



**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 151/Chd/Chd/2019**

**Under Section 7 of the  
Insolvency & Bankruptcy  
Code, 2016**

**In the matter of:**

**Punjab National Bank**  
**through its Attorney and Principal Officer,**  
**Sh. Har Bhagwan Dass Babbar, Assistant General Manager**  
having its Head office at:  
Plot No. 4, Sector-10, Dwarka, New Delhi  
having its Branch Office at:  
SCO No. 16, Phase-1, Mohali  
District SAS Nagar, Punjab

....Petitioner-Financial Creditor

Vs.

**V.I.R. Food Limited**  
having its Registered Office at  
SCO No. 25, Sector 26, Madhya Marg  
Chandigarh-160019  
Work office at:  
Barmalipur Road, Village Payal,  
District, Ludhiana, Punjab-141416  
CIN No: U15310CH2005PLC028446

...Respondent-Corporate Debtor

**Judgment delivered on: 01.06.2023**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present:**

For the Petitioner-Financial Creditor : Mr. V.K. Mahajan, Advocate

For the Respondent-Corporate Debtor : Ms. Salina Chalana, Advocate



**PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)**

**JUDGMENT**

The present petition has been filed by **Punjab National Bank** (hereinafter referred to as 'Petitioner/Financial Creditor') through its Assistant General Manager, Sh. Har Bhagwan Dass Babbar, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **V.I.R Food limited.** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Assistant General Manager, Sh. Har Bhagwan Dass Babbar, with the affidavit verifying the contents of the application, appended thereto.

2. The Corporate Debtor is stated to be incorporated on 20.05.2005. The company has its registered address at SCO No. 25, Sector 26, Madhya Marg, Chandigarh-160019. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is attached as Annexure A-3 of the petition.

3. The brief facts of the case are that the corporate debtor was engaged in the business of Rice Sheller, Sela Plant, Rice Grains, Flour Mills and Roller Flour Mills, Vegetable Oil Extraction Plants, Food Processing Units, Feed Mills, etc. and was sanctioned various credit facilities on 25.10.2005 which were enhanced/renewed/restructured from time to time by Financial Creditor. The credit facilities were restructured on 29.06.2015 by the sanction of CC Limit of Rs. 1580 lakhs, Working Capital Term Loan of Rs. 420 lakhs and Funded Interest Term Loan of Rs. 357 lakhs. Further, the ad-hoc CC limit of Rs. 455 lakh as on 30.03.2017. Vide resolutions dated 22.06.2015 and 29.03.2017, authorized its Director to furnish securities and execute Loan & Security Document. Financial



Creditor filed objections on 29.01.2018 before the Court of Sessions of Greater Bombay for the release of IPs as the same are equitable mortgaged to secure credit facilities sanctioned. The equitable mortgages also cover credit facilities of Rs. 41 crores availed by Bharat Foods & Agro Products. The Corporate Debtor did not pay interest and installments and the account was classified as NPA and on 31.03.2017. Notice dated 31.05.2017 under Section 13(2) of the SARFAESI Act demanding an amount of Rs. 29,14,72,391.92/- as on 18.05.2017 with further interest w.e.f. 01.05.2017 was served upon the corporate debtor. Notice under Section 13(4) on 21.08.2017 and Demand Notice dated 23.10.2018 for Rs. 34,74,96,023/- as on 21.10.2018 was served upon Corporate Debtor. The Bank Charges on fixed Assets as well as Current Assets were duly registered with ROC on 29.06.2015 and 30.03.2017. The Management of the Corporate Debtor has indulged in unfair practices and has diverted/misappropriated the assets owned by Corporate Debtor. The recovery suit bearing OA No. 417/2018 was filed before Hon'ble Debts Recovery Tribunal-III, Chandigarh which was allowed vide judgment dated 17.08.2019.

4. It is stated in Part-IV of Form No.1, the total amount claimed to be in default is Rs. 36,41,58,899/- (Rupees Thirty Six Crore Forty One Lakh Fifty Eight Thousand Eight Hundred Ninety Nine Only) and date of default is 31.12.2016. Copy of sanction (Annexure-A-5), sanction adhoc limit (Annexure-A-6), hypothecation limit (Annexure-A-8, A-11, A-12, A-18) Working Capital Term Loan Limit (Annexure-A-9), Funded Interest Term Loan Agreement (Annexure-A-10), Master Agreement (Annexure-A-13), Supplementary Agreement (Annexure-A-14), Letter of intent (Annexure-A-17, A-20), ROC charges (Annexure-A-21), BC Letter (Annexure-A-22), Audited Balance Sheet (Annexure-A-23), Possession Notice



(Annexure-A-26), CIBIL Report (Annexure-A-28) and Statement of Accounts (Annexure-A-29, A-30, A-31, A-32) are attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor to show cause as to why this petition be not admitted. An affidavit of service was filed vide Diary No. 3295 dated 09.07.2019. The reply was filed vide Diary No.244 dated 10.01.2020, wherein it is stated that the Financial Creditor has produced the documents backed by the certificate issued under Bankers Book Evidence Act, but, however, has not fulfilled the essential requirements under the law. The Bank has not provided the details of the amount due and detailed calculations nor any statement of accounts. The corporate debtor company availed loan and facilities to the tune of Rs. 24 crores and during this period company has received interest of Rs. 18 crores. However, the company had built up large capital assets from the funds partly infused by promoters and partly availed as term loans from the petitioner bank and the capital assets were offered as security to the bank against term loans and credit facilities. The balance as on the date of the debit freeze by EOW for the bank account No. 1155008700002786 is of Rs. 19,95,82,169.03. The bank did not realise the fall in prices of rice in the domestic market and continued to lend money to its other rice miller customers, the borrowers whose drawings were much beyond their DP could not service their loans and their accounts were classified as NPA. The Petitioner bank has wrongly classified the loan account as NPA and has itself granted adhoc limit of Rs. 4.55 crore on 30.03.2017. The respondent deposited Rs. 1.60 crores on 28/29.03.2017. The amount claimed in the notice is incorrect. The designation of the person issuing the notice has not been given. The Bank has never considered the settlement proposals on merit. The bank submitted OTS proposals for the settlement of its dues, which is pending for acceptance.



6. The rejoinder was filed vide diary No.1500 dated 24.02.2020, wherein it is stated that the statement of accounts has been attached showing a true picture of transactions, the amount due and default. Sh. Har Bhagwan Dass, Assistant General Manager, Babbar has been authorized for signing the petition as Power of Attorney was granted in his favour and authority was given by circle head vide letter dated 26.02.2019. The properties mentioned are duly mortgaged with Financial Creditor and accounts are guaranteed by Sh. Yash Dewan and Sh. Shanti Sarup Dewan. The central statutory auditors did not agree to adhoc sanction of Rs. 4.55 crore and commented that the outstanding balance of the Corporate Debtor was in excess of sanctioned limit since 30.04.2016. The Short written submissions were filed by the petitioner vide Diary No. 00069/01 dated 10.10.2022 and by the respondent vide Diary No. 00142/2 dated 11.11.2022.

7. We have heard the learned counsel for the petitioner as well as respondent and have also perused the record carefully.

8. Section 7(5)(a) of the Code is as follows:-

*“5) Where the Adjudicating Authority is satisfied that—*

*(a) a default has occurred and the application under sub-section (2) is complete, and there are no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”*

9. The first issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is mentioned as 31.12.2016, which is three months prior to 31.03.2017 i.e. when the account of the corporate debtor was classified as Non-Performing Asset (NPA). The present petition is filed vide Diary No. 1399 dated 20.03.2019. Thus, it can be safely said that the present petition is well within the period of limitation of three years.



10. Another issue for consideration is whether there is a default in payment or not. It is observed from the record that in the present case, the debt is evidenced by sanction (Annexure-A-5), sanction adhoc limit (Annexure-A-6), hypothecation limit (Annexure-A-8, A-11, A-12, A-18) Working Capital Term Loan Limit (Annexure-A-9), Funded Interest Term Loan Agreement (Annexure-A-10), Master Agreement (Annexure-A-13), Supplementary Agreement (Annexure-A-14), Letter of intent (Annexure-A-17, A-20), ROC charges (Annexure-A-21), BC Letter (Annexure-A-22), Audited Balance Sheet (Annexure-A-23), Possession Notice (Annexure-A-26), CIBIL Report (Annexure-A-28) and Statement of Accounts (Annexure-A-29, A-30, A-31, A-32) attached with the main petition. As per the financial records, it is evident that an amount of Rs. 36,41,58,899/- (Rupees Thirty-Six Crore Forty-One Lakh Fifty Eight Thousand Eight Hundred Ninety-Nine Only) is still pending which amounts to default when the corporate debtor avoided the payment of outstanding amount despite repeated requests by the petitioner-financial creditor. Although, Corporate Debtor-respondent has taken pleas of non-consideration of payments already made and settlement proposal or OTS pending. However, their pleas are untenable as once the default is proved beyond the threshold limit then an application under Section 7 is required to be admitted.

11. The application filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, in Part III of Form 1, Sh. Sumat Kumar Gupta, has been proposed as Interim Resolution Professional (IRP). However, vide IA No. 365 of 2021, Sh. Adesh Kumar Singla has been proposed as the new IRP and Form No.2 dated 05.04.2021 has been submitted. Vide order dated 10.10.2022 of this



Adjudicating Authority, the IA No. 365 of 2021 was allowed and disposed of accordingly. The Law Research Associate of this Adjudicating Authority has checked the credentials of Sh. Adesh Kumar Singla, his AFA Certification is valid up to 09.10.2023 and there is nothing adverse against her. In view of the above, we appoint Sh. Adesh Kumar Singla, Registration No. IBBI/IPA-002/IP-N00191/2017-18/10557, Email: as022208@gmail.com, Mobile No.7045353823, the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Sh. Adesh Kumar Singla 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 request 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.

12. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:



- 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 Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002; and
- 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.
- e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- f) The order of moratorium shall have effect from the date of this order till 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 the corporate debtor under Section 33 as the case may be.

13. We direct the Financial Creditor to deposit a sum of ₹2,00,000/- (Rupees Two Lakhs Only) with the Interim Resolution Professional, to meet out the expense to perform the functions assigned to him in accordance with Regulation 6



of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

14. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

15. The petition is admitted accordingly.

Sd/-  
(Subrata Kumar Dash)  
Member (Technical)  
June 01, 2023  
PKA/TB

Sd/-  
(Harnam Singh Thakur)  
Member (Judicial)