

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH, GUWAHATI

I.A. No.58 of 2019
IN
CP (IB) No.24/GB/2019

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

In the matter of:

Punjab National Bank : ... Financial Creditor

—Versus—

M/s. Shree Sai Prakash Alloys Ltd. : ... Corporate Debtor

Order delivered on 23rd August, 2019

Coram:

Hon'ble Mr. Hari Venkata Subba Rao, Member (J)

Hon'ble Mr. Ashutosh Chandra, Member (T)

For the Financial Creditor : Mr. K. K. Nandi, Advocate

For the Corporate Debtor : Mr. Mukesh Sharma, Advocate

ORDER

Heard both the sides in I.A. No.58/2019 in CP (IB) No.24/GB/2019. The above application is filed by the respondent/CD to stay the pronouncement of the order in the main company petition on the ground that the respondent/CD has preferred a Writ Petition bearing No.6029/2019, wherein the Hon'ble Gauhati High Court has passed the following order:

"The petitioner to serve a copy of the writ petition by hand upon the Branch Manager, PNB, Guwahati Branch, intimating him about the pendency of this

proceeding and the next date fixed in the matter, so as to enable the bank to appear before this Court on the next date.

Till 26/08/2019, parties to maintain status quo in the matter."

2. The learned Advocate appearing for the respondent/FC vehemently opposed the above application contending that the CD already filed another Writ Petition before the Hon'ble High Court of Meghalaya at Shillong and withdrawn the same and suppressing the above fact once again filed the above referred Writ Petition before the Principal Bench of the Hon'ble Gauhati High Court.

3. Before dealing with the above application, it is important to mention here that the arguments in the above company petition were heard by this Tribunal on 14th August, 2019 and the matter was reserved for orders. The learned Advocate appearing for the CD submitted before this Tribunal on 14-08-2019 that the CD is once again approaching the highest authority of the FC/bank for a settlement on 16-08-2019 and requested to adjourn the matter. In view of the above submission this Tribunal assured both the parties that this Tribunal will not pass orders before 20-08-2019 and both the parties are at liberty to inform this Tribunal on or before 20-08-2019 about the outcome of the compromise. It was also clarified that if nothing is heard from either of the parties before 20-08-2019, orders will be pronounced in the above company petition at any time after 20-08-2019 as the CD did not raise any serious legal pleas in opposing the main company petition except saying that the bank has unilaterally cancelled the OTS proposal.

4. Accordingly, orders were made ready and, therefore, the matter is listed today for pronouncement of the orders. The CD knowing very well about the above position appears to have filed the above Writ Petition on 19-08-2019.

5. We have carefully perused the order passed by the Hon'ble Gauhati High Court. The Hon'ble Gauhati High Court in its order merely directed the petitioner to serve copy of the Writ Petition by hand to the Branch Manager of the FC and intimate

him about the pendency of the writ petition and the next date of hearing. While ordering the said notice to the respondent bank in the above Writ Petition, the Hon'ble High Court directed both the parties in the Writ Petition to maintain *status quo*. The said order does not contain any direction to this Tribunal in this regard. The CD is conscious of the fact that this Tribunal may pass final orders in all the matters of the group companies relating to the CD at any time after 20-08-2019.

6. In the absence of such specific order to this Tribunal, this Tribunal is of the considered opinion that pronouncement of the orders by the Tribunal is justified in the light of the above facts and circumstances.

7. For the reasons stated above, there are no merits in the above application filed by the CD and accordingly, the same is rejected and the orders in the main company petition is pronounced.

Sdf

Member (Technical)
Adjudicating Authority

Sdf-

Member (Judicial)
Adjudicating Authority

Dated, Guwahati the 23rd day of August, 2019.

//Deka/23-08-2019//

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH, GUWAHATI

I.A. No.46 of 2019
and
CP (IB) No.24/GB/2019

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

In the matter of:

Punjab National Bank : ... Financial Creditor

–Versus–

M/s. Shree Sai Prakash Alloys Pvt. Ltd. : ... Corporate Debtor

Order delivered on 23rd August, 2019

Coram:

Hon'ble Mr. Venkata Subba Rao Hari, Member (J)

Hon'ble Mr. Ashutosh Chandra, Member (T)

For the Financial Creditor : Mr. K. K. Nandi, Advocate

For the Corporate Debtor : Mr. Amit Pareek, CS

ORDER

This application is filed by Punjab National Bank (hereinafter called as "Financial Creditor") against the Respondent/Corporate Debtor M/s. Shree Sai Prakash Alloys Pvt. Ltd. under Section 7 of the Code for an order of insolvency resolution.

2. The brief facts of the application are that the applicant bank has sanctioned credit facilities to a tune of Rs.58, 29,00,000.00 (Rupees Fifty Eight crores Twenty Nine lacs only) on different dates from 26th April, 2004 to 25th July, 2014 to the CD

on execution of security documents as well as creation of security interest against hypothecated and mortgage properties belonging to the CD. Subsequently, the account was declared as NPA on account of default committed by the CD on 12th May, 2015 and an amount of Rs.84,46,17,450.68 (Rupees Eighty Four crores Forty Six lacs Seventeen thousand Four hundred Fifty and paise Sixty Eight only) became due and payable as on 20th February, 2018. As there was no response from the CD, the FC having no other alternative filed the above application for an order of insolvency resolution.

3. After filing the above application, the CD approached the FC for settlement under OTS and despite entering into a settlement, failed to honour the terms & conditions of the OTS except paying a meagre amount of Rs.7,00,00,000.00 (Rupees Seven crores only). The CD also filed an interim application bearing IA No.46 of 2019 for dismissal of the above application on the ground that the main company application has become infructuous on account of the OTS entered into between the parties. As the CD failed to comply all the terms & conditions of the OTS proposal, the FC cancelled the OTS proposal and pressed for disposal of the above application. This Tribunal vide its Roznama Order dated 06th August, 2019 directed both parties to get ready for arguments in both the IA as well as main company petition as this Tribunal is not inclined towards piece-meal disposal of matters. Thus, arguments in both the IA as well as the main company petition were heard on 14th August, 2019 and the matter was reserved for orders.

4. Mr. Amit Pareek, learned PCS who appeared on behalf of the CD on the date of final hearing on 14-08-2019 did not raise any serious objections in allowing the above petition except once again submitting that the FC has unilaterally cancelled the OTS even though they are entitled to charge interest for the delayed period. He has further submitted that the CD company is engaged in mining operations and due to slow down of business in the mining industries, they are not in a position to honor

the OTS proposal and the promoter directors are not in a position to raise any funds even if the above company petition is allowed by this Tribunal.

5. All the above submissions made by the learned PCS on behalf of the CD are beyond the scope of enquiry in an application under Section 7 of the Code when once the CD admits the default. Even otherwise the CD gained so much time on the pretext of settlement and also by filing Writ Petition before the Hon'ble High Court of Meghalaya at Shillong and it is high time we put an end to this matter.

6. This Adjudicating Authority having satisfied itself with the fact that the Corporate Debtor defaulted in making payment towards the liability to the petitioner, the company petition deserves to be admitted.

7. This Adjudicating Authority on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan. The Financial Creditor also furnished the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceeding pending against him, the application under Sub-section (2) of Section 7 of the Code is taken as complete and accordingly this Bench hereby admit the company petition by dismissing the Interim Application filed by the CD in IA No.46 of 2019 by passing the following orders:

ORDER

- (i) *The petition filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating Corporate Insolvency Resolution Process in respect of M/s. Shree Sai Prakash Alloys Pvt. Ltd.*
- (ii) *We hereby declare a Moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.*

- (iii) *The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.*
- (iv) *Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:*
- 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 (54 of 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.*

- (v) *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.*
- (vi) *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- (vii) *The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution Process.*
- (viii) *Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.*
- (ix) *Necessary public announcement as per Section 15 of the IBC, 2016 may be made.*
- (x) *Mr. Anil Agarwal, AAA Insolvency Professionals LLP, 15F, Anil Roy Road, 2nd Floor, Kolkata – 700029, Registration No.IBBI/IPA-001/IP-P00270/2017-18/10514, email- anilagarwal@aaainsolvency.com is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.*
- (xi) *The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the*

Committee of Creditors and shall identify the prospective Resolution Applicant as per rules.

(xii) Registry is hereby directed under Section 7(7) (a) of the I.B. Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through e-mail.

(xiii) The Interim Resolution professional is directed to strictly comply with the model timeline for CIRP as provided under Regulation 40A of IBBI (IRP for Corporate Person) Regulation, 2016.

8. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

Self

Member (Technical)
Adjudicating Authority

Self

~~Member (Judicial)
Adjudicating Authority~~

Dated, Guwahati the 223rd day of August, 2019.

//DeKa/20-08-2019//

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH, GUWAHATI

CP (IB) No.24/GB/2019

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

In the matter of:

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–Versus–

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Coram:

Hon'ble Mr. Hari Venkata Subba Rao, Member (J)

Hon'ble Mr. Ashutosh Chandra, Member (T)

For the Financial Creditor : Mr. K. K. Nandi, Advocate

For the Corporate Debtor : Mr. Mukesh Sharma, Advocate

ORDER

Order pronounced vide separate order.

2. In the result, company petition CP (IB) No.24/GB/2019 is allowed and Mr. Anil Agarwal, Insolvency Professional is appointed as IRP.

sd/-

Member (Technical)
Adjudicating Authority

sd/-

Member (Judicial)
Adjudicating Authority

Dated, Guwahati the 23rd day of August, 2019.
//DeKa/23-08-2019//