

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

CP-IB-429/ND/2019

**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

...PETITIONER

Versus

Tristar Global Infrastructure (P) Ltd

...RESPONDENT

MEMO OF PARTIES

**Punjab National Bank
Plot No. 04, Dwarka, Sector-10,
New Delhi - 110075**

...Applicant/Financial Creditor

Versus

**Tristar Global Infrastructure Private Limited
Through its Director(s)
C-207, Ground Floor, Sarvodhya Enclave,
New Delhi- 110030**

...Respondent/ Corporate Debtor

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Coram:

**R.VARADHARAJAN,
Hon'ble Member (Judicial)**

**K.K. VOHRA,
Hon'ble Member (Technical)**

Counsel for the Petitioner: Mr. V.K. Jain,
Shekhar Gupta (Advocates)
Counsel for the Respondent: Ms. Reema Khorana (Advocate)

ORDER

Delivered on: 28.08.2019

1. The Financial Creditor (Petitioner) has filed a Petition under Section 7 of Insolvency and Bankruptcy Code, 2016 for the recovery of a total outstanding amount of Rs 52,05,03,856.06 which includes a Cash Credit of Rs 30,10,88,786.25 (Page 906 of Petition) and a Term Loan of Rs 21,94,15,069.81(Page 912 of Petition) from the Corporate Debtor.
2. The Ld. Counsels for Petitioner as well as Respondent were present. The Petitioner has stated that the Respondent availed loan facilities starting from June 2009 which were

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enhanced from time to time. As the Corporate Debtor (Respondent) was not maintaining accounts with the Financial Creditor as per the agreed terms and conditions, the account of Respondent was declared as NPA by Financial Creditor on 30.09.2016.

3. The Respondent was issued a notice by the Petitioner on 30.11.2016 and on subsequent dates as well. Despite the notices, the Respondent failed to pay the outstanding amount to Petitioner.
4. The Ld. Counsel for Respondent argued that the Respondent had applied for a loan of Rs 2 Crore from the Petitioner which was not disbursed and as a result the Respondent had to incur a loss of Rs 45.1987 Crore. Thus the respondent had made a counter claim of Rs 45.1987 Crore (Pg 36 of the Reply on behalf of Respondent) against the Petitioner.
5. The Respondent mentioned that the applicant bank was made fully aware of the deteriorating condition of the Respondent Company, due to the omission and commission of the Petitioner, through repetitive communications by way of letters emails etc by the Respondent (Pg 88 of reply of Respondent). It further stated that due to lack of non release of any LC since December 2014, the Respondent had not been able to execute its running project resulting into non realisation of payments.
6. The Ld Counsel for Respondent stated that there is no liability of Respondent in view of the counter claim. The Respondent admitted that he had taken the loan. The counter claim of Rs 45.1987 Crore (Pg 36 of reply on behalf of the Respondent) includes items like loss of good will, loss of order book and profitability etc.



7. The banks give loans out of the money collected from depositors, share holders etc. The notional loss as pleaded by the Respondent is prima facie not tenable. The Ld. Counsel for the Petitioner has stated that credit facility of Rs 2 Crore was not disbursed as the Respondent failed to fulfil the Terms of the sanction. Keeping in view the circumstances of the case, the Application of the Petitioner is admitted.
8. The Petitioner has proposed Mr. Arvind Garg, registered with Insolvency Professional Agency of Institute of Cost Accounts of India having registration number IBBI/IPA-003/IP-N00029/2017-18/10189, as the Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP.
9. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

“(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

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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 the possession of the Corporate Debtor.”

However during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

“(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”

The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and is reproduced below for ready reference:

“(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process

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period, if the Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

11. Based on the above terms, the Application stands admitted in terms of Section 7 of the Code and the Moratorium shall come in to effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the Respondent above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

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(K.K. VOHRA)
MEMBER (TECHNICAL)

-Sol-

28/08/2019

(R. VARADHARAJAN)
MEMBER (JUDICIAL)