

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

Coram : (1) Shri Madan B. Gosavi, Hon'ble Member (J)
(2) Shri Virendra Kumar Gupta, Hon'ble Member(T)

CP (IB) No. 1234/KB/2018

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process 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;

-And-

In the matter of:

Union Bank of India, having its registered office at Union Bank Bhavan, 239, Vidhan Bhavan Marg, Nariman Point, Mumbai-400 021, Maharashtra.

... **Applicant/Financial Creditor**

-Versus-

In the matter of:

Purna Pharmaceuticals Private Ltd., having its registered office at 71, Canning Street, A-402/8, Bagree Market, Kolkata-700001 West Bengal, CIN: U85100WB2008PTC129015;

... **Respondent/Corporate Debtor**

Counsel appeared:

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|------------------------------------------|---|------------------------|
| 1. Mr. S. K. Singhi, Advocate |] | |
| 2. Mr. Ankur Singhi, Advocate |] | For Financial Creditor |
| 3. Ms. Riti Basu, Advocate |] | |
| 4. Mr. Prashant Kumar Tripathi, Advocate |] | |
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| 1. Ms. Debaleena Ganguly, Advocate, |] | For Corporate Debtor |

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Date of Pronouncement of Order: 03.10.2019

ORDER

Per Shri M. B. Gosavi, Member(J):

Union Bank of India- the Financial Creditor filed this application under section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **Purna Pharmaceuticals Private Ltd.** – Corporate Debtor to start Corporate Insolvency Resolution Process (in short, “CIRP”) of the Corporate Debtor as the Corporate Debtor committed default in paying the financial debt of Rs.20,75,00,594/-.

2. The following facts are not in dispute.

3. By loan sanction letter dated 10.10.2013, Financial Creditor granted and disbursed in favour of the corporate debtor loan of Rs.07 crores. On 21.10.2014, the above cash credit facility was enhanced to Rs.09 crores. Thereafter, vide sanction letter dated 02.03.2016, cash creditor facility was further enhanced to Rs.15 crores. At every such time, the corporate debtor executed various documents in favour of the bank and thereby admitted and acknowledged the debt. Since the corporate debtor committed default in paying the loan as agreed, this application is filed to start CIRP of the corporate debtor.

4. The corporate debtor is served with the notice of this application. One of its director, Mr. Aditya Balasaria appeared in the proceeding and filed affidavit-in-reply. It is contended that this application is defective and unless the financial creditor removes the defect, it cannot be admitted. There is no proper authorisation for the Officer filing this proceeding on behalf of the bank. The bank

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has already filed recovery proceeding against the corporate debtor in DRT. Hence, this application is not maintainable.

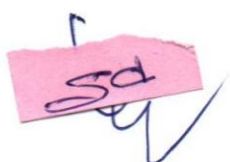
5. Financial Creditor suggested name of Mr. Kannan Tiruvengadam of Netaji Subhas Villa, Flat No.3C, 3rd floor, 18 Karunamoyee Ghat Road, Near Dharapara, Tollygunge, Kolkata- 700 082, West Bengal, having registration no. IBBI/IPA-001/IP-P00253/2017-2018/10482 and email Id. calkannan@gmail.com for appointment as the IRP.

6. We heard the Ld. Counsel for the Financial Creditor and Ld. Counsel for the Corporate Debtor at length. We perused the records.

7. At the outset, we note that the corporate debtor did not dispute two relevant facts- (i) that amount of more than Rs.20 crores is due and payable by the corporate debtor to the financial creditor and (ii) corporate debtor did not pay the same and thereby committed default in paying the financial debt. These are two facts, this authority has to consider while dealing with this application under section 7 of IBC.

8. Corporate Debtor contended that the application filed under section 7 of IBC is defective. However, it did not point out any specific defect. We perused form No. I to V submitted by the financial creditor as per rule 4 of IBBI (Application to Adjudicating Authority) Rules, 2016. We did not notice any defect in the application.

9. Corporate Debtor further contended that as the financial creditor filed recovery proceeding in DRT, this application is not maintainable. We reject this contention, for simple reason that proceeding for recovery filed in DRT and this proceeding are the independent and distinct from each other. This proceeding is



filed against the corporate debtor to resolve its corporate insolvency. This proceeding cannot be rejected on such ground.

10. We also find that the Officer signing and presenting this application is properly authorised by the bank and we do not find any ambiguity therein. Financial Creditor established that the debt is due and payable by the corporate debtor. It has committed default in paying the debt. The Financial Creditor suggested name of the IRP for appointment of the IRP. The IRP has also submitted his consent in Form 2 dated 27.08.2018, wherein he has declared that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professions of ICAI. This application is defect-free. Hence, we admit the corporate debtor in CIRP and pass the following order:

ORDER

- (i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process in respect of **Purna Pharmaceuticals Private Ltd.** Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.
- (ii) 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 Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

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- (iii) Moratorium under Sec.104 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 judgement, 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.
- iv) 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.
- v) 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.
- vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.

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- vii) 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 Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.
- (ix) As per proposal given by the Financial Creditor, Mr. Kannan Tiruvengadam of Netaji Subhas Villa, Flat No.3C, 3rd floor, 18 Karunamoyee Ghat Road, Near Dharapara, Tollygunge, Kolkata- 700 082, West Bengal, having registration no. IBBI/IPA-001/IP-P00253/2017-2018/10482 and email Id. calkannan@gmail.com is appointed as the Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- x) The Financial Creditor to pay to IRP a sum of Rs.50,000/- as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.
- xi) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016


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xii) Registry is hereby directed under section 7(7) of the I&B Code, 2016 to communicate the order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post and also by email.

Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on **18.11.2019** for filing progress report.


(Virendra Kumar Gupta)
Member (T)


(Madan B. Gosavi)
Member (J)

Signed on this, the 3rd day of October, 2019.