

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 164/Chd/Hry/2021

**Under Section 7 of the
Insolvency & Bankruptcy
Code, 2016**

In the matter of:

**Punjab National Bank
through Chief Manager, Jasbeer Singh Meelu**

having its Registered office at:

Zonal Sastra Centre,
Gate No. 1, Ist Floor,
Sector 17-B, Chandigarh-160017

Vs.

....Petitioner-Financial Creditor

Shri Vishnu Overseas Pvt. Ltd.

having its Registered Office at:

Jind Road Kaithal-136027,
Haryana

...Respondent-Financial Creditor

Judgment delivered on: 04.11.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing:

For the Petitioner-Financial Creditor : Mr. S.K. Sharma, Advocate

For the Respondent-Corporate Debtor : Proceeded *ex parte* vide
order dated 27.07.2022

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed by Punjab National Bank (hereinafter referred to as 'Petitioner/Financial Creditor') through its Chief Manager, Mr. Jasbir Singh Meelu under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against Shri Vishnu Overseas Pvt. Ltd. (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Jasbir Singh Meelu with the affidavit verifying the contents of the application appended thereto.

2. The Corporate Debtor is stated to be incorporated on 09.06.1995. The company having its registered address at Jind Road, Kaithal-136027, Haryana. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is stated to be filed as Annexure-1/B of the petition. The Corporate Debtor is engaged in processing of paddy/rice and flour mill.

3. Brief facts of the case are that the corporate debtor was dealing with the bank since 27.03.2009. In June 2015, corporate debtor approached and requested financial creditor for renewal-cum-enhancement of existing fund based working capital limits and term loan for its business. Financial creditor renewed/enhanced/sanctioned working capital and term loan limit in favour of corporate debtor of Rs. 108,85,00,000/- (Rupees One Hundred Eight Crores Eighty Five Lakhs Only) sanction letter dated 18.06.2015. The corporate debtor

executed various loan and security documents on 02.02.2016 in favour of a consortium led by the financial creditor. In March 2017, the corporate debtor approached for review/renew/sanction of loan, the financial creditor acceded to the request and reviewed working capital limits and term loan limit of Rs. 95,83,00,000/- (Rupees Ninety Five Crores Eighty Three Lakhs Only) vide sanction letter dated 07.03.2017. The corporate debtor confirmed debit balances in the loan account as on 10.05.2017 and executed various balance and security confirmation letter. The corporate debtor failed to maintain financial discipline and were declared Non-Performing Asset on 30.09.2017 by the bank. The financial creditor issued a recall notice under Section 13(2) of SARFAESI Act, 2002 to discharge their debt. The corporate debtor filed its objections against the notice dated 09.11.2017. The financial creditor replied to the objections and issued possession notice under Section 13(4) of the SARFAESI Act, 2002 to the corporate debtor. The financial creditor filed Original Application bearing No. 1524/2019 before Debt Recovery Tribunal-II, Chandigarh for recovery of Rs. 157,67,65,699/- (Rupees One Hundred Fifty Seven Crores Sixty Seven Lakhs Sixty Five Thousand Six Hundred Ninety Nine Only) against the corporate debtor, guarantors and mortgager which is pending for adjudication.

4. It is stated in Part-IV of Form No.1 that the petitioner has provided a loan amount of Rs. 104,27,87,056/- (Rupees One Hundred Four Crores Twenty Seven Lakhs Eighty Seven Thousand Fifty Six Only) (principal). The total amount claimed to be in default is Rs.166,80,85,695/- (Rupees One Hundred Sixty Six Crores Eighty Lakhs Eighty Five Thousand Six Hundred Ninety Five Only) (including interest and misc. expenses) and date of default is 30.09.2017 i.e. the date on which the account of the corporate debtor was declared Non Performing Asset.

Copies of sanction letter dated 18.06.2015 and 07.03.2017 (Annexure-I/C), working for computation of default (Annexure-1/D), Memorandum of deposit of title deed (Annexure-1/E), registration of charge issued by the Registrar of Companies (Annexure-1/F), CERSAI report (Annexure-1/G), record of default with Information Utility (Annexure-1/H), Packaging Credit Agreement dated 02.02.2016 (Annexure-I/K), Hypothecation of goods and book debts (Annexure-I/L), hypothecation of movable assets dated 02.02.2016 (Annexure-I/M), agreement of guarantee dated 02.02.2016 (Annexure-I/O), statement of account (Annexure-I/P), agreement of hypothecation of current asset dated 02.02.2016 (Annexure-I/I), balance and security confirmation (Annexure-I/Q), recall notice dated 09.11.2017 (Annexure-I/R) and NPA certificate dated 13.05.2021 (Annexure-I/U).

5. The notice of this petition was issued to the respondent corporate debtor vide order dated 18.01.2022 for 05.05.2022 to show cause as to why this petition be not admitted, none appeared on behalf of respondent-corporate debtor nor any reply was filed. A perusal of affidavit of service showed that respondent-corporate debtor could not serve through ordinary process and therefore, the substituted service was effected through publication in two daily newspapers (Financial Express and Jansatta), both dated 03.03.2022 having wide circulation in the area. Affidavit of service was filed vide Diary No. 00667/1 dated 27.04.2022. It is stated that last opportunity was granted to respondent for filing reply as per order dated 05.05.2022, however, the same has not been filed. Therefore, respondent-corporate debtor proceeded *ex parte* vide order dated 27.07.2022. The short written submissions are filed by petitioner-financial creditor vide Dairy No. 00667/2 dated 20.10.2022.

6. We have heard the learned counsels for the petitioner and the respondent-corporate debtor and have also perused the record carefully.

7. Section 7(5)(a) of the Code is 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.”*

8. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is 30.09.2017 i.e. the date on which the account of the corporate debtor was declared Non Performing Asset and the last date for filing the present petition was 29.09.2020. The present petition is filed vide Diary No. 00667 dated 01.07.2021. The period from 15.03.2020 till 28.02.2022 stands excluded by virtue of order dated 27.04.2021 passed by Hon'ble Supreme Court in “In Re: Cognizance for Extension of limitation registered as Suo-Moto Writ Petition (C) No. 3/2020. Operative portion of order passed by Hon'ble Apex Court on 27.4.2021 is as follows:-

“We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant-public in all the states. We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.”

Further in M.A. 21 of 2022, Hon'ble Supreme Court held:-

“In continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings”.

Therefore, the present petition is filed within limitation.

9. Another issue for consideration is whether there is default in payment or not. It is observed from the record that in the present case, the default is evidenced by the sanction letter dated 18.06.2015 and 07.03.2017 (Annexure-I/C), working for computation of default (Annexure-1/D), Memorandum of deposit of title deed (Annexure-1/E), registration of charge issued by the Registrar of Companies (Annexure-1/F), CERSAI report (Annexure-1/G), record of default with Information Utility (Annexure-1/H), Packaging Credit Agreement dated 02.02.2016 (Annexure-I/K), Hypothecation of goods and book debts (Annexure-I/L), hypothecation of movable assets dated 02.02.2016 (Annexure-I/M), agreement of guarantee dated 02.02.2016 (Annexure-I/O), statement of account (Annexure-I/P), agreement of hypothecation of current asset dated 02.02.2016 (Annexure-I/I), balance and security confirmation (Annexure-I/Q), recall notice dated 09.11.2017 (Annexure-I/R) and NPA certificate dated 13.05.2021 (Annexure-I/U). The respondent corporate debtor has proceeded *ex parte*, thus, there is no rebuttal to the claim of petitioner. The application filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, in Part III of Form 1, Mr. Hemanshu Jetley has been proposed as Interim Resolution Professional.

10. In Part-III of Form No.1, Mr. Hemanshu Jetley, Registration No.IBBI/IPA-001/IP-P00219/2017-2018/10457 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 05.04.2021 along with the the certificate of IBBI issued in favour of proposed Interim Resolution Professional i.e.

Mr. Hemanshu Jetley is attached at Annexure-II/A of the petition. The Law Research Associate of this Tribunal has checked the credentials of Mr. Hemanshu Jetley, and there is nothing adverse against him. In view of the above, we appoint Mr. Hemanshu Jetley, Registration No.IBBI/IPA-001/IP-P00219/2017-2018/10457, Email: hejetley@gmail.com, Mobile No.90417-00000, the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016. 12. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above threshold limit, the petition is admitted in terms of Section 7(5) of the IBC. Moreso, the respondent has admitted the claim and expressed its inability to pay back the debt. Accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- “(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;

- (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.
- (e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.
- (f) The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- (g) The order of moratorium shall have effect from the date of this order till 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 the corporate debtor under Section 33 as the case may be.”

11. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

12. We direct the Financial Creditor to deposit a sum of Rs. 1,00,000/- (Rupees One Lakh Only) with the Interim Resolution Professional, to meet out the expense 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 amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

13. Accordingly, petition is admitted and allowed.

14. A copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/- 4.11.2022
(Subrata Kumar Dash)
Member (Technical)

Sd/- 4.11.22
(Harnam Singh Thakur)
Member (Judicial)

November 04, 2022

YP/TB