

**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH**

\*\*\* \*\*

**CP (IB) No. 187/7/AMR/2019**

**In the matter of Panyam Cements and Mineral Industries Limited**

\*\*\* \*\*

**Dated 14<sup>th</sup> May, 2020**

The regular court proceedings have been suspended/closed as per Notice dated 22.03.2020 of NCLT, Principal Bench and subsequent follow up orders due to the COVID-19 pandemic. The order in this case is ready. Counsel for the parties are present in the Video Conference (VC). Order is pronounced through VC. The TCP (IB) No. 187/7/AMR/2019 is admitted as per separate sheets.

Upload the same onto the NCLT website. A copy of the order may also be sent to the Registrar, NCLT as per Circular dated 14.04.2020 for necessary action at his end.

  
**MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH**

\*\*\* \*\*

CP (IB) No. 187/7/AMR/2019

**In the matter of a Petition under Section 7 of the  
Insolvency and Bankruptcy Code, 2016  
and  
In the matter of M/s Panyam Cements & Mineral Industries  
Limited**

**Between**

IDBI Trusteeship Services Limited,  
Asian Building, Ground Floor,  
17, R. Kamani Marg, Ballard Estate,  
Mumbai – 400001,  
Maharashtra.

... **Petitioner**

**and**

Panyam Cements and Mineral Industries Limited,  
C-1, Industrial Estate, Nandyal,  
Andhra Pradesh – 518 502.

... **Respondent**

**Date of Order: 14.05.2020**

**CORAM:**

**Hon'ble Janab Mohammed Ajmal, Member Judicial.**

**Appearance:**

For the Applicant: Mr. Kiran Kumar & Mr. Ekta Bahl,  
Advocates

For the Respondent s: Mr. D. Gopala Krishan, Mr. J. Basava Raju  
and Ms. A. Sandhya Rani, Advocates.

**ORDER**

A Financial Creditor (Petitioner) seeks Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor (Respondent) in this Application under section 7 of the Insolvency & Bankruptcy Code (the Code for short).

2. The facts leading to the Application may be stated as follows. The Respondent *inter alia* is a manufacturer of cement with its registered office in Nandyal, Kurnool, and factory at Cement Nagar in the same district in the State of Andhra Pradesh. The Company by its Board Resolution dated 29.12.2015 desired to raise private funds through 978 secured, rated, listed, redeemable, non-convertible debentures at a face value of Rs. 10,00,000/- each for cash at par to be issued and allotted in one or more tranches aggregating to Rs. 97,80,00,000/- only. EW India Special Assets Fund Private Limited and ECAP Equities Limited subscribed to the debentures numbering 330, 300 and 348 respectively in three tranches on 30.03.2016, 02.05.2016 and 14.07.2016. The present Petitioner as the Debenture Trustee entered into an agreement (Debenture Trust Deed) on 09.02.2016 and other security instruments with the Respondent. The debentures were to be partially redeemed on different dates as per the redemption schedule set out in the Debenture Trust Deed (Annexure 2 thereof). The Respondent defaulted in partially redeeming the debentures on 31.10.2017 and paid Rs.1,66,38,784/- only on 12.12.2017 as against the due amount of Rs.2,16,38,685/-. It also failed to pay any amount due for the months subsequent to October, 2017. Thus, the Respondent committed default in payment of a financial debt. An amount of Rs. 186,62,33,737/- remained due as on 12.09.2019 which included the principal, interest thereon, maturity premium default interest, costs and TDS on 26.07.2018 the Petitioner issued a notice of default and breach of the terms of the Debenture Trust Deed. It also issued a notice of acceleration and recall on 31.01.2019 and a reminder on 30.04.2019 for payment of debt due. Since the amount was not paid nor the notices responded to the Petitioner came up with the present petition on 18.09.2018 with the above prayer.
3. The Respondent in reply to the notice issued through this Authority contested the claim by filing a counter. It is contended that this Tribunal does not have jurisdiction to entertain the Petition. The parties had agreed in the Debenture Trust Deed that the Courts at Hyderabad would alone have jurisdiction. It is further asserted that the Company had pledged shares to an extent of Rs.76,63,842/- against the debentures. The rights of

the shares were transferred to the Petitioner and as such there was no existence of liability of debt. The Petitioner was authorised to sell or otherwise dispose of all or any part of the promoters' shares and apply the proceeds thereof towards repayment of amount due. The pledge created pursuant to the pledge agreement could be enforced without recourse to any rights of the debentures holders or enforcing any other security. The Petitioner was also entitled to enter upon the secured properties under the transaction documents and utilize the rents and profits thereof. The Petitioner had enough authority under the Trust Deed for realize of the amount due. Therefore, and Application under section 7 of the Code would not be maintainable. The Petitioner having not come to the Tribunal with clean hands, the petition deserves to be dismissed.

4. Basing on the rival pleadings the following issues emerge for determination.
  - I. Whether the Petition is maintainable?
  - II. Whether the Respondent committed default in payment of a financial debt?
  - III. To what relief, the Petitioner is entitled?

**Issue No. II:**

5. The execution of the Debenture Trust Deed and allotment of the debenture to the debentures holders is not in dispute. It is also not in dispute that the Respondent defaulted in honouring the redemption on the schedule dates as per Annexure 2 of the Debenture Trust Deed. It partially redeemed debentures on 12.12.2017, which were due on 31.10.2017. It is not disputed that it failed to pay any amount due including interest subsequent to October, 2017 despite issue of notice of acceleration and recall dated 31.01.2019. The Hon'ble Apex Court in *Innoventive Industries vs. ICICI Bank & Anr: (2018) 1 SCC 407* have held as follows.

“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of debt, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in

respect of a claim and for the meaning of claim, we have to go back to Section 3(6) which defines claim to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4).”

6. The Respondent accordingly was in default in payment of a financial debt. Issue No. II is answered in the affirmative.

**Issue No. I:**

7. The maintainability of the Petition is challenged on the ground that the Petitioner had other avenues available for enforcing the deed and realise the debt. Jurisdiction of this Tribunal is thus barred. In this connection, reference is made to Article 46 of the Trust Deed and *pari materia* terms in the deeds of guarantee and pledge agreement which indicate that the parties agreed to the Courts at Hyderabad alone and no other Courts shall have jurisdiction to entertain and try any dispute arising from and out of the provisions of the deed(s). It must be remembered that a proceeding under section 7 of the Code is not recovery proceeding. Therefore, whether or not the Petitioner was authorised to resort to recovery of the debt by other means, it could not be precluded from approaching this Authority. Besides section 238 of the Code envisages that the provisions of the Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. The contention raised by the Respondent accordingly does not hold much water. In this connection reference may profitably be made to the observations of the Hon'ble Apex Court and Hon'ble NCLAT.

(i) “12. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests.” (in re: Swiss Ribbons v. Union of India: (2019) 4 SCC 17).

(ii) “19. It is made clear that Insolvency Resolution Process is not a recovery proceeding to recover the dues of the creditors. I & B Code,

2016 is an Act relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons and to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including the Government dues. Such being the object of the I & B Code 2016, if the interest of all the stakeholders are balanced and satisfied then to promote entrepreneurship and to ensure that the company continue to function as on going concern, it is desirable to close such proceeding without delay and going into technical rigour of one or other provisions, which are all otherwise futile for all purpose. (in re: Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt. Ltd. (Company Appeal (AT) (Insol.) No. 89 of 2017 Decided on 18.08.2017)

8. As already indicated the Code has overriding effect over any other law or any instrument having the effect of law. The agreement between the parties as to the jurisdiction of Courts at Hyderabad cannot override express provision of the Code which provides for a specialised mechanism for Corporate Insolvency Resolution. The parties cannot decide jurisdiction of the resolution of their dispute in violation of the express provision of any statute. The contention as to lack of jurisdiction of this Authority raised by the Respondent accordingly cannot be accepted. Issue no. I is answered in the affirmative.

**Issue No. III:**

9. In view of the foregoing findings the Company Petition needs to be allowed. The Petitioner has suggested the name of Mr. Bhruagesh Rameshchandra Amin as the Interim Resolution Professional (IRP). He has furnished his consent in Form No. 2. The Petition is otherwise complete. It thus needs to be admitted. Hence ordered.

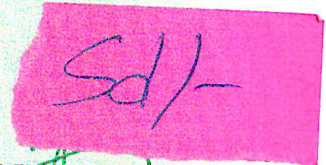
**ORDER**

The Company Petition is admitted on contest. The Corporate Insolvency Resolution Process of the Respondent shall commence from this date and shall be completed within 180 days hence.

- i. Shri Bhruagesh Rameshchandra Amin C/o BDO Restructuring Advisory LLP, BDO India LLP, Level 9, The Ruby, NW

Wing, Senapati Bapat Marg, Dadar (W), Mumbai 400028  
Email [bhrugethamin@bdo.in](mailto:bhrugethamin@bdo.in) IBBI/IPA-002/IP-N00353/2017-2018/11003 is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website.

- ii. He is directed to take charge of the Respondent/Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of the Code and Rules made thereunder.
- iii. Moratorium in respect of the Respondent is hereby declared under Section 14 of the Code.
- iv. The Directors, Promoters or any other person(s) associated with the management of Respondent (Corporate Debtor) shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for effectively discharging his functions under the Code.
- v. The Registry shall communicate the order to the Petitioner and the Respondent forthwith.
- vi. The Petitioner/OC and the Registry shall send the copy of this order to IRP for necessary compliance.



**(MOHAMMED AJMAL)**  
**MEMBER JUDICIAL**