



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 149/Chd/HP/2019

**Under Section 7 of the
Insolvency & Bankruptcy
Code, 2016**

In the matter of:

Syndicate Bank

Sarojini House,
6 Bhagwan Das Road,
New Delhi - 110001

Vs.

....Petitioner-Financial Creditor

Him Cylinders Ltd.

CIN No.U23203HP1983PLC008864

Plot No.1-4, Industrial Area,
Amb Distt.,
Una (HP)-177203

...Respondent-Financial Creditor

Judgment delivered on: 22.11.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing:

For the Petitioner-Financial Creditor : Mr. Arun Kumar, Advocate

For the Respondent-Corporate Debtor : Proceeded *ex parte* vide
order dated 21.09.2022.



PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed by **Syndicate Bank** (hereinafter referred to as 'Petitioner/Financial Creditor') through its Chief Manager, Mr. Rajender Pal Chandel under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **Him Cylinders Ltd.** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Rajender Pal Chandel, with the affidavit verifying the contents of the application appended thereto.

2. The Corporate Debtor is stated to be incorporated on 19/08/1983. The company having its registered address at Plot No.1-4, Industrial Area, AMB Distt., UNA (HP)-177203. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is stated to be filed as Annexure-A2 of the petition.

3. Brief facts of the case are that the corporate debtor failed to adhere to the terms and conditions of the sanction letter and agreements. The financial creditor made several requests/ attempts to regularise the account by way of writing, oral and written requests letters. Upon corporate debtors' failure to regularise the account, on 30.10.2017, the account was declared Non-Performing Asset (NPA). On 14.11.2018, the financial creditor issued a final notice recalling the overall outstanding as well as invoked guarantees. Financial creditor initiated legal



actions by issuing notices, newspaper publications and under provisions of SARFAESI Act, 2002.

4. It is stated in Part-IV of Form No.1 that the petitioner has provided a loan amount of Rs.18,00,00,000/- (Rupees Eighteen Crores Only) vide sanction letter dated 06.02.2016. The total amount claimed to be in default is Rs. 19,58,13,060.00/- (Rupees Nineteen Crore Fifty-Eight Lakhs Thirteen Thousand Sixty Only) (including interest, charges, fees and penalty) and date of default is 30.10.2017 i.e. when the account was classified to Non-Performing Asset. Copies of computation containing amount of loan sanction, amount of default as (Annexure-A3), Summary of Valuation (including the copies of valuation report (Annexure-A4), possession Notice dated 14/11/2018 (Annexure-A5), Sanction letter dated 02.06.2016 along with other loan documents (Annexure-A6), Composite Hypothecation Agreement dated 13/12/2016 (Annexure-A7), Guarantee Agreement (Annexure-A8, A9 & A10), Omnibus Counter Guarantee dated 28.03.2016 (Annexure-A11), Bank Statements maintained by the financial creditor (Annexure-A21), Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) indicating the charge created in favour of Applicant Financial Creditor (Annexure-A22) are attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor vide order dated 17.05.2019 for 19.07.2019 to show cause as to why this petition be not admitted. The reply was filed on behalf of the respondent-corporate debtor vide Diary No.6306 dated 13.11.2019, wherein, it is stated that no proper authorisation is present in the petition. The Power of Attorney holder is not holding the specific authorisation to effect the filing of petition. The petitioner has already filed an application under Section 14 of the SARFAESI Act, 2002. The bank has



failed to disclose in its petition as to how the figure of Rs.19,58,13,060/- (Rupees Nineteen Crore Fifty-Eight Lakhs Thirteen Thousand Sixty Only) had been arrived that which is allegedly due and payable by corporate debtor to financial creditor. Further, no details have been provided with respect to the amount received. It is also submitted that there was non-fulfillment of assurances given by petitioner bank. The rejoinder was filed by petitioner-financial creditor vide Diary No.1072 dated 10.02.2020. Vide order dated 13.07.2022 of this bench, it is submitted by the learned counsel for respondent-corporate debtor that OTS proposal had been given to petitioner bank and some amount has been paid. On the other hand, it was stated by learned counsel for petitioner-financial creditor that he had no instructions about the OTS proposal from the petitioner bank. Vide order dated 21.09.2022, last opportunity was given to respondent corporate debtor for filing short written submissions but none appeared on behalf of respondent, thus it seems that respondent corporate debtor was not interested in defending the present petition, therefore, respondent corporate debtor was proceeded ex parte. The short written submissions were filed by petitioner-financial creditor vide Dairy No. 00435/01 dated 03/12/2021.

6. We have heard the learned counsel for the petitioner and have also perused the record carefully.

7. Section 7(5)(a) of the Code is as follows:-

“5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”

8. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is 30.10.2017



i.e. when the account was classified as a Non-Performing Asset. The present petition is filed vide Diary No. 1064 dated 01.03.2019. Therefore, the present petition is filed within limitation.

9. Another issue for consideration is whether there is default in payment or not. It is observed from the record that in the present case, the default is evidenced by the computation containing amount of loan sanction, amount of default securities (Annexure-A3), Summary of Valuation (including the copies of valuation report (Annexure-A4), possession Notice dated 14/11/2018 (Annexure-A5), Sanction letter dated 02.06.2016 along with other loan documents (Annexure-A6), Composite Hypothecation Agreement dated 13/12/2016 (Annexure-A7), Guarantee Agreement (Annexure-A8, A9 & A10), Omnibus Counter Guarantee dated 28.03.2016 (Annexure-A11), Bank Statements maintained by the financial creditor (Annexure-A21), Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) indicating the charge created in favour of Applicant Financial Creditor (Annexure-A22). The respondent corporate debtor has been proceeded *ex parte*. Although respondent has alleged that, there was non-fulfillment of assurances given by petitioner bank but there is no rebuttal to the claim of the petitioner-financial creditor as respondent chose not to appear and proceeded *ex-parte*.

10. The application filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, in Part III of Form 1, Ms. Reshma Mittal has been proposed as Interim Resolution Professional.



11. In Part-III of Form No.1, Ms. Reshma Mittal, Registration No.IBBI/IPA-001/IP-P00297/2017-18/10541 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 05.02.2018 along with the the certificate of IBBI issued in favour of proposed Interim Resolution Professional i.e. Ms. Reshma Mittal is attached at Annexure-II of the petition. The Form-B (Authorisation for Assignment) is filed vide diary No.00435/2 dated 15.11.2022. The Authorisation is valid from 10.11.2022 to 09.11.2023. The Law Research Associate of this Tribunal has checked the credentials of Ms. Reshma Mittal and there is nothing adverse against her. In view of the above, we appoint Ms. Reshma Mittal, Registration No.IBBI/IPA-001/IP-P00297/2017-18/10541, Email: careshmamittal@gmail.com, Mobile No.9811546688, the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016. 12. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above threshold limit, the petition is admitted in terms of Section 7(5) of the IBC. Accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- “(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.
- (e) 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 the moratorium period.
- (f) 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.
- (g) 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 passes an order for liquidation of the corporate debtor under Section 33 as the case may be.”

12. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file



a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

13. We direct the Financial Creditor to deposit a sum of Rs. 2,00,000/- (Rupees Two Lakh Only) with the Interim Resolution Professional, to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

14. A copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

15. Accordingly, the petition is admitted.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

November 22, 2022

SD/TB

Sd/-

(Harnam Singh Thakur)
Member (Judicial)