



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

CP(IB)-271/MB/2022

Under Section 7 of the IBC, 2016

In the matter of

Punjab National Bank (International) Ltd.

...Financial Creditor

v/s.

La Trendz Fabrica Private Limited

...Corporate Debtor

Order Pronounced on: **05.01.2023**

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner: Mr. P.G. Sabnis a/w Mr. Mithlesh Kumar Pandey,
Advocates.

For the Respondent: Mr. Diwakar Singh, Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **Punjab National Bank (International) Ltd.**



(hereinafter called “the Financial Creditor”) – a commercial bank incorporated in the UK, is the wholly owned subsidiary of Punjab National Bank, India (PNB) - seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **La Trendez Fabrica Private Limited** (hereinafter called “the Corporate Debtor”), [CIN: U17121MH2001PTC132788] on the ground that, as on 04.05.2021, this Corporate Debtor defaulted in making repayment of the outstanding amount of Rs.37,18,85,052/- indebted to this Financial Creditor in relation to the loan facilities availed.

2. The Corporate Debtor is a company incorporated on 19.07.2001 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at 29, Apurva Industrial Estate, Makwana Road, Andheri Kurla Road, Andheri East, Mumbai, Maharashtra – 400 059. Therefore, this Bench has jurisdiction to deal with the present petition.

Brief Facts of the Case:

3. The Financial Creditor submits that the Corporate Debtor approached the Financial Creditor for its working capital, the Financial Creditor provided loan facility to the Corporate Debtor for a total of US\$ 4.67 million (Conversion Rate 1USD = 74.15 INR) through sanction letters dated 25.10.2011 and 13.08.2014 and the Corporate Debtor availed the loan facility after execution of facility agreements with the Financial Creditor on 19.11.2011 and 27.09.2014. Two term loans were sanctioned by the Financial Creditor and as per the terms and conditions of the sanction letters, to secure both the term loans and advances, various guarantee/security/mortgage



documents were executed by the Corporate Debtor and Personal Guarantors of the Corporate Debtor in favour of the Financial Creditor -

- (i) Land admeasuring 19600 sq. mts. bearing C. Gat No. 871, situated at village Korochi, Ichalkaranji, Taluka Hatkanangale, Dist. Kolhapur, Maharashtra along with plant and machinery thereon.
 - (ii) All other movable and immovable assets owned by the Corporate Debtor.
 - (iii) Personal Guarantee of Mr. Ayush Modi bearing PAN No. AACPM1534B, Mr. Rajesh Modi bearing PAN No. AJKPM6958J, Smt. Neha Modi (wife of Mr. Rajesh Modi) bearing PAN No. AAHPM0769P.
4. As the Corporate Debtor defaulted in repayment of loan, the Financial Creditor issued Loan Recall Notice to the Corporate Debtor on 04.05.2021. Upon receipt of notice, the Corporate Debtor started paying and stopped abruptly and the last payment was made on 17.12.2021.
5. The Financial Creditor submits that the debt owned by the Corporate Debtor is a Financial Debt within the meaning of Section 5(8)(h) of the IBC, 2016. After declaring the Corporate Debtor as NPA, the Financial Creditor has been running from pillar to post to get the justice. The Financial Creditor further submits that the Corporate Debtor is unable to pay its debts and therefore, in such circumstances, the present petition shall be admitted, moratorium be declared and CIRP to be commenced on the Corporate Debtor.



Defence of the Corporate Debtor:

6. The Corporate Debtor submits that to initiate the CIRP under the provisions of IBC 2016, there are various requirements and ingredients from the end of Financial Creditor to substantiate their case beyond reasonable doubt proving that Corporate Debtor has wilfully defaulted the payment of the Financial Creditor. Non-performing Asset (NPA) has been declared by the Bank only with reason that the loan amount has being not paid. On the contrary, there is no such allegation that loan amount/Credit facility has been used for other purposes. Also, it is one of the important ingredients which is a burden of Financial Creditor to prove their pleadings that loan amount has been siphoned/misused by the Corporate Debtor for the unlawful gain in some other business, then Corporate Debtor can be held guilty and directions can be passed to initiate CIRP under the provision of Insolvency & Bankruptcy Code, 2016.
7. The Corporate Debtor further submits that it is a well settled law that every demand by Financial Creditor/Operational Creditor should be demanded in a prescribed format laid down under the Rule 5 of IBC. It is to be seen that Financial Creditor has sent a recall notice to Corporate Debtor which is not under prescribed format and hence, on this preliminary objection, the admission can be denied. It further submits that the Financial Creditor disbursed Rs.17.94 crores (USD 3.43 million) in five instalments and the last disbursement was made on 22.03.2012. Also, the payment responsibility of the Corporate Debtor was supposed to start from 01.01.2014 as there was a moratorium facility was provided by the Financial Creditor taking into consideration of a new business of Corporate Debtor.



8. The Corporate Debtor further submits that the liability of the Corporate Debtor is neither disputed nor denied. However, due to Covid-19 and other factors its business has drastically gone down, therefore, inability to repay the loan amount, which doesn't mean that the business of the Corporate Debtor is going to wind up. It is trying to restore their business position as it was in the past, but it will take sufficient time to recover in the same manner. Therefore, requires more time to repay the loan. The Corporate Debtor relied upon a judgment by the Hon'ble Supreme Court in the case of "*A Navinchandra Steels Pvt. Ltd. v/s. SREI Equipments Finance Ltd., 2021 4 SCC 435*", which says "*every efforts should be made to resuscitate the Corporate Debtor in the larger public interest, which includes not only the workmen of the Corporate Debtor but also its creditors and the goods it produces in the larger interest of the company of the country*".
9. The Corporate Debtor further submits that it is approaching the Financial Creditor for One Time Settlement (OTS), which itself proves its honest intention to repay the loan. The Corporate Debtor in its reply submitted undertook to repay the liability without any excuse, provided the economic situation of the company gradually improves and requested this Tribunal to consider leniently and provide sufficient opportunity to the Corporate Debtor in terms of repayment and sought to reject the Petition filed by the Financial Creditor.

Findings:

10. The Financial Creditor has filed Form 1 to seek CIRP under Section 7 of the IBC, 2016 against the Corporate Debtor, in which, an amount of



Rs.37,18,85,052/- is the claim to be received by the Financial Creditor from the Corporate Debtor. The Corporate Debtor has accepted to have received the disbursements to the tune of Rs. 17.94 crores. The Financial Creditor has proved beyond doubt that there is a debt payable by the Corporate Debtor, which is accepted by the Corporate Debtor, however, the Corporate Debtor is seeking time for making repayment of the debt and submitted OTS proposal which was rejected by the Financial Creditor.

11. Therefore, the Petition made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one crore rupees stipulated under the Code. Therefore, the debt, due and default are established and therefore, this is a fit case for admission of the Petition to bring the Corporate Debtor into CIRP.
12. The Financial Creditor has proposed Mr. Anshul Gupta as Interim Resolution Professional (IRP) in the matter. Consent letter of Mr. Anshul Gupta in Form 2 is also attached to the Petition.
13. It is, accordingly, hereby ordered as follows:

This Application bearing No. **C.P.(IB)-271/MB/2022** filed under Section 7 of I&B Code, 2016, presented by **Punjab National Bank (International) Limited**, Financial Creditor/Applicant against **La Trendz Fabrica Private Limited**, Corporate Debtor for initiating Corporate Insolvency Resolution Process (CIRP) is hereby **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench, as a result of moratorium, prohibits -



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CP(IB)-271/MB/2022

- 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 (SARFAESI Act);
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date 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



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

CP(IB)-271/MB/2022

of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

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

VI. That this Bench appoints **Mr. Anshul Gupta**, a registered insolvency resolution professional having Registration Number IBBI/IPA-002/IP-N00310/2017-2018/10899 (email: contactanshulgupta@gmail.com) as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

14. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-

Manoj Kumar Dubey
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)