

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

CP (IB) No.392/Chd/HP/2018

**Under Section 7 of Insolvency and
 Bankruptcy Code, 2016**

In the matter of:

Punjab National Bank,

having its Head Office at Plot No.4,

Sector 10, Dwarka, New Delhi- 110075

And Branch Office at Large Corporate Branch,

Bhagwati Towers, RK Rd, Cheema Chowk

Industrial Area-A, Ludhiana- 141003,

Through its Chief Manager Shri Vishal Kumar Prasad

...Petitioner-Financial Creditor

Versus

M/s Kut Energy Pvt. Ltd.,

Having its Registered Office at House No.99,

Sector-3, New Shimla, Himachal Pradesh- 171 009

Second Address at SCO 140-141, Sector 34-A, Chandigarh- 160022

...Respondent-Corporate Debtor

Judgment delivered on 07.10.2019

**Coram: HON’BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
 HON’BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

For the Petitioner : 1. Mr. Harsh Garg, Advocate
 2. Mr. Pulkit Goyal, Advocate

For the Respondent : 1. Mr. Sumit Jain, Advocate
 2. Mr. Sahil Garg, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGMENT

The instant petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as ‘Code’) read with Rule 4 of

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as '**Rules**'). The application has been filed in Form 1 as prescribed in Rule 4(1) of the Rules.

2. The application in Form 1 is filed by Punjab National Bank (**'financial creditor'**) for initiation of Corporate Insolvency Resolution Process (**'CIRP'**) in the case of M/s Kut Energy Private Limited (**'corporate debtor'**). The petition is submitted on behalf of the financial creditor by Shri Vishal Kumar Prasad (PF No.304819) Chief Manager, Punjab National Bank. A copy of Authority Letter dated 11.09.2018 issued by the Zonal Office, Ludhiana, authorizing Shri Vishal Kumar Prasad to file the petition against corporate debtor is annexed as Annexure I/1 of the petition. Annexure I/2 is the General Power of Attorney dated 06.02.2017, nominating, constituting and appointing Shri Vishal Kumar Prasad, to be the true and lawful attorney of the petitioner-bank.

3. As per master data annexed with the Replication, filed by the petitioner-financial creditor vide Diary No.1936 dated 15.04.2019, the respondent-corporate debtor is a company incorporated under the Companies Act, 1956 with authorized share capital of ₹383500000/- and paid up capital of ₹382444230/-. The CIN of the corporate debtor is U40101HP2007PTC030745 and its date of incorporation is 25.05.2007. It has its registered office at District Shimla in the State of Himachal Pradesh and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

4. The facts of the case, briefly stated, are that the petitioner-financial creditor is a nationalized bank, incorporated under Banking Companies (Acquisition and Transfer of Undertakings) Act of 1970 (Act 5 of 1970). The

respondent-corporate debtor is a SPV specifically incorporated for the business of power distribution and was keen on setting 24 MW river hydro power project. In Part IV of Form No.1, it is stated that respondent-corporate debtor was sanctioned various financial facilities by the petitioner-financial creditor from time to time, with the last sanction being on 29.09.2015. The total outstanding amount as on 31.08.2018 is stated to be ₹89,30,56,987.58 and the copy of statement of account is at Annexure I/92 of the paper book. The credit facilities which were sanctioned to the respondent-corporate debtor are as under:-

Facility	Limit
Term Loan I	₹50 Crores
Term Loan II	₹8 Crores
Term Loan III	₹8 Crores
Term Loan IV	₹7.35 Crores
Term Loan V	₹8.03 Crores
Term Loan VI	₹11.99 Crores
ILC (within TL)	₹40 Crores
BG within TL	₹4.45 Crores
Overall	₹93.37 Crores

In order to avail the aforesaid facilities, the respondent-corporate debtor executed various agreements, security documents and *inter alia*, agreed to various terms and conditions of the petitioner-financial creditor for availing the financial facilities. It is stated that in addition to the corporate debtor, one of the Directors, namely, Shri Amit Kumar Modi, gave his personal guarantee and two companies, namely, M/s Capri Infrastructure Pvt. And M/s Kut Non Conventional Energy Pvt. Ltd., also gave their corporate guarantees to secure the aforementioned facilities.

5. It is stated that respondent-corporate debtor failed to achieve commercial operations within the specific time and even after expiry of several

extensions, the account of the respondent-corporate debtor was classified as NPA on 31.03.2016 by the petitioner-financial creditor. Thereafter, a demand notice dated 15.03.2017, Annexure I/85, under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as '**SARFAESI**') was issued by the petitioner-financial creditor to the respondent-corporate debtor as well as to the guarantors in the loan account of the corporate debtor, demanding an amount of ₹106,07,91,644.26 as on 14.03.2017 along with future interest at the contractual rate along with incidental expenses. Subsequently, pre-possession notice dated 31.07.2017, Annexure I/87, followed by a possession notice dated 22.08.2017, Annexure I/88, under Section 13(4) of the SARFAESI Act, was issued by the petitioner-financial creditor to the respondent-corporate debtor for taking physical possession of the property mortgaged with the bank.

6. The petitioner-financial creditor also issued a sale notice dated 30.08.2017, Annexure I/89, to the respondent-corporate debtor for sale of the properties taken possession of, and through the said sale notice the respondent-corporate debtor was informed that if it has any interested buyer for the property, then it is entitled to put the bid as per terms of the sale. As per the Sale Certificate dated 18.05.2018, Annexure I/90, issued by the petitioner-financial creditor, the sale of the secured assets fetched an amount of ₹120,00,11,000/-.

7. Thereafter, the petitioner-financial creditor also filed Original Application, being OA No.1091/2018, under Section of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993, before the Debts Recovery Tribunal-I, Chandigarh.

8. Notice of this petition to show cause as to why this petition be not admitted was issued to the respondent-corporate debtor on 10.12.2018 and the matter was fixed on 06.02.2019. However, on the said date i.e. 06.02.2019, Mr. Sumit Jain, learned counsel for the respondent appeared and filed his power of attorney along with Board Resolution of the respondent-corporate debtor and sought time to file the reply.

9. The respondent-corporate debtor filed its reply vide Diary No.1734 dated 04.04.2019. In its reply, the respondent-corporate debtor stated that the amount of ₹89.30 crores, claimed by the bank is unconscionable and no such amount is due and recoverable from the answering respondent, corporate debtor herein, at any point of time. It was also stated that Securitization Application (SA) is still pending before Debts Recovery Tribunal-I, Chandigarh and the sale of the assets of the corporate debtor is still under challenge.

10. The petitioner-financial creditor filed its replication vide Diary No.1936 dated 15.04.2019 reiterating the averments taken in the petition.

11. During the course of arguments, the learned counsel for the petitioner handed over a copy of order dated 30.08.2019 passed in OA No.1091/2018; Punjab National Bank Versus M/s Kut Energy Pvt. Ltd. and Others, wherein the Debts Recovery Tribunal-III, Chandigarh, allowed the application declaring that defendant No.1 to 4 are liable to pay to the applicant a total sum of ₹129,47,26,759.80 jointly and severally with costs, current and future simple interest @14.65% p.a. from 09.05.2018, till the date of realization of the amount.

12. We have heard the learned counsel for the petitioner and the learned counsel for the respondent and have carefully perused the records.

13. The Hon'ble Supreme Court in the case of ***Innoventive Industries Ltd. Versus ICICI Bank and Another; (2018) 1 Supreme Court Cases 407***, held as under:-

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). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate

debtor within 7 days of admission or rejection of such application, as the case may be.

29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing—i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

14. The present petition is filed under Section 7 of the Code. The application is filed in the prescribed Form 1. As discussed above, the petition is submitted on behalf of the financial creditor by Shri Vishal Kumar Prasad (PF No.304819) Chief Manager, Punjab National Bank. A copy of Authority Letter dated 11.09.2018 issued by the Zonal Office, Ludhiana, authorizing Shri Vishal Kumar Prasad to file the petition against corporate debtor is annexed as Annexure I/1 of the petition. Annexure I/2 is the General Power of Attorney dated 06.02.2017, nominating, constituting and appointing Shri Vishal Kumar Prasad, to be the true and lawful attorney of the petitioner-bank. In view of the filing of the Authority Letter dated 11.09.2018 and General Power of Attorney dated 06.02.2017, it is held that Form No.1 was submitted by duly authorized person of the financial creditor.

15. Section 7 of the Code reads as under:-

7. (1) A financial creditor either by itself or jointly with other financial creditors or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

- (2) *The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.*
- (3) *The financial creditor shall, along with the application furnish—*
- (a) *record of the default recorded with the information utility or such other record or evidence of default as may be specified;*
 - (b) *the name of the resolution professional proposed to act as an interim resolution professional; and*
 - (c) *any other information as may be specified by the Board.*
- (4) *The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).*
- (5) *Where the Adjudicating Authority is satisfied that—*
- (a) *a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or*
 - (b) *default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:*
- Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.*
- (6) *The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).*
- (7) *The Adjudicating Authority shall communicate—*
- (a) *the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;*
 - (b) *the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.*

16. The learned counsel for the respondent submitted that as per the petition, the date of default was 31.03.2015 and whereas the CP was filed on 19.09.2018 i.e. beyond the period of three years and hence, the CP is barred by the period of limitation. But it is to be seen that the loan was restructured on 29.09.2015 and that there was no payment by the corporate debtor, thereafter. Since the C.P. is filed on 19.09.2018, i.e., within 3 years from 29.09.2015, it can be concluded that the C.P. is within limitation. Apart from this ground, the respondent-corporate debtor has not able to show any valid ground for consideration. It is stated by the petitioner that an amount of approximately ₹40

Crores was realized as its share from the sale of secured assets under the provisions of SARFAESI Act. Further, the Debts Recovery Tribunal-III, Chandigarh, vide its order dated 30.08.2019 in OA No.1091 of 2018 allowed the said OA and directed to issue the recovery certificate.

17. Section 7(5) of the Code provides for admission of the application where the Adjudicating Authority is satisfied that (a) a default has occurred; (b) the application under sub-section (2) of Section 7 is complete; (c) there is no disciplinary proceedings pending against the proposed Resolution Professional. The satisfaction of the three conditions is being examined below.

18. The first condition is that a default has occurred. From the facts narrated above, we find that the default has occurred.

19. The second condition is that the application under Section 7(2) is complete. No objections in this regard, were raised during the hearing of the petition. We have discussed the contents of the application above and we conclude that the application is complete.

20. The third condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, Shri Nipan Bansal, IBBI/IPA-001/IP-P00039/2016-2017/10100, has been proposed as interim Resolution Professional. Form 2 filed by the proposed Interim Resolution Professional is at Page 2303 of the petition. Shri Nipal Bansal has certified that there are no disciplinary proceedings pending against him with the board or Indian Institute of Insolvency Professional of ICAI. He has also affirmed that he is eligible to be appointed as a Resolution Professional in respect of the corporate debtor in accordance with the Insolvency and Bankruptcy Board of

India (Insolvency Resolution Process for Corporation Persons) Regulations, 2016.

21. In view of the satisfaction of the conditions provided for in Sections 7(5) of the Code, the petition for initiation of CIRP in the case of M/s Kut Energy Pvt. Ltd. is admitted.

22. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 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.

23. 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 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 financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

24. 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 corporate debtor under Section 33 as the case may be.

25. The Law Research Associate of this Tribunal has checked the credentials of Mr. Nipan Bansal and there is nothing adverse against him. The following directions are issued in respect of the appointment of the Interim Resolution Professional: -

- i.) Appoint Shri Nipan Bansal, 10-B, Udham Singh Nagar, Civil Lines, Ludhiana- 141001, having Registration No.IBBI/IPA-001/IP-P00039/2016-2017/10100, and email address irp@parshotamandassociates.com, Mobile No.9876445400 as an Interim Resolution Professional;
- ii.) The term of appointment of Shri Nipan Bansal, shall be in accordance with the provisions of Section 16(5) of the Code;

- iii.) 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 inventory of assets of the Corporate Debtor;
- iv.) 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 moral;
- v.) 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;

- vi.) 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;
- vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

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

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

Sd/-
(Pradeep R.Sethi)
Member (Technical)

October 7th, 2019
Mohit Kumar/Yashpal

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

Pronounced in open Court.

Sd/- 07/10/2019