IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

CP (IB) No.398/Chd/Pb/2018

Under Section 7 of the Insolvency & Bankruptcy Code, 2016

<u>In the matter of:</u>

State Bank of India
having its registered office at
Madame Cama Road Nariman Point,
Mumbai – 400021, Maharashtra

Also:

Branch at Stress Asset Management,
Fountain Chownk, Civil Lines,
Zonal Business office,
Ludhiana, Punjab
Through Kailash Chander, Assistant General Manager

...Applicant/Financial Creditor

Versus

Priknit Retails Limited,
Having its registered office at
B-XXXV/539-A/10
Jalandhar Byepass Road,
Karabara, Near Shiv Puri,
Ludhiana - 141008, Punjab

...Respondent/Corporate Debtor

Judgement delivered on: 11.09.2019

Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)

For the Petitioner	:	Mr. Saurav Goyal, Advocate
For the Respondent	:	1. Mr. Harsh Garg, Advocate 2. Mr. Pulkit Jain, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGEMENT

The application in the prescribed Form No.1 is filed by State Bank of India (hereinafter referred to as **Bank**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of Priknit Retails Limited. (hereinafter referred to as **Corporate Debtor**). The application is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**Code**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**Rules**). The application is signed by Shri Kailash Chander, Assistant General Manager, Stress Asset Management Branch at Fountain Chownk, Civil Lines, Zonal Business office, Ludhiana. His affidavit verifying the contents of the application is at pages 27 to 28. The authorization in favour of Shri Kailash Chander as constituted attorney for the Bank is at page 29 of the petition. Regulation 76 & 77 of the State Bank of India General Regulations, 1955 and The Gazette of India No.44, containing the order dated 31.08.2005 of the Executive Committee of the Central Board, under which he derives power to sign the petition are at page Nos.30 to 35.

2. The copy of certificate of incorporation is at Annexure A-3 and Memorandum and Articles of Association of Corporate Debtor are stated to be filed at Annexure A-4 of the petition. The Corporate Debtor is stated to be incorporated on 23.10.2007 and the registered address is stated to be at B-XXXV/539-A/10, Jalandhar Byepass Road, Karabara, Near Shiv Puri, Ludhiana - 141008, Punjab. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. It is stated in Part-IV of Form No.1 that the Corporate Debtor was sanctioned credit facilities on 20.09.2008 and 30.01.2009 and the respective dates of disbursement are indicated in the statement of accounts thereof. The credit facilities sanctioned are as under:-

Facility by State Bank of India	**Limit (₹ in Crores)**
Cash Credit (Hypothecation)	45.00
CC (Book Debt)	3.25
Term Loan I	0.58
Term Loan II	0.44
Term Loan III	0.95
Term Loan IV	1.90
Term Loan Fresh	8.00
Total Term Loan	11.87
Total FB Limit	56.87
ILC/FLC	7.00
BG	0.25
FLC	1.70
Total NFB Limit	7.00
SLC	5.00
Total FB & NFB	**68.87**

Facility by State Bank of Patiala	**Limit (₹ in crores)**
CC	12.00
SLC	1.80
Total	13.80

It is stated that the loan accounts of the Corporate Debtor were declared NPA on 31.03.2009 due to the default in repayment of instalments.

4. In Part-V of Form No.1, the particulars of security held are given. It is stated that the credit facilities are primarily secured by way of mortgage

of lands. It is further stated that the sanction letters dated 19.04.2008 and 27.08.2008 are filed at Annexure A-5 & A-6 of the petition and that the terms and conditions of the sanction letters were duly acknowledged by the Corporate Debtor through its authorised Director(s)/signatories vide Board Resolutions of Corporate Debtor dated 19.04.2008 and 11.09.2008. Also, copy of a charge verification report is attached as Annexure A-20 of the petition. Annexure A-23 are the Valuation reports, Annexure A-12 is a list of various properties mortgage and Annexure A-11 is the copy of Title Deeds. The copy of the report of Credit Information Bureau India Ltd.(Cibil) dated 19.07.2018 is stated to be attached as Annexure A-22 of the petition. The statement of account pertaining to the credit facilities duly certified under the Bankers Books Evidence Act, 1891 along with the calculation sheets are stated to be attached as Annexures A-14 to A-19 of the petition. It is stated that the debts and securities stand acknowledged vide Board Resolutions dated 19.04.2008 and 11.09.2008.

5. It is also stated in Part-V of Form No. I that original application OA No.157 of 2012 has been filed against the Corporate Debtor and other obligants with the Debt Recovery Tribunal (**DRT-I**) Chandigarh wherein the recovery certificate dated 21.07.2016 was issued. The recovery certificate (RC No.457 of 2017) is still pending adjudication before the Recovery Officer, Debt Recovery Tribunal, Chandigarh.

6. Due to the default in repayment of loan instalments, the Bank issued a notice dated 12.10.2011 (Annexure A-12) under Section 13(2) of the SARFAESI Act, 2002. In this notice, it is informed to the corporate debtor that the operation and conduct of the financial assistance/credit facilities have become irregular and the debt has been classified as Non-Performing

Asset (NPA) in accordance with the directives/guidelines of Reserve Bank of India. The outstanding amount as on 08.10.2011 was ₹113,37,34,402/- inclusive of interest as per this notice. The amount outstanding included the facilities offered by SBI, SBOP as well as Allahabad Bank. Further, another notice under Section 13(4) of the SARFAESI Act, 2002 was issued on 11.09.2017 to the respondent-corporate debtor for undertaking the possession of the two properties as it has failed to repay the default amount. Copies of these notices are found to be attached as Annexures A-12 and A-13 with the petition.

7. In Part-III of Form No.1 Mr. Sanjay Kumar Aggarwal, Regn. No. IBBI/IPA-002/IP-N00126/2017-2018/10295 has been proposed as Interim Resolution Professional (**IRP**). Form No. 2 submitted by the proposed IRP is stated to be attached as Annexure A-24 of the petition.

8. Vide order dated 24.12.2018, notice of the petition was directed to be issued to respondent-corporate debtor. Reply has been filed by the Corporate Debtor by Diary No.1514 dated 26.03.2019. It is stated that the petitioner bank is only one of the member of consortium of banks which had sanctioned various credit facilities to the Corporate Debtor. It is also stated that a "One Time Settlement" proposal is under way before the competent authority and same is likely to be accepted by the petitioner-financial creditor.

9. It is further submitted that the Corporate Debtor is ready to pay the outstanding amount of the petitioner-financial creditor as suggested in the latest OTS letter and proposal which is lying with the petitioner-bank for consideration. It has also been averred that the loan account of the corporate debtor was settled by the financial creditor for a sum of ₹30 crores and a consent decree for the same has been filed, for which the corporate debtor

has already paid ₹15 crores as part payment of the One Time Settlement amount. The consent decree was rejected by the financial creditor unilaterally and corporate debtor was not informed about the same. It is submitted that the corporate debtor is willing to make the remaining payment as per the consent decree for One Time Settlement, which is under active consideration of the petitioner-bank.

10. The Corporate Debtor in its reply has raised the issue of limitation by stating that the debt by the financial creditor was granted in 2008 and exceeds the limitation of 3 years, making the debt hopelessly time-barred.

11. During the course of the hearing, the learned counsel for the Bank relied on the petition filed and stated that the requirements of Section 7 of the Code are satisfied and the petition be admitted.

12. We have carefully considered the submissions of learned counsel for the bank and the Corporate Debtor and have also perused the record.

13. The learned counsel for the petitioner Bank stated that no OTS is pending at present. He also stated that the present due is after adjusting the ₹15 crores, paid by the applicant. Obtaining a consent decree on an earlier occasion from DRT, jointly along with Allahabad Bank, is not a bar to file the instant C.P. under the Code, by the petitioner Bank, individually, as long as the corporate debtor failed to pay the debt due to the petitioner.

14. In Form No.1 and accompanying Annexures, the bank has brought out that credit facilities were sanctioned to the respondent-corporate debtor on 20.09.2008 and 30.01.2009 and that in respect of the these facilities, acknowledgement of debt was furnished by the Corporate Debtor

vide Board Resolutions dated 19.04.2008 and 11.09.2008 (Annexure A-7 and A-9 of the petition). The copies of the statement of account pertaining to the credit facilities duly certified under the Bankers Books Evidence Act 1891 have been filed as Annexures A-14 to A-19 of the petition. The amounts due along with the calculation sheets along with due interest up to and including 30.09.2018 is given as under:-

Sr. No.	Bank Name & Account No.	Date of NPA	Balance as on 30.09.2018	Interest from 01.04.2009 to 30.09.2018	Total Dues as on 30.09.2018
1.	SBI 33090726452	31.03.2009	₹586563113.30	₹2025101139.19	₹2611664252
2.	SBOP	31.03.2009	₹121041221.08	₹322718755.92	₹443759977
	Total				**₹3055424229**

15. It has been stated by the Bank that original application OA No.157 of 2012 filed against the respondent-corporate debtor and other obligants with the DRT-I, Chandigarh wherein the recovery certificate dated 21.07.2016 was issued. The OA is filed by the Bank against the Corporate Debtor and five others being Director/Guarantor/Mortgagor. In para 4 of the order dated 21.07.2016, it was held by the DRT-I, Chandigarh that since the defendants have failed to comply with the terms and conditions as per Annexure C-1 of the Consent Decree dated 22.01.2015 based on the OTS dated 09.04.2014, MA RR 5005 of 2016 in OA No.157 of 2012. Further vide MA 89 of 2016, a recovery certificate was issued, wherein the defendants were ordered to pay ₹1,22,66,93,975/- with interest, till the realization along with ₹1,50,000/- as costs. The recovery certificate is still pending adjudication before the Recovery Officer, DRT, Chandigarh.

16. Section 7(5)(a) of the Code is as follows:-

"(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application."

17. In the present case, the occurrence of default is evidenced by the details furnished by the bank including report of CIBIL, the copies of statement of accounts duly certified under the Bankers Books Evidence Act 1891, Balance Confirmation letters dated 14.02.2009 by the respondent-corporate debtor in form of Revival Letter and Recovery Certificate dated 21.07.2016 of the DRT-I, Chandigarh.

18. It is a proven fact that the Corporate Debtor has not disputed the loan facilities granted by the petitioner-financial creditor. This fact could also be seen in the balance sheet for the year ending 31.03.2012 of the respondent-corporate debtor wherein the loan facilities by the petitioner-bank are being shown under the term loan head under the secured loans of the corporate debtor's balance sheet (page 509). Copy of the balance sheet is attached as Annexure A-21 of the petition.

19. The application filed in the prescribed Form No. I is found to be complete.

20. The proposed Interim Resolution Professional, Mr. Sanjay Kumar Aggarwal has filed Form No.2 (Annexure A-24 of the petition) certifying that there are no disciplinary proceedings pending against him with the Board so far or Insolvency Professional Agency (ICSI).

21. The conditions provided for by Section 7(5)(a) of the Code being satisfied in the present case, we direct that the application for initiation of CIRP against Priknit Retails Limited be admitted. The directions regarding moratorium and appointment of IRP are given below.

22. We declare the Moratorium in terms of sub-section (1) of Section 14 of the code as under:-

(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 the possession of the corporate debtor.

23. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

24. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until

this Bench approves the resolution plan under sub-section (1) of Section 31 or pass an order for liquidation of corporate debtor under Section 33 as the case may be.

25. The following directions are also issued in respect of the appointment of the Interim Resolution Professional:-

i) Appoint Mr. Sanjay Kumar Aggarwal, resident of #14, New Punjab Mata Nagar, Main Street, Pakhowal Road, Ludhiana - 141013, having Registration No. IBBI/IPA-002/IP-N00126/2017-2018/10295 and email address sanjayaggarwal.fcs@gmail.com, Mobile No.9876105414 as an Interim Resolution Professional;

ii) The term of appointment of Mr. Sanjay Kumar Aggarwal, shall be in accordance with the provisions of Section 16(5) of the Code;

iii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iv) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morality;

v) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

vi) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the

Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vii) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee; and

viii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

26. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

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(Pradeep R. Sethi)
Member(Technical)

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(Ajay Kumar Vatsavayi)
Member(Judicial

11th Sept., 2019
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राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
चण्डीगढ़ बेंच
Chandigarh Bench

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