

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(through web-based video conferencing platform)**

**IA No. 89/2021, CA No. 962/2019  
and  
CP (IB) No. 63/Chd/Pb/2019**

**Under Section 7 and Section 60(5) of  
Insolvency and Bankruptcy Code,  
2016 and Section 5 of Limitation Act  
read with Section 238A of the Code**

**In the matter of CP(IB) No. 63/Chd/Pb/2019:**

**Punjab National Bank**

having its registered office at  
Plot No. 4, Sector 10, Dwarka,  
New Delhi-110075 and one of the Branches at  
Large Corporate Branch, Bhagwati Tower,  
R.K. Road, Ludhiana

...Petitioner-Financial Creditor

Vs.

**M/s. Macro Dairy Ventures Pvt. Ltd.**

having its registered office at  
Hotel Majestic Park Plaza,  
Bhai Wala Chowk, Ludhiana, Punjab

...Respondent-Corporate Debtor

**And in the matter of IA No. 89/2021**

**Punjab National Bank**

having its registered office at  
Plot No. 4, Sector 10, Dwarka,  
New Delhi-110075 and one of the Branches at  
Large Corporate Branch, Bhagwati Tower,  
R.K. Road, Ludhiana

...Petitioner-Financial Creditor

Vs.

**M/s. Macro Dairy Ventures Pvt. Ltd.**

having its registered office at  
Hotel Majestic Park Plaza,  
Bhai Wala Chowk, Ludhiana, Punjab

...Respondent-Corporate Debtor

**And in the matter of CA No. 962/2019**

**M/s. Macro Dairy Ventures Pvt. Ltd.**

having its registered office at  
Majestic Park Plaza,  
Bhai Wala Chowk, Ludhiana, Punjab

...Applicant

Vs.

**Punjab National Bank**

having its registered office at  
Plot No. 4, Sector 10, Dwarka,  
New Delhi-110075 and one of the Branches at  
Large Corporate Branch, Bhagwati Tower,  
R.K. Road, Ludhiana

...Respondent

**Judgment delivered on: 30.11.2022**

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)  
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner & Applicant  
in IA No. 89/2021 & respondent in

CA No. 962/19 :

Mr. N.C. Sahni, Advocate

For the Respondent in

CP (IB) No. 63/Chd/Pb/2019 and IA No. 89/2021

applicant in CA No. 962/2019:

Mr. V.K. Sachdeva, Advocate

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

**JUDGMENT**

The present petition has been filed 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 by Punjab National Bank (hereinafter referred to as 'Petitioner/Financial Creditor') to initiate the Corporate Insolvency Resolution Process ('CIRP') against M/s Macro

Dairy Ventures Private Limited (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Vishal Prasad, Chief Manager, Panjab National Bank, Large Corporate Branch, Bhagwant Road Tower RK Road Ludhiana, and the affidavit verifying the contents of the application is on pages 30 to 32 of the petition. The authority letter is attached as Annexure A-2

2. The Corporate Debtor is stated to be incorporated on 09.08.2000. The master data of the corporate debtor is attached on Pages 406-407 of the petition. The company has its registered address at C/o Majestic Park Plaza, Bhai Bala Chowk, Ferozepur Road, Ludhiana PB 141002 IN. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. Brief facts raising to the present Company Petition which are necessary for the disposal of the same are narrated hereunder:

3.1 The Corporate Debtor i.e., M/s. Macro Dairy Ventures Pvt. Ltd., Obtained a term loan of Rs 74 Crore from the financial creditor bank i.e Punjab National Bank on 07.04.2008 against furnishing security by way of registered mortgage of the land measuring 138 Kanal 16 ½ Marlas situated at District Ludhiana and also the security of registered mortgage of the personal properties of the two directors of the company namely i.e Sh Satbir Singh Khangura and Smt. Raman Khangura who stood as guarantor for the repayment of bank dues. The amount was repayable in 66 monthly installments each of Rs 1,12,12,121.00/- along with interest at the rate prevailing from time to time, payable with effect from October 2009.

3.2 After availing and enjoying the amount, the corporate debtor started making default and committed a breach of the terms and conditions of the

loan and failed to make regular payments as a result of which the loan

account was classified as NPA on 30.09.2011 as per the instructions of the Reserve Bank of India.

3.3 Thereafter, on the failure of the corporate debtor to pay the loan outstanding along with up-to-date interest within 60 days of the demand notice under section 13 (2) of the SARFESAI Act dated 30.09.2011, the financial creditor invoked the provisions of Section 13(4) of the SARFESAI Act and took over the symbolic possession of mortgaged property of the corporate debtor on 03.02.2012. And on the resistance on delivering of physical possession of the mortgaged property by the corporate debtor the financial creditor made an application on 30.07.2013 to the District Magistrate, Ludhiana to take over the possession of mortgage property, which was allowed vide order dated 22.08.2013 but the order was not implemented for a long time nor did the corporate debtor repaid the loan amount as a result of which the financial creditor filed a Civil Writ Petition bearing no.4721 of 2015 before the Hon'ble Punjab and Haryana high court at Chandigarh. In opposition by the corporate debtor, the same stands admitted by the Hon'ble High Court. The financial creditor having been unsuccessful in making the recovery of its dues by enforcement of its security under the SARFEASAI Act 2002 filed an application under section 19 of the Recovery of Debts and Bankruptcy act, 2018 dated 26.11.2014 which is also pending adjudication in DRT-III, Chandigarh.

4. In Part-III of Form No.1, Mr. Krishan Vrind Jain, Registration No.IBBI/IPA-001/IP-P00284/2017-2018/10528 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 09.10.2018 is attached to Annexure A-4 of the petition.

5. It is stated in Part-IV of Form No.1 that the petitioner has provided a loan amount of Rs.74/- crore. The total amount claimed to be in default is Rs.226,86,52,133.10/- (including interest as of 17.12.2018). The loan account was classified as NPA on 30.09.2011 as per the instructions of the Reserve Bank of India. A Copy of details of disbursement of loan (Annexure A-5). Copy of computation of amounts (Annexure A-7). Copy of sanction letter (Annexure A-8). Copy of default notice (Annexure A-1A). Copy of cheque (Annexure A-4).

6. The notice of this petition was issued to the respondent-corporate debtor on 20.02.2019 as to why this petition be not admitted. A reply on behalf of the respondent-corporate debtor is submitted vide Diary No.4332 Dated 26.08.2019 by Mr. Harbinder Singh Grewal, Director of the respondent-corporate debtor, affidavit authorizing him on behalf of the respondent is attached on Page No.31-32 of the reply.

7. The corporate debtor through its reply has denied the averments made by the petitioner. It is submitted that the petitioner-Bank did not re-structure the accounts of the corporate debtor. Further, it is alleged that the Financial Creditor has not submitted the complete details of the assets. The assets, the status of which is sub-judice before the Hon'ble High Court, therefore, during the pendency of the matter, the financial creditor would not have invoked the proceedings under the IBC. The petitioner has filed a rejoinder vide Diary No. 5274 dated 01.10.2019 whereby, rebutting the contention of the corporate debtor.

8. We have heard the learned counsels for the petitioner and the respondent-corporate debtor and have also perused the written submissions and records available carefully.

9. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the initial default occurred on 30.09.2011 when the loan account of the respondent-corporate debtor was classified as a Non-Performing Asset. Further, the respondent-corporate debtor signed and executed a balance confirmation dated 22.04.2011 & 02.04.2014 and admitted its liability to pay a sum of Rs. 75,22,80,757 including interest as of 31.03.2011 & Rs. 70,27,26,131/- including interest up to the date of 31.03.2014 respectively. The corporate debtor offered a settlement as per the procedure laid down by the applicant bank on 10.09.2014 (Annexure A-16), and when the first proposal became unsuccessful, the respondent-corporate debtor made another application for settlement of dues dated 26.11.2015 (Annexure A-16A). The corporate debtor has also admitted the debt in its balance sheet ending 31.03.2017 (Page 207) filed by it with RoC, for the year 2016-17 dated 05.09.2017. It is settled law that admission of debt in the balance sheet amounts to acknowledgment.

10. Here reliance can be placed on the decision of the Hon'ble Supreme Court in the matter of **State Bank of India Vs. Krishidhan Seeds Pvt. Ltd.(2022) ibclaw.in 40 SC**, wherein it is held that'

*12. The decisions in Sesh Nath Singh (supra), Laxmi Pat Surana (supra) and Asset Reconstruction Company (supra) have subsequently been followed in numerous decisions of this Court delivered by two-Judge Benches, namely: (i) Dena Bank v C. Shivakumar Reddy(((2021) 10 SCC 330)); (ii) State Bank of India v Vibha Agro Tech Limited((2021 SCC OnLine SC 1297)); (iii) Devas Multimedia Private Ltd. v Antrix Corporation Ltd. and Another((2022 SCC OnLine SC 46)); and (iv) SVG Fashions Pvt. Ltd. (Earlier Known As SVG Fashions Ltd.) v Ritu Murli Manohar Goyal and Another((2022 SCC OnLine SC 373)). Besides the above decisions, there is a more recent decision of a three-Judge Bench of this Court in Rajendra*

IA No. 89/2021, CA No. 962/2019

and

CP (IB) No. 63/Chd/Pb/2019

*Narottamdas Sheth and Another v Chandra Prakash Jain and Another((2021 SCC OnLine SC 843)), where, speaking for the Bench, Justice L Nageswara Rao held:*

*“25. We have already held that the burden of prima facie proving occurrence of the default and that the application filed under Section 7 of the Code is within the period of limitation, is entirely on the financial creditor. While the decision to admit an application under Section 7 is typically made on the basis of material furnished by the financial creditor, the Adjudicating Authority is not barred from examining the material that is placed on record by the corporate debtor to determine that such application is not beyond the period of limitation. Undoubtedly, there is sufficient material in the present case to justify enlargement of the extension period in accordance with Section 18 of the Limitation Act and such material has also been considered by the Adjudicating Authority before admitting the application under Section 7 of the Code. The plea of Section 18 of the Limitation Act not having been raised by the Financial Creditor in the application filed under Section 7 cannot come to the rescue of the Appellants in the facts of this case. It is clarified that the onus on the financial creditor, at the time of filing an application under Section 7, to prima facie demonstrate default with respect to a debt, which is not time-barred, is not sought to be diluted herein. In the present case, if the documents constituting acknowledgement of the debt beyond April, 2016 had not been brought on record by the Corporate Debtor, the application would have been fit for dismissal on the ground of lack of any plea by the Financial Creditor before the Adjudicating Authority with respect to extension of the limitation period and application of Section 18 of the Limitation Act.”*

*13. In view of the above decisions, the position of law has been set at rest. Neither the NCLT nor the NCLAT had the benefit of adjudicating upon the factual controversy in the context of the decisions of this Court. The principles which emerge are that:*

*(i) The provisions of Section 18 of the Limitation Act are not alien to and are applicable to proceedings under the IBC; and*

*(ii) An acknowledgement in a balance sheet without a qualification can furnish a legitimate basis for determining as to whether the period of limitation would stand extended, so long as the acknowledgement was within a period of three years from the original date of default.*

11. It may be noted that the present petition is filed vide Diary No. 34 dated 07.01.2019 whereas the default occurred on 30.09.2011 when the loan account of the respondent-corporate debtor was classified as a Non-Performing Asset. subsequently, the respondent-corporate debtor signed and executed a balance confirmation dated 22.04.2011 & 02.04.2014 and admitted its liability. Further, the respondent corporate debtor offered a settlement on 10.09.2014 & 26.11.2015, in which the debt has been acknowledged. Thereafter, there is an acknowledgment in a balance sheet ending 31.03.2017, stating the following

*“Term loans from bank Punjab National Bank are required by a) hypothecation of Land and Building, Live Stock, Plant and Machinery and Miscellaneous fixed assets (h) hypothecation of stock of milk, and milk products, stock in process, consumable stores, packaging material, stock of silage, dry fodder, concentrates, etc. The said term loan has further been collaterally secured with personal guarantees of the promoters namely Mr. Jagpal Singh Khangura, Mr. Jasher Singh Khangura and Mr. Satbir Singh Khangura. Term loan of rupees 74,00,00,000/- is repayable in 66 monthly installments of rupees 1,12,12,121/- with effect from June 2010 and last installment was due on November 2015. In 2016-17 amounted Rs. 15,00,000/- each on 21.02.2017 and 31.03.2017 is made in 2017-18”*

The above subsequent acknowledgments have extended the limitation period. Therefore, in the present circumstances, the limitation against the respondent-corporate debtor is alive, and the debt is enforceable and falls within



limitation as per Section 238A of the Code. Thus, the present petition is within limitation.

12. Another issue for consideration is whether there is a debt and default in payment or not. As per Section 7 of IBC which is reproduced below:-

*“Section 7 Initiation of corporate insolvency resolution process by financial creditor.*

- (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.*

- (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*

13. It is observed from the record that in the present case, the total outstanding amount of debt as mentioned in Part-IV of Form No.1 is Rs.226,86,52,133.10/- (Two Hundred Twenty Six Crores Eighty Six Lakhs Fifty Two Thousand One Hundred Thirty Three Rupees and Ten Paise Only) (including interest as of 17.12.2018). The occurrence of default is evidenced by the copy of the sanction letter dated 07.04.2008, demand notice u/s 13(2) of SARFAESI Act,2002, above said balance confirmation letters, and OTS proposal made by the corporate debtor, which clearly shows there is a default in the payment of debt.

14. 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.

15. The Law Research Associate of this Tribunal has checked the credentials of Mr. Krishan Vrind Jain, and there is nothing adverse against him. In view of the above, we appoint Mr. Krishan Vrind Jain, Registration No.IBBI/IPA-001/IP-P00284/2017-2018/10528, Email:[jainkv@gmail.com](mailto:jainkv@gmail.com), Mobile No.9417009490, the Interim Resolution Professional with the following directions:

-

- i.) The term of appointment of Mr. Krishan Vrind Jain 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 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
- viii.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

16. We direct the Financial Creditor to deposit a sum of ₹1,00,000/- (Rupees One Lakh 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.

17. The petition is admitted accordingly.

18. 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.

**IA No. 89 of 2021**

The present application filed by the petitioner seeking condonation of delay, if any, for filing Company Petition bearing CP(IB) No. 63/Chd/Pb/2019. The instant application was filed vide Diary No. 00051 dated 08.01.2021.

2. Since, in the above Company Petition bearing CP (IB) No. 63/Chd/Pb/2019, it is held that the petition is well within the limitation period. Therefore, in view of the above decision, present IA No. 89 of 2021 renders infructuous and disposed of accordingly.

**CA No. 962/2019**

The present application was filed vide Diary No. 5999 dated 31.10.2019, wherein the applicant prays for the dismissal of the Company Petition bearing CP(IB) No. 63/Chd/Pb/2019 on the preliminary issue of limitation, having been filed beyond the period 3 years from the date of default on 30.09.2011.

2. As held above in Company Petition bearing CP(IB) No. 63/Chd/Pb/2019, the petition is within the limitation period as prescribed. Therefore, the present CA No. 962/2019 is dismissed and disposed of accordingly.

Sd/-

**(Subrata Kumar Dash)**  
**Member (Technical)**  
November 30, 2022

PB/ ASH

IA No. 89/2021, CA No. 962/2019  
and  
CP (IB) No. 63/Chd/Pb/2019

Sd/-

**(Harnam Singh Thakur)**  
**Member (Judicial)**