



**NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH (COURT-II), CHANDIGARH**

**IA(I.B.C.)/713(CH)2023**

**IN**

**CP(IB) No.62/Chd/Pb/2019  
(Admitted Matter)**

*(An Application under Section 25 (2) (a) and (b) and Section 60 (5) of the  
Insolvency and Bankruptcy Code, 2016)*

**IN THE MATTER OF :**

**IA(I.B.C.)/713(CH)2023**

**Sh. Parvinder Singh,**

Resolution Professional

Reg. No. IBBI/IPA-001/IP-P-01603/2019-2020/12468

Address: 10 Jandu Tower, Miller Ganj,

Ludhiana, Punjab – 141003

...Applicant/ Resolution Professional

**Neel-Rattan Enterprises Private Limited**

Through its Directors

Ravish Jain and Pravesh K Shani

Address: Guru Vihar, Gali No.04, Rohan Road,

Ludhiana, Punjab -141001

...Respondent No. 1

**Mr. Ravish Kumar Jain**

Director of Neel-Rattan Enterprises Private Limited

Address: Ward No. 04, Raina (137)

Sirsa, Haryana, India- 125076

And Guru Vihar, Gali No.04, Rohan Road,

Ludhiana, Punjab -141001

...Respondent No. 2

**Mr. Pravesh Kumar Shani**

Director of Neel-Rattan Enterprises Private Limited

Address: 279, Panchsil Colony, Near Noor Wala Road,

Ward No.2, Ludhiana, Punjab, India- 141001

...Respondent No. 3

**Kaapil Jain**

Director (Powers Suspended) of Aabha Industries Limited

Address: # B-796/12/5, #7, Circular Road,

Near Gowshala Chowk, Madhopuri-7, Ludhiana

Central Post Office, Ludhiana-141008, Punjab, India.

...Respondent No. 4



**Parveen Kumari Jain**

Director (Powers Suspended) of Aabha Industries Limited  
Address: K.K. Jain Traders, Circular Road, Madhopuri-7,  
Ludhiana, Central Post Office, Ludhiana,  
Punjab, 141008, India

...Respondent No. 5

**Shaveta Jain**

Director (Powers Suspended) of Aabha Industries Limited  
Address: B-796/12/5, #7, Circular Road  
Near Gaushala Chownk, Madhopuri-7,  
Ludhiana, Central Post Office,  
Ludhiana-141008, Punjab, India

...Respondent No. 6

**IN THE MAIN MATTER OF :**

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

*(An application under Section 7 of the Insolvency and Bankruptcy Code, 2016)*

Punjab National Bank  
(Erstwhile Oriental Bank of Commerce)

...Financial Creditor

Versus

Aabha Industries Limited

...Corporate Debtor

**Order delivered on: 21.04.2026**

**Coram: SHRI KHETRABASI BISWAL, MEMBER (JUDICIAL)  
SHRI KAUSHALENDRA KUMAR SINGH, MEMBER (TECHNICAL)**

**Present:**

**For the RP**

: Ms. Swati Saluja, Advocate along  
with Mr. Parvinder Singh, RP in  
person present through V.C.

**For the Respondent Nos.1  
to 3**

: Mr. Manish Jain, Senior Advocate  
along with Ms. Divya Sharma, Advocate

**For the Respondent Nos.4  
to 6**

Mr. Nahush Jain, Advocate



## **ORDER**

1. The present Application bearing No. **IA(I.B.C.)/713(CH)2023** has been filed by **Sh. Parvinder Singh, Resolution Professional** (hereinafter referred to as “RP”/ “Applicant”) for **Aabha Industries Limited, Corporate Debtor**, under Section 25 (2) (a) and (b) and Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**Code**”) read with Rule 11 of Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 for seeking directions to the Respondent Nos. 1 to 3 to hand over the possession of the factory, land and building and also to pay the rent of the premises as per prevalent rent rate for the period it has possession of the property.

### **FACTS AND SUBMISSIONS OF THE APPLICANT**

2. The submissions made by the Applicant in its Application are summarized hereunder:

(i) The Applicant, whilst collating the claims from Financial Creditors of the Corporate Debtor, vide Form-C read with Sanction letter dated 24.09.2014 submitted by the Punjab National Bank (Erstwhile Oriental bank of commerce) ('Secured Financial Creditor'), discovered that the Corporate Debtor has availed a loan and created 1<sup>st</sup> *pari passu* charge by way of equitable mortgage, in favour of Secured Creditor over its five immovable properties. Copy of Sanction letter dated 24.09.2014 along with Charge creation and Form C submitted by the Secured Financial Creditor are annexed as Annexure A-3 to the Application.



(ii) Out of such five immovable properties of the Corporate Debtor, one Factory land and building, located at Village Raiyan, Chandigarh Road, District Ludhiana, is in possession of the Respondents. Detail of relevant property is given below:

***Factory, land and building (unit II of Corporate Debtor) Measurement:-  
(hereinafter mentioned as 'the property')***

Measurement:	14 kanal- 11 M
Khasra No.:	48/8/3, 9/2, 9/3, 10 (as per jamabandi for the year 2008- 2009)
Situated at:	Revenue estate, Village-Raiyan, Chandigarh Road, Kohara H.B. no. 196, Tehsil & District- Ludhiana
Sale Deed in name of Corporate Debtor:	Wasika no. 710 dated 05.08.2010

(iii) Further, the Applicant submitted that during the inspection visit to above mentioned property of the Corporate Debtor, Respondent no. 4, the suspended director of the Corporate Debtor who was present at the site, verbally informed that the Corporate Debtor failed to repay the money borrowed (advance amount received from Respondent no.1/Neel Rattan for purchase of raw material) to the Respondent Nos. 1 to 3. It was further stated that Respondents Nos.1 to 3 had allegedly filed proceedings before a civil court and had taken possession of the property pursuant to an order of the said court. However, no documentary evidence was produced before the Applicant/IRP to substantiate the said claim.

(iv) The Applicant further submitted that in terms of Sections 18 and 25(2)(a) and (b) of the Insolvency and Bankruptcy Code, 2016, it is the duty of the IRP to take control and custody of the assets of the Corporate Debtor. Accordingly, the Applicant vide email and letter



dated 05.01.2023 requested Respondents Nos.1 to 3 to hand over possession of the property of the Corporate Debtor and to provide documents validating their alleged possession. The Applicant also apprised the Respondents that the CIRP of the Corporate Debtor had been initiated by this Tribunal vide order dated 23.12.2022 and that by virtue of Section 238 of the Code, the provisions of the Code override other laws. Further, follow up emails were sent on 27.01.2023 and 01.02.2022. Copy of the Email dated 05.01.2023, 27.01.2023 and 01.02.2022 along with the letter dated 05.01.2023 is attached as Annexure A-4 to the Application.

(v) It was further submitted that Respondent No.1, vide email dated 09.02.2023, claimed that the possession of the property was lawful by virtue of an arbitral award passed in their favour in relation to the failure of the Corporate Debtor to fulfil its contractual obligations. However, the Respondents failed to provide any details or copy of the alleged arbitral award.

(vi) The Applicant thereafter, vide email dated 11.02.2023, reiterated the initiation of CIRP and the applicability of the moratorium under Section 14 of the Code and requested the Respondents to hand over possession of the property. Reliance was also placed on the judgment of the Hon'ble Supreme Court in **Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund**, wherein it was held that arbitration proceedings are not maintainable once a petition under Section 7 of the Code has been admitted. Copy



of email dated 11.02.2023 is annexed as Annexure A-6 to the Application.

(vii) The Applicant further submitted that the contention of the Respondents regarding lawful possession is untenable, as the property in question has been mortgaged with the secured financial creditor since 2014 and the said creditor holds the first charge over the property. The secured creditor was not aware of any alleged transfer of possession pursuant to any arbitral award. The land records (Fard) available on the official website of the Government of Punjab also indicate that the property stands mortgaged with Punjab National Bank / Oriental Bank of Commerce. Further, upon verification of pending litigations against the Corporate Debtor, the Applicant did not find any case or order relating to the Respondents with regard to possession of the said property. Applicant also submitted that the ownership or possession of a mortgaged property cannot be transferred without knowledge and consent of prior mortgagee (Punjab National Bank, in present matter) under Order 34 Rule 12 of the Civil Procedure Code, 1906. *Order 34 Rule 12 of the Civil Procedure Code, 1906* provides that:

*" Sale of property subject to prior mortgage - Where any property the sale of which is directed under this Order is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold"*

(viii) The Applicant submitted that it is a settled principle under the Insolvency and Bankruptcy Code, 2016 that speed and strict timelines



are the essence of the Corporate Insolvency Resolution Process (CIRP), and the Adjudicating Authority has exclusive jurisdiction over matters relating to the Corporate Debtor. If the Respondents have any financial or operational claim against the Corporate Debtor, the same may be submitted before the Applicant in accordance with the provisions of the Code.

(ix) In view of the above, the Applicant submitted that the Respondents have failed to establish any lawful claim over the property of the Corporate Debtor and their continued possession is adversely affecting the time-bound Corporate Insolvency Resolution Process and causes delay, which may ultimately frustrate the resolution process and push the Corporate Debtor into liquidation, thereby prejudicing the interests of its creditors and resulting in wastage of the stressed assets. It was therefore prayed that appropriate directions be issued to the Respondents to hand over possession of the property to the Applicant/IRP in order to facilitate the CIRP and protect the interests of the creditors.

**SUBMISSIONS BY THE RESPONDENT**

**3.** The Application has been opposed by the Respondent Nos. 1 to 3 by filing a Reply dated 25.09.2023 and by the Respondent Nos. 4 to 6 by filing a Reply dated 03.10.2023. The defense as taken in the reply are briefly summarised as under:-



**Reply by Respondent Nos. 1 to 3**

(i) Respondents Nos. 1 to 3 submitted that the present application is not maintainable before this Tribunal as it essentially relates to the enforcement and validity of an arbitral award passed under the Arbitration and Conciliation Act, 1996, over which this Tribunal has no jurisdiction.

(ii) It is submitted that Respondent No. 2 and the Corporate Debtor had executed a Memorandum of Understanding dated 09.12.2017 whereby the Corporate Debtor had agreed to supply 80 metric tons of acrylic and blended yarn to Respondent No. 2 on agreed terms. However, the Corporate Debtor failed to fulfil its contractual obligations, which led to disputes between the parties. Consequently, Respondent No. 2 invoked the arbitration clause contained in the said MoU. Upon appointment of the Arbitrator, Respondent No. 2 filed its claim before the learned Arbitrator and, after hearing both parties, an arbitral award dated 26.06.2020 was passed in favour of Respondent No. 2. A copy of the Arbitral Award dated 26.06.2020 is annexed as Annexure R-1/2 to the Reply.

(iii) According to the Respondents, the arbitral award provided that in the event the Corporate Debtor failed to supply the agreed material, Respondent No. 2 and/or its assignee would be entitled to use the entire plant and machinery along with other infrastructure facilities of the Corporate Debtor for a maximum period of 48 months, with an additional period of 30 months if the Corporate Debtor failed to refund



the amount as directed in the award. The award further directed the Corporate Debtor to hand over charge of its manufacturing facilities within six months from the date of the award and granted Respondent No. 2 and/or its assignee independent access to the plant site for smooth operation during the said period.

(iv) In pursuance to the Award, Respondent No. 2 was handed over possession of the plant site in January, 2021 and since then he along with Respondents Nos. 1 and 3 have been running the plant and carrying out the manufacturing facilities as directed in terms of the Arbitration Award. It is submitted that Respondent No. 1 is running the plant and machinery of the Corporate Debtor in the capacity of Assignee in terms of the Award of which Respondents Nos. 2 and 3 are directors.

(v) It is further submitted that the claim of Respondent No. 2 has been duly decided by the Ld. Arbitrator by virtue of the Award dated 26.06.2020 and Respondents Nos. 1 to 3 are only implementing the same and are not disposing off the asset of the Corporate Debtor in any manner. The said contention can also be corroborated from the fact that in terms of one of the conditions of the Award, the Respondent Nos. 1 to 3 are required to apprise the Corporate Debtor on or before of the 7th of every month regarding the quantity produced by them. It is submitted that the said Respondents have been periodically intimating the corporate Debtor regarding the production being made by them in the manufacturing unit.



(vi) Respondents Nos. 1 to 3 further contended that the arbitral award dated 26.06.2020 has attained finality as no objections or appeal have been filed against the same by any party. They submitted that the secured financial creditor, namely Punjab National Bank (erstwhile Oriental Bank of Commerce), was informed about their possession of the manufacturing unit during the stock audit conducted in April 2021 and no objection was raised by the bank in that regard. It is also submitted that the Resolution Professional was informed about the arbitral award and the Respondents had extended full cooperation during the visit of the RP or his representatives to the premises. The Respondents undertook that upon completion of the terms of the award, they would vacate the premises of the Corporate Debtor.

(vii) The Respondents further argued that by way of the present application, the RP is indirectly seeking to challenge the arbitral award, which cannot be permitted before this Tribunal for want of jurisdiction and stated the provisions under Section 2(1)(e) of the Arbitration and Conciliation Act, the competent court for challenging an arbitral award would be the principal civil court of original jurisdiction or the High Court exercising original jurisdiction. Therefore, any challenge to the award dated 26.06.2020 could only be made under Section 34 of the Arbitration and Conciliation Act before the competent civil court at Ludhiana. In this regard, reliance was placed on the judgment of the Hon'ble Supreme Court in **Yashpal**



**Chopra & Co. v. Union of India SLP (C) No. 78324 of 2022**, wherein it was categorically held that the appropriate court for the purposes of challenging of Arbitral Award is either the concerned District court or the High court having the original jurisdiction over the such matters.

The relevant extract of the said judgment is reproduced below:

*“Ms. Meenakshi Arora, learned Senior Advocate appearing on behalf of the petitioner has heavily relied upon Section 42 of the Arbitration Act and Section 11 of the Arbitration Act, as amended, in support of her submission that the High Court, who has exercised the jurisdiction under Section 11 of Arbitration Act alone can be said to be 'court' and, therefore, Section 34 application shall lie before the concerned High court only. The aforesaid has no substance. It is an admitted position that so far as Orissa High court is concerned, the same does not possess the original jurisdiction.”*

(viii) It was further submitted that the arbitral award was passed on 26.06.2020, whereas the Corporate Insolvency Resolution Process of the Corporate Debtor was initiated on 23.12.2022. Thus, the rights of the parties had crystallised much prior to the initiation of CIRP and cannot be diluted through proceedings under the Insolvency and Bankruptcy Code.

(ix) The Respondents also submitted that the prayer made by the RP seeking payment of rent by Respondents Nos. 1 to 3 is not supported by any pleading or document on record and therefore such relief cannot be granted. On these grounds, Respondents Nos. 1 to 3 prayed for dismissal of the present application.

**Reply by Respondent Nos. 4 to 6**

(x) Respondents Nos. 4 to 6, in their reply, submitted that the present application is not maintainable against them as no specific relief has been sought against them in the Application. They, therefore,



prayed that their names be deleted from the array of parties. It was further submitted that Respondents Nos. 5 and 6 had resigned from the Corporate Debtor much prior to the initiation of CIRP and have no connection with the affairs of the Corporate Debtor. It is submitted that these facts are well within the knowledge of the Resolution Professional. Copies of the respective Resignation Letters are annexed herewith as Annexure R-4/1 to the Reply.

(xi) Respondents Nos. 4 to 6 also submitted that the moratorium under the Insolvency and Bankruptcy Code, 2016 would not apply in the present case since the arbitration proceedings had already concluded and the arbitral award had been passed on 26.06.2020, i.e., well before the initiation of CIRP on 23.12.2022. According to them, the rights of the parties had already been adjudicated through the arbitral award and Respondents Nos. 1 to 3 are merely implementing the same. They further denied that the property in question is in their possession and submitted that possession had already been handed over to Respondents Nos. 1 to 3 in terms of the arbitral award.

### **ISSUES**

**4.** We have considered the submissions made by the learned counsels of Applicant as well as the Respondents and have gone through the material available on record carefully, along with the extant provisions of the Code and the settled position of law on the subject issue. In view of the submissions and material placed on record, the following issues arise for consideration:



(A) Whether the present Application filed under Section 25(2)(a) and Section 60(5) of the Code is maintainable?

(B) Whether the execution of arbitral award hit by moratorium under Section 14 of the Code?

**OBSERVATIONS AND ANALYSIS**

5. It is observed that the immovable property in question, being the factory land and building (Unit-II) of the Corporate Debtor situated at Village Raiyan, Ludhiana, forms part of the secured assets over which a 1<sup>st</sup> *pari passu* charge stands created in favour of the secured financial creditor, i.e., Punjab National Bank (erstwhile Oriental Bank of Commerce), pursuant to the sanction letter dated 24.09.2014. It is further noted that the Respondents Nos. 1 to 3 claim possession of the said property on the basis of an arbitral award dated 26.06.2020, passed prior to the initiation of CIRP on 23.12.2022, whereby conditional rights were granted to use the plant and machinery and manufacturing facilities of the Corporate Debtor for a specified period upon failure of contractual obligations. It is further noted that such possession is asserted to be in the nature of implementation of the arbitral award.

**(A) Whether the present Application is maintainable?**

6. At the outset, it is pertinent to examine the scope and ambit of Section 60(5) of the Insolvency and Bankruptcy Code, 2016. The said provision confers wide and residuary jurisdiction upon this Tribunal to entertain and dispose of any application or proceeding by or against the Corporate Debtor, including any question of law or fact arising out of or in relation to the



Corporate Insolvency Resolution Process (CIRP). The jurisdiction under Section 60(5) is comprehensive in nature and is intended to ensure that all matters having a direct nexus with the insolvency resolution process are adjudicated by this Tribunal, so as to avoid multiplicity of proceedings and ensure timely resolution. Further, this Tribunal also takes note of Section 238 of the Code, which provides an overriding effect to its provisions over any other inconsistent law, thereby reinforcing the primacy of the Code in matters connected with insolvency resolution.

**7.** The Respondents have contended that the present application is not maintainable on the ground that it involves issues pertaining to the enforcement and validity of an arbitral award, which, according to them, falls outside the jurisdiction of this Tribunal. It is their case that any challenge to the arbitral award can only be made under Section 34 of the Arbitration and Conciliation Act, 1996 before the competent court, i.e., the principal civil court of original jurisdiction or the High Court exercising original jurisdiction, in terms of Section 2(1)(e) of the said Act. In this regard, Respondent placed reliance on the judgment of the Hon'ble Supreme Court in ***Yashpal Chopra & Co. v. Union of India, SLP (C) No. 78324 of 2022.*** Therefore, it is contended that the present application is an indirect attempt to challenge the arbitral award and is therefore not maintainable before this Tribunal.

**8.** This Tribunal has considered the submissions advanced by the Respondents. In the present case, the grievance raised by the Applicant/Resolution Professional pertains to taking control and custody of



the assets of the Corporate Debtor, which constitutes a fundamental duty within the CIRP framework. The dispute concerning possession of the factory premises, along with the competing claims of Respondent Nos. 1 to 3 based on an arbitral award, has a direct bearing on the asset pool of the Corporate Debtor and the effective conduct of the CIRP. Accordingly, such issues are intrinsically linked to the insolvency resolution process and fall squarely within the ambit of Section 60(5). This Tribunal is not adjudicating upon the validity of the arbitral award per se; rather, it is examining its effect and enforceability in the context of the provisions of the Code, particularly the moratorium under Section 14 and the statutory duties of the Resolution Professional.

**9.** Furthermore, the bare reading of sub-section (1) of Section 25, read together with clause (a) of sub-section (2), clearly imposes a mandatory duty upon the Resolution Professional to take immediate custody and control of all assets belonging to the Corporate Debtor. The statutory scheme of the Code contemplates that all assets of the Corporate Debtor must come under the control of the Resolution Professional to ensure effective management of the Corporate Debtor as a going concern and to preserve the value of its assets during the Corporate Insolvency Resolution Process. Where a statute explicitly assigns such responsibility to the Resolution Professional, it must be interpreted and applied in a manner that allows full and effective discharge of that responsibility. In this context, the principle embodied in the maxim *expressum facit cessare tacitum* becomes relevant. In essence, it means that when a specific provision is clearly stated in a legal document,



any implied or assumed meaning is disregarded; and as such, there is no scope to read down or qualify the statutory mandate of the Resolution Professional to take over all assets of the Corporate Debtor.

In view of the above, the present application is held to be maintainable, and this Tribunal has the requisite jurisdiction to adjudicate the same.

**(B) Whether the execution of arbitral award hit by moratorium under Section 14 of the Code?**

**10.** It is noted that the reliance placed by Respondent No. 1 to 3 on the arbitral award dated 26.06.2020 to justify continued possession of the factory premises is misconceived in light of the commencement of CIRP on 23.12.2022 and the consequent imposition of moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016. In terms of Section 14(1)(a) of the Code, the institution or continuation of proceedings against the Corporate Debtor, including execution of any judgment, decree or order of any court, tribunal or arbitral authority, stands expressly prohibited. Thus, execution of the arbitral award, in any form, is clearly barred during the subsistence of moratorium. The Tribunal further observes that the principle underlying Section 14 of the Code, which seeks to preserve and maximize the value of the assets of the Corporate Debtor, squarely applies in the present case. Any rights claimed by the Respondents flowing from the arbitral award cannot be enforced in a manner that affects the asset pool of the Corporate Debtor or interferes with the CIRP.

**11.** While it is not in dispute that the arbitral award predates the initiation of CIRP and grants certain conditional rights of usage of the plant and



machinery till 30.06.2027, the Tribunal observes that any enforcement or continued execution of such award, resulting in deprivation of control and custody of the assets of the Corporate Debtor from the IRP/RP, is hit by the moratorium.

**12.** Further, this Tribunal during the proceedings dated 21.01.2026 noted that although Respondent Nos. 1 to 3 claimed entitlement to possession under Clauses (b) and (c) of the award, they failed to demonstrate compliance with essential conditions of the award, particularly the obligation to furnish periodic production details to the RP after commencement of CIRP. The Tribunal thus finds that the arbitral award, even if valid inter se parties, cannot override the statutory mandate of the Code, and its execution or continuation in a manner that obstructs the RP from taking control of the assets is impermissible during the subsistence of moratorium

**13.** In view of the foregoing discussion and findings, this Tribunal deems it appropriate to direct the Respondents to forthwith hand over peaceful possession, custody and control of the factory premises, along with all assets, records and documents of the Corporate Debtor in their possession, to the Resolution Professional within a period of 2 weeks from the date of this Order.

**14.** In case the same is not handed over within the said period, then RP can seek assistance from police department and for that he can approach to the Commissioner of Police and in that event, the Commissioner of Police is directed to provide the police assistance for getting the premises vacated



from the control and possession thereof of the Respondent Nos. 1, 2 & 3 and to handover the control to the applicant RP.

**15.** Accordingly, IA(I.B.C.)/713(CH)2023 in CP(IB)No.62/CHD/PB/2019 is **allowed** and **disposed of**.

Sd/-  
**Kaushalendra Kumar Singh**  
**Member (Technical)**  
Inderjeet

Sd/-  
**Khetrabasi Biswal**  
**Member (Judicial)**