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

CP (IB) No.197/Chd/CHD/2019

Under Section 7 of the Insolvency & Bankruptcy Code, 2016

In the matter of:

State Bank of India
Corporate office at:
Madame Cama Road,
Nariman Point,
Mumbai - 400021

Also:

Branch Office at
Stressed Assets Management
Branch, Local Head Office,
Madhya Marg, Sector 17-A
Chandigarh - 160017

…Applicant/Financial Creditor

Versus

M/s Agro Dutch Industries Limited
Having its registered office at
SCO-23, First Floor,
Sector 33-D, Chandigarh - 160020

…Respondent/Corporate Debtor

Order delivered on: 27.11.2019

Coram: HON'BLE CHIEF JUSTICE (RETD.) M.M. KUMAR, PRESIDENT
HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)

For the Petitioner : 1. Mr. PBA Srinivasan, Advocate
2. Mr. Parth Tandon, Advocate

For the Official Liquidator : Mr. Deepak Agrawal, Advocate

ORDER

Notice of this petition was issued on 29.07.2019. In response thereto, Mr. Deepak Agrawal, the learned counsel for the Provisional Liquidator has appeared for the Corporate Debtor. It is pertinent to note that against the Corporate Debtor i.e. Agro Dutch Industries Limited, a winding up petition has already been admitted by the Hon'ble High Court of Punjab & Haryana being in CP No.119 of 2011 (O&M) on 16.05.2019. A Provisional Liquidator stands already appointed who is represented by Sh. Deepak Agrawal, Advocate. On behalf of the Provisional Liquidator it has been stated that the liquidation proceeding are at the stage of holding meeting between the Financial Creditor and the Corporate Debtor-the company in liquidation. There is no transaction of sale of assets etc. till date.

2. The law laid down by Hon'ble Supreme Court in *Forech India Ltd. v. Edelweiss Assets Reconstruction Co. Ltd. (CA No.818 of 2018)* decided on 22.01.2019 is that there is no bar by admission of a petition under Section 433(e) and (f) read with Section 434 and 439 of the Companies Act, 1956. In other words, the remedy of filing a petition under Section 7 IBC would continue to be available to a financial creditor. In that regard the view of the Bombay High Court noticed in Para 19 & 20 of the judgment has been approved by Hon'ble Supreme Court which noticed verbatim as under:-

> "***19.*** *Mr. Sen also referred us to a judgment of the learned Single Judge of the High Court of Bombay reported, in (2018) 2 AIR Bom R 350 in PSL Limited v. Jotun India Private Limited. The Learned Single Judge, after referring to the self-same provisions of the Code and subordinate legislation made thereunder, held as follows:—*
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> > *"93. The fact that post notice winding up petitions continue to be governed by the Companies Act, 1956, only means - that to those proceedings it will be the Companies Act, 1956 which will apply. It*

does not, however, mean that if, in a post-notice winding up petition a new proceeding is filed under IBC, and where orders are passed by NCLT, including under Section 14 of IBC, the consequences provided for under IBC will not apply to post notice proceeding, whatever their stage may be.

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98. Furthermore, this transitional provision cannot in any way affect the remedies available to a person under IBC, vis-a-vis the company against whom a winding up petition is filed and retained in the High Court, as the same would amount to treating IBC as if it did not exist on the statute book and would deprive persons of the benefit of the new legislation. This is contrary to the plain language of IBC. If the contentions of petitioner were to be accepted, it would mean that in respect of companies, where a post notice winding up petition is admitted or a provisional liquidator appointed, provisions of IBC can never apply to such companies for all times to come.

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100. The mere fact that post notice winding up proceedings are to be "dealt with" in accordance with the provisions of the Companies Act, 1956, does not bar the applicability of the provisions of IBC in general to proceedings validly instituted under IBC, [nor] does it mean that such proceeding can be suspended."

***20.** This judgment was upheld by a Division Bench of the Bombay High Court. We may hasten to add that the law declared by this judgment has our approval."*

3. A perusal of the aforesaid paras of the judgment would show that the remedies provided under the Insolvency & Bankruptcy Code (IBC) are not suspended because of admission of a petition by Hon'ble High Court in accordance with the provisions of the Companies Act, 1956. It has also been laid down that even if the petition is admitted or a Provisional Liquidator is appointed, the provisions of the IBC would continue to apply to such companies and moratorium under Section 14 can be imposed. In Para 20, it has clarified that the law declared by the judgment of the Bombay High Court in PSL Limited case (supra) is approved by the Supreme Court.

4. The principles of law laid down by the Hon'ble Supreme Court in *Forech India Ltd. case (supra)* would not detain us from considering the matter on merit. The Official Liquidator has not argued nor it is possible to do

so that the Corporate Debtor-Company in liquidation is in a position to pay the dues of the Financial Creditor-Petitioner. According to the averments made in the petition the various debts were granted during the period from September 2009 to April 2010 and disbursed in various account numbers and the total amount of default is ₹1622415380.11. The accounts are running accounts. The account was declared NPA on 30.06.2009 and the Master Restructuring Agreement took place on 26.03.2011 executed between the Corporate Debtor and the consortium bank including the petitioner herein. The Corporate Debtor gives a commitment to restart and complete the project by improving its operation. The Corporate Debtor had been referred to the Corporate Debt Restructuring Forum, a non-statutory voluntary mechanism set up under the aegis of the Reserve Bank of India for its efficient restructuring (Annexure A-71). A copy of the Facility Agreement under CDR Package between the Corporate Debtor and the consortium bank including the petitioner was also executed on 26.03.2011 (Annexure A-72) along with a Joint Deed of Hypothecation on the same date (Annexure A-73). On the same date i.e. 26.03.2011 Inter Se Agreement was executed along with corporate guarantee (Annexure A-74 & A-75). On 30.08.2012 a Board Resolution was passed by the Corporate Debtor and it was resolved that the accounts in respect of the credit facilities sanctioned to the Corporate Debtor by consortium lenders and other banks, were to be operated on instructions given by authorised Directors and the acknowledgment of debt or balance confirmation was to be executed on behalf of the Corporate Debtor by the authorised Directors as and when required by the banks. A Revival Letter was executed by the Corporate Debtor in favour of the Financial Creditor on

14.12.2012. On 30.11.2015 a letter was written by the Corporate Debtor to the Financial Creditor acknowledging that for the purpose of Section 18 of the Limitation Act, 1963 and any like limitation law in order to preclude any question of limitation law, the Corporate Debtor was liable to the Financial Creditor for the payment of all outstanding with interest costs, charges and expenses and other monies due and payable (Annexure A-82). A copy of the Revival letter dated 30.11.2015 was also executed by the Corporate Debtor in favour of the Financial Creditor (Annexure A-83). The Consortium Leader-Union Bank of India issued possession notice on 11.02.2015, 23.02.2015 and 28.04.2016 (Annexure A-88). Accordingly, we find sufficient evidence within the meaning of Section 18 of the Limitation Act to conclude that the petition filed on 04.02.2019 is within the period of limitation. It is also evident from the perusal of order dated 16.05.2019 passed in CP No.119 of 2011 rendered by Hon'ble Punjab & Haryana High Court that winding up proceeding are already pending since 2011 and on that account also the instant petition is found to be within a period of limitation.

5. The petitioner has suggested the name of Mr. Desh Deepak, Registration No.IBBI/IPA-001/IP-P00648/2017-18/11105, R/o #1009/1, Sector 37-8, Chandigarh - 160036, Mobile No.8360234664, E-mail: deshdeepak297@gmail.com, as an Interim Resolution Professional. He has filed his consent to act as an Interim Resolution Professional in Form-2 along with copy of certificate issued by IBBI (Annexure A-4 of the petition) which satisfied the requirement of Rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

6. It is from the narration of the facts stated above it is evident that the requirement of Section 7 of IBC stands satisfied. The amount of debt is due and payable and the default has occurred. Accordingly, the petition warrants admission. We do not wish to burden the petition with detailed discussion to show that the provisions of Section 7(2) and Section 7(5) of the IBC have been complied with the aforesaid issue has been discussed in detail in the order dated 27.11.2018 rendered in the case of *ECL Finance Limited vs. Digamber Buildcon Pvt. Ltd. (IB-1039(PB)/2018).*

7. After a reading of Section 7 of the Code along with Rule 4(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, we are satisfied that a default has occurred and the application under sub-Section (2) of Section 7 is complete. The IRP proposed does not have any disciplinary proceedings pending against him.

8. As a sequel to the above discussion, this petition is admitted and Mr. Desh Deepak is appointed as an Interim Resolution Professional.

9. In pursuance of Section 13(2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of the Code.

10. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and

similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

11. We direct the Financial Creditor to deposit a sum of ₹2 lacs with the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors. The amount must be accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

12. Directions are also issued to the Ex-Management/Auditors and the Official Liquidator to provide all the documents in their possession and furnish every information in their knowledge as required under Section 19 of the Code to the Interim Resolution Professional within a period of one week from today otherwise coercive steps to follow.

13. Before parting we must notice the complaint made against Financial Creditor in the form of discrepancies in the statement of account. We cannot in summary proceedings determine the amount due. This function is required to be performed by the Information Utility which is not yet fully functional. Therefore, Resolution Professional may ask the ex-promoter/director of the Corporate Debtor for any such correction if need be and act accordingly by placing it before the Financial Creditor as it is only fair to do so.

14. The office is directed to communicate a copy of the order to the Financial Creditor, the Official Liquidator, the Interim Resolution Professional and the Registrar of Companies, Punjab and Chandigarh at the earliest 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.

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

Sd/-
(Chief Justice M.M. Kumar)
President, NCLT,
Camp at Chandigarh

Nov. 27, 2019
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