

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

**C.P. NO. IB-441(PB)/2018**

**IN THE MATTER OF:**

**Bank of India** .....**Financial Creditor**

**v.**

**M/s. Advance Navotpad Surfactants Ltd**  
.....**Corporate Debtor**

**SECTION : Under Section 7 of The Insolvency and Bankruptcy Code, 2016**

**Judgment delivered on 27.09.2018**

**Coram:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**  
**Hon'ble President**

**S.K. MOHAPATRA**  
**Hon'ble Member (T)**

**PRESENTS:**

For the Petitioner:                      Mr. Ranjit Singh Randhawa, Mr. Harvinder S. Kohli, Advocates

For the Respondent:                      Mr. Ayush S. Sahni & Mr. Lohit K. Bimal, Advocates

**M.M. KUMAR, PRESIDENT**

**JUDGMENT**

The 'Financial Creditor'- Bank of India has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to trigger the Corporate Insolvency Resolution Process in the matter of M/s. Advance Navotpad Surfactants Limited. The financial creditor is a body corporate constituted under the Banking Companies

(Acquisition and Transfer of Undertakings) Act, 1970. It was initially incorporated on 07.09.1906 in the styled as 'The Bank of India Limited'. It has its Head Office at C-5, 'G' Block, Bandra-Kurla Complex, Bandra (E), Mumbai -400051 and acting through its Branch office at 478/6, Old Railway Road, Gurgaon-122001, Haryan (India).

2. Mr. Ranvir Singh, Assistant General Manager in Branch office of the Financial Creditor-Bank has been empowered to sign and submit the petition by the Power of Attorney dated 21.02.2015 (Annexure-1).

3. The Corporate Debtor-M/s. Advance Navotpad Surfactants Limited is a company registered under the provisions of the Companies Act, 1956 and was originally incorporated on 07.07.1998 in the styled as M/s Advance Design & Engineering Limited but subsequently changed in the present name. The identification number of the Corporate Debtor is U74899DL1998PLC094875 and its registered office is situated at 511/2/1, Village Rajokri, New Delhi – 110038. Its authorized share capital is Rs. 18,00,00,000/- and the paid up share capital is Rs. 17,90,00,000/- which is based on the details given in master data obtained from the official website of Registrar of

Companies.

4. The Financial Creditor has proposed the name of Shri Sethurathnam Ravi, 505-A, Fifth Floor, Rectangle 1, District Centre, Saket, New Delhi-110017, email id – sravi.fca@gmail.com. He has registration No. IBBI/IPA-001/IP-P00372/2017-18/10629. A written communication dated 17.04.2018 made by Mr. Ravi in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or Institute of Chartered Accountants of India. In addition, further necessary disclosures have been made by Mr. Ravi, as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

5. In the application, the Financial Creditor has given the details of financial debt granted to the Corporate Debtor with the dates of disbursement. A perusal of part IV of the application would show the following particulars of financial debt:

<b>Particulars of Financial Debt</b>
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1.	Total Amount of Debt Granted Date(s) of Disbursement	<p><b><u>TERM LOAN-I</u></b></p> <p><b>A. Amount sanctioned</b></p> <p>Rs. 11,97,00,000/-</p> <p>(Rupees Eleven Crores and Ninety Seven Lacs only) vide Sanction letter no. GRG/ADV/GPK/2014-15/01 dated 05.04.2014. Thereafter, tentative date of commencement of commercial operations (DCCO) was extended/revised to November, 2015 and Term Loan-I was reviewed/sanctioned with reduced limit of Rs. 11,27,00,000/- repayable with revised schedule of instalments vide sanction letter No. GRG/ADV/VV/2015-16/658 dated 30.11.2015. On the date of review/sanction the then existing overdue position in Term Loan-I was to be cleared and closed, however the Corporate Debtor failed to clear/close the overdue in the Term Loan-I a/c till date.</p> <p><b>Date of Disbursement-</b></p> <table border="1" data-bbox="821 1839 1398 2020"> <thead> <tr> <th data-bbox="821 1839 1106 1962">Issue Date</th> <th data-bbox="1106 1839 1398 1962">Loan Amount In Rupees</th> </tr> </thead> <tbody> <tr> <td data-bbox="821 1962 1106 2020">26.05.2014</td> <td data-bbox="1106 1962 1398 2020">2,21,00,000/-</td> </tr> </tbody> </table>	Issue Date	Loan Amount In Rupees	26.05.2014	2,21,00,000/-
Issue Date	Loan Amount In Rupees					
26.05.2014	2,21,00,000/-					

Handwritten initials/signature

27.05.2014	1,60,37,415/-
28.05.2014	2,26,80,078/-
29.05.2014	3,03,89,585/-
03.06.2014	1,97,77,255/-
12.06.2014	20,46,614/-
13.06.2014	27,98,922/-
18.06.2014	3,22,199/-
18.06.2014	2,93,371/-
19.06.2014	18,04,515/-
19.06.2014	7,71,968/-
15.07.2014	3,12,935/-
17.07.2014	1,47,012/-
TOTAL	11,94,81,869/-

**TERM LOAN-II**

**B. Amount sanctioned**

Rs. 17,73,00,000/-

(Rupees Seventeen Crores and Seventy Three Lacs only) vide Sanction letter no. GRG/ADV/GPK/2014-15/01 dated 05.04.2014. Thereafter, tentative date of commencement of commercial operations (DCCO) was extended/revised to November, 2015 and Term Loan-II was reviewed/sanctioned with reduced limit of Rs. 17,13,20,000/- repayable with

revised schedule of instalments vide sanction letter No. GRG/ADV/VV/2015-16/658 dated 30.11.2015. On the date of review/sanction the then existing overdue position in Term Loan-II was to be cleared and closed, however the Corporate Debtor failed to clear/close the overdue in the Term Loan-II a/c till date.

**Dates of Disbursement-**

Issue Date	Loan Amount In Rupees
06.06.2014	4,80,29,485/-
13.06.2014	3,85,15,922/-
19.06.2014	48,70,806/-
19.06.2014	17,79,169/-
24.06.2014	64,189/-
26.06.2014	49,00,000/-
02.07.2014	36,98,500/-
11.07.2014	11,28,334/-
19.07.2014	3,06,154/-
21.07.2014	1,40,97,690/-
22.07.2014	3,05,410/-
30.07.2014	10,46,223/-
02.08.2014	3,27,335/-
06.08.2014	8,43,032/-
08.08.2014	15,75,000/-
19.08.2014	26,44,911/-
22.08.2014	6,23,419/-

	23.08.2014	7,94,902/-
	26.08.2014	6,86,940/-
	29.08.2014	2,80,000/-
	19.12.2014	4,81,00,000/-
	<b>TOTAL</b>	<b>17,46,17,421/-</b>
	<p style="text-align: center;"><b><u>WORKING CAPITAL FACILITIES</u></b></p> <p><b>A. Amount sanctioned</b></p> <p>Rs. 3,50,00,000/-</p> <p>(Rupees Three Crores and Fifty Lacs only) vide Sanction letter no. GRG/ADV/GPK/2014-15/01 dated 05.04.2014. Thereafter, tentative date of commencement of commercial operations (DCCO) was extended/revised to November, 2015 and Working Capital facilities were reviewed/sanctioned with same limit of Rs. 3,50,00,000/- (Rupees Three Crores and Fifty Lacs only) vide Sanction letter no. GRG/ADV/VV/2015-16/658 dated 30.11.2016.</p> <p><b>Date of Disbursement-</b></p> <p>19.03.2015 and thereafter for working capital requirements.</p>	





The aforesaid details would show that the loan facilities were extended to the Corporate Debtor to the extent shown in the aforesaid tables as stated in the petition itself.

6. In column 2 of part IV the amount claimed to be in default and the date on which the default had occurred, have been detailed. According to the averments made by the Financial Creditor-Bank of India the aforesaid facilities availed by the Corporate Debtor are overdue and total amount in default as on 16.04.2018 is Rs. 44,25,47,206.83 (Rupees Forty Four Crores Twenty Five Lacs Forty Seven Thousand Two Hundred Six and Eighty Three Paise Only) together with further interest thereon.

7. As per the averments of the 'Financial Creditor', the account of the Corporate Debtor was declared as Non-Performing Asset (NPA) on 31.03.2016 in its books in accordance with the guidelines of Reserve Bank of India.

8. The details of the securities held by, or created for the benefit of 'financial creditor'- Bank of India which fulfils the requirements of Section 77 of Companies Act, 2013 have been given in Part V of the application.

9. A record of default is available with the Central Repository of Information on Large Credits (CRILC) as per its asset classification





report of the Corporate Debtor (at pgs. 159-160) as well as with Credit Information Bureau (India) Limited (CIBIL) as per its commercial credit information report of the Corporate Debtor based on report dated 27.03.2018 (at pgs. 532-541). Likewise, Entries in Bankers Book in accordance with the Bankers Books Evidence Act, 1891 have also been placed on record (at pgs. 542-578).

10. The Financial Creditor then placed on record a list of all the financial facilities granted by the Financial Creditor to the Corporate Debtor along with the copies of the said Financial Contracts.

11. The 'Financial Creditor' has also attached a list of other documents to the application to prove the financial debt, the total amount due and the date of default. Those documents are as under:-

- 1) A copy of letter dated 12.03.2015 addressed to the Financial Creditor by the Corporate Debtor requesting to release the payments for purchase of raw materials.
- 2) A copy of letter dated 05.09.2015 addressed to the Financial Creditor by the Corporate Debtor

requesting to reschedule payment of Term Loans in tune with the revised Date of Commencement of Commercial Operations.

- 3) A copy of letter dated 10.03.2016 addressed to the Corporate Debtor by the Financial Creditor to clear the overdue position in the accounts.
- 4) A copy of letter dated 22.04.2016 addressed to the Financial Creditor by the Corporate Debtor requesting to further restructuring the loan accounts.
- 5) A copy of E-mail dated 07.06.2016 addressed to the Corporate Debtor by the Financial Creditor advising that account classified as NPA since 31.03.2016.

That the Corporate Debtor availed and utilized the credit facilities from time to time but were not being operated in accordance with the terms and conditions of the sanction. The Corporate Debtor failed to maintain financial discipline and credit facilities went out of order. That said credit facilities were classified

as NPA with effect from 31.03.2016 in accordance with RBI guidelines.

True copies of correspondence exchanged between the Financial Creditor and the Corporate Debtor are annexed herewith as **'Annexure-49 Colly'**.

Notice dated 21.04.2016 under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 was issued by the Financial Creditor to the Corporate Debtor to pay entire dues together with interest thereon within 60 days.

True copy of notice dated 21.04.2016 is annexed herewith as **'Annexure-50'**.

Notice dated 09.02.2018 regarding initiating the process under the Insolvency and Bankruptcy Code, 2016 was issued by the Financial Creditor to the Corporate Debtor to pay entire dues together with interest thereon.

True copy of notice dated 09.02.2018 is annexed herewith as **'Annexure-51'**.

12. After service of notice when the matter came up for consideration on 09.05.2018 learned counsel for the respondent sought time to file reply. We granted ten days' time for filing reply and ordered listing of the matter on 30.05.2018. However, again time was sought on 30.05.2018 but no reply was filed. In the interest of justice we had granted further time on 03.07.2018. When the reply was not filed despite granting two opportunities, right to file the reply was closed and the matter was posted for arguments on 11.07.2018. On 11.07.2018 a different counsel appeared and sought time to file his vakalatnama and further time was granted to file the reply. The matter was posted for 12.07.2018. Time was again given for filing reply but the Corporate Debtor did not choose to file reply. Thereafter we further granted a week's time for filing reply subject to payment of Rs. 1,00,000/- as cost and ordered listing of the matter on 06.09.2018 with a further observation that if no reply is filed within stipulated period and the cost if not paid within the time, the right to file reply was to be forfeited.

13. Thereafter on 06.09.2018 neither the cost was paid nor any reply was filed by the Corporate Debtor and instead of obeying a direction issued on 02.08.2018 by us, the Corporate Debtor filed an application seeking extension of time for filing of reply.





Accordingly, the application was dismissed by us with an observation that it is a fit case where the right to file reply warrants to be forfeited. The aforesaid order is set out below:-

*‘This application has been filed seeking extension of time for filing of reply. In the detailed order dated 02.08.2018, we have listed the various dates and time granted to file reply repeatedly. At one stage even the right of filing reply was forfeited. Despite that time was granted and different counsels at different dates have been appearing. Even today neither the cost has been paid nor any reply has been filed. It is a fit case where the right to file reply warrants to be forfeited. Accordingly, we dismiss the application seeking extension of time for filing reply as the respondents are resorting to delaying tactics, such a course is impermissible in law especially in proceedings under the Insolvency and Bankruptcy Code, 2016.*

*In view of the above, the right to file reply is forfeited, the matter be listed for arguments on 10.09.2018.”*

14. Now we deal with the submissions made on behalf of the applicant-Financial Creditor.



15. Mr. Ranjit Singh Randhawa, learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process by a Financial Creditor stand fulfilled. In that regard, he has submitted that the application is complete as per the requirements of Section 7 (2) of the Code and other conditions prescribed by Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. He has further submitted that the details of default along with its dates have been clearly stated in part IV along with all the minute details. There is overwhelming evidence to prove default and name of the resolution professional has also been clearly specified.

16. Learned counsel for the Corporate Debtor was given opportunity to address argument on the basis of material on record. However, he made an attempt to address arguments on the basis of some material which is not on record but has been kept in his brief. Such a course is not available in view of the order dated 06.09.2018 passed on the application forfeiting its right to file any reply. He could not successfully dispute the amount disbursed, default and the date when the default occurred.

17. After hearing learned counsel we may first examine the provisions of Section 7 (2) and Section 7 (5) of IBC which read as under:-

**“Initiation of corporate insolvency resolution process by financial creditor.**

7 (1) .....

7 (2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

7 (3) .....

7 (4) .....

7 (5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) .....

18. A conjoint reading of the aforesaid provision would show that form and manner of the application has to be the one as prescribed. It is evident from the record that the application has been filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code. We are satisfied that a default amounting to lacs of rupees has occurred within the meaning of Section 4 of the Code and the application under sub section 2 of Section 7 is complete; and no disciplinary proceedings are pending against the proposed Interim Resolution Professional. Thus, the application warrant admission. Thus, the petition is complete from all angles.

19. As a sequel to the above discussion, this petition is admitted and Mr. Sethurathnam Ravi, 505-A, Fifth Floor, Rectangle 1, District Centre, Saket, New Delhi-110017, email id - sravi.fca@gmail.com, Registration No. IBBI/IPA-001/IP-P00372/2017-18/10629 is appointed as an Interim Resolution Professional.

20. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this





application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

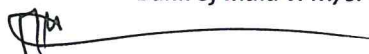
21. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus the following prohibitions are imposed which must be followed by all and sundry:

- “(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.”

22. It is made clear that the provisions of moratorium shall not apply to (a) such transactions which might be notified by the Central Government in consultation with any financial regulator; (b) a surety in a contract of guarantor to a Corporate Debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

23. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *interalia*, by Sections 15, 17, 18, 19, 20 & 21 of the Code. He must follow best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear



that all the personnel connected with the Corporate Debtor, erstwhile directors, 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 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/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/Resolution Professional shall be under a 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.

24. Before parting we wish to observe about the approach adopted by the Corporate Debtor-Respondent. In that regard it would be appropriate to refer to the orders granting time to the Corporate Debtor-Respondent for filing reply. The aforesaid position would become evident from a series of orders dated



09.05.2018, 30.05.2018, 03.07.2018, 11.07.2018, 12.07.2018 & 02.08.2018 which are set out below:-

Order dated 09.05.2018

“Affidavit of service is taken on record.

Learned counsel for respondent requests for some time to file reply. Let reply be filed within 10 days with a copy in advance to the applicant.

Rejoinder, if any, be filed within 5 days thereafter with a copy in advance to the counsel opposite.

List for arguments on 30<sup>th</sup> May, 2018.

Order dated 30.05.2018

Learned counsel for the respondent has requested for another opportunity to file the reply. Let the reply be filed within a week with a copy in advance to counsel opposite.

Rejoinder, if any, be filed within five days thereafter with a copy in advance to the counsel opposite.

We make it clear to respondent that the time utilise to filing of reply should not be used for any extraneous purposes like shifting of assets from the factory of the corporate debtor. If any, such acts of misfeasance on the part of the corporate debtor are reported by the applicant the same shall be taken into consideration for initiating coercive proceedings.

List 03.07.2018.





Order dated 03.07.2018

Learned counsel for the applicant is present. None appears for the respondent. In spite of two opportunities granted to file reply to the respondent, nobody appears on behalf of the respondent and the reply is also not filed. **Hence, right to file the reply is closed and the matter is fixed for final arguments on 11<sup>th</sup> July, 2018.**

Order dated 11.07.2018

On the request made by the counsel for respondent (who is yet to file his Vakalatnama) hearing is deferred to 12.7.2018.

Order dated 12.07.2018

The affidavit filed by the learned counsel is taken on record. It has been stated that on account of death of his grandfather, he could not appear on the last appearing and there is delay in filing the reply. **In view of the affidavit filed we recall the order dated 03.07.2018 which has closed the right of the respondent to file reply. We grant one last opportunity to file reply within ten days with a copy in advance to the counsel for the petitioner.**

It has also been stated that talks for amicable settlement are in progress. If any, settlement is reached between the parties then the same be placed on record on or before the adjourned date. **However the pendency of talks for settlement shall not be a ruse for non-filing of reply.**

Rejoinder, if any, be filed within five days thereafter with a copy in advance to the counsel opposite.

List for further consideration on 02.08.2018.

Order dated 02.08.2018



The proceedings in this matter were initiated way back on 23.04.2018. On 09.05.2018, Mr. Ayush Kapoor had appeared for the respondent and was granted ten days time to file reply. However, again time was sought on 30.05.2018 as no reply was filed. In the interest of justice we had granted further time on 03.07.2018. When the reply was not filed despite the granting two opportunities, right to file the reply was closed and the matter was posted for arguments on 11.07.2018. On 11.07.2018 a different counsel appeared and sought time to file his vakalatnama and some time was granted to file the same and the matter was posted for 12.07.2018. Thereafter, time was again given for filing reply but no reply is filed even today.

2. Mr. Ayush Sahni has appeared who is yet to file his vakalatnama and reply is not in sight. He has requested for a short adjournment to file reply.

3. We accept the request and grant a week's time to file reply with a copy in advance to the counsel opposite. However, the same shall be subject to payment of Rs. 1, 00,000/- as cost. If no reply is filed within stipulated period and the cost is not paid within the time, the right to file reply shall be struck off.

4. In case reply is filed then rejoinder be filed within a week thereafter with a copy in advance to the counsel opposite.

5. List for arguments on 06.09.2018.”

The aforesaid details concerning the conduct of the Corporate Debtor-Respondent would reveal that a design effort has been made to impede the insolvency proceedings by repeated change of



counsels. The leniency shown by the Tribunal has been misused to the hilt. It was therefore, in these circumstances the order dated 06.09.2018 forfeiting the right of the Corporate Debtor-Respondent to file reply was again passed. We are constrained to observe that in some of the cases the Corporate Debtor-Respondent deliberately delayed the proceeding so as to avoid the initiation of Corporate Insolvency Resolution Process. The Interim Resolution Professional must take care of all the transactions for the reasons mentioned in the order dated 30.05.2018 (supra). This order was passed on the request of the Financial Creditor who have anticipated some mischief. This case is a classic example of such a conduct. We say no more on this issue.

25. 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, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.

Sd/-

**(M.M. KUMAR)**  
**PRESIDENT**

Sd/-

**(S.K. MOHAPATRA)**  
**MEMBER (TECHNICAL)**

**27.09.2018**  
Vineet