

NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.3
CP(IB)/28(MP)2023

Proceedings under Section 7 IBC

IN THE MATTER OF:

Axis Bank Ltd

.....Applicant

V/s

Sun Petpack Jabalpur Pvt Ltd

.....Respondent

Order delivered on 04/04/2024

Coram:

P. Mohan Raj, Hon'ble Member(J)

Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

A. Bhadauria

Sd/-

P. MOHAN RAJ
MEMBER (JUDICIAL)

THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

CP(IB)/28/MP/2023

(An application under section 7 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

Axis Bank Limited

CIN No.: L65110GJ1993PLC020769

Having its registered address at:

Trishul, 3rd Floor, Opp. Samartheshwar
Temple, Near Law Garden, Ellisbridge,
Ahmedabad,
Gujarat- 380006

.....Petitioner/Financial Creditor

Versus

Sun Petpack Jabalpur Private Limited

CIN NO.: U25209MP2000PTC014124

Having its registered address at:

774, Gole Bazar,
Jabalpur,
Madhya Pradesh- 482002

.....Respondent/Corporate Debtor

Order pronounced on: 04.04.2024

Coram: P. Mohan Raj, Member (J)

Kaushalendra Kumar Singh, Member (T)

Appearance:

For Petitioner: Ld. Adv. Mr. H.Y. Mehta

For Respondent: Ld. Adv. Mr. Akshat Agrawal

ORDER

1. This petition was filed on 02.03.2023, by Mr. Yogesh A Nerkar, Assistant Vice President of M/s Axis Bank Limited (Financial Creditor) under section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiating the Corporate Insolvency Resolution Process (CIRP) against M/s

Sun Petpack Jabalpur Private Limited (Corporate Debtor). The default amount stated by the financial creditor is Rs 20,69,89,748/-. The date of default stated by the financial creditor is 29.12.2016.

2. The averments made by the financial creditor in its petition and presented/argued by the learned counsel for the financial creditor are summarized hereunder:

(i) The corporate debtor had approached the financial creditor for sanctioning different kinds of credit facilities, which was sanctioned by the financial creditor vide letter dated 12.05.2014 amounting to Rs 9.58 Crore.

(ii) The corporate debtor has made the default in repaying the loan, subsequently, the financial creditor classified the loan accounts of the corporate debtor as NPA on 29.12.2016. Even after giving sufficient opportunity, the corporate debtor did not repay the loan as per the agreed terms and conditions.

(iii) Details of the outstanding amount are as follows:

Nature of facility	Principal Outstanding	Interest/Penal Outstanding	Total Dues as on 31.01.2023
Term Loan-I	1,15,00,000/-	1,52,57,010/-	2,67,57,010/-
Term Loan- II	29,99,600/-	39,78,931/-	69,78,531/-
Term Loan- V	2,30,80,314/-	3,08,59,570/-	5,39,39,884/-
Cash Credit	4,75,00,000/-	6,01,99,803/-	10,76,99,803/-
Bank Guarantee Crystallised (Buyers Credit)	65,49,691/-	50,64,829/-	1,16,14,520/-
Total	9,16,29,605/-	11,53,60,143/-	20,69,89,748/-

(iv) In the event of default, the financial creditor had initiated legal proceedings against the corporate debtor to recover the loan and obtained the order from appropriate authorities to take the physical possession of the mortgaged property from DM, Mandla, DM, Jabalpur and DRT, Jabalpur.

(v) A loan recall notice dated 04.01.2017 was also issued by the financial creditor to the corporate debtor recalling Rs 8,88,00,808/- against several credit facilities provided by the financial creditor.

(vi) The corporate debtor wrote a letter dated 07.04.2021 for the settlement of loan accounts. The corporate debtor by its aforesaid letter has admitted that the loan accounts are of the corporate debtor and the said loan accounts are in default.

(vii) As the account of the corporate debtor was classified as NPA on 29.12.2016 and the outstanding amount as on 31.01.2023 is Rs 20,69,89,748/-, the corporate debtor has shown the liability to pay the financial creditor in its audited balance sheet till 2023 (Balance Sheet for the years 2016-17, 2017-18, 2018-19 & 2019-20 are enclosed with the application). However, till date, the corporate debtor has not paid the said loan amount. As the remedy under the Code was available for speedy recovery of the loan/public money from the corporate debtor, therefore, this application is filed before this Adjudicating Authority.

3. In this context, the defense placed by the corporate debtor in its affidavit in reply and submissions made thereon and as presented/argued by the learned counsel for the corporate debtor are summarized as under:

(i) The corporate debtor took a term loan of Rs 1.20 Crore from M.P. Financial Corporation by hypothecation of fixed assets of the corporate debtor and collateral securities of part of house property which was in the name of Shri RS Gupta father of Mr. Ravi Gupta. M.P. Financial Corporation sanctioned this loan on 19.05.2000.

(ii) The corporate debtor was sanctioned a working capital limit of Rs 84 Lacs by State Bank of India commercial branch Jabalpur vide their

sanction letter dated 09.11.2000. This loan was secured by second charge on the fixed assets and collateral security which was with M.P. Financial Corporation.

(iii) Between 2001 to 2011 the corporate debtor kept on doing expansion by upgrading the machines as well as adding more machines to cater to the requirements of customers and took additional term loan from M.P. Financial Corporation and increased working capital limits from State Bank of India.

(iv) In year 2013 the corporate debtor approached M.P. Financial Corporation for additional term loan of Rs 1.95 Crores for diversification project for manufacturing containers for processed food items with latest technologies. State Bank of India also enhanced working capital limits from time to time and at this time it was Rs 2.17 Crores including non-fund limit of Rs 7 Lacs.

(v) In year 2014 the financial creditor approached the corporate debtor for takeover of all the limits from M.P. Financial Corporation as well as State Bank of India and offered additional working capital as well as additional term loan for another diversification project.

(vi) The financial creditor agreed to take over existing facilities from M.P. Financial Corporation and SBI and also agreed to sanction enhanced working capital and new term loan for paper pulp moulded products on 28.03.2014.

(vii) Unfortunately, 2014 monsoon badly hit the oilseed crop in M.P. and badly affected the business and financial planning of the corporate debtor and the corporate debtor incurred huge losses. With financial challenges arising because of over run in project cost also delay in project all lead to non-payment of instalments of various term loan with the financial creditor. The corporate debtor approached the financial creditor to provide additional finances for the cost escalation in project which they refused. So in such crisis, the corporate debtor did market borrowing to complete the project.

(viii) The corporate debtor completed the project and started commercial production on 31.05.2016. During this period account with the financial creditor was under stress, payment of instalments were delayed for more than 60 days. Thereafter, the financial creditor agreed to increase cash credit limit on 30.09.2016 by Rs 1 Crore while the corporate debtor was in dire need of Rs 2 Crore either by way of working capital term loan (WCTL) or term loan. With the result maximum amount of disbursement was adjusted in regularizing the accounts with the financial creditor. Since the corporate debtor could not pay the instalments for October, November and December the account became NPA on 01.01.2017. On turning account to NPA the financial creditor froze all the accounts including the current account of the corporate debtor.

(ix) The corporate debtor opened an account in SBI and continued to run the factory. The corporate debtor was making all efforts to come out of the situation and settle with the financial creditor. The corporate debtor managed to get a sanction of Rs 12 Crore of loan from NBFC in April 2019. The corporate debtor along with NBFC met authorities of the financial creditor who had agreed to enter into One Time Settlement (OTS) at Rs 8 Crores.

(x) While this process was underway, on 26.05.2019 the factory of the corporate debtor had an accident due to some short circuit and massive fire broke out. The corporate debtor incurred huge loss of approx. Rs 7 Crores. Due to fire NBFC who had agreed to finance Rs 12 Crore backed out and accordingly the corporate debtor was forced to withdraw OTS offer. The corporate debtor once again submitted OTS proposal to the financial creditor on 07.04.2021 for Rs 3 Crore which was turned down by the financial creditor.

(xi) In December 2016 the financial creditor gave a letter regarding renewal of insurance with a remark that if renewal is not done the financial creditor will renew the same and debit the amount of insurance premium to the corporate debtor's account. The corporate

debtor had confirmed to the financial creditor that they have balance in the current account maintained with the financial creditor and insurance premium should be paid from that. However, there was no insurance on the date of fire. The financial creditor also refused to take any responsibility for the same.

(xii) There exists no default as on date. The default of non-renewal of the insurance policy and thereby suffering from non-recovery from the insurance the corporate debtor is entirely attributed to the financial creditor, for which the corporate debtor cannot be saddled with the liability.

(xiii) Otherwise the amount alleged to be due is in dispute and has not yet been crystallized as the original application filed by the financial creditor is still pending adjudication before DRT, Jabalpur.

(xiv) The alleged claim of the financial creditor is barred by limitation and therefore the present petition is not maintainable.

4. The submissions made in the rebuttal affidavit of the financial creditor are summarized hereunder:

(i) The corporate debtor in its reply cum objection has specifically admitted to the fact of the existence of debt in favour of the financial creditor and demonstrated that the corporate debtor was not able to repay the amount to the financial creditor.

(ii) Regarding allegations pertaining to insurance, it is denied that there was liability on the part of the financial creditor to renew any insurance policy. A detailed reply in this regard was given to the corporate debtor by the financial creditor vide letter dated 31.05.2019.

(iii) The loan account pertaining to the corporate debtor were kept in debit freeze mode after been classified as NPA. The term loan agreement clearly stipulated that the obligation of insuring was on the borrower i.e. the corporate debtor.

(iv) The present petition is well within the limitation period as the corporate debtor in the financial year 2016-17, 2017-18, and 2019-20

has submitted its annual audited report and has acknowledged and admitted its liability of payment of debt in favour of the financial creditor.

5. We have heard the learned counsel for the financial creditor as well as the learned counsel for the corporate debtor on the issue of admission of petition filed under section 7 of the Code and have perused the relevant records and documents. It is noted that the financial creditor has provided various credit facilities to the corporate debtor and the same was sanctioned through a letter dated 12.05.2014 for an aggregate amount of Rs 9.58 Crores. The said credit facilities were renewed from time to time and the corporate debtor has also provided various securities and guarantees against the said credit facilities. The account of the corporate debtor was declared as NPA on 29.12.2016. Further, a loan recall notice dated 04.01.2017 was issued by the financial creditor to the corporate debtor calling for balance amount of Rs 8,88,00,808/-. The financial creditor has also placed on record the National E-Governance Services Limited (NeSL) Certificate with regards to various credit facilities provided to the corporate debtor, which shows total outstanding aggregating to an amount of Rs 9,16,29,604/-, default date 30.06.2021 and the status of authentication as Deemed to be Authenticated.

6. In defence, the corporate debtor has taken a plea that the alleged amount is not due and payable and the present petition is Barred by Limitation. However, the corporate debtor has also submitted that it had proposed OTS in the year 2019 which was withdrawn due to incidence of fire in the factory whereupon the NBFC which had agreed to finance Rs 12 Crores had backed out. The another OTS made in the year 2021 was turned down by the financial creditor.

7. Having considered the facts of the case, we are of the view that the corporate debtor has defaulted in repayment of its debt. The OTS proposed by the corporate debtor, debt acknowledgment letters dated 08.12.2014, 21.12.2015 & 26.09.2016, and the acknowledgment of debt in the balance sheet for the years ending 2016-17, 2017-18, 2018-19 & 2019-20, confirm the same. The present petition was filed on 02.03.2023. The acknowledgment

as per OTS proposed and financial statements extended the period of limitation, and as such application is well within the limitation period. The plea as regards the liability of carrying out insurance on the financial creditor is also misplaced and even otherwise the dispute in that regard has no bearing in section 7 petition. The amount claimed to be in default meets the threshold limit as prescribed under section 4 of the Code, as such the petition deserves to be admitted. Accordingly, we allow this petition and order as under:

(i) Corporate Debtor M/s Sun Petpack Jabalpur Private Limited is admitted in the Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.

(ii) The moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of section 14(1) of the Code.

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;

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.

(iii) 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 Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of

Corporate Debtor under section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

(iv) As proposed by the Financial Creditor, we appoint Mr. Mangesh Vitthal Kekre having registration No. IBBI/IPA-001/IP-P00539/2017-2018/10964, having address at: 607, Chetak Centre, RNT Marg, Near Hotel Shreemaya, Indore, Madhya Pradesh- 452001, Email: ca.mangesh@gmail.com, to act as an Interim Resolution Professional under section 13(1)(c) of the Code. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

(v) The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by section 13(1) (b) of the Code.

(vi) 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. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

(vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(viii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the

Corporate Debtor as a going concern as a part of obligation imposed by section 20 of the Insolvency & Bankruptcy Code, 2016.

(ix) The Financial Creditor is directed to pay an advance of Rs.1,00,000/- (Rupees One Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

(x) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

(xi) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employee's associations so that they are informed of the initiating of CIRP against the Corporate Debtor timely.

(xii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

8. Accordingly, the petition i.e. CP(IB)/28/MP/2023 stands admitted.

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KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-sd-

P. MOHAN RAJ
MEMBER (JUDICIAL)

KN/A. Bhadauria