

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 99/7/JPR/2019

IN THE MATTER OF:

PUNJAB NATIONAL BANK

...Financial Creditor

VERSUS

M/S TIRUPATI BALAJI ENTERPRISES PVT. LTD.

...Corporate Debtor

MEMO OF PARTIES

Punjab National Bank

Branch Office- Raja Park
Parnami Parisar, Parnami
Mandir, Raja Park, Jaipur-
302004

...Applicant

VERSUS

M/S Tirupati Balaji Enterprises Pvt. Ltd.

A-2, Rana Pratap Nagar,
Kalwar Road Jhotwara,
Jaipur-302012

...Respondent

FOR THE APPLICANT : Amol Vyas, Adv.

Vikas Jain, Adv.

FOR THE RESPONDENT : Ankit Sareen, Adv.

Order Pronounced On: - 31.10.2023

Selr

Selr

ORDER




Per: Mr. Deep Chandra Joshi, Judicial Member

1. This Application is filed by Punjab National Bank ('Applicant' / 'Financial Creditor'), against the Corporate Debtor namely M/s Tirupati Balaji Enterprises ('Respondent' / 'Corporate Guarantor') under Section 7 of Insolvency and Bankruptcy Code, 2016 (the 'IBC' / 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of the Corporate Insolvency Resolution Process ('CIRP'), pursuant to default in repayment of the outstanding amount.
2. The Corporate Guarantor is a Private Limited Company, incorporated on 01.12.2011 and duly registered with the Registrar of Companies, Jaipur having Identification No. U45201RJ2011PTC037209. The registered office of the Corporate Guarantor is situated at A-2 Rana Pratap Nagar, Kalwar Road, Jothwara, Jaipur- 302012 (Rajasthan). The authorised share capital of the company is Rs. 50,00,000/- (Rupees Fifty Lakh Only) and the paid-up share capital is also Rs. 25,00,000/- (Rupees Twenty-Five Lakh Only).
3. The details of the transactions leading to the filing of this Application averred by the Applicant are as follows:
 - 3.1 The Financial Creditor herein i.e., Punjab National Bank has preferred an Application under Section 7 of the Code against Corporate Guarantor due to default in loan account of the Corporate Debtor

Sd/-

Sd/-



namely *M/s Guman Furnitures and Services Private Limited*. The aforementioned Financial Creditor had also preferred seeking initiation of CIRP against the Corporate Debtor before this Authority vide *CP No. (IB) 45/7/JPR/2018* which was allowed vide Order dated 01.03.2019.

3.2 The Corporate Debtor has availed the loan facility of Rs. 10,00,00,000/- (Rupees Ten Crores Only) under the Cash Credit Facility from the Financial Creditor wherein Corporate Guarantor has given its guarantee and mortgaged its property in favour of the Applicant.

3.3 Subsequently, the Corporate Debtor did not maintain financial discipline of the Financial Creditor therefore the loan account of the Corporate Debtor was classified as Non-Performing Asset ('NPA') on 30.09.2016. The Applicant issued a recall notice dated 01.10.2016 to the Corporate Debtor and the all the guarantors including the Corporate Guarantor.

3.4 Thereafter the Applicant initiated proceedings under the provisions of Section 13(2) of the SARFAESI Act, 2002 and issued a Demand Notice dated 04.10.2016 to the Corporate Debtor and Corporate Guarantor.



Sd-



Sd-

3.5 Therefore, the total amount outstanding as on 31.03.2019 is Rs. 14,42,07,115/- (Rupees Fourteen Crore Forty-Two Lakh Seven Thousand One Hundred Fifteen Only) against the Corporate Debtor.

3.6 Further the Applicant Bank states that the liability of the Corporate Debtor is co-extensive with the Corporate Guarantor. Therefore, the Corporate Guarantor is equally liable to pay the dues of the Applicant.

4. As a consequence of the aforementioned default, this Application has been filed seeking initiation of CIRP against the Corporate Guarantor. The Applicant claims that the Corporate Guarantor is liable to pay the aggregate amount of Rs. 14,42,07,115/- (Rupees Fourteen Crore Forty-Two Lakh Seven Thousand One Hundred Fifteen Only) as of 31.03.2019, as reflected in Part IV of the Application.

Part IV

S. No.	Particulars of Financial Debt	
1.	Total amount of debt granted Date(s) of disbursement	Cash Credit Facility (A/c No. 2226008701040943) Rs. 10.00 Crore (Rupees Ten Crore Only) Copy of Sanction Letter dated 21.01.2015 is annexed as Annexure-A/3 of the Application. Aforesaid Credit Facility was availed by the Corporate Debtor, Loan account for Cash Credit Facility was opened in the name of the Corporate Debtor on 21.01.2015, in books of account of applicant bank and all the transactions

Sd/-

Sd/-

		were entered/ recorded into aforesaid loan account.
2.	Amount claimed to be in default and the date on which the default occurred	<p><u>Amount Claimed:</u> Total Dues in loan account of Corporate Debtor: - Cash Credit Account – Rs. 14,42,07,115/- (Rupees Fourteen Crore Forty-Two Lakh Seven Thousand One Hundred Fifteen Only) plus future interest, cost & expenses.</p> <p>Loan account of the Corporate Debtor was classified as Non-Performing Asset (NPA) on 30.09.2016 and the Applicant bank had issued recall notice dated 01.10.2016 to the Corporate Debtor and the Corporate Guarantor</p>

5. Consequent to the notice issued by this Adjudicating Authority, the Respondent filed its reply *vide* Dairy No. 1729/2023 dated 18.07.2023 stating as follows:

5.1 The Respondent states that the actual amount of debt and default is due and payable against on the part of the principal borrower i.e., Guman Furniture and Services Private Limited which is undergoing liquidation process. Rather than waiting for the outcome of the said liquidation process, the Applicant Bank has filed fresh Petition under Section 7 of the Code to initiate CIRP against the Corporate Guarantor/Respondent.

Sd/-

Sd/-



- 5.2 Further it is submitted that the present Application is filed with the aim to recover the money and the filing of the instant Application amounts to abuse of the process of law. Moreover, the Corporate Debtor has undergone the liquidation process. This Adjudicating Authority *vide* order dated 29.03.2023 had observed that the Applicant Bank cannot avail dual benefit over and above the loan sanctioned by the Principal Borrower.
- 5.3 The Applicant has pre-maturely filed the present Application under Section 7 of the Code against the Corporate Guarantor for recovery of its alleged outstanding dues. The Applicant has filed its claim before the liquidator of the Principal Borrower therefore the claim of the Applicant cannot be quantified or ascertained unless the liquidation Process of the Guman Furniture and Service Private Limited/Principal Borrower is concluded.
- 5.4 The instant Applicant has filed the present petition without any ascertainment that whether the Applicant is liable to receive from the liquidation proceeds in the Liquidation Process. Unless such amount is ascertained and reduced from the total alleged outstanding debt being claimed, the actual amount of the debt cannot ascertained.
- 5.5 The present Application has been filed by the Applicant not for the purpose of resolution. The Applicant has also claimed miscellaneous charges such as legal expenses, possession charges, valuation charges

Sdr

Sdr

etc. Further it is an admitted fact that the Applicant had already headed towards recovery of the alleged outstanding dues under the liquidation process, therefore the instant Application against the Respondent for the same set of claims is liable to be rejected till the liquidation proceedings against the principal borrower are concluded.


5.6 Additionally, the Respondent also relied on the following Judgements;

- I. *IFCI Ltd. Vs. ACCIL Hospitality Ltd. CA (AT) (Ins) No. 1422/2019*
- II. *Bijay Kumar Agarwal Vs State Bank of India, CA (AT) (Ins) No. 993/2019*
- III. *Dr Vishnu Kumar Agrawal Vs M/s Piramal Enterprises Ltd., CA (AT) (Ins) No. 346/2018*

6. The Applicant has filed its rejoinder *vide* Diary No. 1788/2023 dated 24.07.2023 submitting the following:

6.1 The Applicant submits that there is no bar in simultaneous proceedings against the Corporate Debtor and Corporate Guarantor/Personal Guarantor as the case may be. It is pertinent to note that in accordance with Section 7 of the Code if there is any debt and default, an Application can be filed against the Corporate Debtor as well as the Guarantor if the Corporate Debtor does not maintain the financial discipline.

6.2 It is stated that the loan account of the Corporate Debtor turned into NPA and the Applicant bank had recalled its entire outstanding



amount from all of the loan obligates including the Corporate Guarantor in the loan account of the Corporate Debtor and invoked the guarantee given by the Corporate Guarantor *vide* letter dated 01.10.2016 and thereafter issued a demand notice under the Section 13(2) of the SARFAESI Act, 2002.

6.3 The obligates of the loan account of the Corporate Debtor including the Corporate Guarantor had defaulted in repayment of the loan/credit facility.

6.4 Further in accordance with the Section 128 of the Indian Contract Act, 1872 the liability of the surety is co-extensive with the borrower. It is pertinent to note that the record of default was also recorded with the Information Utility dated 18.06.2020 is annexed as Annexure-A/32 of the Rejoinder.


6.5 It is submitted that the management of the Corporate Guarantor failed to fulfil its commitment being as a Guarantor, which shows clear default on their part.

7. The Respondent has filed written submission *vide* Dairy No. 2452/2023 dated 10.10.2023 reiterating the same as mentioned in their reply.

8. We have gone through the documents filed by both parties and heard the arguments made by the counsels. After analysing the pleadings, the moot point for the consideration is whether simultaneous proceedings can be

Sdr

Sdr



initiated against the Principal Borrower/Corporate Debtor and Corporate Guarantor.

9. In the instant case, a Section 7 Application against the Corporate Debtor i.e., *M/s Guman Furnitures & Services Pvt. Ltd.* was also filed by the same Applicant which was before this Tribunal numbered as *CP No. (IB)-45/7/JPR/2018* titled as *Punjab National Bank vs. Guman Furnitures and Services Private Limited*. The said application was admitted on 01.03.2019 and CIRP was initiated against the Corporate Debtor. Thereafter, *vide* order dated 01.10.2019, this Authority ordered the liquidation of the Corporate Debtor in *IA No. 267/JPR/2019*.
10. Furthermore, the Corporate Guarantor/Respondent has asserted that CIRP proceedings are not recovery proceedings, which is a settled principle of law. Thus, the present proceedings can be continued as these are not in the nature of recovery proceedings. Further, the Applicant has relied on Section 128 of the Indian Contract Act, 1872 to enunciate that liability of a guarantor is co-extensive with that of the debtor, thereby making the guarantor jointly and equally liable to pay the debts of the Corporate Debtor. In the instant matter, the Corporate Guarantor i.e., *M/s Tirupati Balaji Enterprise Pvt. Ltd.* had furnished a guarantee for repayment of dues of amount borrowed by the Corporate Debtor i.e., *M/s Guman Furnitures & Services Pvt. Ltd.*





11. The law on the subject has been categorically laid down by the Hon'ble NCLAT in the matter of *Babumanoharan Jai Kumar Christhuran Vs Indian Bank and Ors. MANU/NL/0216/2022* has held that:

“36. Thus, from the above judgment of the Hon'ble Supreme Court and the provisions of law with regard to the Corporate Guarantor it is unequivocal that the CIRP can be initiated by the Creditor against the Principal Borrower and the Corporate Guarantor simultaneously and there is no bar.”

“40. In view of the decisions of this Tribunal and the ratio of the Hon'ble Supreme Court and the fact that the judgment passed in 'Piramal' is pending before the Hon'ble Supreme Court, the simultaneous proceedings by the Creditor against the Principal Borrower and the Corporate Guarantor being surety having coextensive liability, can be initiated simultaneously.”

12. It is further relevant to notice that no submission has been advanced regarding debt or default. Debt and default by the Corporate Debtor are an admitted fact which has not been questioned or contested. Moreover, this Adjudicating Authority has already held in *CP No. (IB)- 45/7/JPR/2018* titled as *Punjab National Bank vs. Guman Furnitures and Services Private Limited* that there existed financial debt and default thereof. Hence, the debt and default as claimed by the Applicant has already been established vide order dated 01.03.2019 in *CP No. (IB)- 45/7/JPR/2018*.

Sdr

Sdr



13. In view of the aforementioned Judgement of Hon'ble NCLAT, we are of the view that Corporate Insolvency Resolution Process ought to be initiated against the Corporate Guarantor.


14. The Applicant has named one Ms. Garima Diggiwal, the registration number of the proposed Interim Resolution Professional ('IRP') is IBBI/IPA-001/IP-P02018/2020-21/13158 (email: garima286@gmail.com), duly registered with ICSI Insolvency Professional Agency, to be appointed as the Interim Resolution Professional. The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the named IRP.

15. Consequences of initiation of CIRP shall be inter-alia as follows:

15.1 The Insolvency Resolution Professional proposed by the Applicant is Ms. Garima Diggiwal, who is an IP registered with ICSI Insolvency Professional Agency having Registration No. IBBI/IPA-001/IP-P-02018/2020-21/13158. She is hereby appointed as the Interim Resolution Professional to take over the affairs of the Corporate Debtor and duties as required to be performed by her under the provisions of IBC, 2016, including the issue of the publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016 and

Sd-

Sd-



calling for the claims from the creditors of Corporate Debtor and collation of the same shall be done.


15.2 Further, as a sequel of admission, the moratorium, as envisaged under Section 14 of IBC, 2016, is invoked concerning the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly per the timelines specified and as envisaged under the provisions of IBC, 2016, concerning the Corporate Debtor.

15.3 The said IRP shall act strictly in accordance with the provisions of IBC, 2016, and to defray her expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Rs. Two Lakh Only) to the bank account of IRP within a week from the date of this Order. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP as unfolding in relation to the Corporate Debtor.

15.4 In terms of Sections 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor, including promoters and the Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

15.5 In terms of Section 7 of IBC, 2016, this Order shall be communicated at the earliest, not exceeding one week from today, to the Applicant,





Corporate Debtor, and the IRP appointed by this Adjudicating Authority to carry out the CIRP.

16. Copy of this order shall also be communicated to IBBI for its record, and to any other body/entity to whom the Corporate Debtor is under legal/contractual obligation to inform/update.

17. In the circumstances, CP No. (IB) 99/7/JPR/2019 is admitted.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**