

**IN THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”**

CP (IB) No. 286/Chd/Pb/2018

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

In the matter of:-

Punjab National Bank

having its head office at
Plot No.4, Sector 10, Dwarka,
New Delhi-110075.

Branch office at Large Corporate Branch,
Bhagwati Tower, R.K. Road,
Cheema Chowk, Ludhiana through
its Attorney and Principal Officer,
Shri Vishal Kumar Prasad, Chief Manager.

....Petitioner-Financial Creditor

Vs.

M/s Rama Krishna Knitters Private Ltd.

having its registered office at 36-B,
New Kitchlu Nagar, Ludhiana-141001.

2nd Address:

Village Noorpur Bet, Ladowal Road,
Ludhiana-141008.

...Respondent-Corporate Debtor

Judgment delivered on: 13.02.2019

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

For the Petitioner : Mr. R.S. Bhatia, Advocate

For the Respondent : Mr. Shivansh Malik, Advocate

Per R.P. Nagrath, Member (Judicial)

Judgment

The Punjab National Bank incorporated on 31.03.1970 under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, Act 5 of 1970 with head office in New Delhi, has filed this petition as a financial creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short to be hereinafter as the 'Code') for initiating the Insolvency Resolution Process against the corporate debtor. The petition has been filed by the bank through Mr. Vishal Kumar Prasad, Chief Manager of the Large Corporate Branch, Bhagwati Tower, R.K. Road, Cheema Chowk, Ludhiana who has been authorized by the competent authority for filing the petition against the respondent-corporate debtor under the provisions of the Code. The authority letter issued by the Zonal Office of the bank dated 26.06.2018 is at Annexure A/2. Mr. Vishal Kumar Prasad holds a Power of Attorney dated 06.02.2017 in his favour authorizing him to do various acts including advance money of the bank on sufficient and reliable security or otherwise in compliance with the instructions and orders of the bank; to take and use all lawful legal proceedings, actions and means for realizing, 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 realization of its claims, etc. The Power of Attorney is at Annexure A/1.

2. The Financial Creditor-petitioner has filed application in Form 1 as prescribed in Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity the 'Rules'). The respondent was incorporated as a company on 15.02.2007, under the Companies Act, 1956. Its authorized share capital is ₹40 crores and the paid up share capital is

₹37,00,14,500/-. The respondent-corporate debtor has its registered office at Ludhiana and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Annexure A/4 is the master data of the respondent and the certificate of incorporation is at Page 31 of the paper book with which the Memorandum and Articles of Association have been annexed as Annexure A/3.

3. It is stated that the respondent was originally granted loan on 02.08.2010. The amount of ₹16.50 crores was granted as facility for the packing credit and ₹23.50 crores for FOBP/FOUBP/FABC/FOBNLC/FOUBNLC. Apart from that the term loan of ₹4.50 crores was also granted, total amounting to ₹44.50 crores.

4. The loan facilities were enhanced from time to time and the latest documents of loan were executed in the month of March, 2015. This included different categories of the loan described as CC Limit, Packing Credit Limit, FOBP/FOUBP/FABC/FAUBC, existing and fresh Term Loan WCTL-I, WCTL-II, FITL-I, FITL-II and the total amount of the loan under different facilities was now to the tune of ₹136.34 crores.

5. The petitioner-financial creditor has relied upon various documents of loan. These comprise of sanction letter dated 02.08.2010 Annexure A/6 in respect of the grant of total loan of ₹44.50 crores. The latest sanctioned letter dated 30.03.2015 Annexure A/7.

6. The respondent-corporate debtor also passed resolution dated 30.03.2015 accepting the terms and conditions of the sanction letter dated 30.03.2015 issued by the bank. The respondent executed various documents of loan i.e. (i) copy of agreement of FITL Annexure A/17; copy of FITL Annexure A/18; copy of supplementary agreement of WCTL Annexure A/19; copy of

supplementary agreement Annexure A/20; copy of term loan agreement Annexure A/21; copy of agreement of packing credit limit Annexure A/22, copies of agreements of hypothecation Annexure A/23 to Annexure A/25; copy of agreement of FOBNLC/FOUBNLC Annexure A-26; letter of undertaking Annexure A/27; copies of guarantee deeds by different guarantors Annexure A/28 to Annexure A/30, all dated 30.03.2015.

7. In order to secure the loan, the respondent-corporate debtor created equitable mortgages of various properties by deposit of the title deed and details of those properties mortgaged by the bank are detailed in the documents and copies of the mortgage deeds are at Annexures A/8 to A/10, the copy of the title deeds which were deposited with the bank for creation of the equitable mortgage are at Annexure A-11 (colly) (pages 84 to 672).

8. The charge over the immovable property was also registered with the Registrar of Companies and the record of registration of charge available with the Registrar of Companies is at Annexure A/12.

9. The names of guarantors of loan have been described as Smt. Shallu Gupta W/o late Shri Naresh Kumar Gupta, Smt. Amrit Bala W/o late Shri Shambu Nath, Shri Narinder Chugh S/o Shri Mehar Chand Chugh and late Shri Naresh Kumar Gupta represented through his LRs, Ms. Aditi Gupta D/o late Shri Naresh Kumar Gupta, Shri Aditya Gupta S/o late Shri Naresh Kumar Gupta and Smt. Shallu Gupta.

10. It is further stated that corporate debtor failed to pay the interest and installments regularly due to which the account was classified as NPA on 31.03.2016 w.e.f. 31.03.2015 by the Central Statutory Auditors. The bank also issued a notice under Section 13(2) of The Securitisation and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) claiming the corporate debtor to be in default to the tune of ₹113,79,89,477.06 (page 769) as on 31.03.2016 stating that the bank classified the account as NPA on the said date, in respect of various facilities. The notice dated 06.04.2016 is at Annexure A-14. Copy of the notices were also endorsed to the guarantors and directors of the company.

11. The petitioner-financial creditor also filed Original Application (OA) before the Debt Recovery Tribunal-II at Chandigarh under the Recovery of Debts and Bankruptcy Act, 1993 for recovery of ₹126,82,11,673.34 (page 675) as on 04.11.2016 with further interest agreed rate. In the application Form 1 the amount claimed to be in default is ₹165,02,00,716/- (Page 11) of the application upto 24.06.2018 and amount in default in respect of each of the account has been mentioned in the tabulated information at page 12 of the application in Form 1.

12. Notice of this petition was issued to the respondent for 14.11.2018 to show cause as to why this petition be not admitted. In the meanwhile, the petitioner was also directed to file the additional affidavit stating the facts leading to declaration of the accounts of the respondents as NPA on 31.03.2016.

13. The officer of the bank, Mr. Vishal Kumar Prasad filed the affidavit vide Diary No.4992 dated 18.12.2018 stating therein that under WCTL and FITL accounts the corporate debtor was supposed to pay the interest as and when levied. The repayment of installments was to begin in respect of accounts WCTL-I, WCTL-II and FITL-I in January 2017 and FITL-II in July 2015. The interest on the first three accounts upto September, 2015 was paid and in FITL-II upto October 2015. The interest on CC account was paid only upto September, 2015. Even no stock statement was submitted after 30.09.2015, due to which the

drawing power could not be calculated and there was depletion in value of stocks. It is further stated that since more than 90 days passed and that the interest was not served and depletion in the stocks, the account was declared as NPA on 31.03.2016.

14. The respondent has filed the reply stating therein that instant petition has been filed simply to pressurize the respondent to pay the outstanding liabilities without any basis or justification. The factum of the execution of the documents of loan, the creation of the mortgage of the properties, execution of the guarantee deeds, etc., has not been denied.

15. It was further stated that the corporate debtor was undergoing immense financial stress due to false commitments and assurances given by the financial creditor, after the demise of Mr. Naresh Kumar Gupta, the erstwhile Managing Director. Mr. Naresh Kumar Gupta is said to have expired on 14.11.2014. The corporate debtor is undergoing financial stress since the year 2014. It is further averred that one Mr. Narinder Chugh, who was family friend of erstwhile Managing Director came forward to run the operations of the corporate debtor. Several documents were got signed from the erstwhile Managing Director as well as Narinder Chugh on false pretext. The financial assistance was being extended to the corporate debtor to optimize the business operations which were hampered due to the sudden demise of Mr. Naresh Kumar Gupta.

16. It is also averred that despite providing all documents, none of the assurances and commitments were kept by the financial creditor and instead new charge was created on the personal properties of the wife of the erstwhile Managing Director and Shri Narinder Chugh in a desperate attempt to safeguard the outstanding liabilities of the corporate debtor. It is pertinent to note here that

Narinder Chugh is one of the guarantors who executed the guarantee deed for securing the loan. The guarantee deed executed between Narinder Chugh and Punjab National Bank-financial creditor is at Annexure A-28 dated 30.03.2015.

17. It is also admitted in the reply filed by the respondent that Narinder Chugh was appointed as the President of the corporate debtor on 11.12.2014 to look after the business of the corporate debtor and he was also appointed as the Director on 21.01.2015 and Managing Director on 01.02.2015. It is further stated that Narinder Chugh was asked to contribute a sum of ₹9.54 crores in order to enable the financial institutions to extend their support to the corporate debtor and accordingly, the aforesaid amount was deposited over a period of two months from February 2015 to March 2015. It is further stated that the financial institutions miserably failed to extend financial support as promised to the corporate debtor as a result of which Narinder Chugh resigned from all the posts held by him in February 2015 itself. Copy of the minutes of meeting dated 27.12.2014 alongwith the resolution and resignation letter of Narinder Chugh are at Annexure A1 (colly) of the reply. Reference was also made to minutes of the meeting of the Joint Lenders Forum dated 14.03.2015 as Annexure A2 with the reply but it is pertinent to mention that both these documents i.e. Annexure A1 and A2 have not been annexed with the reply though stated so in the contents in the reply. OA No.4713 of 2017 is admittedly pending before Debt Recovery Tribunal-II, Chandigarh.

18. We have heard the learned counsel for the parties and have perused the records quite carefully.

19. As already observed while narrating the facts, the respondent has not denied the execution of the documents of loan, issuance of the sanction letter

and various documents executed by the bank or even that the respondent has defaulted in making the payment despite issuance of the demand notice under Section 13(2) of the SARFAESI Act, 2002.

20. On occurrence of the default, the financial creditor has to move an application in the prescribed form which has been done in this case in Form 1 as prescribed in Rule 4(1) of the Rules. The petitioner has thus, been able to satisfy the requirement of Sub-section (1) and (2) of Section 7 of the Code.

21. Sub-Section (3) of Section 7 of the Code read as under:-

- “(3) The financial creditor shall, along with the application furnish-*
- (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;*
 - (b) the name of the resolution professional proposed to act as an interim resolution professional; and*
 - (c) any other information as may be specified by the Board.”*

22. In the instant case, the petitioner-financial creditor adduced abundant evidence to show the default which has been committed by the respondent-corporate debtor and the same has not been disputed. The respondent-corporate debtor is also stated to have executed the balance confirmation letter dated 13.02.2015 whereunder the loan facilities were renewed. The balance confirmation letter dated 13.02.2015 are at Annexure A/37 (colly). There are other balance confirmation letters dated 28.05.2011, 13.02.2015 and 15.04.2015 in respect of different accounts. There is no denial of the balance confirmation letters in the reply. The balance outstanding amount as on 24.06.2018 in different accounts has also been described in the tabulated information in the synopsis of the case. No discrepancy in the calculation has been pointed out but in any event if there is any such discrepancy it is for the

Interim Resolution Professional or Resolution Professional as the case may be to look into the same after the insolvency resolution process is initiated.

23. The evidence of default is also borne out from the CIBIL record relied upon by the petitioner bank as Annexure A/31 dated 21.06.2018.

24. The other positive evidence of the defaults under various accounts are the copies of the statements of account maintained by the bank under Banker's Book Evidence Act, 1891 which are from Annexure A/32 to Annexure A/36. There is the certificate attached with each of the statements in terms of Section 2A of the Banker's Book Evidence Act, 1891. It is certified that the books of account are maintained in the computer system operated properly on the basis of the relevant data and copy of the print outs represent correctly the relevant data. There is a presumption of correctness attached to the entries in the books of accounts. The petitioner bank has thus, shown that the corporate debtor was in default in making payment of the outstanding balance at the time, the petition was filed. The petitioner bank has been able to prove the requirement of clause (a) of Sub-section (3) of Section 7 of the Code.

25. As per clause (b) of Section 7(3) of the Code, the financial creditor is bound to propose the name of the Resolution Professional to be appointed as Interim Resolution Professional.

26. In Part III of the application Form No.1, the petitioner has proposed the name of Mr. Rajender Kumar Jain a registered Resolution Professional proposed to be appointed as Interim Resolution Professional. The written communication in Form 2 furnished by Mr. Rajender Kumar Jain is at Annexure A/5 dated 14.06.2018 furnishing the required particulars. He is not serving as a

Resolution Professional in any proceedings under the Code so far. It is further certified that there are no disciplinary proceedings pending against Mr. Jain with the Board or Indian Institute of Insolvency Professional of ICAI. We have perused Form No.2, the written communication furnished by the Resolution Professional which is found to be in order. The certificate of registration issued by the IBBI is at Page 53 of the paper book.

27. In view of the above, we hold that the petition deserves to be admitted. Therefore, the petition is admitted and the moratorium declared in terms of sub-section (1) of Section 14 of the code as under:-

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the 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.

28. 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.

29. 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.

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

- i) Appoint Mr. Rajender Kumar Jain, registered insolvency professional bearing Registration No. IBBI/IPA-001/IP-P00543/2017-18/10968, Mobile No. 99155-98862, email ID: amicusthe@gmail.com as Interim Resolution Professional.
- ii) The term of appointment of Mr. Rajender Kumar Jain 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.

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.

Pronounced in open court

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

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

February 13, 2019
Yashpal