

IN THE NATIONAL COMPANY LAW TRIBUNAL

JAIPUR BENCH (RAJASTHAN)

CP No. (IB)-59/7/JPR/2019

**Coram: Dr. P.S.N. PRASAD,
HON'BLE JUDICIAL MEMBER**

**SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER**

IN THE MATTER OF SECTION 7 OF IBC, 2016.

IN THE MATTER OF:

**ORIENTAL BANK OF COMMERCE
Registered Office: Plot No. 5, Sector 32,
Industrial Area, Gurgaon- 122001 (Haryana)**

...FINANCIAL CREDITOR/APPLICANT

VERSUS

**SUPER SHIV SHAKTI CHEMICALS PRIVATE LIMITED
C-112, Shastri Nagar, Near Shyam Temple,
Bhilwara- 311001 (Rajasthan)**

...CORPORATE DEBTOR/RESPONDENT

**FOR PETITIONER (S) : Raj Kumar, ADV.
FOR RESPONDENT(S) : Prabhansh Sharma, Adv.**

Oriental Bank of Commerce
Versus
Super Shiv Shakti Chemicals Private Limited



ORDER PRONOUNCED ON: -10.01.2020**ORDER****Per: Shri Raghu Nayyar, Technical Member**

1. This Application is filed by the Oriental Bank of Commerce, (“Applicant”), claiming to be a Financial Creditor, through Krishna Prasad Samantaray, its Authorised Signatory and Assistant General Manager, who is duly authorized vide Authority Letter dated 04.02.2019 to file this Application against the Corporate Debtor, Super Shiv Shakti Chemicals Private Limited (“Corporate Debtor”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of the Corporate Insolvency Resolution Process (CIRP), pursuant to default in repayment of loan amount by the Corporate Debtor to the Applicant.
2. The Applicant is a Banking Company, constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 and the PAN Number of the Applicant Company is AACO0191M. The Registered Office of the Company is at Plot No. 5, Sector 32, Industrial Area, Gurgaon-122001 (Haryana).

Oriental Bank of Commerce
Versus
Super Shiv Shakti Chemicals Private Limited



3. The Respondent is a Private Limited Company, incorporated under the Companies Act, 1956, on 30.11.2004 and duly registered with the Registrar of Companies, Jaipur bearing CIN: U24119RJ2004PTC019955. The Registered Office of the Company is at C-112, Shastri Nagar, Near Shyam Temple, Bhilwara- 311001 (Rajasthan). The authorized share capital of the company is Rs. 16,90,00,000/- (Rupees Sixteen Crore Ninety Lakh Only) and paid up share capital is Rs. 15,89,00,000/- (Rupees Fifteen Crore Eighty-Nine Lakh Only). The Respondent is engaged in the business of manufacturing /supply of different type of explosives.
4. It is the case of the Applicant that the Respondent has availed various credit facilities namely Cash Credit Facility of Rs. 5,00,00,000/- vide sanction letter dated 09.01.2013, Term Loan I of Rs. 3,64,00,000/- sanctioned vide letter dated 17.10.2013 and Term Loan II of Rs. 10,00,00,000/-sanctioned vide letter dated 17.02.2015. The term loan I was repayable in 78 monthly instalments of Rs. 4,67,000/- plus interest at the rate of 13.50% subject to changes in base rate and additional interest at the rate of 2% p.a. over and above the normal rate on overdue portion in case of default. The Term Loan II of Rs. 10,00,00,000/- was repayable in 24 quarterly instalments of Rs. 41,67,000/- after moratorium of 9 months on same interest rate as Term Loan I. The said cash credit facilities were renewed and the limits have been



enhanced from time to time by the Applicant as per the request of the Respondent. The Applicant further submits that the Corporate Debtor has executed various loan and security documents in order to avail said loan and credit facility.

5. The Applicant further submits that since the Corporate Debtor did not maintain financial discipline, the Loan Accounts of the Corporate Debtor were classified as NPA on 30.03.2017. The Applicant has filed Balance and Security Confirmation letter dated 28.03.2016 in which the Respondent has confirmed outstanding amount towards Applicant of Rs. 11,14,37,047 of cash credit, Rs. 2,56,59,000/- of Term Loan I and Rs. 9,58,33,333 of Term Loan II. Thereafter the Applicant has issued Notice dated 05.02.2019 under Section 13 (2) of the SARFAESI Act, 2002 to the Corporate Debtor and Guarantors and demanded an outstanding amount of Rs. 27,05,47,705/- of Cash Credit, Rs. 9,32,35,029.22 of Term Loan I and Rs. 1,84,36,068/- of Term Loan II but the outstanding amount was not repaid. Copy of Demand Notices were annexed as Annexure-32 with the Application.
6. As a consequence of default, this Application was filed. As claimed by the Applicant, the Corporate Debtor is liable to pay aggregate amount Rs. 37,87,08,562.22/- as on 25.02.2019 as an outstanding amount, as reflected in Part IV of the Form - 1 filed.



Part IV

S. no.	Particulars of Financial Debt	
1.	Total amount of debt granted date(s) of disbursement.	Amount of Loan granted:- a) Term Loan I of Rs. 3.64 Crores b) Term Loan II of Rs. 10 Crores c) Cash Credit of Rs. 21 Crores Total (a+b+c) = Rs. 34.64 Crores
2.	Amount claimed to be in default and the date on which the default occurred	Outstanding Amount as on 25.02.2019 a) Term Loan I Account Rs. 8,97,24,789.22/- with interest. b) Term Loan Account Rs. 1,84,36,068/- with interest. c) Cash Credit Account Rs. 27,05,47,705/- with interest. Total (a+b+c) = Rs. 37,87,08,562.22/- Date of Default is the day on which the Corporate Debtor was declared as NPA i.e. 30.03.2017

7. The Respondent has filed reply to the Application vide Dairy No. 137/2019 Dated 26.07.2019. The Respondent had raised an objection that no relief has been sought in the Application filed by the Applicant. The affidavit filed by Applicant is not in compliance with Form No. NCLT-6 of NCLT Rules, 2016. The Applicant has not filed the Board Resolution in respect of power given to the General Manager to authorise Mr. Krishna Prasad Samantaray



to file an Application. It is further submitted that the statement of accounts furnished with Application is from the period of 28.03.2016 whereas CC limit was sanctioned on 09.01.2013 and the first transaction took in year 2013. The name of the proposed IRP in Form I Part III is mentioned as Mr. Brajeesh Verma whereas Form 2 is filed by Mr. Brajesh Kumar Verma. In Form No. 1 of Part IV filed by the Applicant, instead of total amount of debt due and date of disbursement the Applicant has mentioned total outstanding as on 25.02.2019 Rs. 37,87,08,562.22/-. Also, at Sr. No. 2 of Part IV instead of amount claimed and date of default date of NPA and SARFESI notice is mentioned. The Application is not accompanied enclosed with a copy of certificate of Registration of charges issued by the Registrar of Companies.

8. The Respondent further submitted that the it was holding Licence No. E/HQ/RJ/20/21(E23420), E/HQ/RJ/34(E70164) and E/HQ/RJ/20/22(E23432) for manufacturing of explosives. It is an admitted fact that for expansion of business and to meet working capital requirement, the Respondent took loan facilities and CC facility from Applicant and the said CC facility has been enhanced from time to time. On 11.08.2016 an accident took place at the factory of the Respondent because of which 4 died and 1 got injured. Consequently on 12.09.2016 the Chief Controller of Explosives (CCE) has suspended licence No. E70164 and 23420. Thereafter the company through several letters requested CCE to grant permission to



start slurry/ emulsion explosive plant under Licence No. E23432 while claiming that the said plant is unaffected by the accident dated 11.08.2016. The company has filled writ petition vide SBCWPNO. 15121/2016 before Hon'ble High Court of Judicature Rajasthan at Jodhpur for revocation of suspension of manufacturing licences issued by CCE. The Hon'ble High Court of Judicature Rajasthan vide order dated 03.08.2017 allowed the writ petition and directed the CCE to consider the request of the petitioner company for revocation of suspension of explosives licenses. In between due to no operations the account of the Respondent with the Applicant turned NPA on 30.03.2017.

9. The Respondent further submits that turnover of the Respondent during the interim suspension period dipped considerably. It is further stated that on revival of the operations the Applicant stated that they would transfer and retain 10% of the amount realized by the corporate debtor which was done by Applicant, later Applicant started retaining 15 % due to which it become difficult for the Respondent to continue operations of the unit. Ultimately in January 2019 the Respondent had to close the unit.
10. The Respondent has admitted its inability to pay the debt amount in its prayer in the reply and the same is reproduced below:



“The corporate debtor is trying its best to present a onetime settlement proposal to the Applicant consequent to release of the Insurance claim (latest communication with the Insurance co. attached as Annexure R—4) and finding a suitable investor to infuse funds in the company . That the Corporate debtor is in discussion with the higher officials of the Applicant to sort out the matter and needs three to six months’ time to revive the operations by presenting an OTS which is in line with the objects of the Insolvency and Bankruptcy Code, 2016 which has been brought to promote entrepreneurship and not with an intent to be an Act for recovery of dues.”

11. In view of the inherent admission made in the reply by the Corporate Debtor, the Corporate Insolvency Resolution Process can be initiated against the Corporate Debtor, as it has committed default and the default is more than one lakh of rupees.
12. This Tribunal perused all the relevant papers and found them to be in order. The Registered Office of Corporate Debtor is situated in Bhilwara and therefore this Tribunal has jurisdiction to entertain and try this Application. The matter is within the limitation period as enunciated under the Law of Limitation.



13. The Applicant has named one Mr. Brajesh Kumar Varma having Registration Number IBBI/IPA-002/IP-N00491/2017-18/11381 (email: varma.brajesh@gmail.com, Mobile No.: 8874747555), duly registered with ICSI Insolvency Professional Agency, to be appointed as the Interim Resolution Professional. The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 stating therein that no disciplinary proceedings are pending against the named IRP.

14. Consequences of initiation of CIRP shall be inter-alia as follows:

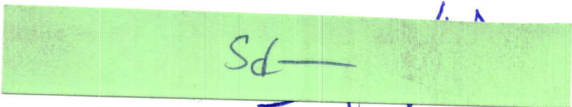
- (i) The Resolution Professional proposed by the Applicant is Mr. Brajesh Kumar Varma who is an IP registered with ICSI Insolvency Professional Agency having Registration No. IBBI/IPA-002/IP-N00491/2017-18/11381. He is hereby appointed as the Insolvency Resolution Professional (IRP) to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016 including issue of publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016 and calling for the claims from the creditors of Corporate Debtor and collation of the same shall be done.

- (ii) Further, as a sequence of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the Corporate Debtor which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.
- (iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016 and with a view to defray his expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lacs Only) to the account of IRP within three days from the date of this order. The IRP shall duly file a status report from time to time appraising this Tribunal about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016 all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- (iv) In terms of Section 7 of IBC, 2016, this order shall be communicated to the Applicant, Corporate Debtor as well as the Interim Resolution Professional (IRP) appointed by this Tribunal to carry out the CIRP



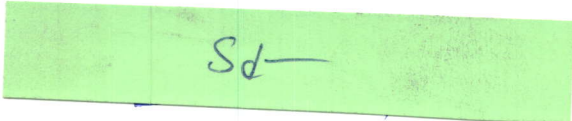
at the earliest, not exceeding one week from today. A copy of this order shall also be communicated to IBBI for its records.

(v) In the circumstances, this Company Petition is admitted.



Sd—

**SH. RAGHU NAYYAR,
MEMBER (TECHNICAL)**



Sd—

**Dr. P.S.N. PRASAD
MEMBER (JUDICIAL)**

Mansi J.