

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.1095 of 2024

(Arising out of Order dated 14.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Court-I, in CP(IB) 184/CHD/PB/2020 and CP No.351/Chd/PB/2018)

IN THE MATTER OF:

Pawan Kumar

...Appellant

Versus

Central Bank of India & Ors.

...Respondents

Present:

For Appellant : Ms. Eshna Kumar and Ms. Jasleen Singh Sandha, Advocates.

For Respondent : Ms. Yaehartha Gupta and Mr. Mayuresh, Advocates for PNB/ R2.

Mr. Rajesh Rattan, Mr. Anuj Jain, Advocates for R3.

Mr. Anant Gautam, Mr. Dinesh Sharma, Advocates for Indian Bank.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed by Suspended Director of the Corporate Debtor – M/s Kaur Sain Spinners Ltd., challenging order dated 14.05.2024 passed by Adjudicating Authority in CP(IB)No.184/CHD/PB/2020 admitting Section 7 Application filed by Punjab National Bank (Successor of Oriental Bank of Commerce) and order dated 14.05.2024 passed in CP No.351/Chd/Pb/2018 disposing of Section 7 Application filed by Central Bank of India as infructuous, in view of order passed in Section 7 Application of Punjab National Bank. In the proceedings Central Bank of India has been referred to as Respondent

No.1; Oriental Bank of Commerce, as Respondent No.2 and Mr. Nipan Bansal, IP as Respondent No.3. The Memo of Parties is not described properly. Accordingly, we direct that the Memo of Parties of the Appeal be corrected, Central Bank of India as Respondent No.1; Punjab National Bank as Respondent No.2 and Mr. Nipan Bansal, IRP as Respondent No.3.

2. Brief background facts giving rise to the Appeal need to be noticed:

- (i) The Corporate Debtor (“**CD**”) was extended a loan by Consortium of Bank, consisting of Oriental Bank of Commerce and Central Bank of India by an Agreement dated 06.03.2017.
- (ii) Central Bank of India declared the account of Corporate Debtor as NPA with effect from 30.09.2017. The Oriental Bank of Commerce, the lead Bank also declared the account of Corporate Debtor as NPA on 31.08.2017. Central Bank of India filed OA No.3000 of 2018 before Debts Recovery Tribunal (“**DRT**”) for recovery of its outstanding dues. Oriental Bank of Commerce also filed OA No.3249 of 2019 against the CD.
- (iii) Section 7 Application was filed by Central Bank of India praying for initiation of CIRP against CD on 19.09.2018. Section 7 Application was also filed by Oriental Bank of Commerce (Now Punjab National Bank) against the CD.

- (iv) In the proceedings before DRT a Decree was passed in favour of Central Bank of India for Rs.49,44,65,248/-. For execution of Decree obtained by Central Bank of India, recovery proceedings were initiated by Proclamation of Sale by Recovery Officer for two assets of the CD at Samarala and Doraha. On certain objections, by order dated 25.10.2021, Auction proceedings was put on hold by order dated 28.10.2021 and the Proclamation of Sale was cancelled. Central Bank of India filed Civil Writ Petition No.22367 of 2021 in the Punjab and Haryana High Court, Chandigarh challenging order dated 25.10.2021 and 28.10.2021. Recovery Officer subsequently cancelled the auction on 24.04.2023.
- (v) The CD also filed Civil Writ Petition No.11117 of 2022 in the Punjab and Haryana High Court for setting aside notice dated 11.05.2022 issued by Tehsildar-Executive Magistrate, Samrala for physical possession of property pursuant to order dated 07.12.2021 passed by Additional Magistrate under Section 14 of the SARFAESI Act, 2002.
- (vi) In the proceedings under Section 7 filed by Oriental Bank of Commerce, an interim order was issued by the Adjudicating Authority directing that assets of the CD be not alienated. In Section 7 Applications, filed by Central Bank of India and Oriental Bank of Commerce, replies were filed by the CD and both the Applications were heard by the Adjudicating

Authority. On 14.05.2024, order was passed by National Company Law Tribunal, Chandigarh Bench, Court-I, admitting Section 7 Application filed by Punjab National Bank (Successor of Oriental Bank of Commerce), initiated CIRP and appointed the Interim Resolution Professional (Respondent No.3 herein).

- (vii) Both the Writ Petitions, which were filed, being Writ Petition No.22367 of 2021 filed by Central Bank of India and Writ Petition No.11117 of 2022 filed by the CD, were heard by Punjab and Haryana High Court and by order dated 24.05.2024, both the Writ Petitions were disposed of. The High Court did not interfere with the order cancelling the auction and affirmed the order for refund of the amount of auction money of Rs.37.60 crores. The High Court also noticed initiation of CIRP by order dated 14.05.2024 and held that both the Writ Petitions have become infructuous.
- (viii) This Appeal has been filed by the Suspended Director of the Corporate Debtor on 28.05.2024, challenging the order admitting Section 7 Application.

3. We have heard learned Counsel for the parties.

4. When the Appeal was heard by this Tribunal on 29.05.2024, a submission was advanced by learned Counsel for the Appellant that two assets of the CD have already been auctioned and an amount of Rs.136 crores have been recovered and Bank is taking steps to recover the dues

by means of proceedings under Section 7, which are subject matter of writ petition. Noticing the above submission, this Tribunal passed an interim order on 29.05.2024, directing the IRP, not to take any further steps in pursuance of impugned order dated 14.05.2024 passed in CP(IB)No.184/CHD/PB/2018. Notices were also issued. Both Central Bank of India and Punjab National Bank have filed reply. The IRP has also filed its reply.

5. Learned Counsel for the Appellant challenging the order admitting Section 7 Application submits that the lead Bank, i.e. Oriental Bank of Commerce (now Punjab National Bank) had taken steps to restructure the debt and on 16.07.2018 a proposal for restructuring was accepted by the lead Bank. It is submitted that Central Bank had no jurisdiction to file Section 7 Application and it was only lead Bank, who as per *inter-se* Agreement, can take steps for enforcement of the securities. The Central Bank having already initiated proceedings before DRT, could not have filed Section 7 Application. Section 7 Application has been filed as a recovery measure. The auction of the assets, which was conducted by the Central Bank was for very low amount. It is submitted that against the order passed by the Punjab and Haryana High Court dated 24.05.2024, the Appellant has filed Special Leave Petition (Civil) Diary No(s).28586 of 2024, which has been disposed of on 22.07.2024 by the Hon'ble Supreme Court, where it was observed that Petitioner shall be at liberty to apprise the Tribunal about the estimated market value of the property and/ or take other initiatives, for revival of the industry. The Appellant has

submitted OTS proposal both to the Oriental Bank of Commerce as well Central Bank of India, which need to be considered and proceedings to be withdrawn.

6. Learned Counsel for the Central Bank of India opposing the submission of learned Counsel for the Appellant submits that the Appellant by misstatement of facts has obtained an interim order on 29.05.2024. There was no recovery of Rs.136 crores as submitted by the Appellant and as noted in paragraph 2 of the order dated 29.05.2024. In fact the auction was held on 05.11.2021 for Rs.37.60 crores, which auction was subsequently cancelled on 24.04.2023. The Punjab and Haryana High Court has already decided both the Writ Petitions on 24.05.2024. The refund of auction money from the auction purchaser has also been affirmed by the High Court, thus, no money has been recovered by the Central Bank of India and the Appellant by misstatement has obtained the interim order. It is submitted that Decree was already passed by the DRT for an amount of Rs.49,44,65,248/- for recovering the debt. It is submitted that Section 7 Application filed by the Central Bank of India has been dismissed as infructuous in view of order dated 14.05.2024 passed in the Company Petition filed by Punjab National Bank. It is submitted that there is debt and default and Adjudicating Authority has rightly admitted Section Application. It is further submitted that OTS proposal submitted by the Appellant is wholly insufficient.

7. Learned Counsel for the Punjab National Bank (Successor of Oriental Bank of Commerce) has also filed reply. It is submitted that Punjab National Bank filed Section 7 Application on account of default in payment of the dues by the CD. The CD has committed default in paying its debt towards several facilities extended by Punjab National Bank to the CD in the year 2017. Total dues were Rs.246,30,21,036/-, for which Section 7 Application was initiated. The account of CD was declared as NPA on 31.08.2017. The SARFAESI proceedings were also initiated. It is submitted that the Corporate Debtor has committed default and Section 7 Application has been rightly admitted by the Adjudicating Authority.

8. Learned Counsel for the IRP has also filed reply.

9. We have considered the submissions of learned Counsel for the parties and perused the record. Section 7 Application, which was filed by the Oriental Bank of Commerce, was filed in the year 2020 claiming default of Rs.246,30,21,036/-, in which Section 7 Application, a reply was filed and after hearing the parties, the Adjudicating Authority after finding debt and default has admitted Section 7 Application. The proceeding for auction, which was initiated in pursuance of Decree passed by DRT on 02.03.2020 on the Application filed by Central Bank of India, where assets were auctioned on 05.11.2021 for an amount of Rs.37.60 crores, has now stand cancelled on 24.04.2023. The Writ Petition, which was filed by Central Bank of India being Writ Petition No.22367 of 2021 and Writ Petition No.11117 of 2022 filed by the CD were both heard and decided on 24.05.2024 by the Punjab and Haryana High Court. The High

Court in the order dated 24.05.2024 has noted the order dated 14.05.2024, by which Section 7 Application was admitted. The High Court has held in the judgment that by virtue of order of admission under Section 7 of IBC, both the Writ Petitions have become infructuous. The High Court in its order dated 24.05.2024 has also noted that auction stand cancelled and the direction has been issued to refund the amount to the auction purchaser. It is useful to notice paragraphs 17 to 19 of the judgment, which are as follows:

“17. Learned counsel for petitioner — Bank as well as other two banks do not deny that order dated 24.04.2023 whereby auction in favour of respondent No. 9 has been set aside has not been subjected to challenge and said order stands as on today having attained finality.

18. Learned counsel for petitioner in CWP-22367-2021 and IRP representing petitioner in CWP-11117-2022 are unable to deny that in view of order dated 14.05.2024 passed by learned NCLT, both the writ petitions are indeed rendered infructuous.

19. In our considered opinion, there is no merit in the objection raised by learned counsel for IRP appointed by learned NCLT qua the prayer for release of bid amount by respondent No. 9. Factual aspect of auction having been conducted on 05.11.2021, pursuant to orders of this court in CWP-22367-2021, subsequent decision on the objections by Recovery Officer and setting aside of auction proceedings as well as sale in favour of respondent No. 9 vide order dated 24.04.2023 passed by Recovery Officer, is also a matter of record. With passing of order dated 24.04.2023, which as per information provided to us, stands unchallenged as on date, sale of property in question in favour of respondent No. 9 clearly does not exist. It is a matter of record that refund of the amount in question has been ordered vide order dated 24.04.2023.

10. The Writ Petition was decided by the Punjab and Haryana High Court on 24.05.2024. The submission made on behalf of the CD before

the Adjudicating Authority to defer the hearing of Section 7 Application, has become infructuous. The Adjudicating Authority having found the debt and default, we do not find any error admitting Section 7 Application. The submission of the Appellant that under *inter-se* Agreement it was only the lead Bank, who could have taken steps, is also without any substance, since lead Bank, i.e., Oriental Bank of Commerce has also filed Section 7 Application, which has been admitted by the impugned order. The submission of the Appellant that Section 7 Application was filed for recovery of dues and was not maintainable, also cannot be accepted. It is well settled law that the fact that Financial Creditor has initiated proceedings before the DRT does not preclude them to take remedy under Section 7, which is a special remedy provided under the IBC.

11. The learned Counsel for the Appellant has also referred to the order of Hon'ble Supreme Court dated 22.07.2024. On 22.07.2024, the Hon'ble Supreme Court has passed following order:

“1. *The application for permission to file the Special Leave Petition is allowed.*

2. *We have heard Mr.P.S. Patwalia, learned Senior Counsel for the petitioner at a considerable length in support of his prayer that the High Court ought to have ordered a probe into the allegation of collusion between the bank officials and the auction purchaser. He has highlighted various circumstances in order to impress upon that the auction was a managed show, it lacked transparency and it was an covert attempt to grab the mortgaged property at a highly low rate. We are, however, not inclined to entertain this question in view of the fact that the order of the Recovery Officer cancelling the auction has been fully affirmed by the High Court. The*

auction property has been restored to its original status and is now subject to such orders that may be passed by NCLT/NCLAT in the pending proceedings. The petitioner shall be at liberty to apprise the Tribunals about the estimated market value of the property and and/or other initiatives, as may be deemed appropriate, for the revival of the industry.

3. *With these observations, the Special Leave Petition is disposed of.*

4. *As a result, the pending interlocutory applications also stand disposed of.”*

12. The Appeal which was filed by the Appellant before the Hon’ble Supreme Court challenging order of Punjab and Haryana High Court dated 24.05.2024 has not been interfered with by the Hon’ble Supreme Court and the Hon’ble Supreme Court has also noticed the orders passed by the NCLT and the pending proceedings. The observation of the Hon’ble Supreme Court that *“The petitioner shall be at liberty to apprise the Tribunals about the estimated market value of the property and and/or other initiatives, as may be deemed appropriate, for the revival of the industry”* are with respect to proceedings pending before the NCLT/NCLAT.

13. The learned Counsel for the Appellant has also submitted that it has submitted proposal before both the Financial Creditors for One Time Settlement and in event the proposal is accepted, the Financial Creditors may need to file an Application under Section 12-A of the IBC for withdrawal of the proceedings. To the submission of the Appellant that OTS proposal if accepted by Financial Creditors, there can be no impediment in filing Section 12-A Application before the NCLT for withdrawal of the proceedings through IRP by giving Form-FA, in

accordance with law, no exception can be taken. Learned Counsel for the IRP has also submitted that some time may be provided for consideration of Section 12-A Application.

14. In view of the foregoing discussion and our conclusion, we are of the view that no grounds have been made out by the Appellant to interfere with the impugned order admitting Section 7 Application by the Adjudicating Authority. However, we are of the view that in event the OTS proposal as submitted by the Appellant is accepted by Financial Creditors, it shall be open for the Financial Creditors to file Application under Section 12-A read with Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 within two weeks from today. In event, the OTS proposal is not accepted by Financial Creditors and Application is not filed within two weeks from today, the IRP shall proceed in the CIRP of the CD in accordance with law. With the liberty aforesaid, the Appeal is dismissed. There shall be no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

15th January, 2025

Ashwani