

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
COURT- III**

**IB-960/ND/2020**

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**IN THE MATTER OF**

**Punjab National Bank**

Through Sh. Pawan Gupta (Authorized Representative)

ARMB, 1<sup>st</sup> Floor, Rajendra Bhawan, Rajendra Place,

New Delhi-110125

**...Financial Creditor**

**Versus**

**M/s SSK Trading Private Limited**

Registered Address

X-603,

Sidhartha Apartments, MP Enclave,

Pitampura, New Delhi-110034

**...Corporate Debtor**

**Coram:**

**Shri Bachu Venkat Balaram Das**

Hon'ble Member (Judicial)

**Shri Narender Kumar Bhola**

Hon'ble Member (Technical)

*Delivered on: 04.01.2022*

Appearances:

Financial Creditor :Mr. Vivek Jain and Associates (Advocates)

Corporate Debtor :Nagar and Associates (Advocates)



## ORDER

**Per: Narender Kumar Bhola, Member (Technical)**

1. This is an application filed by the Financial Creditor namely, Punjab National Bank against the corporate debtor namely, SSK Trading Private Limited under section 7 of the IBC, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor
2. The transaction leading to filing of application under consideration is as follows:
  - a. It is submitted that the corporate debtor is indebted to the Financial Creditor for a sum of Rs. 96,59,24,446/- (Rupees Ninety-Six Crores Fifty-Nine Lakh Twenty-Four Thousand Four Hundred Forty-Six only) as the total amount of debt including interest in relation to the Corporate Guarantee dated 30.08.2013 executed by the corporate debtor through its Authorised Signatory Sh. Surender Kumar Bansal in favour of "Bank of India" Consortium for total amount of Rs. 200.00 crores with respect to the Loan Sanction letter dated 29.04.2013 And Working Capital Consortium Agreement dated 30.08.2013.
  - b. It is further submitted that the Financial Creditor is a Bank which had sanctioned various credit facilities to borrower, Bansal Diamonds Pvt. Ltd. guaranteed by the Corporate Debtor, SSK Trading Pvt. Ltd. which is a

company engaged in the business of trading of Diamonds. The Financial Creditor had initially sanctioned a credit facility to the tune of Rupees 25 Crores to the Borrower, Bansal Diamonds Pvt Ltd. vide sanction letter dated 19.08.2010. The Credit facilities were further enhanced to Rs. 35.00 crore from Rs. 25.00 Crore vide sanction letter dated 19.12.2011. The credit facilities for Rs. 35.00 Crore were renewed to the borrower, Bansal Diamonds Pvt. Ltd. vide Sanction letter dated 29.04.2013. The Corporate Debtor, along with other guarantors, had created joint equitable mortgage of immovable properties on first pari passu charge basis in favour of the Applicant/Financial Creditor and other consortium member banks to secure the repayment of Debt. The borrower, Bansal Diamonds Pvt. Ltd. was under obligation to make repayment towards principal and the interest thereon stipulated period to the financial creditor without any delay or protest, however, borrower as well as corporate debtor being corporate guarantor failed to honour its obligation despite various reminders and requests made by the financial creditor.

- c. It is averred that the account of the principal borrower was declared as NPA on 30.06.2014. The Applicant issued a demand notice to the borrower u/s 13(2) of SARFAESI Act, 2002 asking to pay outstanding amount of Rs. 38,06,39,079.30/- on 07.07.2014. After fulfilling all the procedural requirement, the consortium of banks issued an e-auction sale notice under SARFAESI Act,



2002 for auction of the mortgaged properties on 21.03.2020. Hence, the present Petition.

3. The Corporate Debtor has also filed its reply and raised the question regarding the maintainability of the captioned petition as the petition is not in proper format, there are material omissions with respect to the interest component in the Petition and necessary documents like certificate of registration of charge are not attached with petition. The Corporate Debtor also relied on NCLAT judgment in the matter of *Dr. Vishnu Kumar Agarwal v. M/s Piramal Enterprises Limited (Company Appeal (AT) (insolvency) No. 346 of 2018)*. It was held by Appellate Tribunal that once a CIRP is initiated against one of the corporate debtors (either the principal debtor or the corporate guarantor) on the basis of the claim of a financial creditor, the same financial creditor cannot file a second application for initiating CIRP against the other corporate debtor for the same set of claim and default. However, in the present matter the Financial Creditor had filed two separate applications for the same set of claim and default — One against the principal borrower being Bansal Diamonds Private Limited and another against the Corporate Debtor being the corporate guarantor of the principal borrower. It is also stated that this Adjudicating Authority is not a recovery tribunal.
4. The Financial Creditor has also filed the rejoinder and submitted that the Petition is devoid of any technical irregularity in form-1 and there are several judgments of NCLT as well as Hon'ble NCLAT, in which it was held that



when the existence of debt and default is established then this adjudicating authority should not reject the petition where no cogent reason/ground is there to reject the same. It is further stated that certificate of registration of charge has been filed with the rejoinder. It is further submitted that the presence of default is evident in the balance sheet of the principal borrower for the financial year of 2018-19. The financial creditor also referred to the section 128 of Contract act, 1872, which as follows:

*“128. Surety’s liability - the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. - the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.”*

It is also stated that pursuant to the 2018 amendment of IBC, 2016, it has been clear that the order of moratorium u/s 14 of IBC will not be applicable against the guarantor. Hence, prayed that the Petition deserves to be admitted.

5. The Corporate Debtor also filed the written submissions and raised the objections regarding maintainability, limitation and relied on the Hon’ble Supreme Court judgment in the matter of M/s S.F. Mazda Versus Durga Parsad. It was held that words used in the acknowledgment must indicate the jural relationship of debtor and creditor and it must appear that the submission is given with the intention to admit such jural relationship. It is stated that since the account of corporate debtor was declared as NPA on 30.06.2014, the limitation expired on 29.06.2017, hence, the minutes of the

meeting said to have been held on 03.09.2018, even if assumed as an acknowledgment will not give afresh rise to extend the limitation after 29.06.2017. The Corporate debtor also relied on Hon'ble Madras High Court judgment in the matter of *Kalpana Trading Co. vs Executive Officer*. It was held that under Section 18 of Limitation Act, one of the essential requirements for acknowledgement is that the writing concern must contain an admission of a subsisting liability, a mere admission of a past liability is not sufficient to constitute such acknowledgement. The court in the said judgment in para 8 has held that the goods were supplied to the Defendants on 16.11.1972 and there is no acknowledgment of liability by Defendants subsequently so the suit is ought to have been filed within a period of 3 years from 16.11.1972 as the period of limitation runs from 16.11.1972 and as the Suit has not been filed within a period of limitation, it is hopelessly barred by limitation.

6. This Adjudicating Authority has perused the pleadings as well as heard the arguments advanced by the Financial Creditor and the corporate debtor. It is seen from the petition that the Financial Creditor was pursuing other remedies against the principal borrower before filing the present petition against the guarantor before this adjudicating authority as is evident from the documents filed with the Petition. Therefore, we cannot arrive at the conclusion that the financial creditor was sleeping on its rights. Hence, the petition is held to be within the limitation. Furthermore, the principal borrower has admitted its

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liability towards the Financial Creditor in its balance sheet. The evidence placed by the financial creditor is sufficient to establish the existence of debt as well as default in payment on the part of the Corporate Debtor being a corporate guarantor. The Hon'ble Apex Court has clearly stated in *Innoventive Industries (Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407)*) that the moment it is established that there is a default in payment of financial debt by the corporate debtor, which is due and payable and the application is complete and no disciplinary proceedings is pending against the proposed RP then the adjudicating authority has no option but to admit the application. In the instant case, the Financial Creditor has fulfilled all the requirements of law essential for admission of this application. Accordingly, this Adjudicating Authority is inclined to admit this application and initiate the process of CIRP of the Corporate Debtor. The financial Creditor has also proposed the name of the Resolution Professional for appointment of IRP.

7. Mr. Reetesh Kumar Agarwal Regn. No.-IBBI/IPA-001/IP-P000878/2017-18/11475 (Email ID: carkagarwal@gmail.com) is hereby appointed as IRP as has been proposed by the Financial Creditor. There is no disciplinary proceeding pending against the IRP as evident from the Form-2. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of



receiving the copy of this order and call for submissions of claim in the manner as prescribed.

8. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:
  - 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's 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 (54 of 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.
9. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.



10. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.
11. The financial Creditor is directed to send the copy of this order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this order as per the provisions of IBC, 2016.
12. The financial Creditor is directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect.
13. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.
14. The order is pronounced by this Adjudicating Authority through Virtual Hearing.

  
**(BACHU VENKAT BALARAM DAS)**  
MEMBER (JUDICIAL)

  
**(NARENDER KUMAR BHOLA)**  
MEMBER (TECHNICAL)