

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

**C.A. NO. (IB)-202(PB)/2017**

**IN THE MATTER OF:**

Punjab National Bank,  
Having its registered Office at :  
7, Bhikaji Cama Place,  
New Delhi-110066 And  
Having its Branch Office at:  
Sector-17B, Large Corporate Branch,  
Chandigarh.

.... Applicant/Petitioner

v.

Bhushan Power and Steel Limited,  
A company incorporated under the Companies Act, 1956  
And having its registered Office at:  
F-Block, Ist Floor International Trade Tower,  
Nehru Place,  
New Delhi-110 019, India

.... Respondent

**Judgement delivered on 26.07.2017**

**Coram:**

**CHIEF JUSTICE M.M.KUMAR**  
**Hon'ble President**

**Ms. Deepa Krishan**  
**Hon'ble Member (T)**

For the Financial Creditor

: Mr. Bishwajit Dubey, Mr. Manpreet  
Lamba, Ms. Priyal Mool,  
Ms. Surabhi Khattar, Advocates

For the Respondent

: Mr. U.K. Chaudhary, Sr. Advocate  
Mr. Mahesh Aggarwal, Advocate  
Mr. Sumesh Dhawan, Advocate  
Mr. Rajeev Kumar, Advocate  
Ms. Vatsala Kak, Ms. Shally Bhasin  
Ms. Jasuin Dhama, Advocates

For Bhushan Steel

: Mr. Vivek Sibal, Ms. Jasmine Kottai,  
Advocates

**Per CHIEF JUSTICE (RETD.) M.M.KUMAR, HON'BLE PRESIDENT**

**JUDGMENT**

The Punjab National Bank (for brevity 'PNB-Financial Creditor') has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code'), with a prayer for triggering the insolvency resolution process in the matter of Bhushan Power and Steel Limited (for brevity the 'Corporate Debtor'). It is appropriate to mention that PNB-Financial Creditor' is a body corporate constituted by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its registered office at 7, Bhikaji Cama Place, New Delhi. The 'Corporate Debtor' has CIN No. U27100DL1999PLC108350. It was incorporated on 22.02.1999. Its authorised share capital is Rs. 450,00,00,000/- (Rupees Four Hundred Fifty Crore only) and the paid up share capital is Rs.249,70,11,300/- (Rupees Two Hundred Forty Nine Crore Seventy Lakhs Eleven Thousand Three Hundred). The aforesaid data concerning the Corporate Debtor is authenticated by master data available on the website of Ministry of Corporate Affairs and the Memorandum of Association available with the 'PNB-Financial Creditor' (Annexure-3).

2. The 'Financial Creditor' has also named Shri Mahender Kumar Khandewal, Golf Course, Gurgaon (Regn. No. IBBI/IPA-001/IP-P00033/2016-17/10086), which satisfied the requirement of Section 7(3)(b) of the Code.

3. The 'Financial Creditor' has also given the details of Financial Debt, Working Capital Facilities, Details of Term Loan and External Commercial Borrowings Facilities. In part-IV of the application, which is on a proforma prescribed under Rule-4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code, has given the following details about the financial debts:

a) In total facilities aggregating to Rs.3750,53,92,271/- (Rupees Three Thousand Seven Hundred Fifty Crores Three Lakhs Ninety Two Thousand and Two Hundred Seventy One only).

b) External commercial borrowings aggregating to USD98,000,000 (Ninety Eight Million Dollars) (rupee equivalent of which as of May 31, 2017 as per RBI reference rating is Rs.632,59,00,000/- (Rupees Six Hundred Thirty Two Crores and Fifty Nine Lakhs only).

c) The total amount of facilities is Rs.4383,12,92,271/- (Rupees Four Thousand Three Hundred Eighty-Three Crores Twelve





Lakhs Ninety Two Hundred and Two Hundred Seventy One only).

There is full description of the individual facilities and the amounts disbursed thereunder which have been set out under the working capital facilities, term loan facilities and external commercial borrowings facilities.

4. The defaulted amount within the meaning of Section 3(12) has also been disclosed under the Working Capital Consortium Agreement. The defaulted amount as on 31.05.2017 in respect of fund based working capital facilities is Rs.541,43,00,000 (Rupees Five Hundred Forty One Crores and Forty Three Lakhs). The amount include for which letters of credit and guarantees were issued, invoked and not repaid under the non-fund based facilities and include interest on such amounts. The initial date of default by the 'Corporate Debtor' in respect of fund based working capital facilities is 01.02.2016. In respect of term loan, the initial date of default is 01.03.2016 and the defaulted amount under the Term Loan Agreement I as on 31.05.2017 is Rs.17,04,00,000/- (Rupees Seventeen Crores and Four Lakhs Only). Likewise, In respect of Term Loan Agreement II, the defaulted amount is claimed to be Rs.34,73,00,000/- (Rupees Thirty Four Crores and Seventy Three

Lakhs Only) and the initial date of default by the 'Corporate Debtor is 01.11.2016. There are further illustration of defaulted amount in respect of Term Loan Agreement III, IV, V, VI and VII and the details are available on record (pgs. 13-15). In respect of ECB Facility Agreement-I, II and III, again defaulted amount has been specified in US Dollar at pages 15 to 18. All the aforesaid figures are proved by the documents placed on record (Annexure P-5 to P-17). The 'Financial Creditor has also given particulars of financial debt documents, records and evidence of default with the help of annexures, which have been placed on record (P-7 to P-11, pgs. 18 to 23). Evidence as per Banker's Book has also been placed on record. The guarantees furnished by Mr. Sanjay Singhal and Ms.Aarti Singhal as guarantors have also been placed on record (Annexures- 24 to 42).

5. From the perusal of the record, we are satisfied that the 'Financial Creditor' has proved by overwhelming evidence that default has occurred, which meets the requirement of Section 3(11) & (12) read with Section 7(3)(a) and Section 7(5) of the Code. We further find that the application is complete in all respects as the Insolvency Professional, Mr. Mahender Kumar has also been proposed.

6. When the matter came up for consideration on 13.07.2017, the 'Corporate Debtor' sought time to file objections and the matter was listed for arguments on 19.07.2017.

7. At the hearing on 19.07.2017, Mr. U.K. Chaudhary, learned Senior Counsel on instructions received from the respondents has stated in categorical term that they do not have any objections to raise and accordingly no objection in writing has been filed. The only submission made by Mr. Chaudhary is that directions to the Insolvency Resolution Professional be issued as has been done by this Bench in the case of **Bank of India v. Tirupati Infra Projects Pvt. Ltd. (C.P. No. (IB)104(PB)/2017, decided on 03.07.2017).**

8. We have also heard Shri Bishwajit Dubey, learned Counsel for the 'Financial Creditor' who has taken us through the various paras of the application as already recorded in the preceding paras and we have also expressed our satisfaction with regard to fulfilling the requirements of the Code by the 'Financial Creditors'.

9. As a sequel to the above discussion, this petition is admitted and Mr. Mahender Kumar Khandewal, 703, 7<sup>th</sup> Floor, New Delhi House, Barakhamba Road, Connaught Place, New Delhi-110 001, [md@varrenyam.net.in](mailto:md@varrenyam.net.in), whose name also figures in the latest list of



Insolvency Professionals issued by the Insolvency & Bankruptcy Board of India is appointed as an Interim Resolution Professional.

10. In pursuance of Section 13 (2) of Code, we direct that public announcement shall be immediately made by the Interim Resolution Professional with regard to admission of this application under Section 7 of the Code. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus the following prohibitions are imposed:

- “(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 Securitisation

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.”

11. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period.

12. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *inter alia*, by Sections 15, 17, 18, 19, 20 & 21 of the Code. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor. In case there is any violation the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for

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passing an appropriate order. Accepting the request of Mr. U.K. Chaudhary, learned Senior Counsel, we specifically direct the Interim Resolution Professional to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

13. The Petition is disposed of in the above terms.

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**(CHIEF JUSTICE M.M.KUMAR)  
PRESIDENT**

Sd-

**(DEEPA KRISHAN)  
MEMBER(TECHNICAL)**

V. Sethi