

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II**

**CP (IB) 434/MB/2018**

Under section 7 of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 4 of  
the Insolvency and Bankruptcy

(Application to Adjudicating Authority)  
Rules, 2016

*In the matter of*

**Punjab National Bank  
(Erstwhile Oriental Bank of Commerce)  
..... Applicant/ Financial Creditor**

**Versus**

**Mittal Corp Limited  
..... Corporate Debtor**

**Order Delivered on :- 10.11.2021**

**Coram:**

**Mr. Ashok Kumar Borah : Hon'ble Member (Judicial)**

**Mr. Shyam Babu Gautam : Hon'ble Member (Technical)**

***Appearances:***

For the Petitioner: Counsel, Mr. Rohit Gupta a/w Mr. Rohan Agarwal i/b  
MDP & Partners.

For the Respondent: Pradeep Bakhru

## **ORDER**

***Per:- Ashok Kumar Borah, Member (Judicial)***

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) seeking to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against Mittal Corp Limited, (“**the Respondent**”) alleging default in payment of a Financial Debt.
2. The Respondent Company is incorporated on 05.07.1985 under the Companies Act, 1956. The Authorized Share Capital of the Respondent/Corporate Debtor Company is Rs. 102,00,00,000/- and the Paid Up Share Capital is Rs. 101,07,02,410/-.

### **The Submissions of the Financial Creditor are as follows: -**

3. The Corporate Debtor Company is engaged in the business of production of cold rolled steel and coated steel products for automobiles, home appliances, construction, etc.
4. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of outstanding financial Debt of Rs. 244,85,29,569.79/- (Rupees Two Hundred Forty Four Crore Eighty Five Lac Twenty Nine Thousand Five Hundred Sixty Nine and paise Seventy Nine Only) as on 28.02.2018. The date of Non Performing Asset was on 30.06.2016.

5. The Financial Creditor submits that various securities were held by Punjab National Bank (erstwhile oriental Bank of Commerce) with respect to facilities provided by it to the Corporate Debtor along with its estimated value. The details of which are detailed as below:-
6. **Security :-** (a) Factory land, Building and Plant & Machinery of Unit I and Unit II of the company situated at plot no. 159 and plot no. 164-C, Sector III, Industrial area, Pithampur, District, Dhar (MP). (b) Hypothecation on the entire current assets of the company viz, finished goods, raw materials, work-in-progress, consumable stores and spares, book debts, bills receivable.
7. **Collateral Security :-** (a) Plot no. 6, part of khasra no. 157, 163/2 Gram Pipliya Rao Tehsil, Dist-Indore owned by Karan Mittal and Pooran Mittal. (b) Plot no. 7, part of khasra no. 157, 163/2 Gram Pipliya Rao Tehsil, Dist-Indore owned by Karan Mittal. (c) Plot no. 1, part of khasra no. 157, 163/2 Gram Pipliya Rao Tehsil, Dist-Indore owned by the Company.
8. The Financial Creditor submits that the estimated value of the aforementioned security are as under.
9. (a). Rs. 204,40,00,000/- as per Valuation Report dated 29.04.2017 and 06.05.2017. (b). Rs. 61,06,37,000/- as per Valuation Report dated 21.11.2017. (c). Rs. 3,28,75,000/- as per Valuation Report dated 07.10.2017. (d). Rs. 3,73,58,000/- as per Valuation Report dated 07.10.2017. (e). Rs. 3,28,75,000/- as per Valuation Report dated 07.10.2017.
10. The Financial Creditor further submits that the copy of Certificate of Registration of Charge dated 30.03.2015 issued by the Registrar of

Companies with respect to the aforementioned securities. The owners of secured properties have mortgaged the said properties in favour of Andhra Bank.

11. The Financial Creditor further submits that the report of CRILC is on record. The Financial Creditor submits that the Financial Contracts with respect to the Credit facilities given by the Financial Creditor as specified herein below.
12. (a). Sanction Letter dated 20.03.2015 sanctioning various credit facility of Rs. 242.04 Crores. (b). Master Joint Lenders Forum Agreement dated 04.03.2015. (c). Master Restructuring Agreement dated 30.03.2015 wherein various credit facility granted by the Applicant and other members of the consortium have been restructured. (d). Joint Deed of Hypothecation dated 30.03.2015.
13. The Financial Creditor further submits that the Respondent after availing the credit facilities to meet its financial requirements from the Applicant and the other consortium lenders, the dues were stressed in the account of the Corporate Debtor and the debts of the Corporate Debtor had been restructured and Master Restructuring Agreement was entered in to which it could not give desired results and ultimately SDR was invoked as per RBI guidelines. Later after completion of the statutory period of 18 months and as no offer from the New Promoter was found acceptable to lenders and therefore the account was declared as NPA on 30.06.2016.

14. The Financial Creditor further submits that in order to prove the existence of Financial Debt, the amount and date of default, the Financial Creditor have produced other documents on record such as Audit Report of Mittal Corp Limited of Mahendra Badjatya & CO. dated 02.09.2017. Revival letter dated 29.03.2016.
15. The Financial Creditor submits that entries in the bankers book in accordance with the Bankers Book Evidence Act, 1891 along with Certificates under Bankers Book Evidence Act, 1891 have been produced on record in order to corroborate the claim filed by the Financial Creditor.
16. Hence, the petitioner submits that the petition is complete in all respects, the default has been corroborated by enough substantial evidences, therefore, the petition ought to be admitted and the Corporate Debtor's Corporate Insolvency Resolution process be initiated.
17. The Corporate Debtor filed its Reply dated 06.06.2018 in their defence. The Corporate Debtor has raised the issue of maintainability on the ground that the Financial Creditor is presently a shareholder of the promoter category and in totality 51% shares (majority) of the Company are held collectively by a consortium of 14 nationalised banks pursuant to a merger by State Bank. The State Bank holds 13.39% shares in the Corporate Debtor as on 31.03.2017. As the consortium of Banks are promoters and majority shareholders of the Respondent Company, the Financial Creditor cannot file the present application.

18. Further the Corporate Debtor Company was in a process to implement a Strategic Debt Restructuring in respect of the stress situation. The Corporate Debtor further stated that neither it is in the interest of lenders to get the present petition admitted and the assets of the Corporate Debtor Company to be liquidated. The Company's performance has substantially improved and the Company can be revived.

19. The Financial Creditor vide its Affidavit in rejoinder stated that various credit facilities had been advanced to the Corporate Debtor under consortium arrangement. The Respondent has admitted that due to several factors, it was going through a constrained liquidity. The Respondent owes a huge sum of Rs. 245 crores and has defaulted and neglected the same. The Respondent has nowhere disputed its liability to pay but only stated that the Corporate Debtor Company were in the process to achieve a resolution of the stress situation of the Corporate Debtor Company.

### **FINDINGS**

20. We have heard the submissions of the Counsel appearing for the Financial Creditor and Counsel appearing for the Corporate Debtor.

21. This Bench observes from the records available that the Financial Creditor had preferred an Appeal in the Hon'ble National Company Law Appellate Tribunal (NCLAT) in the present CP No. 434/2018 wherein the Adjudicating Authority had dismissed the Application under section 7 of the Code. The said Petition was dismissed on the grounds set as under :-

*'10. Two contradictory arguments of the Bank cannot run side by side that on one hand the action was taken on account of default committed as identified in the impugned RBI Guidelines and -2- Company Appeal (AT) (Insolvency) No. 260 of 2020 now on the other hand saying that the said RBI Guidelines should not be made the basis for quashing of the proceedings because only those cases are to be covered which are having exposure Rs. 20 Billion or above and since in the present case the debt as per Bank of India Petition under section 7 of the I&B Code in the capacity of Financial Creditor is much below therefore, legally not to be quashed. This plea of the Bank is not sustainable in the eyes of law because if it was so, then why the Banks have asked for a Resolution of the debt under the compliance of impugned guidelines of the RBI. The evidences on record have explicitly demonstrated that the Consortium of Banks have taken the due steps following the RBI Guidelines.*

*11. We hereby conclude that since the proceedings under section 7 of the Insolvency Code were the consequence of the impugned RBI Guidelines, which stood quashed by the Hon'ble Supreme Court, hence as a result, this Petition is non-est hence dismissed.'*

22. It is observed that main point that falls for consideration is whether Section 7 Application is maintainable, whether it is pursuant to the RBI Circular dated 12.02.2018 and if the ratio of Dharani Sugars is applicable. The relevant portion of the RBI circular dated 12.02.2018 is reproduced as hereunder to ascertain whether the instant case is covered by the said circular, which was declared non-est by the Hon'ble Supreme Court in Dharani Sugars. :-

*‘Guidelines dated 12.02.2018 (RBI/2017-18/131 DBR. No. BP.BC.101/21.04.048/2017-18) :- “D. Timelines for Large Accounts to be Referred under IBC*

*8. In respect of accounts with aggregate exposure of the lenders at Rs. 20 Billion and above, on or after March 1, 2018 (‘reference date’), including accounts where resolution may have been initiated under any of the existing schemes as well as accounts classified as restructured standard assets which are currently in respective specified periods (as per the previous guidelines), RP shall be implemented as per the following timelines:*

*i) If in default as on the reference date, then 180 days from the reference date.*

*ii) If in default after the reference date, then 180 days from the date of first such default. -14- Company Appeal (AT) (Insolvency) No. 260 of 2020*

*9. If a RP in respect of such large accounts is not implemented as per the timelines specified in paragraph 8, lenders shall file insolvency application, singly or jointly, under the Insolvency and Bankruptcy Code (IBC) within 15 days from the expiry of the said timeline.*

*10. In respect of such large accounts, where the RP involving restructuring/change in ownership is implemented within the 180-day period, the account shall not be in default at any point of time during the “specified period”, failing which, the lenders shall file an insolvency application, singly or jointly under the IBC within 15 days from the date of such default. ‘Specified period’ means the period from the date of implementation of RP upto the date by which at least 20 per cent of the outstanding principal debt as per the RP and interest capitalization*



*sanctioned as part of the restructuring, if any, is rapid. Provided that the specified period cannot end before one year from the commencement of the first payment of interest or principal (whichever is later) on the credit facility with longest period of moratorium under the terms of RP.*

*11. Any default in payment after the expiry of the specified period shall be reckoned as a fresh default for the purpose of this framework.*

*12. For other accounts with aggregate exposure of the lenders below Rs. 20 Billion and, at or above Rs. 1 Billion, the Reserve Bank intends to announce, over a two-year period, reference dates for implementing the RP to ensure calibrated, time-bound resolution of all such accounts in default.*

*13. It is, however, clarified that the said transition arrangement shall not be available for borrower entities in respect of which specific instructions have already been issued by the Reserve Bank of the banks for reference under IBC. Lenders shall continue to pursue such cases as per the earlier instructions”*

23. It is clear that the pre-requisite for the invocation of the said circular is that there should be an aggregate exposure of the lender above Rs. 2,000 Crs. And in the present case the total outstanding claimed debt amounts to Rs. 1,007/- Crs. Out of which the amount claimed by the Financial Creditor is to the tune of Rs. 2,44,85,29,569.79/- Crs. Hon’ble NCLAT also observed that the said Circular is not applicable to the instant case and the decision of Dharani Sugars is not applicable as the subject matter of the circular was with respect to debts greater than 2000/- Crs.

24. Further it is seen that the account was declared NPA in December 2017, with effect from June 2016, after the expiry of 18 months time-period under Strategic Debt Restructuring and Section 7 Application was filed before the lapse of the time period of 180 days, for a default in existence much before the reference date i.e. 01.03.2018.
25. Hence, there were no cogent evidence to show that the Application was pursuant to the Circular issued by the Reserve Bank of India which was not applicable to the present case. The Hon'ble NCLAT also noted that it was not open to this Tribunal to reject the said Petition and also set-aside the Impugned Order dated 20.12.2019 and the case was remitted back to the Adjudicating Authority to decide on merits.
26. Further the Corporate Debtor filed an Additional Affidavit dated 02.01.2019 where the Corporate Debtor submitted that the parties were negotiating the possibilities of settlement. The Corporate Debtor Company were reworking on the OTS proposal diligently and were serious to settle the dues of the Financial Creditor.
27. Hence, it is seen from the records available that the Financial Creditor has established that the various term loans/Credit facilities were duly sanctioned and duly disbursed to the Corporate Debtor but there is no payment of Debt on the part of the Corporate Debtor. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be admitted u/s 7 of the I&B Code.

28. Further, it is worth to reproduce sub-Section of (5) of S. 7 of the Code 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; or*

*(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:*

*Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.*

Hence, accordingly We, have perused this Petition/Application filed under Section 7 of the Code r.w. Rule 4 of the Rules and come to conclusion that, pursuant to S. 7 (7) (5) (a) of the Code this Application is complete under sub-section (2) of S. 7 of the Code.

29. On going through the facts and submissions of the Financial Creditor and upon considering the same, it is concluded that the Financial Creditor has established that the loan/ Credit facilities was

duly sanctioned and duly disbursed to the Corporate Debtor but there has been default in payment of Debt on the part of the Corporate Debtor.

30. Considering the above facts, we come to conclusion that the nature of Debt is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e. existence of ‘debt’ and ‘default’, for admission of a petition under section 7 of the I&B Code, have been met in this case.

31. As a consequence, keeping the afore said facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves ‘**Admission**’.

32. For the foregoing reasons, the above Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

### **ORDER**

a. **The above Company Petition No. (IB) - 434(MB)/2018 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Mittal Corp Limited.

b. This Bench hereby appoints Mr. Ashok Kumar Gulla, Registration No: IBBI/IPA-003/IP-N00024/2017-18/10174 as the Interim Resolution Professional having registered office at C/o RBSA Restructuring Advisors LLP, 9C, Hansalaya Building, 15, Barakhambha Road, Connaught Place, New Delhi - 110001, email :- [ashok.gulla@rbsa.in](mailto:ashok.gulla@rbsa.in), Mobile :- 9674713222 to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement of this order till the 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.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession

and furnish every information in their knowledge to the  
IRP/RP.

j. Registry shall send a copy of this order to the  
concerned Registrar of Companies for updating the Master  
Data of the Corporate Debtor.

**Accordingly, this Petition is admitted.**

The Registry is hereby directed to communicate this order  
to both the parties and to IRP immediately.

**Sd/-**

**SHYAM BABU GAUTAM  
(MEMBER TECHNICAL)**

**Sd/-**

**ASHOK KUMAR BORAH  
(MEMBER JUDICIAL)**