

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI - BENCH-VI
CP (IB) No. 3528/MB/2018

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

PUNJAB NATIONAL BANK

(Erstwhile Oriental Bank of Commerce)

Head Office: Harsha Bhawan, E- Block
Connaught Place, New Delhi-110001.

...Financial Creditor

V/s

VADRAJ CEMENT LIMITED (Under Liquidation)

[CIN- U36941MH1996PLC185707]

Registered Office: 3rd Floor, Lloyds Centre Point,
Appasaheb Marathe Marg, Prabhadevi
Mumbai-400025, Maharashtra.

...Corporate Debtor

Pronounced: 02.02.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Hearing: Hybrid

Appearances:

Financial Creditor: Adv. Prakash Shinde a/w Adv. Ruchita Jain i/b MDP Partners

Official Liquidator: Adv. Ganesh Gunjal a/w AOL Chetan Shelke

Corporate Debtor: Adv. Suyash Shanker, Adv. Yash Agarwal

ORDER**[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]****1. Background**

1.1. This is a matter which has been transferred to this Tribunal by the Hon'ble Bombay High Court (HC) in IA (L) No. 11092/2023 in Company Petition No. 863/2015 by its order dated 18.08.2023 in terms of Section 434(1)(c) of the Companies Act, 2013, by recalling the winding up order dated 23.08.2018 passed by the HC in the matter of Beumer Technology India Pvt. Ltd. Vs. Vadraj Cement Ltd. (In Liqn).

1.2. Before the said transfer to this Tribunal, this Company Petition bearing C.P. (IB) No. 3528/MB/2018 (Application) was filed on 11.09.2018, by Oriental Bank of Commerce (OBC) [Now Punjab National Bank (PNB)], the Financial Creditor (FC) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (Rules), for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Vadraj Cement Limited (Formerly ABG Cements Ltd.), the Corporate Debtor (CD).

1.3. The total amount of default involved as on 31.08.2018 is Rs. 87,45,21,077.08/- (Eighty-Seven Crores Forty-Five Lakhs Twenty-One Thousand Seventy-Seven Rupees and Eight Paise) as detailed below:

Nature of Facility	Principal Balance	Interest Balance	Total o/s as on 31.08.2018	Penal Interest	Total Claim
Term Loan	59,20,51,200	6,51,09,898	65,71,61,098	79,15,643.44	66,50,76,741.44

Term Loan	16,79,85,834	1,83,77,979	18,63,63,813	22,56,189.55	18,96,20,002.55
Cash Credit	1,76,35,374	27,58,658	2,03,94,032	4,30,301.09	2,08,24,333.09
			Total Amount		87,45,21,077.08

The aforesaid amount due to be paid by the CD to the FC is borne out of the Sanction Letter dated 28.09.2016 (Sanction Letter), which remains to be in default despite notifying the CD by the FC on various occasions.

1.4. The date of default as mentioned in the Part IV of the Application is 30.12.2017, i.e., after the date on which the CD's account was declared as Non-Performing Asset (NPA). Hence, the FC prays that CIRP be initiated in respect of the CD under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC).

2. Contentions of FC

2.1. The FC submits that the CD had approached the OBC for seeking credit facility regarding its business of cement manufacturing. The OBC, by the Sanction Letter, relying upon the minutes of the 150th meeting of Credit Approval Committee dated 23.09.2016, granted the term loan of Rs. 76,00,37,034/- (Seventy-Six Crore Thirty-Seven Thousand Thirty-Four Rupees) as well as cash credit facility of Rs. 1,76,35,374/- (One Crore Seventy-Six Lakhs Thirty-Five Thousand Three Hundred Seventy-Four Rupees) to the CD. Out of the said loan amount, the amount of Rs. 77,76,72,408/- had since been disbursed by the OBC.

2.2. Pursuant to the Sanction Letter, the CD executed several documents, namely, Simple Mortgage, Escrow Agreement, Deed of Hypothecation, Non-Disposal

Undertaking from its existing promoters and a Corporate Guarantee of M/s. Tirupati Management & Investment Services Pvt. Ltd., M/s. ABG Cement Holdco Pvt. Ltd., M/s. Baba Gangaram Investment Services Pvt. Ltd. and M/s. ABG International Pvt. Ltd., *inter-alia*, securing the facilities sanctioned by the FC. The estimated value of the securities provided by the CD was at Rs. 31,66,37,29,000/- for which the FC relied upon the Valuation Report dated 03.10.2016 by M/s S.N. Samdani and Associates, which was appointed by the FC and the CD.

2.3. The FC submits that the CD defaulted in payment of credit facilities and has committed default in terms of documents executed from time to time. Due to this, the CD's account was classified as NPA on 30.12.2017. In fact, the CD had not made any repayment at all to OBC/FC towards its debt. The FC relied upon the Annexure A to the Independent Auditor's report in the Annual Report of the CD for the year ending 2016-2017.

2.4. In the circumstances, the FC issued a loan recall notice dated 19.03.2018 recalling the financial assistance granted to the CD. However, the CD did not respond to the FC's recall notice. In the circumstances, the FC prays that CIRP be ordered to be initiated in respect of the CD.

3. Contentions of CD

3.1. There is nothing on record to suggest that the CD has filed any objection to the present Application. During the arguments, the Counsel for the CD has submitted that the CD was already undergoing winding up in Company Petition No. 863 of 2015 before the HC and the assets were under the custody of the Official Liquidator (OL) attached to the HC. The CD had earlier objected to this

Application on the ground of multiplicity of proceedings in respect of the CD. However, the Counsel for the CD has submitted that there is hardly anything left with the CD to discharge the debts it owes to its creditors and no purpose would be served if the CD is brought under CIRP. Hence, the contentions of the CD are not that of any denial of transactions, debt, liability and default.

4. Submissions of OL

4.1. In his reply dated 29.05.2023, the OL submitted that the HC, *vide* its order dated 23.08.2018 in *Beumer Technology India Pvt. Ltd. V/s. ABG Cements Ltd. (Company Petition No. 863 of 2015)*, winding up proceedings were initiated and pursuant to the said Order, the OL took various steps such as taking physical possession of the CD's assets, appointing M/s. V.S. Jadon & Co Valuers LLP for valuation of the CD's assets in Gujarat, etc. It is submitted that the assets of the CD were attached by the Enforcement Directorate under the Prevention of Money-laundering Act, 2002 worth Rs. 952 Crore. The OL further submitted that the secured creditors of the CD including the FC herein were already involved and actively participating in the CD's winding up proceedings. The OL had produced copies of his meetings with secured creditors dated 06.06.2022, 06.10.2022 and 02.03.2023.

4.2. The OL stated that the FC's application for transfer of winding up proceedings to NCLT by the HC was initially rejected by a Single Judge *vide* order dated 12.06.2019 by the Division Bench *vide* order dated 25.08.2022 in *Oriental Bank of Commerce V/s. The Official Liquidator of Vadraj Cements Ltd. (Appeal No. 445/2019 in Company Application No. 222 of 2019)*. The OL further submitted that the FC, as part of the Bank Consortium had strongly opposed the Transfer

Application filed by J.C. Flowers Asset Reconstruction Pvt. Ltd. in the Interim Application (L) No. 11092/2023 before the HC. However, the OL has not filed any formal written reply to the present Application and submitted that the Application may be dealt with as per law.

5. Analysis & Findings

5.1. We have perused the records and heard both the Ld. Counsel for the FC, the CD and the OL. The date of default mentioned in Part IV of the Application is 30.12.2017 while the present application is filed on 11.09.2018. The date of declaration of the CD's accounts as NPA vide NPA Certificate dated 10.09.2018 is 30.12.2017 which is also the date of default as per the Application and, accordingly, it will come within the said period of limitation of 3 years from the date of default.

5.2. From the perusal of available records, we find that the winding up order dated 23.08.2018 passed by the HC in *Beumer Technology India Pvt. Ltd. V/s. ABG Cements Ltd. (Company Petition No. 863 of 2015)* was recalled on account of the HC's order dated 18.08.2023 in *J.C. Flowers Asset Reconstruction Pvt. Ltd. in the matter of Beumer Technology India Pvt. Ltd. V/s. Vadraj Cements Ltd (In Liqn) [Interim Application (L) No. 11092 of 2023 in Company Petition No. 863 of 2015]*, which permitted the transfer of winding up proceedings to the NCLT in terms of Section 434(1)(c) of the Companies Act, 2013. Since the HC has already transferred the matter to this Tribunal, the OL's contention for not allowing this Application on ground of pending winding up proceedings before the HC does not carry any weight. Further, the MCA Master Data indicates that the CD is still under liquidation and the OL is in charge of the CD.

5.3. It is further seen that on the request of the CD, the FC had granted/sanctioned/enhanced, the various credit facilities from time to time. The CD availed of the credit facility; however, the CD failed to repay the dues on time. Further, the FC also issued recall notice on 19.03.2018, thereby recalling and demanding the outstanding dues to the tune of Rs. 83,86,74,336/- as on 28.02.2018. The FC submitted that the print-outs of the statement of CD's bank accounts for the period from 01.04.2017 to 31.08.2018 correctly represent the data derived from the system at the FC's Corporate Branch. The FC relies upon the certificate issued under Section 2A(a) of the Bankers' Books Evidence Act, 1891 to the effect that the printouts of CD's bank account and the certificate by the person in charge of computer system containing descriptions under Section 2A(b) of the said Act, are dated 10.09.2018. The FC has further produced the record of default by the CD from the Central Repository of Information on Large Credits (CRILC) dated 10.09.2018. This corroborates the date of default as mentioned in the Part- IV of the Application.

5.4. From the above, it is clear that the financial debt amounting to more than Rs.1,00,00,000/- (One Crore Rupee) is due and payable by the CD to the FC herein and is not paid and hence, there is a default by the CD in payment of debt amount within the definition of Section 5(8) r/w Section 4 of the IBC. Considering the facts and law as discussed above, this Bench is of the view that in such circumstances, it is imperative that CIRP is only to be initiated in respect of the CD.

5.5. The Application is complete and has been filed under the proper form. The debt amount is more than One Crore Rupees and the default of the CD has been established and the Application filed under Section 7 of the IBC deserves to be admitted.

5.6. The FC has proposed the name of Mr. Pulkit Gupta, a registered Insolvency Professional having Registration Number- IBBI/IPA-001/IP-P02364/2021-2022/13697 through FC's Additional Affidavit dated 26.10.2023. The proposed IRP has given his written consent and the same is placed on record.

ORDER

In view of the above discussions, this Application bearing C.P. (IB) No. 3528/MB/2018 filed by Punjab National Bank, the FC, under Section 7 of the IBC read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating CIRP in respect of Vadraj Cement Limited, the CD is **admitted**.

We further declare moratorium u/s 14 of the IBC, with consequential directions as follows:

I. We prohibit-

- a) the institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the Securitisation 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 CD.

- II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under section 31(1) of the IBC or passes an order for the liquidation of the CD under section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.
- V. That this Bench hereby appoints Mr. Pulkit Gupta, a registered Insolvency Professional having Registration Number- IBBI/IPA-001/IP-P-02364/2021-2022/13697 and e-mail – pulkit.gupta@in.ey.com as the IRP, having valid AFA up to 12.06.2024 to carry out the functions under the Code. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.
- VI. Upon taking of the charge, the IRP is directed to take steps without any further lapse of time and also file a special report within 15 days of taking charge before this Adjudicating Authority.
- VII. Further, the OL, Mr. Chandan Kumar is directed to hand over the charge to IRP and the OL will be discharged from the duties and responsibilities to act as OL the moment his charge is handed over to IRP. The OL is directed to hand over possession and custody of all the assets of the CD and to cooperate with the functions and duties of the IRP/RP in accordance with law. He is directed to cooperate with the IRP/RP and provide all documents and support for the IRP/RP to discharge his duties and functions under law.

- VIII. During the CIRP Period, the management of the CD/OL shall vest in the IRP/RP in terms of section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the CD/OL shall provide all documents in their possession and furnish every information in their knowledge to the IRP and extend all cooperation to the IRP/RP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the FC to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the FC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the CD.
- XI. The Registry is directed to immediately communicate this Order to the FC, the CD, the OL and the IRP by way of e-mail and WhatsApp, not later than two days from the date of this Order.
- XII. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

//Tanmay Jain//