

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

CP (IB) No.159/Chd/Pb/2018

**Under Section 7 of Insolvency and
 Bankruptcy Code, 2016**

In the matter of:

Oriental Bank of Commerce, through Cluster Monitoring Head at Cluster Monitoring Office, Oriental Bank of Commerce, C/o B-10, Ranjit Avenue, Amritsar- 143001

...Petitioner-Financial Creditor

Versus

M/s Millennium Wires Pvt. Ltd., a company registered under Companies Act, 1956, having its Registered Office at D-30, Focal Point, Jalandhar City, Punjab- 141010

...Respondent-Corporate Debtor

Judgment delivered on 30.08.2018.

**Coram: HON’BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL)
 HON’BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

For the Petitioner : 1) Mr. Harsh Garg, Advocate
 2) Mr. Adesh Kumar Singla, Resolution Professional

For the Respondent : 1) Mr. Manish Jain, Advocate
 2) Ms. Divya Sharma, Advocate

Per: R.P.Nagrath, Member (Judicial):

JUDGMENT (ORAL)

Oriental Bank of Commerce being a Financial Creditor, has filed this petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the ‘Code’) for initiating Insolvency

Resolution Process against the respondent-Corporate Debtor. The Petitioner-Bank has been constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act (Act 40 of 1980), with Head Office at Connaught Place, New Delhi, having its Corporate Office at Plot No.5, Institutional Area, Sector 32, Gurugram, Haryana and the Cluster Monitoring Head Office at Amritsar

2. The instant petition has been filed by moving application in Form-1, as prescribed in Rule (4) (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity the 'Rules'). The petition has been filed through Mr. Binod Kumar Dobhal, Assistant General Manager, posted as Cluster Monitoring Head at Cluster Office, Amritsar. There is an authority letter dated 06.03.2018 issued by the General Manager in favour Mr. Binod Kumar Dobhal, in compliance to the Resolution No.A-24 dated 16.12.2017 of the Board of Directors of the Financial Creditor and he is also authorized on the basis of Power of Attorney, executed by the Bank in his favour. The Power of Attorney is dated 04.09.2003. Copies of the authority letter and Power of Attorney are at Annexure I/1 and Annexure I/2, respectively.

3. It is stated that the respondent-Corporate Debtor is a Company incorporated on 16.04.2001 under the Companies Act, 1956, with authorized and paid up share capital of ₹ 4,70,00,000/- each. The respondent-Corporate Debtor has its registered office at Jalandhar, in the State of Punjab, and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Annexure I/3 is the master data of the respondent-Corporate Debtor.

4. The facts of the case, briefly stated, are that the respondent-Corporate Debtor had been availing the loan facilities on the basis of various sanction documents from the year 2002 and lastly the documents were executed on 19.09.2014. As per the latest documents of the year 2014, the respondent-Corporate Debtor was granted the working capital term loan to the tune of ₹6.53 Crores; Cash Credit (Hypothecation) ₹19.88 Crores (existing); Cash Credit (Hypothecation) Fresh ₹2 Crores; Letter of Credit-I ₹3.90 Crores; Letter of Credit-II ₹7 Crores; and FTLT ₹2.66 Crores, aggregating to ₹41.97 Crores.

5. Copy of the sanction letter dated 15.02.2002 is Annexure I/11. The other loan documents executed by the Corporate Debtor are Agreement of Hypothecation, Agreement of Term Loan, Agreement of Guarantee, Conveyance Deed, Equitable Mortgage of the Immovable Property by deposit of title deeds, executed by the Corporate Debtor, which are at Annexure I/12 to Annexure I/16.

6. The details of the security for obtaining the loan executed by the Corporate Debtor and the guarantees have also been furnished. These are in the nature of hypothecation of stock, mortgage of the movable property, comprising of Plot No. D-30, Old Industrial Area, Focal Point, Jalandhar; House No.397, built over the land measuring 24 Marlas, Lajpat Nagar, Jalandhar; and agricultural land measuring 6 Kanals description of which are given in Column No.1 of Part V of the Application Form. Out of the mortgaged property, the Petitioner-Financial Creditor has already sold Plot No. D-30, Old Industrial Area, Focal Point, Jalandhar, measuring 40 Marlas

under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002. With regard to the creation of mortgage, the copies of title deeds have also been placed on record as Annexure I/7 (Colly) and the charge has also been registered with the Registrar of Companies. The Registration of Charge with Registrar of Companies is at Annexure I/8.

7. Reference has been made to so many other documents, executed from time to time by the respondent-Corporate Debtor, but suffice it would be to refer to the documents pertaining to the last renewals. The sanction was granted by the Bank, vide letter dated 18.09.2014 (Annexure I/39), reference to which has already been made and copy of acceptance of Terms and Conditions executed by Corporate Debtor is Annexure I/40. The Corporate Debtor through its authorized signatory has executed the agreement and Term Loan (Annexure I/41); Agreement of Hypothecation of Assets (Annexure I/43); Agreement of FITL (Annexure I/44); and Undertaking for Assignment of Receivable and Cash Flows (Annexure I/46. Apart from these documents, the Petitioner-Bank has also relied upon the Common Agreement with regard to last transaction executed by the Corporate Debtor, copy of which is Annexure I/45.

8. It is further stated that the amount availed against WCTL and FITL loan accounts were available in regular monthly instalments along with interest @ 10.25% per annum with monthly rests. The present Rate of Interest is stated to be 9.70% per annum with monthly rests in respect of the both the aforesaid loan accounts.

9. Both the Directors of the Corporate Debtor, namely Smt. Sarita Khanna and Shri Rakesh Khanna, are stated to have furnished the personal guarantees to secure the aforesaid facilities by executing Agreement of Guarantee dated 11.10.2014. Apart from them, one Divyanshu Khanna and Smt. Mansi Kalra have also furnished the personal guarantees, vide guarantee deeds of the even date, copies of which are at Annexure I/47.

10. The account of the Corporate Debtor became irregular and a recall notice under Section 13(2) of the SARFAESI Act, 2002, dated 14.10.2015 was sent to the Corporate Debtor. Copy of the same is at Annexure A/51. When the account was not regularized, the bank issued two possession notices under Section 13(4) of the SARFAESI Act, 2002. The notices are dated 03.02.2016 for taking possession over the secured assets, hypothecated with the bank. Copies of the notices are at Annexure I/52 (Colly). The details of the amount in default as on 14.10.2015 under various accounts have been mentioned in these notices. With regard to the creation of charge with the Registrar of Companies, M/s Abhilashi and Company, the Chartered Accountants have issued a certificate dated 19.04.2016, as at Page 993 of Annexure I/53.

11. After filing of this application before this Tribunal, the petitioner had also sent copy of the entire petition to the respondent-Corporate Debtor by Registered Post on 16.03.2018. Copy of postal receipt is at Page 1006 of the paper book in order to comply with the requirement of sub-rule (3) of Rule 4 of the Rules. The learned counsel for the petitioner has handed over the copy of the tracking report of delivery of the postal article, containing the

paper book, showing that it was delivered on 19.03.2018 and the same is taken on record.

12. Notice to this petition was issued to respondent-Corporate Debtor as to why the petition be not admitted. The petitioner filed affidavit of service, vide Diary No. 2592 dated 20.07.2018. Mr. Manish Jain, Advocate, put in appearance on behalf of the respondent-Corporate Debtor and filed his Memo of Appearance and sought time for filing the Power of Attorney, copy of Board of Resolution and reply. The matter thereby, was adjourned for today.

13. The learned counsel for the Respondent has handed over the Power of Attorney along with Resolution of the Board of Directors of the respondent-Corporate Debtor dated 18.08.2018 in favour of Mr. Rakesh Khanna, Managing Director, who is stated to have furnished Power of Attorney in favour of Mr. Manish Jain, Advocate. The learned counsel for the respondent-Corporate Debtor has stated that the respondent is not to file any objection/reply to the instant petition and submits that the matter may be disposed of in accordance with the law.

14. We have heard learned counsel for the petitioner and learned counsel for the Respondent and have carefully perused the records. The basic question is whether the default in payment of the debt has occurred. The factum of sanction of loan, execution of various documents, creation of the mortgage, registration of charge has not been disputed by the learned counsel for the respondent-Corporate Debtor.

15. It is stated in Part IV of the Application Form that respondent-Corporate Debtor committed defaults in making payment of various loan accounts. It is stated that as the Corporate Debtor defaulted in payment of interest and principal amount, the accounts were declared NPA and the amount outstanding as on 14.10.2015 was ₹ 42,66,41,087.15. The total amount outstanding as on 28.02.2018 is stated to be ₹48,90,31,563/-. The requirements of sub-section (1) and sub-section (2) of Section 7 of the Code are fulfilled by the petitioner.

16. Sub-Section (3) of Section 7 of the Code, reads as under:-

“(3) 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.”

In this case, the petitioner-bank has relied upon other evidence of default i.e. in the nature of various documents executed by the respondent-corporate debtor, the CIBIL report (Annexure I/10), the documents relating to creation of charge including the mortgage deeds and hypothecation deeds etc.

17. The learned counsel for the petitioner also referred to the copies of the entries in the bankers books of the corporate debtor maintained in accordance with the Bankers Book Evidence Act, 1891, in respect of each of the defaulting account. The copies of the entries are at Annexure I/5 (colly). The requisite certificates required under Section 2-A of the Bankers Book Evidence Act, in respect of these accounts, maintained by the person

incharge of the computer system and the incharge of the Bank are at Page Nos. 55, 63 65, 82, 258-A, 258-B and 258-D, respectively. The petitioner-bank has also relied upon the Balance Confirmation letters executed and signed by the authorized signatory of the Corporate Debtor. The Balance Confirmation letters are dated 28.02.2013 and 11.10.2014, Annexure I/50 (Colly).

18. The learned counsel for the respondent has not pointed out any defect in the application filed by the operational creditor. Under Clause (b) of sub-section (3) of Section 7 the financial creditor is bound to propose the name of the Registered Resolution Professional to be appointed as Interim Resolution Professional. In this case, the petitioner-bank has proposed the name of Adesh Kumar Singla, Registered Resolution Professional in Part III of the Application Form. Mr. Adesh Kumar Singla has filed his written consent in Form No.2 which is at Annexure II, giving necessary particulars. He has certified that there are no disciplinary proceedings pending against him with the Insolvency and Bankruptcy Board or ICSI Insolvency Professional Agency. Presently, he is serving as a Resolution Professional (now stated to be Liquidator in one case). We have perused the written communication and find the same in order.

19. The petition, therefore, filed by the Oriental Bank of Commerce the Financial Creditor under Section 7 of the Code being complete is admitted and we declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- (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.

20. 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 moratorium period. 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.

21. 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 pass an order for liquidation of corporate debtor under Section 33 as the case may be.

26. The matter be listed on 07.09.2018 for passing of the formal order of appointment of the Interim Resolution Professional.

Copy of this order be communicated to both the parties.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

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

August 30, 2018
Mohit Kumar