

IN THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
 (Exercising powers of Adjudicating Authority under
 the Insolvency and Bankruptcy Code, 2016)

CP (IB) No.104/Chd/Hry/2017

Under Section 7 of IBC,2016

In the matter of:

Punjab National Bank
 Having its Head Office at
 7, Bikhaji Cama Place,
 New Delhi-110607

... Petitioner/Financial Creditor

Vs.

M/s Dinesh Polytubes Pvt.Ltd.
 Having registered office at
 455, Agarwal Colony,
 D.N.College Road,
 Hissar-125001 (Haryana)

...Respondent/Corporate Debtor

Order delivered on : 11.12.2017

Coram: Hon'ble Mr.Justice R.P.Nagrath, Member (Judicial)

For the Petitioner : Mr. R.S.Bhatia, Advocate

For the Respondent : Mr.Atul Sharma, Advocate

ORDER

This petition has been filed by the Punjab National Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code') read with rule (4) of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, the 'Rules') for initiating insolvency resolution process against the Respondent-Corporate Debtor. The application has been filed in Form No.1 of the Rules as prescribed under 4(1) of the Rules, giving the necessary particulars.

2. The petitioner Bank was incorporated on 31.03.1970 under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 with Head Office at 7, Bikhaji Cama Place, New Delhi and a Branch Office at MCB, Model Town, Hissar. The Respondent-Corporate Debtor was incorporated on 10.06.2009 as a company registered under Companies Act, 1956 and allotted CIN U25194HR2009PTC039191 with authorised share capital of ₹50 lacs and paid up capital of ₹37 lacs. Copy of Memorandum and Articles of Association of the respondent are at Annexure A/3. The Registered Office of the corporate debtor is at Hissar, in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

3. The instant petition has been filed through Mr. Navdeep, Senior Manager of the Branch at Hissar in whose favour, the Bank has executed General Power of Attorney dated 05.11.2015 Annexure A-1. The competent authority vide letter dated 28.07.2017 Annexure A/2 has also accorded permission to the Branch Head to file the petition before NCLT under the Insolvency and Bankruptcy Code, 2016 against the Respondent–Corporate Debtor. Vide this letter Mr. R.S.Bhatia, Advocate has been authorised on behalf of the Bank to file this petition. The competent authority has also proposed the name of Mr.Jalesh Kumar Grover, Resolution Professional to act as Interim Resolution Professional.

4. The facts of the case, briefly stated, are that the corporate debtor approached the Petitioner-Bank for sanction of various credit facilities in the year 2010. These were in the nature of CC limit of ₹90 lacs; CC book debt limit of ₹60 lacs and term loan for plant & machinery of ₹150 lacs, total amounting to ₹300 lacs.

5. The request of corporate debtor was allowed by the Bank for CC limit of ₹30 lacs on 04.03.2011 which was enhanced to ₹250 lacs on 15.03.2011 and fresh term loan of ₹75 lacs was also sanctioned. Further, the corporate debtor was sanctioned adhoc limit of ₹10 lacs on 03.10.2011; adhoc limit of ₹50 lacs on 25.02.2011 and one car loan was also sanctioned to the corporate debtor which, however, stands adjusted.

6. The corporate debtor was then sanctioned the cash credit limit of ₹250 lacs on 09.03.2013. The corporate debtor executed various documents i.e. hypothecation of goods and book debts to secure cash credit facility dated 26.02.2010 (Annexure A/12); hypothecation of assets to secure term loans (Annexure A/13), hypothecation of moveable assets (Annexure A/14) hypothecation of current assets (Annexure A/15), all dated 26.02.2010. Annexure A-16 is the copy of sanction of enhanced CC limit dated 15.03.2011 and the other documents of hypothecation of the similar nature dated 15.03.2011 which are at Annexure A/17 to A/19. Further documents Annexure A/20 to Annexure A/22 all dated 30.03.2011 were also executed. Annexure A/23 is the sanction of credit facilities dated 09.03.2013. The different loans sanctioned to the corporate debtor are Cash Credit(hypothecation) of ₹150 lacs; CC book debt of ₹100 lacs; Term Loan-I of ₹150 lacs and Term Loan-II of ₹75 lacs. The corporate debtor is said to have committed default and recall notice dated 08.01.2015 (Annexure A/9) was issued. It was mentioned in this notice that the total amount outstanding as on 31.12.2014 inclusive of interest was ₹4,07,43,345.08. This notice (Annexure A/9) was sent to the company, its directors and others.

7. Thereafter, the Bank issued a notice to the corporate debtor under Section 13(2) of the SARFAESI Act, 2002 (Annexure A/10) dated 13.02.2015. The petitioner-bank then filed a Suit bearing OA No.519 of 2016 (old) and 2597 of 2017 (new) dated 14.03.2016 before DRT which was still pending. Annexure A/8 is the copy of that application.

8. By way of evidence in support of the claim of default committed by the corporate debtor, the petitioner-bank has relied upon various balance confirmation letters executed by the corporate debtor ranging from 07.05.2013 to 28.05.2014 which are from Annexure A/28 to A/33. The petitioner-bank has also relied upon statements of account of the corporate debtor under different loan accounts as at Annexure A/25 to A/27 which are certified under the Bankers Books Evidence Act, 1891.

9. Before filing this petition, the petitioner-bank also served Demand Notice to the corporate debtor (Annexure A/34) dated 09.02.2017 wherein the then outstanding amount as on 08.02.2017 was stated as ₹36833617.24. The petitioner-bank has also relied upon CIBIL report (Annexure A/24) dated 27.10.2016 in order to bring further evidence of default. In this notice it was stated that the Bank proposes to initiate the proceedings under the Insolvency and Bankruptcy Code in case the debt remains unpaid by the date specified in the notice.

10. It is also stated that the corporate debtor mortgaged the factory building on the land measuring 14 Kanal 18 Marla comprised in Khewat No.350, Khatoni No.535 and Khasra No.11/10 (7-10), 11(7-8) situated at Balsmand Road, Village Pattan, Tehsil, District Hissar. The value of the mortgaged

property is stated to be ₹2,03,36,000/-, apart from the valuation of the stock has been given.

11. The petitioner sent copy of this petition along with copy of entire paper book to the corporate debtor in order to comply with the requirements of sub-rule (2) of Rule 4 of the Rules.

12. Notice of this petition was issued to the Respondent-Corporate Debtor at the two addresses of the company furnished by the petitioner and filed affidavit of compliance dated 14.11.2017 of the authorised representative of the bank.

13. The appearance was made by learned counsel for respondent-corporate debtor and some time was requested to file reply. Preliminary objection raised by the respondent is that the petition has been filed on behalf of the Bank without any valid authorisation. Further that this petition has been filed to over-reach the procedure adopted by the Bank under SARFAESI Act,2002. It is stated that during those proceedings, no sale of the mortgaged property was effected for which a statement was made before the DRT. Later on, sale was confirmed in favour of a third party which is the obvious reason for filing this petition. Filing this petition is said to be abuse of the process of the Court.

14. The Respondent-Corporate Debtor has reproduced elaborate facts placed before the DRT under Section 17 of the Securitisation Act – for amendment keeping in view the fact of sale process being conducted by the Bank also. Various objections taken before the DRT have been reiterated. The respondent further stated that in the interest of justice and fairness of law the

amendments were prayed in the matter pending before the DRT as the case was at the initial stages. Copy of the interim application filed by the corporate debtor before the DRT is at Annexure R-2.

15. I have heard learned counsel for the parties and perused the records.

16. The primary contention of learned counsel for respondent is that the petition has not been filed by the competent officer on behalf of the Bank and there is no Power of Attorney in favour of Mr. Navdeep, Senior Manager, of the bank to initiate proceedings under the Code. The learned counsel placed reliance upon the order passed by Guwahati Special Bench of NCLT in SB Case No.01/IBC/GB/2017 in **Company Petition No. 37/2017, titled ICICI Bank Ltd. Vs. Palogix Infrastructure Private Ltd.** In the said case, the power of attorney was issued by the ICICI Bank on 20.10.2014, on the basis of which, the petition under the Code was filed. It is submitted that the terms of power of attorney in the instant case are similar to the power of attorney as discussed in the order dated 30.03.2017 in the matter referred to Guwahati Bench by the Division Bench of NCLT Kolkata and it was held that there should be a specific authorisation for the purpose of initiating the proceedings under the Code. It would be seen that the Kolkata Bench of NCLT ultimately in the order dated 12.04.2017 pointed out the aforesaid defect to the petitioner and issued a direction to rectify the defect within seven days.

17. The aforesaid judgment was discussed by the Mumbai Bench of NCLT in **“M/s DF Deutsche Forfait AG and Anr. Vs. M/s Uttam Galva Steel Ltd.”, CP No.45/I&BP/NCLT/MAH/2017, decided on 10.04.2017**, wherein it

was held that the nature of the proceedings under the winding up as well as insolvency is more or less the same, though the procedure is slightly different.

18. In the instant case, the general power of attorney in favour of Mr.Navdeep through whom the instant petition has been filed also empowers him to make compliances with the instructions received from the Bank from time to time to settle, compromise, compound, refer to arbitration, terminate, withdraw or abandon any suits, action or any proceedings and for all or any of the purposes aforesaid to execute such instruments and take such steps or to do such things as may be necessary in the case.

19. There are clear instructions in the authority issued by the Circle Head of the bank vide letter dt.28.07.2017 (Annexure A/2) which is in reference to the letter of the Branch Head at Hissar seeking permission to file petition before NCLT under the provisions of the Code.

20. The General Power of Attorney dated 05.11.2015 was also executed in favour of Mr. Navdeep by the bank, authorising him to do the following acts on behalf of the Bank: -

“To take and use all lawful legal proceedings, actions and means for realising recovering of debts, advances and claims due to the said Bank and also to institute and conduct, defend proceedings relating to the property, assets and affairs of the said Bank and realisation of its claims, demands or decrees. He shall have the power to take and use all legal proceedings necessary for the purpose of realisation of rents of property belonging to or taken on lease by the said Bank and also for the possession, ejectment of the tenants or the occupants thereof. He shall also have the power in compliance with instructions

received from the said Bank from time to time, to settle, compromise, compound, refer to arbitration, terminate, withdraw or abandon any suits, action or any proceedings and for all or any of the purposes aforesaid to execute such instruments and take such steps or do such things as may be necessary and expedient.

To take criminal proceedings/action and take insolvency and liquidation proceedings against the debtors of the Bank, to appear and act in a court of insolvency and Liquidation Judge and before the Official Receiver and Liquidator, to file claims prove debts of the said Bank in the insolvency and liquidation Court and before the Official Receiver or Liquidator to oppose discharge of the insolvent and to collect/receive dividend declared by the insolvency or liquidator court in respect of any insolvency or liquidation case.”

21. In view of the aforesaid, I find the petition to have been filed by the Bank through a competent person.

22. Sub-section (3) of Section 7 of the code says that the Financial Creditor shall along with the application furnish –

“(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.”

23. There is no dispute that the petitioner-bank has complied with the requirements of clause (b) of sub-section (3) of section 7 of the Code inasmuch as there is written communication by the proposed Interim Resolution Professional in Form No.2 as at Annexure A/4. All the necessary particulars required to be furnished have been given. It is stated that there are no

disciplinary proceedings pending against the said Resolution Professional. Learned counsel for respondent pointed out that this Form No.2 is defective inasmuch as it does not bear date on which it was executed by the proposed Interim Resolution Professional. The column of date is lying blank. I do not think that this can be considered as a defect in the written communication which of course should be before the date of filing of this petition in the Tribunal on 26.09.2017. I find no ground to reject the written communication and then to direct the Bank to file fresh Form No.2 of the proposed Interim Resolution Professional. Rest of the particulars required to be given in the form have been given. In view of the above, the written communication in Form No.2 is found to be in order.

24. There is abundant record of default committed by the corporate debtor and the detail of that record has already been discussed. There are also certificates certifying each of the bank statements under the Bankers Books Evidence Act, 1891. This would be an important piece of evidence in proof of the default committed by the Corporate Debtor.

25. Learned counsel for respondent, however, referred to the order dated 22.01.2016 of DRT-I (Annexure R-4) with the reply. Learned counsel made specific reference to the said order which shows that the corporate debtor had alleged that the Bank at the back of the Tribunal despite passing proper order has fixed the sale. Attention of DRT was also drawn towards Annexure A-1 attached with the interim application of the respondent whereby the authorised officer, after giving a statement before the DRT through counsel, specifically stated that no bid has been received but later on through same sale

sold the property and sale was confirmed. Learned counsel for petitioner submitted that earlier statement was incorrect.

26. I, however, find that such issues are not of much relevance for disposing of the petitions under the Code. The provisions of the Code have over-reaching effect and it would be appropriate enough to refer to the Section 238 of the Code which reads as under: -

“The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

27. Insolvency and Bankruptcy Code, 2016 is a self-contained Code and the Adjudicating Authority has to be governed by these provisions. Sub-section (4) and sub-section (5) of Section 7 of the Code reads as under: -

“(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(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; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within

seven days of receipt of such notice from the Adjudicating Authority.”

28. The existence of default has been shown from abundant evidence on record. The corporate debtor in the reply is not denying that it is in default of payment to the Bank. The above is the requirement of the aforesaid provisions for enabling the Adjudicating Authority to admit the petition. I find that the application filed by the Financial Creditor in Form No.1 is complete in all respects. Therefore, the instant petition deserves to be admitted.

29. In view of the above, the instant petition is admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 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.

30. It is further directed 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. The provisions of sub-section (1) shall however not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

31. That 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 Corporate Debtor under Section 33 as the case may be.

32. The matter is adjourned to 18.12.2017 for passing formal order of appointment of Interim Insolvency Resolution Professional with further directions. Copy of this order be communicated to both the parties.

Sd/-
(Justice R.P.Nagrath)
Member (Judicial)
Adjudicating Authority

December 11, 2017
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