

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

IB-558/(ND)/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:

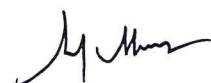
PUNJAB NATIONAL BANK
Mid Corporate Branch,
H-1A/11, Sector-63,
Noida, Gautam Budh Nagar,
UP – 201301.

...Applicant

Versus

RATHI ISPAT LTD.
Registered office at:
C-220, Savitri Nagar,
Malviya Nagar,
New Delhi – 110017.

...Respondent

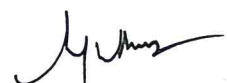


Coram:

DR. P.S.N. PRASAD
Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

Counsel for Applicant: Mr. Rajesh kumar Gautam, Ms. Khushboo Aggarwal
Counsel for Respondent: Satish Kumar Tripathi



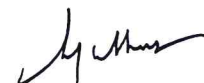
ORDER

Date:17.12.2019

1. This is an application filed by the Applicant Punjab National Bank seeking to initiate corporate insolvency resolution process (“CIRP”) of the Respondent Rathi Ispat Ltd. under Section 7 of the Insolvency and Bankruptcy Code, 2016 for the alleged default on the part of the Respondent in settling an amount of Rs. 1,40,58,32,990/- including the interest component lent by the Applicant. The details of the transactions leading to the filing of the application as averred by the Applicant are as follows:

- i. The Applicant advanced financial facilities to the Respondent starting from the year 1970 and has been enjoying financial facilities from the Applicant. The Applicant has produced the details of financial facilities advanced to the Respondent starting from the year 1988 when the Applicant sanctioned cash credit facility of Rs.1,00,00,000/- and deferred payment guarantee of Rs.53,00,000/- against securities substantiated vide documents/deeds of the Respondent executed during the period 14.01.1989 to 15.05.1989, till the year 2005/2006 when the Applicant had last extended the financial facilities to a total of Rs. 5300 lakhs in favour of the Respondent against securities

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substantiated vide documents/deeds of the Respondent executed during the period 27.04.2005 to 07.06.2006.

- ii. The Applicant sought the recourse under Section 19 of the RDDBFI Act 1993 in OA No. 190 of 2009 titled Punjab National Bank vs M/s Rathi Ispat Ltd. & Ors. for recovery of Rs.68,90,95,822/- along with pendente lite and future interest in the year 2009. The Tribunal vide order dated 04.09.2018 allowed the OA No. 190 of 2009 and directed the defendants to pay Rs.68,90,95,822/- with pendente lite and future interest at the rate of 125 p.a. from the date of filing of OA till the date the amount is repaid.
- iii. Hence, the present application for initiating CIRP has been filed as even till today the default in repayment of the financial facilities continues.

2. The Respondent has made the following objections in its reply:

- i. The power of attorney annexed with the application cannot be relied upon as it has been executed on the basis of two purported board resolutions which have not been annexed with the application.
- ii. The statement of accounts filed by the Applicant are inadmissible and wholly unreliable inter alia as there is no



certificate under the Bankers' Books Evidence Act, 1891 filed in support thereof.

- iii. Further, the statement of accounts is vague and opaque and don not even contain the interest rate or any other information which would enable the borrower to verify the contents therein. There is no material show how the said amount has been reached by the Applicant.
 - iv. The two valuation reports dated 25.08.2018 and 23.08.2018 cannot be relied upon as they are conflicting. The value of each of the properties has been stated differently in different parts of the same valuation report. This creates scope for confusion and ambiguity.
3. We have perused the documents submitted by the Applicant and heard the arguments. It is evident from the documents filed by the Applicant as well as from the Respondent's own admissions that the financial facilities stated by the Applicant were advanced to the Respondent by the Applicant and that the Respondent failed to repay the loans due to financial constraints. Thus, the Respondent has committed default in repayment of the loan. The objections raised by the Respondent to the Applicant's claim are merely technical in nature and do not defeat the Applicant's case. In view of the above



reasons this Tribunal initiates CIRP of the Respondent with immediate effect.

4. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.



- (2) The supply of essential goods or services to the Respondent 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.
- (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”
5. The interim resolution professional (“IRP”) proposed by the Applicant is Mr. Raj Kumar Gupta (Email – rkgassociate@gmail.com) and is being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

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(DR. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

Deepak

- 2 d -

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