

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

Company Petition No. (IB)-343 (PB)/2019

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

In the matter of:

Corporation Bank

Applicant/Financial Creditor

Vs.

M/s. Multiwal Pulp and Board Mills Private Limited

Respondent/Corporate Debtor

Judgment delivered on: 21.05.2019

CORAM:

MR. CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT

MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)

For Applicant:

Ms. Suruchi Kumari, Advocate and
Ms. Ekta Chaudhary, Advocate.

For Respondent:

Mr. Mrinal Kumar Sharma, Advocate.

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ORDER

S. K. Mohapatra, Member

1. Corporation Bank has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s. Multiwal Pulp and Board Mills Private Limited referred to as the corporate debtor.
2. The Respondent Company M/s. Multiwal Pulp and Board Mills Private Limited (CIN No. U 74899 DL 1989 PTC 036417) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 29.05.1989 having its registered office at A-14, New Friends Colony, New Delhi - 110065. Since the registered office of the respondent corporate debtor is in New Delhi, this

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Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. It is appropriate to mention that the applicant Corporation Bank, is a body corporate constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1980, having its Registered Office at Mangla Devi Temple Road, Mangalore, Karnataka and a branch office amongst others at 1st Floor, Ektadwar Complex, Company Bagh, Civil Line, Moradabad – 244001.

4. Shri Arvind Kumar Srivastwa Chief Manager and authorized representative of the applicant bank, has preferred the present application on behalf of the applicant for initiation of corporate insolvency resolution process against the respondent corporate debtor in terms of the provisions of the Code.

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5. The applicant bank has filed the present application under Section 7 of the Code in the requisite FORM-1 to initiate Corporate Insolvency Resolution Process against the respondent Corporate Debtor. Form-1 filed under Section 7 of the Code read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 shows that the required information and other facts as prescribed have been furnished. The applicant bank has annexed to the application detail particulars of 'financial debt' including documents, records and evidence of default as required under sub-section 3 (a) of Section 7 of the Code. On a bare perusal of the Form reveals that the same is complete in all respect and there is no infirmity in the same.
6. Sub-section (3) (b) of Section 7 further mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Manish Agarwal, for appointment as Interim Resolution Professional having registration number IBBI / IPA-



002 / IP-N00223/ 2017-18 / 10904 resident of 707,
Saket, Opp. Rohtash Sweets, Meerut, Uttar Pradesh,
250 001 with email - id manishfcs@gmail.com. Mr.
Manish Agarwal has agreed to accept the appointment
as the interim resolution professional and has signed
a communication dated 05.01.2019 in Form 2 in
terms of Rule 9(1) of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016.
There is a declaration made by him that no
disciplinary proceedings are pending against him in
Insolvency and Bankruptcy Board of India or
elsewhere. In addition, further necessary disclosures
have been made by Mr. Manish Agarwal as per the
requirement of the IBBI Regulations. Accordingly, it is
seen that the requirement of Section 7 (3) (b) of the
Code has been satisfied.

7. At part IV of the application Form, applicant
financial creditor has claimed that the decreed
amount of Rs.56,70,74,811.06/- along with interest
as awarded, is due from the respondent company. A
copy of judgement dated 15.10.2018 passed by Debts



Recovery Tribunal, Delhi in O.A. No. 28/2016 has been placed on record along with table of computation of debt as per the Decree.

8. It is the case of the applicant that a total sum of Rs. 50 Crores loan was sanctioned to the respondent company on 01.04.2013 by the petitioner bank by way of following loan facilities.

Facility 1 : Cash Credit for Rs.30,00,00,000/-

Facility 2 : Inland/Import Letter of credit / Buyers credit for Rs. 20,00,00,000/-.

9. In order to secure the loan facilities applicant and the respondent executed loan documents on 02.08.2013. Corporate Debtor also created equitable mortgage by depositing the title deed of the land as described in the application with the Financial Creditor and created charge over the land under the provisions of the Companies Act, 1956.

10. Besides applicant has placed on record CIBIL Report pertaining to Credit Information Report in respect of the respondent company. Applicant Bank



has also filed the relevant statement of accounts along with certificate under Section 2 (a) of the Banker's Books of Evidence Act, 1891.

11. It is pertinent to note here that the applicant bank had filed Original Application bearing OA No. 28 of 2016 before Debts Recovery Tribunal, Delhi titled Corporation Bank Vs. M/s. Multiwal Pulp and Board Mills Private Limited. The OA was allowed on 15.10.2018 by Debts Recovery Tribunal, Delhi and defendant nos. 1 to 7 including the respondent company were directed to pay a sum of Rs.56,70,74,811.06/- along with *pendentelite* and future interest @15% per annum till its realization.

12. Despite the enforceable decree passed from a competent court of law, the respondent corporate debtor failed and defaulted to pay the amount as decreed and accordingly it is prayed for initiation of corporate insolvency resolution process against the respondent company by admitting the present application.



13. The respondent corporate debtor has filed its reply on 12.04.2019. During hearing on 24.04.2019, Learned counsel for applicant submitted that no rejoinder was required to be filed on behalf of the Petitioner bank. Accordingly, the parties were heard on 09.05.2019 and the order was reserved.
14. In the reply respondent has mainly submitted about the numerous difficulties faced by the corporate debtor in running the affairs of the company. It is submitted that Central Pollution Control Board had directed on 19.02.2013 for immediate closure of the production activities of the company. The unit was further sealed on 09.03.2013. It is contended that their representations were not considered expeditiously. The reply largely deals with the fact that the company faced many challenges in its operation. Respondent has also blamed the financial creditors in causing huge loss to the company.
15. These issues are irrelevant for the disposal of the present proceeding filed under the Code. Initiation of CIRP under Section 7 of the Code is not an adversary



litigation. It is neither a recovery proceeding nor can be treated to be a suit or case pending for decision on merit.

16. Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited V. Kirusa Software Private Limited* reported in AIR 2017 SC 4532 at Para 19 has observed that:

*“Once the adjudicating authority / Tribunal is satisfied as to the existence of the default and has ensured that the application is complete and no disciplinary proceedings are pending against the proposed resolution professional, it shall admit the application. **The adjudicating authority / Tribunal is not required to look into any other criteria for admission of the application.**”*

(Emphasis given)

17. Adjudicating Authority cannot decide issue of claim of loss, claim of collusion including disputed issues, which can be decided by the court of

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competent jurisdiction. Thus, any fact unrelated or beyond the requirement of the Code are not required to be considered and such narrations cannot be a ground to reject the application filed under Section 7 of the code.

18. The corporate debtor is entitled to point out to the Adjudicating Authority that a default has not occurred; in the sense that a debt, which may also include a disputed claim is not due i.e. it is not payable in law or in fact.

19. Admittedly, the claim in the present case is based on a decree of a court of law. Respondent company had moved an application no. 1674/2016 for recalling the said decree, which was dismissed on 19.05.2017. Even appeal filed by the respondent corporate debtor under Section 20 of the Recovery of Debt due to Banks and Financial Institution act, 1993 was dismissed by Debts Recovery Appellate Tribunal. The judgement passed by Debts Recovery Tribunal, Delhi on 15.10.2018 has thus attained finality. The decree passed in favour of the applicant bank has



since become final and binding upon the corporate debtor. Respondent has committed clear default in not paying the amount and interest as per the decree.

20. The application filed by the applicant financial creditor under sub-section 5 (a) of Section 7 of the code, has to be admitted on satisfaction that:

- I. *Default has occurred.*
- II. *Application is complete, and*
- III. *No disciplinary proceeding against the proposed IRP is pending.*

21. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the loan facilities and has committed default in repayment of the outstanding loan amount, even after a decree passed in favour of the applicant bank. After dismissal of the appeal, the decree passed in favour of the applicant



bank has since become final and binding upon the corporate debtor.

22. Once there is a debt and default and the application is complete, the Adjudicating Authority is bound to admit the application.

23. In the facts it is seen that the applicant bank clearly comes within the definition of Financial Creditor. There has been default in nonpayment of the decreed amount which has since attained finality. We are also satisfied that the present application is complete in all respect and there is no disciplinary proceeding pending against the proposed IRP. The applicant financial creditor is entitled to claim the decretal amount from the corporate debtor and the respondent corporate debtor has committed clear default in nonpayment of the financial debt as per the decree.

24. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

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25. Mr. Manish Agarwal, having registration number IBBI / IPA-002 / IP-N00223/ 2017-18 / 10904 resident of 707, Saket, Opp. Rohtash Sweets, Meerut, Uttar Pradesh, 250001 with email - id manishfcs@gmail.com is appointed as an Interim Resolution Professional.

26. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

27. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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.”

28. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions



of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

29. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this



Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

30. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

Sd-

21.05.2019

(M.M. KUMAR)
PRESIDENT

Sd/-

(S. K. MOHAPATRA)
MEMBER (T)



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