

**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)**

CP (IB) No. 247/Chd/Pb/2021

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

In the matter of:

M/s Intec Capital Limited

R/o 708, Manjusha Building,
57, Nehru Place,
New Delhi-110019
CIN No: L74899DL1994PLCO57410

....Petitioner-Financial Creditor

Vs.

M/s Punjab Tubes Limited

R/o Opposite Agro Tech,
P.O Budhewal,
Ludhiana Punjab-141112, India
CIN No: U27106PB1995LC017260

...Respondent-Corporate Debtor

Judgment delivered on: 16.12.2022

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

Present through Video Conferencing:

For the Petitioner-Financial Creditor : Mr. Dhruv Parwal, Advocate

For the Respondent-Corporate Debtor : Mr. Rakesh Bhatia, Advocate.

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed by **M/s Intec Capital Limited** (hereinafter referred to as 'Petitioner/Financial Creditor') through its Authorized Signatory Ms. Chandan, under Section 7 of the InsolConsents of 0% Compulsory Convertible Debenture Holders and 0% Optionally Convertible Debenture Holders of Applicant Company No. 1 furnished by way of affidavits (Annexure A-30 and A-32 of the Application);

vency 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 **M/s Punjab Tubes Limited** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Ms. Chandan, with the affidavit verifying the contents of the application attached at Page Nos 29 to 31 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 has submitted applications to the financial creditor on various dates for the purpose of availing four loan facilities for their business expansion. After the discussions between the parties and based on the information provided by the

corporate debtor, the financial creditor has agreed to sanction and disburse four loan/financial facilities which are as follows :

Sl	Loan Account No.	Amount	EMI (INR)	Sanction Date	Interest Rate%p.a.
1.	LNLUD00113 -140002491	50,64,206	1,16,561	26/06/2013	13.51%
2.	LNLUD00113 -140002786	67,91,994	1,64,000	24/09/2013	13.28%
3.	LNLUD00113 -140002942	65,53,678	1,57,800	29/10/2013	13.28%
4.	LNLUD00113 -140003147	50,64,206	1,18,500	27/12/2013	13.31%

4. Subsequent to the disbursement of the financial facilities, the corporate debtor has failed to maintain the adequate amount in the bank account due to which the post-dated cheques issued for the repayment of the financial facilities were dishonoured. The applicant has failed to pay the EMI as per the repayment schedule. The petitioner has also filed cases for dishonouring of cheques of the corporate debtor as per the Negotiable Instruments Act, 1881 which is pending for the adjudication in Saket Courts, New Delhi. The petitioner has also invoked the arbitration clause and an arbitration award dated 07.05.2018 has been passed against the respondent-corporate debtor.

5. It is stated in Amended Part-IV of Form No.1, the total amount claimed to be in default is Rs. 4,21,28,218 (Rupees Four Crore Twenty One Lakh Twenty Eight Thousand Two Hundred and Eighteen Only) as on 31.03.2021 against all the four loan accounts and the date of default is stated to be as follows :-

Loan Account No.	Last Date of Default
LNLUD00113-140002491	16.07.2018
LNLUD00113-140002786	16.10.2018
LNLUD00113-140002942	16.11.2018
LNLUD00113-140003147	16.12.2018

The date of default is the same date in which last transactions in respect of loan accounts are made. Copy of statement of dues along with loan transaction details showing all transactions in respect of loan accounts are attached as Annexure-5 of the petition.

6. The notice of this petition was issued to the respondent corporate debtor vide order dated 07.12.2021 to show cause as to why this petition be not admitted. The affidavit of service was filed vide Diary Nos. 01001/2 dated 15.03.2022.

7. The respondent has filed its reply by Diary No.01001/3 dated 19.04.2022 stating that the statements of the account produced by the petitioner are not in accordance with Banker's Book Evidence Act and are disputed and defective. The entries have been reversed (bounced) back in each of the loan accounts contrary to the policy. It is stated that the present petition is barred by limitation. The petitioner made the last payment in each of the loan accounts in the month of February, 2015 or April 2015 and the petition is filed on 25.08.2021 i.e. beyond the period of three years. In addition to that the debt has not been acknowledged by the corporate debtor. Thus, the alleged default occurred in all four loan accounts is on 27.02.2015 and 30.04.2015 (which is the last date of payment). Even the accounts were declared as NPA on 31.03.2017. The period of limitation cannot be extended on passing of the Arbitral Award. It is further submitted that the date of default as

mentioned in the Information Utility record of default (Annexure-8) is 31.03.2017 and 30.09.2016 which is contrary to the Amended Part-IV filed by the petitioner.

8. The petitioner had filed its rejoinder by Diary No. 01001/4 dated 11.07.2022 stating that the applicant has submitted a certificate u/s 65B of Evidence Act, 1872 certifying that all the documents attached with the petition are true. The petitioner has also preferred Arbitration Proceeding against the Corporate Debtor and an Arbitral Award was passed on 07.05.2018 with respect to the said loan accounts in favour of the Financial Creditor. The loan accounts of the Corporate Debtor was declared as NPA and the same is mentioned in the record of default available in the Information Utility (IU). It is submitted that the present petition is filed within the limitation as the award was passed on 07.05.2018 in all loan accounts and the petitioner has also placed reliance in the case of ***Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy and Anr. Civil Appeal No. 1650 of 2020 dated 04.08.2021*** wherein it has held that insolvency proceedings can be initiated on the basis of arbitral Award and the three years limitation starts from the date of arbitral award. Hon'ble Supreme Court of India in ***Misc. Application No.665 of 2021 under Suo Motu Writ Petition (Civil) No.3 of 2020 dated 10.01.2022*** has excluded the period from 15.03.2020 to 28.02.2022 for the purpose of computing the limitation. The present petition was filed on 18.08.2021 and the arbitration award was passed on 07.05.2018. Keeping in view the decision of the Hon'ble Supreme Court the said date falls within the stipulated period for which limitation has been excluded. Therefore, the present application has been filed within the limitation period.

9. The respondent has filed additional submissions by Diary No. 01001/8 dated 18.11.2022 in stating that the Arbitral Award cannot extend the period of limitation. The order of the Hon'ble Supreme Court dated 10.01.2022 states that Courts or

Tribunal can condone the delay but in the present case no application for Condonation of delay is forthcoming, therefore, it cannot be delayed. The judgment of **Dena Bank (supra)** is not applicable and the respondent has relied on the judgment of Hon'ble Supreme Court in case of **B.K. Educational Services (P) Ltd. Vs. Parag Gupta & Associates, AIR 2018 SC 5601.**

10. The applicant has filed written submissions by Diary No.01001/5 dated 20.10.2022 stating that as per Article 137 of Limitation Act, 1963 the limitation for filing the petition before this adjudicating authority is three years and the limitation starts from the date of passing of the arbitral award. It is further averred that the corporate debtor has not denied the fact pertaining to the debt which is due and payable. The petitioner has also relied upon the judgement of Hon'ble SC Judgment in the matter of '**Innoventive Industries Ltd Versus ICICI Bank & Anr**', CIVIL APPEAL Nos. 8337-8338 OF 2017 delivered on 31st August 2017, in para 28, it was held that:

"28. 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," (Annexure-4)

11. We have heard the learned counsel for the petitioner and have also perused the record carefully.

12. 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."*

13. 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 the amount in four loan accounts on various dates in the Year 2013. Copies of the Accounts Statement maintained with the Bank showing loan disbursement are attached as Annexure-10 of the petition. The copies of the loan agreements executed between the financial creditor and corporate debtor and sanction letters dated 05.09.2015, 15.09.2015, 05.09.2015 and 28.08.2015 issued by the financial creditor along with the loan application are attached as Annexure-9 and Annexure-11, respectively of the application. The charge agreement along with the certificate of registration of charge filed with ROC is attached as Annexure-8 of the petition. The petitioner has also attached copies of termination-cum-arbitration notices dated 05.09.2015, 15.09.2015, 05.09.2015 and 28.08.2015 as Annexure-13 of the petition. After invoking the arbitration, an arbitration award dated 07.05.2018 has also been passed in respect of all four loan accounts

14. Another issue for consideration is whether the present application is filed within limitation. The date of default in amended Part-IV is mentioned as 07.05.2018. It can be seen from the records that the arbitration award has been passed on 07.05.2018 and the present petition is filed on 25.08.2021. It is categorically upheld in case of ***Dena Bank (Supra)*** wherein it has been held that

“143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.”

15. We have also placed reliance on the judgment passed by Hon'ble NCLAT in case of ***M/s Essjay Ericsson Pvt. Ltd. Vs. M/s Frontline (NCR) Business Solutions Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 936 of 2021 dated 08.06.2021*** wherein it is held that *"there was no requirement of filing an Application for condonation of delay by the Appellant and the Appeal cannot be held to be barred by time. We, thus, overrule the objection raised by the Counsel for the Respondent and hold the Appeal to be within time."* Keeping in view the discussions in both the cases, it is held that the present petition falls within limitation.

16. 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. Vivek Bansal, Registration No. IBBI/IPA-001/IP-P-01475/2019-2019/12249 has been proposed as Interim Resolution Professional (IRP). The written consent of the proposed Interim Resolution Professional has been attached as Annexure-14 of the petition. The Law Research Associate of this Tribunal has checked the credentials of Mr. Vivek Bansal, and no adverse remarks has been found. In view of the above, we appoint Mr. Vivek Bansal, Registration No. IBBI/IPA-001/IP-P-01475/2019-2019/12249, Email: irp.vivekbansalca@gmail.com, Mobile No. 9815869228, the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Vivek Bansal 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.

17. 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.

18. 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.

19. 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.

20. The petition is allowed and admitted accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

December 16, 2022
VN/SA

Sd/-

(Harnam Singh Thakur)
Member (Judicial)