

**IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(EXERCISING THE POWERS OF ADJUDICATING AUTHORITY
UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016)**

CP (IB) No.161/Chd/Hry/2018

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

**In the matter of:
(Amended Memo of Parties)**

Allahabad Bank,
having its Head Office at 2,
Netaji Subhash Road, Kolkata
and its Branch at Taraori,
Karnal – 132116 (Haryana)

....Petitioner-Financial Creditor.

Versus.

1. M/s Skyhigh Infraland Pvt.Ltd.,
SCO No.5, First Floor, HUDA
Shopping Complex, Sector 8,
Karnal – 132001.

2. Ranjeev Aggarwal (Director)
son of Raj Kumar Aggarwal,
Resident of # 604/5, Madan Street,
Mohan Nagar, Near Aggarsain Chowk,
Kurukshetra (Haryana).

2nd Address:

H.No.631, Sector 3, Urban Estate,
Kurukshetra (Haryana).

3. Savita Aggarwal (Director)
Wife of Ranjeev Aggarwal,
Resident of # 604/5, Madan Street,
Mohan Nagar, Near Aggarsain Chowk,
Kurukshetra (Haryana).

2nd Address:

H.No.631, Sector 3, Urban Estate,
Kurukshetra (Haryana).

....Respondent-Corporate Debtor.

Order delivered on: 29.10.2018

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

For the petitioner: Mr.Nakul Sharma, Advocate

For the respondent: None.

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

Judgment (Oral)

This petition has been filed by Allahabad Bank, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 with Head Office at Kolkata and Branch and Zonal Office at Chandigarh under Section 7 of the Insolvency & Bankruptcy Code, 2016 (for short to be referred here-in-after as the 'Code') for initiating the insolvency resolution process against the respondent-corporate debtor.

2. The petition has been filed by moving application in Form-1 as prescribed under Rule 4 (1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity the 'Rules') through Mr.Raghuvinder Harna, Chief Manager, Allahabad Bank, Zonal Office, Chandigarh, who holds the power of attorney executed by the Bank in his favour dated 22.01.1990 at Annexure A-1. There is also the authority issued in his favour by the Deputy General Manager of the Bank to initiate the proceedings against the respondent-corporate debtor under the

provisions of the Code. The authority under the Code flows from the office memorandum dated 29.12.2017, which is part of the authority letter Annexure A-2.

3. The respondent-corporate debtor was incorporated as a company on 16.02.2011 under the Companies Act, 1956 with the authorised and paid-up share capital of ₹50,000,000/-. It has its registered office at Karnal in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal. The Certificate of Incorporation of the respondent-corporate debtor is at Annexure A-5 and the master data of the respondent-corporate debtor is at Annexure A-6.

4. It is averred that the respondent-corporate debtor availed of the term loan from the petitioner-financial company to the tune of ₹180,000,000/- which was sanctioned by the Bank vide sanction letter dated 27.06.2013 at Annexure A-11. The corporate-debtor failed to adhere to the financial discipline as per the terms and conditions of the sanction letter and the account of the respondent was declared NPA on 29.12.2016.

5. The respondent-corporate debtor accepted the sanction letter by executing acknowledgement dated 27.06.2013 at Annexure A-12. The consent clause executed by the corporate-debtor dated 23.07.2013 is at Annexure A-13.

6. For securing the loan, the respondent-corporate debtor created Equitable Mortgage of the immovable property as at Annexure A-14, dated 23.07.2013 and Annexure A-15 is the Letter of Mortgagor confirming deposit of title deeds of the even date. The other document

executed on 23.07.2013 are the borrower as copy of declaration at Annexure A-16, copy of Term Loan Agreement containing terms and conditions of the loan at Annexure A-17, copy of General Letter of Hypothecation Annexure A-18 and copy of the Guarantee Deed Annexure A-19.

7. The details of the immovable property, which was equitably mortgaged with the Bank are at column No.1 part V of the application Form. In support of the application, the petitioner-financial creditor has also attached the Certificate Registration of Charge downloaded from the portal of the Ministry of Corporate Affairs as Annexure A-5 to A-7. The Certificate of Registration of Charge issued by the Registrar of Companies is Annexure A-9 and Form-8 certified by the Registrar of Companies is at Annexure A-10.

8. The corporate-debtor also executed the demand promissory note dated 03.08.2013 for an amount of ₹180,000,000/- which was sanctioned by the Bank and thereafter the corporate-debtor also executed the acknowledgement of debt dated 27.09.2016. These documents have been attached as Annexure A-20 & A-21.

9. The petitioner-financial creditor also issued a notice under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), dated 31.12.2016, Annexure A-26 and the amount then outstanding on 30.12.2016 was ₹17,38,38,115/-. It is also stated in this notice that the account of the respondent-corporate debtor was declared as NPA on

29.12.2016. Thereafter, notice under Section 13 (4) of the SARFAESI Act, dated 03.07.2017 at Annexure A-27 was also sent.

10. The petitioner has stated that there was an amount of ₹20,72,39,792/- was outstanding as on 20.02.2018. Apart from this, the amount of interest has also been calculated. The date of default is stated to be 01.10.2016 and accordingly the account of the respondent-corporate debtor was declared NPA on 29.12.2016. The tabulated information with regard to the default has been annexed at Annexure A-4 for showing the corporate-debtor to be in default. The CIBIL report has also been attached as Annexure A-22.

11. Notice of this petition was issued to the respondent-corporate debtor to show cause as to why this petition be not admitted. The notice was directed to be issued at the registered address of the respondent-corporate debtor by speed post as well as the e-mail address available on the master data of the respondent-corporate debtor. In the original petition, the address of respondent-corporate debtor was mentioned as SCO 41, Randhir Lane, Karnal – 132001, Haryana, Head Office Sector 32, Near Noor Mahal, Karnal – 132001 (Haryana) as mentioned in the master data Annexure A-6.

12. When the matter was listed on 06.06.2018, learned counsel for the petitioner contended that on filing of this petition, copy of the application along with the entire paper book was dispatched to the corporate debtor in terms of Rule 4 (3) of the Rules, but the same was returned undelivered with the report that the address is incorrect. It was

stated by the learned counsel for the petitioner that the address on the envelope, which was received back undelivered, was sent at the registered office of the company, as is evident from the master data of the corporate debtor.

13. The learned counsel for the petitioner had also handed over the tracking report with regard to the dispatch of the copy of the petition and the entire paper book at the registered address of the company by speed post and as per the postal receipt dated 04.04.2018 bearing the even details EP524382550 in which there is report of the postal department containing the entry dated 06.04.2018 that at the time delivery was attempted, but the same was refused. However, according to the report on the envelope purported to be made by the postal employee, different endorsement is made that the address is incorrect.

14. When the matter was listed on 25.07.2018, it was directed that the affidavit of service be filed in the registry. Further direction issued was that the petitioner would file an appropriate application for service of the respondent by giving particulars of the latest address.

15. When the matter was listed on 20.08.2018, the following order was passed:-

“ In view of the observation made in the order dated 25.07.2018, the authorised representative of the petitioner has filed affidavit vide diary No.3003, dated 16.08.2018 mentioning the latest address of the corporate debtor as well as two of its directors and also the amended Memo of Parties. The amended Memo of Parties be taken on

record. Learned counsel for the petitioner further submits that apart from sending the notices by registered or speed post, the petitioner may also be permitted to effect the service by way of publication in the newspapers because earlier the notices were sent at the registered office of the corporate debtor available on the master data. We find it appropriate to accept the aforesaid request.

Notice of this petition be issued to the respondents for 27.09.2018 to show cause as to why this petition be not admitted. Petitioner shall collect the notices from the Registry and send the same along with copy of petition and entire paper book to the respondents at the registered office address as well as at the addresses as per the amended Memo of Parties by speed post immediately and also publish the notice in the newspapers i.e. Indian Express (English) Haryana Edition and Punjab Kesri (Hindi) Haryana Edition as well as at the e-mail address available on the master data once again and file affidavit of service along with postal receipts, tracking reports, newspaper publications and copy of e-mails at least 3 days before the date fixed stating in the affidavit that the aforesaid e-mails have not bounced back.”

16. The affidavit of service was filed by the petitioner accordingly vide diary No.3627, dated 25.09.2018. Along with the affidavit, the copies of the paper publication for the substituted mode of service of the respondent, were annexed. It was stated in the said affidavit of the authorised representative of the Bank that the complete paper book was sent at the latest address of the corporate debtor and further notice along with paper book was sent to both its Directors vide speed post on 10.09.2018, which was returned with the report ‘not delivered unclaimed

and insufficient address'. Copies of the speed post annexed with this affidavit are at Annexures S-1 and S-2. It is further stated that the physical copy of the registered post sent to the corporate debtor and the directors have been returned with the report 'left without address and address wrong'. Copy of the said report is at Annexure S-3. The publication of the date of hearing was made in two newspapers 'Indian Express (English), Haryana Edition and Punjab Kesry (Hindi) Haryana Edition. Copy of the said newspaper clippings are at Annexure S-4 and S-5. It is also stated that the copy of the paper book was also sent to the corporate debtor at the e-mail address on 19.09.2018, which have not bounced back. There was no representation from the respondent, but the matter in the interest of notice was adjourned for today i.e. 29.10.2018 for arguments. There is no representation from the respondent-corporate debtor.

17. We have heard the learned counsel for the petitioner and have carefully perused the record.

18. Having perused the application in Form 1, we find the same to be complete in all respect. The grant of loan, its sanction and relevant documents executed by the respondent-corporate debtor have already been discussed above. The learned counsel for the petitioner Bank has also referred to the other important evidence of the account statement of the respondent-corporate debtor maintained under the Banker's Book's Evidence Act, which is at annexure A-23. The Bank statement is supported with the certificate issued under Section 2A (b) of the Banker's Book's Evidence Act, 1871. The interest charged after the account was declared NPA has also been prepared at Annexure A-24. The detailed calculations

are from pages 107 to 109 which further supported by the Certificate under the Banker's Books Evidence Act.

19. The petitioner-financial creditor has also filed the copy of the provisional Balance Sheet of the respondent-corporate debtor as on 31.03.2016 at Annexure A-25 page 112 of the paper book, which is part of the aforesaid Balance Sheet, the outstanding amount as claimed in the present petition has been admitted. The same is stated to be stamped by the corporate-debtor. Therefore, there is complete affirmative evidence led by the Bank with regard to the default committed by the respondent-corporate debtor. The ingredients of Section 7 (1), (2) and (3) of the Code are therefore, fulfilled.

20. One of the requirements as per Section 7 (3) (b) of the Code mandates the financial creditor to propose the name of a Resolution Professional to be appointed as interim resolution professional. In the instant case, the financial creditor in Part III of the application has proposed the name of Mr.Jalesh Kumar Grover, the registered Resolution Professional to be appointed as the Interim Resolution Professional. Annexure A-3 is the Certificate of Registration issued by the Insolvency & Bankruptcy Board of India in favour of Mr.Jalesh Kumar Grover. The written communication furnished by the Resolution Professional is at page 19 of the paper book and all the necessary particulars as required therein have been given. It is stated that there are no disciplinary proceedings pending against him with the Board or ICSI insolvency professional's agency. We have perused Form 2 and find the same in order.

21. In view of the above, the instant petition is admitted. The matter be listed on 02.11.2018 for passing formal order of declaring the moratorium as well as appointment of the Interim Resolution Professional.

Copy of this order be communicated to both the parties.

Sd/-

(Pradeep R.Sethi)
Member (Technical)

October 29, 2018.

Ashwani

Sd/-

(Justice R.P.Nagrath)
Member (Judicial)