Before the National Company Law Tribunal,
Chandigarh Bench
Corporate Bhawan, Plot No.4B, Sector 27-B, Madhya Marg,
Chandigarh.

No: NCLT/CHD/Reg/750 Date: 28-2-19

CP(IB) No. 19/Chd/CHD/2018

In the matter of:
Small Industries Development Bank of India (SIDBI)
...Petitioner-Financial Creditor

Vs

Mansa Print & Publishers Limited ...Respondent-Corporate Debtor

To,

Small Industries Development Bank of India (SIDBI),
Tower 15, Ashok Marg,
Lucknow-UP

Please find enclosed herewith a certified copy of order dated 28.02.2019, for your information and necessary action.

28/2/19
Asstt. Registrar
for Registrar
NCLT, Chandigarh Bench

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

CP (IB) No.19/Chd/CHD/2018

Under Section 7 of the Insolvency and Bankruptcy Code 2016.

In the matter of:

Small Industries Development Bank of India (SIDBI)
having its head office at
Tower 15, Ashok Marg,
Lucknow – Uttar Pradesh
Branch office at
SCO 145-146, 1st & 2nd Floor,
Sector 17-C, Chandigarh - 160017

...Petitioner-Financial Creditor

Versus

Mansa Print & Publishers Limited
Plot No.781, Industrial Area Phase-II
Chandigarh - 160002

...Respondent-Corporate Debtor

Judgment delivered on 28.02.2019

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

For the petitioner : 1. Mr. G.S. Sarin, Practising Company Secretary
2. Ms. Niharika Sohal, Advocate

For the respondent : 1. Mr. Keshav Gupta, Advocate
2. Ms. Anna Bansal, Advocate

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

JUDGMENT

This petition has been filed by Small Industries Development Bank of India (SIDBI) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code') for initiating the insolvency resolution process against the respondent-corporate debtor. The petitioner has filed application in Form No.1 as prescribed in Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 (for brevity 'the Rules').

2. SIDBI was incorporated on 02.04.1990 under the Act of Indian Parliament. It has its Head Office at Lucknow and branch office at Sector 17-C, Chandigarh. The application has been filed through Mr. K. Keshvan Lyengar, Assistant General Manager of SIDBI posted at Chandigarh Branch. He has been authorised vide Authorisation Letter dated 06.12.2017 Annexure-IV(A) to initiate the insolvency proceedings against the respondent-corporate debtor under the Code and the Rules framed thereunder. He has been authorised to sign, verify the pleadings, engage Advocate/Practising Company Secretary etc. and to do all the necessary acts in the progress of the case. The authorisation has been issued in pursuant to clause IV(2)(ii) of the Stressed Assets and NPA Management Vertical (SANMV), Delegation of Power effective from 07.10.2016. Copy of which has been annexed with the authorisation letter. There is the affidavit of Mr. K. Keshvan Lyengar in support of contents of the application.

3. The respondent-corporate debtor was incorporated as a Company on 05.08.2003 and the certificate of incorporation is at Annexure-

I(T) at page 1450 of the paper book. It has authorised capital of ₹5 crores and paid up capital of ₹37,912,420/-. The respondent-corporate debtor has its registered office at Chandigarh and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

4. The facts of the case, briefly stated, are that the corporate debtor was sanctioned various credit facilities vide sanction letter dated 19.03.2008. The petitioner-bank issued a Letter of Intent dated 19.03.2008 Annexure-I(A) in response to the application filed by the respondent-corporate debtor sanctioning the amount of loan to the tune of ₹439 lakhs by way of takeover of existing term loans outstanding from State Bank of Patiala and sanctioning of fresh loan of ₹900 lakhs under the project finance scheme. The Letter of Intent is at page 33 of the paper book. The sanctioned amount of ₹439 lakhs included terms loan I amounting to ₹69.22 lakhs and term loan II for ₹369.59 lakhs both taken over from State Bank of Patiala. The repayment schedule in respect of these loans of ₹69.22 lakhs, ₹369.59 lakhs and ₹900 lakhs are attached a Appendixes-I, II and III with the Letter of Intent. Vide letter dated 28.04.2008, the total amount of term loan is to the tune of ₹1339 lakhs. In continuation of Letter of Intent the letter dated 28.04.2018 was issued by the petitioner with regard to the change in certain loan stipulations including the security which is at page 42 of the paper book. The respondent-corporate debtor passed their Resolution dated 28.04.2008 accepting the terms of loan and conditions of loan laid down by the Bank. The Board Resolution is at page 452 of the paper book.

5. The documents of loan are the Loan Agreement dated 13.04.2008 (page 49) executed by the corporate debtor and remaining documents Deeds of Hypothecation, Personal Guarantee Deeds executed by

the Guarantors, Undertaking for non-disposal of shareholding over run and non-withdrawal of unsecured loans, declaration and undertakings and the details of the immovable properties mortgaged with the bank for securing the loans, registration of charge with the Registrar of Companies, creation of pari-passu charge with repayment schedule are all annexed with the petition at Annexure I(Colly).

6. Thereafter the revised sanction letter dated 14.03.2011 was issued by the petitioner-bank. The fresh term loan of ₹550 lakhs under Direct Credit Scheme for the purposes of expansion by acquisition of machinery at its existing manufacturing facilities of the borrower i.e. Packaging Division known as Unit I. The Letter of Intent is at page 159 of the paper book containing the terms of the loan and the rate of interest with the term of creation of the additional security. The repayment schedule of the loan is mentioned in the Annexure as at page 167 of the paper book which is part of the Letter of Intent.

7. Details of the term loan disbursed to the corporate debtor has been stated as under:-

Sr. No.	Sanctioned Loan	Disbursed Amount	Date of Disbursement
1	Term Loan-1 69.22 Lacs	69.22 Lacs	02.05.2008
2	Term Loan-2 369.59 Lacs	356.91 Lacs	02.05.2008
3	Term Loan-3 900 Lacs	899.70 Lacs	19.09.2008
4	Term Loan-4 550 Lacs	410.79 Lacs	03.07.2012

8. The corporate debtor executed various documents for obtaining the fresh loan facilities under this Letter of Intent. The Resolution of Board of Directors of the corporate debtor is dated 15.03.2011 and copy of the EOGM

of the corporate debtor held on 16.03.2011 are also annexed. The other documents are declaration and undertaking, the Auditor's certificate under Section 29(1)(d) of the Companies Act, 1956, the Deed of Hypothecation dated 17.03.2011 and the subsequent documents in the nature of deed of hypothecation dated 14.03.2012 and for which the Resolution of Board of Directors of the respondent-corporate debtor is dated 13.03.2012. The other documents executed are declaration and undertaking dated 14.03.2012, loan agreement dated 17.03.2011, various deeds of guarantee of the month of March 2011, undertaking for over run non-withdrawal of shareholdings and non-withdrawal of unsecured loans with the miscellaneous undertakings. The latest and complete copy of the financial contract for the loan of ₹550 lakhs issued by the Financial Creditor are at Annexure I(B) from pages 315 to 436.

9. It is also stated that on occurrence of the default the financial creditor issued a notice to the respondent-corporate debtor under Section 13(2) of the Securitization & Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act, 2002) dated 18.12.2015 which is at Annexure I(C). The Financial Creditor again issued the notice Annexure ID) dated 12.05.2017 under the SARFAESI Act, 2002. The Financial Creditor had filed Original Application (OA) for recovery before the Debt Recovery Tribunal (DRT-I), copy of which is at Annexure I(E). This OA is dated 09.08.2016.

10. To the notice under Section 13(2) of SARFAESI Act, the reply/representation/objections Annexure-1(F) was sent by the corporate debtor to which the rejoinder was also sent by SIDBI vide letter dated 25.07.2017 which is at Annexure-1(G) (Colly) and similar replies were filed to

the representation of the other personnel of the corporate debtor, which are part of the same document.

11. The petitioner has also attached the copies of the Registration of Charges issued by Registrar of Companies, Punjab, Chandigarh and Himachal Pradesh which is at Annexure-1(H) along with copies of Form-8 and also Annexure-1(G). The Deed of Hypothecation executed by the corporate debtor dated 14.03.2012 which is at Annexure-I(K). The financial creditor has filed the valuation report dated 21.04.2016 Annexure-I(L) prepared by Er. O.P. Vij for the land and building and also another Valuation Report dated 14.04.2016 prepared by Er. Sanjay Puri. The calculation sheet showing the amount in default is at Annexure-I(M) at page 1102 and the amount of default as per this calculation sheet is ₹14,81,01,362.45 with interest as on 20.12.2017 which is mentioned in column No.2 of part IV of the application form.

12. Notice of this petition was issued to the respondent-corporate debtor to show cause as to why this petition be not admitted. The respondent has filed the reply to the instant petition raising so many preliminary objections. It was alleged that the respondent-company filed CWP No.4353 of 2018 titled Mansa Print Publisher Limited Vs. Union of India and Ors. before the Hon'ble Punjab & Haryana High Court, Chandigarh. It was stated that since the Hon'ble High Court is seized of the controversy the instant petition may not be decided till the decision in the said writ petition. Apart from that reference has been made of various CWPs pending on similar issues.

13. The aforesaid plea can be disposed of at this very stage. The learned counsel for the respondent admits that the Civil Writ Petitions

challenging various provisions of the Code have since been decided by the Hon'ble Supreme Court upholding constitutional validity of the Code in the case titled **Swiss Ribbons Pvt. Ltd. & Anr. Versus Union of India & Ors. Writ Petition (Civil) No.99 of 2018) 2019 SCC Online SC 73** with which various other writ petitions were attached. Writ Petition (Civil) No.598 of 2018 was also disposed of along with **Swiss Ribbons Pvt. Ltd. & Anr. case (supra).** When this matter was listed on 25.07.2018 it was submitted by the learned counsel for the respondent that the respondent had filed **Writ Petition (Civil) No.598 of 2018** before Hon'ble Supreme Court which was attached with **Writ Petition (Civil) No.99 of 2018**. In view of the above learned counsel for the respondent could not press the challenge to the instant petition on the aforesaid ground.

14. It is further stated that the petitioner has acted in disregard to the provisions of the RBI Act as well as the circulars and notifications issued thereunder.

15. On merits it is stated that the respondent-corporate debtor was incorporated in August 2003 and commenced the production in the year 2004. The respondent is engaged in manufacturing of printed Paper Cartons, Packaging Material and Aluminium Strips/Foils, mainly Forusein Pharma Industry. The respondent-company has provided employment to about 165 persons at different levels and most of the employees are associated with it for more than 10 years.

16. It is admitted that the respondent obtained four separate term loans from the petitioner under relevant schemes in the year 2008. Another loan was taken vide Letter of Intent dated 14.03.2011 for an amount of ₹550 lakhs and executed various documents.

17. It is further stated that the respondent-company has made significant repayments to the petitioner and out of the principal loans as disbursed to the respondent, the amount of ₹996.11 crores has been paid and the balance outstanding was only ₹830.49 lakhs.

18. The respondent has also obtained working capital limit from other two banks namely, Federal Bank and IDBI Bank, details of which have also been given. Federal Bank has taken over the loan as given by Punjab and Sind Bank, holds second pari passu charge over the assets of the respondent-corporate debtor.

19. It is also admitted that respondent availed a loan vide Letter of Intent dated 14.05.2012 for an amount of ₹28.75 crores from the petitioner-bank.

20. However, due to the uncomfortable business environment, distressed financial situation and shrinking cash flow margins, increasing interest burden, locking of funds in long term assets, raw material prices going up, problems in marketing etc., the respondent was not fully able to service/pay instalment of the term loan as well as other loans. Vide letter dated 19.08.2013, the respondent-company requested the petitioner and other lenders to restructure the loan account.

21. A joint lenders meeting was held on 06.09.2013, the minutes of which are at Annexure R-4. In SIDBI, the Financial Creditor however did not choose to participate in the said Meeting for the reasons best known to it.

22. It is further stated that since the problems being faced by the Company did not whither away, letter dated 29.05.2014 Annexure R-5 was written to the petitioner requesting for restructuring of the loan and holding a joint lenders meeting as per the RBI guidelines to facilitate the functioning of

the company. RBI guidelines to support the contention of the respondent are at Annexure R-5(A) dated 26.02.2014.

23. However, SIDBI recalled the loan vide letter dated 30.06.2015 Annexure R-6 in sheer disregard to the RBI guidelines and without even considering the request of the respondent for restructuring the loan. The recall letters mentioned highly exaggerated interest which is not chargeable as per the contract.

24. Vide letter dated 15.07.2015 Annexure R-7, the respondent-company had requested for One Time Settlement (OTS), of the account of the company and comprehensive reply to the recall notice was also sent. This OTS proposal was rejected by SIDBI by letter dated 29.07.2015, copy of which is at Annexure R-8, (the date of this document SIDBI is mentioned as 29.06.2015 but it apparently should bear date 29.07.2015 as the same is in response to letter dated 15.07.2015 sent by the respondent.

25. The respondent-company also sent another OTS proposal dated 19.03.2016 Annexure R-13. This was again rejected vide letter dated 27.04.2016 for the same reasons that the amount offered was below the value of the security charged to the Bank.

26. It is also stated that SIDBI undertook the valuation of the machinery on 17.08.2016 pursuant to which the respondent-company submitted a notice proposal. Notice was to propose an amount of ₹7.30 crores on 23.08.2016 (Anneuxre R-15) which was also rejected in a cryptic manner on 30.08.2016.

27. Reference is also made to another notice under SARFESI Act under Section 13(2) dated 15.07.2017, which was also replied by the

respondent on 11.07.2017, response whereto sent by SIDBI is dated 25.07.2017.

28. It is stated that 100% of the net worth of the business of the respondent-corporate debtor had already been eroded and therefore a reference was made by the company to Board of Industrial and Financial Reconstruction (BIFR) bearing case No.89 of 2015 dated 16.09.2015. The interest charged by Bank was also highly excessive. It was thus prayed that the instant petition may be dismissed.

29. The petitioner/financial creditor also filed the rejoinder, It is denied that there has been violation of any of the provisions of the RBI Act or the circulars and notifications issued thereunder. It is stated that the debt and the default being admitted, the instant petition deserves to be admitted. The interest charged is in accordance with the provisions of the Contract Act and the terms of agreement of loan entered into between the parties. The OTS were examined in detail and rejected. The allegations in the petition were reiterated.

30. We have heard learned counsel for the parties and perused the records with their able assistance.

31. So far as the grant of loan facilities to the corporate debtor, execution of various documents of loan and that the respondent-corporate debtor is in default of payment of the debt are the facts which are not disputed.

32. The first and the foremost contention of learned counsel for the respondent was that the petitioner-financial creditor having elected the remedy under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDB Act) cannot initiate the parallel proceedings under the Code.

It is admitted in the application in Form No.1 that the Original Application No.4325 of 2017 filed by the petitioner-bank is still pending adjudication.

33. In support of his contention the learned counsel has mainly relied upon the judgment of Hon'ble Supreme Court in **Allahabad Bank Versus Canara Bank and Another (2000) 4 SCC 406,** by referring to paragraphs 21, 22 and 25 of the said judgment. The Hon'ble Supreme Court held as under:-

> *"21. In our opinion, the jurisdiction of the Tribunal in regard to adjudication is exclusive. The RDB Act requires the Tribunal alone to decide applications for recovery of debts due to banks or financial institutions. Once the Tribunal passes an order that the debt is due, the Tribunal has to issue a certificate under Section 19(22) [formerly under Section 19(7)] to the Recovery Officer for recovery of the debt specified in the certificate. The question arises as to the meaning of the word "recovery" in Section 17 of the Act. It appears to us that basically the Tribunal is to adjudicate the liability of the defendant and then it has to issue a certificate under Section 19(22). Under Section 18, the jurisdiction of any other court or authority which would otherwise have had jurisdiction but for the provisions of the Act, is ousted and the power to adjudicate upon the liability is exclusively vested in the Tribunal. (This exclusion does not however apply to the jurisdiction of the Supreme Court or of a High Court exercising power under Articles 226 or 227 of the Constitution.) This is the effect of Sections 17 and 18 of the Act.*
>
> *22. We hold that the provisions of Sections 17 and 18 of the RDB Act are exclusive so far as the question of adjudication of the liability of the defendant to the appellant Bank is concerned.*
>
> *25. Thus, the adjudication of liability and the recovery of the amount by execution of the certificate are respectively within the exclusive jurisdiction of the Tribunal and the Recovery Officer and no other court or authority much less the civil court or the Company Court can go into the said questions relating to the liability and the recovery except as provided in the Act. Point 1 is decided accordingly."*

34. The facts of the said case are not at helpful to the respondent. That was a case in which the dispute was between two Nationalised Banks i.e. Allahabad Bank and Canara Bank. Allahabad Bank had already secured a simple money decree from DRT whereas the Original Application filed by Canara Bank who claimed to be a secured creditor was still pending. The points of consideration before the Hon'ble Supreme Court have been enumerated in Para 13 of that judgment. The question mainly for consideration were whether at the stage of adjudication for the money due to the banks or financial institutions and at the stage of execution for recovery of money under the RDB Act, the Tribunal and the Recovery Officers are conferred with exclusive jurisdiction in their respective spheres? The other question was whether for initiation of various proceedings by the banks and financial institutions under the RDB Act, leave of the Company Court is necessary under Section 537 of the Companies Act, 1956 before a winding-up order passed against the Company or before provisional Liquidator is appointed under Section 446(1) and whether the Company Court can pass orders of stay of proceedings before the Tribunal, in exercise of powers under Section 442?

35. The question here is whether the provisions of the Code override the provisions of RDB Act and whether pendency of Original Application before DRT creates a bar to the initiation of such a process. Qua the RDB Act, the Hon'ble Supreme Court in **Allahabad Bank case (supra)** accepted the observations of the High Court that the Companies Act is a general Act and does not prevail over RDB Act.

36. The Hon'ble Supreme Court in **Allahabad Bank case (supra)** further held that there can be a situation in law where the same statute is

treated as a special statute vis-à-vis one legislation and again as a general statute vis-à-vis yet another legislation. Reliance was also placed upon the principle of law laid down in **LIC of India Versus D.J. Bahadur 1981 (1) SCC 315** that for certain cases, an Act may be general and for certain other purposes, it may be special and the court cannot blur a distinction when dealing with the finer points of law. The illustration was also referred that a Rent Control Act may be a special statute as compared to the Code of Civil Procedure, but vis-à-vis an Act permitting eviction from public premises or some special classes of buildings, the Rent Control Act may be a general statute.

37. Hon'ble Supreme Court also referred to **Damji Valji Shah Versus LIC of India AIR 1966 SC 135,** wherein it was held that LIC Act will override the general Act viz. the Companies Act, 1956 which is an Act relating to Companies in general.

38. The most important principle on the controversy relevant to the instant case was laid down by the Hon'ble Supreme Court in Para 40 of the judgment in **Allahabad Bank (supra) case**. It was held as under:-

> *"40. Alternatively, the Companies Act, 1956 and the RDB Act can both be treated as special laws, and the principle that when there are two special laws, the latter will normally prevail over the former if there is a provision in the latter special Act giving it overriding effect, can also be applied. Such a provision is there in the RDB Act, namely, Section 34. A similar situation arose in* ***Maharashtra Tubes Ltd. v. State Industrial and Investment Corpn. of Maharashtra Ltd. [(1993) 2 SCC 144]*** *where there was inconsistency between two special laws, the Finance Corporation Act, 1951 and the Sick Industries Companies (Special Provisions) Act, 1985. The latter contained Section 32 which gave overriding effect to its provisions and was held to prevail over the former. It was pointed out by Ahmadi, J. that both special statutes contained non obstante clauses but that the*
>
> > *"1985 Act being a subsequent enactment, the non obstante clause therein would ordinarily prevail over the*

non obstante clause in Section 46-B of the 1951 Act unless it is found that the 1985 Act is a general statute and the 1951 Act is a special one". (SCC p. 157, para 9)

Therefore, in view of Section 34 of the RDB Act, the said Act overrides the Companies Act, to the extent there is anything inconsistent between the Acts.

39. Even the provisions of the Code have the overriding effect over all the laws. Section 238 of Code 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."*

40. The perusal of the record would show that OA No.4325 of 2017 is dated 09.08.2016 which is even before of the commencement of the Code. The date of signing of the OA is 09.08.2016 as evident from page 492 of the paper book and the affidavit of authorised representative of the petitioner in support of the said application is also dated 09.08.2016. The authorisation to file the petition in favour of Mr. K. Keshvan Lyengar, Assistant General Manager to file the instant petition before this Tribunal is based on the Resolution dated 06.12.2017 much after coming into the force of the Code w.e.f 01.12.2016.

41. Though Original Application No.4325 was registered is of the year **2017** by the DRT-II but the perusal of the record of the OA shows that it is dated 09.08.2016. The Insolvency & Bankruptcy Code came into force with 01.12.2016 much after OA before DRT was filed by Mr. Lyengar, Assistant General Manager on the basis of Regulation No.10 and 11 of SIDBI General Regulations of the year 2000, though the OA may have been registered in the year 2017.

42. It may be further observed that the effect on the pending original application would be that a moratorium would apply in the event of the petition being admitted. In Sub-Section (1) of Section 14 says that on the Insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely;

> *"(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) to (d)* .....

43. We hold the consequence of admission of the instant petition would always have effect of moratorium as given in Section 14(1) of the Code.

44. The learned counsel for the respondent-corporate debtor also referred to the judgment of Hon'ble Supreme Court in **A.P. State Financial Corporation Versus M/s GAR Re-Rolling Mills and Another (1994) 2 SCC 647.** In para 15 of the judgment it was held that Doctrine of Election clearly states that when two remedies are available for the same relief, the party to whom the said remedies are available has the option to elect either of them. The Hon'ble Supreme Court however, further held that this contention cannot be accepted in cases where the ambit and scope of the two remedies is essentially different. Therefore, this judgment rather goes against the respondent. We find that the remedy under RDB Act is to adjudicate upon the liability of the corporate debtor and relating to the execution of the orders after determining the liability. The object of the Code is quite different to consolidate and amend the laws relating to reorganisation

and insolvency resolution of the corporate persons to maximise the value of its assets. The proceeding under the Code are not recovery proceedings.

45. In the **A.P. State Financial Corporation case (supra),** the State Financial Corporation had obtained an order under Section 31 of the State Financial Corporations Act. Having not been able to execute the order or decree after invoking the provisions of Section 31 of the Act, it resorted to the proceedings under Section 29 of the Act of the State Financial Corporations Act for sale of the property of the respondent concern. The question before this Hon'ble Supreme Court was as to whether such a recourse was permissible. This question was answered in Para 19 of the judgment holding that right vested in the Corporation under Section 29 of the Act is besides the right already possessed at common law to institute a suit or the right available to it under Section 31 of the Act. Since, the Corporation can withdraw from the court its proceedings under Section 31 of the Act at any stage, it would imply that it has the right to withdraw from further proceedings under Sections 31 and 32 of the Act even after obtaining an order in its favour and take recourse to the proceedings under Section 29 of the Act without pursuing the proceedings under Section 31 of the Act any further. It was observed that The Corporation cannot, indeed, execute the order under Section 31 of the Act and yet simultaneously take recourse to proceedings under Section 29 of the Act for the same relief. Not pursuing the matter further under Section 31 of the said Act the Corporation, which it abandoned by withdrawing from those proceedings impliedly.

46. The statement of objects and reasons for the Code have been referred to **Innoventive Industries Limited Versus ICCI Bank 2018 (1) SCC 407** as under:-

"Statement of Objects and Reasons.—There is no single law in India that deals with insolvency and bankruptcy. Provisions relating to insolvency and bankruptcy for companies can be found in the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013. These statutes provide for creation of multiple fora such as Board of Industrial and Financial Reconstruction (BIFR), Debts Recovery Tribunal (DRT) and National Company Law Tribunal (NCLT) and their respective Appellate Tribunals. Liquidation of companies is handled by the High Courts. Individual bankruptcy and insolvency is dealt with under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920 and is dealt with by the Courts. *The existing framework for insolvency and bankruptcy is inadequate, ineffective and results in undue delays in resolution, therefore, the proposed legislation.*

2. *The objective of the Insolvency and Bankruptcy Code, 2015 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.*"

47. It was further held in **Innoventive Industries Limited case (supra)** that the Code seeks to provide for amendment in the Indian Partnership Act, 1932, the Central Excise Act, 1944, Customs Act, 1962, the Income Tax Act, 1961, **the Recovery of Debts Due to Banks and Financial Institutions Act (RDB Act), 1993**, the Finance Act, 1994, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFESI Act), 2002, the Sick Industrial Companies (Special Provisions)

Repeal Act, 2003, the Payment and Settlement Systems Act, 2007, the Limited Liability Partnership Act, 2008, and the Companies Act, 2013.

48. From the above discussion we hold that pendency of OA by way of an argument that the Financial Creditor has elected the remedy of filing under RDB Act, cannot be accepted.

49. The other contention was that the Financial Creditor has not complied with the mandatory circulars/notifications issued by the Reserve Bank of India which have binding force. The contention raised to support this aspect is that the petitioner-financial creditor has not made any effort for restructuring of the Company.

50. Reference is made to the Minutes of the Joint Lenders Meeting held on 26.09.2013 Annexure R-4 with the reply, which was attended by the representatives of IDBI and those of Federal Bank the other lenders of the Company. That is not material as it is evident that SIDBI the financial creditor abstained from attending the meeting by expressing its inability.

51. Annexure R-7 with the reply is a letter dated 15.07.2015 from the corporate debtor to the petitioner/Financial Creditor in which it is clearly stated that the unit is not working in proper state of affairs and not generating any revenue and the account of the corporate debtor is admittedly highly irregular. It is stated that net worth of the corporate debtor has almost eroded and losses are accumulating year on year basis. The OTS proposal by this letter was sent. The response to this letter was sent by the petitioner/financial creditor on 26.07.2015 that the OTS proposal cannot be considered as per the policy guidelines of the petitioner below the value of the security charged to the bank. Further it is stated in this letter that the recall notice has already been issued by the SIDBI and suitable action is being taken. Another recall

notice sent by the Financial Creditor is dated 26.07.2016 Annexure R-14. The aforesaid contention on behalf of the respondent-corporate debtor is also found untenable.

52. Section 7 of the Code says that on occurrence of a default the Financial Creditor has to move an application in the prescribed form which the Financial Creditor has done, and thus complying with the requirements of sub-Section (1) and (2) of Section 7 of the Code.

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

"The financial creditor shall, along with 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."

54. The Financial Creditor in this case has filed evidence in abundance to establish that default committed by the corporate debtor, which has been discussed in detail while narrating facts of the case. There is the notice under Section 13(2) of the SARFESI Act, response whereto was sent by the respondent. The financial creditor has also filed the certificates of registration of charge with the Registrar of Companies to which reference has already been made. The OTS proposal sent by the corporate debtor by letter dated 29.11.2017 was also rejected by the financial creditor and the documents in that regard are at Annexure-I(U). The notice by SIDBI for declaring the account as NPA is at Annexure-I(W) dated 29.06.2013. There was also a recall notice issued by the financial creditor on 30.06.2015 as at Annexure-I(Q) and further recall notice dated 26.07.2016 Annexure-I(S).

55. The petitioner-bank has also filed copy of the statement of account of the respondent certified under the Bankers Book Evidence upto 28.12.2017 Annexure-I(O).

56. The petitioner/financial creditor also filed proper certificate in support of the statement of account with the master ledger for Chandigarh filed vide Diary No.357 of 2018. The factum that the corporate debtor is in default is further fortified from the CIBIL report Annexure-I(N).

57. The corporate debtor cannot contend that it was not in default because the respondent itself made a reference to the BIFR in 2015. This is evident from the order dated 08.06.2016 passed by BIFR as at page 1499 of the paper book. This order shows that the reference was filed by the respondent-corporate debtor on 31.03.2015 under Section 15(1) of the SICA Act, 1985. The reference was registered on 15.07.2015. It was the averment of the respondent-corporate debtor before the BIFR that the entire net worth of the corporate debtor has fully eroded on account of accumulated losses. This order relates to an application filed by the Central Excise and Service Tax Commissionerate requesting the Board to consider the liability under the Central Excise Act to be the first charged under Section 11 E of the Act. The Company having paid the taxes during the course of hearing and the matter being settled, the application filed by the Central Excise and Service Tax Commissionerate, Panchkula was disposed of as infructuous. However after coming into force the provisions of the Code, SICA Act, 1985 stood repealed. Therefore, the petitioner has fully complied with the requirement of clause (a) of sub-Section (3) of Section 7.

58. Clause (b) of Section 7(3) of the Code makes it mandatory upon the financial creditor to propose the name of Resolution Professional to be

appointed as the Interim Resolution Professional. In this case the written communication in Form 2 has been furnished by Mr. Jalesh Kumar Grover, an insolvency professional containing all the necessary particulars. He holds Registration No.IBBI/IPA-001/IP-P00200/2017-2018/10390. It is certified that no disciplinary proceedings is pending against him with the IBBI or Indian Institute of Insolvency Professional of ICAI. We have perused Form 2 and same is found in order.

59. In view of the above discussion, we admit this petition under Section 7 of the Code and a moratorium is declared as per 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."*

60. 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.

61. 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.

62. In view of the above, the following directions are issued in respect of the appointment of the Interim Resolution Professional:-

i) Appoint Mr. Jalesh Kumar Grover, registered insolvency professional bearing Registration No. IBBI/IPA-001/IP-P00200/2017-18/10390, address SCO-131, 2nd Floor, MDC, Sector-5, Panchkula-134114, Mobile No.9216001808 email ID: jk.grover27@gmail.com as Interim Resolution Professional.

ii) The term of appointment of Mr. Jalesh Kumar Grover shall be in accordance with the provisions of Section 16(5) of the Code;

iii) In terms of Section 17 of 'the Code', from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the 'Corporate Debtor' shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant

provisions of the 'Code', including taking control and custody of the assets over which the 'Corporate Debtor' has ownership rights recorded in the balance sheet of the 'Corporate Debtor' etc. as provided in Section 18 (1) (f) of the 'Code'. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the 'Corporate Debtor';

iv) The Interim Resolution Professional shall strictly act in accordance with the 'Code', all the rules framed thereunder by the Board or the Central Government and in accordance with the 'Code of Conduct' governing his profession and as an Insolvency Professional with high standards of ethics and moral;

v) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the 'Code' read with Section 15 calling for the submission of claims against 'Corporate Debtor';

vi) It is hereby directed that the 'Corporate Debtor', its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the

'Corporate Debtor' as a going concern and extend all cooperation in accessing books and records as well as assets of the 'Corporate Debtor';

vii) 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 constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee; and

viii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

63. In view of the proviso to Section 5(12) of the Code as inserted by way of amendment by Act 26 of 2018 w.e.f. 06.06.2018, the insolvency commencement date shall be w.e.f. today.

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

CA No.315 of 2018 also stands disposed of.

—Sd—

(Pradeep R. Sethi)
Member (Technical)

Pronounced in open court

— Sd —

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

Feb. 28 2019
Anchal

राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
चण्डीगढ़ बेंच
Chandigarh Bench

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Chandigarh Bench, Chandigarh