

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

**CP (IB) NO.129/ALD/2020
&
IA NO.25/ALD/2021
IN
CP (IB) No.129/ALD/2020**

In the matter of
An application under Section 7 of Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016

CP (IB) NO.129/ALD/2020

In the matter of:
Punjab National Bank
Branch Office: Bank Road,
Gorakhpur,
Uttar Pradesh : Financial Creditor

Versus

Kanoria Sugar and General Manufacturing Company Limited
Having Registered Office at
Captainganj District, Kushinagar
Uttar Pradesh- : Corporate Debtor

IA (IB) No.25/ALD/2021

In the matter of:
1. Daroga Pandey
R/o Semara, Khusinagar,
Uttar Pradesh

2. Ram Niwas Pandey
R/o Semara, Khusinagar,
Uttar Pradesh : Applicants

Versus

Kanoria Sugar and General Manufacturing Company Limited
Having Registered Office at
Captainganj District, Kushinagar
Uttar Pradesh- : Respondent/
Corporate Debtor

Order reserved on 25.04.2022

Order pronounced on 27.04.2022

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Coram:

Mr. Rajasekhar V.K. : Member (Judicial)
Mr. Virendra Kumar Gupta : Member (Technical)

Appearances (via video conference):

For Financial Creditor : Mr. Yash Tandon, Advocate
For Corporate Debtor : Mr. Rahul Agarwal, Advocate
For Applicant in IA No.25/ALD/2021 : Mr. Akhilesh Kalra, Advocate
Mr. Rahul Kapoor, Advocate

COMMON ORDER

Rajasekhar V.K., Member (Judicial)

1. The court convened *via* videoconferencing. This common order disposes of both IA (IB) No.25/ALD/2021 as well as the main CP (IB) No.129/ALD/2020.

IA No.25/ALD/2021

2. The Application No.25/ALD/2021 in CP(IB) No.129/ALD/2020 was first taken up for consideration. Mr Akhilesh Kalra, Ld. Counsel for the Applicant in Intervention Petition No.25/ALD/2021 appeared and submitted that proceedings under section 7 of the Insolvency & Bankruptcy Code (“IBC” or “the Code”) should not be proceeded with as there was a stay on those proceedings by the order of the Hon’ble Allahabad High Court in PIL No.29523/2014. He sought to draw our attention to the relevant paras of an order dated 30.10.2014 passed by the Hon'ble Allahabad High Court in the said writ petition, which effectively ensured that the security interest of the financial creditors had been made subservient to the farmers’ interest.
3. We pointed out to the Ld Counsel appearing for the Applicant that the order only places the farmers’ interest above that of the secured creditors. We asked the Ld Counsel to show us any judgment that would have the effect of interdicting the proceedings under section 7 of the Insolvency & Bankruptcy Code, 2016 (“the Code”). At this, the Ld Counsel kept insisting that the order passed by the Hon'ble Allahabad High Court effectively ensures only that, and that therefore the Bench should not proceed to pass orders on the petition until

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the farmers' dues were settled in full. This was repeated again even after it was pointed out by the Bench that the Code is not for ensuring recovery of amounts but only to try and resolve the insolvency of the Corporate Debtor. At best, the order passed by the Hon'ble Allahabad High Court may have effect in proceedings before the DRT or such other fora where the focal point of the prayers would be recovery of the amounts due and payable. Recovery is neither the only purpose nor an objective of the Code, and therefore, with the greatest respect to the order passed by the Hon'ble Allahabad High Court, we are unable to convince ourselves to agree with the Ld Counsel that the order dated 30.10.2014 effectively stymies proceedings even under the Code.

4. This petition filed under Section 7 is pending from March 2020. Even during this process, the Applicant/proposed intervenor, being aware of this fact, could have approached the competent constitutional courts to obtain clear-cut directions on the fate of application was filed by the Financial Creditor. This has not been done. There is nothing in the intervention petition that inhibits us from hearing the present section 7 petition.
5. Therefore, in these circumstances, IA No.25/ALD/ 2020 is dismissed as devoid of any merit.

CP (IB) No.129/ALD/2020

6. Now we proceed to deal with the main company petition filed under 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Punjab National Bank** (*hereinafter referred as the Financial Creditor*), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in respect of the **Kanoria Sugar and General Manufacturing Company Limited** (*hereinafter referred as the Corporate Debtor*).

Facts of the case:

7. The facts, in brief, are that the Financial Creditor has provided credit facilities *i.e.*, term loans, overdraft facilities and cash credit facilities to the Corporate

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Debtor. In pursuance of the two agreements dated 01.02.2016 and 29.12.2017 entered into between the financial creditor and the corporate debtor, the applicant increased the financial assistance to the corporate debtor to ₹80.80 crore from ₹75.82 crore. A charge was also created on 29.12.2017 against the mortgage of properties of the Corporate Debtor. However, the Corporate Debtor failed to make the payment in terms of the agreement. Therefore, the account of the corporate debtor was declared NPA on 30.06.2018, and as per the Financial Creditor, the default occurred on 30.04.2018 as per the agreement.

8. Our attention was drawn to the notice dated 04.07.2018 sent by the financial creditor to the corporate debtor under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Sarfaesi) Act, 2002 as well as to the email dated 09.07.2019¹ annexed at page no.132-139 demanding the outstanding dues with the Corporate Debtor. However, no payments were made.
9. Accordingly, it is prayed that since there was a debt which was outstanding and payable, and a default had occurred, hence, the application was liable to be admitted. It was further submitted that the Financial Creditor has also proposed the name of the IRP to conduct CIRP

Reply On Behalf Of The Corporate Debtor

10. During hearing, the learned counsel appearing on behalf of the Corporate Debtor submits that the OTS proposal has been given to the bank and was under consideration of the bank and in the reply filed by the corporate debtor they have stated that several requests has also been made by the corporate debtor to the applicant for regularising the loan account of the corporate debtor.

Findings & Conclusion

11. We have considered the submissions made on behalf of the Financial Creditor and material on record. Having discussed this aspect and considering the agreement entered into between the parties, the statements annexed for payment

¹ Pages 132-139 of the petition

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due as well as the OTS proposal wherein the corporate debtor has placed for restructuring the loan amount, thus admitting the debt. Thus, we hold that there is a debt which is due and payable both in law and in fact and default has occurred within the meaning of provisions of section 7 of IBC, 2016.

12. The Financial Creditor has proposed the name of **Shravan Kumar Vishnoi** [Reg. No. **IBBI/IPA-002/IP-N00040/2016-2017/10079**] to be appointed as Interim Resolution Professional (IRP). There exists no material to show that any disciplinary proceedings are pending against such proposed IRP or such IRP is otherwise not ineligible to be appointed.
13. The application filed under section 7 of the Code, is, therefore, complete in all respects and meet all other procedural requirements of the Code and Regulations made thereunder.
14. Accordingly, we pass the following orders:
 - i) The application filed by Punjab National Bank, the Financial Creditor under section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, ***Kanoria Sugar and General Manufacturing Company Limited***, is hereby **admitted**.
 - ii) There shall be a moratorium under section 14 of the IBC.
 - iii) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
 - iv) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
 - v) Mr. Shravan Kumar Vishnoi [Reg. No. IBBI/IPA-002/IP-N00040/2016-2017/10079], having address at BCC Tower, 1008, 10th Floor, Arjun Ganj, Near Saheed Path, Lucknow, Uttar Pradesh 226002, having AFA No

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AA2/10079/02/081122/201499, to act as the IRP under Section 13(1)(c) of the Code. is hereby appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

vi) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. It is directed that the key managerial personnel of the Corporate Debtor shall coordinate with the Interim Resolution Professional to hand over the documents, and this shall be done without further delay.

vii) The IRP/RP shall submit to this Adjudicating Authority quarterly reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

viii) The Financial Creditor shall deposit a sum of ₹2,00,000/- (Rupees two lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

15. The Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately.
16. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Uttar Pradesh, Kanpur, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
17. List the matter on 25.07.2022 filing of the progress report.

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18. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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Virendra Kumar Gupta
Member (Technical)

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Rajasekhar V.K.
Member (Judicial)