

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

**C.P. NO. IB-630(PB)/2019**

**IN THE MATTER OF:**

State Bank of India .... Financial Creditor/Petitioner

v.

Mastana Foods Pvt. Limited .... Corporate Debtor/Respondent

**SECTION: UNDER SECTION 7 OF THE INSOLVENCY AND  
BANKRUPTCY CODE, 2016**

**JUDGMENT DELIVERED ON 18.09.2019**

**CORAM:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**  
**HON'BLE PRESIDENT**

**SH. S.K. MOHAPATRA**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Petitioner:

Mr. Avinash Mohapatra, Advocate

For the Respondent:

Mr. Joy Bajaj & Mr. Utkarsh Mishra,  
Advocates

**M.M.KUMAR, PRESIDENT**

**JUDGMENT**

This petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') prays for initiation of Corporate Insolvency Resolution Process in respect of 'Corporate Debtor' namely Mastana Foods Private Limited. The petition has been filed on the Form-1 prescribed under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'Adjudicating Authority Rules'). The details of financial debt

advanced by the petitioner-Financial Creditor have been set out in Part-IV of the proforma. The total amount disbursed with respect to various facilities on different dates from 03.07.2008 to 27.12.2016 is claimed to be INR 249.85 Crores. The amount claimed to be in default and the details of default have been given in sub para 2 of Part-IV and the same reads as under:

2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH DEFAULT OCCURED	<b>Account No.</b>	<b>Amount Claimed to be in Default (In Rs.)</b>
	30416819811	84,19,82,369.63
	30863599665	50,71,33,832.50
	35955140078	1,00,62,845.50
	31570839761	85,71,1112.00
	33370469044	2,01,992,876.00
	35092569809	82,48,238.00
	35384142052	15,14,72,449.00
	36370256997	11,42,57,137.00
		<b><u>166,19,20,589.63</u></b>
Uncharged interest from 01.06.2017	35,47,68,526.08	
<b>Total</b>	<b>Rs. 201,66,89,385.71</b>	

**Total Default Amount: Rs. 201,66,89,385.71**  
Date of Default: 28.06.2017

		Days of Default: 536 Days of Default has been calculated from 28.06.2017 Working Sheet regarding computation of amount and days of default is annexed herewith and marked as <b><u>ANNEXURE A-5</u></b> (128-130)
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Thus, the case of the petitioner is that on 28.06.2017 a sum of INR 201,66,89,385.71/- is outstanding and the petition has been filed on 04.02.2019 stating the days of default of 536 days.

2. The details of the securities held by, or charge created for the benefit of 'financial creditor'-State Bank of India which fulfils the requirements of Section 77 & 78 of Companies Act, 2013 have been given in Part V of the application.

3. The Financial Creditor has also placed on record a list of all the financial facilities granted by the Financial Creditor to the Corporate Debtor along with the copies of the said Financial Contracts.

4. It is submitted by the Petitioner-Financial Creditor that the account of the Corporate Debtor was classified as NPA by the Petitioner-Financial Creditor on 28.06.2017. Further the Bank initiated proceedings under Section 19 of the Recovery of Debts and



Bankruptcy Act, 1993 before the Debts Recovery Tribunal-II, Chandigarh.

5. Learned counsel for the Corporate Debtor has opposed the admission of the petition by asserting as under:-

1. The Respondent has paid Rs. 93.61 crores as interest during the period of five financial years from 2012-13 to 2016-17. Besides it also repaid loan principal to the tune of Rs. 37.27 crores in 2016-17 in order to keep the account as a Standard Asset.
2. The Respondent had been apprising the petitioner from time to time about the adversaries being faced by them but inspite of extending a helping hand to bail out the Respondent from financial distress it has identified its account as NPA.
3. After having negotiated with suitable clients to run two lines out of five lines of the plant, sought permission of the petitioner-Bank to lease out two lines but it did not get any response from the Bank.
4. The Respondent made an attempt to its revival but the Petitioner-Bank instead of coming forward to extend a

supportive hand for its revival, issued a notice under SARFEASI Act on 17.09.2017.

5. The Respondent then proposed one time settlement plan to the Petitioner-Bank which was in various tranches modified and amended with the help of strategic investor and on the request and advice of the Bank but all such attempts were in vain.
6. The certificate filed under the Bankers Books of Evidence Act (Annexure A-35) is not on the letter head of the Petitioner-Bank and does not disclose the name of the person who has signed it. The said certificate does not fulfil the requirements of the RBI notification dated 24.04.2009 which states that each such certificate issued by the Bank should be dated and subscribed by the principal accountant or manager of the Bank with his name and official title.

6. A rejoinder to the reply has been filed by the Financial Creditor reiterating the submissions made in the petition and controverting the assertions in the reply.

7. We have heard learned counsel for the parties and have also perused the record.



8. Having heard learned counsel for the parties we are of the considered view that the Financial Creditor has succeeded in establishing a case for triggering the Corporate Insolvency Resolution Process.

9. The Financial Creditor-Bank has placed on record numerous proofs in relation to the disbursement of different kinds of loan to the Respondent Company. The material on record and the documents clearly depict that the loan was sanctioned, disbursed and the loan agreements were properly executed. Respondent company utilized and enjoyed the loan facility. In support of the 'financial debt' the Financial Creditor has relied upon the balance sheet of the Corporate Debtor for the year ended on 31.03.2017, agreement of Pledge of Goods and Assets dated 05.12.2015 executed by the Corporate Debtor and the certificates of Registrar of Companies confirming creation of mortgage in its favour. The petitioner has further placed reliance on the Board Resolution (Annexure A-21) dated 05.12.2015 of the Corporate Debtor wherein in para 1 it was resolved that the "*Company be and is hereby authorized to avail of from the Bank the various credit facilities, as mentioned in the Sanction Letter, by whatever name called whether granted by way of fund or non-fund based credit facilities upto a maximum principal*

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*amount of Rs. 2,49,85,00,000/- (Rupees Two Hundred forty nine Crores & eighty five lacs only) in the aggregate, ('the credit facilities') on the terms, conditions and securities as mentioned in the Sanction Letter and as may be stipulated by the Bank from time to time and to furnish/ create the said securities in favour of the Bank'* to argue that it is a candid admission of the Corporate Debtor in respect of the various loan taken by it.

10. It is seen that various loan were sanctioned to the Respondent by the Petitioner-Bank and the account of the Respondent has been declared NPA due to non-payment of amount. The Petitioner-Bank has filed the relevant statement of accounts duly certified under Banker's Book Evidence Act, 1891. The certified copy of statement of account kept during course of banking business, on which basis the claim has been raised, can be termed as sufficient evidence of the financial debt. The Petitioner-Bank has placed on record overwhelming evidence to prove the default. The material on record clearly goes to show that the Respondent not only availed the loan facilities but also committed default in repayment of the outstanding financial debt.

11. The Tribunal is not an adjudicating authority to ascertain the quantum of amount of default or to pass decree as to how much



amount is actually due to the Petitioner-Financial Creditor. Adjudicating Authority do not decide a money claim or suit. 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 petition. Besides in a petition under Section 7 of the Code, it does not matter that the debt is disputed so long as the debt is due and payable.

12. We further find that all requirements of Section 7 for the initiation of Corporate Insolvency Resolution Process by a Financial Creditor stand fulfilled. In that regard, it has been submitted that the petition as prescribed by Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 (2) of IBC is complete in all respects. He has further submitted that the details of the default along with the dates have been stated in part IV and the additional documents have been submitted subsequently along with all the minute details. There is overwhelming evidence available to prove default and name of the resolution professional has been specified who does not suffer from any disqualification.

13. We may now examine the provisions of Section 7 (2) and Section 7 (5) of IBC which read as under:-

**“Initiation of corporate insolvency resolution process by financial creditor.**

7 (1) .....

7 (2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

7 (3) .....

7 (4) .....

7 (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; or

(b) .....

14. A conjoint reading of the aforesaid provision would show that form and manner of the application has to be the one as prescribed. It is evident from the record that the application has been filed on the

proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code. We are satisfied that a default amounting to lacs of rupees has occurred. As per requirement of Section 4 of the Code if default amount is one lac or more then the CIR Process would be issued. The application under sub section 2 of Section 7 is complete; and no disciplinary proceedings are pending against the proposed Interim Resolution Professional.

15. On 07.08.2019, during the course of hearing learned counsel for the respondent was insisted that some OTS proposal has been sent to the Petitioner-State Bank of India which was denied by the learned counsel for the Bank. Accordingly, we reserved the order giving liberty to the Corporate Debtor to place on record the settlement, if any reached before the pronouncement of the order. During this interregnum period of more than one month as well no fruitful result has come forward. The object of the 'Code' is to resolve the insolvency issue which cannot be achieved unless the petition is admitted. The resolution as against liquidation would only be possible if the Corporate Insolvency Resolution Process is triggered and efforts in that direction are made.



16. The Financial Creditor has proposed the name of Resolution Professional, Mr. Ashok Kumar Juneja with the address 1302, Vijaya Building, 17 Marakhambha Road, Connaught Place, New Delhi-110001 and email id – ashokjuneja@gmail.com. His registration number is IBBI/IP-N00117/2017-18/10286. He has filed his written communication which satisfies the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration.

17. As a sequel to the above discussion, this petition is admitted and Mr. Ashok Kumar Juneja is appointed as an Interim Resolution Professional.

18. 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. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

19. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of



Section 14 (1) (a), (b), (c) & (d) and thus the following prohibitions are imposed which must be followed by all and sundry:

- “(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.”

20. It is made clear that the provisions of moratorium shall not apply to (a) such transactions which might be notified by the Central Government in consultation with any financial regulator; (b) a surety in a contract of guarantor to a Corporate Debtor. 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 services or supplies as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

21. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *interalia*, by Sections 15, 17, 18, 19, 20 & 21 of the Code. He must follow best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, 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 affairs of the Corporate Debtor. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else the Interim Resolution Professional/Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer



for passing an appropriate order. The Interim Resolution Professional/Resolution Professional shall be under a 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.


22. Directions are also issued to the Ex-Management/Auditors etc. 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.

23. We direct the Financial Creditor to deposit a sum of Rs. 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 Person) 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.



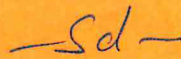
24. Before parting we must notice the complaint made against Financial Creditor in the form of discrepancies in the statement of account. We cannot in summary proceedings determine the amount due. This function is required to be performed by the Information Utility which is not yet fully functional. 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.

25. 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, NCR, New Delhi 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.



(M.M. KUMAR)  
PRESIDENT

18.09.  
2019



S.K. MOHAPATRA  
MEMBER (TECHNICAL)

18.09.2019  
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