

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.49/Chd/Hry/ 2017

Under Section 7 of Insolvency and
Bankruptcy Code, 2016 read with
rule 4 of the Insolvency and
Bankruptcy (Application to
Adjudicating Authority) Rules, 2016.

In the matter of:

PUNJAB NATIONAL BANK, a body corporate, constituted under Banking
Companies (Acquisition & Transfer of Undertakings) Act, 1970, having its
H.O. at 7, Bikhaji Cama Place, New Delhi - 110607

And

Branch Office at MCB, Model Town, Hissar through its Attorney and
Principal Officer, Shri Navdeep, Senior Manager, Branch Office, MCB,
Model Town, Hissar.

....Petitioner/Financial Creditor.

Versus.

M/s Arcee Ispat Udyog Ltd., a company registered under Companies Act,
1956, having its registered office at 7th KM Stone, Barwala Road, Talwandi
Rana, Hissar.

....Respondent/Corporate Debtor.

Deep Singh



CP (IB) No.49/Chd/Hry/ 2017

Judgment delivered on 30.08.2017.

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

For the petitioner/Financial
Creditor:

Mr.R.S.Bhatia, Advocate

For respondent/Corporate
Debtor.

1. Mr.Manish Jain, Advocate
2. Ms Divya Sharma, Advocate

Judgment

The petitioner Bank has come up before the Adjudicating Authority under Section 7 of the Insolvency & Bankruptcy Code, 2016 (for short to be referred here-in-after as the 'Code') read with rule 4 of the Insolvency & 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 rule 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 Bikhaji Cama Place, New Delhi and the Branch Office at Hissar. The Respondent-Corporate Debtor was incorporated on 17.12.1987 with authorised share capital of ₹4,00,00,000/- (Rupees four crore only) and paid-up share capital of ₹3,92,04,000/- (Rupees three crore, ninety-two lacs and four thousand only). The Memorandum and Articles of Association of the respondent is at Annexure A-3, with which



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CP (IB) No.49/Chd/Hry/ 2017

the certificate of the incorporation is also enclosed. Its CIN No. is U27106HR1987PLC030006. The Branch Office of the Corporate Debtor is at Hissar 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 Office at Hissar in whose favour, the Bank has executed the General Power of Attorney dated 05.11.2015 Annexure A-1. The competent authority vide letter dated 28.03.2017 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 appointed on behalf of the Bank to file this petition.

4. The facts of the case, briefly stated are that the respondent started a project of manufacturing of galvanizing of MS pipe/tubes. This is a closely held company, the shares being held by the family members of the promoter. In order to meet its financial requirement, the respondent company approached the petitioner Bank for credit facilities for running of the business. The respondent is availing of the credit facilities since 07.04.1989. The details of credit facilities for the period ranging from 07.04.1989 to 14.03.2013 with last sanction granted on 14.03.2013 of LC facility ₹500 lacs Adhoc are at Annexure P-5. The aforesaid credit facilities were availed by the respondent from time to time. The list of documents of the credit facilities and loan availed by the Corporate Debtor are given



Navdeep

as under:

CP (IB) No.49/Chd/Hry/ 2017

- i) For Cash Credit Hypothecation limit of ₹4000.00 lakh, Agreement of Hypothecation of Goods and Book Debts;
- ii) LC limit of ₹1200 lacs Deed of Hypothecation dated 07.01.2012 and Master Agreement For Inland Documentary Credit dated 07.01.2012;
- iii) Agreement of Hypothecation of Movable Assets forming part of fixed/block assets;
- iv) Agreement of Hypothecation of Current Assets;
- v) Agreement of Hypothecation to Secure Ad Hoc LC limit dated 18.03.2013; and
- vi) Master Agreement for Ad-Hoc LC limit, dated 18.03.2013.

The Annexures A-13 to A-20 are the copies of sanction letters and documents executed by the Respondent-Corporate Debtor. The Directors of the respondent namely; Shri Ramesh Chander Gupta, Shri Krishna Gupta and Shri Akshat Gupta also executed the agreements of guarantee.

5. The Corporate Debtor also mortgaged the following properties to secure the loan:

- i) Total land measuring 66K-09M comprising of Factory land and Building situated at Village Rohad, Tehsil Bahadurgarh, District Jhajjar under khasra No.55//23/02 (0-7), 55//24



(7-11), 18 (8-0), 17 (8-0), 55//19/1 (7-12), 55//23/1 (7-3),
55//22 (7-4), 55//15 (7-0), 16 (7-0), 25 (6-12)

- ii) Total land measuring 92K-07M adjoining to Factory land and Building situated at village Rohad, Tehsil Bahadurgarh, District Jhajjar comprising of khasra No.31/23 (7-11), 55//3 (8-0), 4 (8-0) measuring 23 kanal 11 marla out of which 320/471 share i.e. 16 kanal of the land and khasra No.55//9/1 (7-12), 31/21 (7-11), 55//2/2 (7-12), 55//7 (8-0), 8 (8-0), 13 (8-0), 14 (8-0), 55//5 (7-0), 6 (7-0), 55//12/2 (7-12) measuring 76 kanal 7 marlas.

6. The Petitioner-Financial Creditor filed application before the Debt Recovery Tribunal on 07.10.2013 under Section 17 of the Recovery of Debts and Bankruptcy Act, 1993 for recovery of ₹57,23,35,556/- (Rupees Fifty Seven Crore Twenty Three Lacs Thirty Five Thousand Five Hundred and Fifty Six only) along with pendente lite and future interest from 07.10.2013 till realisation. The said OA is still pending adjudication before DRT-II and copy of the application is at Annexure A-9.

7. The Corporate Debtor also executed the charge/modification of charge on different dates, which are mentioned in the tabulated information at page 10 and 11 of the paper book. The Respondent-Corporate Debtor also executed the balance and security confirmation letters on 19.04.2013 in respect of the term loan to the tune of



₹1,17,89,762/- and of the even date in respect of cash credit facility for an amount of ₹36,78,33,130.47.

8. The Corporate Debtor committed default in payment of interest etc. and the Bank issued final legal recall notice dated 20.09.2013 and the account of the Corporate Debtor was classified as NPA on 30.09.2013.

9. It is further stated that the Corporate Debtor has taken action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by issuing notice under Section 13(2) of the said Act on 30.09.2013. The mortgaged property and hypothecated plant and machinery of one unit situated at Rohad has been sold under the SARFAESI Act, 2002. The land and building was sold on 20.05.2015 for a sum of ₹20,01,00,000/- and the plant and machinery was sold on 31.12.2015 for an amount of ₹3,81,50,000/-, which has been adjusted in the account statement. One Company Ridhi Steel and Tubes Pvt. Ltd. had filed SA No.44 of 2014 claiming itself to be the tenant in the unit at Hissar, but that SA was dismissed on 30.11.2016 by DRT-I and the true copy of the order is at Annexure A-10.

10. The total amount of default with interest upto 31.12.2016 is ₹58,57,24,460/- and the dates of default of the different loans have been mentioned as June, July, August and September, 2013, when the loan facility was recalled. The calculation sheet of interest/penal interest is attached at Annexure A-6 and A-7. The Petitioner-Financial Creditor has



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CP (IB) No.49/Chd/Hry/ 2017

attached the copies of the statements of various loan accounts from Annexure A-22 to A-37 duly certified under the Banker's Books Evidence Act.

11. The petitioner sent copy of the petition along with the entire paper book to the Corporate Debtor in order to comply with the requirement of sub rule (2) of Rule 4 of the Rules and there is an affidavit of Mr.Navdeep, the attorney holder of the Bank in support of this fact. When the matter was listed before this Bench, notice was directed to be issued to the Respondent-Corporate Debtor to show cause as to why this petition be not admitted.

12. The Respondent-Corporate Debtor has filed the counter Affidavit through its authorised representative to oppose instant petition. The respondent has challenged the maintainability of the petition on the legal grounds seeking leave of the Tribunal to file a detailed reply to the petition, if so warranted.

13. It is stated in the reply/objections that Mr.Navdeep, Senior Manager of the Branch Office, who claims to be competent to file this petition on behalf of the Bank on the basis of general power of attorney dated 05.11.2015, has no authority to initiate the insolvency process under Section 7 of the Code. This general power of attorney was executed way back on 05.11.2015 i.e. prior to coming into force of the Code and, therefore, it cannot be construed as an instrument authorising Mr.Navdeep to file such a petition before the Adjudicating Authority. Further, the



Navdeep

CP (IB) No.49/Chd/Hry/ 2017

authorisation letter dated 28.03.2017, Annexure A-2 neither refers to the authorisation to institute this petition nor it discloses that which competent authority has issued it. Moreover, the aforesaid letter dated 28.03.2017 has instructed Mr.Navdeep to nominate Mr.Krishan Vrind Jain, Resolution Professional, but in this case, the written communication in form No.2 has been filed by Mr.Jalesh Kumar Grover as proposed interim resolution professional. It is further stated that the registration of Mr.Jalesh Kumar Grover was valid only upto 29.06.2017.

14. It is otherwise admitted that the Petitioner-Financial Creditor sold the land and building of the Corporate Debtor on 20.05.2015 and the plant and machinery of the Corporate Debtor on 31.12.2015, but it is submitted that the sale proceeds are not reflected in the statements of account filed by the Corporate Debtor.

15. I have heard the learned counsel for both the parties and carefully perused the record.

16. The first issue arising is whether this petition has been filed by a duly authorised person on behalf of the Bank. Learned counsel for the petitioner referred to the terms of General Power of Attorney dated 05.11.2015 executed by the Bank in favour of Mr.Navdeep. The power of attorney authorises Mr.Navdeep to do the following acts among others 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, ejection of the tenants or the occupants thereof. He shall also have the power to comply 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."



17.

Learned counsel for respondent referred to the order of the three members Bench of NCLT Kolkata in **Company Petition No.37/2017, titled as "ICICI Bank Ltd. Vs. Palogix Infrastructure Private Ltd."** In 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
CP (IB) No.49/Chd/Hry/ 2017

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similar to the power of attorney as discussed in the order dated 12.04.2017 passed by the Kolkata Bench in the above said case and it was held that there should be a specific authorisation for the purpose of initiating the proceedings under the Code. In view of this, the Kolkata Bench pointed out the aforesaid defect to the petitioner and issued a direction to rectify the defect within seven days.

18. 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.

19. 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, to 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.

20. There is clear instruction/authority by the Circle Head of the Bank vide letter dated 28.03.2017 Annexure A-2, which is in reference to the letter of the Branch Head of the Bank at Hissar for seeking permission

CP (IB) No.49/Chd/Hry/ 2017



Navdeep

to file the petition before the NCLT under the Code and the aforesaid letter clearly suggests that a notice to initiate the Insolvency and Bankruptcy proceedings against the Corporate Debtor was issued by the Branch of the Bank on 14.02.2017, which was directed to be handed over to Mr.R.S.Bhatia, who has been engaged in this case. Therefore, the aforesaid objection raised by the Corporate Debtor is unsustainable in the instant case.

21. The other objection is the nomination of the Interim Resolution Professional. Section 7(3) of the Code reads as under:

"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.*

22. Learned counsel for the Respondent-Corporate Debtor submitted that the only authority with Mr.Navdeep was to nominate Mr.Krishan Vrind Jain and not Mr.Jalesh Kumar Grover as Interim Resolution Professional (IRP). Looking into the contents of the authority letter Annexure A-2, the aforesaid contention cannot be accepted. In this letter, the name of the IRP was proposed and it was directed that the



Navdeep

consent be obtained from him in Form No.2. Learned counsel for the petitioner submitted that since Mr.Krishan Vrind Jain had the other assignments, so there was no alternative except to get the consent from the other Insolvency Resolution Professional. I am of the view that there is nothing wrong in proposing the name of Mr.Jalesh Kumar Grover as the Interim Resolution Professional, who is registered with Insolvency & Bankruptcy Board of India and such a power could be exercised by Mr.Navdeep on the basis of General Power of Attorney in his favour. Regarding the registration of Mr.Jalesh Kumar Grover with IBBI, it was upto 29.06.2017. The information given cannot be said to be wrong, as the application was filed in the Registry on 15.05.2017. Mr.Jalesh Kumar Grover has since been issued the Registration No.IBBI/IPA-001/IP/P00200/2017-18-10390 which is valid for the year 2017-18.

23. The next question is to determine, whether the petitioner Bank has produced the record as evidence of the default committed by the Corporate Debtor. There has been no specific challenge on this aspect except suggesting that the amount of the sale proceeds of the land, plant and machinery has not been accounted for. The learned counsel referred to the various statements of accounts of different loans (Annexure A-22 to A-36-A) obtained by the Respondent-Corporate Debtor in order to rebut the aforesaid contention. Learned counsel for the respondent submitted that the land was sold on 20.05.2015 and the plant and machinery on 31.12.2015. The learned counsel referred to various entries in different statements of accounts wherein the credit of the aforesaid amount is

CP (IB) No.49/Chd/Hry/ 2017

shown to have been duly made. For example, in statement Annexure A-22, there is a credit of various amounts on 24.06.2016 as under:

₹1,25,491.00 Cr

₹1,64,387.00 Cr

₹68,503.00 Cr

₹6,59,861.00 Cr

₹3,00,686.00 Cr

Similarly, the following credit was made on 24.06.2015, as per statement of account Annexure A-23:

₹2,49,73,776.00 Cr

These are the statements of accounts duly certified under the Banker's Books Evidence Act and have prima-facie evidentiary value. The learned counsel for the petitioner has referred to various entries in different statements of accounts for suggesting that these amounts were duly credited.

24. The Respondent-Corporate Debtor has not disputed in the reply that it is in default. The Petitioner-Financial Creditor sent demand notice Annexure A-40 dated 14.02.2017 to the respondent stating that there was an outstanding amount of ₹58,57,24,460/- as on 31.12.2016 and the accounts were declared NPA. In reply thereto as at Annexure A-41, it was stated that the Bank has already realised ₹23.825 crores and from time to time and the Corporate Debtor had been requesting the Bank to consider the OTS proposal. It was stated in this reply that the Company's efforts have always been to settle the account, but without any justification, rhyme or reason, the Bank has neither accepted the proposal nor has



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CP (IB) No.49/Chd/Hry/ 2017

rejected the same. Consequent upon that, the delay itself has made OTS proposal submitted to the Bank futile. It is further stated that the Corporate Debtor had arranged an amount of ₹1.50 lacs, which was deposited to establish bona fide, but the Bank has not considered the same.

25. Section 7(5) of the Code says that 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."

So, the default having occurred and the application filed under Section 7(2) of the Code being complete and that there is no disciplinary proceeding pending against the proposed resolution professional, the application deserves to be admitted.

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CP (IB) No 49/Chd/Hydr/2017



26. In view of the above, the petition is, therefore, is admitted and the moratorium is declared for prohibiting all of the following as provided in 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.

27. 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.

28. 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-CP (IB) No.49/Chd/Hry/ 2017



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section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 as the case may be.

29. The matter is adjourned to 07.09.2017 for passing formal order to appoint 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

August 30, 2017.
Ashwani



No.....
Date of Presentation As per order dated 07/09/17 of
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