

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CP (IB) 2729/MB/2019

Under Section 7 of the I&B Code,  
2016

In the matter of

Punjab National Bank,

Plot No. 4, Sector- 10, Dwarka,  
New Delhi- 110075

... Petitioner

Vs.

Dream Merchant Content Private  
Limited,

Shop No. 187, 1<sup>st</sup> Floor, Citi mall,  
New Link Road, Andheri (West),  
Mumbai- 400053

... Corporate Debtor

Order delivered on: 24.10.2019

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (J)  
Hon'ble Shri V. Nallasenapathy, Member (T)

For the Petitioner: Adv. Falguni Shete

For the Corporate Debtor: Adv. Jigar Kamdar, Adv. Parul Sharma

*Per: V. Nallasenapathy, Member (T)*

ORDER

1. Punjab National Bank (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process against Dream Merchant Content Private Limited (hereinafter called the 'Corporate Debtor') on the ground that the Corporate Debtor committed default to the extent of ₹66,58,63,415.41/- as provided under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petition reveals that Punjab National Bank had granted a term loan of ₹50,00,00,000/- repayable with interest at the rate of 12.50% per annum vide Sanction Letter dated 06.06.2017 to the Corporate Debtor. The Petitioner enclosed the following documents in support of the Term Loan granted to the Corporate Debtor:
  - (a) Copy of the Sanction Letter dated 06.06.2017;
  - (b) Loan Agreement dated 09.06.2017;
  - (c) Deed of Hypothecation dated 09.06.2017;
  - (d) Guarantee Agreement dated 09.06.2017;
  - (e) Agreement for Pledge of Shares dated 09.06.2017;
  - (f) Registered Indenture of Mortgage dated 09.06.2017 for creating mortgage of the Corporate Debtor's properties.
3. The Petitioner enclosed the Statement of Account from year 2017 to 2019 and summary statement of outstanding amount with interest calculations for the Term Loan, wherein it was found that the total outstanding amount of ₹66,58,63,415.41/- is pending as on 10.07.2019, which shows that the Corporate Debtor has defaulted in paying the total outstanding dues. The Petitioner declared the Corporate Debtor as a Non-Performing Asset (NPA) on 30.12.2007.
4. The Petitioner filed an application under SARFAESI Act, 2002, before the Debt Recovery Tribunal and sought recovery of ₹66,58,63,415.41/- and other relief. The Petitioner issued notice u/s 13(2) of SARFAESI Act dated 12.01.2018 upon the Corporate Debtor demanding total outstanding dues which are annexed to the Petition. The Petitioner has also annexed Commercial Credit Information Report (CIBIL) dated 19.09.2018 and Certificate under Sections 2A(a) and 2A(b) of the Banker's Book of Evidence Act, 1891 dated 10.07.2019 of Corporate Debtor.
5. The Petitioner further submits that the copy of the petition sent to the branch office of the Corporate Debtor was served and affidavit

of service to that effect was filed. Subsequently, the petitioner informed the date of hearing to the Corporate Debtor and filed proof of service. Both sides were present on 30.08.2019. Previously, on 14.08.2019, on the request of the Counsel for Corporate Debtor, time was given to file reply on or before 20.08.2019. Later, this petition was listed on 21.08.2019 wherein both sides were absent. Then it was listed on 30.08.2019, however the Corporate Debtor failed to file reply and again sought time. This being a Section 7 Petition, no further time was given and the Corporate Debtor was permitted to file their written submissions.

6. The counsel for the Corporate Debtor filed written submissions wherein it was contended as below;
  - a. The Corporate Debtor voluntarily handed over possession of certain mortgaged properties to the petitioner
  - b. Even though the Corporate Debtor had pledged 14,80,000 equity shares of M/s. TV Vision Ltd. as primary security to the loan, the petitioner, on 27.09.2017, partially invoked the pledge of approximately 20,000 shares, even before the declaration of the Account as NPA, which was on 30.12.2017, but not sold the shares, which caused irreparable harm and prejudice to the Corporate Debtor.
  - c. Due to the invocation of pledge on shares by the Petitioner bank, the share price of the said company, which is a group concern of the Corporate Debtor, fall drastically and created negative impact on the group's reputation.
7. The above contentions of the Corporate Debtor cannot be taken into account while considering the Petition for admission under section 7 of the code, in view of the decision of the Hon'ble Supreme Court of India in the case "*Innoventive Industries Ltd. Vs. ICICI Bank and Ors.*, - (2018) 1 SCC 407" wherein it was observed as below:

*"28. When it comes to a 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 Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied 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 post or 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 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 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 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 authority. Under sub-section (7), 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."*

8. On hearing of the Petition and going through the Form-1 and the connected documents, it is amply clear that the Corporate Debtor defaulted in making the repayment of the financial debt due to the Petitioner and the petition deserves to be admitted.
9. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:
  - I. (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 Securitisation 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 the 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 moratorium period.

- III. 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.
- IV. That the order of moratorium shall have effect from 24.10.2019 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.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.
- VI. That this Bench hereby appoints, Mr. Mukesh Verma, having his address at A 504, Manish Garden CHS, Manish Nagar, JP Road, Andheri (West), Mumbai - 400058, having Registration No. IBBI/IPA-001/IP-P01665/2019-20/12522 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.
10. Accordingly, this Petition is admitted.
11. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-

V. Nallasenapathy  
Member (T)

Sd/-

Suchitra Kanuparthi  
Member (J)