

**In the National Company Law Tribunal,  
“Chandigarh Bench, Chandigarh”  
(Exercising the powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No.128/Chd/Hry/2017**

**Under Section 7 of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 4  
of the Insolvency and Bankruptcy  
(Application to Adjudicating Authority)  
Rules, 2016.**

**In the matter of:**

Bank of India,  
Mid Corporate Branch,  
Near Hotel Gold, G.T.Road,  
Panipat – 132103.

....Petitioner-Financial Creditor.

**VERSUS**

OSIL Exports Limited,  
Having its Registered Office at  
80<sup>th</sup> Mile Stones, G.T.Road,  
Jattipur, Panipat – 132103 (Haryana)

....Respondent/Corporate Debtor.

**Order delivered on 31.01.2018.**

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL).**

For the Petitioner/Financial

1) Mr.G.S.Sarin, Practising Company  
Secretary.

2) Mr.P.D.Sharma, Practising  
Company Secretary.

For the Respondent/Corporate  
Debtor:

Mr.Ishaan Bhardwaj, Advocate.  
for Mr.Rajiv Agnihotri, Advocate.

**Judgment (Oral)**

Learned counsel for the respondent has filed the copy of resolution of the Board of Directors of the respondent-corporate debtor authorising him to appear in this case, which he received by email. The same be taken on record. However, reply/objection to the petition has not been filed despite opportunity granted for the third time and it was made clear that no request for further adjournment shall be entertained. I now proceed to dispose of the matter.

2. This petition has been filed by the Bank of India, a financial creditor, with its Head Office, Oriental Building, Espanade Road, Mumbai through its Branch at Panipat. The petitioner Bank was incorporated on 07.09.1906 and has been allotted CIN number U99999MH1906PLC000243. The petition has been filed by the Bank through Mr.Ashwani Kumar, Assistant General Manager, Bank of India, SCO 181-182, 2<sup>nd</sup> Floor, Sector 17, Main Branch, Chandigarh, under whose jurisdiction, the Panipat Branch of the petitioner Bank is situated. Ashwani Kumar is authorised to file the application on the basis of the power of attorney dated 05.05.2009, copy of which is at Annexure A-1. The General Manager of the petitioner Bank has approved the initiation of insolvency resolution process against the respondent-corporate debtor vide letter dated 28.06.2017 as at page 52A of the paper book. With regard to the appointment of resolution professional, it was directed that the Zone should obtain quotations from three Resolution Professionals and put up the same in Joint Lenders Forum and upon confirmation from JLF put up at the Head Office.

3. In the meeting of the Joint Lenders Forum held on 24.07.2017, copy of which is at Annexure G5, it was resolved to appoint AAA Insolvency Professionals LLP, New Delhi as Insolvency Resolution Professional. The written communication dated 08.11.2017 in Form No.2 submitted along with the application is at page 30 of the paper book, furnished by Kanwal Goyal with registration number IBBI/IPA-002/IP-N00007/2016-17/10007. Kanwal Goyal is from AAA Insolvency Resolution Professionals LLP, New Delhi. The proposed Insolvency Resolution Professional has given all the disclosures including the disclosure that there are no disciplinary proceedings pending against him and that he is currently serving as a resolution professional in only one proceedings. With regard to clause (vi), Kanwal Goyal has given further declaration dated 08.11.2017 and furnished his affidavit dated 08.11.2017 at page 34 of the petition in support of the contents of various paragraphs of the written communication in Form No.2. Having heard the learned counsel for the parties, the written communication in Form No.2 is found in order.

4. This petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred here-in-after as the 'Code') read with Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity the 'Rules') for initiating the insolvency resolution process against the respondent-corporate debtor. The application for the purpose has been filed in Form No.1 prescribed in Rule 4(1) of the Rules.

5. The respondent-corporate debtor was incorporated on 01.04.2008 as a company with the Registrar of Companies, Delhi. The

certificate issued by the Registrar of Companies, Delhi with regard to change the original name of the company to the present name issued on 13.06.2014 is at Annexure A-2. The registered office of the company is situated in District Panipat in the State of Haryana and, therefore, the matter falls within the territorial jurisdiction of this Tribunal. The corporate-debtor has the authorised capital of ₹25,00,00,000/- and the paid-up capital ₹13,55,75,880/- as per the master data Annexure A-3.

6. It is further stated that the respondent-corporate debtor is availing the loan/credit facilities from the Banks through a consortium arrangement with Bank of India, State Bank of India, State Bank of Bikaner and Jaipur, State Bank of Patiala and Oriental Bank of Commerce since the year 1996. The loan facility granted to the respondent-corporate debtor was restructured. It is stated that the respondent was granted working capital term loan of ₹13.60 crores which was disbursed on 27.03.2010; working capital term loan 2 of ₹7.52 crores also disbursed on 27.03.2010; term loan 1 of ₹19.88 crores and term loan 2 of ₹2.63 crores; term loan 3 of ₹4.00 crores; term loan 4 of ₹3.00 crores on different dates during the years 2010 and 2012, the details of which are given in Annexure B-1, which contains the list of loans sanctioned and disbursed. Apart from that the respondent-corporate debtor was granted CC Hypothecation of ₹26.25 crores on 28.02.2005; Export Packing Credit limit of ₹30.75 crores on 10.03.2001 and Corporate Loan of ₹47.00 crores on 03.03.2015. In this way, the total sanction granted to the respondent-corporate debtor towards the loan facilities is to the tune of ₹154.63 crores out of which the loan amount of ₹132.63 crores was disbursed. The sanction letter in respect of

the loans sanctioned on 27.03.2010 are at Annexure B-2 (Colly). Loans documents executed during the year 2011-12 are at Annexure B-3 (Colly) and at Annexure B-4 (Colly) are the limits granted during the financial year 2013-14. During the financial year 2014-15, the corporate loan sanction memo relied upon is at Annexure B-5, out of which 25.00 crores are disbursed under different loan facilities from 03.03.2015 to 20.05.2015.

7. The petitioner Bank has also given the dates of default and the amount in default, the payment of instalments etc., which are given in the list at Annexure C-1 at page 127 of the paper book.

8. The account of the respondent-corporate debtor was declared NPA on 31.12.2015, when the total outstanding amount of default was ₹120.89 crores, as per the document Annexure C-1. The Bank also issued a notice under Section 13 (2) of the SARFAESI Act, 2002, which is at Annexure C-2 showing the total amount then outstanding as ₹120.89 crores.

9. The respondent-corporate debtor had also executed the Joint Deed of Hypothecation on 29.03.2010 in favour of the petitioner and the other lenders of the consortium for total amount of ₹86.63 crores, copy of which is at Annexure D-1.

10. The Joint Deed of Hypothecation was also executed by the respondent with the petitioner Bank and State Bank of India on 26.07.2011 with the total amount outstanding of ₹119.98 crores. The hypothecation deed is at Annexure D-4. Another Joint Deed of Hypothecation was executed on 21.05.2014 with Bank of India and the consortium of ₹120.14 crores, copy of which is at Annexure D-6. The corporate debtor is also said

to have created an equitable mortgage in respect of the immovable property by deposit of the title deeds on 28.02.2015 and copy of the said letter is at Annexure D-8. It also executed promissory note dated 21.02.2015 as at Annexure D-10 in favour of the Bank. The personal guarantees were also furnished by certain individuals by executing the guarantee deeds dated 21.02.2015 Annexure D-11 (Colly). The certificate of registration of the charge on assets of the corporate debtor obtained from the Registrar of Companies is dated 21.05.2014 for an amount of ₹120.14 crores, which is at Annexure D-13 and Annexure D-14 is the certificate of registration of charge dated 21.02.2015 for ₹136.02 crores.

11. The petitioner Bank has also relied upon various other documents of loan i.e. working capital consortium agreement dated 29.03.2010 Annexure E-1, joint term loan consortium agreement dated 26.07.2011 Annexure E-2, working capital consortium agreement dated 26.07.2011 Annexure E-3, working capital consortium agreement dated 21.05.2014 Annexure E-4 and credit facility agreement dated 21.02.2015 Annexure E-5.

12. With regard to the financial position of the corporate debtor, the petitioner Bank has also relied upon the copy of the CIBIL report dated 01.11.2017, which is at Annexure E-6. The petitioner Bank has also relied upon the copies of statements of account of the petitioner Bank maintained under the Bankers Books Evidence Act, 1891 in respect of all the accounts as at Annexure F-1 (Colly) with the Banker's Certificate issued in terms of Banker's Books Evidence Act, 1891 Annexure F-2.

13. The total amount outstanding against the corporate debtor as on 26.09.2017 as per the document Annexure C-1 is stated to be ₹1,088,782,458.

14. Notice of this petition was issued to the respondent-corporate debtor to show cause as to why this petition be not admitted. The notice was issued for 21.12.2017, but no reply/objection to point out any defect in the petition or with regard to the nomination of the insolvency resolution professional proposed as interim resolution professional has been pointed out. On the request made on behalf of the corporate debtor, the adjournment was granted for 16.01.2018 and then again for today and it was made clear that no request for further adjournment shall be entertained. There is no justification shown for seeking further adjournment.

15. I have heard the learned counsel for the parties and perused the record.

16. Section 7 (3) of the Code reads as under:-

*“The financial creditor shall, along with the application furnish-*

- (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;*
- (b) the name of the resolution professional proposed to act as an interim resolution professional; and*
- (c) any other information as may be specified by the Board.”*

The information utility has not started functioning. The corporate debtor, otherwise has led abundant evidence in the nature of the sanction letters,

various documents of loan agreement executed by the corporate debtor from time to time with regard to the disbursement of the loan and the same has not been disputed by filing any objection.

17. About the default, there is already the notice issued by the petitioner Bank declaring the account of the corporate debtor as NPA and notice under the SARFAESI Act, 2002 was also issued. This is further fortified from the copies of the statements of account of the respondent-corporate debtor being maintained by the petitioner Bank as at Annexure F-1 (Colly) in respect of various loan accounts. The statement of account of the corporate debtor under different facilities are from pages 466 to 565 and Annexure F-2 is the certificate issued by the Bank in terms of Section 2A(A) and 2A(B) of the Banker's Books Evidence Act, 1891. This certificate has been issued by Vishal Kumar Singh, presently posted as Assistant General Manager, Panipat Mid Corporate Branch, Panipat, Haryana, which disbursed the loan facilities to the corporate debtor. The name of the resolution professional has also been proposed and the communication furnished in Form No.2 is found in order.

18. Section 7 (5) of the Code reads as under:-

**“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) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary*



*proceeding is pending against the proposed resolution professional, it may, by order, reject such application.*

*Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.”*

19. From the evidence as discussed above and there being no opposition, it is clearly made out that the respondent-corporate debtor has committed the default and also that the application filed by the petitioner-financial creditor is complete in all respects.

20. In view of the above, the application deserves to be admitted. The application is, therefore, admitted and the moratorium is declared for prohibiting all the following in terms of sub-section (1) of Section 14 of the Code:

- (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.

21. It is further directed that the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall however not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

22. That the order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 as the case may be.

23. The matter be listed on 08.02.2018 for passing of the formal orders of appointment of Interim Resolution Professional. Copy of the order be communicated to both the parties.

Sd/-  
(Justice R.P.Nagrath)  
Member (Judicial)  
Adjudicating Authority

January 31, 2018.  
Ashwani