

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH**

**Company Petition (IB)No.126/ALD/2018**

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

**IN THE MATTER OF:**

**Punjab National bank**

*(Having its Head Office at:  
Plot No.4, Sector 10, Dwarka,  
New Delhi -110075)*

*(and Branch office at:  
Mahmoorganj, Varanasi (U.P)*

.....**Financial Creditor/ Applicant**

**VERSUS**

**M/s Aman Medicals Products Pvt.Ltd.**

*(Having its Registered Office at:  
Illrd, Floor, Burlington Crossing  
Vidhan sabha Marg, Lucknow)*

.....**Corporate Debtor**

**JUDGMENT/ORDER DELIVERED ON 14.06.2018**

**CORAM :**

**Sh. V.P. Singh, Hon'ble Member (Judicial)**

**Ms Saroj Rajware, Hon'ble Member (Technical)**

**For the Applicant/ Financial Creditor: Sh. Saurabh Srivastava, Adv.**

**For the Respondent/ Corporate Debtor: Sh. Amit Gupta, PCS.**

**AS PER: V P Singh, Member Judicial**

**Order/Judgment**

1. The present petition is under Section 7 of Insolvency and Bankruptcy Code,2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016 by the Applicant/Financial Creditor **i.e.Punjab National Bank** for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate debtor company "**M/s Aman Medical Products Private Limited.**".

2. The Applicant “**Punjab National Bank**” is a Banking Institution and corporate body constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act,1947 having CIN U28113UP1981PTC005370. Mr.Jitendra Kumar Singh, Chief Manager, has been authorised to file this application on behalf of Financial Creditor.
3. The Respondent/Corporate Debtor “**M/s Aman Medical Products Pvt.Ltd.**” is a Company Incorporated on 07.07.1998 under the provision of Companies Act, 1956, bearing Identification Number U29296UP1998PTC023655. The Authorized Share Capital of Corporate Debtor Company is Rs 6,00,00,000/- ( Six Crore Only), and Paid-up Share Capital is 5,76,03,450/- ( Five Crore Seventy Six Lakhs Three Thousand Four Hundred Sixty Only). The Company is Involved in manufacture of special purpose medical machinery.
4. Brief facts related to petition are as follows:
  - (i) The Corporate Debtor approached Financial Creditor seeking financial assistance in the shape of Cash Credit and Term Loan. The Cash Credit Facility and Term Loan amounting to **9.55 Cr** (*Cash Credit Facility of 4 Cr and CCBD( Rs 1.45 Cr+ Term Loan of1.65 Cr and WCTL of 2.45 Cr*), on the terms and condition as laid down in sanction letter dated 29.09.2005, and equitable mortgagges were created on 03.08.2006, 22.11.2006 and 05.02.2007 for granting loan. (***Copy of the security documents( mortgage deed) is annexed as Annexure-6***)

- (ii) Financial Creditor further stated that Corporate Debtor cash credit facility was renewed on 16.12.2008 and to secure the repayment equitable mortgage was created on 26.03.2009.
  - (iii) The account of the Corporate Debtor Company was declared as NPA w.e.f 31.12.2010 due to continuous default in repayment of the bank loan as per the agreement executed between the corporate debtor and the applicant.
  - (i) Hence, the amount claimed by the Financial Creditor as default against Corporate Debtor is **Rs.23,65,00,000/-** **(Rupee Twenty-Three Crore Sixty-Five Lakh Only) as on 31.03.2017 along with interest.**
5. It is a matter of record Corporate Debtor has filed Counter Affidavit/ Objection to the application filed by the Financial Creditor and the facts stated by the Corporate Debtor in defence to application are as follows:-
- (i) That the application filed for initiating CIRP against respondent company is without proper authority as letter of authorisation placed along with application is not appropriate.
  - (ii) Further, the amount mentioned in the application is not correct, and there is no justification for choosing 31.03.2017 as date of default, hence amount claimed to be in default is without any basis and argument evidence.
  - (iii) Further corporate debtor has taken objection that no justification regarding the meeting of requirement of Law

of Limitation has been provided in the application. Hence this application is liable to be rejected.

6. We have heard the argument of the Ld. Counsels of the Petitioner and the Respondent and perused the record.
7. Since this petition is filed by the Financial Creditor, the Corporate Debtor raised various technical objections against the initiation of insolvency resolution process against the Corporate Debtor that the applicant has not disclosed the correct amount in the Form-1, date of default is incorrect, and application is barred by the Limitation Act.
8. From perusal of the application with supporting documents filed along with the application and the objections filed by the Corporate Debtor, it is crystal clear that this Corporate Debtor has neither disputed grant of the working capital facility or withdrawal the financial facilities granted nor even disputed the occurrence of default. But the objections raised by this Corporate Debtor are procedural mainly in respect to improper authorisation, incorrect date of default as mentioned in from, application is barred by the limitations etc.
9. It is matter of fact that Ld. Counsel for the Corporate Debtor during course of the argument and in reply, raised the objection that the Authorization of Mr Jitendra Singh, Chief Manager of the applicant Bank is not proper and defective( there is no proper seal & essential details of the person signing the authorization letter) to initiate CIRP under IBC against the Corporate Debtor deserves to be rejected at the very threshold.
10. But it is pertinent to point out that applicant has filed the better copy of the Authorisation letter ( With seal and deatils of

the person giving authorisation, i.e. of Shri Hemanta Kumar Panda (General Power of Attorney Holder). It is further to point out that General Power of Attorney, which is attached with rejoinder affidavit as Annexure RA-1 further authorises to delegate power to attorney holder Sri Hemanta Kumar Panda, Assistant General Manager to take insolvency and liquidation proceedings against the debtors of the bank, by **clause d(iv) of the General Power of attorney**, on behalf of Punjab National Bank Sri Hemanta Panda has authorised Mr. Jitendra Singh, Chief Manager to initiate Corporate Insolvency Process against the Corporate Debtor. Hence objection taken by the corporate debtor are not sustainable. The applicant has annexed proper authorisation to initiate CIRP against the Corporate debtor.

11. Now while discussing the objection taken by the corporate debtor that date of default mentioned by the applicant in form-1 is not correct. The applicant through their rejoinder affidavit has clarified that the date on which corporate debtor was declared NPA is 31.12.2010, but the amount they have mentioned is amount due to corporate debtor as on 31.03.2017, hence date of default is date of declaration of NPA, i.e. 31.12.2010 and amount due to corporate debtor was 9.55 Cr. **(Detail of Chart of Calculation of Interest and Other Charges is annexed as Annexure RA-3 of the rejoinder affidavit)**

12. Lastly, corporate debtor has taken objection that since the date of default of corporate debtor is 31.12.2010, hence present application is barred by the limitation Act and liable to be rejected. A perusal of the record shows that applicant bank has issued notice to corporate debtor declaring him as wilful defaulter and

asking corporate debtor to regularise/ adjust the amount within 15 days from the receipt of this notice. The date mentioned in such notice is 07.04.2017 hence it is clear the limitation period will apply from the date of this notice given by the applicant to corporate debtor. Thus the application is well within the limitation period.

Further the applicant has also annexed possession notice dated 22.02.2011 sent to corporate debtor under section 13(2) of SARFAESI Act, and suit was filed on 26.12.2011 at DRT which is still pending and proceedings initiated by the applicant in DRT shows that applicant has taken legal proceeding against corporate debtor after declaration of account of corporate debtor as NPA, i.e. 31.12.2010 which is still pending. Thus there is no bar of limitation in present proceeding.

13. Further the Ld. Counsel for the Financial Creditor submitted that to prove the Existence of the Financial Debt; they have annexed following documents:

- (i) The Copy of sanction letter dated 24.05.2005 and the agreement guarantee dated 28.09.2005 for credit facilities granted to corporate debtor (The Copy is annexed as **Annexure A-1 of the supplementary Affidavit**)
- (ii) Applicant has also annexed the copy of the balance/ security confirmation letter by the corporate debtor dated 29.12.2008, where the corporate debtor has acknowledged its liability towards applicant (**Copy of letter is Annexure RA-7**)
- (iii) Further, the corporate debtor has annexed possession notice dated 22.02.2011 given to corporate debtor by applicant under section 13(2) of the SARFEASI Act 2002.

***(True Copy of notice is annexed as Annexure RA-6 of the Rejoinder Affidavit).***

- (iv) Copy of the Registration of charge ( Form- 8) registered by ROC ***(Copy is annexed as Annexure RA-4 of the Rejoinder Affidavit)***

14. Hence, the application on behalf of financial creditor/ Applicant under Section 7 of IBC is complete. It further appears that there is default in non-payment of the debt owed by the corporate debtor. Applicant has annexed Notice dated 02.08.2017 at **page no 87** of the supplementary affidavit, informing corporate debtor and its director that due to non- payment of instalment/interest/ principal debt, **the the corporate debtor has been declarted as willful defaulter on 27.07.2013 as per bank guidelines**, however OTS (One Time Settelment) of resonable amount is always aceptable. But till date, no OTS is offered by the corportae debtor to the applicant. Since Corporate Debtor failed to repay the financial debt hence committed default in non-payment of debt and applicant has annexed sufficient evidence to show the default on behalf of the corporate debtor. Thus application filed U/S 7 of IBC deserves to be admitted.

15. Financial Creditor has suggested the name of Mr Shravan Kumar Vishnoi, Registration Number IBBI/IPA-002/IP-N00040/2016-17/10079 for appointment as Interim Resolution Professional(IRP). Further Mr. Shravan Kumar Vishnoi has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him.

16. There is default in the payment of the financial debt. Therefore, as per section 7(5)(a) of the code, the present application filed U/s 7 of the I B Code is admitted.
17. **Mr Shравan Kumar Vishnoi, Registration Number IBBI/IPA-002/IP-N00040/2016-17/10079** is appointed as Interim Resolution Professional(IRP). Further, a moratorium under the provision of section 13 & 14 of the Code is declared prohibiting the following:
- (i) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
  - (ii) *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
  - (iii) *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 (54 of 2002);*
  - (iv) *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.*

It is further directed that:

- (i) *The supply of essential goods or services to the corporate debtor as may be specified shall not be*



*terminated or suspended or interrupted during the moratorium period*

*(ii) The provision of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.*

18. The IRP shall comply with the Provision of Section 13(2), 15,17 &18 of the Code. Further, the Directors, Promoters or any person associated with the Management of the Corporate Debtor are directed to co-operate to the IRP as prescribed under Section 19 and for discharging his function under a provision of section 20 of the Code.

19. The Registry is further directed to communicate this order to Financial Creditor and Corporate Debtor and IRP through email and speed post. List on **DT. 2.7.2018** for the filing of the progress report

**(Ms. Saroj Rajware)**  
**(Member Technical)**

**Dated- 14.06.2018**

**( V.P Singh)**  
**Member Judicial**