

NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform)

IA No. 451/2020
Alongwith
CP (IB) No. 135/Chd/Pb/2019

Under Section 7 of the Insolvency
and Bankruptcy Code, 2016 and Rule
11 of the NCLT Rules, 2016

In the matter of:

Jammu & Kashmir Bank Ltd.
having its Corporate Headquarter at
Maulana Azad Road, Srinagar, Kashmir
Jammu & Kashmir

Branch Office at:-

Chaura Bazar, Ludhiana, Punjab.

Versus

....Applicant/Financial Creditor

Bharat papers Limited
having its registered office at
181, Beantpura, Ludhiana,
Punjab

...Respondent/Corporate Debtor

Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)

Present through Video Conferencing:

For the Financial Creditor : 1. Ms. Aashna Jain, Advocate
2. Ms. Kritika Sharma, Advocate

For the Corporate Debtor : 1. Mr. Manish Jain, Advocate
2. Ms. Divya Sharma, Advocate
3. Ms. Preeti Yadav, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGEMENT (ORAL)

IA No. 451/2020

The instant IA has been filed by Applicant-Corporate Debtor seeking urgent hearing of CP (IB) No. 135/Chd/Pb/2019. In the circumstances, the instant IA is allowed and CP (IB) No. 135/Chd/Pb/2019 is taken up for hearing.

2. IA No. 451/2020 stands disposed of accordingly.

CP (IB) No. 135/Chd/Pb/2019

The application in the prescribed Form No.1 is filed by Jammu and Kashmir Bank Ltd. (hereinafter referred to as **Petitioner**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of Bharat Papers Limited (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. Rajiv Bhardwaj, Executive Manager, IAPM Department, J & K, Zonal Office, Phase-II, Mohali. His affidavit verifying the contents of the application is from Pages 24 to 24B of the petition. The General Power of Attorney and Authority Letter in favour of Mr. Rajiv Bhardwaj as constituted attorney for the petitioner is attached as Annexure A-1 (Page No. 25 to 34) of the petition.

2. The master data of the Corporate Debtor is stated to be filed as Annexure A-1/A (page 34-A) of the petition. The Corporate Debtor is stated to be incorporated on 07.09.2006 and the registered address is stated to be at Village Bhamian Kalan, Tejpur Road, Ludhiana, Punjab. 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 approached the financial creditor for grant of credit facility and the following loan/credit facilities from the Financial Creditor, were granted viz.,

- (i) Term Loan of Rs. 25,00,00,000/-
- (ii) FLC (Capex) within Term Loan of Rs. 16,00,00,000)/-.
- (iii) Cash Credit Limit of Rs. 10,00,00,000/-.
- (iv) ILC/BG Limit of Rs. 5,00,00,000/-.

The total amount of default is of Rs.98,18,01,469.65/- (Rupees Ninety Eight Crores Eighteen Lakhs One Thousand Four Hundred Sixty Nine and Sixty Five Paise) as on 30.09.2018. The total sum is inclusive of Interest and Expenses upto 30.09.2018.

4. It is stated in Part-V of Form No. 1 that credit facilities are primary secured by the entire fixed assets of the company both present and future on *pari passu* basis comprising of 419 kanal and 19 marlas of Land/Building/Plant and Machine/Fixed Asset at Village Logate (Kathua). As per valuation report the total realisable value of land and building situated at Kathua, Jammu and Kashmir is Rs. 1963.84 lakhs

as approved by Er. Daljit Raheja, and of machinery and fixed assets is Rs. 3145 lakhs as approved by report of Er. Sat Paul Bajaj. It is submitted that the working capital is also secured by first *pari passu* charges on an entire current assets of the company. The present value of current assets is stated to be NIL. Copies of the valuation reports are attached as Annexure A-3 (Colly). The term loan is also secured by second charge on entire current assets of the company on *pari passu* basis and a collateral security of equitable mortgage of a property at Delhi in the name of M/s Bharat Box Factory Limited. This security stand disposed of by State Bank of India under SARFAESI Act. Corporate guarantee of Bharat Box Factory Limited has been attached as Annexure A-23 of the application. It is further submitted that corporate debtor has executed various Hypothecation Agreement(s) in favour of financial creditor for creating charge. Copy of the said agreements are placed as Annexure A-11 to A-15 of the petition. Letter of Undertaking furnished by and Letter of Continuity alongwith Loan Agreement are attached as Annexure A-16, Annexure A-17 and Annexure A-18 respectively. The Sanction Letter dated 24.10.2007 approving term loan and Cash Credit Limit of Corporate Debtor is found at Annexure A-7 of paper book.

5. Due to default in repayment of loan, a demand notice dated 22.04.2013 has been issued under Section 13(2) of SARFAESI Act by State Bank of India on behalf of consortium of Banks and demand notice

dated 15.03.2014 has been issued by petitioner bank and same are appended as Annexure A-33 and A-34 of petition. A notice dated 18.05.2013 under Section 13(4) of SARFAESI Act has also been issued by State Bank of India on behalf of consortium with respect of property situated at Kathua, Jammu & Kashmir and New Delhi. The recovery proceedings initiated by the member Banks of Consortium were challenged by the corporate debtor before the High Court of Jammu & Kashmir in OWP No. 355/2015 wherein the Hon'ble High Court, vide Order dated 31.03.2015, stayed the proceedings pending before the Debts Recovery Tribunal as stated in Form-I of the application.

6. In Part-III of Form No.1, Mr. Navneet Gupta, Registration No.IBBI/IPA-001/IP-P00361/2017-18/10619 has been proposed as Interim Resolution Professional (**IRP**). True copy of Certificate of Registration issued by Insolvency and Bankruptcy Board of India is attached as Annexure A-2 of petition. Form No. 2 dated 27.11.2018 submitted by the proposed IRP is found attached at Page No. 18-21 of the petition.

7. The Corporate Debtor has filed reply vide diary No. 4626, dated 06.09.2019 in which corporate debtor has submitted that due to global recession and financial difficulties faced by the company, corporate debtor is unable to service the debts of the company. It is also submitted that due to factor beyond its control, the company could not service its debt on time and as a result, its accounts were declared

as NPA. As a result of continuous downfall, the company filed a reference before the Board of Industrial & Financial Reconstruction (BIFR) under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). However, proceedings before BIFR were abated due to repeal of the Act.

8. Rejoinder was filed vide Diary No. 6853 dated 04.12.2019 wherein the contents of the application have been reiterated and it is submitted that it is a fit case that the present application be allowed in the interest of justice.

9. On the last date of hearing, the learned counsel representing corporate debtor submitted that the respondent has no objection if the CP is admitted as the respondent is not in a position to pay the debt of the petitioner.

10. We have heard the learned counsels for the petitioner & the Corporate Debtor and have also perused the record carefully.

11. 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 petitioner including Sanction Letter dated 29.10.2007 (Annexure A-7), various hypothecation agreement executed between the parties creating charge over land and building, plant and

machinery dated 12.03.2008 and 08.01.2009 (Annexure A-11 and Annexure A-12). The promissory notes furnished by corporate debtor dated 12.03.2008, are attached as Annexure 9 and Annexure 10. The term loan and cash credit sanctioned to corporate debtor has been rescheduled vide Sanction Letter dated 21.02.2009 appended as Annexure-25 and Annexure-27 respectively with petition. Copy of a bank statement of loan account has been attached as Annexure A-31 (Colly).

13. It is evident from the contents of the petition that the Corporate Debtor has defaulted in the repayment of interest as have been requested by the financial creditor according to the terms of agreement. It can be also seen that on the last date of hearing, the corporate debtor has submitted that it is unable to pay the debt due to the petitioner and the present CP may be admitted.

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

15. The Proposed Interim Resolution Professional, Mr. Navneet Gupta, Registration No. IBBI/IPA-001/IP-P00361/2017-18/10619 has filled Form No. 2 (Page No. 18 to 21) certifying that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI. It is also stated that he is currently serving as Liquidator in the matter of PNB Vs. James Limited.

It is also submitted that he is not a related party or employee of the corporate debtor.

16. 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 Bharat Papers Limited be admitted. The directions regarding moratorium and appointment of IRP are given below.

17. 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.

18. 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.

19. 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.

20. The Law Research Associate of this Tribunal has checked the credentials of Mr. Navneet Gupta and there is nothing adverse against him. In view of the above, we appoint Mr. Navneet Gupta, R/o House No. 1598 (First Floor), Sector 22-B, Chandigarh-160022 having Registration No. IBBI/IPA-001/IP-P00361/2017-18/10619 and email address: navguptaca@gmail.com, Mobile No. 98143-33213, the Interim Resolution Professional, with the following directions:-

- i) The term of appointment of Mr. Navneet Gupta 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.

A copy of this order be communicated to both the parties. The authorized representative and 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/-
(Raghu Nayyar)
Member (Technical)

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

01.10. 2020
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