

(2024) 01 NCLT CK 0037

In the National Company Law Tribunal

Case No : Company Petition (IB) No. 238/KB/2023

Canara Bank Vs Birbhum Chemicals and Fertilisers Ltd ?

Date of Decision : 08-01-2024

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 7, 7(3)(a), 7(5), 7(7), 13(2), 14, 14(1), 14(2), 14(3), 15, 15(1)(b), 17, 18, 19, 20, 21
Banker's Books Evidence Act, 1891 — Section 2(3)
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 — Section 4, 9(1)
Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 — Regulation 40A

Citation : (2024) 01 NCLT CK 0037

Hon'ble Judges : Bidisha Banerjee, Member (J); D. Arvind, Member (T)

Bench : Division Bench

Advocate : Sujash Ghosh Dostidar, Sankari Roy, Sayoi Mukhopadhyay, Neelina Chatterjee, Suvodeep Chakraborty

Final Decision : Disposed Of

Judgement

D. Arvind, Member (Technical)

1. The Court is congregated through hybrid mode.
2. Heard the Learned Counsels for both parties.
3. This is an application preferred by Canara Bank (hereinafter referred to as the "Applicant", "Financial Creditor" or "FC") under Section 7 of the Insolvency and Bankruptcy Code, 2016, for brevity "IBC" for initiating Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") of Birbhum Chemicals and Fertilizers Ltd. (hereinafter referred to as "Respondent", "Corporate Debtor" or "CD").

Factual Matrix:

4. The Financial Creditor herein has advanced Rs. 50 crores by way of WC-OCC/OCBD in terms of sanction letter dated 23.12.2023 and further sanction letter

dated 27.02.2023.

5. The documents evidencing sanction of loan and credit facilities are annexed in Annexure "E" attached to the said application.

6. The working for the default for computation of amount and dates of default in tabular form as has been annexed in Annexure "B1" to the application.

7. The statement of account evidencing the disbursement of credit facilities mentioned above has been attached to the application in the IBC.

8. The Statement of account attached is in compliance with Section 7(3)(a) of the IBC which says that the Financial Creditor along with the application may furnish a record of default recorded with the information utility or such other record or evidence of default as may be specified.

9. The IBBI (Corporate Insolvency Resolution Process for Corporate Persons Regulations 2016) provides that the Financial Creditor may furnish certificate copies of entries in the relevant account in the banker's book as defined in clause (3) of Section 2 of the Banker's Books Evidence Act, 1891 as per regulation 2(a) of the said regulations.

10. The Total amount claimed to be in default is of Rs. 50,70,30,550.53/-.

11. The date of default occurred on 30.06.2023 being the date of declaration of the account of Corporate Debtor as NPA and the evidence for the same is in the application.

Applicant's Submissions:

12. Ld. Counsel for the Applicant submits that neither the amount disbursed nor the default of which is disputed by the Corporate Debtor. The date of default being 30.06.2023 which is the date of the declaration of account as NPA is also not been disputed. Therefore, the application meets all the criteria required for admission under Section 7 of the IBC.

Respondent's Submissions per contra:

13. The Learned Counsel for the Respondent was present during the hearing but did not dispute the claim made by the Learned Counsel for the Applicant.

14. We have noted and duly considered the rival contentions made by the Learned Counsels.

Analysis and Findings:

15. It is evident that the Financial Creditor sanctioned a credit facility to the Corporate Debtor, Cash Credit for Rs. 47 Crore and subsequently for another Rs. 3 Crore totalling Rs.50 Cr.

16. We find that the total default is Rs. 50,70,30,550/- as on the date of default (30.06.2023) out of which Rs. 49,94,22,414/- is towards the principal amount

and Rs. 76,07,664/- is the interest amount.

17. It is evident that the date of default occurred on 30.06.2023 being the date of declaration of the account of Corporate Debtor as NPA and evidence for the same is in the application. In this context, we would refer to the settled law as laid down by the Hon'ble Apex Court in Laxmi Pat Surana vs. Union Bank of India reported in (2021) 8 SCC 481: MANU/SC/0221/2021 that "... upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action Under Section 7 of the Code.

18. We are supported by the views of the Hon'ble Apex Court to define "Financial Debt" and to initiate the Corporate Insolvency Resolution process as under:

(a) Pioneer Urban Land and Infrastructure Ltd. v. Union of India reported in (2019) 8 SCC 416:

"Any debt to be treated as financial debt, there must happen disbursement of money to the borrower for utilization by the borrower and that the disbursement must be against consideration for time value of money."

(Emphasis added)

(b) Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited reported in (2020) 8 SCC 401:

"The essential condition of financial debt is disbursement against the consideration for time value of money."

(Emphasis added)

(c) Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund reported in (2021) 6 SCC 436: MANU/SC/0231/2021 (para 14) that:

"14. ... to trigger an application, there should be in existence four factors: (i) there should be a 'debt' (ii) 'default' should have occurred (iii) debt should be due to 'financial creditor' and (iv) such default which has occurred should be by a 'corporate debtor..."

(Emphasis added)

(d) Innoventive Industries Ltd. v. ICICI Bank reported in (2018) 1 SCC 407: MANU/SC/1063/2017 has laid down that:

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. ..."

"28. ... the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application

must be admitted unless it is incomplete, ..."

xxx xxx xxx xxx

"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 in 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."

(Emphasis added)

19. From the order dated 07.12.2023, we have directed the Learned Counsel appeared on behalf of the Corporate Debtor to file a Reply Affidavit within one week with an advance copy served on the Learned Counsel on Record for the Financial Creditor. It is noted that no Reply Affidavit has been filed till date and on 21.12.2023, this matter has been reserved for order and we have recorded that Learned Counsels Ms. Neelina Chatterjee and Mr. Suvodeep Chakraborty have appeared and made their submissions orally. 20. Upon considering all the facts and circumstances, we are satisfied that there is debt and default on the part of the Corporate Debtor. Further, we infer that there is a dispute to the claims made by the respondent, we find that it is a fit case for admission under Section 7 of the IBC. Accordingly, we admit the application filed by the Financial Creditor and initiate the CIRP of the Corporate Debtor.

21. In the light of the facts stated in the application bearing Company Petition (IB) No. 238/KB/2023, and the evidence placed on record and the discussion hereinabove, we allow this application filed under Section 7 of IBC, and accordingly, we order the initiation of Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor by the following Orders:

- i. The Application filed by the Canara Bank (Financial Creditor), under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, admitted for initiating the Corporate Insolvency Resolution Process in respect of Birbhum Chemicals and Fertilizers Ltd. (Corporate Debtor).
- ii. Because of this Application being admitted in terms of Section 7 of the IBC, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:

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 asset 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 (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 Corporate Debtor.

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

iv. 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.

v. The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

vi. The Applicant has proposed the name of "Mr. Avishek Gupta", Address:

CK 104, Sector 2 Salt Lake, Kolkata, West Bengal – 700091, Email ID: avisekh@optimusresolution.net, Registration No. IBBI/IPA-003/IP-N000135/2017-2018/11499, Mobile Number: +91 90513 20025, as the "IRP". We have perused that there is a written communication, annexed as Annexure "II" to this Application as per the requirement of Rule 9(I) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him with the Board or Insolvency Professional Agency of the Institute of Cost Accountants of India. In addition, further necessary disclosures have been made by Mr. Avishek Gupta as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint Mr. Avishek Gupta as the Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC subject to submission

of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

vii. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately regarding the admission of this application under Section 7 of the Code and call for the submission of claims under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

viii. During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.

ix. The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned Police Authorities and/or the Officer-in-Charge of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.

x. The IRP or the RP, as the case may shall submit to this Adjudicating Authority periodical report regarding the progress of the CIRP in respect of the Corporate Debtor.

xi. The Financial Creditors shall be liable to pay to IRP a sum of Rs. 3,00,000/- (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).

xii. In terms of sections 7(5) and 7(7) of the Code, the Registry of this Adjudicating Authority is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor, and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.

xiii. Additionally, the Registry of this Adjudicating Authority shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their

record and upon the Registrar of Companies (ROC), West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

xiv. The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

xv. The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, regarding the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority from time to time.

xvi. The order of moratorium shall cease to have effect as per Section 14(4) of the IBC.

22. An urgent certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

23. Post the matter on 19/ 02/ 2024 for filing the Periodical Progress Report by the IRP/RP.