



NATIONAL COMPANY LAW TRIBUNAL
INDORE SPECIAL BENCH
COURT NO. 1

ITEM No.203
CP(IB)/28(MP)2024

Proceedings under Section 7 IBC

IN THE MATTER OF:

Punjab National Bank

.....Applicant

V/s

Tast Healthy Foods India Pvt Ltd

.....Respondent

Order delivered on: 17/03/2025

Coram:

Shammi Khan, Hon'ble Member(J)

Sanjeev Kumar Sharma, Hon'ble Member(T)

PRESENT:

For the Applicant/RP

: Ms. Ayushi Patidar, PCA (Online)

For the Respondent

: None

ORDER

(Hybrid Mode)

1. The present Petition is filed on 03.06.2024 through e-mode by the Applicant Punjab National Bank (hereinafter referred to as "Financial Creditor") against the Respondent M/s Tast Healthy Foods India Private Limited (hereinafter referred to as "Corporate Debtor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "IB (AAA) Rules, 2016") for initiation of Corporate Insolvency Resolution Process (CIRP), appointment of an Interim Resolution Professional (hereinafter referred to as "IRP") and declaration of moratorium for having defaulted payment of its outstanding dues of **INR 10,23,54,024.08** as on 30.04.2024.



It is noted that advance notice and copy of the Petition in terms of Rule 4(3) of IB (AAA) Rules, 2016 was already served on 03.06.2024 through e-mode upon the Corporate Debtor. However, despite advance notice by the Financial Creditor & Service of the Petition none appeared on behalf of the Corporate Debtor on 06.06.2024.

- 3.** Therefore, a formal notice in the Petition was also issued on 06.06.2024 to the Corporate Debtor. The Corporate Debtor was served on 24.06.2024 through e-mode and registered post on 27.06.2024. The Corporate Debtor appeared on 06.08.2024 and sought time to file a reply, which was granted. Thereafter, on 22.10.2024 and 04.12.2024 the matter was listed but no reply was filed by the Corporate Debtor. The Tribunal vide order dated 04.12.2024 granted one more opportunity to file a reply within a period of next two weeks, subject to a cost of Rs. 20,000/-to be deposited in the Prime Minister Relief Fund.
- 4.** However, again despite repeated opportunities, neither any reply was filed nor any cost was deposited on subsequent dates, including 18.12.2024 and 22.01.2025 except a Vakalatnama which was filed on 06.08.2024.
- 5.** It is noted that the matter was relisted on 18.12.2024 and adjourned due to paucity of time to 22.01.2025 wherein the Respondent did not appear. However, it was recorded in the order that, the Applicant had received the reply from the Respondent and sought time to file the Rejoinder.
- 6.** Today again matter was taken up for hearing. However, despite repeated calls, neither any one appeared for the Respondent nor any reply was found on record either on the DMS Portal in soft form or in physical form on the file as confirmed by the Court Officer. Further, no proof of cost is found deposited by



the Respondent in terms of the order dated 04.12.2024. Therefore, in light of the continued failure to file a reply and non-appearance of the Respondent, the right to file a reply of the Respondent is hereby closed. Further, the Respondent is proceeded Ex-parte.

7. We had heard the oral submissions of Ld. PCA for the Financial Creditor, ex-parte against the Respondent and perused the material available on record. The Observations of the Tribunal are followed as under: -
8. On perusal of Part-I of the Form-1 reveals this Petition has been filed by Punjab National Bank (Hereinafter referred as financial creditor/Applicant) which is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having head office at 4, Sector 10, Dwarka, New Delhi - 110075. It is engaged into the business of Banking. The bank was nationalised in 19th July 1969 and is authorised by RBI to grant loans and advances.
9. This Petition has been filed by through Mr. Mukesh Kumar Ahriwar, Head - Circle SASTRA Centre, Gwalior at Vatsal Mansion, City Center, Tulsi Vihar Colony, Gwalior (M.P.) – 474002 who has been authorised by Letter of Authority/Power of Attorney which is annexed at **Annexure-P/I**.
10. On perusal of Part-II of the Form-1 reveals that the Respondent/Corporate Debtor is one Tast Healthy Foods India Private Limited having CIN No. U15311MP2015PTC034318. The Respondent/Corporate Debtor was incorporated on 15.06.2015 and having registered office at SR No.51, Satyadev Nagar, Gandhi Road, Gwalior, Madhya Pradesh - 474002. MCA - Master Data relating to the Corporate Debtor is annexed at **Annexure - P/2**.



1. On perusal of Part-III of the Form-1 reveals that the Financial Creditor has named Mr. Rahul Anand having (Registration No. IBBI/IPA-003/IP-N00166/2018-2019/11955, having address: Flat No. 9A, Orchard Residency, Sarvdharm Sector A, Kolar Road, Bhopal, Madhya Pradesh, 462042, (e-mail: rahulpnb@hotmail.com) under section 13 (1)(c) of the Code to act as Interim Resolution Professional (IRP). He has filed his written communication annexed with the Application as **Annexure - P/22** as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or in Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by him as per the requirement of the IBBI Regulations.

12. Part-IV of the Form-1 reveals that total dues as claimed by the Financial Creditor is Rs. 10,23,54,024.08 Inclusive of plus, interest, charges and penalties up-to 30.04.2024. The Financial Creditor has submitted that The Corporate Debtor, M/s Tast Healthy Foods India Private Limited availed various credit facilities from the Financial Creditor, including:-

 - a. In the year 2016, Term Loan: INR 3,00,00,000. Cash Credit: Initially INR 70,00,000 on 04.05.2016, later enhanced to INR 3,25,00,000 on 18.11.2017. Thereafter, on 23.11.2018, Additional Term Loan: INR 75,00,000 was granted to the Corporate debtor.
 - b. However, after availing the aforesaid Credit Facilities, the Corporate Debtor defaulted in repayment, leading to classification as a Non-Performing Asset ("NPA") on 02.10.2019. The Financial Creditor issued a



notice under Section 13(2) of the SARFAESI Act on 13.01.2020, recalling the credit facilities (Annexure P/19).

- c. The Corporate Debtor subsequently sought restructuring of its accounts, and the Financial Creditor sanctioned the restructuring along with the grant of an additional Funded Interest Term Loan (FITL) INR 26,22,000 on 29.12.2020.
- d. In consideration of the loan, the Corporate Debtor executed multiple security agreements, including hypothecation deeds, term loan agreements, and supplementary agreements. (Annexure P/6 to P/16).
- e. However, despite the restructuring, the Corporate Debtor defaulted again in December 2020, leading to its account being reclassified as NPA on 31.03.2021. Therefore, another notice under Section 13(2) of the SARFAESI Act was issued on 15.04.2021. (Annexure P/20).
- f. The Corporate Debtor has failed to make payments despite multiple reminders, including letters dated 03.12.2019 and 28.01.2022. (Annexure P/12, P/13).
- g. The Financial Creditor has filed Form-D being record of debt and default issued by National E-Governance Services Limited (“NeSL”) in which date of default is reordered as 31.03.2021 with status “Deemed to be Authenticated”. A copy of the same is annexed with the Petition as Annexure-P/5.
- h. The Financial Creditor has relied on various documents, including loan agreements, hypothecation deeds, restructuring agreements, SARFAESI notices, CIBIL reports, and NeSL records wherein the date of default



recorded as 30.03.2021 and its authentication status is marked as AUTHENTICATED, to substantiate its claims. (Annexures P/5 Colly).

- i. In the absence of any reply or documentary evidence contradicting the Applicant's claims, the Tribunal proceeds to decide the matter based on the available records.
- j. Though, there is a discrepancy in the records concerning the date of default with the National E-Governance Services Ltd. (NeSL) as in Form-D records the date of default as 31.03.2021 which is a date of subsequent NPA. This anomaly suggests an error on the part of the Financial Creditor in data submission or recording with National E-Governance Services Ltd. (NeSL). The NeSL records are secondary data sources and cannot override primary banking records.
- k. It has been observed by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 1589 of 2023 ***Milind Kashiram Jadhav Suspended Director of Jabalpur MSW Pvt. Ltd Vs State Bank of India*** (2024) ibclaw.in 273 NCLAT that the NPA classification date is to be treated as the 'date of default' within the ambit of the Code. The relevant paragraphs are reproduced hereunder for ready reference: -

"74. The loan accounts of the Corporate Debtor were officially classified as Non-Performing Assets (NPA) on September 27, 2019, following 90 days of non-payment, thereby triggering a default event. Despite subsequent partial payments made by the borrower, the NPA status and default persisted, indicating a continuous state of default. Consistent with established judicial precedents and the specific circumstances of the case, the date of NPA classification serves as the valid "Date of Default" for initiating insolvency proceedings. Even after the NPA classification, the borrower



remained in default. Consequently, September 27, 2019, the date of NPA classification, stands as the "date of default" under the Insolvency and Bankruptcy Code (IBC), superseding any subsequent events, such as the loan recall notice issued on August 18, 2020.....”

- I. Further, the Hon’ble NCLAT in Company Appeal (AT) (CH) (Ins) No.390/2022 in *Canara Bank Vs. DAAJ Hotels & Resorts Pvt. Ltd.*, (2024) ibclaw.in 861 NCLAT, again on 20.12.2024 upheld the NCLT’s decision, ruling that insolvency proceedings under IBC cannot be used to revive time-barred claims, and the date of default remains the NPA classification date.

13. In view of the Financial Creditor establishing the existence of a legally enforceable debt and default, the present Petition under Section 7(5) of the Insolvency and Bankruptcy Code, 2016 is complete. The Financial Creditor is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. The outstanding financial debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Moreover, the said default is not covered under the period exempted under Section 10A of IBC, 2016.

14. Further, the Hon’ble Supreme Court in the case of ***Innoventive Industries Limited v. ICICI Bank Limited***, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.:-

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to



any financial creditor of the corporate debtor – it need not be a debt owed to the financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.



5. Hence, the Petition filed under section 7(2) of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

16. Accordingly, in light of the above facts and circumstances, it is, hereby **ordered** as under:-

- (i) The Respondent/Corporate Debtor ***Tast Healthy Foods India Pvt Ltd*** is admitted in Corporate Insolvency Resolution Process (CIRP) under section 7 of the IBC, 2016.
- (ii) As a consequence, thereof, an Interim Resolution Professional (IRP) is appointed, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the IBC, 2016.
 - 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 Securitisation 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.*
 - e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements 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.*
- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate



Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.

- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The corporate debtor to provide effective assistance to the IRP as and when she takes charge of the assets and management of the corporate debtor.
- (v) As proposed by the Financial Creditor, we appoint **Rahul Anand** having (Registration No. IBBI/IPA-003/IP-N00166/2018-2019/11955, having address: Flat No. 9A, Orchard Residency, Sarvdharm Sector A, Kolar Road, Bhopal, Madhya Pradesh, 462042, (e-mail: rahulpnb@hotmail.com)) under section 13 (1)(c) of the Code to act as Interim Resolution Professional (IRP). She shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all her functions as contemplated, inter-alia, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty



to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. She is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the financial creditor to pay IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about her fees/expenses.
- (xii) The Registry is directed to communicate this order to the financial creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.



- (xiii) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST (centre), State Trade Tax, Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employees associations so that they are informed of the initiation of CIRP against the Corporate Debtor timely.
- (xiv) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

17. Accordingly, this Petition **CP(IB)/28/MP/2024** is hereby ***admitted***. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-

SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)