

Sr.No-182/2019

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IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH (RAJASTHAN)

CP No. (IB)-11/7/JPR/2019

**CORAM: DR. POONDIA BHASKARA MOHAN,
HON'BLE JUDICIAL MEMBER**

**SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER**

IN THE MATTER OF SECTION 7 OF IBC, 2016.

IN THE MATTER OF:

**UNITED BANK OF INDIA
Reg. Off. : 11, Hemantu Basu Sarani,
Kolkata - 700001**

...FINANCIAL CREDITOR/APPLICANT

VERSUS

**M/S PRITHVI MULTIPURPOSE COLD
STORAGE Private Limited
Reg. Off.: Bari Bas, Sujangarh,
Rajasthan - 331507**


Assistant Registrar 29/8/2019
**National Company Law Tribunal
Jaipur**

...CORPORATE DEBTOR/RESPONDENT

FOR PETITIONER (S) : VIKAS JAIN, ADV.

FOR RESPONDENT(S) : DEVENDRA SHARMA, ADV.

United Bank of India
Vs.
M/s Prithvi Multipurpose Cold Storage Pvt Ltd



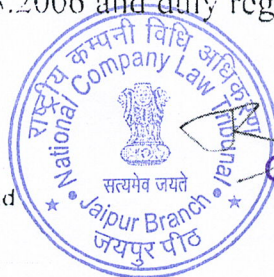
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ORDER PRONOUNCED ON: -28.08.2019

ORDER

1. This application is filed by United Bank of India, (for brevity "Applicant"), claiming to be a Financial Creditor, through Mr. Rajendra Kumar Gupta its Authorised Signatory and Senior Manager, Nehru Place Branch, S.P.F. No. 24160, who is duly authorized vide Power of Attorney dated 16.04.2008 to file this application against the Corporate Debtor, M/S Prithvi Multipurpose Cold (for brevity "Corporate Debtor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of the Corporate Insolvency Resolution Process (CIRP), pursuant to default in repayment of loan amount by the Corporate Debtor to the Applicant.
2. The Applicant is a Banking Company, constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 on 10.05.1995 and the PAN Number of the Applicant Company is AACU5624P. The Registered Office of the Company is at 11, Hemantu Basu Sarani, Kolkata -- 700001.
3. The Corporate Debtor is a Private Limited company, incorporated under the Companies Act, 1956 on 02.08.2006 and duly registered with the Registrar

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of Companies, Jaipur having CIN: U63022RJ2006PTC022885. The Registered Office of the Company is at Bari Bas, Sujangarh, Rajasthan - 331507. The authorized share capital of the company is Rs. 5,00,000/- (Rupees Five Lakh Only) and paid up share capital is Rs. 1,00,000/- (Rupees One Lakh Only).

4. It is the case of the Applicant that the Corporate Debtor has availed various credit facilities, in total amounting to Rs. 6,47,96,000 (Rupees Six Crore Forty-Seven Lakhs Ninety-Six Thousand Only), vide Sanction Letter dated 03.08.2013 and had entered into various Loan Agreements all dated 03.08.2013, whereby a Term Loan amount of Rs. 5,25,96,000/- (Rupees Five Crore Twenty-Five Lakh and Ninety-Six Thousand Only), Seasonal Cash Credit of Rs. 84,00,000 (Rupees Eighty-Four Lakhs Only), Working Capital Limit Facility of Rs. 34,00,000 (Rupees Thirty-Four Lakh Only) and Bank Guarantee of Rs. 4,00,000 (Rupees Four Lakh Only) were disbursed by the Applicant to the Corporate Debtor and the Corporate Debtor was under an obligation to pay interest @11.5% p.a. The said loan was to be repaid by the Corporate Debtor in 32 quarterly instalments of Rs. 16,44,000/- each starting from June 2015 quarter and ending on March 2023.

On the request of the Corporate Debtor the Applicant has renewed the above said Credit Facility of Rs. 647.96 vide sanction letter dated 15.05.2015 and

as per sanction letter dated 15.05.2015 the Corporate Debtor was under an

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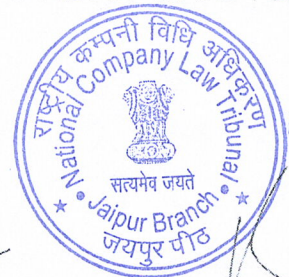
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- obligation to pay interest @11.5% p.a. and the loan was to be repaid by the Corporate Debtor in door to door tenure of 10 years, inclusive of project implementation and moratorium period of 2 years, followed by effective period of 8 years by way of 32 quarterly instalments of Rs. 16,44,000/- each starting from May 2016 quarter and ending on February 2024.
5. It is further submitted that the Corporate Debtor did not maintain financial discipline of the Applicant Bank, and resultantly the Loan Account of Corporate Debtor was classified as NPA on 16.08.2017 and thereby the applicant had issued demand notice dated 12.09.2017 under Section 13(2) of SARFAESI Act, 2002, whereby applicant demanded its outstanding amount from Corporate Debtor and all other guarantors/mortgagors but they did not pay any heed. Thereafter, the applicant proceeded under Section 13(4) of SARFAESI Act, 2002 and took symbolic possession of the subject properties vide possession notice dated 07.03.2018 and also filed Recovery Suit (OA) before DRT-3, Kolkata and the same is pending till the date of filling of this petition.
6. As a consequence, this application was filed. As claimed by the applicant, the Corporate Debtor is liable to pay an amount Rs. 7,36,31,425/- as on 30.11.2018 as an outstanding amount, as reflected in Part IV of the Form-I filed.

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S. no.	Particulars of Financial Debt	
1.	Total amount of debt granted date(s) of disbursement.	Rs. 647.96 Lakh
2.	Amount claimed to be in default and the date on which the default occurred	<p>Outstanding Amount as on 30.11.2018</p> <p>a) Term Loan Account (A/c No.0074300016764) Rs. 6,00,85,006.18 plus future interest cost & expenses.</p> <p>b) Cash Credit Account (A/c No.0074250307819) Rs. 96,39,715.88 plus future interest, cost & expenses.</p> <p>c) Working Capital Limit Account (Ac No. 0074250307796) Rs. 39,06,703.73 plus future interest, cost & expenses.</p> <p>Total (a+b+c) = Rs. 7,36,31,425.79</p>

Date of Default is the day on which the Corporate Debtor was declared as NPA i.e. 16.08.2017



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7. The Corporate Debtor has filed reply and did not deny the fact that the credit facility of Rs. 6,47,96,000 was availed from the Applicant but denies that an amount of Rs. 7,36,31,425.79 as mentioned in the Application is outstanding and states that on the day of filing of the application there was no overdue loan outstanding towards the Corporate Debtor. It is further stated that the

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Corporate Debtor has availed Term Loan from Applicant to contribute its share in the project for setting up a Multi- purpose Cold Storage under the Scheme of "Cold Chain, Value Addition and Preservation Infrastructure". It is also stated that on 29.08.2017 the Ministry of Food Processing Industries of India (MOFPI) was ready to disburse and send an amount of Rs. 2,50,00,000/- as the part of its contribution to the petitioner bank, but instead of welcoming this development the Applicant has declared corporate Debtor as NPA on 16.08.2017. It is further submitted that the applicant has contravened the mandatory provisions of the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises issued under MSME Act, 2006 on 29.05.2015 and corresponding RBI guidelines before declaring the account of the Corporate Debtor as NPA. As per RBI guidelines the Applicant has failed to forward the Corporate Debtor's account to the Committee for Corrective Action Plan (CAP) which is mandatory in case of accounts reported as SMA-2 and the Applicant has classified the accounts of the corporate Debtor as SMA-2. Also, as per RBI guidelines recovery proceedings against an MSME borrower can only be started once the option of rectification and restructuring has been exhausted but in the Corporate Debtor's matter the applicant has straight way issued demand notice under Section 13 of the SARFAESI Act.

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8. The Corporate Debtor further submits that the application is submitted without proper authorization and hence liable to be dismissed. It is also stated that the applicant has concealed the fact that the Corporate Debtor has made an application dated 14.12.2017 requesting to restructure the loan and for which applicant has granted its approval and also appointed one Mr. Nirmal Kanti to conduct Techno Economic Viability (TEV) study of the Corporate Debtor's Project and submit the report to the Applicant. Copy of the application to the same dated 14.12.2017 is annexed but the Corporate Debtor has not submitted any proof of approval of restructuring request. In the TEV report submitted to the Applicant it is stated that the project is technically, commercially and financially viable. It is further submitted that the Corporate Debtor had deposited a total amount of Rs. 32,74,500/- from January 2018 to December 2018 in accordance with restructured payment schedule given by the bank and the same is reflected in the bank statement annexed with the reply as Annexure- R-5.

9. The Applicant has filed rejoinder to the reply on 04.04.2019 denying the contention of the Corporate Debtor that the Restructuring Plan was at any time got approved, though the Applicant has admitted that TEV study was conducted to examine the Economic Viability of the project but there was neither any in-principal approval of restructuring of loan account. The

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the loan account of the Corporate Debtor, same was credited but denies that such deposit was made on the instructions of the Applicant to deposit the said amount as per TEV report. It is further stated that the applicant has adhered to all the applicable provisions of MSME Act and also the loan account of the Corporate Debtor was classified as NPA in accordance with guidelines of Reserve Bank of India. It is further submitted that the Applicant has annexed the letter of authorisation as well as Power of Attorney of Mr. Rajender Kumar Gupta authorising him to file the Application against the Corporate Debtor.

10. Upon a detailed consideration of the application and documents filed, it is seen that the applicant has established that there is a default in a sum of Rs. 7,36,31,425.79/-. The Registered Office of the Corporate Debtor is situated within the territorial jurisdiction of this Tribunal.
11. Hence, this Tribunal is inclined to initiate the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor as envisaged under the provisions of IBC, 2016.
12. The Applicant has named the Interim Resolution Professional (IRP), to be appointed by the order of Tribunal, one Mr. Kamal Kumar Jain having Registration Number IBB/IPA-001/IP-P00092/2017-18/10192 (email: eakamaljain07@gmail.com, Mobile No.: 9829058442), duly registered with Indian Institute of Insolvency Professional of ICAI, as the Interim

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Resolution Professional. The Applicant has filed consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 stating therein that no disciplinary proceedings are pending against the named IRP.

13. Consequences of initiation of CIRP shall be inter-alia as follows:

(i) The Resolution Professional proposed by the Applicant is Mr. Kamal Kumar Jain who is an IP registered with ICAI institute of Insolvency Professionals having Registration No. IBB/IPA-001/IP-P00092/2017-18/10192. He is hereby appointed as the Insolvency Resolution Professional (IRP) to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016 including issue of publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016 and calling for the claims from the creditors of Corporate Debtor and collation of the same shall be done.

(ii) Further, as a sequence of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the Corporate Debtor which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.

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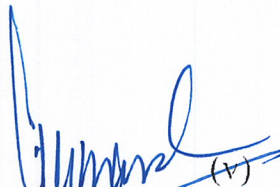
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- (iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016 and with a view to defray his expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lacs Only) to the account of IRP within three days from the date of this order. The IRP shall duly file a status report appraising this Tribunal about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016 all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- (iv) In terms of Section 7 of IBC, 2016, this order shall be communicated to the Applicant, Corporate Debtor as well as the Interim Resolution Professional (IRP) appointed by this Tribunal to carry out the CIRP at the earliest, not exceeding one week from today. A copy of this order shall also be communicated to IBBI for its records.

(v) In the circumstances, this Company Petition is admitted.


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Sd-

SH. RAGHU NAYYAR,
MEMBER (TECHNICAL)

Sd-

IR. PUNDE ABHASKARA MOHAN
MEMBER (JUDICIAL)

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