

NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I)

CP (IB) 184/CHD/PB/2020

IN THE MATTER OF:

Punjab National Bank

(Successor of Oriental Bank of Commerce)

Through Mr. Ashish Verma

Chief Manager

Overseas Branch, Industrial Area-A, Ludhiana

... Applicant/Financial Creditor

Versus

M/s. Kaur Sain Spinners Ltd.

Village Arrincha, GT Road,

Opposite Mac Donalds, P.O. Doraha,

Ludhiana-141421

...Respondent/Corporate Debtor

Order Delivered on: 14.05.2024

SECTION: Section 7 of IBC 2016

CORAM:

SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Advocate Harsh Garg & Pulkit Goyal

For the Respondent : Sr. Advocate Anand Chhibbar,
Advocate Vaibhav Sahni, Edward Augustine
George & Supriya Garg.

ORDER

PER: SH. L. N. GUPTA, M(T) & SH. HARNAM SINGH THAKUR, M(J)

Punjab National Bank (Successor of Oriental Bank of Commerce by virtue of Scheme of Amalgamation) (for brevity, the “**Applicant**”) has filed the present application 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 with a prayer to initiate the Corporate Insolvency process against M/s Kaur Sain Spinners Limited (for brevity, the “**Respondent**”).

2. The Respondent namely, M/s Kaur Sain Spinners Limited is a Company incorporated on 18.09.1997 under the provisions of the Companies Act, 1956 with CIN U17115PB1997PLC020455 having its registered office at Village Arrincha, GT Road, Opposite Mac Donalds, P.O. Doraha, Ludhiana-141421, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs. 40,00,00,000/-, and the Paid-up Share Capital is Rs.40,00,00,000/-, as per the Master Data annexed.

3. It is averred by the Applicant that the Respondent availed various financial facilities from the Applicant, lastly vide sanction letter dated 27.01.2017. In order to avail these facilities, the Respondent executed various agreements, security documents and inter-alia agreed to various terms and conditions of the Applicant. In addition to the Respondent, Directors of the Respondent and others stood as guarantors for Respondent. The detailed particulars of the unpaid Financial Debt claimed including the total amount

of default and the date of default as mentioned by the applicant in Part IV of the application read thus:

Part-IV

PARTICULARS OF FINANCIAL DEBT		
1	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	<p>The Corporate Debtor been sanctioned/ reviewed/ enhanced the following cash credit limit by the petitioner/ financial creditor lastly on 27.01.2017:</p> <p>Fund Based - CC facility - Rs. 70 crores (review cum</p> <p>enhancement) Packing Credit/PCFC - Rs. 15 crores (review) FDBP/FUDBP – Rs. 15 crores (review) as sublimit of packing credit BPLC (Export) – Rs. 10 crores Total Fund Based Working Capital Rs. 95 crores Term Loan I - Rs. 15.71 crore (review) Term Loan II - Rs. 38.33 crore (review) Term Loan III - Rs. 10.71 crore (review) Term Loan-IV - Rs. 17.44 crore (review) Term Loan-V - Rs. 4.80 crore (review) Total Term Loans of Rs. 86.99 crores</p> <p>Non Fund based – Inland/ Import LC (RM) DP/DA – Rs. 8 crores Inland/ Foreign Bank Guarantee – Rs. 5 crores Forward Contract (Credit equivalent @ 5% of limit) – Rs. 0.75 crores Total Non Fund Based Limit is Rs. 13.75 crores</p>

The Total sanctioned credit limit is Rs.195.74 crores as per Sanction Letter dated 27.01.2017.

Facility	Account Number	Date of disbursement
CC	06054010000120	27.01.2017*
Packing Credit	06058511013785	27.01.2017*
Term Loan-I	06057021000445	03.05.2010
Term Loan-II	06057025000234	30.06.2012
Term Loan-III	06057025000573	26.09.2013
Term loan-IV	06057025001488	13.02.2015
Term Loan-V	06057021000704	23.09.2016
Vehicle Loan	06056515001164	13.08.2014



		*CC limit and Packing Credit was lastly enhanced on 27.01.2017.
2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	<p>The Corporate Debtor was sanctioned various credit facility by the corporate debtor. As the Corporate Debtor defaulted in the payment of interest and principal amount which resulted in classifying account as NPA by the Financial Creditor on 31.08.2017. Thereafter demand notice under section 13 (2) of SARFAESI Act, 2002 dated 26.12.2017 was issued by the Financial Creditor to the Corporate Debtor demanding an amount of Rs. 193,41,71,512.52 as on 31.11.2017 along with future interest at the contractual rate along with incidental expenses.</p> <p>However, the total outstanding against the corporate debtor as on 31.01.2020 is Rs. 246,30,21,036.15. Bank account statements along with calculation of interest and penal interest after the accounts were classified as NPA maintained as per the provisions of Banker's Books Evidence Act, 1891 are</p>

4. Thus, as per Part IV of the application (ibid), the Applicant has claimed an outstanding "financial debt" of Rs. 246,30,21,036.15. It has been added that the Account of the Respondent Company was classified as NPA on account of default on 31.08.2017 and the Applicant Bank issued the notice dated 26.12.2017 under Section 13(2) of SARFAESI Act, calling upon the CD and other obligors to pay the defaulted amount.

5. In support of its plea, the Applicant has relied on the following documents:

(i) Agreements of Guarantee dated 04.07.2008, 03.05.2010, 07.02.2011, 30.06.2012, 04.09.2012, 17.05.2013, 18.09.2013, 13.12.2013, 23.01.2014, 09.10.2014, 09.02.2015, 19.02.2015, 29.09.2015, 28.10.2015, 05.08.2016, 24.11.2016, 27.01.2017, 06.03.2017, 24.04.2017;

(ii) CIBIL report of the Respondent (page 3173-3290);

(iii) Copy of the Balance and Security Confirmation Letters (page 2812-2901);

(iv) Sanction Letters dated 16.04.2010, 11.01.2011, 06.02.2012, 16.05.2013, 24.07.2013, 07.12.2013; 01.10.2014, 24.09.2015, 04.08.2016, 27.01.2017, 20.04.2017;

(v) Statement of Accounts along with the memorandum of costs (page 2911-3125);

(vi) Notice under Section 13(2) SARFESI dated 26.12.2017 & possession notice dated 06.04.2018;

(vii) Inter-se agreements of consortium between Allahabad Bank & Oriental Bank of Commerce dated 14.09.2012, 18.09.2013, 23.01.2014; Letters of authority dated 14.09.2012, 18.09.2013, 23.01.2014 by the Allahabad Bank in favour of Oriental Bank of Commerce.

(viii) Inter-se agreement of consortium between Central Bank of India & Oriental Bank of Commerce dated 09.02.2015; Letter of authority dated 09.02.2015 by the Central Bank of India in favour of Oriental Bank of Commerce.

(ix) Inter-se agreements of consortium between Allahabad Bank, Central Bank of India & Oriental Bank of Commerce dated 19.02.2015, 28.10.2015, 24.11.2016; Letters of authority dated 19.02.2015, 28.10.2015, 24.11.2016 by the Allahabad Bank & Central Bank of India in favour of Oriental Bank of Commerce.

(x) Inter-se agreements of consortium between Allahabad Bank, Central Bank of India, Oriental Bank of Commerce & Punjab National Bank dated 06.03.2017; Letters of authority dated 06.03.2017 by the Punjab National Bank, Allahabad Bank & Central Bank of India in favour of Oriental Bank of Commerce.

(xi) Original Application u/s 19 of Recovery of Debts due to Banks and Financial Institutions Act, 1993 (page 3126-3171).

6. Based on the facts described above and documents (ibid) relied upon, the Applicant has prayed for the initiation of CIRP against the Respondent.

7. On issuance of the notice, the Respondent filed its reply to the main Application vide IA-1236/2022, which was allowed and the reply was taken on record vide order dated 10.02.2023. In reply, the Respondent has mainly stated the following:

7.1 The loan agreements filed in the Application are from 2008 and onwards. However, the facilities were availed by the Respondent from 2004. The Petitioner has concealed various agreements signed between the Applicant and Respondent to cover up its irregularities. Further, all sanction letters and loan agreements have signatures of Sh. Sushil Mittal, who passed away on

28.04.2020 due to COVID. The authenticity of these documents is questionable, thereby all documents are wrong and denied.

7.2 The bank has also concealed the fact about the pendency of CWP 8363/2019 in Hon'ble Punjab and Haryana High Court challenging the same, where in notice of stay quo was ordered. The same was challenged by the CD and the matter was listed for final arguments on 13/10/2022. Applicant Bank has concealed this fact with mala fide intention charged these assets which were primarily charged in another partnership firm namely, Kaur Sain Spinning Mills.

7.3 Further, the assets mortgaged have already been sold via auction pursuant to the order of the Hon'ble Punjab and Haryana High Court.

7.4 The contents of paragraph 2 of part IV of the Application are vehemently opposed and denied. The Applicant has claimed that the total amount outstanding as on 31/01/2020 is Rs.193,41,71,512.52, which is not true. Moreover, the Applicant, with a malicious intent, has not placed before this court a copy of the order dated 02/03/2020 of the Hon'ble Debt Recovery Tribunal ("DRT") which held that the amount payable to the Applicant shall be Rs.49,44,65,248/- with an interest on 13.60% p.a. which is in no way equal to the amount alleged by the Applicant in this application.

8. In rebuttal, the applicant has filed a Rejoinder dated 26.09.2023 to the reply filed by the Respondent stating mainly the following:

8.1 The applicant has mentioned the fact of availing of facilities by the respondent from the year 2004 onwards in its petition as well at page 42. Moreover, the applicant is ready to place on record any document as this

Tribunal directs. However, it is worthwhile to mention that the plea taken by the respondent is completely a sham as once new facilities were sanctioned and documents executed, the respondent is bound by the terms and conditions as stipulated in those and moreover, the Tribunal while looking into petition under section 7 is required only to see whether there is existence of a debt, and the Corporate Debtor has defaulted in making the repayments. From the documents placed on record, the Applicant has proved that there is an existence of debt and that the Respondent has defaulted in the same.

8.2 The contention of the Respondent is admitted to the extent that Sh. Sushil Mittal had expired during the pendency of the present petition. However, it is mentioned that the respondent corporate debtor is a company/body corporate having distinct legal personality separate from the individuals managing it and thus, the corporate Body continues to run and remain in existence even on the death of its Members or Directors.

8.3 The Writ petition i.e., CWP - 8363/2019 filed before the Hon'ble High Court has no bearing on the present petition for insolvency. In the said writ petition, the Respondent has challenged the SARFAESI action taken by the Applicant against the respondent. Moreover, the Respondent has nowhere denied the existence of debt and that there is a default towards the same.

8.4 The certain assets of the Respondent have been sold by the Recovery Officer of the Hon'ble DRT-III, Chandigarh under the recovery proceeding initiated under the Recovery of Debt and Bankruptcy Act, by one of the members of the consortium of banks, which had sanctioned the credit

facilities to the Respondent. However, the same would have no bearing on the present petition.

8.5 The contention of the Respondent to the extent that the Applicant has claimed an amount of Rs.193,41,71,512.52 as on 31.11.2017 is admitted. However, rest is denied. Moreover, it is worth mentioning here that suit filed before the Hon'ble DRT, in which the award for Rs.49,44,65,248/- has been passed, is in relation to a different case being OA No. 3000/2018 titled as "Central Bank of India VS M/s Kaur Sain Spinners Ltd and Others" by the Hon'ble DRT-III Chandigarh account. Furthermore, in this application, the Applicant has to show only a default of Rs.1,00,000/- only.

9. We heard the submissions of both parties and perused the pleadings on record filed by both parties. The Respondent in its defence has mainly contended that all sanction letters and loan agreements of Corporate Debtor allegedly have signatures of Late Sushil Mittal, who passed away on 28.04.2020 due to COVID. Hence, the authenticity of the documents is questionable and uncertain. Per Contra, the Applicant has annexed various documents to prove the existence of debt and default on behalf of the Corporate Debtor Company as mentioned in Para 5 of this order.

10. At the outset, we would like to examine whether the present Application is within limitation or not. The Applicant in part IV of its Application has mentioned that the account of the Corporate Debtor was classified as NPA on 31.08.2017. We are aware that the date of NPA classification too serves as the valid "Date of Default" for initiating insolvency proceedings. In this context, we refer to the recent judgement dated 25.04.2024 of Hon'ble NCLAT's in

Company Appeal (AT) (Ins) No. 1589 of 2023 Milind Kashiram Jadhav vs State Bank of India & Anr., the conclusions of which are reproduced below:

“Conclusions:

74. *The loan accounts of the Corporate Debtor were officially classified as Non-Performing Assets (NPA) on September 27, 2019, following 90 days of non-payment, thereby triggering a default event. Despite subsequent partial payments made by the borrower, the NPA status and default persisted, indicating a continuous state of default.*

Consistent with established judicial precedents and the specific circumstances of the case, the date of NPA classification serves as the valid "Date of Default" for initiating insolvency proceedings. *Even after the NPA classification, the borrower remained in default. Consequently, September 27, 2019, the date of NPA classification, stands as the "date of default" under the Insolvency and Bankruptcy Code (IBC), superseding any subsequent events, such as the loan recall notice issued on August 18, 2020. The Adjudicating Authority's decision to admit the Bank's application for initiating Corporate Insolvency Resolution Process (CIRP) against the Company was apt and in accordance with the provisions of the IBC. There are no discernible flaws in the orders issued by the Adjudicating Authority; hence, they are upheld without any alteration. Appeal is dismissed. No costs are imposed in this matter.”*

Hence, in terms of the judgement (supra), we can rely upon the date of NPA i.e., 31.08.2017, as the date of default for the purpose of calculating limitation.

Now, we calculate the period of limitation as follows:

S. No.	Document	Date	Period of Limitation till
1.	Date of NPA (as per Part IV of Application) or date of default	31.08.2017	30.08.2020
2.	Date of filing of Present Application		18.02.2020 (which is prior to 30.08.2020)

In terms of the aforesaid analysis, we find that the present application filed by the Applicant Bank is well within the limitation period.

11. Now, we would like to examine the main argument of the Respondent that all sanction letters and loan agreements allegedly have signatures of Sh. Sushil Mittal, who passed away on 28.04.2020 due to COVID. Hence, the authenticity of the documents is questionable and uncertain. Per contra, the Applicant Bank has rebutted the argument of the respondent by stating that the Respondent/ Corporate Debtor is a company/ body corporate having distinct legal personality separate from the individuals managing it and thus, the said corporate Body continues to run and remain in existence even on the death of its members or directors. We tend to agree with the contention of the Applicant and find no force in the argument of the Respondent that the authenticity of the documents of the present case against the Corporate Debtor Company becomes questionable merely because the signing member has expired. As per the documents on record, the loan has been availed by the Corporate Debtor Company, which is in existence.

12. As regards the argument of Respondent regarding difference in the amount of Rs. 193,41,71,512.52 claimed by the Applicant herein and the amount of award for Rs.49,44,65,248/- by DRT, the Applicant has clarified in its rebuttal that the award by DRT is in relation is in relation to a different case being OA No. 3000/2018 titled as “Central Bank of India VS M/s Kaur Sain Spinners Ltd and Others”. Further, in any case, the amount of default is much above than the minimum threshold limit applicable to the present case.

13. Thus, in terms of the abovementioned discussion, we find that the Applicant Bank has been able to successfully establish the debt and default beyond doubt on the part of the Respondent-Corporate Debtor in repayment of its financial debt.

14. In the sequel to the above and the given facts and circumstances, the present Application being complete and the Applicant having established the default on the part of the Respondent in payment of the Financial Debt for an amount being above the minimum threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, the Moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the Moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:

“(a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.”

15. As proposed by the Applicant, this Bench appoints Mr. Nipan Bansal as IRP having Registration No. IBBI/IPA-001/IP-P00039/2017-18/10100 Email ID: irp@parshotamandassociates.com subject to the condition that no disciplinary proceedings is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week of this Order. This Adjudicating Authority further orders that:

Mr. Nipan Bansal, as an IRP having Registration No. IBBI/IPA-001/IP-P00039/2017-18/10100, Email ID: irp@parshotamandassociates.com is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is further directed to take the steps as mandated under the IBC specifically under Sections 15, 17, 18, 20, and 21 of IBC, 2016.

16. The Applicant is directed to deposit Rs.5,00,000/- (Five Lakhs) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Applicant.

17. A copy of this Order shall immediately be communicated to the Applicant Bank, the Respondent Company, IBBI and the IRP named above by the Court Officer/Registry of this Tribunal.

18. **In terms of the above, the present application stands admitted and is accordingly, disposed of.**

Sd/-

(L. N. GUPTA)
MEMBER (T)

Sd/-

(HARNAM SINGH THAKUR)
MEMBER (J)