

**THE 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)**

**CP (IB) No. 110/Chd/Hry/2019
Under Section 7 of the Insolvency
and Bankruptcy Code, 2016**

In the matter of:

Corporation Bank

with its registered office at
Mangladevi Temple, Pandeshwar
Mangalore

...Petitioner/Petitioner

Versus

M/s. NDT Trade House Pvt Ltd.

with its registered office at
Plot No-566, Phase-V, Udyog Vihar,
Gurgaon, Haryana-122015

...Respondent/Corporate Debtor

Judgement delivered on: 21.12.2021

**Coram: HON'BLE MR. HARNAM SINGH THAKUR (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH (TECHNICAL)**

For the Petitioner : Ms. Ekta Choudhary, Advocate
For the Respondent : Set Ex-parte

Per: Harnam Singh Thakur, Member (Judicial)

JUDGEMENT

The present petition is filed, under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (**hereinafter referred to as 'IBC'/'Code'**) by Corporation Bank through its Authorized Representative Mr. Subhash Chander Bhatia(hereinafter referred to as Petitioner) to initiate the Corporate Insolvency Resolution Process (**'CIRP'**) against M/s NDT Trade House Pvt Ltd (**hereinafter referred to as 'Corporate Debtor'**). The power of Attorney in favour of Sh. Sanjay Kumar and letter of authority authorizing him to file the present petition is attached as Annexure A1 and A2, respectively of the

petition. The Corporate Debtor namely, M/s NDT Trade House Pvt Ltd is a Company incorporated on 30.08.2011 under the provisions of the Companies Act, 1956 with CIN No. U74900HR2011PTC043769 having its registered office at Plot No-566, Phase-V, Udyog Vihar, Gurgaon, which falls within the territorial jurisdiction of this Adjudicating Authority.

2. The Authorized Share Capital of the Respondent Company is ₹4,01,00,000/- and Paid-Up Share Capital of the Company is ₹4,00,000/- as per the Company Master Data attached as Annexure 3 of the Petition.

3. The facts of the case, as briefly stated in the petition, is that the corporate debtor has requested the petitioner to avail/enhance the credit facilities. In pursuance of the same, the following documents are executed between the Corporate Debtor and Petitioner:-

- a) Financial contract dated 28.05.2014 (Annexure A-9 of the petition).
- b) Sanction letter dated 06.01.2015 (Annexure A-10 of the petition).
- c) Various demand promissory notes (A-12 of the petition).
- d) A common deed of hypothecation of movable/assets/debts dated 15.01.2015 (Annexure A-14 of the petition).
- e) The letter of undertaking cum declaration (Annexure A-15 of the petition)
- f) General Power of Attorney for the books debts/supply bills (Annexure A-15 of the petition)
- g) Agreement for term loan dated 15.01.2015 (Annexure A-16 of the petition).

4. It is further stated that the corporate debtor has acknowledged the debt/liability of the petitioner on 05.12.2017 amounting to Rs. 2,16,88,458 in term loan account and Rs. 3,80,16,233.92 in cash creditor account and the same

are attached as Annexure A-18 and A-19 of the petition. The corporate debtor has been sanctioned the following credit facilities vide sanction letter dated 06.01.2015

CC Limit	375 Lakhs
Term Loan	341 Lakhs
Total	699 Lakhs

5. It is also stated that the petitioner has issued a notice under Section 13(2) of Sarfaesi Act on 05.03.2018 demanding a payment of Rs. 5,97,80,938.92 (in aggregate). Later on, possession notice was also issued under Section 13(4) of Sarfaesi Act. The petitioner has also filed an application for the recovery of Rs. 6,19,72,465.92 before DRT-II, Delhi and the true copy of the plaint is attached as Annexure A-6 of the petition.

6. In Part-III of Form No.1, Mr. Arun Gajwani, Registration No. IBBI/IPA-002/IP-N00568/2017-18/11724 has been proposed as Interim Resolution Professional (IRP). Form No. 2 dated 05.12.2018 stating that there is no disciplinary proceedings against the proposed Resolution Professional is attached as Annexure-II of the Petition. It is also stated that the interim Resolution Professional is currently serving in one other proceeding.

7. It is stated in Part-IV of Form No. 1 that the total amount of default is Rs. 6,65,53,169.92 as on 28.12.2018. The date of default is stated to be 31.12.2017 which is the date of NPA. The table of computation of amounts and days of default is attached as Annexure 4 of the petition.

8. In Part-V of Form No. 1, the details of the security held by the Petitioner is mentioned which includes property situated at Mauja-Mitrol, Tehsil, Hodal, District Palwal, Haryana along with plant and machinery. The estimated value of the property is Rs. 2,40,07,500 and of plant and machinery is Rs. 1,50,45,000 as per valuation dated 20.06.2018. The registration of charge created with ROC is attached as Annexure 5 of the petition.

9. Notice was issued to the corporate debtor as to why this petition should not be admitted on 26.03.2019. The petitioner has filed an affidavit of service vide Diary No. 2548 dated 20.05.2019 wherein, notices were issued through post as well as by e-mail as mentioned in master data of the corporate debtor. The original postal receipts along with the tracking report showing that the post was not delivered being “unclaimed” are attached as Annexure S-1 of the aforesaid affidavit. The copy of e-mail sent to the registered e-mail address of the corporate debtor is attached as Annexure S-2 of Diary No. 2548 dated 20.05.2019 where no reply has been received from corporate debtor for the same.

10. The petitioner-petitioner has also published the notice of hearing in two daily newspapers i.e. “Jansatta” dated 06.10.2019 and “Financial Express” dated 06.10.2019 which are attached as Annexure A1 of the Diary No. 5572 dated 14.10.2019. However, none appeared on behalf of corporate debtor, therefore, set ex-parte vide order dated 12.03.2021.

11. We have heard the learned counsel for the petitioner and have also perused the record carefully.

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.”

12. In the present case, the occurrence of default of debt is evidenced by the copy of the agreement of term loan, General Power of Attorney, letter of undertaking cum declaration, common deed of hypothecation and sanction letter dated 06.01.2015. The corporate debtor has defaulted in making the regular payments of the credit facilities sanctioned by the petitioner and a demand notice under Section 13(2) of the Sarfeasi Act, 2002 recalling debt.

13. The other issue for consideration is whether the present application is filed within limitation. The corporate debtor has acknowledged the debt for the cash credit as well as for the term loan on 05.12.2017 and the present petition has been filed for 15.01.2019. Therefore, the petition has been filed within the period of limitation.

14. The application filed in the prescribed Form No. 1 is found to be complete.

15. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, 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 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.
- (e) 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.
- (f) 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.
- (g) 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 passes an order for liquidation of corporate debtor under Section 33 as the case may be.”

16. The Law Research Associate of this Tribunal has checked the credentials of Mr. Arun Gajwani and there is nothing adverse against him. In view of the above, we appoint Mr. Arun Gajwani bearing Registration No.

IBBI/IPA-002/IP-N00568/2017-18/11724, e-mail: arungaj572@gmail.com as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

17. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the 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 filling the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

18. The Petitioner is directed to deposit an amount of ₹2,00,000/- (Rupees Two Lakhs) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the Operational Creditor to be recovered as the CIRP cost.

19. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-
(Subrata Kumar Dash)
Member (Technical)
December 21, 2021
PB

Sd/-
(Harnam Singh Thakur)
Member (Judicial)