

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

C.P. (IB) - 1088/MB/2020

Under Section 7 of the I&B Code, 2016

In the matter of

Punjab National Bank (International)
Limited

1 Moorgate, London, EC2R 6JH

.... Petitioner

vs.

Topsgrup Services and Solutions
Limited

5, Royal Palms Golf & Country Club,
Aarey Milk Colony, Goregaon (E),
Mumbai- 400065

.... Corporate Debtor

Order Pronounced on: 19.02.2021

Coram: Hon'ble Suchitra Kanuparthi, Member (Judicial)

Hon'ble Chandra Bhan Singh, Member (Technical)

For the Petitioner: Adv. Almira Lasrado, Adv. Rohan Agrawal i/b MDP &
Partners

For the Corporate Debtor: Adv. Sandeep Ladda

Per: Chandra Bhan Singh, Member (T)

ORDER

1. Punjab National Bank (International) Limited (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process of Topsgrup Services and Solutions Limited (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default to the extent of GBP 13,624,899.92 (Great Britain Pounds Thirteen Million

Six Hundred Twenty Four Thousand Eight Hundred Ninety Nine and Ninety Two Cents Only), i.e., approximately ₹136,89,87,706.77 (Rupees One Hundred Thirty Six Crores Eighty Nine Lakhs Eighty Seven Thousands Seven Hundred Six and Seventy Seven) plus interest at the rate of 12% p.a. as provided under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Contentions of the Petitioner:

2. The Counsel for the Petitioner submits that the Petitioner, vide various Sanction letters, had sanctioned and thereafter, renewed/modified the sanction of various credit facilities to 'The Shield Guarding Company Limited' (Principal Borrower) on the terms and conditions mentioned in the Facility Agreement dated 28.02.2013 and Amended Facility Agreement dated 04.04.2014. The details of the credit Facilities sanctioned by the Petitioner vide the various Sanction Letters are as under:

- a. Sanction Letter dated 21.11.2012 for a working Capital Facility of GBP 6,500,000.
- b. Enhanced Sanction Letter dated 31.03.2014 for a working Capital facility of GBP 7,000,000.
- c. Sanction Letter dated 09.07.2015 for an Adhoc Working Facility for meeting salary expenses of GBP 4.04 million.

3. The Counsel for the Petitioner further submits that the Corporate Debtor was originally incorporated as Tops Security Limited which was subsequently changed to Topsgруп Services Limited on 15.03.2017 and again to Topsgруп Services (India) Limited on 28.05.2018. Finally, the name of the Corporate Debtor was changed to Topsgруп Services and Solutions Limited on 09.01.2020. The Corporate Debtor had provided an unconditional and irrevocable continuing guarantee in favor of the Petitioner against the credit facilities availed by the Principal Borrower, i.e., The Shield Guarding Company Limited. It is then submitted that since

the Principal Borrower had defaulted in making payments to the Petitioner, the account of the Corporate Debtor was declared as a Non-Performing Asset on 30.11.2015. The date of default with respect to the account of the Corporate Debtor was 30.09.2015.

4. The Counsel for the Petitioner submits that the Petitioner had issued a Demand Certificate dated 16.09.2016 on the Corporate Debtor and called upon the Corporate debtor to repay the amount of GBP 10,710,209.02, which remained outstanding from the Principal Borrower as on 15.09.2016, on the basis of the guarantee executed by the Corporate Debtor in favor of the bank.

5. In view of the default committed by the Corporate Debtor, the Petitioner had approached the County Court of London and initiated appropriate proceedings *inter alia* against the Corporate Debtor for their claims to be adjudicated and vide a judgement dated 01.07.2019, the Court had *inter alia* directed the Corporate Debtor to make payments to the Petitioner.

6. The Petitioner then submits that the Corporate Debtor had made part payments to the Petitioner between 30.09.2015 (date of default) and 13.07.2017. Also, the Corporate Debtor had acknowledged the debt in its correspondences exchanged between the Petitioner and the Corporate Debtor vide emails dated 07.11.2019, 08.11.2019 and 24.11.2019 wherein the Corporate Debtor had categorically admitted its liability in respect of the debts owed to the Petitioner. The emails dated 07.11.2019, 08.11.2019 and 24.11.2019 exchanged between the Petitioner and the Corporate Debtor are as follows:

To: Pramod Kumar /Recovery/PNBIL <pramod.kumar@pnbint.com>; Tops Ramesh Iyer <ramesh.iyer@topsgroup.com>
Cc: TOPS Amar Panghal <amar.panghal@topsgroup.com>; Managing Director /PNBIL <md@pnbint.com>
Subject: Re: Assignment of Receivables

Dear Pramodji,

1. As agreed, we will remit (a) ₹1 Cr tomorrow from my brother in law's personal account and (b) ₹1.5 Crs on 13th Nov / 14th Nov from the cheque payments we are receiving from India Bulls tomorrow and early next week. This will complete the ₹2.5 Crs commitment of ours.
2. The balance ₹2.5 Crs, will be remitted to PNBIL in December 2019 as per the executed agreement.
3. Like we discussed at length, the IBR has given us a firm deadline of 6pm tomorrow before he institutes the COC and writes to the various bankers who have first charge on our immovable assets and our receivables. We need to stop this from happening or else everything will be over; our tens of thousands of men and their families will come on the road and we need to do everything we can to prevent that from happening. Further, if the COC is formed, and if our customers find out about the bankruptcy proceedings, they will immediately terminate the contracts and that will kill the business and brand.
4. We are moving the honourable Courts tomorrow for a stay and would with folded hands request you to send us the letter as requested earlier, latest by noon tomorrow IST. Ramesh had sent you a simple two line draft that we expect via an email from PNBIL.
5. To summarise, we need the letter by noon tomorrow to submit to the honourable Courts as that would then cease the Insolvency proceedings of Olevea and most importantly, cease any further action by the IBR.

Additionally, Tops is well on it's way to recovery. Like I mentioned over the phone, Rakesh Jhunjhunwala has additionally acquired 9% stake in Tops taking his shareholding to nearly 20%. We are in extremely advanced discussions to raise ₹200 Crs equity and ₹50 Crs debt in India for our working capital needs. With all these funds coming in and with our business growth, we are confident and committed of paying back every single penny to PNB as committed by me in our executed agreement.

We are extremely thankful to Rajeevaji and you for discussing this matter with us and offering your support as partners.

I look forward to urgently hearing from you.

Thank you once again and God bless,

Best wishes,

From: Diwan Rahul Nanda <drn@topsgroup.com>
Sent: 08 November 2019 11:42
To: Pramod Kumar /Recovery/PNBIL; Tops Ramesh Iyer
Cc: TOPS Amar Panghal; Managing Director /PNBIL
Subject: Re: Assignment of Receivables

Dear Pramodji,

This has reference to your call and our discussion.

Thank you for confirming that PNBIL is giving us the NOC subject to the following points -

1. We will transfer ₹250,000 today to PNBIL
2. We will transfer ₹250,000 by end of next week ie 15th November 2019 to PNBIL and
3. I will come and meet Mr Rajiva on 22nd November 2019 in London.

Kindly have the NOC sent urgently to the undersigned and people marked in this mail.

Also let us know the name and number of your lawyer who will be present in the honourable NCLT Court # 1 today?
We need the lawyer to be there as soon as possible.

Thank you,

Best wishes,

From: Dr. Diwan Rahul Nanda <drn@topsgroup.com>
Sent: 24 November 2019 14:41
To: Pramod Kumar /Recovery/PNBIL
Cc: Ramesh Iyer; Panghal India Amar
Subject: Our offer for payment of the second tranche

Dear Pramodji,

Kindly refer to our discussion over the last two days.

As agreed, we will remit £500,000 to PNBIL as follows:

- 1) £100,000 already stands remitted as on 22nd November 2019.
- 2) We will remit £150,000 @ £20,000 every bank working day starting 25th Nov'19 to be completed by 4th Dec'19 subject to working days of banks in India & the UK.
- 3) We will further remit £100,000 by 12th Dec'19 and
- 4) We will remit the balance £ 150,000 by 23rd Dec'19

We also stand committed to abide by the One Time Settlement (OTS) entered into between PNBIL & us on 01.07.2019 in the honourable Courts of London, UK.

We would request for a formal acceptance of our above proposal today itself.

Best wishes,

7. The Counsel for the Petitioner then submits that the present Petition was filed on 16.03.2020 and therefore, considering the provisions of Section 19 of the Limitation Act, 1963, the present Petition is well within limitation.

8. The Counsel for the Petitioner submits that the Corporate Debtor had admittedly defaulted in repaying the financial assistance which was availed by the Principal Borrower and the Corporate Debtor executed an unconditional and irrevocable guarantee for the same and then failed/neglected to repay the loan amount. It is submitted that the liability of the Borrower and the Guarantor is co-extensive and therefore, the Guarantor has failed to service the debt of the Corporate Debtor.

Findings:

9. This Petition has been filed by Punjab National Bank (International)

Limited (PNB(I)L) under Section 7 of the Code to initiate Corporate Insolvency Resolution Process against Topsgrup Services and Solutions Limited, the Corporate Debtor. The Petitioner mentions that the Corporate Debtor was originally incorporated as Tops Security Limited which was subsequently changed to Topsgrup Services Limited on 15.03.2017 and again to Topsgrup Services (India) Limited on 28.05.2018. Finally, the name of the Corporate Debtor was changed to Topsgrup Services and Solutions Limited on 09.01.2020. The Petitioner has enclosed certificate of incorporation with regard to the changes in name.

10. The Bench notes that this Petition has been filed for a total outstanding Debt of Great British Pound (GBP) of 13,624,899.92 which translates about Rs. 136,89,87,706.77 which is due and payable by the Corporate Debtor to the Financial Creditor as on 28.01.2020. The Petitioner had sanctioned credit facilities on 21.11.2012 for a working capital of GBP 6,500,000 which was subsequently enhanced to GBP 7,000,000 on 31.03.2014. In addition, an adhoc working capital of GBP 4,040,000 was granted vide Sanction Letter dated 09.07.2015. The Sanction Letter and credit facilities were provided to The Shield Guarding Company Limited, Principal borrower. Topsgrup Services and Solutions Limited, the Corporate Debtor had provided an unconditional and irrevocable continuing guarantee in favor of the Petitioner. The default of payment to the Petitioner occurred on 30.09.2015 and the loan was declared as NPA by the Petitioner on 30.11.2015.

11. The Bench also notes that the Petitioner has submitted that Corporate Debtor had made part payments to the Petitioner between 30.09.2015 (date of default) and 13.07.2017. The Corporate Debtor has acknowledged the Debt in its correspondence with the Petitioner via emails on 07.11.2019, 08.11.2019 and 24.11.2019, a copy of which are extracted above at Para No. 6. The Bench notes that this Company Petition was filed on 16.03.2020. Therefore, this Petition is in accordance with Section 18 and 19 of the Limitation Act, 1963 where a fresh period of

limitation commences from the date of acknowledgement of the debt by the Corporate Debtor and/ or when the last payment was made. Therefore, this Bench is of the view that the present Company Petition is well within limitation as per Sections 18 and 19 of the Limitation Act, 1963. In this regard, the Bench's attention was drawn to an Order of Hon'ble NCLAT of 18.12.2020 passed in Company Appeal (AT) (Insolvency) No. 621 of 2020 in which it was held that:

"24. Section 18 applies to not merely suits but also applications and where before expiry of the prescribed period for an Application an acknowledgement is made, the Section provides for computing fresh period of Limitation from the time when acknowledgement was so signed. Perusal of Section 19 shows that where payment is made on account of a debt or interest before expiration of the prescribed period by the person liable to pay, a fresh period of Limitation shall be computed from the time when the payment was made. The date of NPA will not shift. It will remain the foundational date and Period of Limitation gets triggered from that date. But when prescribed period is computed in accordance with the Limitation Act and facts of this matter, Section 18 and 19 do appear to be attracted."

12. This Bench notes that this matter had come up for hearing on last six occasions, i.e., on 06.11.2020, 23.11.2020, 10.12.2020, 22.01.2021, 29.01.2021 and 05.02.2021. During hearing on 10.12.2020, the Counsel for the Petitioner had submitted that the copy of the Petition and court notice were served to the Corporate Debtor on 27.11.2020 intimating the next date of hearing. On the same day, the Bench had given last chance to the Corporate Debtor to file Reply. Even then, the Corporate Debtor chose not to file Reply to the Petition. On 05.02.2021, both the counsels for the Petitioner as well as Corporate Debtor were heard. Shri Sandeep Ladda, supposedly Counsel for the Corporate Debtor was present but mentioned that the Corporate Debtors are in jail and he does not have any

instructions from them nor any reply has been filed.

13. In view of the above, the Bench has come to the conclusion that in the present Petition, the 'debt' qualifies as a Financial Debt as per Section 5(8) of the Code and there is a 'default' as per Section 3(12) of the Code. Also, this Petition is well within limitation as per Sections 18 and 19 of the Limitation Act, 1963. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Petitioner as a major constituent for admission of a Petition under Section 7 of the Code. Therefore, the Petition under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-(I), namely:

(I) (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 (SARFAESI Act);

(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.

(II) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

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

(IV) That the order of moratorium shall have effect from the date of pronouncement of this order till the 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 Corporate Debtor under Section 33, as the case may be.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.

(VI) That this Bench hereby appoints, Mr. Rajendra Karanmal Bhuta, having office at 1207, Yogi Paradise, Yogi Nagar, Borivali (W), Mumbai – 400092, having Registration No. IBBI/IPA-001/IP/P-00141/2017-2018/10305 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

14. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)