

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH**

CP (IB) 3602/MB/2019

Under Section 7 of the I&B Code,
2016

In the matter of

Punjab National Bank,

Branch Office: Asset Recovery
Management Branch (ARMB),
Ground, Floor, Aurora Towers, 9
Moledina road, Camp, Pune-
411001.

... Petitioner

V/s

Pushpam Plaza Private Limited,

At 51, Krishna Kunj Lulla Nagar,
Pune-411040.

... Corporate Debtor

Order delivered on: 16.01.2020

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (J)
Hon'ble Shri V. Nallasenapathy, Member (T)

For the Petitioner: Adv. Falguni Shete i/b Intralegal
For the Corporate Debtor: Mr. Rohit Kulkarni

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. Punjab National Bank (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process against M/s Pushpam Plaza Private Limited (hereinafter called the 'Corporate Debtor') on the ground that the Corporate Debtor committed default to the



extent of ₹22,13,87,073/-, as provided under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petitioner had granted seven facilities to the Corporate Debtor and the details are as below:

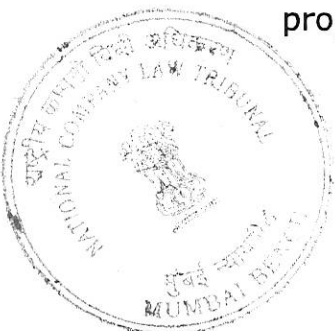
Sr. No.	Facility	Date of Sanction	Amount
1.	Term Loan	28.03.2008	249.00 Lacs
2.	Term Loan	28.03.2008	116.32 Lacs
3.	Term Loan	03.03.2010	66.10 Lacs
4.	Term Loan	29.10.2010	330.00 Lacs
5.	Cash Credit	09.12.2010	55.00 Lacs
6.	Overdraft	09.12.2010	100.00 Lacs
7	Term Loan	23.08.2011	230.00 Lacs

3. The Petitioner enclosed the following documents in support of the various facilities granted to the Corporate Debtor:

- (a) Term loan Agreement dated 28.03.2008;
- (b) Letter of Intent to create Equitable Mortgage dated 06.05.2008;
- (c) Term Loan Agreement dated 28.03.2008;
- (d) Letter of continuity dated 06.05.2008;
- (e) Term Loan Agreement dated 05.03.2010;
- (f) Letter of continuity dated 30.04.2010;
- (g) Term Loan cum Hypothecation Agreement dated 31.08.2010;
- (h) Letter of continuity dated 28.09.2010;
- (i) Hypothecation Agreement dated 10.12.2010;
- (j) Letter of continuity dated 24.12.2010;
- (k) Letter of Undertaking dated 10.12.2010;



- (l) Term Loan cum Hypothecation Agreement dated 24.08.2011;
(m) Letter of continuity dated 16.09.2011;
4. The Petitioner enclosed the Statement of account for the above said facilities granted to the Corporate Debtor. The Petitioner also submitted the calculation showing that a sum of ₹22,13,87,073/- is due from the Corporate Debtor on 31.08.2019 for all the facilities. The Petitioner has also annexed Commercial Credit Information Report of TransUnion (CIBIL) dated 29.06.2019 to further show the default of Corporate Debtor.
 5. The Petitioner submits that the Corporate Debtor's account was declared as non-performing assets (NPA) on 31.03.2014. The Petitioner issued notice on 23.04.2014 under Section 13(2) of SARFAESI Act, 2002.
 6. The Petitioner has enclosed the confirmation of balance issued by the Corporate Debtor on 09.02.2017 for all the above said facilities.
 7. The Petitioner enclosed the certificate under Bankers Books Evidence Act, 1891.
 8. The Corporate Debtor in their reply submitted as below:
 - a. They require 45 days' time to settle the matter.
 - b. The income of the Corporate Debtor is not matching with the increase in the interest rate and due to this mismatch, they are not in a position to service the loan fully and the account was classified as NPA.
 - c. The overall slowdown the real estate market and the additional stress on account of initiation of prompt correct action by the Petitioner lead to a situation where major portion of their properties remained vacant and affected their rental income.



- d. The Petitioner failed to release the mortgage properties with the bank when the private buyers are ready to purchase the property.
- e. When the Corporate Debtor taken steps for taking over of this loan by another entity namely Dharampeth Mahila Multi State Co-operative Society Limited, Nagpur, the Petitioner failed to co-operate for the same.
9. The above submissions of the Corporate Debtor cannot come in the way of the admission, in view of the fact that there is debt above Rs.1 lakh and the Corporate Debtor committed default in repayment of the debt.
10. It is appropriate to mention the decision of the Hon'ble Supreme Court in "*Innoventive Industries Ltd. Vs. ICICI Bank and Ors.*, (2018) 1 SCC 407" wherein it was held as below:
"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the Corporate Debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the Corporate Debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents,



records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the Corporate Debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the Corporate Debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. 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. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and Corporate Debtor within 7 days of admission or rejection of such application, as the case may be."

11. In view of the categorical ruling of the Hon'ble Supreme Court in the case of *Innoventive Industries Ltd. Vs. ICICI Bank and Ors.*, cited supra, the contentions raised by the Corporate Debtor in the reply does not hold water and has to be rejected in limine.
12. This Adjudicating Authority, on perusal of the documents filed by the Financial Creditor, is of the view that the Corporate Debtor



defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

- I.
 - (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
 - (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.
- II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- III. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from 16.01.2020 till the 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 Corporate Debtor under Section 33, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.
- VI. That this Bench hereby appoints, Mr. Udaykumar Bhaskar Bhat, having his address at, B-304 Goldville, Aundh Ravet Road, Dange Chowk Thergaon, Pune Maharashtra-411033 having Registration No. IBBI/IPA-001/IP/P-01425/2018/2019/12234 having email id udaybhat2805@gmail.com as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.
13. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)



Certified True Copy
Copy Issued "free of cost"
On 20.01.2020


Assistant Registrar
National Company Law Tribunal Mumbai Bench