitation i.e. 3 years prescribed under the Limitation Act, 1963.
10. The Financial Creditor has proposed the name of Mr. Udaykumar Bhaskar Bhat, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01425/2018-2019/12234] as

Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

- a) This Application being C.P. (IB) No. 986/NCLT/MB/C-IV/2020 filed by Punjab National Bank, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Mak Glit Chem India Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

- 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 Financial Assets and Enforcement of Security Interest Act, 2002;
- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Mr. Udaykumar Bhaskar Bhat, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01425/2018-2019/12234] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

- e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five 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).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-

Manoj Kumar Dubey
Member (Technical)

/NP/
05/01/2023

Sd/-

Kishore Vemulapalli
Member (Judicial)