

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

Company Petition (IB)No.191/ALD/2017

(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:
Krishna Nagar, Kanpur-208007)

.....Financial Creditor/ Applicant

VERSUS

M/s Savaria Roller Flour Mills Private Limited.
(Having its Registered Office at:
82/8-J Gandhi Garm, Kanpur-208007 (U.P))

.....Corporate Debtor

JUDGMENT/ORDER DELIVERED ON 06.06.2018

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 Verma, Adv.

AS PER: V P Singh, Member Judicial

Order/Judgment

1. The present petition is filed 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 Savaria Roller Flour Mills Private Limited."



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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 Kanchan Lohanai, Chief Manager, has been authorised to file this application on behalf of Financial Creditor.
3. The Respondent/Corporate Debtor "**M/s Savaria Roller Flour Mills Private Limited.**" is a Company Incorporated on 26.02.2004 under the provision of Companies Act, 1956, bearing Identification Number U15311UP2004PTC028338. The Authorized Share Capital of Corporate Debtor Company is Rs 3,50,00,000/- (Three Crore Fifty Lakhs Only), and Paid-up Share Capital is 1,85,52,400/- (One Crore Eighty Five Lakhs Fifty Two Thousand Four Hundred Only). The Company is involved in the manufacture of grain mills products, starches and starch products and prepare animal feeds.
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 amounting to 3.5 Cr (Cash Credit Facility of 1 Cr and Term Loan of Rs 2.35 Cr), on the terms and condition as laid down in sanction letter dated 20.06.2006, 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 enhanced on 13.03.2009 from 1 Cr to 3 Cr hence total amount stood to [3 cr (Cash Credit)+



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2.35 cr (Term Loan) =5.35 Cr] and to secure the repayment equitable mortgagage was created on 26.03.2009.

- (iii) Again the cash credit limit of corporate debtor company was enhanced from 3Cr to 5.40 Cr for which loan documents were signed and executed on 14.09.2009 and to secure the repayment of due under above facilities all the previous mortgages were extended on 15.09.2009. The cash credit limit was enhanced from 5.40 Cr to 9.00 Cr for which loan documents were executed and signed on 29.06.2010 by directors of the corporate debtor company, Ram Kishan Agarwal and Shree Kishan Agarwal and to secure repayment due under above credit facilities granted all the mortgages were extended on 30.06.2010 & 02.07.2010.
- (iv) After that, the cash credit facility granted to the corporate debtor company was further enhanced from 9 Cr to 12 Cr including continuation of existing Term Loan of Rs.2.35Cr on 23.08.2011 for which loan documents were signed and executed on 16.09.2011.
- (v) Further, the cash credit limit was enhanced from 12 Cr to 15.50 Cr, and fresh term loan of Rs.50 Lacs was sanctioned on 22.02.2014 for which loan documents were signed and executed on 24.02.2014 including extension of previous mortgages.
- (vi) An Ad-hoc cash credit limit was also granted on 06.05.2015 to the company for which loan documents were signed and executed on 06.05.2015 by the corporate



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debtor company, and all the already created mortgages were extended on 06.07.2015. ***(Copy of sanction letters is annexed as Annexure -7 in the application)***

- (vii) The account of the Corporate Debtor Company was declared as NPA w.e.f 30.12.2015 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.15,35,43,557.89/-** **(Rupee Fifteen Crore Thirty-Five Lakh Forty-Three Thousand Five Hundred Fifty-Seven Only) as on 09.02.2016 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 respondent company was paying the regular and on time installment to the Financial Creditor but due to dispute with the other directors of the company the corporate debtor company was not able to pay debt, hence requested the financial creditor for restructure of the account of the corporate debtor vide letter dated 20.11.2015, but inspite of request letter financial creditor declared the account of the corporate debtor as NPA on 30.12.2015. ***(True copy of letter is annexed as Annexure No-R2) .***



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- (ii) Further stated that applicant has not followed RBI guidelines in declaring corporate debtor company as NPA instead issued notice under section 13(2) of the SARFAESI Act, 2002 on 17.02.2016. After that applicant took symbolic possession over the secured asset of the respondent company and against that respondent has availed the statutory remedy by filing Application No.509/2016 before the DRT Lucknow, which is still pending. (***A true copy of notice and memo of application filed before DRT is annexed as Annexure R-6 and R-7.***)
- (iii) The respondent further took objection that application is not complete because bank has not applied in form and manner as prescribed by the code and application is filed under general power of attorney without specific authorisation, which is not maintainable it is not supported by affidavit and affidavit so annexed is not proper. Secondly, Applicant has not given the required information in Part V of the Form-1 of the application.

6. Heard the Ld. Counsel for the Petitioner and the Ld. Counsel for the respondent and perused the record available.

7. Since this petition is filed by the Financial Creditor, the Corporate Debtor raised several objections against the initiation of insolvency resolution process against the Corporate Debtor on the ground that applicant has not followed the due process of law as he has already initiating recovery process before DRT and subsequently invoked the provision of the IBC, the Power of Attorney filed by the applicant to initiate CIRP is defective,



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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 granting the working capital facility or withdrawing 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 Power of Attorney, Pendency of proceeding before DRT, Affidavit not adequately stamped.e.t.c.
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 Power of Attorney of Mr Kanchan Lohani of the applicant Bank does not empower to file any petition under IBC against the Corporate Debtor and on this ground application deserves to be rejected at the very threshold.The Ld. Counsel for the Corporate Debtor heavily relied upon the case law of **"Palogix Infrastructure Pvt Ltd vs. ICICI Bank Ltd (company Appeal (AT)(Insol) No. 30/2017) decided on 20.9.2017)** decided by Hon'ble NCLAT.It is further contended that a power of attorney filed by one Mr.Kanchan Lohani to represent on behalf of the Financial Creditor cannot be a valid document authorising him to represent on behalf of the Financial Creditor in a petition filed under Insolvency & Bankruptcy Code, 2016

10. But it is relevant to reproduce the Para 38, Para 39 of this Judgement which reads as under: -

(38) "This apart, if an officer, such as senior Manager of a Bank has been authorised to grant loan, for recovery of loan or to initiate a proceeding for 'Corporate Insolvency Resolution Process' against the person who have taken loan,



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in such case the 'Corporate Debtor' cannot plead that the officer has the power to sanction loan, but such officer has no power to recover the loan amount or to initiate 'Corporate Insolvency Resolution Process', in spite of default of Debt....

(39) If a plea is taken by the authorised officer that he was authorised to sanction loan and had done so, the application under section 7 cannot be rejected on the ground that no separate specific authorization letter has been issued by the 'Financial Creditor' in favour of such officer designate.

It is important to point out that General Power of Attorney filed by the petitioner which is attached with the petition as Annexure 8 authorises attorney holder Sri Kanchan Lohani, chief manager to take insolvency and liquidation proceedings against the debtors of the bank, on behalf of Punjab National Bank, and law laid down by NCLAT in the case mentioned above, it is clear that defence taken by Corporate Debtor cannot be sustained, and this petition cannot be dismissed on this ground.

11. Now while discussing the Point that weather CIRP can be initiated when proceedings are already initiated and pending before the respected DRT, answer to to this question lies in Section 14 of the IB code itself, which declare moratorium for prohibiting the following actions:

- (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



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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;**

Hence it is established that once the CIRP is triggered under IBC, moratorium order applies and proceeding pending under any other law automatically got stayed. Hence there is no prohibition for applying NCLT when DRT proceedings are initiated.

12. Lastly, corporate debtor has taken objection that applicant has not provided details as mandated in Part V of the Form 1, applicants in form of supplementary/additional affidavit annexed the copy of the certified bank statement of the corporate debtor maintained by the applicant to show the default. (***Copy of the certified bank statement is annexed as Annexure A-1 in the supplementary affidavit***)

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 the entries in bankers Booker book as maintained by Punjab National Bank has been annexed as **Annexure A-1 of the additional affidavit.**
- (ii) Applicant has also annexed letter of continuity dated 06.07.2015 to the securities, signed and accepted by the corporate debtor to avail financial facilities. (**Copy of sanction letter is annexed as Annexure A-7**)



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(iii) Further, the corporate debtor in itself annexed possession notice dated 24.06.2016 given to corporate debtor by applicant under section 13(4) of the SARFEASI Act 2002 **(True Copy of notice is annexed as Annexure R-6 of the objection).**

(iv) A notice from DRT Allahabad to respondent in OA 457/2017 filed by the applicant **(Notice is annexed as Annexure A-16 in the objection.)**

14. Hence, the application on behalf of financial creditor/ Applicant under Section 7 of IBC is complete and there is default in non-payment of the debt owed by the corporate debtor. Applicant has annexed Notice dated 30.01.2016 at **page no 84** of the application, informing corporate debtor and its director that due to non- payment of instalment/interest/ principal debt, the account of the corporate debtor has been classified as Non-Performing Asset(NPA) as on 31.12.15 as per Reserve Bank Guidelines and asked for repayment within 7 days from the receipt of this letter, failing which applicant will be constrained to legal steps against the corporate debtor, 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, Hence present application 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



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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, hence the present application filed U/s 7 of the I B Code is admitted.

17. **Mr. Shravan 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.*



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It is further directed that:

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- (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. 02/07/2018** for the filing of the progress report.



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(Ms. Saroj Rajware)
(Member Technical)

Dated- 06.06.2018

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(V.P Singh)
Member Judicial

FREE OF COST COPY

Ravinder Kumar
06/06/2018

Ravinder Kumar
Bench Officer
National Company Law Tribunal
Allahabad-U.P.

compared by me
Bhavesh Mishra
06/06/2018