



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-1934/PB/2019

Section: 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

At: Ground Floor, Mahatma Gandhi Seva,
Mandir Trust Building,
Bandra (West), Opp. Bandra Talao,
Mumbai-400050

...Financial Creditor/Applicant

Versus

M/s. Interdril Asia Limited

At: R 13 & 4, LGF, Ansal Chambers II,
6, Bhikajikama Place,
New Delhi-110066

...Corporate Debtor/Respondent

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Coram:

**SHRI. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)
SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

Counsel for Applicant: Adv. S.K Sharma

Counsel for Respondent: Adv. Aditya Dewan

ORDER DELIVERED ON: 22.12.2022

ORDER

Per: P.S.N Prasad, Member(Judicial)

1. This is an application filed by Punjab National Bank to initiate the Corporate Insolvency Resolution Process ("CIRP") against M/s. Interdril Asia Limited under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code") for an alleged default on the part of the Respondent in settling an amount of Rs. 193,28,38,803 (One hundred Ninety Three Crores Twenty Eight Lakhs Thirty Eight Thousand Eight Hundred Three Rupees) as on 31.07.2019 and 280,92,87,008/- (Two hundred Eighty Crores Ninety Two Lakhs Eighty Seven Thousand and Eight Rupees) as on

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31.03.2022. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That the Corporate Debtor is dealing with the Applicant bank since June 2003. The account was taken over from State Bank of Mysore and State Bank of Indore. The Corporate Debtor is manufacturer of drill collars, heavy weight drill pipe & spiral heavy weight drill pipe. It had obtained certain credit facilities from the Applicant bank from time to time.
- ii. That the Corporate Debtor had been availing various financial limits e.g. FDBP/FUDBP, Packing Credit, Term Loan, Corporate Loan, Bank Guarantee, Letter of Credit, Overdraft Account etc., for its business requirement and expansion since 2003 from Bandra (West) Branch, Mumbai of financial creditor. That the said credit facilities were sanctioned/renewed/enhanced/reviewed time to time. The Corporate Debtor had availed the above said credit facilities on terms and conditions' contained in various loan agreements/facility agreement/supplementary documents entered

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into between the Corporate Debtor and Financial Creditor.

- iii. That in order to secure the existing financial assistances, the Corporate Debtor created security interest from time to time, inter alia by way of hypothecation of all its current assets, movable assets and mortgaged of all its immovable properties as securities for due repayment of the facilities availed by the Corporate Debtor.
- iv. That the Corporate Debtor had availed the facilities as mentioned above, but it was not maintaining proper financial discipline and also not adhering to banking norms laid down by the Reserve Bank of India. The Financial Creditor was constrained to classify the accounts of the Corporate Debtor as Non-Performing Assets on 31.03.2012 in terms of the Directives of the Reserve Bank of India and internal guidelines of the Financial Creditor.
- v. That for the purpose of encashment of the security interest, the Financial Creditor issued Recall Notice u/s 13(2) of the Securitization Act, 2002 to defendants



on 01.12.2012 and asked them to pay the dues of Rs. 85,89,23,071.21 plus interest within 60 days. The financial creditor filed an Original Application bearing No. 128/2013 before the Debts Recovery Tribunal, Mumbai..

- vi. That the Corporate Debtor approached the Financial Creditor and submitted One Time Settlement Proposal vide letter dated 13.11.2013 to settle the account for Rs. 44.68 crore, which was approved by Financial Creditor vide letter dated 22.11.2013. The said compromise was recorded, in Lok Adalat held at Scindia House, 5th Floor, Mumbai on 11.01.2014, whereby the corporate debtor agreed to pay Rs. 44.68 Crores to the Financial Creditor. That the corporate debtor failed to comply the terms and conditions of the Compromise Memo dated 11.01.2014 recorded in Lok Adalat held on 11.01.2014. However, the corporate debtor failed to comply the terms of the Compromise Memo dated 11.01.2014.
- vii. The Corporate Debtor again approached Financial Creditor for revised One Time Settlement. The



Financial Creditor approved revised One Time Settlement vide letter 23.05.2015. However, the Corporate Debtor again failed to comply the terms of the approved revised One Time Settlement dated 23.05.2015.

viii. That the Financial Creditor filed an application u/s 14 of the SARFAESI Act for taking physical possession of the mortgaged property of the Corporate Debtor.

2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply and contended that:

- i. That the recovery of loan is hopelessly barred by limitation as the account as per the applicant was declared NPA in the year 2012, whereas the present application is being filed in the year 2019 i.e. on 07.08.2019 and as such the same is liable to be dismissed on the ground of limitation.
- ii. That the Respondents was constantly in touch with the bank to resolve the impasse in the spirit of settlement and the Respondent approached the

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Financial Creditor for settlement while factoring in various micro and macro-economic variables.

3. The Applicant has filed written submissions stating as follows:

- i. That the Financial Creditor duly qualifies under the definition of Section 5(7) of the 1&B Code, 2016 as the loan/facility was sanctioned on various dates vide sanction letters dated 10.09.2005, 10.12.2007, 05.1.2009, 20.10.2010 & 15.10.2011.
- ii. That the said petition is within the Limitation Period as there is a Continuous cause of action and further the DRT certificate initiates the fresh cause of action.
- iii. That simultaneous proceeding in DRT is not a bar for initiating a simultaneous proceeding in NCLT.

4. The Respondent has filed written submissions stating as follows:

- i. That the Respondent has always been desirous of settling its debts with the Petitioner for which it has made several OTS proposals.
- ii. That the time-barred application of the Petitioner was allowed to stand only on the basis of the



recovery certificate. The Petitioner should first take steps to recover in terms of the recovery certificate and the present petition should not be allowed.

iii. That the Respondent should not be subjected to CIRP merely because the Petitioner, having filed a time barred petition was able to continue on the basis of a subsequently issued recovery certificate, and without having taken steps to implement the recovery certificate issued in its favor.

5. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The Applicant is claiming a default on the part of the Respondent for an amount of Rs. 193,28,38,803 (One hundred Ninety Three Crores Twenty Eight Lakhs Thirty Eight Thousand Eight Hundred Three Rupees) as on 31.07.2019 and 280,92,87,008/- (Two hundred Eighty Crores Ninety Two Lakhs Eighty Seven Thousand and Eight Rupees) as on 31.03.2022.

6. A mere plain reading of the provisions u/s 7 of the IBC, 2016 shows that in order to initiate CIRP under Section 7, the

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Applicant is required to establish financial debt and show that a default has been committed in respect of said debt. What constitutes a 'default' must be determined under the provisions of the Code. Section 3(12) of the Code defines default as:

“default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;

7. Further, the Hon'ble Supreme Court in *Innoventive Industries Ltd Vs ICICI Bank & Anr Civil Appeal Nos. 8337-8338 Of 2017* held that:

“The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed.”

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8. The documents submitted by the Financial Creditor substantiate the Financial Creditor's claim that the Corporate Debtor has indebted and defaulted the repayment of debt. The Corporate Debtor has nowhere denied the existence of debt. However, the Corporate Debtor has contended that the present Application is barred by Limitation. The Ld. DRT-I, Mumbai had issued a recovery certificate bearing no. 94/2021 dated 27.09.2021 in M.A No. 81 of 2016 "Oriental Bank of Commerce (now Punjab National Bank) Vs. Interdril Asia. Limited" in favour of the Financial Creditor and against the Corporate Debtor for the total sum of Rs. 101,85,03,493.43/- (Rupees One Hundred and One Crore Eighty-Five Lac Three Thousand Four Hundred and Ninty Three Only). The said Debt Recovery Certificate was taken on record by this Tribunal vide order dated 07.02.2022 in I.A 4940/2021. Further, the Hon'ble Supreme Court in the matter of , *Dena bank v C Shivakumar Reddy and Anr.*[CA No 1650/2020] held that:

"142. To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed

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beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.

143. 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.”

In terms of the above judgement of the Hon'ble Supreme Court, the Debt Recovery Certificate dated 27.09.2021 gives a fresh lease of limitation to the Financial Creditor for filing the present Application for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the issuance of the



Certificate of Recovery. In view of the above, we are of the view that the present Application is not barred by Limitation.

9. After giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.
10. Sub-section (3)(b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Jitendra Kumar Budhalal Shah for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P-01034/2017-2018/11688. Mr. Jitendra Kumar Budhalal Shah 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 dated 21.05.2019. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.



11. It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the code* stands satisfied as default has occurred, the present application filed under Section 7 is complete as no disciplinary proceeding against the proposed IRP is pending.

12. Section 16(1) and Section 16 (2) of the Code mandate that the Resolution Professional proposed by the Financial Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional Mr. Jitendra Kumar Budhalal Shah has submitted the declaration in Form 2 dated 21.05.2019.



13.It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the credit facilities and has committed default in repayment of the outstanding amount.

14.We are satisfied that the present application is complete in all respects and the applicant Financial Creditor is entitled to claim its outstanding financial debt from the Corporate Debtor and that there has been default in payment of the financial debt.

15.As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

16.Mr. Jitendra Kumar Budhalal Shah having registration number IBBI/IPA-001/IP-P-01034/2017-2018/11688 is appointed as an Interim Resolution Professional.

17.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 Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

18. 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) of the Code. 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 Securitization

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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 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 as 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) Act, 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.

20.The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further



made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

21. 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, NCT

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of Delhi & Haryana at the earliest possible 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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(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

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

Pronounced today under Rule 151 of NCLT Rules, 2016 as Hon'ble Member (J) Sh. P.S.N Prasad is not holding the court today.

Court Officer
22.12.2022