

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 1, MUMBAI BENCH**

C.P. (IB) No. 2947/MB/2019

Under Section 7 of the I&B Code, 2016

In the matter of:

Bank of India

...Financial Creditor / Petitioner

V/s

Vacc-Syn Biotech Pvt Ltd

...Corporate Debtor / Respondent

Order Delivered on 11.2.2020

Coram:

Hon'ble Member (Judicial) Smt Suchitra Kanuparthi

Hon'ble Member (Technical) Shri V Nallasenapathy

For the Petitioner: Mr. Manoj Kumar

For the Respondent: None Present

Per: V. Nallasenapathy, Member(Technical)

ORDER

1. This is a Petition being C.P. (IB) No. 2947/MB/2019 filed by Bank of India, the Financial Creditor / Petitioner, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Vacc-Syn Biotech Pvt Ltd., Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).
2. The Petition is filed by Mr. Sanjay Kumar Srivastav, Financial Creditor, claiming a total default of Rs.24,32,53,599.12 (Twenty Four Crore Thirty Two Lakh Fifty Three Thousand Five Hundred Ninety Nine and Paise Twelve Only) including interest.
3. It is submitted that on the request of the Corporate Debtor, the Petitioner had sanctioned a term loan of Rs.20,50,00,000, (Rupees

Twenty Crore Fifty Lakh Only) to the Corporate Debtor, vide sanction letter No.PPD/ADV/14-15/640, dated 30.3.2015, which was reviewed and reduced to Rs.18,95,00,000/- (Eighteen Crore Ninety Five Lakh Only), vide sanction letter dated 8.1.2018. Copies of the said sanction letters are annexed to the Petition as Annexure 2 and Annexure 3.

4. The Petitioner further submitted that on the sanction of the credit facility in the form of Term Loan, the Corporate Debtor on 30.3.2015 executed the Demand Promissory Note, Term Loan Agreement, Letter of Declaration, Undertaking and Authority, Deed of Guarantee, Hypothecation cum Loan Agreement and L-516 Agreement in favour of the Petitioner.
5. The Petitioner further submitted that vide Hypothecation cum Loan Agreement, the Corporate Debtor has created charge over the current assets namely stocks of Raw materials, stocks in process, equipment, Bill Receivable and Book Debts and all other movables both present and future whether now lying loose or in cases or which are not lying or stored in or about or shall hereinafter from time to time during the continuance of the security of these presents be brought into or upon or be stored or be in or about of the borrowers factories premises situated at Bhiwandi (E) Thane and other placed in the State of Maharashtra or wherever else same may be.
6. The Petitioner further submitted that the charge of the Financial Creditor in respect of Hypothecated goods was registered in Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) on 2.4.2015.
7. The Petitioner submitted that the Corporate Debtor failed to comply with and breached the terms of loan documents hence the Loan Account of the Corporate Debtor was classified as NPA on 30.9.2016 (Wrongly mentioned as 28.9.2016 in Form I.)
8. The Petitioner further submitted that the Corporate Debtor has acknowledged the debt vide acknowledgement of Debt letter dated 5.3.2018. The copy of the said letter is annexed with the Petition as Annexure 16.

9. The petitioner submitted that since the Corporate Debtor failed to repay the dues of the Financial Creditor, they have filed this Petition under the provisions of Section 7 of the IBC read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016
10. This Company petition was listed for hearing on 29.8.2019 wherein a direction was given to the Financial Creditor to issue court notice on the Corporate Debtor. The Financial Creditor has filed the affidavit of service which shows that the court notice was served on the Corporate Debtor on 24.9.2019.
11. Thereafter, this matter came up for hearing on 27.9.2019 when the Counsel for the Corporate Debtor appeared and took time to file Vakalatnama and reply.
12. Till date, the Corporate Debtor neither filed the Vakalatnama nor filed their reply. No one appeared on behalf of the Corporate Debtor at the time of hearing on 4.2.2020. We have heard the submissions of the Applicant and perused the records.
13. On perusal of the documents submitted by the Petitioner, it is evident that the debt and default of the Corporate Debtor have been established, and the application deserves to be admitted.
14. The Petitioner has proposed the name of Mr. Kamal Kishor Gurnani, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P01463/2018-2019/12338] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that no disciplinary proceedings are pending against him.
15. The petition under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than rupees one lakh is due and payable against the corporate debtor and its default is also proved. Application is within limitation. Accordingly, the application filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

16. Accordingly, this Petition is admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench prohibits:
 - 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- IV. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- V. That this Bench appoints Mr. Kamal Kishor Gurnani, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P01463/2018-2019/12338] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code.

17. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution

Professional by email. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-

V NALLASENAPATHY
Member (Technical)

Sd/-

SUCHITRA KANUPARTHI
Member (Judicial)