

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**ORDER SHEET OF THE HEARING ON 11<sup>th</sup> DECEMBER, 2023, 10:30 A.M.**

CP (IB)/120/GB/2018

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao  
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

Name of the Company	Punjab National Bank Vs M/s Virgo Cements Ltd
Under Section	U/s 7 of IBC, 2016

For Petitioner (s) : Mr. K. K. Nandi, Adv

For Respondent (s) :

**ORDER**

Order Pronounced through VC *vide* separate sheets.

Sd/-  
**Satya Ranjan Prasad**  
**Member (Technical)**

Sd/-  
**H.V. Subba Rao**  
**Member (Judicial)**

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**CP (IB) No.120/GB/2018**

***In the matter of:***

An application 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, to initiate Corporate Insolvency Resolution Process;

**-And-**

***In the matter of:***

**Punjab National Bank**, Head office at Plot No.4, Sector-10, Dwarka, New Delhi-110075 and branch office at Police Bazaar, Shillong- 793001;

**... Applicant/Financial Creditor**

**-Versus-**

**M/s Virgo Cements Ltd**, Damas East Garo Hills, Meghalaya- 793122.

**... Respondent/Corporate Debtor**

***Coram:***

Shri H. V. Subba Rao : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

***Appearances (through video conferencing):***

For the Petitioners : Mr. K.K Nandi, Adv.

For the Respondent : Mr. Bikash Sharma, Adv.

**Order reserved on: 30.11.2023  
Order pronounced on: 11.12.2023**

**ORDER**

1. The present application has been filed by the Financial Creditor— Punjab National Bank, 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, to initiate Corporate Insolvency Resolution Process of the Corporate Debtor— M/s Virgo Cements Ltd.

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2. Brief facts as stated by the Petitioner are as follows:
- 2.1 The Petitioner/Financial Creditor is a Banking Company, incorporated on 19.07.1969 and constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The Financial Creditor is engaged in the business of banking & finance, having its head office at Plot No.4, Sector-10, Dwarka, New Delhi-110075 and a branch office at Police Bazaar, Shillong- 793001. Copy of Incorporation Certificate & Master Data of the Financial Creditor as downloaded from the MCA Portal has been annexed.
- 2.2 The Respondent/Corporate Debtor is a Private Limited Company incorporated under the provisions of the Companies Act, 1956, having its registered office at Damas, East Garo Hills, Meghalaya- 793122. The Authorized Share Capital of the Corporate Debtor is Rs. 10,00,00,000 and the Paid-up Share Capital is Rs. 6,41,65,680. A copy of the Master Data of the Corporate Debt or as downloaded from the MCA Portal has been annexed.
- 2.3 The Corporate Debtor herein approached the Financial Creditor for the purpose of obtaining financial loan of Rs 20,00,00,000 for expansion of its existing cement manufacturing operations. The aforesaid loan was granted by the Financial Creditor to Corporate Debtor for interest @ 1.50% + 0.50% - 2.00% over prevailing Bank Prime Lending Rate (BPLR) per annum with monthly rests.
- 2.4 Further, a Cash Credit limit of Rs. 6,40,00,000 was sanctioned by the Financial Creditor *vide* letter dated 09.04.2010.
- 2.5 The Financial Creditor served the Demand Notice dated 18.01.2016 under Section 13(2) of the SARFAESI Act, 2002, to the Corporate Debtor, for an amount of Rs 19,61,17,659. Further, the Financial Creditor informed the Corporate Debtor that it has been classified as a wilful defaulter *vide* letter dated 03.06.2016.

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2.6 On 18.11.2018, the Corporate Debtor requested a One Time Settlement (OTS) under the scheme of One Time Settlement of NPA accounts, with a proposal of Rs. 4,00,00,000.

3. The CD filed affidavit in reply opposing the admission of the above CP. The relevant paragraphs of the affidavit in reply are extracted hereunder for ready reference:

3.1 *“6. That the Respondent states that letter of authorization dated 13.06.2028, authorizing one Sri. R.K. Poddar, Chief Manager, Shillong Branch, is invalid and non-est in the eyes of law, and as such the very institution of the instant petition by the so called authorized person is marred with inherent infirmities, which is not curable in nature.”*

3.2 *“7. That the Respondent states that the Circle head of the Petitioner Bank had no authority to appoint an authorized representative on behalf of the Bank by issuing a letter of authorization, in as much as the extant powers delegated at various level vide circular dated 30.01.2014 is limited for the purpose of sanctioning of filing/ or to defend matters in the name of the Bank and therefore the same cannot in any manner be said to have vested any valid authority on the Circle Head of the Bank to issue letter of authorization in favor of the officers of the Bank so as to initiate insolvency process, more so in the absence of any Board of Resolution by the Directors of the Petitioner Bank to that effect.”*

3.3 *“8. That the Respondent states the very source of power of the Circle Head Office of the Petitioner Bank to appoint authorized representative and/ or to authorize officers to initiate insolvency process under IBC, 2016 have not been disclosed/ annexed in the instant petition, and as such any act done by the Circle Head Office of the Bank pursuant to or in exercise of such non-extent/ purported power is untenable in law and as such the instant petition being admittedly initiated in furtherance of such power, is liable to dismissed by this Hon’ble Tribunal at the threshold.*

*Further, it is pertinent to mention herein that Shri. R. K. Poddar, who has been purportedly authorized by the Circle Head Office, is already a power to attorney holder of the Petitioner Bank wherein specific powers have been delegated to him and so such, the Circle Head Office cannot delegate or confer any additional powers*

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*on the attorney holder, which is not contemplated in the power of attorney granted by the Board of Directors of the Petitioner Bank.”*

- 3.4 *“11. That the Respondent states that more pertinently in an earlier round of litigation, the Petitioner Bank had approached the Hon’ble High Court of Meghalaya, assailing the order dated 31.07.2018 passed by the Ld. Addl. Deputy Commissioner, Resubelpara and the same was registered as MAF No. 1 of 2018. Therefore, the Hon’ble High Court of Meghalaya vide order dated 13.09.2018 passed in MAF No. 1 of 2018 had set aside the order dated 31.07.2018 passed by the Addl. Deputy Commissioner, with the directions that the Petitioner Bank would not use any coercive or illegal means to recover the loan amount and since the matter pertaining to recovery of loan amount is already pending before the Debt Recovery Tribunal (DRT), Guwahati, as such the manner should be decided by the DRT, Guwahati which is the right forum and both the parties were directed to appear before the DRT, Guwahati for redressal of their respective grievances and therefore with the aforesaid directions, the MAF No. 1 of 2018 was disposed of by Hon’ble High Court, which order not having been challenged by the Petitioner Bank has attained finality and as such as the Petitioner Bank is stopped in law from approaching this forum. (Copy of the order dated 13.09.2018 passed in MAF No. 1/ 2018 is annexed hereto and marked as Annexure-2).”*
- 3.5 *“14. That the Respondent states that the Petitioner Bank has acted malafide and suppressed the material facts while instituting a subsequent proceeding/ petition before the NCLT, Guwahati Bench, in as much as the Petitioner Bank despite being aware of the pendency of O. A. No. 411/2016 before the DRT, Guwahati and the order dated 13.09.2018 passed by the Hon’ble High Court of Meghalaya, have not disclosed the same in the petition filed before this Hon’ble Tribunal. Besides, it is the case of the Petitioner Bank that the application before the DRT, Guwahati is being contested by both the parties and the same is at the stage of final hearing and it is expected that the judgment would be delivered by the DRT, Guwahati within a short period of time, therefore there was no occasion or any bona fide reason for the Petitioner Bank to institute a subsequent proceeding before this Hon’ble Tribunal for the recovery of the same loan amount.”*

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3.6 *“15. That the Respondent states that due to situation beyond the control of the Respondent and in view of the ban imposed on mining of limestone and coal in the State of Meghalaya due to the directions of Natural Green Tribunal (NGT) coupled with the fact that they are in which the cement plant / industry is situated and operating and the North Garo Hills District in general is an insurgent and extremist zone, the cement plant/ industry of the Petitioner faced critical situation like kidnaping of management staff, bomb blast, arson activities, etc., and therefore the plant could not operative effectively, thereby resulting in impossibility to perform the contract. As such, the contract stood frustrated and despite all efforts the project could not be completed.*

*It is pertinent to mention herein that the area in which the cement plant of the Respondent is situated, including the entire Garo Hills District has been a severely affected area, which is further fortified by the fact that the Ministry of Home Affairs, had vide notification dated 01.10.2017 declared the bordering area of the Garo Hills as a ‘Disturbed Area’ under Section 3 of the Armed Forces Special Power Act. Further, it may also be mentioned that the Hon’ble High Court of Meghalaya in W.P. (C) No. 127 of 2015 vide order dated 02.11.2015 considering the breakdown of law and order situation in the Garo Hills had also directed imposition of AFSPA Act to the Central Government. (Copies of the newspaper articles, notification dated 01.10.2017 and order dated 02.11.2015 are annexed hereto and marked as Annexure-3, 4 and 5 respectively).”*

3.7 *“16. That the Respondent states that without prejudice to the foregoing, though it was for circumstances beyond the control of the Respondent which led to non-performance of contract, thereby resulting in failure to pay the liability, the Respondents had been making sincere and genuine efforts to liquidate the liability and the loan amount to the Petitioner Bank, in as much as the Petitioner had offered settlement of due under OTS scheme of the Bank on several occasions latest being on 18.11.2018, wherein the Respondent once again had submitted its proposal to settle the dues under OTS vide its representation 18.11.2018 to the Bank which further establish that the Respondent is serious towards clearing of the liability inspite of being situations turning against him. (Copy of the OTS proposal dated 18.11.2018 is annexed hereto and marked as Annexure-6).”*

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4. At the specific request of Ld. Counsel Mr. Bikash Sharma, the matter was listed on Board on 30.11.2023 for taking appropriate instructions from his clients. However, Mr. Bikash Sharma, the Ld. Counsel representing the CD purposefully remained absent and did not choose to address any arguments on 30.11.2023. Therefore, this Bench having no other alternative reserved the matter for orders basing on the submissions made by the Ld. Counsel appearing for FC and as per the material available on record.
  
5. It is the submission of Mr. Nandi, the Ld. Counsel for FC that the FC had disbursed various loan facilities to the CD for running their business and the CD having availed the said loan facilities committed default in repayment and the FC having no option filed the present CP for initiation of CIRP against the CD. It is his further submission that the date of default being 31.12.2015, the above CP filed on 17.09.2018 is well within limitation. He further submits that the CD has submitted an OTS proposal on 18.05.2018, which would amount to admission of “debt” and “default” by the CD. He further submits that the FC has also suggested the name of the proposed IRP and thus prayed for admission of the above CP.
  
6. As stated above, even though the CD had filed affidavit in reply, their advocate Mr. Bikash Sharma did not choose to address any arguments. From the perusal of the affidavit in reply filed by the CD, the main grievance of the CD is that the Circle Head Office of the Respondent Bank has no authority to appoint an authorized representative on behalf of the Bank by issuing a letter of authorisation for filing the above CP and therefore, the above CP filed on such authorisation is not maintainable. CD further contends that the powers delegated at various levels *vide* circular dated 30.01.2014 is limited for the purpose of sanction of filing or to defend matters in the name of the Bank and therefore, the same cannot in any manner be said to have vested any valid authority on the Circle Head of the Bank in the absence of any Board Resolution by the Directors of the Petitioner Bank.

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7. In this regard, it is important to mention here that the above CP is filed on behalf of the FC represented by its Chief Manager, Mr. R.K. Poddar under a letter of authorization dated 13.06.2018 issued by the Circle Head by virtue of his power as per the Circular issued by the Law Division Head Office, New Delhi of the PNB. The authorization specifically authorizes Mr. Poddar, Chief Manager to initiate proceedings under IBC, 2016 against the CP. As per the Circular issued by Head Office, the Power for appointing officers to file/defendant the cases on behalf of the Bank were specifically conferred on the respective Circle Heads depending upon the amount of credit exposure. Accordingly, the Circle Head by exercising his powers authorized Mr. Poddar, Chief Manager to file the above case. Therefore, this Tribunal did not find any illegality in the said authorization and the arguments of the CD in this regard are liable to be rejected. In this regard, it is appropriate to mention here that the Hon'ble Supreme Court recently in **Rajendra Narottamdas Sheth & Anr Vs Chandra Prakash Jain** held that a Bank Officer under a Power of Attorney or a valid authorization can initiate proceedings under Section 7 of the Code, 2016 and the objections of the borrowers with respect to authorisation etc. are very trivial and technical in nature which will not cause any prejudice to defaulting borrowers.
8. The next contention raised by the CD is that the FC had already approached the DRT, Guwahati by filing OA bearing no. 411 of 2016 and therefore, cannot file the present CP simultaneously. The above contention of the CD is also not legally sustainable in view of the recent ruling of the Hon'ble Supreme Court in — **Tottempudi Salalith v. State Bank of India & Ors**—whereunder the Hon'ble Supreme Court held that the Doctrine of Election cannot be applied to a FC for initiating proceedings under IBC, 2016.
9. The other objection is that the FC had already approached the Hon'ble HC of Meghalaya assailing the order dated 31.07.2018 passed by the Ld. Additional

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Deputy Commissioner which was set aside by Hon'ble Meghalaya High Court *vide* Order dated 13.09.2018 with the directions that the Petitioner Bank could not use coercive or illegal measures against the CD for the purpose of recovery of loan, and therefore, the FC having not challenged the Order dated 13.09.2018 passed in MAF No. 1 of 2018, is estopped from approaching this Tribunal. In this context, it is appropriate to mention here that the Hon'ble Meghalaya High Court *vide* its order dated 13.09.2018 disposed of the above MAF No. 1 of 2018 filed by the FC with the observation that the matter should be decided by the DRT, Guwahati and accordingly, directed both the parties to appear before DRT, Guwahati. There was no discussion nor any order with respect to the present CP proceedings in the above Order dated 13.09.2018 of the Hon'ble Meghalaya High Court. It is also important to mention here that on 16.11.2022, a mention was made before the Hon'ble Meghalaya High Court by the FC herein, that the Interim Order of stay of the present CP dated 13.12.2018 is not extended after 12.03.2019 and the pendency of the Revision Application before the Hon'ble Meghalaya High Court is causing prejudice to the FC to proceed with the above CP. The Hon'ble High Court after hearing both the parties clarified *vide* its order dated 16.11.2022 as follows:

*“Be that as it may, at this stage it is noted that as on date, there are no interim orders operating staying any proceeding before the National Company Law Tribunal or any Tribunal seized with the matter. Accordingly, list this matter for final hearing on 02.02.2023.”*

10. After obtaining of the above clarification from the Hon'ble Meghalaya High Court, the FC moved this Tribunal for relisting of the above CP and accordingly, the CP was relisted on Board on 17.10.2023 on which date there was no representation on either side. Thereafter, the matter was once again listed on 21.11.2023 on which date the Ld. Counsel appearing for FC alone was present and none appeared for CD. Again, it was listed to 29.11.2023 by ordering specific notice by the Ld. Counsel appearing for FC to the Counsel on record of CD intimating the next date of listing which was duly communicated by FC to Mr. Bikash Sharma, Advocate on record for CD. On 29.11.2023, Mr Bikash Sharma appeared on notice and took

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adjournment to 30.11.2023 for taking appropriate instructions and disappeared on 30.11.2023.

11. As seen from the reply, the CD had submitted OTS proposals from time to time to the FC for settlement and the latest being on 18.11.2018, which shows that there is no dispute regarding existence of “debt” and “default” by the CD. As rightly submitted by the FC, the above CP is within the limitation and the FC has also suggested the name of the IRP and thus the above CP satisfies all necessary legal requirements for admission. Therefore, this Tribunal did not find any valid reasons to reject the above CP for the aforesaid reasons and keeping in mind the above law laid down by Hon’ble Supreme Court stated supra, this Bench is of the considered view that none of the above objections raised by the CD would stand to the test of legal scrutiny and are liable to be rejected.

12. Accordingly, this Bench admits the above CP by passing the following order:

12.1 There shall be a moratorium under Section 14 of the IBC, regarding the following:

- (i) 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;
- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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 (SARFAESI) Act, 2002;

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- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

Notwithstanding the above, during the period of moratorium:

- (i) 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;
- (ii) The provisions of sub-section (1) of Section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.

12.2 The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 of the IBC or passes an order for liquidation of Corporate Debtor under Section 33 of the IB Code.

12.3 Public announcement of the CIRP shall be made immediately as specified under Section 13 of the IBC read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

12.4 Mr. Kannan Tiruvengadam, CA, Registration No. IBBI/IPA-001/IP-P00253/2017-18/10482, having address at Netaji Subhas Villa, Flat No 3C, 18 Karunamoyee Ghat Road (Tollygunge Area), Kolkata- 700082; Email: [calkannan@gmail.com](mailto:calkannan@gmail.com), is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The Financial Creditor shall deposit an amount of Rs.5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the IRP appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards CIRP expenses only and not towards

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his fees, till the same is decided by CoC. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

- 12.5 Directions are also issued to the suspended management to provide all documents in their possession and furnish every information in the knowledge within a period of one week from the date of admission of the petition to the IRP, otherwise coercive steps to follow.
- 12.6 The Interim Resolution Professional shall convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.
- 12.7 Interim Resolution Professional to file 1<sup>st</sup> Progress Report on 16.01.2024.
- 12.8 List the matter on 16.01.2024.
13. The Registry is directed to send e-mail copies of the orders forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
14. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
15. File be consigned to records.

Sd/-

**Satya Ranjan Prasad  
Member (Technical)**

Sd/-

**H.V. Subba Rao  
Member (Judicial)**

*Signed this on 11<sup>th</sup> day of December 2023.*