

**NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 222/Chd/Hry/2019

**Under Section 7 of the Insolvency
and Bankruptcy Code, 2016**

In the matter of :

Abhyudaya Co-operative Bank Limited

having its registered office at
Building No. 36/2512, Abhyudaya Nagar,
G D Ambedkar Marg, Mumbai – 400 033

Administrative Office at
K.K. Tower, Abhyudaya Bank Lane,
Off G.D. Ambedkar Marg,
Parel Village, Mumbai – 400 012

...Petitioner/Financial Creditor

Versus

M/s. Bhagwandas Ispat Pvt. Limited

having its registered office at
500, Priti Nagar, Satrodia Colony,
Hisar, Haryana – 125 005

...Respondent/Corporate Debtor

Judgement delivered on: 23.10.2019

**Coram: HON’BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON’BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Petitioner-Financial Creditor : 1). Mr. Puneet Jain, Advocate
2). Mr. Yogesh Kumar, Advocate

For the respondent-corporate debtor : Mr. Rakesh Sobti, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGEMENT

The application in the prescribed Form No.1 is filed by Abhyudaya Cooperative Bank Ltd. (hereinafter referred to as **Bank**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of Bhagwandas Ispat Pvt. Ltd. (hereinafter referred to as **Corporate Debtor**). The application is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**Code**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**Rules**). The application is signed by Mr. Rajendra S. Gurav, Manager (Legal) at Building No. 36/2512, Abhyudaya Nagar, G D Ambedkar Marg, Mumbai – 400 033. His affidavit verifying the contents of the application is at page 24 to 25 of the petition. The Board Resolution authorizing Mr. Rajendra S. Gurav, Manager (Legal) is placed at Annexure I/1 of the petition.

2. The master data of the Corporate Debtor is stated to be filed at Annexure-I/2 of the petition. The Corporate Debtor is stated to be incorporated originally on 05.09.1988 and subsequently, the name of the corporate debtor was changed from Amar Ispat Private Limited to Bhagwandas Ispat Private Limited vide fresh Certificate of Incorporation dated 19.06.2008. The registered address is stated to be at 500, Priti Nagar, Satrodia Colony, Hisar, Haryana-125005. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. It is stated in Part-IV of Form No.1 that the Corporate Debtor has been granted total debt of ₹11,30,00,000/- under Cash Credit Facility of ₹950 lacs, bank guarantee of ₹930 lacs vide sanction letter dated 04.02.2014.

Also financial creditor (Bank) has issued two bank guarantees of ₹100 lacs and ₹28 lacs in favour of Maharashtra State Electricity Distribution Company Limited. It is stated that due to default in payment of instalments, the corporate debtor was declared NPA on 29.10.2014. The account wise outstanding is as under:-

Cash Credit A/c ARBCC/20297	
Principal	9,01,99,359.04
Unapplied Interest as on 31.01.2019	5,85,59,004.00
Unapplied Charges as on 31.01.2019	24,57,081.00
Total (A)	15,12,15,444.04

Invoked Bank Guarantee A/c ARBBG-26	
Principal	89,45,432.00
Unapplied Interest as on 31.01.2019	53,11,482.00
Unapplied Charges as on 31.01.2019	0.00
Total (A)	1,42,56,914.00

As per Part-IV of Form No.1, the total amount due towards the corporate debtor upto 31.01.2019 is ₹16,54,72,358.04 with pendent lite and future interest @ 14% per annum with monthly rests.

4. In Part-V of Form No.1, the particulars of security held are given. It is stated that the credit facilities are secured by way of mortgage of land at

Murbad Industrial Area, District Thane alongwith factory building/structures constructed, furniture, fixture, fittings equipments, plant and machinery under Schedule "A" (ii) of Deed of Extension of Mortgage dated 01.12.2011 and hypothecation of stocks and book debts for cash credit account as bank guarantee on 11.02.2014. Copy of deed of the deed of mortgage alongwith extension deed dated 01.06.2009, 25.01.2009 and 01.12.2011 are attached as Annexure I/5 (Colly) of the petition. Also copy of hypothecation of stock and book debts agreement as well as bank guarantee agreement is found attached as Annexure I/12 (Colly) of the petition. It is stated that the charge on the assets of the corporate debtor got duly registered with the Registrar of Companies and a copy of Form 8 showing such registration is placed as Annexure I/7 of the petition. It is further stated that default of the corporate debtor could also be borne out from the Cibil report attached as Annexure I/9 of the petition.

5. It is also stated in Part-V of Form No. I that an arbitration claim against the corporate debtor has been filed before the Arbitration Authority, Mumbai where an award of ₹11,19,49,667/- with further interest @ 14% per annum from 01.12.2012 till full payment/recovery has been passed in favour of the financial creditor on 26.04.2016. Copy of the Arbitral Award is appended with the petition as Annexure I/8.

6. It is submitted that the corporate debtor failed to keep its cash credit account regular and therefore, the account of the corporate debtor was classified as Non-Performing Asset (NPA) in accordance with the directives/guidelines of Reserve Bank of India on 29.10.2014. Further, a recall notice dated 09.12.2014 is stated to be issued upon the corporate debtor through Advocate calling upon the corporate debtor to pay the entire

outstanding amount. The outstanding amount upto 31.01.2019 is stated to be ₹16,54,72,358.04 with pendent lite and future interest @ 14% per annum with monthly rests.

7. In Part-III of Form No.1 Ms. Prajakta Avil Menezes, Regn. No.IBBI/IPA-001/IP-P01349/2018-19/12016 has been proposed as Interim Resolution Professional (**IRP**). Form No. 2 dated 04.04.2019 submitted by the proposed IRP is stated to be attached as Annexure-II of the petition.

8. Vide order dated 24.05.2019, notice of the petition was directed to be issued to respondent-corporate debtor. Reply has been filed by the Corporate Debtor by Diary No. 5127 dated 25.09.2019 wherein it has been stated that the bank has already initiated securitization proceedings in the matter and has acquired physical possession of the factory premises and sold plant and machinery already. It has also been submitted that as there is no possibility of revival of the business of the corporate debtor, the company may be liquidated, in the interest of justice.

9. During the course of the hearing, the learned counsel for the Bank relied on the petition filed and stated that the requirements of Section 7 of the Code are satisfied and the petition be admitted.

10. We have carefully considered the submissions of learned counsel for the bank and the Corporate Debtor and have also perused the record.

11. When the matter was taken up for final hearing, the learned counsel appearing for the respondent-corporate debtor at the outset, submitted that they have defaulted in making payment to the petitioner as well as to the others and the respondent company may be liquidated.

12. Section 7(5)(a) of the Code is as follows:-

*“(5) Where the Adjudicating Authority is satisfied that—
(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”*

13. In the present case, the occurrence of default is evidenced by the details furnished by the bank including report of CIBIL (Annexure I/9) and the copies of statement of accounts duly certified under the Bankers Books Evidence Act 1891 is placed as Annexure I/4 of the petition.

14. The Corporate Debtor has not disputed the loan facilities granted by the petitioner-financial creditor and admitted the default in repayment of dues to the petitioner bank. The outstanding amount upto 31.01.2019 is stated to be ₹16,54,72,358.04 with pendent lite and future interest @ 14% per annum with monthly rests.

15. The application filed in the prescribed Form No. I is found to be complete.

16. The proposed Interim Resolution Professional, Ms. Prajakta Avil Menezes has filed Form No.2 (Annexure-II of the petition) certifying that there are no disciplinary proceedings pending against her with the Board or Indian Institute of Insolvency Professionals of ICAI.

17. The conditions provided for by Section 7(5)(a) of the Code being satisfied in the present case, we direct that the application for initiation of CIRP against Bhagwandas Ispat Private Limited be admitted. The directions regarding moratorium and appointment of IRP are given below.

18. We declare the Moratorium in terms of sub-section (1) of Section 14 of the code as under:-

- (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 the possession of the corporate debtor.

19. It is further directed that 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. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

20. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31

or pass an order for liquidation of corporate debtor under Section 33 as the case may be.

21. The Law Research Associate of this Tribunal has checked the credentials of Ms. Prajakta Avil Menezes and there is nothing adverse against her. In view of the above, we appoint Ms. Prajakta Avil Menezes, resident of 2D-1104, Dreams CHS, LBS Marg, Bhandup West, Mumbai-400078 having Registration No.IBBI/IPA-001/IP-P01349/2018-19/12016 and email address prajakta.menezes@gmail.com, Mobile No.98339-39366, the Interim Resolution Professional, with the following directions:-

- i) The term of appointment of Ms. Prajakta Avil Menezes, shall be in accordance with the provisions of Section 16(5) of the Code;
- ii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance

sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iii) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morality;
- iv) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend

all cooperation in accessing books and records as well as assets of the Corporate Debtor;

- vi) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee; and
- vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

22. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member(Judicial)

October 23rd, 2019
Yashpal

Pronounced in open court Sd/- 23.10.2019

