

**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
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**IA No. 78/CTB/2019
Connected with
TP No. 197/CTB/2019
Arising out of
CP (IB) No. 4707/MB/2018**

**CORAM: 1. Ms. Sucharitha R. Member (J)
2. Shri Satya Ranjan Prasad Member (T)**

**In the matter of:
INSOLVENCY AND BANKRUPTCY CODE, 2016.**

-And-

**In the matter of:
An application under Section 60(5) of the Insolvency and Bankruptcy Code,
2016.**

-And-

**In the Matter of:
Rashi Steel & Power Limited, a company incorporated under the Companies
Act, 1956 having its registered office and carrying on business at CF 09, Rajeev
Plaza, Bus Stand, Bilaspur CT 495001 IN.**

... .. Corporate Debtor

-VERSUS-

**PUNJAB NATIONAL BANK, a bank incorporated under the Banking
Companies (Acquisition and Transfer of Undertakings) Act, 19709 Act V of
1970) having its registered office at Sector 10 Dwarka, New Delhi, 1110075, *inter***

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alia branch office at Gursukh Tower, Main Road, Katora Talab (Distinctive No. 3246), Raipur (CG)- 492001.

... .. Financial Creditor

Counsels on Record

1. Mr. Manoj Kumar Mishra] For the Corporate Debtor

Date of pronouncement of Order: 2nd day of March, 2020.

ORDER

Per: Shri Satya Ranjan Prasad, Member (T)

1. This application has been filed by **M/s. Rashi Steel and Power Limited**, the Corporate Debtor herein, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) praying for dismissal of the proceedings initiated by the Financial Creditor/Punjab National Bank (**PNB**) against them under section 7 of the IBC, 2016 for allegedly committing default in paying financial debt to the tune of Rs.141,66,79,953.83 as on 17.12.2018.

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2. This is an undisputed fact that the Corporate Debtor has availed Term Loan Facility and Cash Credit Facility from the Financial Creditor/Punjab National Bank (PNB) under Sanction letter dated 24.12.2012 and 29.10.2013 respectively. The Corporate Debtor has also been extended separate term loan facility and Cash Credit Facility from Allahabad Bank vide Sanction Letter dated 26.08.2014 and Sanction Letter dated 12.01.2016 respectively. Subsequent, to issuance of the aforesaid sanction letters, PNB and Allahabad Bank also entered into a Working Capital Consortium Agreement along with the applicant in respect of the Cash Credit Facilities sanction in favour of the Corporate Debtor. On 24.11.2016, the Corporate Debtor, issued a communication in the form of a proposal for restructuring to the Financial Creditor, which *inter alia* included a request for a fresh term loan, required for the business.

3. As per the averments, during the consortium meeting dated 28.11.2016, request of the Corporate Debtor for an additional term loan was deliberated upon and accordingly, it was resolved that PNB will appoint its empanelled agency for Techno Economic Viability (TEV) Study for restructuring proposal of the Company. The Corporate Debtor issued another communication on 03.12.2016, *inter alia* requesting PNB to appoint expert for TEV study of the restructuring proposal. Thereafter, a consortium meeting was convened on 30.01.2017 wherein the Corporate

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Debtor requested the Consortium Members to consider the restructuring proposal with the existing exposure, and to appoint an expert for TEV Study immediately.

4. In short, the subsequent sequence of events is noted to be as under:
- a) A TEV expert was appointed by the Financial Creditor, to study the Restructuring Plan proposed by the Corporate Debtor
 - b) Pursuant to TEV Report prepared by the expert appointed by the Financial Creditor and due deliberations in the consortium meeting dated 27.03.2017, the restructuring package was accepted subject to approval of the competent authority of the respective Banks.
 - c) Corporate Debtor was instructed to pay instalment of March 2017, as per the restructuring package. The same was paid by the Corporate Debtor.
 - d) Corporate Debtor informed the Financial Creditor that it had a prospective investor who would conduct due diligence on approval of the restructuring by the Competent Authority. Accordingly, during consortium meeting dated 20.06.2017 and 22.09.2017 the Consortium Members including the Financial Creditor resolved to follow up with their respective competent authorities for sanction of the restructuring package.

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- e) During the meeting held on 21.12.2017, the Financial Creditor informed the Corporate Debtor that the decision on restructuring package is under active consideration and accordingly the Corporate Debtor was advised to deposit instalments as per restructuring package.
- f) In the meantime, the Reserve Bank of India issued “Revised Framework for Resolution of Stressed Assets” (“RBI Framework”) vide its Circular dated 12.02.2018. Pursuant to issuance of the RBI Circular of 12.02.2018, the Financial Creditor delisted the then pending Restructuring Proposal and directed the Corporate Debtor to submit a new Resolution Plan in terms of the aforesaid RBI Circular.
- g) Applicant submitted a fresh Resolution Plan in terms of the aforesaid RBI Circular, which was subsequently rejected.

5. We have noted that the earlier Resolution Plan/Restructuring Package, which was submitted by the Corporate Debtor, was rejected not only on account of the revised RBI Guidelines but also due to non-routing of sales of the Corporate Debtor through cash credit account as is evident from the Minutes of the Consortium Meeting dated 28.03.2018. The relevant extracts of the meeting are reproduced below –

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“Mr. Rajeev Khera, DGM Punjab National Bank informed that the restructuring proposal was sent to head office with due recommendation of Branch, Circle Office and Zonal Office, however in between the new guidelines of Reserve Bank of India came on Stressed Assets, which stated that the Resolution Plan /Restructuring Package has to be get rated by any RBI approved rating agency before sanction. He informed that, due to the aforesaid guidelines of RBI and non-routing of sales of the company through the cash credit account, the head office has delisted the proposal and advised to send the Resolution Plan with the present circumstances.

6. The Financial Creditor has recalled the loan facilities vide its letter dated 03.04.2018. The Applicant argues that the said letter of recalling the loan facility , was a subject matter of challenge before the Hon’ble High Court of Bilaspur and further that it was served on them during the period when the Financial Creditor has itself directed the Applicant to submit a resolution plan in terms of the RBI Circular dated 12.02.2018. It has been alleged by the Corporate Debtor that since the resolution plan submitted by them in terms of the RBI Circular was rejected by the Financial Creditor,

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the present proceedings were initiated by PNB in the month of December, 2018. Applicant's main plea is that petition has been filed by the Financial creditor as a sequitur to the aforesaid RBI Circular and therefore in view of the judgment of the Hon'ble Supreme Court in **Dharani Sugars and Chemicals VS. Union of India & Ors. (Transferred Case (Civil) No. 66 of 2018 in Transfer Petition (Civil) No. 1399 of 2018)**, the petition filed by the Financial Creditor under Section 7, of IBC needs to be dismissed.

7. It has been noted that on 2nd April 2019 the Hon'ble Supreme Court of India in the matter of Dharani Sugars and Chemicals Limited Vs. Union of India & Ors. has quashed the aforesaid RBI Circular and declared all actions taken under the said circular as bad in law. The relevant extract of the judgment has been reproduced herein below.

"For these reasons also, the impugned circular will have to be declared as ultra vires as a whole, and be declared to be of no effect in law. Consequently, all actions taken under the said circular, including actions by which the Insolvency Code has been triggered must fall along with the said circular. As a result, all cases in which debtors have been proceeded against by financial creditors under Section 7 of the Insolvency Code, only because of the operation of the impugned circular will be proceedings which, being faulted at the very inception, are declared to be non-est."

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8. The Financial Creditor in its reply presented before this Tribunal on 26.08.2019 has *inter alia* made submissions to the effect that-

- i) *Since the Corporate Debtor failed to repay the instalments charges and serve interest in its respective accounts on time, its accounts have become highly irregular and consequently, the Financial Creditor has classified the same as NPA on 17.10.2016 as per the banks/RBI Guidelines.*
- ii) *The irregularities were not redressed hence, Financial Creditor vide letter dated 03.04.2018 called upon the Corporate Debtor to pay the entire outstanding interest and other charges failing which proceeding under IBC 2016 shall be initiated.*
- iii) *Corporate Debtor failed to comply with its recall notice. Therefore, the Financial Creditor vide its letter dated 04.10.2018 intimated the Corporate Debtor that its resolution plan was discussed in bankers meeting on 20.09.2018 and various deficiencies as noted there in were pointed out. Owing to the such deficiencies the resolution*

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of the Corporate Debtor was not considered and proceeding for recovery before this Tribunal.

iv) Aforesaid, sequence of events indicate that the Corporate Debtor has been proceeded by the Financial Creditor by virtue of the present application under section 7 of the IBC, 2016 not on account of RBI circular dated 12.02.2018 but because of the failure of the Corporate Debtor to repay the debts and to various deficiencies in its resolution plan which has no relation with the said RBI Circular. Financial Creditor has also submitted on record, Minutes of the Meeting of the Consortium on 05.04.2019, wherein the forensic audit report of the account of Corporate Debtor were considered, wherein the Consortium found various abnormal transactions as detailed in the said minutes which, prima facie, indicate large scale diversion of funds.

v) The present proceeding under IBC 2016 have been initiated due to failure of the Corporate Debtor to pay the outstanding amount dues as under taken in the loan agreement and due to various deficiencies in its resolution plan and not only because of the operation in the RBI Circular.

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9. We have heard the learned Counsels and also gone through the records and proceedings of this case and also pursued the judgement of the Hon'ble Apex Court in the case of Dharani Sugars and Chemicals Ltd. (Supra). At the outset it is to be noted that the corporate debtor did not dispute two material facts: -

- i) That there is a financial debt of more than Rs.1.00 lakh being payable by them to the Financial Creditor; and
- ii) That there is default on their part in paying the debt.

10. We have noted that Resolution Plan/Restructuring Package, which was submitted by the Corporate Debtor, was rejected, as is evident from the Minutes of the Consortium Meeting dated 28.03.2018, not only on account of the revised RBI Guidelines but also due to non-routing of sales of the Corporate Debtor through cash credit account. Details on record, more particularly the Minutes of the Meeting of the Consortium on 05.04.2019, wherein the forensic audit report of the account of Corporate Debtor were considered, various irregularities have been recorded. Thus, *prima facie*, the Financial Creditor has succeeded in establishing that the proceedings initiated by them against the Corporate Debtor under IBC 2016 is primarily due to failure of the Corporate Debtor to pay the

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outstanding amount dues as under taken in the loan agreement and not only on account of the abovesaid RBI Circular.

11. In “Innoventive Industries Ltd. Vs. ICICI Bank and Anr. – (2018) 1 SCC 407”, the Hon’ble Supreme Court observed and held-

“The Scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which include non-payment of even part thereof or an instalment amount. For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim” to mean a right to payment even if it is disputed. The Code get triggered the moment default is of rupees one lakh or more (Section 4). The Corporate Insolvency Resolution Process may be triggered by the corporate Debtor itself of a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor

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means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services”.

“When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt- it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-Section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which required particular of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed Interim Resolution Professional in Para III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidences furnished by the financial creditor, is important. This is must within 14 days of the

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receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-Section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

12. Relying on the above judgement, Hon'ble NCLAT in the matter of *State Bank of India Vs. Rohit Ferro Tech Limited*, Company Appeal (AT) (Insolvency) No. 671 of 2019 had held that –

"Petition under Section 7 of the I & B Code is to be considered by the Adjudicating Authority on its own merits taking into consideration the records and in absence of any evidence to show that the State Bank of India filed the application only because of the 'Circular' issued by Reserve Bank of India, it was not open to the Adjudicating Authority to reject the application".

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13. In light of the facts and circumstances of the case, material on record and also aforesaid decision of the Hon'ble Supreme Court as well as Hon'ble NCLAT and there being debt payable by the 'Corporate Debtor' and having committed default, we hold that the Financial Creditor has made out a case for initiating of 'Corporate Insolvency Resolution Process' against the 'Corporate Debtor', which needs to be decided on its merits.
14. Accordingly, the **I.A No. 78/CTB/2019** connected with **TP No. 197/CTB/2019** arising out of **CP (IB) No. 4707/MB/2018** is **DISMISSED**.
15. Registry is hereby directed to communicate this Order to the petitioner & respondent. Let the certified copy of the Order be issued upon compliance with the requisite formalities.

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Shri Satya Ranjan Prasad
Member (T)

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Ms. Sucharitha R.
Member (J)

Signed on this, the 2nd day of March, 2020.

Ravijeet _P.S.