

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

CP (IB) No. 406/Chd/Pb/2018

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

In the matter of :

State Bank of India,

Corporate Office at:
 Madame Cama Road,
 Nariman Point,
 Mumbai-400021.

One of its Branch at:
 State Bank of India,
 Stressed Asset Management
 Branch, Local Head Office,
 Sector 17A, Chandigarh-160017

...Applicant/Financial Creditor

Versus

M/s Nexgen Laminators Pvt. Ltd.,

having its registered office at:
 6458/1, Lahori Gate,
 Patiala-147001, Punjab

...Respondent/Corporate Debtor

Judgement delivered on: 25.11.2019

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
 Hon'ble Mr. Pradeep R. Sethi, Member (Technical)**

For the Financial Creditor : 1. Mr. PBA Srinivasan, Advocate
 2. Mr. Parth Tandon, Advocate .

For the Corporate Debtor : Ms. Eshna Kumar, Advocate

Per: Pradeep R. Sethi, Member (Technical)

JUDGEMENT

The present application in Form 1 is filed under Section 7 of the
 Insolvency and Bankruptcy Code, 2016 **(Code)** read with Rule 4 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**Rules 2016**) by State Bank of India (erstwhile State Bank of Patiala) (**SBI**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s Nexgen Laminators Pvt. Ltd. (**Nexgen**). The master data of Nexgen shows that its CIN is U21022PB2011PTC034561 and its registered address is Village Farm Bahadurgarh, Behind Milk Food, Patiala, Punjab-147021. Therefore, the jurisdiction lies with this Bench of the Tribunal.

2. The application in Form 1 is signed by Shri Surjeet Kaushal, Assistant General Manager, State Bank of India, Stressed Management Branch, Local Head Office, Sector 17-A, Chandigarh-160017. It is stated in Part I of Form 1 that in terms of General Regulations Nos. 76 & 77 of State Bank of India, General Regulations, 1955 made by the Reserve Bank of India in exercise of the powers conferred by sub section (3) of Section 50 of the State Bank of India Act, 1955 read with Gazette Notification published in the Gazette of India dated 02.05.1987, Shri Surjeet Kaushal, Assistant General Manager is competent to sign and verify all types of applications, complaints, written statements, petitions, vakalatnamas and affidavits, executions and various other applications and to do all acts necessary for proper conduct of legal proceedings filed on behalf of SBI. The Gazette Notification dated 27.03.1987 by order of the Executive Committee of the Central Board of State Bank of India is placed at Annexure A-1 of the petition. Specific authorisation of the Deputy General Manager, SARG-Commercial Branch, SBI authorising Shri Surjeet Kaushal, Assistant General Manager to file the case/application against Nexgen under the provisions of the Code is dated 26.11.2018 and is placed at page 48 of the petition. The affidavit of Shri Surjeet Kaushal,

Assistant General Manager verifying the contents of the application is at pages 46A of the petition.

3. In Part IV of Form 1, the total amount of debt granted and date of disbursement is given as under:-

<i>Total amount of debt granted Date(s) of disbursement</i>	<i>Loan (Amount in ₹)</i>	<i>Date of disbursement</i>
	₹17,50,00,000	18.04.2015
	₹6,75,00,000	18.04.2015
	₹50,00,000	18.04.2015
<i>Total</i>	₹24,75,00,000	

4. In part IV column 3 of Form 1, the amount claimed to be in default and the date on which the default occurred is given as under:-

<i>Account No.</i>	<i>Amount claimed to be in default (₹)</i>
65151542266	
<i>Uncharged interest from 01.10.2016 to 30.09.2018</i>	28,74,12,003.92
<i>Total</i>	28,74,12,003.92
Total Default Amount 28,74,12,003.92/- Days of default: 999 Days of default has been calculated from 05.01.2016 Working Sheet regarding computation of amount and dates of default is annexed at Annexure A-5.	

5. In part V of Form 1, the particulars of the securities held along with the estimated value is given.

6. In Part III of Form 1, Ms. Ritu Rastogi has been proposed as Interim Resolution Professional (**IRP**). Her consent in form No.2 has been filed at Annexure A-4 of the petition.

7. It is stated that the amount of debt is more than ₹1,00,000 lac and the registered office of Nexgen is situated in Bahadurgarh, Near Patiala, Punjab, this Tribunal has the jurisdiction to entertain and admit the application.

8. Vide order 20.12.2018, it was stated that the written communication in form 2 is not complete in as much as column No. (vi) does not reflect disclosures which are stated to be as per the contents annexed at the written communication but no such reference is made in Column No. (vi) *supra*. It was further stated that even in Part IV Column No.2, short note of documents to be referred to in support of the plea that the default occurred on 05.01.2016 is not given. SBI was asked to remove the defects within 7 days by filing the details by way of affidavit of the authorized representative in respect of column No.2 of Part IV and filing fresh communication Form from proposed IRP.

9. The compliance was made by Diary No.5151 dated 31.12.2018 and fresh communication Form from the proposed IRP was filed as Annexure-1 thereof. It was submitted through affidavit that the default occurred on 05.01.2016 due to devolvement of first LC and however, the date of NPA is 26.09.2016 due to over due of working capital account and non-service of interest.

10. Vide order dated 08.01.2019, notice of the petition to Nexgen was directed to be issued.

11. The reply was filed by Nexgen by Diary No.2461 dated 15.05.2019. It is stated that substantial facts relating to filing of winding up petition under Section 433 (e) of the Companies Act, 2013 in the Hon'ble Punjab & Haryana High Court registered as **Company Petition No.64 of 2016** and **CP(IB) 11 of 2017** under Section 7 of the Code were concealed. It is stated that the main suppression of fact is that it is SIDBI that moved the present application at the behest of the applicant and this fact is evident by the minutes of the meeting of 11.10.2017 between the three creditors called by SIDBI. It is stated that SBI relies upon the balance confirmation and acknowledgement dated 23.11.2016 (Annexure A-102 of the petition) but conveniently misses out that Nexgen after 23.11.2016 has done payments to SBI for amounts which were payable. It is submitted that the date of default is taken by SBI as 05.01.2016 but the account was regular on this date. It is submitted that Nexgen has been able to repeatedly show its solvency by regularising its account and the account was irregularised by SBI by reprobating from its promise. It is submitted that the consent of the proposed IRP is not proper.

12. The rejoinder was filed by SBI by vide Diary No. 3654 dated 25.07.2019 submitting that there is no concealment of any material facts by SBI and the present petition has been independently filed by SBI and not at the behest of SIDBI. It is submitted that contents of para 6 of the reply make it crystal clear that Nexgen defaulted in its payment towards SBI.

13. Vide order dated 29.08.2019, it was stated that the learned counsel for SBI having noticed that it was stated at page 23 of the petition that the date of default was 05.01.2016 and whereas the limit for renewal of the

working capital limits of Nexgen is stated to be 30.08.2016, sought time to file additional affidavit explaining the relevant facts.

14. The affidavit was filed by Diary No.4901 dated 18.09.2019 submitting that the default occurred on 05.01.2016 due to devolvement of LC (Letter of Credit) of ₹1821153 due to which the account of Nexgen exceeded the limit of the account from ₹17,50,00,000 to ₹17,50,81,178.66 and thereafter, the CC account of Nexgen was running irregular since 29.02.2016 on account of devolvement of various LCs and application of monthly interest and the account slipped to sub standard category on 31.05.2016. It is further stated that the account was regularised for one day i.e. on 28.06.2016 and again became irregular on 29.06.2016, the account was renewed on 30.08.2016 but the borrower did not succeed to regularise the account by making payment of devolved LCs and interest accrued till date, so the account slipped to NPA on 26.09.2016. A fresh copy of Form 2 submitted by Ms. Ritu Rastogi proposed IRP was also submitted.

15. The reply to the additional affidavit was filed by Nexgen vide Diary No.5599 dated 15.10.2019, submitting that no amount is due and payable from Nexgen on the date of default of 05.01.2016 and this was supported by the submission of SBI in the affidavit that the account was regularised on 28.06.2016 and renewed on 30.08.2016.

16. Vide order dated 16.10.2019, it was stated that as rightly pointed out by the learned counsel for Nexgen, the communication i.e. Form 2 is defective and notice of defect was directed to be issued to be rectified by SBI within 7 days.

17. Vide Diary No.5867 dated 23.10.2019, the fresh communication Form by the proposed IRP was submitted.

18. We have carefully heard and considered the arguments of the learned counsel for SBI and Nexgen and have also perused the record. It has been pleaded that SBI concealed substantial facts relating to winding up petition and application under Section 7 of the Code filed by SIDBI and that SBI has filed the present application at the behest of SIDBI. The non-disclosure of the facts relating to SIDBI are not relevant for the adjudication of the application under Section 7 of the Code filed by SBI. Nexgen has referred to minutes of meeting of 11.10.2017 between the three creditors called by SIDBI in which it was *inter alia* observed that while SIDBI would pursue with the Hon'ble High Court for withdrawal of plea at Hon'ble High Court for winding up, SBI may file application with NCLT for recovery proceedings and SIDBI and Canara Bank will support SBI and all the three lenders will share all expenses incurred during NCLT proceedings. The observations are to be read in the context of the further observation in the minutes that Shri Balbir Singh, DGM, SIDBI informed that SBI has already got approval from their competent authority for approaching NCLT and this was also recorded in JLM minutes dated 15.05.2017 i.e. SBI had already initiated the process of obtaining and receiving approval from their competent authority for NCLT proceeding much before the meeting of 11.10.2017 referred to by Nexgen. These observations do not justify the contention of Nexgen that the present application is moved at the behest of SIDBI. No evidence is brought on record to show that the expenses for SBI filing application in NCLT were shared by all the lenders. In

any case, such sharing even if it has taken place, cannot be a ground for rejection of the application under Section 7 of the Code.

19. It is stated by Nexgen that SBI relies upon the balance confirmation and acknowledgement dated 23.11.2016 (Annexure A-102 of the petition) but SBI conveniently misses out that Nexgen after 23.11.2016 has done payments to SBI for amounts which were payable. The statement of accounts of Nexgen in SBI have been filed as Annexure A-107 of the petition along with the certificate under Bankers Books Evidence Act, 1891 (Annexure A-108 of the petition). Nexgen has not pointed out any payment made by them to SBI which is not recorded in the account. Therefore, the plea raised is not accepted.

20. The main objection is that no amount is due and payable from Nexgen on the date of default of 05.01.2016 and this is supported by the submission of SBI in the affidavit filed by Diary No.4901 dated 18.09.2019 that the account was regularised on 28.06.2016 and renewed on 30.08.2016 after the said date of default and had the amount been due and payable, the account would not have been regularised or renewed after the date of default. We find that in column No.2 of Part IV of Form 1, it is *inter alia* stated that "Days of Default" has been calculated from 05.01.2016. In the affidavit filed vide Diary No.4901 dated 18.09.2019, SBI stated that the default occurred on 05.01.2016 due to devolvement of LC (Letter of Credit) of ₹18,21,153 due to which the account of Nexgen exceeded the limit of account from ₹17,50,00,000 to ₹17,50,81,178.66. It has been pleaded by the learned counsel for Nexgen that the cash credit limit of ₹17.50 crores includes a sub-limit of ₹1.00 crore at erstwhile State Bank of Patiala (**SBOP**), Mall Road

Branch, Patiala and therefore, the cash credit limit in respect of SBOP, Chandigarh is only ₹16.5 crores and that the first default in the cash credit account of SBOP, Chandigarh occurred on 31.05.2015 and the application is thereby barred by limitation.

21. We note that the statement of account enclosed at Annexure A-2 of Diary No.4901 dated 18.09.2019 gives the limit of ₹17,50,00,000. If we assume that the CC limit should be ₹16,50,00,000 as pleaded by the learned counsel for Nexgen, the default is still present. The contention of the learned counsel for Nexgen that if the CC limit is ₹16.5 crore, the first default occurred on 31.05.2015 is not supported by any evidence. A default is therefore, proved to have taken place on 05.01.2016 and even the subsequent regularisation of the account for one day on 28.06.2016 and renewal of limits on 30.08.2016 do not affect the conclusion that there was a default on 05.01.2016. We may add here that at Annexure RA-1 of Diary No.5549 dated 15.10.2019, Nexgen has enclosed a copy of its account No.65152209438 with SBI, Mall Road, Patiala from 23.03.2017 to 01.08.2018. The account type shown is MR-VR-CC Stocks(C&I-SLC), drawing power shown is zero and the balance as on 23.03.2017 was ₹26,25,787.03 (credit) and as on 01.08.2018 was ₹12,41,712(credit). However, the connection of this account with the accounts claimed to be in default by SBI is not proved. The claim of default as made by SBI is therefore, to be accepted.

22. We have already discussed above that the written communication in Form No.2 submitted by the IRP was not found complete since in column (vi), the details of the disclosures made in accordance with the Code of Conduct for insolvency professionals as set out in the IBBI (Insolvency

Professionals) Regulations, 2016 were not made. In response to notice of defect issued vide order 20.12.2018, a fresh communication in form No.2 was submitted vide Diary No.5151 dated 31.12.2018. The learned counsel for Nexgen pointed out defect in form No.2 available on record and therefore, notice of defect was again issued to SBI on 16.10.2019. A fresh Form No.2 dated 17.10.2019 was filed by SBI by Diary No.5861 dated 23.10.2019. During the course of hearing, it was pointed by learned counsel for Nexgen that there was a contradiction in para x and 1 (below para z) in Annexure-C in as much as in para x, it was stated that not more than 5 concurrent assignments would be accepted whereas in para I, it was stated that not more than 3 concurrent consignments would be accepted. The defect pointed out is not material and therefore, Form 2 dated 17.10.2019 *supra* is being accepted.

23. The learned counsel for Nexgen has relied on **Surendra Trading Company Vs. Juggilal Kamlapat Jute Mills Company Limited and others (2017)16 Supreme Court Cases 143**. The Hon'ble Supreme Court has held in para 25 thereof that the provision of removing the defects within 7 days is directory and not mandatory in nature. The learned counsel for Nexgen has pleaded that the Hon'ble Supreme Court has further stated in para No.25 that they would like to enter a caveat and held in Para No.26 as follows:-

We are also conscious of the fact that sometimes applicants or their counsel may show laxity by not removing the objections within the time given and may take it for granted that they would be given unlimited time for such a purpose. There may also be cases where such applications are frivolous in nature which would be filed for some oblique motives and the applicants may want those applications to remain pending and, therefore, would not

remove the defects. In order to take care of such cases, a balanced approach is needed. Thus, while interpreting the provisions to be directory in nature, at the same time, it can be laid down that if the objections are not removed within seven days, the applicant while refiling the application after removing the objections, file an application in writing showing sufficient cause as to why the applicant could not remove the objections within seven days,. When such an application comes up for admission/order before the adjudicating authority, it would be for the adjudicating authority to decide as to whether sufficient cause is shown in not removing the defects beyond the period of seven days. Once the adjudicating authority is satisfied that such a cause is shown, only then it would entertain the application on merits, otherwise it will have right to dismiss the application.

24. The Hon'ble Supreme Court has held that while interpreting the provisions to be directory in nature, at the same time, it can be laid down that if the objections are not removed within 7 days, the applicant while refiling the application after removing the objections, file an application in writing showing sufficient cause as to why the applicant could not remove the objections within 7 days. In compliance to the order dated 20.12.2018, the affidavit was filed vide Diary No.5151 dated 31.12.2018. Vide order 08.01.2019 the same was taken on record and the delay of 4 days was presumably condoned. The compliance of defect in form No.2 pointed out vide order dated 16.10.2019 was made by Diary No.5867 dated 23.10.2019 i.e. within the period of 7 days. In view of these facts, the removal of the defects in Form No.2 is taken to be properly made.

25. Section 7 (5)(a) is as follows:-

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.

26. The first condition is that a default has occurred. We have already held above that occurrence of default on 05.01.2016 is proved. The computation of the amount claimed to be in default of ₹28,74,12,003.92 is given in Annexure A-5 of the petition.

27. Annexure A-102 is a balance confirmatory-cum-acknowledgement of security letter dated 23.11.2016 of Nexgen confirming the correctness of ₹24,03,71,705.87 debit balance in the books of SBI as on 22.11.2016. The issue of the confirmation letter is not disputed by Nexgen. Annexure A-103 is a legal notice dated 28.03.2017 of erstwhile SBOP for repayment of entire loan amount of ₹25,69,25,632.66 including interest as on 27.03.2017 (in both accounts FBWC and NFB). The reply dated 14.04.2017 of Nexgen is at Annexure A-104 of the petition in which it is *inter alia* stated that on 30.08.2016, erstwhile SBOP again renewed the working capital limits and sanctioned various concessions by sanction letter dated 26.08.2016 but on account of certain market fluctuations, the amount recoverable to the company could not be recovered and on account of certain temporary deficiencies, the account once again stepped into NPA on 27.09.2016. Annexure A-107 is the statement of account along with certificate as per Bankers Books Evidence Act, 1891 at Annexure A-108. Annexure A-113 is notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act 2002**). It is stated therein that the account was classified as non-

performing asset w.e.f. 26.09.2016. Annexure A-110 is possession notice under Rule 8(1) of Security Interest (Enforcement) Rules Act, 2002 by which symbolic possession was taken over of the properties described therein.

28. The above discussion shows that the occurrence of default in the present case is proved.

29. The defect pointed out in Form No.1 by Nexgen was in respect of the date of default of 05.01.2016. The same has been considered above and the plea was not accepted. It was pointed out by Nexgen that there is a difference between the sanctioned limit as per column 1 of Part IV of Form 1 and Annexure A-5 of the petition. In the rejoinder, SBI has reiterated that the limits sanctioned are correctly given in column 1 of Part IV of Form No.1. No further objections have been raised by Nexgen. Nexgen has contended that a fixed deposit of ₹24.00 lacs was not disclosed. We find that the FDR is disclosed at Annexure A-5 of the petition. It is stated by Nexgen that the collateral security at column 2A of Part V of Form 1 is owned by Nexgen Laminators (partnership firm). In the rejoinder, the SBI has stated that the property charged to the bank as collateral security is in the name of M/s Nexgen Laminators (partnership firm) which was mortgaged to the bank at the time of sanction of various facilities. The discrepancy if it exists, is not a material discrepancy. Therefore, Form 1 is regarded as complete.

30. In the Form 2 filed at different times and lastly on 23.10.2019, Ms. Ritu Rastogi IRP has certified that there are no disciplinary proceedings pending against her with the Board or IIIP ICAI.

31. The Law Research Associate of this Tribunal has checked the credentials of Ms. Ritu Rastogi and there is nothing adverse against her.

32. The conditions provided for in Section 7(5)(a) are satisfied. We therefore admit the application for initiation of CIRP in the case of Nexgen Laminators Pvt. Ltd. and direct moratorium and appointment of IRP as below.

33. We declare the Moratorium in terms of sub-section (1) of Section 14 of the Code prohibiting all the following, namely.

(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.

34. 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.

35. 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.

36. We appoint Ms. Ritu Rastogi, IP Registration No. IBBI/ IPA- 001/ IP- P00204 / 2017 – 18 / 10393, email Id: ritu_rastogi1@yahoo.co.in, Mobile No.9810037450 as the Interim Resolution Professional, with the following directions:-

- i) The term of appointment of Ms. Ritu Rastogi 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 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 moral;
- 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 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
- vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

37. 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.

Pronounced in open court.

Sd/-

(Ajay Kumar Vatsavayi)
Member(Judicial)

Sd/-

(Pradeep R. Sethi)
Member (Technical)

November 25, 2019
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