

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

CP (IB) No.264/MB-IV/2023

Under Section 7 of the IBC, 2016

In the matter of

PNB Housing Finance Limited

[CIN: L65922DL1988PLC033856]

...Financial Creditor

v/s.

Nakoda Fruit Products Private Limited.

[CIN: U51109MP1999PTC013811]

...Corporate Debtor

Order Delivered on: 13.10.2023.

Coram:

Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor:

Mr. Nausher Kohli a/w Mr. Noel
Thomas and Ms. Soumya Srinivasan
i/b Legasis Partners, Ld. Counsel.

For the Corporate Debtor:

Mr. PS. Thakre, Ld. Counsel.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by PNB Housing Finance Limited ("Financial Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Nakoda Fruit Products Private Limited., the Corporate Debtor.

1.1 The petition is filed on 24/01/2023 and the total outstanding amount of Rs. 15,18,62,040.07/- in default has been disbursed by the Financial Creditor to the Corporate Debtor.

Submissions of the Financial Creditor

2. The Corporate Debtor vide its Loan Application dated 11.09.2018, approached the Financial Creditor to avail a Non-Housing Loan. The Financial Creditor sanctioned a Loan of Rs.10,52,00,000/- (Rupees Ten Crore Fifty-Two Lakhs Only) ("Loan") vide a Sanction Letter dated 29.09.2018 in favour of the Corporate Debtor for a tenure of 144 months with a floating rate of interest. The Corporate Debtor was liable to repay the said loan in Equated Monthly Instalments of Rs. 13,03,220/- (thirteen lakhs three thousand two hundred and twenty only.)
 - 2.1. Accordingly, the Financial Creditor issued a Disbursement Letter NHL/NAG/0918/576663 dated no 29.09.2018 in favor of the Corporate Debtor. The said loan was secured by mortgage of immovable land of the Corporate Debtor and a Demand Promissory Note was also issued by the Corporate Debtor in favour of the Financial Creditor.

2.2.The total loan sanctioned to the Corporate Debtor amounting to Rs.10,52,00,000/- was disbursed by the Financial Creditor to the Corporate Debtor. The details of such disbursement are as under.

Sr. No	Date of Disbursement	Cheque No	Disbursement Amount (Rs.)
1	29.09.2018	224516	3,00,00,000.00
2	29.09.2018	224517	3,00,00,000.00
3	29.09.2018	224518	2,87,21,300.00
4	29.09.2018	224519	12,00,000.00
5	31.05.2019	221900	1,52,78,700.00
			10,52,00,000.00

2.3.Subsequent to the disbursement, the Corporate Debtor defaulted in paying the outstanding loan amount including interest to the Financial Creditor, despite the same being due and payable and mounting.

2.4.Despite repeated requests, the Corporate Debtor failed to regularize its Loan Account. Consequently, on account of such default, the Loan Account of Corporate Debtor was classified as a Non-Performing Asset ("NPA") on 14.12.2019.

2.5.Due to the repeated defaults, the Financial Creditor was constrained to address a Notice dated 15.01.2020 under section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 calling upon the Corporate Debtor to pay a sum of Rs.10,61,22.067.16/- due as on 05.01.2020 alongwith future interest and charges within 60days.

2.6. The Financial Creditor issued a pre-sale compliance notice dated 16.09.2021 under Rule 8 (6) of Security Interest (Enforcement) Rules, 2002 read with 13 (8) of SARFAESI Act whereby the Financial Creditor informed the Corporate Debtor that the possession of the mortgaged property was taken over by the Financial Creditor and intended to sell the mortgaged property by conducting e-Public/Public Auction Sale after expiry of 30 days.

2.7. As on 19.01.2023 a sum of Rs. 15,18,62,040.07/- (Rupees Fifteen Crores Eighteen Lakhs Sixty-Two Thousand Forty and Seven Paise Only) towards the Disbursed Loan ("Total Outstanding Amount"), charges and the interest due thereon which is payable by the Corporate Debtor to the Financial Creditor.

2.8. In view of the failure on part of Corporate Debtor to repay the loan the Financial Creditor has filed the petition under section 7 of the IBC Code.

Submissions of the Corporate Debtor

3. The Counsel for the Corporate Debtor sought further time to file reply. However, this bench noticed that the previous counsel in the preceding hearing had categorically stated that IN No 3163/2023 be treated as reply to the petition.

3.1. The counsel for the Corporate Debtor through its Interlocutory Application states that, the Corporate Debtor has made every possible effort to resolve the issue inter-alia in numerous e-mails, correspondences have been issued to the Financial Creditor to regularize the account much-less various personal visits have been made by the directors personally to regularize the account, further the Corporate Debtor have written several letters making the OTS offer however all the efforts have turned futile and none of the requests were ever considered by the Financial Creditor; the Corporate

Debtor also wish to show its bona-fide towards the settlement of claimed amount made by the Financial Creditor.

3.2. Further, the Corporate Debtor has relied upon the Judgement passed by the Hon'ble Apex Court in the matter of *M/s. Vidarbha Industries Power Limited vs. Axis Bank* {(2022) 8 SCC 352} held that *before admitting the petition u/s7 of the Code a difficulties of the Corporate Debtor to be looked into and a fair chance for revival be granted to the Corporate Debtor.*

Findings:

4. We have heard the arguments of Learned Counsel for Financial Creditor and the Corporate Debtor.

4.1. The bench observes that, the Financial Creditor in Part IV of the application has specified date of default as 14.12.2019, which is date of NPA. Since the account was classified as NPA on 14.12.2019, the date of default would be 90 days prior i.e. 13.09.2019. The SARFAESI notice u/s 13(2) was sent to the Corporate Debtor on 15.01.2020. The Corporate Debtor through its correspondences dated 24.08.2020 and 11.11.2022 to the Financial Creditor submitted the OTS proposal and these OTS proposals constitute acknowledgement u/s 18 of the Limitation Act. The present petition is filed on 24.01.2023 is well within the limitation. Therefore, this Tribunal has jurisdiction to adjudicate the Company Petition filed by the Financial Creditor.

4.2. The bench further notices that, the Corporate Debtor's obligation to repay the Financial Creditor is unequivocal, undisputed and established. The Tribunal, while adjudicating upon an application for admission into Corporate Insolvency Resolution Process filed by a Financial Creditor, is mandated to ascertain the existence of the debt, and any default in payment

of such debt. Further in the facts and circumstances as set out, it is clear that the Corporate Debtor is unable to pay off its debts arising in the usual and ordinary course of its business and is in default of the amount claimed in the petition.

5. Considering the facts placed before us and the fact that, the Corporate Debtor owes the Financial Debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process to be initiated in the matter of the Corporate Debtor. The petition is complete in all aspect. Since, the debt and default exist, this bench is of the view, that the present case deserves to be admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016.

ORDER

6. The Petition bearing CP (IB) No.264/MB-IV/2023 filed by PNB Housing Finance Limited (“Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Nakoda Fruit Products Private Limited., the Corporate Debtor is **Admitted**.
- a) 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, -
- (v) 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;
 - (vi) 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 Tribunal 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) The bench hereby appoints **Mr. Varun Vashisht**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals

of ICAI having registration number **IBBI/IPA-001/IP-P-01919/2020-2021/13141** and email- cavarunvashisht@gmail.com . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 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.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- (i) In view of the submission of the financial creditor that there are no assets left with the Corporate Debtor, the IRP is directed to satisfy himself about this assertion and proceed to take appropriate steps accordingly.
- (j) The Registry is directed to communicate this Order to the Operational 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.

(k) 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.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
13.10.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)