

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(through web-based video conferencing platform)**

**CP (IB) No.169/Chd/Pb/2021**

**Under Section 7, IBC 2016  
& 5 Limitation Act 1963**

**In the matter of:**

**Raj Kumar Singla**

S/o Sh. Lajpat Rai,  
R/o House No. 27, Street No. 10,  
Punia Colony, Haripura Road,  
Sangrur, Punjab – 148001

.....Petitioners-Financial Creditor

Vs.

**Amarparkash Rice Exports Private Limited**

Having its Regd. Office at  
Sant Attar Singh Marg,  
Village Badrukhan, Sangrur,  
Punjab – 148 001  
Through its Authorized Representative

.....Respondent-Corporate Debtor

**Judgment delivered on: 26.04.2022**

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

**Present through Video Conferencing:**

For the Petitioner/Financial Creditor : Mr. Manish Jain, Advocate

For the Respondent/Corporate Debtor : Mr. Akaant Kumar Mittal, Advocate

**PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)**

**JUDGMENT**

1. The present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Raj Kumar Singla (hereinafter referred to as 'Petitioner/Financial Creditor') to initiate the Corporate Insolvency Resolution Process ('CIRP') against Amarprakash Rice Exports Pvt. Ltd (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Raj Kumar Singla, Authorized Representative of guarantors of the Corporate Debtor and the affidavit verifying the contents of the application is on page 21 of the petition. The Authorisation by the Guarantors in favour of applicant is attached as Annexure-2 of the petition.

2. The master data of the corporate debtor is stated to be filed as Annexure-4 of the petition. The Corporate Debtor is stated to be incorporated on 09.12.2013 and is a manufacturer, buyer, seller, agents, importer, exporter of food stuffs company having its registered address at Sant Attar Singh Marg, Village Badrukhan, Sangrur, Punjab-148001. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. Brief facts raising to the present Company Petition which are necessary for disposal of the same are narrated hereunder:

3.1 It is stated that on 19.08.2014, the Corporate Debtor had availed the financial facilities from the Original Lender namely SBI. The Applicant along with the other Guarantors provided guarantee for the above loan facilities availed by the Corporate Debtor. Details of the Guarantee provided are mentioned at Page 11 of the Application.

3.2 It is submitted that Corporate Debtor failed to honour its debt liability due towards SBI and resultantly, firstly its account was declared NPA and thereafter, a Demand Notice u/s 13(2) of SARFAESI Act, 2002 dated

10.04.2017 was issued by SBI to the Corporate Debtor and its Guarantors (Annexure – 7 of the petition).

3.3 It is further submitted that, subsequently, SBI issued a Possession Notice dated 11.07.2017 to the Corporate Debtor and also to its guarantors (Annexure – 8 of the petition). After issuance of the said notice, SBI proceeded in terms of Section 128 of the Indian Contract Act 1872 which enshrines the doctrine of “Co- Extensive Liability of Principal Borrower and the Surety towards the Principal Lender.”

3.4 It is averred that Applicant-Guarantors were apprehensive of the coercive action of SBI. Thus, Applicant-Financial Creditors mutually agreed to settle the loan account on behalf of the CD with SBI and in this regard also met the officials of SBI at different intervals of time and offered settlement proposals.

3.5 In reference to above communications, the Applicant wrote a letter dated 17.03.2018 to SBI, whereby he offered an amount of Rs.7.35 crores as full and final settlement of Corporate Debtor loan account (Annexure–9 of the petition). Accordingly, Guarantors of Corporate Debtor unanimously authorized the Applicant as their representative vide a Letter of Undertaking/ Authorisation Letter dated 17.03.2018 (Annexure -11 of the petition).

3.6 It is contended that SBI vide its letter dated 21.03.2018 accepted the above proposal of Rs. 7.35 crores (Annexure – 12 of the petition) In view of the same SBI issued a ‘No Dues Certificate’ dated 09.05.2018, and closed the account of the Corporate Debtor (Annexure – 13 of the petition). Thereafter,

SBI vide its letter dated 16.05.2018 handed over the possession of property of Corporate Debtor to the Applicant (Annexure – 14 of the petition).

3.7 Corporate Debtor through its another affidavit dated 17.02.2018 gave its “no objection” to the fact that it shall never dispute and make any claim against the Applicant and SBI with regard to its property which was under the possession of SBI (Annexure – 15 of the petition).

3.8 Thus, as on 01.03.2020 a sum of Rs.7,33,85,264/- is due and recoverable from Corporate Debtor by the Applicant. This amount was admittedly paid by the Applicant on behalf of the Corporate Debtor and has not been paid back to the Applicant.

4. In Part-III of Form No.1, Mr. Prem Kumar Garg Registration No.IBBI/IPA-001/IP-P00346/2017-18/10647 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 22.06.2021 along with the Certificate of Registration issued by the Indian Institute of Insolvency Professional of ICAI and the certificate of IBBI issued in favour of proposed Interim Resolution Professional i.e. Mr. Prem Kumar Garg are attached at Annexure-5 of the petition.

5. It is stated in Part-IV of Form No.1 that the petitioner has provided loan settlement amount of Rs.6,11,45,000/- (principal). The total amount claimed to be in default is Rs.7,33,85,264/- as on 01.03.2020. A table showing the computation of amount in default, including interest is attached as Annexure-16 of the petition.

6. The notice of this petition was accepted by learned counsel for respondent-corporate debtor as per order dated 01.12.2021 as to why this petition be not admitted. A reply on behalf of respondent-corporate debtor is submitted vide Diary No.00617/01 Dated 21.12.2021 by Mr. Rupinder Pal and Narinder Kumar Director. The Directors are duly authorized by the Board to act on behalf of the respondent-

corporate debtor and the Board Resolution, authorizing the respondent is attached at Page No.7 of the reply.

7. The corporate debtor through its reply has submitted that the respondent-corporate debtor has faced a huge amount of losses in the past due to which the Corporate Debtor is unable to pay the debts. It is further submitted that this Tribunal may consider the difficulty of the answering respondent and its incapacity to pay the liability to the petitioner.

8. We have heard the learned counsels for the petitioner and the respondent-corporate debtor and have also perused the record carefully.

9. Section 7(5)(a) of the Code is as follows:-

*“5) Where the Adjudicating Authority is satisfied that—  
(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”*

10. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that in the present case, the occurrence of default is evidenced by the copy of the undertaking by the corporate debtor and the account statement of the Petitioner/Applicant and the same are attached as Annexure-11 and Annexure-19 & 20 respectively of the petition. Therefore, the present petition is filed within limitation.

11. Another issue for consideration is whether there is default in payment or not. As per Section 7 of IBC which is reproduced below :-

*“Section 7 Initiation of corporate insolvency resolution process by financial creditor.*

(1) *A financial creditor either by itself or jointly with <sup>1</sup>[other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government,] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.*

<sup>2</sup>*[Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:*

*Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:*

*Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.]*

*Explanation.--For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.*

“

12. It is observed from the record the name of the Applicant is also being reflected in the latest Balance Sheet of the Corporate Debtor for the year ending on 31.03.2019 under the head of Secured Loans i.e. at page 190 of the petition. Also, the Index of charges available on the MCA portal reflects the name of the Applicant as the charge holder which is at page 210 of the petition. The respondent-corporate debtor has also filed a reply wherein it has been admitted that the default mentioned in the petition is due towards the petitioner due to its incapacity to pay the liability. The application filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary

proceedings pending against proposed Resolution Professional. In the present case, in Part III of Form 1, Mr. Prem Kumar Garg has been proposed as Interim Resolution Professional.

13. The Law Research Associate of this Tribunal has checked the credentials of Mr. Prem Kumar Garg, and there is nothing adverse against him. In view of the above, we appoint Mr. Prem Kumar Garg, Registration No.IBBI/IPA-001/IP-P00346/2017-18/10647, R/o SCO-2461, Sector 22C, Chandigarh - 160022, Email: [capremgarg@gmail.com](mailto:capremgarg@gmail.com), Mobile No.9872420001, +911724652400 the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

14. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. Accordingly, the petitioner proved the debt and the default, which is more than threshold limit of one crore. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- “(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 the possession of the corporate debtor.
- (e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.
- (f) The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- (g) The order of moratorium shall have effect from the date of this order till 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.”

15. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and

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

16. We direct the Financial Creditor to deposit a sum of ₹2,50,000/- (Rupees Two Lakh Fifty Thousand 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.

17. A copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-  
(Subrata Kumar Dash)  
Member (Technical)

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

April 26, 2022  
AV/ASH