

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, NEW DELHI
COURT-III

CP (IB)-2058(ND)/2019

IN THE MATTER OF:

Punjab National Bank

.... Applicant/Financial creditor

Versus

M/s. Amzen Machines Pvt. Ltd.

.... Respondent/Corporate debtor

Order delivered on of 11th - March, 2021

CORAM:

CH. MOHD. SHARIEF TARIQ, MEMBER (JUDICIAL)

SHRI NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

For the Applicant/OC : Mr. Manas Shukla, Mr. R.P. Vats, (Advocates)

For the Respondent/CD : Mr. Sumesh Dhawan, Ms. Vatsala Kak,
Ms. Geetika Sharma (Advocates)

ORDER

(Through Video Conference)

1. Under Consideration is an application CP (IB)-2058(ND)/2019 filed under Section 7 of the IBC, 2016 with the prayer to initiate CIR Process against the Corporate Debtor Viz., *M/s. Amzen Machines Pvt Ltd.*, declare the Moratorium and appoint the Interim Resolution Professional.

2. It is submitted by the Ld. Counsel for the Financial Creditor that an amount of Rs. 200 Crore was advanced as Term loan to the Corporate Debtor on 17.03.2011 vide letter-bearing Ref No. PNB/LCB dated 17.03.2011, and amended and supplemented from time to time including letter bearing Ref No. PNB/LCB/dated 21.07.2011 and the noting of PNB dated 21.06.2011 and 17.10.2012. Thereafter, a common Loan Agreement dated 05.04.2014 was executed and other documents

were executed on the same day including, a deed of hypothecation, Inter Creditor Agreement, Lenders Agent Agreement, copy of trust and retention account agreement. Further, on 20.08.2014 certain documents were executed by the Corporate Debtor like the Working Capital Consortium Agreement, Deed of Hypothecation were executed. The Supplemental Agreement dated 27.11.2014 was executed by the Corporate Debtor.

3. In support of the application the Statement of Account duly certified under Banker's Books Evidence Act 1891 is placed on file at page 269 -275 and the Sanction Letter of Term Loan dated 17.03.2011 is also placed on record at page 276 in the typeset, which provides that the loan was advanced @ 12.75% P.A. Thereafter, amendments were made to the conditions of sanction of Term Loan on 21.07.2011. The account of the Corporate Debtor was declared as NPA on 15.03.2016. Thereafter, the Corporate Debtor failed to honour the commitment and the copy of letter dated 10.07.2018 acknowledging the outstanding amount by the Corporate Debtor is placed on file.

4. It is stated that the Applicant/Financial Creditor consequently sent notice dated 10.05.2016 under Section 13 (2) of the SARFAESI Act, 2002 demanding an amount of Rs 173,80,62,160/- outstanding as on 31.03.2016 with further interest until payment due to non-payment of installment & interest.

5. The Corporate Debtor has filed **reply** and submitted that the Application needs to be dismissed due the following reasons: -

First, as the provisions of the Limitation Act, 1963 are applicable to the Code vide Section 238A of the IBC, 2016 and as per the Article 137 of the Limitation Act, 1963 the period of Limitation is three Years. Therefore, it is an admitted fact that account of the Corporate Debtor was classified as NPA w.e.f. 15.03.2016 and the application was filed on 09.08.2019, which is filed after the expiry of the period of limitation of three years from the date of default. Thus, the petition is barred by time. *Second*, it is submitted that there was increase in the cost of the project as the project was distributed across three locations, there was non-availability and delay in grant of approvals from the concerned authorities due to which the Commercial Operation date for the project was extended from March, 2013 to March 2014, however there was no change in repayment schedule of the Project starting from 30.09.2014. *Third*, as per Clause 6 of the Common Loan Agreement dated 05.04.2014, the total sanctioned amount was Rs. 316 Crores out of which Applicant/ Financial Creditor was to provide Rs. 200 Crore and Bank of India was to provide an amount of Rs. 116 Crores, however the amount actually disbursed was less and only Rs. 280.94 Crores in total was actually disbursed. *Fourth*, the debit, credit entries and the rate of interest charged by the Applicant in the statement of account does not reflect the correct position. *Fifth*, the Statement of Account reflecting the alleged dues payable by the Corporate Debtor is not supported by a proper certificate in terms of the Bankers Book Evidence Act, 1891. *Sixth*, the rate of interest charged by the Applicant/Financial Creditor is usurious, exorbitant and was not agreed upon by the Corporate Debtor and its concealment in alleged statement of account highlights arbitrariness on the part of the Applicant/Financial Creditor.

6. Further, the Corporate Debtor has given para wise reply, and submitted that the Applicant/Financial Creditor was aware that the financial situation of the Corporate Debtor was stressed and did not grant sufficient opportunity to the Corporate Debtor to absolve the outstanding liabilities. The Applicant/Financial Creditor did not disburse the sanctioned loan and allegedly declared the accounts as NPA. The interest charged is exorbitant and not in compliance of the RBI Guidelines and in violation of the Banking Regulation Act.

7. Further, the Corporate Debtor has also placed reliance on judgements of Hon'ble Supreme Court, NCLT, Mumbai, NCLT, Kolkata and submitted that the time barred debt cannot be said to be due to trigger the provisions of IBC, and the period of limitation starts from the date when default occurred.

8. Heard the parties and perused the records. The documents are sufficient to ascertain the default on the part of the Corporate Debtor. It is pertinent to note that the Applicant/Financial Creditor can be categorized as a financial creditor as provided under Section 5 (7) of IBC, 2016 and the loan disbursed as a financial debt as provided under Section 5 (8) of IBC, 2016. Further, the Corporate Debtor vide its letter dated 10.07.2018 has acknowledged its liability in favour of the Applicant/Financial Creditor which proves that the debt is due and payable therefore; the application filed is within the period of limitation as it gives fresh lease of limitation from the date of such acknowledgement and the Corporate Debtor has failed/ defaulted in repaying the loan as per agreed terms and conditions. The objection(s) of the Corporate Debtor is nothing but mere ~~bluster~~ ^{bluster}, therefore stand rejected. p

9. The Applicant/Financial Creditor has fulfilled all the legal requirements, the application is **admitted**, and the commencement of the CIRP is ordered, which ordinarily shall be completed within 180 days, reckoning from the day this Order is passed. The CIRP is initiated against the corporate debtor viz., *M/s. Amzen Machines Pvt. Ltd.*

10. The Financial Creditor has also proposed the name of Interim Resolution Professional viz., **Mr. Anurag Goel** having **Registration No.** IBBI/IPA-001/IP-P00876/2017-18/10460, **Address:** 10/349, First Floor, Surender Vihar, Paschim Vihar, New Delhi-110087; **Email address:** agoel@caanurag.com; **Mobile number:** 9212117008. As per the written consent letter (Form 2), no investigation is pending against the Resolution Professional and he agreed to accept the assignment of being Interim Resolution Professional in the matter.

11. 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 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 the possession of the corporate debtor.

12. 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 shall not apply to such transactions, as notified by the Central Government.

13. We hereby direct the Financial Creditor to pay a sum of Rs. 2,00,000/- to the IRP to meet out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

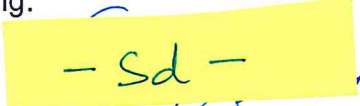
14. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 for the purpose of discharging his functions under Section 20 of the IBC, 2016.

15. The Learned Counsel for the Financial Creditor and the Registry are directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the CD's assets etc., and make compliance with this Order as per the provisions of IBC, 2016.

16. The Registry is also directed to communicate this Order to the Financial Creditor, the Corporate Debtor, and the concerned RoC.

17. The Order is pronounced through video conferencing.


(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)


(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)