**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**MUMBAI BENCH-IV**

**CP (IB) 2823/MB/C-IV/2019**

Under section 7 of the Insolvency & Bankruptcy Code, 2016

*In the matter of*

**Punjab National Bank**
…Financial Creditor

Versus

**Regal Pride Trading and Commercial Private Limited**
**[CIN: U74999MH2013PTC249430]**
…Corporate Debtor

**Order Delivered on 06.12.2019**

***Coram:***

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| Hon'ble Member (Judicial) | : | Mr. Rajasekhar V. K. |
| Hon'ble Member (Technical) | : | Mr. Ravikumar Duraisamy |

***Appearances:***

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| For the Financial Creditor | : | Ms Falguni Shete i/b M/s Intralegal, Advocates |
| For the Corporate Debtor | : | Mr Shyam Kapadia i/b Ms Parul Sharma and Mr Navankur Pathak of ANM Global Inc. |

**<u>ORDER</u>**

***Per: Rajasekhar V.K., Member (Judicial)***

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 **(IBC)** by Punjab National Bank ("the

Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Regal Pride Trading and Commercial Private Limited ("the Corporate Debtor").

2. The Corporate Debtor is a Private company limited by shares and incorporated on 21.10.2013 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U74999MH2013PTC249430. Its registered office is at Shop No 117, 1st Floor, Citi Mall, New Link Road, Oshiwara, Andheri (West), Mumbai, Maharashtra 400053. Therefore, this Bench has jurisdiction to deal with this petition.

3. The present petition was filed on 26.07.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.21,43,04,530.38 (Rupees twenty-one crore forty-three lakh four thousand five hundred and thirty and paise thirty-eight only) as principal as on 12.10.2018 along with compound interest @ 11.20% from 01.10.2018 to 31.12.2018 and thereafter @ 11.55% amounting to Rs.2,01,05,843.86 with further penal simple interest @ 2% amounting to Rs. 29,19,487.07. The date of default is stated to be 12.10.2018.

4. The case of the Financial Creditor is as follows: -

(a) The Financial Creditor had on 25.01.2017 sanctioned to the Corporate Debtor, Overdraft Limit of Rs.21.50 Crore on reducing DP basis against tangible collateral security of residential property of value of Rs.32.60 Crore (Part IV para 1 at page 8 and 18 of the Petition).

(b) Sanction letter has been placed at **Exhibit 'B'** at p. 18. The Sanction letter provides for interest in case of delayed payments, to be charged at Compound Interest rate of 11.55% and Penal interest 2% per annum. The total debt due and payable to the Financial Creditor is Rs.21,45,74,395.31 (Rupees twenty-one crore forty-five lakh seventy-four thousand three hundred ninety-five and paise thirty-one only), as mentioned at page 8 of the Petition.

(c) Overdraft Agreement dated 25.01.2017 had also been executed by the Corporate Debtor (pp. 31-53), which contains the terms and conditions governing the facility.

(d) An undertaking dated 25.01.2017 had also been executed by the Corporate Debtor (pp. 56-64).

(e) The Directors of the Corporate Debtor had also executed personal guarantees (pp. 65-117).

(f) Particulars of the claims as on 17.07.2019 have been placed at p.126 (**Exhibit ‘M’**) of the petition.

(g) Bank statements have been placed on record as **Exhibit 'C'** at pp.22-28. Necessary certificate dated 17.07.2019 under the Information Technology Act, 2000, has been placed at pp. 129-130.

(h) Notional Interest Certificate has been placed at p.131.

(i) Certificate under section 2A(a) & 2A(b) of the Bankers' Books Evidence Act, 1891, has been placed as **Exhibit 'O'** at pp. 132-135 of the Petition.

5. The copy of the Petition was served on the Corporate Debtor vide letter dated 26.07.2019. Necessary Proof of service in this regard have been placed on record at p.150.

6. Mr Shyam Kapadia, Learned Counsel appeared on behalf of the Corporate Debtor and made his submissions.

7. In its reply dated 11.09.2019, the Corporate Debtor has set up the following defence: -

(a) The Petitioner at the time of sanction of the loan very well aware about the nature of the business of the Corporate Debtor. (para 10 at page 3 of the Reply);

(b) Corporate Debtor had prepared its business model on the basis of a policy enunciated by Doordarshan (DD) under which DD was to auction its free DTH slots and increase the number of its channels from 80 to 250. However, due to certain internal reason the auction which was scheduled to be held on 22.08.2017 was put on hold by DD. Thereafter, the Ministry of Information and Broadcasting cancelled the auction process. (para 12 at page 3 of the Reply);

(c) Further, Corporate Debtor submits that it faced various problems in carrying out the business due to several economic changes in the industry which were beyond the control of Corporate Debtor. As a result, the Corporate Debtor could not deposit the amounts of instalment in due course of time. (para 13 at page 3 of the Reply);

(d) The aforementioned financial position of the Respondent was duly intimated at all times to the Petitioner Bank. The Petitioner classified the Corporate Debtor's account as NPA on 12.10.2018 without giving any intimation of the same. (para 15 at page 4 of the Reply);

(e) Further, The Corporate Debtor submits that it has submitted a Resolution and Settlement plan on 08.03.2019 to the Financial Creditor vide its email dated 08.03.2019. (para 17 at page 4 of the Reply);

(f) The Corporate Debtor submits that the Financial Creditor acted in contravention of RBI's circular dated 01.01.2019, which requires restructuring of the existing loans to Micro, Small and Medium Enterprises (MSME) sector. (para 22 at page 5 of the Reply);

(g) The Corporate Debtor is a going concern and has paid an amount of Rs.5,04,88,917/- to the Petitioner out of the total liability of Rs.21.50 Crores. (para 30 at page 7 of the Reply)

8. We have heard the arguments of both sides and perused the records.

9. It is noted from the affidavit in reply dated 11.09.2019 that the Corporate Debtor has admitted the liability. The Corporate Debtor further submits that it is not in a position to repay the debt. The affidavit in reply establishes the existence of debt and default.

10. Upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the Corporate Debtor having availed the OD facility from the Financial Creditor. The Corporate Debtor has also submitted that it had made part payment of Rs.5,04,88,917/- out of Rs.21.50 Crores.

11. While it is admitted by the Financial Creditor that Restructuring and Settlement proposals have been submitted by the Corporate Debtor, the same have been rejected by the Financial Creditor During the hearing of the petition, the Counsel for the Financial Creditor submitted that the Financial Creditor has duly considered

the proposals submitted in the light of RBI's circular on MSME and have found the same to be unacceptable.

12. The Financial Creditor has proposed the name of **Mr Vipul Mittal,** Registration No.IBBI/IPA-001/IP/P01612/2018-2019/12446, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.

13. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

14. It is, accordingly, hereby ordered as follows: -

    (a) The petition bearing **CP(IB)-2823/MB/C-IV/2019** filed by **Punjab National Bank,** the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Regal Pride Trading and Commercial Private Limited [CIN: U74999MH2013PTC249430],** the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under section 14 of the IBC, in regard to 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;

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

(c) 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) That 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 sectoral regulator;

(d) 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 IBC, as the case may be.

(e) 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.

(f) **Mr Vipul Mittal,** Registration No.IBBI/IPA-001/IP/P01612/2018-2019/12446, having address at C-1-407 Shubh Labh Premium, 501 5th Floor, Shrishti Square

Complex , Sonapur Junction, LBS Marg, Bhandup West, Mumbai, 400078 [email: vipulmittalca@gmail.com, Mobile: 9407179117], is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Financial Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

(i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

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| **Sd/-** | **Sd/-** |
| **RAVIKUMAR DURAISAMY** | **RAJASEKHAR V.K.** |
| **Member (Technical)** | **Member (Judicial)** |

**06.12.2019**