

**Before the National Company Law Tribunal,
Chandigarh Bench
Corporate Bhawan, Plot No.4B, Sector 27-B, Madhya Marg,
Chandigarh.**

No: NCLT/CHD/Reg/ 2071

Date: 26/9/18

CP (IB) No. 36/Chd/Pb/2018
Under Section 7 of Insolvency
and Bankruptcy Code, 2016.

In the matter of:
Allahabad bank

...Petitioner

Vs

M/s JVR Forgings Limited.

...Respondent

To

Allahabad Bank,
Asset Recovery Management Branch,
SCO 49-50, III Floor,
Bank Square, Sector 17 B,
Chandigarh-160017

Please find enclosed herewith a certified copy of order dated 12.09.18, for your information and necessary action.


Asstt. Registrar
for Registrar
NCLT, Chandigarh Bench

**IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority
under the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.36/Chd/Pb/2018

Under Section 7 of Insolvency and
Bankruptcy Code, 2016

In the matter of:

Allahabad Bank, having its head office at 2, Netaji Subhash Road, Kolkata and having its Asset Recovery Management Branch at SCO No. 49-50, IIIrd Floor, Bank Square, Sector 17-B, Chandigarh- 160017

...Petitioner-Financial Creditor

Versus

M/s JVR Forgings Limited, having its registered office at Industrial Area-C, Sua Road, Dhandari Kalan, Ludhiana- 141010, Punjab

...Respondent-Corporate Debtor

Judgment delivered on 12.09.2018.

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

For the Petitioner : Mr. Nakul Sharma, Advocate
For the Respondent : Mr. Tegjeet Singh, Advocate, for Mr. Atul Sharma, Advocate

Per: R.P.Nagrath, Member (Judicial):

JUDGMENT (ORAL)

Allahabad Bank, being the financial creditor has filed this petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code') for initiating Insolvency Resolution Process against the respondent-corporate debtor. The petitioner-bank is a



corporate body, constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, with Head Office at Kolkata and Asset Recovery Management Branch Office at Chandigarh.

2. The instant petition has been filed in Form-1, as prescribed under Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity the 'Rules'). The petition has been filed through Mr. Atul Kumar, Assistant General Manager of the Asset Recovery Management, Branch, Chandigarh, in whose favour the bank has executed Power of Attorney (Annexure A-1) dated 31.01.2014. There is also a specific authorization issued by the Deputy General Manager/Zonal Head of the Bank, granting permission to Mr. Atul Kumar, for initiating the process under the Code against the respondent-corporate debtor on the basis of reference dated 24.08.2017 made by him to the Head Office. Annexure A-2 (Colly) is the sanction letter dated 23.11.2017.

3. The respondent-corporate debtor was incorporated on 14.06.1996 with authorized share capital of ₹15,00,00,000/- and paid up share capital of ₹ 6,07,60,000/-. The registered office of the corporate debtor is at Ludhiana in the State of Punjab and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

4. The facts of the case, briefly stated, are that the respondent-Corporate Debtor was sanctioned loan facilities i.e. Cash Credit Facility of ₹ 27,50,00,000/-; Term Loan-2 of ₹ 7,56,00,000/-; Term Loan-3 of ₹ 1,17,00,000/-; Term Loan-4 of ₹ 1,45,00,000/-; Term Loan-5 of ₹ 7,44,00,000/-; FITL to the tune of ₹ 4,75,00,000/-; Working Capital Term



Loan-1 of ₹ 20,18,00,000/-; and Working Capital Term Loan-2 of ₹ 11,30,00,000/-, total amounting to ₹ 81,35,00,000/- (Rupees Eighty One Crore Thirty Five Lacs), in the year 2014, vide sanction letter dated 30.06.2014, copy of which is at Annexure A-7. The sanction letter was acknowledged by the respondent-corporate debtor, vide letter dated 30.06.2014 (Annexure A-9), giving authority to its Director to execute the documents in favour of the bank.

5. The respondent-corporate debtor also executed various documents of loan, which comprise of few Demand Promissory Notes (Annexure A-10 to Annexure A-13) dated 30.06.2014. The guarantee deed executed by the Director of the Company (Annexure A-14); hypothecation agreement (Annexure A-15); term loan agreement (Annexure A-16); and undertaking (Annexure A-17), are also dated 30.06.2014.

6. The account of the respondent-corporate debtor became irregular and it was declared NPA on 01.07.2017. It is submitted that a restructured loan was granted to the respondent-corporate in the year 2014, because the original loan granted long ago became irregular and that the bank has relied upon the latest loan documents.

7. The guarantor of the loan was issued a notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, ('SARFAESI Act'), mentioning therein the outstanding amount in default for each of the accounts as on 15.10.2015, total amounting to ₹ 88,31,20,992/-. Notice (Annexure A-36) under the same provision of SARFAESI Act was also sent to the respondent-



corporate debtor, which is at Page No.263 of the paper book and is a part of document Annexure A-36 (Colly). Description of the properties mortgaged with the bank as collateral security and primary security have also been mentioned in detail in this notice.

8. The petitioner-financial creditor has given details of the primary and collateral securities, including land and building in Column No.1 of Part V of the application.

9. The petitioner-financial creditor has also placed on record, copy of the master data of the respondent-corporate debtor, which is at Annexure A-41 of the additional affidavit filed by Diary No.1902 dated 30.05.2018. The certificates of the registration of charge registered with the Registrar of Companies are at Annexure A-42 and A-43. The certificates of creation of charge issued by the Registrar of Companies are at Annexure A-44 and A-45, attached with this affidavit.

10. It is further submitted that the petitioner-financial creditor has also placed on record the copy of the OA, being OA No.1665 of 2017, pending before the Debts Recovery Tribunal-III, Chandigarh. In order to bring forth the other evidence of default committed by corporate-debtor, the status of the pending OA is attached at Annexure A-6, with the application.

11. The petitioner has also referred to the CIBIL Report (Annexure A-18) in proof of the evidence of default. The bank-financial creditor has also relied upon copies of various statements of accounts (Annexure A-19 to A-24) maintained under the Bankers Book Evidence Act, 1891. When the account was declared NPA, interest chart was prepared separately in respect



of each of the accounts, which are from Annexure A-27 to Annexure A-34. The amount is even reflected in the books of account of the respondent-corporate debtor, as per the balance sheet of the respondent, ending 31.03.2017.

12. The respondent-corporate debtor is also stated to have filed an application for One Time Settlement Scheme ('OTS Scheme') on 28.08.2017, but the bank had declined the same, vide letter dated 29.08.2017.

13. The petitioner-financial creditor has also filed copy of the order passed by Punjab and Haryana High Court, in CWP-7020-2017 (O&M), decided on 09.11.2017, wherein the factum of submitting the application for OTS Scheme by respondent-corporate debtor was referred and the said proposal had been rejected by the bank. The writ petition was withdrawn by the respondent-corporate debtor with liberty to agitate the matter before the appropriate Forum. The order of the Hon'ble High Court is at Annexure A-40. It is admitted by learned counsel for both the parties that the petition before the Hon'ble High Court was filed by Jagdeep Singh and another and Jagdeep Singh, is one of the Director of the company and also the authorized signatory.

14. Notice of this petition was issued to the respondent-corporate debtor. The respondent filed the reply to the instant petition. The main objections raised by the respondent-corporate debtor were that the application does not conform to the requirement of Section 9(3)(c) of the Code and that there is non-compliance of the procedure of Section 2 A (b) of the Bankers Books Evidence Act, 1891. It was further stated that the



application was not maintainable because of the pending dispute before the Debts Recovery Tribunal-III, Chandigarh.

15. It was also stated in the reply that the bank was trying to mis-utilize the provisions of the Code. Various other objections were also raised in the reply, but none of the objections have been insisted upon during the course of arguments.

16. The learned counsel for the petitioner submits that all those detailed grounds taken in Paragraph No.3 of the reply, are similar to the objections which were taken in the application, before the Debts Recovery Tribunal-III, Chandigarh. Learned counsel for the petitioner further submits that the respondent-corporate debtor filed SA, being SA No.238 of 2017, in the pendency of OA, before the Debts Recovery Tribunal, Chandigarh, which was dismissed on 16.02.2018, and this fact is also not disputed by learned counsel representing the respondent-corporate debtor. Copy of order passed by DRT is attached as Annexure A-55 with Rejoinder, which was filed by the bank vide Diary No. 2660 dated 25.07.2018.

17. We have heard learned counsel for the parties and have carefully perused the records.

18. When the matter was listed on 30.05.2018, an adjournment was requested by the learned counsel for the petitioner-financial creditor to file the rejoinder along with the computation of calculation in the tabulated form. In respect of each of the loan account in which the respondent-corporate debtor has committed the default, the computation charts have been annexed as



Annexure A-46 to Annexure A-54 with supporting affidavits, filed vide Diary No.1902 dated 30.05.2018.

19. The amount in default is stated to be ₹ 111,46,00,879/- (Rupees One Hundred Eleven Crores Forty Six Lacs Eight Hundred and Seventy Nine) as on 20.11.2017 and the interest has to be added subsequent to that period. However, if there is any discrepancy, it is for the Interim Resolution Professional or Resolution Professional, to finally determine the amount.

20. The plea raised in the reply regarding non-compliance of Section 9(3)(c) of the Code is untenable in the case of financial creditor. That provision only applies where the application is filed by an operational creditor. The other objections were that the certificates in terms of Section 2 A of the Bankers Books Evidence Act, has not been annexed.

21. When the matter was listed on 31.08.2018, the Tribunal noted the defect that the certificates under Section 2A of the Bankers Books Evidence Act, 1891, should be signed by competent officer as well as dated. In compliance of this order, the petitioner has filed the Bankers Certificates in terms of Section 2 A of the Bankers Books Evidence Act, vide Diary No.3353 dated 06.09.2018 [Annexures A-56 (Colly) to Annexure A-58 (Colly)]. Each of these certificates are dated and signed and the respective account numbers for which they relate have also been stated.

22. During arguments, learned counsel for the respondent submits that respondent-corporate debtor does not oppose the prayer for admission of the case and that no defect remains in the application, after the compliances made by the petitioner. There is sufficient evidence in proof of



default of debt. The application has been filed in the prescribed form and therefore, the requirements of sub-section (1) and sub-section (2) of Section 7 of the Code are fulfilled by the petitioner.

23. Sub-Section (3) of Section 7 of the Code, reads as under:-

“(3) 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.”*

24. There is complete evidence produced by the bank in order to establish the evidence of default as required in the manner prescribed, as already observed.

25. Under Clause (b) of sub-section (3) of Section 7, the financial creditor is bound to propose the name of the Registered Resolution Professional to be appointed as Interim Resolution Professional. In this case in Part III of the application, the petitioner-bank has proposed the name of Hemanshu Jetley, Registered Resolution Professional, to be appointed as Interim Resolution Professional. The learned counsel for the petitioner-financial creditor has also referred to Form No.2, the written communication, furnished by the Resolution Professional as at Annexure A-3. He has given all the particulars required to be disclosed. He has also given his consent to be appointed as Interim Resolution Professional by furnishing Form 2 as at Page No. 299 of the paper book. It is also certified that he is presently not serving as Resolution Professional or Interim Resolution Professional, in any



proceedings currently. He has further certified that there are no disciplinary proceedings pending against him with the Insolvency and Bankruptcy Board of India or Indian Institute of Insolvency Professionals of ICAI. We find the Form to be in order.

26. In view of the above, the petition filed by the Allahabad Bank, financial creditor, under Section 7 of the Code, being complete is admitted and we declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- (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 Securitization 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.



27. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

28. 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 pass an order for liquidation of corporate debtor under Section 33 as the case may be.

26. The matter be listed on 18.09.2018 for passing of the formal order of appointment of the Interim Resolution Professional.

Copy of this order be communicated to both the parties.

— Sd —

(Pradeep R. Sethi)
Member (Technical)

September 12, 2018
Mohit Kumar



— Sd —

(Justice R.P. Nagrath)
Member (Judicial)

Chandigarh Bench, Chandigarh
National Company Law Tribunal
DEAD R/AR / Court Officer

[Handwritten Signature]
26/9/18

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