



NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I)

CP (IB) 329/CHD/PB/2023

IN THE MATTER OF:

Rajdeep Jain

House No- 304 Malwa School Road,
Kochar market, Model town,
Ludhiana- 141002

...Financial Creditor/ Petitioner

Versus

M/s Jhamb Enterprises Private Limited

Registered office at Plot No-172,
Industrial area-A, Ludhiana 141001.
And second address: Village Ramnagar Jatwali,
Firozpur road, Fazilka, 152123.

...Corporate Debtor/ Respondent

Order Delivered on: 09.09.2024

SECTION: **Section 7 of IBC 2016**

CORAM:

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

SH. ARVIND DEVANATHAN, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Pulkit Goyal, Advocate

For the Respondent : None (*Ex parte vide Order dated 22.04.2024*)

JUDGMENT

PER: SH. HARNAM SINGH THAKUR, M (J) & SH. ARVIND DEVANATHAN, M (T)

Mr. Rajdeep Jain (for brevity, the **“Petitioner/ Financial Creditor”**) has filed the present petition 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 Jhamb Enterprises Private Limited (for brevity, the **“Respondent/ Corporate Debtor”**).

2. The Corporate Debtor namely, M/s Jhamb Enterprises Private Limited is a Company incorporated on 22.12.1992 under the provisions of the Companies Act, 1956 with CIN U51109PB1992PTC012853 having its registered office at Registered office at Plot No-172, Industrial area-A, Ludhiana 141001, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Corporate Debtor is Rs. 6,00,00,000/-, and the Paid-up Share Capital is Rs. 4,77,43,160/-, as per the master data annexed with the petition.

3. In its petition, it is averred by the Petitioner Mr. Rajdeep Jain that he was a Personal Guarantor to the Respondent Corporate Debtor M/s Jhamb Enterprises Pvt Ltd., for having availed the financial facilities from time to time from the State Bank of India.

3.1 The Corporate Debtor had failed to maintain the said credit facilities which resulted in classifying account of the Corporate Debtor as NPA by State Bank of India. Subsequently a compromise settlement proposal dated 03.09.2021 was effected between the State bank of India and the Borrower



Corporate Debtor i.e. M/s Jhamb Enterprises Private Limited, in whose loan account the Petitioner financial creditor was also a borrower. However, after making a partial payment, the Corporate Debtor failed to make the balance payment in terms of compromise settlement proposal.

3.2 Thereafter, the Petitioner financial creditor being the Guarantor submitted a cheque bearing no. 114973 for Rs. 1,85,00,000/- dated 26.10.2021, with the State Bank of India in order to discharge their liability and to release their property from mortgage. The bank after realization of said amount released the title deeds of the property of the applicant and handed over the same to them. The Petitioner being the individual/ guarantor who had discharged the liability on behalf of Respondent Corporate Debtor had now been subrogated in place of the original financial creditor i.e. State Bank of India, therefore implying that the Petitioner had now stepped into the shoes of State Bank of India being the financial creditor of the Corporate Debtor in view of doctrine of subrogation and as per provisions of section 140 of Contract Act, 1872.

4. The detailed particulars of the unpaid Financial Debt including the total amount of default and the date of default claimed by the applicant in Part IV of the application reads thus:

2	AMOUNT CLAIMED	Rs. 2,59,31,311/-
	TO BE IN DEFAULT	Rs.1,85,00,000/- towards principal and Rs.
	AND THE DATE ON	74,31,311/- towards interest as on 31.10.2023
	WHICH THE	
	DEFAULT OCCURRED	The corporate Debtor was sanctioned various
	(ATTACH THE	credit facilities by the State Bank of India.



That the date of Default in the present matter would be 26.10.2021, i.e. the date when the petitioner financial creditor had payment on behalf of the respondent corporate debtor.

That despite various reminders for payment the corporate debtor failed to repay therefore applicant sent a demand notice dated 11.08.2023 to the respondent corporate debtor and its directors which were returned back. Again the petitioner sent another notice dated 21.11.2023 to the respondent corporate debtor claiming the above said amount within a period of 10 days, on its registered email on 21.11.2023, and the same has not bounced back. Despite the due service of the above said notice the respondent corporate debtor has failed to make the payment of the said claimed amount to the petitioner. Thus the Default

5. Thus, as per Part IV of the application (ibid), the financial creditor has claimed an outstanding “financial debt” of Rs. 2, 59, 31, 311/- and relied on 26.10.2021 as the “date of default”. It is further submitted that the petitioner financial creditor issued the demand notice dated 11.08.2023 and another notice via email dated 21.11.2023, calling upon the CD & its directors to pay the defaulted amount.

6. To buttress its plea, the financial creditor has relied on the following documents:

- (i) Copy of the 13(2)-notice dated 25.08.2014 and 13(4)-notice of the SARFAESI Act, 2002 issued by the SBI;



(ii) Sanction of Settlement dated 03.09.2021 issued by the SBI & Sanction from SBI dated 25.10.2021;

(iii) Copy of the Letter dated 26.10.2021 depositing the cheques with the SBI;

(iv) Demand Notice & its postal receipt dated 21.11.2023;

(v) Legal notice & its postal receipt dated 11.08.2023;

(vi) Copy of Statement of Account showing interest amount;

(vii) Copy of the letter from the Banker of the petitioner showing issuance of DD in favour of the SBI for an amount of Rs. 1, 85, 00, 000 in the loan account of the CD.

7. Based on the facts described above and the documents referred above, the Financial Creditor has prayed for initiation of the CIRP against the Respondent.

8. On issuance of the notice, none appeared on behalf of the Corporate Debtor except on 24.01.2024, when the Ld. Counsel appearing for Corporate Debtor sought date for filing reply. No reply was filed. Last opportunity was given to the Corporate Debtor to file the reply within two weeks. However, neither reply was filed on record nor anyone represented the Corporate Debtor on 22.04.2024, thus in the circumstances, the Corporate Debtor was proceeded ex- parte. Then an IA-1654/2024 was filed on behalf of Corporate Debtor for recalling of the order dated 22.04.2024, but despite repeated calls none appeared on behalf of the Corporate Debtor. Therefore, the IA-1654/2024 was dismissed for non-prosecution on 05.08.2024.



9. The Financial Creditor has filed its short note/judgments dated 23.01.2024 and written submissions dated 04.06.2024 stating mainly the following:

9.1 The petitioner has filed the present section 7 petition being the guarantor in the loan account of the corporate debtor i.e. M/s Jhamb Enterprises maintained with State Bank of India, who had discharged the liability on behalf of corporate debtor towards the State Bank of India and therefore as per the doctrine of subrogation and in view of section 140 of Contract Act, 1872, which provides where a guaranteed debt becomes due or on a default of payment by principal debtor, the guarantor settles the debt, he happens to be invested with all the rights which the creditor had against the principal debtor. Section 140 of Contract Act, 1872 is reproduce here as under:

"Section 140: Rights of surety on payment or performance.

Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor. "

9.2 The section 5(7) of IBC, 2016, provides for definition of financial creditor as any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred. By way of principle of subrogation and in view of above facts the present petitioner has been assigned the transferred debt in the present matter and falls within the definition of financial creditor. Moreover, the Hon'ble Supreme Court has also in the matter of ***Economic Transport Organisation vs M/s. Charan Spinning Mills (P) Ltd. & Anr***, vide judgment dated 17.02.2010, has held that subrogation is an equitable assignment, while confirming the meaning

of subrogation as provided in the *Laurence P. Simpson's Handbook on Law of Suretyship* (1950 Edn. Page 205) which reads thus:

"Subrogation is equitable assignment. The right comes into existence when the surety becomes obligated, and this is important as affecting priorities, but such right of subrogation does not become a cause of action until the debt is duly paid. Subrogation entitles the surety to use any remedy against the principal which the creditor could have used, and in general to enjoy the benefit of any advantage that the creditor had, such as a mortgage, lien, power to confess judgment, to follow trust funds, to proceed against a third person who has promised either the principal or the creditor to pay the debt."

Hence, in view of the above the present petitioner falls within the definition of financial creditor and is competent to file the present petition us 7 of IBC, 2016.

9.3 The petitioner has also placed reliance upon the matters of Hon'ble Supreme Court i.e. ***"The Bank of Bihar Ltd. vs Dr. Damodar Prasad and another' vide judgment dated 08.08. 1968"***, and in the matter of ***"Amrit Lal Goverdhan Lalan (dead) by his legal representative vs State Bank of Tranvancore and others"*** vide judgment dated 11.04.1968, has held that the surety is entitled to every remedy which the creditor had against the principal debtor, including the enforcement of every security and means of payment, and the use of all those securities against the debtor. This right of the surety is not just contractual, but also based on natural justice.

9.4 Moreover, a similar petition filed by one of the guarantors of the corporate debtor who had paid off/settled the debts of the corporate debtor availed from State Bank of India (Financial Creditor) and thereby stepping into the shoes of financial creditor was also admitted by this Tribunal in the



matter of “**Raj Kumar Singla vs Amarpraksah Rice Exports Pvt. Ltd.**”
(Corporate debtor) vide order dated 26.04.2022.

10. We heard the submissions of financial creditor and perused the pleadings on record. The financial creditor has annexed various documents to prove existence of the debt and default as mentioned in Para 6 of this Judgement.

11. First, we would like to examine whether the present petition is filed within limitation period or not. We notice that, in the instant case, the petition is filed on 15.12.2023, whereas the date of default relied upon by the financial creditor is 26.10.2021, which implies that the petition has been filed within the limitation period of 03 years.

12. Secondly, we would like to ascertain whether the Petitioner stepped into the shoes of a guarantor and exhausted liability of such kind that it enables him to demand repayment of such dues paid. Part II under Schedule ‘C’ of the letter sent by State Bank of India dated 25.08.2014 (attached as Annexure A-3 to the Petition) lists one property owned by the Petitioner along with his brother Sh. Sandeep Jain as “Collateral Security” in Entry No. “3”. The listed property is of the description “ Agriculture/ Commercial land at Paonta Sahib measuring 2717 biswa, i.e, 135 bigha 17 biswa standing in the name of Rajdeep Jain & Sandeep Jain as per 10 different wasika no. 1250, 1251, 1252, 1253, 1165, 1166, 1254, 1167, 1168, 1169”, thus proving the fact of the Petitioner mortgaging one of his properties for the grant of loan in favour of the Corporate Debtor. Upon looking up at the Settlement agreement dated 03.09.2021 (attached as Annexure A-4 to the



Petition) it is found that the acceptance of the settlement was forwarded to the Petitioner as well.

We further find that the State Bank of India had sent a letter addressed to the Petitioner (attached as Annexure A-5 to the Petition) dated 25.10.2021 whereby it requested the Petitioner to consider the Compromise Offer by releasing the properties mortgaged against the deposit of Rs 3.00 Cr. Further, we note that the Petitioner submitted a banker's cheque bearing no. 114973 for Rs. 1,85,00,000/- dated 26.10.2021 to the bank to discharge his liability and release his property from mortgage (Letter by the Petitioner stating the payment through the above Banker's Cheque has been attached as Annexure A-6 to the Petition), while the acknowledgement by the Bank dated 02.11.2023, wherein the Petitioner has issued a demand draft in favour of State Bank of India has been attached as Annexure A-7 to the petition.

Thus, it can be concluded that not only was the Petitioner acting as a guarantor for the Corporate Debtor, but also had discharged the liability on behalf of Respondent Corporate Debtor and thus has now been subrogated in place of State Bank of India to become the financial creditor of the Corporate Debtor in view of doctrine of subrogation and as per provisions of section 140 of Contract Act, 1872 (supra).

13. Thus, in the light of the abovementioned discussion, we find that the Petitioner Bank has been able to successfully establish the debt and default on the part of the Corporate Debtor in repayment of its financial debt. Further, since despite opportunities, neither any reply was filed nor anyone represented the Corporate Debtor during hearing, we safely conclude that



the respondent-corporate debtor has nothing to say in the matter, and evidence led by Petitioner remained unrebutted. Hence CIRP can be initiated against the Respondent Corporate Debtor.

15. In the sequel to the above and the given facts and circumstances, the present petition being complete and the petitioner having established the default on the part of the corporate debtor in payment of the Financial Debt for an amount being above the minimum threshold limit, **the present Petition 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 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 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 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 Respondent.”

16. As proposed by the Petitioner, this Bench appoints Sh. Bhupinder Sethi as IRP having Registration No. IBBI / IPA-001 / IP-P-02144/ 2020 - 2021/ 13366 Email ID: ip.brsethi@gmail.com, subject to the condition that no disciplinary proceedings are 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. The Law Research Associate of this Tribunal has checked the credentials of Sh. Bhupinder Sethi and nothing adverse has found against him. This Adjudicating Authority further orders that:

Sh. Bhupinder Sethi, as an Interim Resolution Professional (“IRP”) having Registration No. IBBI/IPA-001/IP-P-02144/2020-2021/13366, Email ID: ip.brsethi@gmail.com, is directed to take charge of the CIRP of the Corporate Debtor 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.

Sh. Bhupinder Sethi shall exercise his powers as the Interim Resolution Professional with the following directions:-

- i. The term of appointment of Sh. Bhupinder Sethi shall be in accordance with the provisions of Section 16(5) of the Code;
- ii. In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution



Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

iii. The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;

iv. The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v. It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall



extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi. The Suspended Board of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any



non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii. The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational 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 the constitution of the Committee; and

ix. The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

17. The Petitioner is directed to deposit Rs. 3, 00, 000/- (Three 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 Petitioner.

18. A copy of this Order shall immediately be communicated to the Petitioner Bank, the Corporate Debtor, IBBI, and the IRP named above by the Court Officer/Registry of this Tribunal.

19. **The Application is admitted and disposed of accordingly.**

Sd/-
(D. ARVIND)
MEMBER (T)

Sd/-
(HARNAM SINGH THAKUR)
MEMBER (J)

September 09, 2024