

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI (COURT NO. IV)**

**Company Petition No. IB- 699/ND/2019**

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

**IN THE MATTER OF:**

**PUNJAB NATIONAL BANK**

**...Applicant/Financial Creditor**

**VERSUS**

**M/S DHIR GLOBAL INDUSTRIA PRIVATE LIMITED**

**...Respondent/ Corporate Debtor**

**Pronounced on:24.05.2021**

**CORAM:**

**DR. DEEPTI MUKESH**

**HON'BLE MEMBER (Judicial)**

**MS. SUMITA PURKAYASTHA**

**HON'BLE MEMBER (Technical)**

**MEMO OF PARTIES**

**PUNJAB NATIONAL BANK**

**Asset Recovery Management Branch**

1 Floor, Rajendra Bhawan

Rajendra Place, New Delhi-110125

**...Applicant/Financial Creditor**

**VERSUS**

**M/S DHIR GLOBAL INDUSTRIA PRIVATE LIMITED**

**Registered office at 14, Navjivan Vihar**

New Delhi-110017

**...Respondent/ Corporate Debtor**

**For the Applicant:** Mr. Karan Aggarwal, Proxy Counsel for Mr. Vivek Malik

**For the Respondent:** Mr. M. Dutta, Mr. Vivek Malik Advocates

## **ORDER**

**Per-Dr. Deepti Mukesh, Member (J)**

1. The Present Application is filed under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Punjab National Bank, Asset Recovery Management Branch through its Chief Manager, Mr. Anoop Kumar Saxena, who has been duly appointed vide power of attorney (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against M/S Dhir Global Industria Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is a body corporate constituted under Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 incorporated on 31.02.1970, having Identification No AAACP0165G. The applicant is having its place of business 1 Floor, Rajendra Bhawan Rajendra Place, New Delhi-110125.
3. The Corporate Debtor is a private limited company incorporated under the provisions of Companies Act, 1956 on 07.07.1998, having CIN U18101DL1998PTC094872, inter alia involved in the business of export-oriented unit. The corporate debtor is having its registered office at 14, Navjivan Vihar, New Delhi.
4. The applicant submits that credit facilities like Cash Credit, Packing Credit, FOBNLC/FOBUNLC/BDLC, Sub Limit FOBP/FOUBP/FOBD, ODD (clean/Docs/OBD sub limits of FOBP/FOUBP), Letter of Credit (Inland/ Foreign)

(DA/DP), Letter of Guarantee, Term Loan, Car Loan were availed by the corporate debtor and were enhanced/renewed/reviewed from time to time.

5. The applicant submits that the balance and security confirmation letters dated 01.02.2016 & 01.12.2016 were executed by the corporate debtor in favour of the applicant.
6. The applicant submits that the corporate debtor executed various security documents in favor of applicant against the loan and other facilities given by the applicant like Deed of Hypothecation to secure LC on DA Basis, Packing Credit Agreement dated 11.03.2016, Request Letter for FOB/FOUNBLC, Agreement of Hypothecation of Goods/Book Debts to secure Cash Credit Facility, Agreement of Hypothecation of Movable Assets forming part of Fixed/block assets, General Counter Indemnity Agreement for Hypothecation of Current Assets.
7. The applicant submits that due to non-payment of installments/interest/principal debt, the account of the corporate debtor has been classified as non performing asset with effect from 02.12.2016 as per Reserve Bank of India guidelines. It is further submitted that a legal notice dated 11.01.2017 was sent by the applicant to the corporate debtor under Section 13(2) of SARFAESI Act, 2002 calling upon to pay the entire amount of Rs 21,49,71,629.53/- as on 30.12.2016 with further interest with effect from 01.12.2016 at the contracted rate until payment in full within 60 days from the date of the notice.

8. The corporate debtor has filed a reply to the application and has asserted as follows:

- i. That the corporate debtor approached the Applicant for a renewal enhancement of their existing limits, which by letter dated 03.02.2015 was afforded by the Applicant on a commitment to renew their existing limits from Rs.33.50 crores to Rs.32.50 crores. But despite the aforesaid categorical explicit proposal, providing Rs.32.50 crores, the Applicant permitted the corporate debtor to avail only a sum of Rs.21.49 crores. The remaining sanctioned sum, was gradually denied to the corporate debtor. That such deduction of promised funds to the corporate debtor culminated in a series of adverse consequences.
- ii. That the action of the Applicant, declaring the corporate debtor non-performing asset on 02.12.2016 was illegal, unlawful and contrary to the RBI Guidelines.
- iii. That all the accounts were regular, healthy and within limits on the date of declaration of NPA 02.12.2016 or the period of 90 days prior to such declaration, as prescribed by the Reserve Bank of India NPA Guidelines. That as against the FOBNLC, FOBP, ODD, Letter of Credit, and Letter of guarantee, either no amount was disbursed and if disbursed, completely repaid. There were no outstanding against any of these accounts. The only Account that the Notice issued under Section 13(2) of the Securitization Act, complains to be beyond the prescribed limit/irregular, is the Cash-Credit limit and no other/ further limit.

- iv. The corporate debtor submits that aggrieved by such unlawful and illegal declaration of 'non-performing' status and subsequent initiation of proceedings under Section 13(2) and 13(4) of the Securitization Act by the Applicant, the corporate debtor filed Securitization Application (SA. No.91 2017) under Section 17 of the Securitization Act, before the Debt Recovery Tribunal, New Delhi challenging such proceedings initiated by the Applicant. The Debt Recovery Tribunal vide order dated 20.03.2018 has held as

*'As seen from the above factual and legal positions the security applicants have established from the Statement of Account that the account was wrongly notified as NPA on 2<sup>nd</sup> December, 2016 and as such, the entire action initiated by the respondent bank be vitiated and by the wrong declaration of the account as NPA further proceedings under Section 13(4) of the SARFAESI Act are unsustainable.*

*" .....and it is held that the declaration of the account of security applicants as NPA is illegal and consequently, the proceedings taken under Sections 13(2), 13(4) of the SARFAESI Act and for sale of the secured asset are hereby quashed.'*

- v. The corporate debtor further submits that the Applicant has filed a Statutory Appeal (Appeal No.173 / 2013) against the aforesaid final judgment dated 20.03.2018 before the Debt Recovery Appellate Tribunal,

New Delhi. The said appeal is pending adjudication before the Debt Recovery Appellate Tribunal.

9. The applicant has filed a rejoinder controverting the averments made in the reply and has asserted as follows:

- i. That the account of the Corporate Debtor was rightly classified as non-performing asset. A packing credit of Rs. 42 lacs was disbursed on 07.03.2016, the due date (180 days from the date of disbursement) was 03.09.2016. The Corporate Debtor could not ship the goods and failed to adjust the PC within due date. As a result, the account was classified as NPA after 90 days i.e. on 02.12.2016. As per RBI guidelines, if any account of the borrower becomes NPA, and the borrower is having more than one facility with bank, all the facilities granted by the bank has to be treated as NPA and not the particular facility or part or part thereof which has become irregular. Thus, the account of the Corporate Debtor was rightly classified as NPA. It may be pointed out that it is the system/computer which automatically classifies the account as NPA as per the norms of the RBI.
- ii. That the fund-based facilities was allowed to the full extent. Non-fund-based facilities were availed by the corporate debtor as and when required on need basis and the same was never denied to the corporate debtor, whenever asked for. It may be mentioned that out of the total sanction limit, non-fund-based facilities were to the extent of Rs 9 lacs. The applicant further denies that the various accounts of the corporate debtor

under the facilities were within the limits. In case, any of the account if brought within limit for two days or so, it will not convert the sub-standard account into standard account.

- iii. That the Credit facilities were enhanced/renewed/modified from time to time as per the request of the Corporate Debtor and on need-based requirement arrived at as per the financial data provided by the Corporate Debtor and the credit facilities were duly availed and it is also not denied by the Corporate Debtor that there is debt due on the date of filing of the present application.
- iv. It is worth mentioning that the Applicant issued notice under Section 13 (2) of SARFEASI Act, wherein the date of NPA was mentioned as 02.12.2016. A reply/objection to the said notice was sent by the Corporate Debtor on 04.03.2017 and nowhere, in the said reply the date of NPA was challenged and thus, the same stands admitted.
- v. That in part IV of the application, the applicant has specifically stated the amount due as Rs. 28,96,32,153.00/-. There is no denial on the part of the Corporate Debtor regarding the amount due on the date of filing of the application. This fact stands admitted on part of the corporate debtor.

10. The applicant has filed written submissions and has averred as follows:

- i. The record of default with the information utility amongst other modes may be used to demonstrate evidence of default (Part V of Form 1) *i.e.*, the Application by Financial Creditor to initiate Corporate Insolvency Resolution Process. That the authentication regarding the information of default (with regard to the corporate debtor herein) as



required under the IU Regulations was completed by the information utility on 24.12.2019. The record of default for the corporate debtor as recorded and got authenticated by the information utility mentions the date of default as 03.09.2016.

ii. During the course of the arguments the point of limitation was raised on behalf of the corporate debtor for the first time, to which the applicant submits that the application is filed within time and is not time barred.

11. It is useful to refer the judgment of the National Company Law Appellate Tribunal in ‘*Unigreen Global Pvt Ltd. vs. Punjab National Bank & Ors.*’ CA(AT) (Ins. 81/2017). In this judgment it is held that:

*“20. Under both Section 7 and Section 10, the two factors are common i.e. the debt is due and there is a default. Subsection (4) of Section 7 is similar to that of sub-section (4) of Section 10. Therefore, we hold that the law laid down by the Hon’ble Supreme Court in “Innoventive Industries Ltd. is applicable for Section 10 also, wherein the Hon’ble Supreme Court observed as “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”.*

*“25. Similarly, if any action has been taken by a ‘Financial Creditor’ under Section 13(4) of SARFAESI Act, 2002 against the Corporate Debtor or a suit is pending against Corporate Debtor under Section*

*19 of DRT Act, 1993 before a Debt Recovery Tribunal or appeal pending before the Debt Recovery Appellate Tribunal cannot be a ground to reject an application under Section 10, if the application is complete.”*

12. The Supreme Court also in the matter ‘*Laxmi Pat Surana Vs. Union Bank of India, Anr*’ dated 26.03.2021, in Civil Appeal No 2734 of 2020 has held that the plea with regard to the setting aside of NPA by DRT is irrelevant because Section 7 comes into play when the corporate debtor commits ‘default’. Section 7 uses the expression default and not the date of classification of the loan account of the corporate person as NPA. The expression ‘default’ has been defined in Section 3(12) to mean non-payment of ‘debt’ when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the corporate debtor.
13. Heard both the sides and having perused the documents on record, it is beyond doubt that the default has occurred with respect to the payment of the financial debt due to the Applicant. Debt is confirmed as per the confirmation letter issued by the corporate debtor on 01.12.2016 and also the debt is authenticated as per the records of the information utility services (the certificates annexed), there is no doubt left that the debt is due. Even after issuance of notice under section 13 (2) of SARFAESI Act, the debt is not serviced and proceedings before DRT were initiated. Though the DRT has declared that the declaration of account of corporate debtor as NPA was illegal and the same was quashed, but the fact still remains that the debt is unpaid. The corporate debtor has nowhere disputed about

availing the facilities from the bank. The only defense by the corporate debtor is that the account of corporate debtor is no more NPA account hence, section 7 application will not lie. It is amply made clear by the Hon'ble Supreme Court that for admitting application under section 7 of the Code the account of corporate debtor need not be NPA account. Even without classifying the account, as NPA, merely on proof of the default with respect to debt, the application under Section 7 needs to be admitted.

The proceedings under SARFAESI Act and I&B Code are of different nature. Under SARFAESI Act the proceedings are of recovery nature, whereas the proceedings under I&B Code are for resolution of corporate debtor.

14. That in the present case, the date of default was mentioned as the date of declaration of NPA as 02.12.2016. In view of the quashing of the declaration of the account of the corporate debtor as NPA, the date of default now can be considered as date of default as recorded in the certificate of information utility services which is 03.09.2016. The application is filed on 12.03.2019, which is well within the period of limitation and not barred by law.
15. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
16. The Applicant is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. The application is complete hence in the light of above facts and records the present application is admitted.
17. The Applicant has proposed the name of Mr. Vijay Kumar Gupta as Insolvency Resolution Professional, who is being and hereby appointed as IRP of corporate

debtor, having registration number IBBI/IPA-001/IP-P01387/2018-19/12134 (email –guptavk995@gmail.com) as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 in relation to specifically the corporate debtor and the applicant herein and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

18. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely Mr. Vijay Kumar Gupta 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 needful shall be done within three days for the date of receipt of this order by the financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.
19. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Corporate debtor prohibiting proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in vogue.

20. In terms of above order, the Application stands admitted in terms of Section 7(5) of IBC, 2016. A copy of the order shall be communicated to the Applicant as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

**Sd/-**  
**(MS. SUMITA PURKAYASTHA)**  
**MEMBER (T)**

**Sd/-**  
**(DR. DEEPTI MUKESH)**  
**MEMBER (J)**