

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

**CA No. 1154/2019
And
CP (IB) No. 62/Chd/Pb/2019**

**Under Sections 60(5) & 7
of the Insolvency &
Bankruptcy Code, 2016**

In the matter of:

Punjab National Bank

having its Branch Office at
Zonal Satra, PNB Zonal Office,
Ferozpur Road, Ludhiana,

....Petitioner-Financial Creditor

Vs.

Aabha Industries Limited

having its registered office at
B-VI-796/12/5, Street No. 7,
Gaushalla Chowk, Madhopuri,
Ludhiana, Punjab-141008

...Respondent-Corporate Debtor

In the matter of CA No. 1154/2019:

Punjab National Bank

(erstwhile Oriental Bank of Commerce)

having its Branch Office at
Miller Ganj Ludhiana through
its Authorized Officer Sh. R.S.B. Chauhan ,

....Petitioner-Financial Creditor

Vs.

M/s Aabha Industries Limited

having its registered office at
B-VI-796/12/5, Madhopuri-Vill,
Gaushalla Chowk, Ludhiana

...Respondent-Corporate Debtor

Judgment delivered on: 23.12.2022

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

Present :

For the Petitioner-Financial Creditor in
main petition and for respondent in
CA No. 1154/2019 : 1). Mr. Harsh Garg, Advocate
2). Mr. Pulkit Goyal, Advocate

For the Respondent-Corporate Debtor in
main petition and for applicant in
CA No. 1154/2019 : 1). Mr. Manish Jain, Advocate
2). Ms. Divya Sharma, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

CA No. 1154/2019 & CP (IB) No. 62/Chd/Pb/2019

CA No. 1154/2019 has been filed by the respondent/Coporate Debtor seeking rejection of CP (IB) No. 62/Chd/Pb/2019 on the ground of limitation. The main petition has been filed by Punjab National Bank (erstwhile Oriental Bank of Commerce) (hereinafter referred to as 'Petitioner/Financial Creditor') through its Assistant General Manager, 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 **Aabha Industries Limited** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Raj Bahadur Chauhan, with the affidavit verifying the contents of the application attached at Page Nos 36 & 37 of the petition.

2. The Corporate Debtor is stated to be incorporated on 10.11.1995. The company is having its registered Office at Opposite Agro Tech, P.O Budhewal,

Ludhiana, Punjab. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is stated to be attached as Annexure-4 of the petition.

3. The brief facts of the case as stated in the petition are that the corporate debtor was incorporated under the Companies Act, 1956 on 14.06.2010 and was carrying on the business of manufacturing and selling fiber dyed yarn, blended yarn and dyed acrylic fiber yarn. The corporate debtor was availing financial facilities by the financial creditor from time to time. The financial facilities were renewed, enhanced and sanctioned from time to time and lastly on 22.09.2014 and the following facilities were granted:-

Sr	Loan Account.	Amount
1.	Cash Credit (Hypothecation)	Rs.7.63 crores
2.	Term Loan I	Rs.0.56 crores
3.	Term Loan II	Rs.0.61 crores
4.	Term Loan III	Rs.0.24 crores
5.	Term Loan IV	Rs.1.06 crores
6.	Term Loan V	Rs.1.74 crores
7.	Term Loan VI	Rs.0.03 crores
8.	Working Capital Term Loan (WCTL)	Rs.4.49 crores
9.	Funded Interest Term Loan	Rs.2.26 crores
10.	Vehicle Loan	Rs.0.08 crores

4. It is stated in Part-IV of Form No.1, the total amount claimed to be in default is Rs. 27,21,39,045.27/- (Twenty Seven Crore Twenty One Lakh Thirty Nine Thousand and Forty Five Rupees and Twenty Seven Paise Only) as on 31.12.2018 and the account of the corporate debtor was classified as NPA on

31.12.2015. The bank account statements maintained as per the provisions of Banker's Books Evidence Act, 1891 alongwith calculation of interest and penal interest after being classified as NPA is attached as Annexure-I/3 of the petition.

5. It is stated in the Part-V of the Form-1 that in order to secure the financial facilities, the corporate debtor has created a charge/hypothecation of plant and machinery, stocks of raw material, entire current asset, receivables and other current assets and of factory and land and of other immovable properties in favour of financial creditor.

6. The notice of this petition was issued to the respondent corporate debtor vide order dated 19.02.2019 to show cause as to why this petition be not admitted. The affidavit of service was filed vide Diary No.1449 dated 25.03.2019.

7. The respondent has filed its reply by Diary No.6753 dated 02.12.2019 stating that the present petition filed by the Bank is not maintainable and the petition in Form-1 is incomplete and does not disclose material facts. The present petition is filed by Mr. Raj Bahadur Singh Chauhan on the basis of the authority letter dated 10.09.2018 signed by the General Manager of the bank. The General Manager has been given the power to authorize Mr. Raj Bahadur Singh Chauhan through specific resolution dated 16.12.2017 which is not being placed on record by the petitioner. The certificate under Banker's Books of Evidence Act, 1891 is also defective as it has not been prepared in terms of RBI Notification dated 24.04.2009. The certificate under Banker's Books of Evidence Act, 1891 should mention the date, name and designation of the person who signed it which is not done by the petitioner in the present case. It is also objected that the account of the corporate debtor was classified as NPA on 31.12.2015 and the present petition is filed on 11.01.2019. The limitation starts from the date of NPA and is thus

barred by time. A reliance is also placed on a judgment of Hon'ble Supreme Court in case of ***B.K. Educational Services (P) Ltd. Vs. Parag Gupta & Associates***, AIR 2018 SC 5601 and '***Innoventive Industries Ltd Versus ICICI Bank & Anr***', (2018) 1 SCC 407.

8. The petitioner has filed its rejoinder by Diary No. 929 dated 04.02.2022 stating that the authorized representative has been authorized by letter dated 10.09.2018 issued by General Manager of the Bank in exercising the powers conferred by the Board Resolution and Power of Attorney dated 04.09.2003. It is admitted that the account of the corporate debtor was declared NPA on 31.12.2015 and the corporate debtor has shown the petitioner as its creditor in the balance sheets ending on 31.03.2016 which amounts to an acknowledgment on part of corporate debtor under Section 18 of the Limitation Act, 1963. The corporate debtor has also acknowledged its liability towards petitioner by way of submitting various OTS proposal by letters dated 17.09.2018, 10.11.2018 and 17.12.2018. The corporate debtor has also acknowledged its liability in its reply dated 02.03.2016 given to demand notice issued by the bank under Section 13(2) of SARFAESI Act, 2002.

9. The respondent has filed an application bearing CA No. 1154/2019 against the Financial Creditor under Section 60(5) of I&B Code, 2016 seeking rejection of the application bearing CP (IB) No. 62/Chd/Pb/2019 on the ground of limitation. It is submitted in the application that the NPA has been declared on 31.12.2015 and the recall notice was also issued on 04.01.2016. The right to sue occurs when the default occurred which is well prior to three years from the date of filing of the application i.e. 11.01.2019.

10. A short reply has been filed by the respondent in CA No. 1154/2019 wherein it has been reiterated the fact that the corporate debtor has acknowledged the debt in its audited balance sheets for the year ending on 31.03.2016 and in various OTS proposal letter dated 17.09.2018, 10.11.2018 and 17.12.2018.

11. The corporate debtor has filed rejoinder to the reply submitted by financial creditor by Diary No. 1831 dated 06.03.2020 stating that the bank is construing the contents of the failed OTS proposal as acknowledgment debt and the same cannot be considered as admission of liability.

12. The financial creditor has filed written submissions by Diary No.00505/1 dated 19.09.2022 stating that Mr. Raj Bahadur Singh Chauhan is duly authorized to file the present application by authority letter dated 10.09.2018 issued by General Manager of the Bank and by Power of Attorney dated 04.09.2003. Hon'ble Apex Court in the matter of **Rajendra Narottamdas Sheth vs Chandra Prakash Jain & Ans.**, decided on 30.09.2022 held that the GPA holder of the bank can file the application under Section 7 of IBC, 2016. It is also submitted that the certificate issued under Bankers Book Evidence Act, 1891 bears the account numbers of the accounts of the corporate debtor and are also signed. The said entries have never been disputed by the respondent. The Punjab and Haryana High Court in the matter of **State Bank of India Vs M/s H.Satish Hosiery Factory & Anr.** has held that mere non-mentioning of the date in the statement of account is not fatal. The financial creditor has also submitted written arguments in CA No. 1154/2019 by diary No.00507/01 dated 05.07.2022 stating that the corporate debtor has shown the financial creditor as its creditor in the Balance Sheet ending on 31.03.2016 which amounts to acknowledgement the debt. The

financial creditor has also relied on the judgment of ***Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy and Anr.*** Civil Appeal No. 1650 of 2020 dated 04.08.2021 and ***Laxmi Pat Surana Vs. Union Bank of India*** (CIVIL APPEAL NO. 2734 OF 2020 dated 26.03.2021)

13. The corporate debtor has filed written submissions by Diary No.00507/3 dated 03.08.2022 stating that the present debt is time-barred. The financial creditor has filed IA No. 120/2019 seeking condonation of delay of 31 days and the same was withdrawn by order dated 23.11.2021. It is also stated that OTS proposal cannot be considered as admission of debt. The admission in the OTS letter may extend the limitation period only if the conditions laid down in the OTS have been fulfilled. In this case, the petitioner has admitted that there has not been any OTS arrangement. Conditional acknowledgement of debt in the Balance Sheet would not revive the limitation period. Mere narration of the amount as liability in the Balance Sheet cannot be considered as acknowledgement in terms of Section 18 of the Limitation Act, 1963. An acknowledgement in writing should be unconditional/unqualified for the purpose of revival of the limitation period.

14. We have heard the learned counsel for the Financial Creditor and corporate debtor and have also perused the record carefully.

15. 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.”*

16. The first issue for consideration is whether there is a default in payment or not. It can be seen from the records that the Financial Creditor has disbursed various the credit facilities and copies of Santion Letters, Hypothecation

Agreements, Agreement of Term Loan, copy of title deeds deposited with financial creditor, copy of valuation reports, copy of charge created with ROC, Joint Agreements of hypothecation of stocks, books debt and term loan, agreements for hypothecation of movable and immovable assets, working capital consortium agreement and agreements of guarantee and Common Agreements evidencing the availing of credit facilities are attached as Annexure- I/5 to I/74 of the petition. The Bank Account statements maintained by the financial creditor as per the provisions of the Bankers Books Evidence Act, 1891 is attached as Annexures I/3 of the petition.

17. Another issue for consideration is whether the present application is filed within limitation. It is stated that the accounts of the corporate debtor has been declared NPA on 31.12.2015 and the corporate debtor has filed its audited balance sheet for the year ending on 31.03.2016 wherein the financial creditor has mentioned the corporate debtor as one of its creditors. The corporate debtor has also given reply dated 02.03.2016 to the notice issued under Section 13(2) SARFAESI Act, 2002 by the financial creditor. In the reply dated 02.03.2016 the corporate debtor has also acknowledged the debt issued by the financial creditor. Moreover, the corporate debtor has also acknowledged the debt in the financial statements of Year ending on 31.03.2016. Reliance is also placed on the judgment of ***Laxmi Pat Surana Vs. Union Bank of India (Supra)*** where it is held that

“38. The liability of the corporate debtor (corporate guarantor) also triggers when the principal borrower acknowledges its liability in writing within the expiration of prescribed period of limitation, to pay such outstanding dues and fails to pay the acknowledged debt. Correspondingly, right to initiate action within three years from such acknowledgment of debt accrues to the financial creditor. That however,

needs to be exercised within three years when the right to sue/apply accrues, as per Article 137 of the Limitation Act. This is the effect of Section 18 of the Limitation Act. In that, a fresh period of limitation is required to be computed from the time when the acknowledgment was so signed by the principal borrower or the corporate guarantor (corporate debtor), as the case may be, provided the acknowledgment is before expiration of the prescribed period of limitation. Thus, the conclusion reached by the NCLT and affirmed by the NCLAT on the basis of the asservation in the application under Section 7 of the Code, read with the relevant undisputed correspondence, is a possible view.”
xxxxx

18. In the instant case, the petition has been filed on 11.01.2019 i.e. within 3 years of acknowledgement of debt in the financial statement for the year ending on 31.03.2016 and in the reply dated 02.03.2016 given to the demand notice under Section 13(2) of Sarfeasi Act, 2002. Thus, the judgement of **B.K. Educational Services (P) Ltd. Vs. Parag Gupta & Associates (Supra)** and **‘Innoventive Industries Ltd Versus ICICI Bank & Anr’ (Supra)** relied upon by Ld. Counsel for Corporate Debtor are not applicable.

19. 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 Interim Resolution Professional. In the present case, in Part III of Form 1, Mr. Krishan Vrind Jain, Registration No. IBBI/IPA-001/IP-P00284/2017-18/10528 has been proposed as Interim Resolution Professional (IRP). The written consent of the proposed Interim Resolution Professional has been attached as Annexure- II of the petition. The Law Research Associate of this Tribunal has checked the credentials of Mr. Krishan Vrind Jain, and no adverse remarks has been found. In view of the above, we appoint Mr. Krishan Vrind Jain, Registration No.

IBBI/IPA-001/IP-P00284/2017-18/10528, Email: 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 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.

20. 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.

21. We direct the Financial Creditor to deposit a sum of ₹ 2,00,000/- (Rupees Two Lakh Rupees 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.

22. 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.

23. CA No. 1154/2019 is dismissed and CP (IB) No. 62/Chd/Pb/2019 is admitted accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

December 23, 2022

VN /SA

Sd/-

(Harnam Singh Thakur)
Member (Judicial)