

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. IB-449(PB)/2019

IN THE MATTER OF:

Oriental Bank of CommerceFinancial Creditor/Petitioner
v.
M/s. Piyush Colonisers Limited & Ors.
..Corporate Debtors/Respondents

**SECTION: UNDER SECTION 7 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016**

JUDGMENT DELIVERED ON 30.09.2019

CORAM:

CHIEF JUSTICE (RTD.) M.M. KUMAR
HON'BLE PRESIDENT

S.K. MOHAPATRA
HON'BLE MEMBER (T)

PRESENT:

For the Petitioner: Mr. Prashant Kumar and Mr. Ajay
Sharma, Advocates
For the Respondents: Mr. Kunal Kher & Ms. Diksha,
Advocates

M.M.KUMAR, PRESIDENT

JUDGMENT

The 'Financial Creditor'-Oriental Bank of Commerce has filed the instant petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to trigger the Corporate Insolvency Resolution Process in the matter of M/s. Piyush Colonisers Limited.

2. The Corporate Debtor-M/s. Piyush Colonisers Limited is a company registered under the provisions of the Companies Act,

1956 and was incorporated on 14.07.2004. The identification number of the Corporate Debtor is U40105DL2004PLC0127584 and its registered office is situated at A-16/B-1, Mohan Co-operative Industrial Estate, Main Mathura Road, New Delhi-110044.

3. The Financial Creditor has proposed the name of Resolution Professional, Mr. Umesh Garg, with the address D-15, Second Floor, Okhla Industrial Area, Phase-1, New Delhi and email id – info@almondzipe.com. His registration number is IBBI/IPA-001/IP-P00135/2017-18/10277. He has filed his written communication which satisfies the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration.

4. The details of financial debt advanced by the petitioner-Financial Creditor have been set out in Part-IV of the proforma. The total amount disbursed on different dates from 2015 to 2017 which were in the form of Term Loan facility is claimed to be INR 20,77,51,805/-. The amount claimed to be in default and the details of default have been given in sub para 2 of Part-IV and the same reads as under:

2.	AMOUNT	
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CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH DEFAULT OCCURED	S. No.	Principal O/s	Accrued Interest	Other Misc. Charges
	1	20,77,51,805	75964425	608495
	Total outstanding as on 14.01.2019: Rs. 28,43,24,725/-			

5. The Respondent executed several documents for availing the aforesaid financial assistance from the Petitioner. True Copies of each one of those namely, Agreement for Term Loan, Agreement for Term Loan for Immovable Property and LTR 21 have been placed on record (Annexure A/9 to A/11).

6. The details of the securities held by, or charge created for the benefit of 'financial creditor'-Oriental Bank of Commerce which fulfils the requirements of Section 77 & 78 of Companies Act, 2013 have been given in Part V of the application.

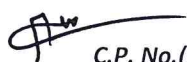
7. It is also submitted by the Petitioner-Financial creditor that the account of the Corporate Debtor was classified as NPA on 31.03.2017. Further it has filed an Original Application (O.A.) No. 243/2018 before the Debts Recovery Tribunal, Delhi for recovery of Rs. 24,59,79,699/- along with future as well as pendent lite interest. The aforesaid proceedings are still pending adjudication.

8. A record of default is available with the Credit Information Bureau (India) Limited (CIBIL) as per its commercial credit information report of the Corporate Debtor based on report dated 11.01.2019 (Annexure-5). Likewise, Entries in Bankers Book in accordance with the Bankers Books Evidence Act, 1891 has also been placed on record (Annexure-12).

9. The precise case of the Petitioner is that the total amount in default due to the Petitioner by the Respondent-Corporate Debtor as on 14.01.2019 is Rs. 28,43,24,725/-. A tabular chart depicting working of the amount in default is annexed (Annexure-2).

10. Learned counsel for the Corporate Debtor has opposed the admission of the petition by asserting that:-

- (i) The account has never been declared as NPA as per the guidelines issued by the Reserve Bank of India from time to time. The petitioner has failed to demonstrate whether, how and when the account of Respondent became "overdue" or "out of order" as per the "*Master Circular – Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances*" dated 01.07.2013 issued by the Reserve Bank of India. It is inconceivable as to how an account was admittedly



“standard” can be declared as an NPA. The petitioner has admittedly not communicated the factum of declaration of the account of Respondent as “irregular” or “overdue” or “out of order” or NPA, which is a mandatory requirement.

- (ii) The Respondent was serving the interest component on time but high interest rate being charged by the petitioner and adverse market conditions could not reap the expected results which led to the delay in making the principal amount as well as serving the high interest cost.
- (iii) The Respondent has always been diligent and bonafide requested for a fair, workable proposal for a structured repayment plan.
- (iv) The petitioner has, till date, not disclosed or provided the legally mandated documents and information like the complete statement of account, the rates of interest debited from time to time, rates of penal interest etc. However, the petitioner is by law, required to give the copies of all supporting alleged documents including vouchers, cheques, drafts, registers, ledgers and all

such other documents including documents relating to the sanction of the loan and credit facilities, and circulars with regard to the rate of interest.

- (v) The officials of the petitioner, at the time of granting the said loan and credit facilities, had obtained the signatures of Respondent on a series of papers, unfilled printed forms, letter heads signed in blank and without even giving an opportunity to read or understand the nature and contents of the said documents.
- (vi) The statement of account placed by the petitioner on record along with the petition even otherwise cannot be relied upon as the same has not been duly certified under the Bankers Books Evidence Act, 1891. The name and designation of the official who is alleged to have certified the said statement of account has not been mentioned or spelt out clearly, and the place and date of the issuance of the said certificate are not mentioned.

11. A rejoinder to the reply has been filed by the Financial Creditor reiterating the submissions made in the petition and controverting the assertions in the reply.



12. We have heard learned counsel for the parties and have also perused the record.

13. Having heard learned counsel for the parties we are of the considered view that the Financial Creditor-Bank has succeeded in establishing a case for triggering the Corporate Insolvency Resolution Process.

14. The Financial Creditor has placed various documents in relation to the disbursement of loan to the Respondent Company. The materials on record and the loan documents clearly depicts that the loan was sanctioned, disbursed and the loan agreements were properly executed. Respondent company utilized and enjoyed the loan facilities. The Financial Creditor has relied upon the document namely 'Charges Registered' obtained from the website of Registrar of Companies confirming creation of mortgage over the properties in order to secure the loan.

15. In addition, the Financial Creditor has filed the relevant statement of accounts duly certified in accordance with Banker's Book Evidence Act, 1891 as per the requirement of Form 1 Part V Column 7 of the application. True copy of statement of accounts submitted by the Financial Creditor pertaining to loan facility, kept during the course of banking business, based on which the claim

has been raised, can be termed as sufficient evidence of the financial debt.

16. Section 4 of the Bankers' Books Evidence Act, 1891 provide for mode of proof of entries in bankers' books and the same read as under:-

"Section 4. Mode of proof of entries in bankers'

books.- Subject to the provisions of this Act, a certified copy of any entry in a banker's books shall in all legal proceedings be received as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise."

17. A perusal of the aforesaid provision would show that a certified copy of entry in a banker's books is to be regarded as *prima facie* evidence in all legal proceedings with regard to the existence of such entry. It must be admitted as sufficient evidence of the matters, transactions and accounts therein recorded in every case.



18. As regards the allegation of charging excessive rate of interest, the Financial Creditor has stated that the interest has been charged in accordance with the terms of sanction letter from time to time. It is submitted that the amount claimed in Part-IV of the application is based on the statement of Accounts maintained by the Bank in its ordinary course of business and in accordance with the banking systems. In any case no serious dispute with regard to the amount payable could legally be raised before us.

19. One of the objections of the Respondent is that the officials of the petitioner, at the time of granting the said loan and credit facilities, had obtained the signatures of Respondent on a series of papers, unfilled printed forms, letter heads signed in blank and without understanding the contents thereof. The submission made is devoid of any substance; firstly, the sanction letter dated 23.12.2014 (Annexure-7) by which credit facilities were granted to the Respondent/borrower in clear terms speak about the copy of the said letter as a token of having accepted the terms and conditions of sanction along with various undertaking to be obtained from the Respondent/borrower on letter pad and the same was sent to the Respondent; secondly, in the Meeting of the Board of Directors of the Respondent (Annexure-8) issue



concerning loan facility granted by the petitioner was considered and along with other resolutions it was resolved that the project land, having khasra No. 114, 115, 116 & 123 of the project be mortgaged to the petitioner and Mr. Puneet Goyal, Managing Director of the Respondent Company was authorized to execute the loan agreement and such other documents like agreements, deeds etc., thirdly, while executing agreement of term loan (Annexure-9) it has also admitted that the sanctioned loan was in the sum of Rs. 30,00,00,000/- though the loan amount disbursed was little lesser i.e. Rs. 20,77,51,805/-. The aforesaid loan was sanctioned in year 2014 and such issue has never been raised in the intervening period from 2014 to till date and first time is being raised in the present proceeding. Under these circumstances, the defence that aforesaid documents were blank does not hold good. It is wholly irresponsible behaviour of the Corporate Debtor.

20. It is also the case of the respondent that the account of the Corporate Debtor has been wrongly declared as NPA. While dealing with application under Section 7 of the Code, it is immaterial for us to examine as to when the account was declared as NPA. In Section 7 application, the Adjudicating Authority has to consider whether there is a debt due in law and facts and whether there has

been a default in paying the financial debt. Hon'ble National Company Law Appellate Tribunal in the case of *Ranjit Kapoor v. Asset Reconstruction Company (India) Limited*, in Company Appeal (AT) (Insolvency) No. 410 of 2018 has held that "the provision of NPA relates to SARFAESI Act, 2002 and has nothing to do with Code". Therefore, the objection of the Respondent that the Financial Creditor has wrongly declared the account as NPA, cannot be a ground to reject the application preferred by Financial Creditor under Section 7 of the Code, there being default in payment of financial debt.

21. The Tribunal is not an adjudicating authority to ascertain the quantum of amount of default or to pass decree as to how much amount is actually due to the Petitioner-Financial Creditor. Adjudicating Authority is not to decide a money claim or suit. The Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the petition. Besides in a petition under Section 7 of the Code.

22. We further find that all requirements of Section 7 for the initiation of Corporate Insolvency Resolution Process by a Financial Creditor stand fulfilled. In that regard, it has been



submitted that the petition as prescribed by Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 (2) of IBC is complete in all respects. He has further submitted that the details of the default along with the dates have been stated in part IV and the additional documents have been submitted subsequently along with all the minute details. There is overwhelming evidence available to prove default and name of the resolution professional has been specified who does not suffer from any disqualification.

23. We may now examine the provisions of Section 7 (2) and Section 7 (5) of IBC which read as under:-

“Initiation of corporate insolvency resolution process by financial creditor.

7 (1)

7 (2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

7 (3)

7 (4)



7 (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; or

(b)”

24. A conjoint reading of the aforesaid provision would show that form and manner of the application has to be the one as prescribed. It is evident from the record that the application has been filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code. We are satisfied that a default amounting to lacs of rupees has occurred. As per requirement of Section 4 of the Code if default amount is one lac or more then the CIR Process would be issued. The application under sub section 2 of Section 7 is complete; and no disciplinary proceedings are pending against the proposed Interim Resolution Professional.



25. As a sequel to the above discussion, this petition is admitted and Mr. Umesh Garg is appointed as an Interim Resolution Professional.

26. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

27. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus the following prohibitions are imposed which must be followed by all and sundry:

- “(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;
- (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.”

28. It is made clear that the provisions of moratorium shall not apply to (a) such transactions which might be notified by the Central Government in consultation with any financial regulator; (b) a surety in a contract of guarantor to a Corporate Debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other services or supplies as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

29. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *interalia*, by Sections 15, 17, 18, 19, 20 & 21 of the Code. He must follow best practices and principles of fairness which are to apply at



various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else the Interim Resolution Professional/Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional/Resolution Professional shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

30. Directions are also issued to the Ex-Management/Auditors etc. to provide all the documents in their possession and furnish



every information in their knowledge as required under Section 19 of the Code to the Interim Resolution Professional within a period of one week from today otherwise coercive steps to follow.

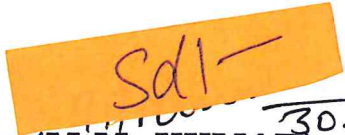
31. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors. The amount must be accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

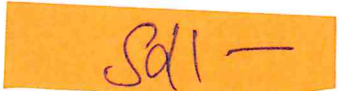
32. Before parting we must notice the complaint made against Financial Creditor in the form of discrepancies in the statement of account. We cannot in summary proceedings determine the amount due. This function is required to be performed by the Information Utility which is not yet fully functional. Therefore, Resolution Professional may ask the ex-promoter/director of the Corporate Debtor for any such correction if need be and act



accordingly by placing it before the Financial Creditor as it is only fair to do so.

33. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.


(M.M. KUMAR)
PRESIDENT


S.K. MOHAPATRA
MEMBER (TECHNICAL)

30.09.2019
VINEET

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble Member (T), Shri S.K. Mohapatra is not holding Court today.


(NIRMALA VINCENT)
COURT OFFICER