

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-V

COMPANY PETITION NO. (IB)-712/ND/2022

Order under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

IN THE MATTER OF:

UNION BANK OF INDIA

A body corporate constituted under Banking Companies (Acquisition & Transfer of Under) Act, 1970, having its Head Office at Union Bank Bhavan, 239, Vidhan Bhavan Marg, Nariman Point, Mumbai-400 021 branches amongst others at SAMV Delhi Branch, M-93, Connaugh Place, New Delhi-110001.

.... APPLICANT

Versus

M/s PCL OIL & SOLVANT LIMITED

*Having its registered office at:
M-105, Connaught Place, 4
New Delhi-110001.*

...RESPONDENT

Order Pronounced on: 04.12.2023

CORAM

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Applicant : Adv. Sanjay Bajaj, Adv. Mr. Sarthak Sehgal.

For the Respondent :

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

1. This petition was filed on 29.08.2022, by Union Bank of India (for brevity 'Financial Creditor'/'Applicant') under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity "the Code/IBC") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AA Rules) to initiate Corporate Insolvency Resolution Process (CIRP) against M/s PCL Oil & Solvant Limited (for brevity 'Corporate Debtor'/'Respondent') for a default of Rs.120,30,42,503.23 (Rupees One Hundred Twenty CroreThirty Lakhs, Forty-Two Thousand and Five Hundred and Three And Twenty Three Paise only) along with pendente lite and future interest from 30.06.2022 till payment and actual realisation.
2. The corporate debtor i.e. M/s PCL Oil & Solvant Limited was incorporated on dated 24.04.1992 under the provisions of the Companies Act, 1956, having CIN No. U15142DL1992PLC044851, its registered address is at M-105, Connaught Place, New Delhi- 110001.

Averments of the Applicants:

3. Applicant submitted that upon the request of the Corporate Debtor, the Financial Creditor from time to time sanctioned the working capital limit under the consortium arrangement wherein the exposure of the Applicant was Rs.97 Crores.
4. Further the Applicant submitted that in order to secure the working capital limits of Rs. 97 Crores, the loan documents were executed on 28.03.2012.
5. Applicant further submitted that the Debt Balance Confirmation (SD-22) dated 19.04.2012, 02.04.2015, 16.04.2016, 07.08.2018 & 04.12.2019 were executed by the Corporate Debtor in favour of Financial Creditor. The Applicant submitted the details of the Debt Balance Confirmed by the Corporate Debtor are as follows:
 - I. That the Corporate Debtor confirmed the balance in its Cash Credit Account to be Rs.15,76,26,953.03 with interest accounted upto 31.03.2012 and executed Debt Balance Confirmation (SD-22) dated 19.04.2012 in favour of the Financial Creditor.
 - II. That the Corporate Debtor confirmed the balance in its Cash Credit Account to be Rs.24,42,99,964.47 with interest accounted upto 31.03.2015 and executed Debt Balance Confirmation (SD-22) dated 02.04.2015 in favour of the Financial Creditor.
 - III. That the Corporate Debtor confirmed the balance in its Cash Credit Account to be Rs.32,71,66,744.92 with interest accounted upto 16.04.2016 and executed

Debt Balance Confirmation. (SD-22) dated 16.04.2016 in favour of the Financial Creditor.

IV. That the Corporate Debtor confirmed the balance in its Cash Credit Account to be Rs.37,36,88,088.86 with interest accounted upto 31.03.2018 and executed Debt Balance Confirmation (SD-22) dated 01.06.2018 in favour of the Financial Creditor.

V. That the Corporate Debtor confirmed the balance in its Cash Credit Account to be Rs.44,47,19,494.81 with interest accounted upto 04.12.2019 and executed Debt Balance Confirmation (SD-22) dated 04.12.2019 in favour of the Financial Creditor.

6. Copies of the said Debt Balance Confirmation Letters with their typed copies are annexed as Annexure A-4 Colly &, Annexure A-5 , Annexure A-6, Annexure A-7, Annexure A-8, Annexure A-9 Colly and Annexure A-10 Colly respectively with the present Application.
7. Applicant submitted that due to continuous default on the part of the Respondent Company/Corporate Debtor, its account was classified as a "Non- Performing Assets" on 31.03.2021 w. e. f. 30.11.2020. Copy of NPA Certificate is annexed as Annexure A-11 with the present Application.
8. The Applicant issued Legal Notice dated 23.08.2021 to the Respondent Company along with other parties. It is further submitted that in the notice dated 23.08.2021, inadvertently the amount was wrongly mentioned, therefore, a

corrigendum notice dated 25.08.2021 was sent to Respondent Company along with other parties. Copies of the notices with postal receipts are annexed as Annexure A-12 Colly with the present Application.

9. On other hand, despite of several Notices served and opportunities given to the Respondent, the Respondent chose not to appear before this Adjudicating Authority. Therefore, vide order dated 11.04.2023 this Adjudicating Authority decided to proceed ex-parte against the Respondent /Corporate Debtor.

Analysis and Findings

10. We have heard the learned counsel and perused the material available on record. It is noted that the corporate debtor has availed various credit facilities amounting to Rs.120,30,42,503.23 from the financial creditor. The said loans/credit facilities were sanctioned and disbursed by the financial creditor and was acknowledged by the Corporate Debtor through debt balance confirmations dated 19.04.2012, 02.04.2015, 16.04.2016, 30.09.2016, 07.08.2018 & 04.12.2019. After regular default in repayment, the financial creditor declared the corporate debtor's loan account as Non Performing Asset ("NPA") on 31.03.2021 (w.e.f. from 30.11.2020).
11. Subsequently, the financial creditor sent a corrigendum legal notice dated 25.08.2021, recalling the entire amount due and payable by the corporate debtor. The corporate debtor has also confirmed the balance through various confirmation

letters in the years between 2012 to 2019. Further, this Adjudicating Authority vide order dated 11.04.2023 decided to proceed ex-parte against the corporate debtor.

12. As per the above observations, it is clear that loan/credit facilities were availed by the corporate debtor from the financial creditor, and the corporate debtor has failed to repay the dues. The present petition was filed on 29.08.2022. The first date of default stated by the financial creditor and the account of the corporate debtor was declared as NPA is on 31.03.2021. Moreover, the corporate debtor, through balance confirmation letters dated between the years 2012 to 2019 has acknowledged its liability for the dues payable to the financial creditor. Hence, in term of section 18 of the Limitation Act, 1963 the limitation period gets renewed as the corporate debtor has accepted its liability before the limitation period gets over. Accordingly, the present petition is well within the limitation period and the amount stated to be in default is Rs.120,30,42,503.23 (Rupees One Hundred Twenty Crore Thirty Lakhs, Forty-Two Thousand and Five Hundred and Three And Twenty Three Paise only) which meets the threshold limit as prescribed under the Code/IBC.

13. Further, in recent judgement laid down by the Hon'ble Supreme Court in " M. Suresh Kumar Reddy vs. Canara Bank & Ors. Civil Appeal No.7121 of 2022 dated 11th May, 2023, it has been held that once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission on the Application under Section 7 of I & B Code, 2016. The relevant part of this decision of the Hon'ble NCLAT is reproduced as under.

“30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

- 14.** In light of the above observation, we admit the instant Application i.e CP No. (IB)-712/ND/2022 and initiates the Corporate Insolvency Resolution Process against the Corporate Debtor i.e. M/s PCL Oil & Solvant Limited with immediate effect.
- 15.** Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional (“IRP”). In compliance thereof the applicant has proposed the name of Mr. Anil Kumar Mittal for appointment as Interim Resolution Professional having Registration No. (IBBI/IPA-002/IP-N00742/2018-2019/12263). The Proposed IRP has a valid AFA which is valid upto 13.09.2024. Accordingly, this Adjudicating Authority, hereby appoints Mr. Atul Kumar Kansal to act as Interim Resolution professional. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

16. 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 Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

17. 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) of the Code. 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 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.”

18. 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. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

- 19.** 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 committed by the ex-management or any preferential/undervalued/tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority 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.

- 20.** 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, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

Let copy of the order be served to the parties

Sd/-

(RAHUL BHATNAGAR)

MEMBER (TECHNICAL)

Sd/-

(MAHENDRA KHANDELWAL)

MEMBER (JUDICIAL)