

**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
SPECIAL BENCH - II**

Company Petition No. (IB)-268(ND)/2021

{Under Section 7 of the Insolvency and Bankruptcy Code, 2016}

IN THE MATTER OF:

PUNJAB NATIONAL BANK

Zonal Sastra Centre,
Gate NO. 1, 1st Floor,
Sector 17-B, Chandigarh - 160017

APPLICANT/FINANCIAL CREDITOR

Vs.

1. SHRI VISHNU EATABLES (INDIA) LIMITED

R/O at: 812, Mall, 8th Floor, Netaji Subash Place,
Pitam Pura, New Delhi – 110034
Email: sethquick@gmail.com

RESPONDENT No.1/CORPORATE DEBTOR

2. Insolvency and Bankruptcy Board of India

7th Floor, Mayur Bhawan,
Shanker Market, Connaught Place,
New Delhi - 110001

RESPONDENT No.2

Order Pronounced on:10.06.2022

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (J)

MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (T)

Present:

For the Applicant : Ms. SK Sharma, My Dyuti Ghai, Advs.

For the Respondent :

- 89 -

ORDER

PER: SUMITA PURKAYASTHA, MEMBER, (T)

The instant application has been filed by Punjab National Bank, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company Shri Vishnu Eatables (India) Ltd. &Ors, referred to as the corporate debtor.

2. It is appropriate to mention that financial creditor, is a body corporate constituted under Banking Companies (Acquisition Transfer of Undertakings) Act, 1970 having its registered office at Plot No.4, Sector-10, Dwarka, New Delhi-110075 and Branch office at Zonal Sastra Centre, Gate No. 1, 1st Floor, Sector 17-B, Chandigarh – 160017.

3. The Corporate Debtor is a company registered under the Companies Act, 1956 on 29th March 1996 with the registered office situated at 812, D Mall, 8th Floor, Netaji Subash Place, Pitampura, New Delhi – 110034. The company is engaged in Rice milling and processing of Paddy/rice and export of rice since inception.

3. Mr. Jasbir Singh Meelu, being the Chief manager has been duly authorized on behalf of financial creditor vide Authority letter dated 04.05.2021, to file the present application on behalf of the financial creditor for initiation of insolvency resolution process against the Corporate Debtor under the Code. A copy of the Authority letter has been placed on record.

4. Since the registered office of the corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the

Page 2 of 9

CP(IB)268(ND)2021

Punjab National Bank Vs. Shri. Vishnu Eatables (India) Ltd. &Ors.

—Sd—

Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process against the respondent corporate debtor under sub-section (1) of Section 60 of the Code.

5. It is the case of the applicant that in the month of February, 2016 the corporate Debtor had approached the financial creditor for renewal of existing working capital limits comprising of fund based and non-fund based working capital requirements. The financial creditor acceded their request and sanctioned working capital limits amounting Rs. 220,00,00,000/- (Rupees Two Hundred Twenty Crore Only) vide letter dated 16.02.2016. The Corporate Debtor executed various loaning and security documents dated 23.06.2016 in favour of consortium led by financial creditor and also executed balance confirmation letter in favour of the financial creditor as on 10.05.2017.

Thereafter in September 2017, the corporate Debtor approached the financial creditor for renew/review/sanction of existing working capital. The financial creditor acceded the request of the corporate debtor and revised the working capital vide sanction letter dated 26.09.2017.

6. The corporate debtor failed to make timely payment and was irregular in serving its debt therefore the financial creditor declared the account of Corporate Debtor as NPA on 29.09.2017. The Financial Creditor served a Recall notice under section 13(2) and possession notice under Section 13(4) of SARFESI Act, 2002 on 09.11.2017 and 16.02.2018 respectively. The said letters were duly served upon the corporate debtor. However, the corporate debtor failed to make payment.

7. It is the averment of the applicant that for recovery of the loan, the financial creditor filed an Original Application bearing No. 681/2019 before Debt Recovery Tribunal –II, Chandigarh for recovery on 04.12.2018. The said application was allowed vide order dated

04.02.2020 and recovery certificate of Rs. 304,52,08,344/- was issued by Hon'ble DRT.

8. The Corporate Debtor failed to make payment and the financial creditor filed the present application under Section 7 of IBC. As per part IV of the application it is claimed that as on 30.04.2021 a total sum of Rs. 350,38,66,495.19/- (Rupees Three Hundred Fifty crore Thirty Eight Lakhs Sixty Six Thousand and Four Hundred Ninety Five only) is due and payable by the Corporate Debtor.

9. As per the mandate of Section 7, Sub-section (3)(b), the financial creditor is required to furnish the name of an Interim Resolution Professional. In compliance thereof the financial creditor has proposed the name of Mr. Himanshu Jaitely, for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P00219/2017-2018/10457 resident of SCO - 818, 1st Floor, NAC, Manimajra, Chandigarh - 160011, having email id: hejetly@gmail.com. Mr. Himanshu Jaitely has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Further, he has also made declaration that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have also been made by IRP abovementioned as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

10. That on perusal of the documents it is observed that the corporate debtor was served notice to appear before this bench and present its defence on 16.05.2021. Further, as per the service affidavit dated 13.08.2021, the corporate debtor was also served via email on 26.07.2021. The financial creditor made substituted service in the

newspaper on 17th September 2021. In spite of several efforts the corporate debtor failed to appear and therefore Corporate Debtor proceeded ex-parte vide order dated 26.11.2021 of this bench.

11. The financial creditor has placed on record the Copy of sanction letters dated 16.02.2016 and 26.09.2017, the Copy of memorandum of deposit of title deeds, the Certificate of registration of charge, the Copies of CERSAI report, the records of default with Information utility, the documents related to Hypothecation of Assets, the Copy of Agreement of Guarantee dated 23.06.2016, the Copy of the bank statements of financial creditor reflecting payment of loan amount, the Copy of balance and security confirmation letter dated 10.05.2017.

12. We have heard the Ld. Counsel and perused the averments made in the application. That prima facie the issue for consideration is whether the claim of applicant is time barred.

13. As regards the issue of limitation, it is seen that the present application has been filed on 17.05.2021 and the account of corporate debtor was declared NPA on 29.09.2017. However, a recovery certificate of Hon'ble DRT was issued in favour of the financial creditor vide order 04.02.2020, which has given rise to a fresh cause of action to the financial creditor to initiate proceeding under Section 7 of IBC within 3 years from the date of the order. Accordingly, the present application is not barred by limitation.

14. We are further strengthened by the finding of Apex Court as recorded in the case of ***Dena Bank (now Bank of Baroda) Vs. C. Shivakuamr Reddy and Anr., Civil Appeal No.1650 Of 2020 [2021 SCC OnLine SC 543]***, decided on 4-8-2021 wherein it was held as follows:

"142.to sum up, in our consideration opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years

from the date of declaration of the loan account of corporate Debtor as NPA, if there was an acknowledgment of the debt by the corporate debtor expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.

143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid. “

15. As regards the establishment of 'default' on part of the Corporate Debtor. We are of the view that it is clearly established that the corporate debtor had approached the applicant for taking loan facility, which was sanctioned by the financial creditor and relevant documents were executed. However, the corporate debtor failed to adhere to terms of the sanction letter and defaulted in repayment of the outstanding financial debt. Therefore their account was declared NPA and from the documentary evidence it is proved that the financial creditor is entitled to recover the outstanding dues from the corporate debtor. It is added that in terms of Section 4 of IBC the corporate debtor has defaulted in payment of more than One Lakh and Hence CIRP must be initiated. The claim of the financial creditor has also been confirmed by the Hon'ble Debt Recovery Tribunal vide order dated 04.02.2020. It is pertinent to mention that the corporate debtor has failed to appear and present its defence; accordingly the present matter has been proceeded ex-parte.

16. On perusal of Form – I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary

proceeding pending against the proposed Interim Resolution Professional.

17. We are satisfied that the present application is complete in all respect. The financial creditor is entitled to move the application against the corporate debtor in view of admitted outstanding financial debt and default of the same by the corporate debtor and the financial debt has also not been refuted by the Corporate Debtor.

18. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is hereby, admitted. Shri. Hemanshu Jetley, having registration number IBBI/IPA-001/IP-P00219/2017-2018/10457 having email – id hejetly@gmail.com. is appointed as an Interim Resolution Professional for corporate debtor.

19. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

20. We direct the Financial Creditor to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Shri. Hemanshu Jetley, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within seven days from the date of receipt of this order by the Financial Creditor. The said amount however is subject to adjustment towards Resolution Process cost as per applicable rules.

21. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the

Page 7 of 9





provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- a) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
- b) The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-Directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code

and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

22. Registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.


(SUMITA PURKAYASTHA)
MEMBER (T)


(DHARMINDER SINGH)
MEMBER (J)