

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

**CP (IB) No.3243/MB-IV/2019**

Under Section 7 of the I&B Code, 2016

In the matter of:

**Punjab National Bank**

...Financial Creditor/Applicant

V/s.

**Lalit Polyester Private Limited**

[CIN: U99999MH1988PTC045817]

...Corporate Debtor/Respondent

**Order pronounced on: 05.01.2023**

*Coram:*

Mr. Manoj Kumar Dubey  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner : Mr. Anup Khaitan, Advocate.

For the Respondent(s) : None present.

**ORDER**

***Per: Kishore Vemulapalli, Member (Judicial)***

1. This is a Company Petition being C.P. (IB) No. 3243/MB-IV/2019 filed by Punjab National Bank, the Financial Creditor, under section 7 of Insolvency & Bankruptcy Code, 2016 (I & B Code) against Lalit Polyester Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Petition is filed by Mr. Muntazeer Ahmed Firoz Khan, Authorised Representative of the Financial Creditor for total outstanding of Rs.87,82,73,584/- (Rupees eighty-seven crore eighty-two lakh seventy-three thousand five hundred eighty-four only).
3. The date of default is 30.08.2019 and the Date of NPA is 31.03.2010.

**Brief facts of the case:**

4. The Corporate Debtor approached the Financial Creditor for grant/sanction of various credit facilities. The Financial Creditor considered the request of the Corporate Debtor and granted/ sanctioned/ enhanced the credit facility from time to time. The initial amount was disbursed on 02.02.2010. The Sanctioned Letter was issued on 02.02.2010. The details of Loan sanctioned (initial sanction) are as follows:

<b>Sr. No.</b>	<b>Facility/es</b>	<b>Date of Loan</b>	<b>Loan Amount (in Lakh)</b>
1	Cash Credit (Hypothecation)	02.02.2010	7.50
2	PCL/ PCFC	02.02.2010	11.25
3	FDBP/ FUDBP/ FCBRD	02.02.2010	(11.25)
4	Import/ Inland LC	02.02.2010	7.62
5	Bank Guarantee	02.02.2010	0.80
<b>Total</b>			<b>27.17</b>

5. To secure the Credit Facilities, the Corporate Debtor executed various loan and security documents in favour of the Financial Creditor. The details or documents is reproduced hereunder:
  - a. Common Agreement dated 24.02.2010.

- b. Supplemental Agreement to secure credit/ loan facilities dated 24.02.2010.
  - c. Agreement of Guarantee in favour of Dhumil Sheth dated 24.02.2010.
  - d. Agreement of Guarantee by Manoj B. Shah dated 24.02.2010.
  - e. Creation of Charge on Mortgaged Property at Shahpur on 23.02.2010.
  - f. Creation of Charge on Mortgaged Property Hypothecation on 24.02.2010.
6. The Financial Creditor has granted/sanctioned the Credit Facility in favour of Corporate Debtor, however, the Corporate Debtor failed to repay the outstanding dues as per the result of which the loan account of the Corporate Debtor was classified NPA on 31.03.2010 as per the Reserve Bank of India (RBI) prudential norms.
7. The Financial Creditor submits that the erstwhile Oriental Bank of Commerce has recently merged with Punjab National Bank with effect from 1<sup>st</sup> April, 2020.
8. The Financial Creditor submits that the Original Application having No. 22 of 2012 was filed before the Debt Recovery Tribunal (DRT), Mumbai for obtaining the decree against the Corporate Debtor. The DRT, Mumbai-II passed a decree on 15.09.2016 and issued a Recovery Certificate on 15.09.2016.
9. We have heard and prudently gone through pleadings available on records, the matter was first listed on 24.09.2019 wherein the Court Notice was issued to the Corporate Debtor to appear in the matter. Again

---

on 11.11.2019, 04.12.2019, 06.01.2020, 28.01.2020, 07.02.2020 the Corporate Debtor did not appear. Vide order dated 03.03.2021, paper publication was ordered against the Corporate Debtor. Hence, after giving reasonable opportunities to the Corporate Debtor to appear, the Corporate Debtor chose not to appear in the matter.

*Findings:*

10. We have heard the arguments of the Learned Counsel for Financial Creditor and perused the records.
11. It is observed by the Bench that the Financial Creditor has provided the Loan Facility to the Corporate Debtor vide Sanction Letter dated 02.02.2010. Pursuant to this, Common Agreement dated 24.02.2010 was entered between Financial Creditor and Corporate Debtor.
12. The Financial Creditor has provided the Loan Facility to the Corporate Debtor in year 2010. As per the submissions of the Financial Creditor it has been observed that the Financial Creditor has filed the DRT proceedings in the year 2011. The Decree of the DRT was passed on 30.03.2016. The Debt Recovery Certificate was received by the Financial Creditor on 15.09.2016.
13. The Financial Creditor has filed the present Petition on the basis of Debt Recovery Certificate dated 15.09.2016. It has been clarified in the Judgment of Hon'ble Supreme Court in *Dena Bank V/s C. Shivakumar Reddy and Anr.*, that the Certificate of Recovery would give Fresh Cause of Action for the Financial Creditor to initiate proceedings under section 7 of the Code. The relevant extract is as under:

*“141. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal*

---

*or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.”*

14. It is observed by the Bench that the Financial Creditor has filed the present Petition on 03.09.2019 which is well within limitation. Hence in view of the above observation, this Bench is inclined to admit the Petition filed by the Financial Creditor.
15. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,000/- (Rupees One Lakh Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor is liable to be admitted.
16. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Lakh and default of the Corporate Debtor has been established.
17. The Applicant has proposed the name of Mr. Laxman Digambar Pawar, a registered Insolvency Resolution Professional as Interim Resolution

Professional (IRP) to carry out the functions as mentioned under I&B Code. It is observed by the Bench that the Proposed IRP is having 44 (Forty-four) assignments with him and his AFA was Valid up to 27.12.2022. Hence, this Bench is of the view that another IRP should be appointed in the matter for the purpose of the smooth functioning of CIRP.

### **ORDER**

This Application being C.P. (IB) No. 3243/MB-IV/2019 filed under Section 7 of I&B Code, 2016, filed by Punjab National Bank, the Financial Creditor, under section 7 of Insolvency & Bankruptcy Code, 2016 (I & B Code) against Lalit Polyester Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process is **Admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
  - 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;

- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
  - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Mr. Nitin Om Kothari, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P-02310/2020-2021/13477], E-mail: [cakotharico@gmail.com](mailto:cakotharico@gmail.com), Contact: 9664442266, as Interim Resolution Professional to carry out the functions as mentioned

under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

- e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five 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).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or Whats App. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-  
Manoj Kumar Dubey  
Member (Technical)  
05.01.2023

Sd/-  
Kishore Vemulapalli  
Member (Judicial)