

IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI
COURT-VI

C.P. NO. IB-1133(ND)/2019

IN THE MATTER OF:

Jammu and Kashmir Bank Limited

.....Financial Creditor/Petitioner

v.

Vinod Cotton Corp. Private Limited

.....Corporate Debtor/Respondent

SECTION: Under Section 7 of The Insolvency and Bankruptcy Code, 2016

Judgment delivered on: 23.08.2019

Coram:

(Dr.) P.S.N PRASAD, HON'BLE MEMBER (J)

(Dr.) V.K. SUBBURAJ, HON'BLE MEMBER (T)

PRESENT: Mr. CA Sinha, Ms. Sonali Khanna, Adv.

ORDER

(Dr.) P.S.N PRASAD, HON'BLE MEMBER (Judicial)

1. Jammu and Kashmir Bank Ltd. has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company Vinod Cotton Corp. Private Limited referred to as the corporate debtor.

2. The Respondent Company Vinod Cotton Corp. Private Limited (CIN No.U17121DL2011PTC214029) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 14.02.2011 having its registered office at 152, IInd Floor, Katra Nawab, Chandni Chowk, New Delhi . Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under subsection (1) of Section 60 of the Code.
3. It is appropriate to mention that the applicant Jammu and Kashmir Bank Ltd. is a company registered under the Companies Act, 1956, having its Registered Office at Maulana Azad Road, Srinagar, Kashmir (J & K).
4. Mr. Vivek Gupta, Executive Manager Law, Zonal Office, Delhi North (Gurugram),the authorized representative of the applicant bank, has preferred the present application on behalf of the applicant for initiation of corporate insolvency resolution process against the respondent corporate debtor in terms of the provisions of the Code.
5. It is the case of the applicant that the Respondent in order to meet its working capital requirements, approached the Applicant Bank for

takeover of its existing working capital limit from Kotak Mahindra Bank.

6. The Financial Creditor has further submitted that the applicant Bank, vide sanction letter dated 08.03.2016, accorded sanction in favour of the Corporate Debtor for takeover cum enhancement of existing facilities from Kotak Mahindra Bank or balance outstanding whichever is lower, against the proposed credit facilities, for a period of one-year subject to renewal after review against the security. The details of the approved credit facilities are as follows:

i. Cash Credit limit of Rs. 1400 Lacs & PCL/PCFC limit of Rs. 700 Lacs being sub-limit within the Cash Credit Limit;

ii. PSL/ PSFC limit of Rs 500 Lacs; and

iii. Forward Contract for Rs. 40 Lacs, total amounting to Rs. 1940 Lacs.

7. It is further contended by the financial creditor that the said credit facilities have been secured against various assets of the Corporate Debtor creating security interest in favour of the Applicant Bank.

8. Further it is argued by the Financial Creditor that it was observed that the turnover in the account of the Respondent was running very low and only within a few months of the takeover of credit facilities from Kotak Mahindra Bank, the Respondent started committing defaults in discharge of its

obligations arising under the security and loan documents. Accordingly, the account of the Corporate Debtor became irregular and sticky as it miserably failed to adhere to the financial discipline of Applicant Bank.

9. It is also contended by the applicant that the respondent was called upon a number of times by the applicant for regularization of its Loan accounts but in spite of various letters, reminders and discussions, the Corporate Debtor failed to repay the dues of the Applicant Bank and its account was declared as NPA on 30.09.2016 with an outstanding balance of Rs. 14,36,33,389/- .Details of total sum due as on 31.12.2018 inclusive of interest and expenses are as:

Total NPA Balance: Rs. 11, 75,91,678/-

Unapplied Interest up to 30.11.2018: Rs. 4,56,81,210/-

Law and other charges: Rs. 4,96,443/-

SARFAESI Charges: Rs. 7,48,683/-

10. Further the applicant issued a legal notice dated 01.10.2016 to the respondent demanding repayment of loan amount. Despite several opportunities as reply was not filed by the respondent company, the defense of respondent was struck off and the respondents were proceeded *ex parte* vide order dated 10.07.2019.

11. The applicant bank has filed the present application under Section 7 of the Code in the requisite FORM-1 to initiate Corporate Insolvency Resolution Process against the respondent Corporate Debtor under the Code.

12. The applicant has proposed the name of Mr. Neeraj Bhatia, for appointment as Interim Resolution Professional having registration number IBBI / IPA-001 / IP-P00824/ 2017-18 / 11400 resident of P-27, 1st Floor, Malviya Nagar, New Delhi with email – [id_nbtrace1@yahoo.com](mailto:nbtrace1@yahoo.com). Mr. Neeraj Bhatia has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere.
13. As per part IV of the application it is claimed that a sum of Rs.16, 45, 18,014/- is due from the respondent company as on 31.12. 2018.
14. On the ground that huge amounts are outstanding, it is claimed that the respondent has become commercially insolvent and accordingly it is prayed for initiation of corporate insolvency resolution process against the respondent company by admitting the present application.
15. We have gone through the application filed in the matter and perused the documents and also heard the counsel for the applicant.
16. In the present case the applicant Bank, vide sanction letter dated 08.03.2016, accorded sanction in favour of the Corporate Debtor for takeover cum enhancement of existing facilities from Kotak Mahindra Bank or balance outstanding whichever is lower, against the proposed credit facilities, for a period of one-year subject to renewal after review against the security. The

loan was disbursed against the consideration for time value of money. In that view of the matter not only the present claim comes within the purview of '*Financial Debt*' but also the applicant bank can clearly be termed as '*Financial Creditor*' so as to prefer the present application under Section 7 of the Code. The petitioner is a Financial Creditor. He has also established the existence of debt and its default on the part of the Corporate Debtor.

17. Therefore, in terms of Section 7 (5) (a) of the Code, the present application is admitted.

18. In pursuance of Section 13 (2) of the Code we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Regulations) with regard to admission of this application under Section 7 of the Code.

19. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d). Thus, the following prohibitions are imposed:

“(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.”

20. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor and may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition as per the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3)(b) of the Code.

21. Mr. Neeraj Bhatia, for appointment as Interim Resolution Professional having registration number IBBI / IPA-001 / IP-P00824/ 2017-18 / 11400 resident of P-27, 1st Floor, Malviya Nagar, New Delhi with email – [id nbtracel@yahoo.com](mailto:nbtracel@yahoo.com) is appointed as an Interim Resolution Professional. He

has affirmed that he is a registered insolvency professional and that no disciplinary proceeding is pending against him. He has also given his consent in Form-2 for appointment as IRP in the present matter. In the facts Mr. Neeraj Bhatia, is appointed as Interim Resolution Professional, who shall take statutory steps as envisaged under section 15, 17 and 18 of the Code. Since, the tenure of the IRP under section 16(5) shall not exceed 30 days from the date of his appointment, the IRP is directed to submit his report at the earliest but not later than 30 days.

22. The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process as per Sub-Section (4) of section 14 of the Code.
23. 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 to the public at large.

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(Dr. V.K. SUBBURAJ)
MEMBER (T)

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(Dr. P.S.N PRASAD)
MEMBER (J)