IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P. (IB) No.67/BB/2019
U/s 7 of IBC, 2016
R/w Rule 4 of I&B(AAA) Rules, 2016

In the matter of:,

Punjab National Bank,
A body Corporate constituted under
Banking Companies(Acquisition & Transfer
Of undertakings) Act, 1970
Plot No.4, Dwarka, Sector-10,
New Delhi – 110 075
And among other places
Having its Large Corporate Branch at 8-2-672,
Sufi Chamber, Banjara Hills,
Hyderabad – 500 034
Represented by its Chief Manager
- Petitioner/Financial Creditor

Versus

M/s.Chincholi Sugar & Bio Industries Ltd,
Sri LaxminarasimhaNilaya
House No.15, 5th Main, 13th Cross,
MRS Nagar, Mathikere
Bengaluru – 560 054. - Respondent/Corporate Debtor

Date of Order: 15thMarch, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner	:	ShriH.R.Katti with Shri Sunil Bagada, (Chief Manager of PNB)
For the Respondent	:	Shri Praveen Kamath

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.67/BB/2019 is filed by **Punjab National Bank(Petitioner /Financial Creditor)** U/s 7 of IBC, 2016, R/w Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of **M/s.Chincholi Sugar & Bio Industries Ltd,(Respondent/Corporate Debtor)** on the ground that the Corporate Debtor committed a default in payment of Rs. 254,52,95,711.25/- as on 31.10.2018

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

   1) M/s.Punjab National Bank(Petitioner/Financial Creditor) was incorporated on 19.05.1894, a Body Corporate constituted under Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 having its Head Office at Plot No.4, Dwarka, Sector-10, New Delhi 110075, and among other places having its Large Corporate Branch at 8-2-672, Sufi Chamber, Banjara Hills, Hyderabad 500034 represented by its Chief Manager.
   2) M/s.Chincholi Sugar & Bio Industries Ltd., (Respondent/Corporate Debtor) a Company registered under the Companies Act, was incorporated on 11.09.1995 with Authorised Share Capital of Rs. 12,00,00,000/- and Paid Up Capital of Rs.11,91,75,520/- having its registered office at Sri.LaxminarasimhaNilya, House No.15, 5th main, 13th Cross, MRS Nagar, Mathikere, Bangalore – 560 054.

3) The Financial Creditor sanctioned a term loan of Rs.100/- Crores and FITL of Rs. 25,02,00,000/-, Hyderabad 500 034, to the Corporate Debtor on 29.06.2013 and the same was disbursed in various stages starting from 29.06.2013. The total advance extended to the Corporate Debtor is Rs. 125,02,00,000/-. The entire facility sanctioned is secured by hypothecating movables and immovable properties. Having availed and utilized the entire limit sanctioned/disbursed, the Corporate Debtor committed default in observing the terms of the sanction in the matter of repayment and consequently the loan account was classified as NPA as on 01.01.2013 and the loan was recalled on 08.11.2014.
4) Subsequently, the Financial Creditor initiated recovery proceedings by filing an original application before the DRT, Bangalore vide O.A.No.59/2017 and the same is pending before the DRT for disposal. It has also initiated proceedings under the SARFAESI Act which was challenged by the Corporate Debtor by filing an application in S.A.No.197/2015 before the DRT, Bangalore, and the said SA was dismissed by DRT vide order dated 03.11.2015.
5) The Corporate Debtor, and Personal Guarantors and the Corporate Guarantors have executed Various Loan Documents on 23.04.2010, confirmed balance and security by confirmation letter and revival letter both dated 20.04.2013 and the loan was recalled on 08.11.2014, 11.11.2014 & 09.12.2014 and original application was filed before the DRT, Bangalore on 10.03.2016 and hence the Debt claimed is well within limitation.

6) The Corporate Debtor has filed Appeal No. 962/2012 (Rev) before the KAT, Bangalore and Interim Stay Order is granted by the KAT, against the Orders passed by the Assistant Commissioner, Sedam. The Financial Creditor has filed an Impleading Application in the above proceedings and the same was allowed by the KAT. The case is now adjourned for Judgment by the newly constituted Bench.The Financial Creditor has issued Notices against the Corporate Debtor, Personal Guarantors and Corporate Guarantorsto showcause as to why they cannot be declared them Wilful Defaulters vide letters dated 09.12.2015, 18.12.2015, 28.12.2015 & 06.01.2016.

7) The statement of accounts and audited balance sheet for the year 2014-15 of the Corporate Debtor shows and acknowledges the loan liability to be paid to Financial Creditor. The Corporate Debtor is due and liable to pay a sum of Rs. 254,52,95,711.25/- (Rupees Two Hundred Fifty Four Crores Fifty Two Lakhs Ninety Five Thousand Seven Hundred Eleven & Twenty Five Paisa Only) as on 31.10.2018 with future interest. Therefore, they have sought to initiate CIRP as prayed for.

3. Heard Shri H.R.Katti, learned Counsel for the Petitioner along with Shri Sunil Bagada, Chief Manager and Authorised Officer of Punjab National Bank, Hyderabad and Shri Praveen Kamath, Learned Counsel for Respondent.

4. Shri H.R.Katti, learned Counsel for the Petitioner, has further submitted that the debt and default in question is not in dispute and the Petition is filed in accordance with law and a qualified IP namely Shri Madhusudhan Rao Gonugunta, with Registration No. IBBI/IPA-001/IP-P00181/2017-18/10360 is suggested to appoint him as IRP, who has also filed written consent in Form 2 dated 23.11.2018. Therefore, he has urged the Tribunal to admit the case as prayed for.

5. Shri Praveen Kamath, Learned Counsel for Respondent urged the Tribunal to grant further time to file their statement of objection.

6. By perusal of the records, it shows that the Company Petition was filed on 24.11.2018. The learned Counsel for Petitioner has filed a Memo dated 05.03.2019, by inter alia stating as follows:

> *"The Advocate for the Petitioner respectfully submits that as directed by the Hon'ble Tribunal, we had taken steps hand delivery of the notice and Petition copy on 01.03.2019 and again 02.03.2019 by our Advocate and staff, at the RO office of the Company in Bangalore. Our Advocated and staff had visited Mathikere, for hand delivery of the notice and petition. On above visit, it was informed that the house No. and cross No. is not available in that place as per the address given. My advocate also made enquiries with the local LPG gas dealer and other but the said office could not be found.*
>
> *We submit that we have sent the notice and Petition to the Company and MD by speed post on 02.03.2019 morning and the postal receipt is enclosed for your kind reference.*
>
> *We also submit that we have sent the Notice and the Petition copy on 01.03.2019 addressed to the Company and MD by email on 3 email id's available with us and 2 mails has not*

bounced back/returned and hence, it is expected that the same has been delivered.

It is further submitted that the Petitioner Bank has also arranged for hand service of the notice and Petition copy to the MD at the corporate office of the Company at Hyderabad and also send an extra copy by speed post.

Hence, this memo may kindly be taken on record and necessary orders may be passed by this Hon'ble Tribunal in the interest of justice and equity."

7. Again, the learned Counsel for Petitioner has filed a memo dated 06.03.2019, by inter alia stating that the notice and Petition copy were served to the Corporate Office of the Company at Hyderabad, by hand service on 05.03.2019 and the same has been received by the MD & Chief Executive Officer. It is not the case of Respondent that they are not aware of the instant proceedings and debt and default in question. And they have filed S.A No. 197 of 2015 before DRT at Bangalore, by inter alia seeking to set aside the Possession Notice dated 13.03.2015 etc. and the same was also dismissed by order dated 03rd November, 2015. Aggrieved by the order, they have also filed Appeal No. 962 of 2012 (Rev) before the Karnataka Appellate Tribunal at Bangalore. Therefore, the Respondent is aware of the instant Petition and but did not avail opportunity given by the Tribunal by filing its objections. Since the Loan Account of Respondent was classified as NPA as early as 01.01.2013 and the Respondent have not come forward to regularize defaulted amount till now, the Respondents cannot be granted further time which would simply drag on the matter without any purpose. Therefore, we are deciding the question of admission basing on parameters raised under the Code and the Law on the issue.

8. The basic issues to be considered in a case filed under Section 7 of the IBC by the Financial Creditor is whether petition is filed in accordance with law, debt and default occurred and it is still payable; suggested a qualified Resolution professional with no disciplinary proceedings pending against him etc. Even after admission, the Respondent would have an opportunity to raise any dispute with regard to the quantum of debts etc before the IRP.

9. As stated supra, the Corporate Debtor was granted loans by banks consisting by Punjab National Bank Rs.100/- Crores, Oriental Bank of Commerce Rs. 50/-Crores, Andhra Bank Rs. 40/- Crore, and State Bank of Travancore Rs.20/- Crore Totaling of Rs.210/- Crores and the same is payable in 81 monthly installments commencing from 31st January 2016 and ending on September 30, 2022 with rate of interest(ROI) @ 12.50 p.a base rate of PNB with reset initially after 3 years and thereafter as per undertaking given. Similarly, Funding interest on all existing Term Loans for 24 months from COD was granted by the same Banks consisting of Punjab National Bank Rs.26.30/- Crores, Oriental Bank of Commerce Rs. 12.53/- Crores, Andhra Bank Rs.10.03/- Crore, State Bank of Travancore Rs.5.00/ - Crore Totaling of Rs.53.86/ - Crores and the same is payable in 72 monthly installments commencing from 31st January 2015 and ending on December 31, 2020 with rate of interest(ROI) @ 10.50 p.a base rate of PNB with reset initially after 3 years and thereafter as per undertaking given.

10. Subsequently, Masters Restructuring Agreement dated 27th March 2014 was executed between the Corporate Debtor and Punjab National Bank, Oriental Bank of Commerce, Andhra bank and State Bank of Travancore, wherein it is inter alia acknowledged of indebtedness by the Borrower; irrevocably acknowledges and confirms the existence of, and, in the absence of any manifest error (which shall be determined by the Lenders at their sole discretion, any such determination of the Lenders being binding on the Borrower), the amount of the Existing Loans outstanding to each of the Existing Lenders as set out in Schedule II hereto and agrees to, and acknowledges, the reconstitution of the Existing Loans due to the Lenders pursuant to the CDR Package, this Agreement and the other Restructuring Documents.

11. The Corporate Debtor has duly mortgaged property in question. After having availed and utilized the entire limit sanctioned/disbursed, the Corporate Debtor committed default in observing terms ofthe sanction as agreed upon leading the Loan account to be classified as NPA as on 01.01.2013 and thus, loan was recalled on 08.11.2014. Since the Corporate Debtor is not coming forward to settle the outstanding amount, the Financial Creditor has initiated recovery proceedings by filing an original application before the DRT Bangalore in O.A No.59/2017 and the same is pending before DRT for disposal. The Financial Creditor has also initiated proceeding under the SARFAESI Act which was challenged by the Corporate Debtor by filing an application in S.A No.197/2015 before the DRT, Bangalore, and the said SA was dismissed by DRT vide order dated 03.11.2015.

12. The Petitioner has also filed the Statement of account andaudited balance sheet for the year 2014-2015 with Customer ID GOQ000089 (Annexure-C page No. 22-119) to show that the amount in question is carrying outstanding against the loan amount of the Corporate Debtor. Therefore, the Financial Creditor has established Debt and default beyond doubt and the same was not as yet.

13. As detailed supra, the basic factors with regard to disbursement of loans in question; debt and default are indispute. Therefore, the Adjudicating Authority has to examine whether the instant Company Petition is filed in accordance with the provisions of 7 of the IBC, 2016 or not. We may advert to law on the issue. The Hon'ble NCLAT vide order dated 15th May, 2017 passed in Company Appeal (AT) (Insolvency) No.1&2/2017, has dealt with the issue of admission of a case filed under section 7 of the Code, under Paras 55 to 58, which is extracted below:

"55)Process of initiation of Insolvency Resolution Process by a financial creditor is provided in Section 7 of the I&B Code. As per sub-section (1) of Section 7 of the I&B, the trigger for filing of an application by a Financial Creditor before the Adjudicating Authority is when a default in respect of any financial debt has occurred. Sub-section (2) of Section 7 provides that the Financial Creditor shall make an application in prescribed form and manner and with prescribed documents, including:

i. "record of the default" recorded with the information utility or such other record or evidence of default as may be specified;
ii. The name of the resolution professional proposed to act as an interim resolution professional; and
iii. Any other information as may be specified by the Board.

56) The procedure once an application is filed by the financial creditor with the Adjudicating Authority is specified in sub-section (4) of Section 7 to sub-section (7) of Section 7 of the Code. As sub-section (4) of Section 7 of the I&B Code:

"(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the Financial Creditor under sub-section (3)".

57)Sub-Section(5) of Section 7 of the I&B Code provides for admission or rejection of application of a Financial Creditors. Where the Adjudicating Authority is satisfied that the documents are complete or incomplete.

58) The Adjudicating Authority post ascertaining and being satisfied that such a default has occurred may admit the application of the Financial Creditor. In other words, the statute mandates the Adjudicating Authority to ascertain and record satisfaction as to the occurrence of default before admitting the application. Mere claim by the Financial Creditor that the default has occurred is not sufficient. The same is subject to the Adjudicating Authority's summary adjudication, though limited to 'ascertainment' and 'satisfaction'.

14. The Hon'ble Supreme Court has upheld the above judgment in Civil Appeal Nos. 8337-8338 of 2017 vide judgment dated 31st August, 2017. The Hon'ble Supreme Court has adverted to the Section 7, at para 28, which reads as under:

"28) When it comes to 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 applicant 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 I&B(AAA), Rules, 2016. Under Rule 4, the application is made by a Financial Creditor in Form 1accompanied 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 Postor 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 the 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 the 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 also 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 authorizes, Under sub-section 97), 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."*

15. In the light of provisions of Section 7 of the Code, and law as declared by the Hon'ble NCLAT and Hon'ble Supreme Court as extracted above, the Adjudicating Authority/Tribunal has to examine the instant case with regard to default, Application/Petition is complete/incomplete, such default is supported by evidence; and has named IRP. As explained above, the instant Company Petition is filed by Punjab National Bank(Financial Creditor) strictly in accordance with provisions of section 7 of Code by inter alia producing record of default as per the Bank Statement; suggested a qualified Resolution Professional namely Shri Madhusudhan Rao Gonugunta with Registration No. IBBI/IPA-001/IP-P00181/2017-18/10360 to appoint him as IRP. We are of prima facie view that the said RP is provisionally qualified to be appointed as IRP. Therefore, we are of the considered opinion that it is a fit case to admit Petition by initiating CIRP in respect of Corporate Debtor with consequential orders/directions.

16. In view of the above facts and circumstances of the case, and by exercising powers conferred on this Adjudicating Authority,

U/s 7(5)(a) and other extant provisions of the IBC, 2016, the following orders are passed:

1) CP(IB)No.67/BB/2019 is hereby admitted by initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s.Chincholi Sugar & Bio Industries Ltd, Corporate Debtor;

2) We hereby appoint Shri Madhusudhan Rao Gonugunta, with Registration No. **IBBI/IPA-001/IP-P00181/2017-18/10360** as Interim Resolution Professional, in respect of the Corporate Debtor to carry on the functions as mentioned under the I&B Code, 2016.

3) The following moratorium is declared prohibiting all of the following, namely:

   a. In 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. the supply of essential goods and services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;

f. the provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government

g. The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process;

4) The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file progress reports to the Tribunal from time to time.

5) The Board of Directors and all the staff of the Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out her functions as such, under the Code and Rules made by IBBI.

6) Post the case for report of the IRP on **26th April, 2019.**

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Raushan