



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-623/(ND)/2021

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

Mr. Bhabani Pigments Pvt. Ltd.

At: A-30, Block B-1, 3rd Floor

Mohan Co-Operative Industrial Estate

Mathura Road, New Delhi- 110044

...Applicant/Financial Creditor

Versus

M/s. Transparents Agro Pvt. Ltd.

At: Farm No 1, Sulatanpur Farms

Gadaipur Mehrauli New Delhi- 110030

...Respondent/ Corporate Debtor

Coram:

Shri. P.S.N Prasad, Member (Judicial)

Shri. Rahul Bhatnagar, Member (Technical)

Counsel for Petitioner: Adv. Ananaya Sachdeva

Counsel for Respondent: Adv. Apoorv Rastogi



ORDER

PER: P.S.N PRASAD, MEMBER (JUDICIAL)

Date: 17.05.2023

1. This petition has been filed by M/s Bhabani Pigments Pvt. Ltd. through Mr. Anant Kanoi, authorised vide Board Resolution dated 03.05.2021 to initiate corporate insolvency resolution process (hereinafter referred to as “CIRP”) against M/s. Transparents Agro Private Limited under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as “the Code”) for the alleged default on the part of the Respondent in repayment of loan of Rs. 4,89,24,986/- (Rupees Four Crores Eighty Nine Lacs Twenty Four Thousand Nine Hundred Eighty Six) along with interest @ 12% per annum. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That on 10.10.2018, a Business Loan Agreement was executed between the Financial Creditor and M/s Emergent Traders Private Limited



wherein the FC granted a loan of Rs. 3,00,00,000/ - (Rupees Three Crores) repayable with interest @ 12% per annum payable at the time of maturity i.e. 31.01.2020.

ii. That the Financial Creditor disbursed an amount of Rs. 3,00,00,000/- to the M/s Emergent Traders Private Limited on 15.10.2018 (Rupees 2,00,00,000/-) and 20.03.2019 (Rupees 1,00,00,000/-) respectively.

iii. Thereafter vide letter dated 01.12.2019, M/s Emergent Traders Private Limited again requested the Financial Creditor for the grant of Short-Term Loan for an amount of Rs.1,50,00,000 (Rupees One Crore Fifty Lacs) for a period of 90 days. Thereafter, a Business Loan Agreement dated 20.12.2019 was executed between the Financial Creditor and M/s Emergent Traders Private Limited for a grant a loan amount of Rs.1,50,00,000/- (Rupees One Crores Fifty Lacs) along with interest of 12% per



annum payable at the time of maturity i.e. 20.03.2020.

- iv. Pursuant to the aforesaid Loan Agreement dated 20.12.2019, a Deed of Guarantee dated 20.12.2019 was executed between the Corporate Debtor (hereinafter also referred as “Guarantor”), the Financial Creditor and the M/s Emergent Traders Private Limited.

Clause 1(ii) of the Deed of Guarantee provides as under: -

"Undertakes to lender that whenever the borrower(s) do/ does not pay any amount which is due and/ or payable under or in connection with the Loan documents and/or does not comply with terms and conditions of the Loan Documents, the Guarantor, without making any delay or demur, shall within three days of demand raised by the Lender, pay the amount to the lender as if he/she were the principal borrower."

- v. Thereafter, vide letter dated 31.01.2020, the Financial Creditor requested the M / s Emergent Traders Private Limited to repay the loan amount of Rs. 3,00,00,000/- along with the



interest amount of Rs. 39,09,836/- as per the agreed terms and conditions of the Business Loan Agreement dated 10.10.2018.

vi. That vide letter dated 29.03.2020, the Financial Creditor again requested M/s Emergent Traders Private Limited to repay the total loan amount of Rs. 4,50,00,000/- along with the accrued interest amount as per the agreed terms and conditions M/s Emergent Traders Private Limited.

vii. The Principal Borrower i.e. M/s Emergent Traders Private Limited, despite receiving letter dated 29.03.2020 neither replied to the letter nor repaid any part of the loan

viii. That Financial Creditor filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 bearing *Company Petition No. (IB) 273 of 2021 titled as M/s Bhabani Pigments Private Limited Vs. M/s Emergent Traders Private Limited* before the

Hon'ble National Company Law Tribunal, New



Delhi on the ground of default in repayment of the loan amount of Rs. 4,89,24,986.

ix. That since M/s Emergent Traders Private Limited has committed default in the repayment of loan of Rs.4,50,00,000, the liability of Corporate Guarantor is also triggered and a sum of Rs. 4,89,24,986.40/ - (*Rupees Four Crores Eighty Nine Lacs Twenty Four Thousand Nine Hundred Eighty Six and Forty Paise*) is due and payable being the Corporate Guarantor to the M/s Emergent Traders Private Limited.

2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions were made:

i. That, the Corporate Debtor had not taken any loan from the Financial Creditor. Corporator Debtor whp stood guarantor to the loan taken by the M/s Emergent Traders Private Limited Financial Creditor had already filed an application under section 7 against M/s Emergent Traders Pvt. Ltd.



It is submitted that Financial Creditor can recover its amount from Borrower itself.

- ii. That the Financial Creditor wants to arm twist the law and use the Insolvency and Bankruptcy Proceedings as a tool to harass the Corporate Debtor by claiming a hefty interest of Rs. 39,24,986 (Thirty-Nine Lakh Twenty-Four Thousand Nine Hundred Eighty-Six) on the loan amount of Rs. 4, 50, 00,000 /- (Rupees Four Crore Fifty Lacs Only) which was orally negotiated with the Financial Creditor on numerous occasions
- iii. That the present application filed by the Financial Creditor is mala fide, devoid of merit and a gross abuse of the process of the law and has been filed with the malicious intent to harass the Corporate Debtor and create undue pressure on the Corporate Debtor

- 3.** We have heard the Ld. Counsel appearing for the Applicant and the Respondent and perused the averments made in the application and reply filed on



behalf of the parties. The Applicant has claimed the default on part of the Respondent for an amount of Rs. Rs. 4,89,24,986/- (Rupees Four Crores Eighty Nine Lacs Twenty Four Thousand Nine Hundred Eighty Six).

4. On perusal of the application, it is observed that the Financial Creditor filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 bearing *Company Petition No. (IB) 273 of 2021 titled as M/s Bhabani Pigments Private Limited Vs. M/s Emergent Traders Private Limited*" before the National Company Law Tribunal, Principal Bench for the same amount of debt and the same was admitted by National Company Law Tribunal, New Delhi vide order dated 06.04.2022
5. It is relevant to refer to para 32 of the judgment of the Hon'ble NCLAT in the matter of *Dr. Vishnu Kumar Agarwal Vs M/s Piramal Enterprises Limited Company Appeal (AT) Insolvency No. 346 of 2018* which is reproduced as under: -



"32. There is no bar in the 'I & B Code' for filing simultaneously two applications under Section 7 against the 'Principal Borrower' as well as the 'Corporate Guarantor(s)' or against both the 'Guarantors'. However, once for same set of claim application under Section 7 filed by the 'Financial Creditor' is admitted against one of the 'Corporate Debtor' ('Principal Borrower' or 'Corporate Guarantor(s)'), second application by the same 'Financial Creditor' for same set of claim and default cannot be admitted against the other 'Corporate Debtor' (the 'Corporate Guarantor(s)' or the 'Principal Borrower'). Further, though there is a provision to file joint application under Section 7 by the 'Financial Creditors', no application can be filed by the 'Financial Creditor' against two or more 'Corporate Debtors' on the ground of joint liability ('Principal Borrower' and one 'Corporate Guarantor', or 'Principal Borrower' or two 'Corporate Guarantor's or one 'Corporate Guarantor' and other 'Corporate Guarantor'), till it is shown that the 'Corporate Debtors' combinedly are joint venture company.



6. The above judgement of Hon'ble NCLAT very clearly states that CIRP cannot be initiated against the Corporate Guarantor for the same debt if CIRP has already been admitted for the same debt against the Principal Borrower.

7. In view of the above, we hereby dismiss the Section 7 petition filed by the petitioner against guarantor.

Let copy of the order be served to the parties.

Sd/-

(Rahul Bhatnagar)
Member (Technical)

Sd/-

(P.S.N Prasad)
Member (Judicial)