

In the National Company Law Tribunal,
Kolkata Bench, Kolkata ,

CP No.421/KB/2017

In the matter of:

Punjab National Bank

.....Petitioner/Financial Creditor

-Versus-

Mintri Tea Co. Ltd.

..... Respondent/Corporate Debtor

Order Delivered on 20/9/17 September 2017

Coram:

Vijai Pratap Singh, Member (J)

Jinan K.R., Member (J)

For the Petitioners : Mr Ranjit Choudhury, Advocate

For the Respondents : 1. Mr. Shankar Acharya Mazumdar, Advocate
2. Mr. Subrata De, Advocate

ORDER

Per Vijai Pratap Singh, Member (J)

The petitioner, Financial Creditor namely, Punjab National Bank has moved an application/petition under Section 7, read with Rule 4 of the Insolvency and Bankruptcy Code, 2016, (Application to Adjudicating Authority Rules)2016 among other things, praying for initiation of Insolvency Resolution Process against the Corporate Debtor / Respondent Company. It has been claimed that the Respondent Company indebted to the Petitioner Company for an amount of INR 10,37,69,840.06/ (Rupees Ten Crores Thirty-Seven Lakh Sixty-Nine Thousand Eight Hundred Forty) as on May 31st,2017 inclusive of interest as per relevant Financial Contract till the date of payment. The of Financial debt amount claimed

to be in default has been enumerated in Annexure H, H1, H2, H3 respectively. The Petitioner has issued a demand notice for Rs.76264905.80 as on 7.02.17 and annexed the notice vide **Annexure I. According** to the petitioner, the debt due as on 31.05.2017 is Rs.10, 37,69,840 and filed this petition claiming the above-said amount as the amount in default due as on 31.05.2017. A power of attorney authorizing the petitioner to file a petition of this nature is also annexed to the petition.

2. The petitioner also produced Loan Agreement for Rs.10, 00, 71,000/- marked as Annexure- 'D', Sanction Letter of Corporate Creditor marked as Annexure- 'A' & 'B' , Hypothecation of Various fixed and Current Assets marked as Annexure-'D series', Guarantee Agreement marked as Annexure-'D' and demand notice marked as Annexure-'I' for supporting the case of the petitioner.

3. The Respondent/Corporate Debtor entered an appearance and filed an affidavit in opposition contending that this petition is not maintainable since there is inconsistency in the total outstanding debt due to the petitioner as per its demand dated 7.02.2017 and as per petitioners claim in the petition in hand. Respondent also disputes the rate of interest claimed by the petitioner in the petition. The respondent further contends that petitioner already initiated proceedings under the SARFAESI Act and therefore simultaneous proceedings against the respondent before this Tribunal is also not maintainable. According to the respondent it availed a loan of Rs.8.5 Crores and paid Rs.18 Crores, and therefore respondent is not a willful defaulter. Respondent also contends that the petitioner not cared to implement the re-structure proposal allowed by the Hon'ble High Court of Calcutta. Upon the said contentions respondent prays for dismissal of the petition.

4. We have Heard both sides. Upon perusal of records and upon hearing the arguments on both sides we find no merit in the objections raised by the

respondent. The contention that there is inconsistency in the amount claimed as per demand notice and the amount claimed in the petition is devoid of any merit. The respondent has no case that it discharged the debt evidently due to the petitioner as per the records available in the case record. In the rejoinder filed by the petitioner the above-said disparity is explained in detail. It shows that the amount claimed as on 31.05.2017 comes to Rs.10,37,69,840.06P. It is significant to note here that issuance of demand notice as required under section 8 of I&B Code,2016 in a petition filed U/s.7 of the Code is not at all necessary. The demand notice disputed in the case in hand can be ignored. This is a petition filed under section 7 of I&B Code,2016. That being so when the petitioner succeeds to prove the existence of default and compliance of S.7 (3) (a) to (c) a petition of this nature is liable to be admitted. The contention of the respondent that initiating proceedings before DRT by the petitioner is also not sustainable under Law. **In Indus Finance Ltd v. Quantum Ltd [2017} 139 CLA 236** the Hon'ble NCLT, Mumbai Bench has held ***"As a result, it can be safely concluded that the provisions of Code are not in conflict with the provisions of SRFAESI Act,2002"***. The very same principle applies to the case in hand. Ld. Counsel for the petitioner submits that re-structure proposal was rejected by the petitioner and the Hon'ble High court dismissed the writ petition. Given the above-said discussion, we find no merits in the objections raised by the respondent and the petition deserve admission.

5. The petitioner has proposed the name of Mr Kamlesh Kumar Singhania as an Interim Resolution Professional.

6. The petitioner has also certified that Mr Kamlesh Kumar Singhania is fully qualified and consented to act as Interim Resolution Professional. The proposed IRP Mr Kamlesh Kumar Singhania has given his consent letter in form no. 2 of

Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016.

ORDER

It is thus clear that the application filed by the Petitioner, i.e. Punjab National Bank under section 7 of the Insolvency & Bankruptcy Code, 2016 against the Corporate Debtor is complete in all respects. The existence of default stands proved from the records above-referred. So also, declaration filed along with supplementary affidavit proves consent of the Interim Resolution Professional, Shri Kamelash Kumar Singhania. Therefore, the petition for initiation of Corporate Insolvency Process under section 7 of the Insolvency & Bankruptcy Code is admitted upon the following direction.

Shri Kamelash Kumar Singhania (Reg.No. IBBI/IPA-OO2/IP-N00023/2016-17/10050) is appointed as Interim Resolution Professional.

Moratorium under section 14 of Insolvency & Bankruptcy Code shall apply.

(a) 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;

(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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

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

(2) 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.

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


(4) The order of moratorium shall affect the date of such order till the completion of the corporate insolvency resolution process.

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order."

Necessary public announcement as per section 15 of the IBC, 2016 may be made. Let the copy of the order be sent to the Applicant / Financial Creditor as well as Corporate Debtor and I.R.P.

List it. 9/10/17 For filing of the progress report.


Jinan K.R.
Member (J)


Vijai Pratap Singh,
Member (J)

Signed on 20/9/17.....September 2017