

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

**(IB)-532(PB)/2017**

In the matter of:

Punjab National Bank

.....Applicant

Vs

Haridwar Iron & Ispat Rolling Limited

.....Respondent

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

**Judgment delivered on 22.05.2018**

**Coram:**

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

**S. K. MOHAPATRA  
HON'BLE MEMBER (TECHNICAL)**

For the Financial Creditor: Mr. Mr. Binder Das, Advocate  
For the Respondent: None



**ORDER**

**S. K. Mohapatra, Member**

1. Punjab National Bank, claiming as the financial creditor, has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of M/s Haridwar Iron & Ispat Rolling Limited, referred to as the corporate debtor.
  
2. The Respondent Company M/s Haridwar Iron & Ispat Rolling Limited (CIN No. U27209 DL 2009 PLC 190691) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 28.05.2009 having its registered office at 108-109, Pratap Bhawan, 5, Bahadur Shah Zafar Marg, New delhi-110002. Since the registered office of the respondent corporate debtor is in New



Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. It is appropriate to mention that the applicant is a body corporate constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 incorporated on 31.03.1970. The Head Office of the applicant company is at 7, Bhikaji Cama Place, New Delhi and one of the branches, amongst others, at Civil Lines, Roorkee, Utrakhhand.
4. Mr. Mohan Chandra Bhatt, Assistant General Manager of the applicant has relied upon the General Power of Attorney dated 21.07.1988 of the applicant bank wherein he was appointed as true and lawful attorney of the applicant bank to do and transact the matters mentioned therein for and on behalf of the applicant bank. Assistant General Manager of the applicant bank delegated with the power can claim to



be the 'Authorised Representative' for the purpose of filing any application under Section 9 of the Code. The General Power of Attorney is clearly an order of authorisation enabling Mr. Mohan Chandra Bhatt, Assistant General Manager of the applicant bank to sign and file the present application for initiation of corporate insolvency resolution process in terms of the provisions of the Code.

5. The applicant has proposed the name of Shri Sanjay Gupta, for appointment as interim resolution professional having registration number IBBI/IPA-001/ IP-00117 / 2017-18/10252 resident of B-143-144, L.G.F. Lajpat Nagar-I, New Delhi-110024, email [sanjay.gupta@aaainsolvency.com](mailto:sanjay.gupta@aaainsolvency.com). A communication dated 26.10.2017 in Form 2 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 elsewhere. In addition, further necessary disclosures



have been made by Mr. Sanjay Gupta as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

6. The details of financial debt have been given in in Part-IV of the application. It is stated that initially applicant bank had sanctioned term loan of Rs. 35 crores and working capital limit of Rs. 30 crores to respondent company on 05.03.2010. Subsequently the loan was restructured vide sanction letter dated 27.08.2011 as follows:

Term Loan	Rs. 35 crores
Term Loan	Rs. 25 crores
ILC/FLC	Rs. 5 crores
WCTL	Rs. 1.18 crores
FITL	<u>Rs. 2.30 crores</u>
<b>Total</b>	<b><u>Rs. 68.48 crores</u></b>

7. Pursuant to the loan facility, various documents were executed by the respondent company and guarantors and the applicant bank disbursed the amount to the respondent company from time to time. However, the respondent failed to meet its repayment obligations towards the applicant bank and has committed defaults. As the respondent failed to maintain financial discipline and committed default in repayment of the loan, the credit facilities were declared as Non-Performing Asset on 31.12.2011.
8. Thereafter applicant bank issued demand notice dated 19.01.2012 under Section 13(2) of SARFAESI Act, 2002 and proceeded to take actual and physical possession of the secured assets on 28.01.2015 under the provisions of SARFAESI Act, 2002. Subsequently the directors of the respondent company alongwith some persons entered the premises of the said secured asset and forced the security guards to vacate the factory premises. In this regard, FIR has been lodged on the complaint of applicant bank. It is stated in the application that the



respondent company is still in possession of the said secured assets.

9. It is further averted that the respondent has admitted its indebtedness towards the applicant to the extent of Rs. 55,43,50,115.00 (as on 13.04.2012) vide balance and security confirmation letter dated 13.04.2012. It is stated that as on 30.09.2017 the outstanding aggregate amount due with interest comes to Rs. 104,74,22,507.14 as per details given in the application.

10. The applicant has placed on record the following documents in support of the debt sanctioned to the Respondent company and in support of the claimed financial debt:

- Sanction letter dated 04.03.2010.
- copy of term loan agreements.
- copy of Hypothecation agreement of current assets.
- copy of Hypothecation agreement of movable assets (second charge).

- copy of Hypothecation agreement of goods and book debts.
- copy of Hypothecation agreement of block assets (second charge).
- Copy of various guarantee agreements.
- Copy of supplementary Agreement dated 28.09.2011 in respect of re-schedulement of loans.
- Copy of FITL and WCTL agreements.
- Copy of various agreements of guarantee executed in favour of applicant bank in respect of re-schedulement of loans.
- Copy of Balance and Security Confirmation.
- Copy of letter dated 07.04.2010 executed by Haridwar Iron & Ispat Rolling Mills Pvt. Ltd. evidencing deposit of title deeds.



- Copy of letter dated 03.05.2011 executed by Haridwar Iron & Ispat Rolling Mills Pvt. Ltd. evidencing deposit of title deeds.
- Copy of balance sheets for financial year ending on 31.03.2016.
- Copy of possession notice dated 28.01.2015.
- Copy of the FIR.
- Copy of the letter dated 16.03.2016 alongwith Minutes of Meeting of 'Grievance Redressal Committee' to decide wilful defaulters held on 17.01.2014.
- Statement of Account.
- Memorandum of unapplied interest.
- Certificate of NPA charges.
- Copy of FORM 8 regarding creation of charge and Copy of FORM 8 showing modification of charge

- Certificate under Bankers Book Evidence Act

1891, for the period from 05.03.2010 to till date.

11. The applicant bank has filed the relevant statement of accounts duly certified in accordance with Banker Books Evidence Act, 1891 as per requirement of Form 1 part V column 7 of the application. The certified copy of statement of account kept during the course of banking business basing on which the claim has been raised can be termed as sufficient evidence of financial debt. It is seen from the statement of account and loan documents that the loan was sanctioned, loan agreements were executed, charge and securities were created and balance confirmation was signed. Respondent company utilised and enjoyed the loan facility and due to non-payment and non-refund of the outstanding dues, the account of the corporate debtor was declared NPA. The applicant bank has also placed balance sheet of the corporate debtor inter alia to show that financial debt is outstanding from the corporate debtor in favour of the applicant bank.



12. Applicant has also filed additional affidavit on 4 January 2018 enclosing the judgement of Debts Recovery Tribunal dated 8<sup>th</sup> December 2016, which shows that recovery certificate for an amount of ₹ 89,29,80,899/- with pendent elite and future interest at the rate of 12% per annum from the date of filing of the Original Application that is from 16 July 2014, has been issued in favour of the applicant bank and against the respondent corporate debtor.

13. It is thus seen that the applicant 'financial creditor' has placed on record voluminous and overwhelming evidence in support of the claim as well as to prove the default.

14. Mr. Shah Nawaz Rana, Director of the Respondent Corporate Debtor, duly authorised to sign on behalf of the respondent company vide Board Resolution dated 10.01.2018, has filed an affidavit dated 28.02.2018 in which following submission have been made:

*“8. Under the circumstances narrated above, it is categorically denied that the promoters are will full defaulters and further the financial creditor is put to strict proof of the same. It is respectfully submitted that the corporate debtor do not oppose the Corporate Insolvency Resolution Process as has be sought in this application, which may be directed by this Hon’ble Tribunal in the best interest of the Company.”*

15. In light of the aforesaid submission made by authorised signatory of respondent corporate debtor, it is seen that the respondent company has no objection against the present application filed by the financial creditor for initiation of Corporate Insolvency Resolution Process against the respondent company.

16. In an application under section 7 of the Code, it is no matter that the debt is disputed so long as the debt is due and payable. The Tribunal in such proceeding is not an adjudicating authority to ascertain the quantum of amount of default or to



pass a decree as to how much is actually due to the applicant financial creditor. The Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application.

17. In support of the claim, the applicant has placed on record the balance sheet of the respondent company, certified copy of the relevant bank statement of account, balance confirmation later, decree and recovery certificate issued by competent Tribunal in favour of the applicant bank. The financial creditor has placed on record overwhelming evidence to prove the default. The material on record clearly goes to show that respondent had availed the loan facilities and has committed default in repayment of the loan amount. In an application under Section 7 of the Code when there has been occurrence of existence of default which is much more than rupees 1 lakh as provided under Section 4 of the Code, the application is clearly maintainable and deserves to be admitted.



18. Under sub-section 5 (a) of Section 7 of the code, the application filed by the applicant financial creditor has to be admitted on satisfaction that:

1. *Default has occurred.*

2. *Application is complete, and*

3. *No disciplinary proceeding against the proposed IRP is pending*

19. Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited V. Kirusa Software Private Limited* reported in AIR 2017 SC 4532 at Para 19 has observed that:

*“Once the adjudicating authority/Tribunal is satisfied as to the existence of the default and has ensured that the application is complete and no disciplinary proceedings are pending against the proposed resolution professional, it shall admit the application. **The adjudicating authority/Tribunal is***



***not required to look into any other criteria for admission of the application.”*** (Emphasis given)

20. In the case in hand the respondent company has committed default in repayment of the outstanding amount. In reply respondent company has not raised objection against admission of the present application filed by the financial creditor. That apart the present application of the financial creditor is complete and there is no disciplinary proceeding pending against the proposed IRP. We are satisfied that the present application is complete and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been a default in payment of the financial debt.

21. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

22. Shri Sanjay Gupta, having registration number IBBI/IPA-001/ IP-00117 / 2017-18/10252 resident of B-143-144, L.G.F. Lajpat Nagar-I, New Delhi-



110024, email sanjay.gupta@aaainsolvency.com is appointed as an Interim Resolution Professional.

23. In pursuance of Section 13 (2) of the Code we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Regulations) with regard to admission of this application under Section 7 of the Code.

24. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d). Thus, the following prohibitions are imposed:

*“(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;*

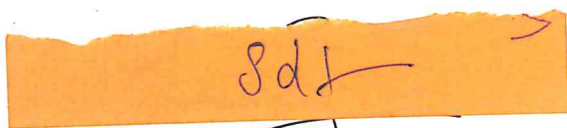
*(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”*

25. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period.

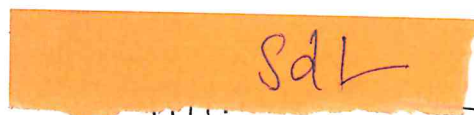
26. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its 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 day to day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim 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 shall be under 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, Rules and Regulations.

27. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest possible but not later than seven days from today.



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



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