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

CP (IB) No.167/Chd/Hry/2019

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

<u>In the matter of</u>:
Punjab National bank
Manu Marg Branch
Alwar Rajasthan- 301001

…Petitioner-Financial Creditor

Versus

M/s Maruti Kesri Nandan Agrofoods Private Limited,
Registered Office 495/7, Kadipur Industrial Area
Near Shiv Mandir, Pataudi Road, Gurgaon- 122001

…Respondent-Corporate Debtor

Judgment delivered on 06.02.2020

Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)

For the Petitioner : Mrs. Nishi Chaudhary, Advocate

For the Respondent : None

<u>Per: Ajay Kumar Vatsavayi, Member (Judicial)</u>

JUDGMENT

The instant petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as '**Code**') read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as '**Rules**'). The application has been filed in Form 1 as prescribed in Rule 4(1) of the Rules.

2. The application in the prescribed Form 1 is filed by Punjab National Bank. (hereinafter referred to as '**petitioner**' and/or '**financial creditor**') for initiation of Corporate Insolvency Resolution Process ('**CIRP**') in the case of M/s Maruti Kesri Nandan Agrofoods Private Limited (hereinafter referred to as '**respondent**' and/or '**corporate debtor**'). The petition is supported by the affidavit of Mr. Vinay Prakash, Senior Manager (Credit), Punjab National Bank. Annexure A1 is the General Power of Attorney executed by Punjab National Bank in favour of Shri Vinay Prakash, appointing him to be true and lawful attorney of the said bank.

3. M/s Maruti Kesri Nandan Agrofoods Private Limited (for short hereinafter referred to as the '**respondent**' and/or '**corporate debtor**') is a company incorporated under the provisions of Companies Act, 2013 with authorized share capital of ₹2,11,00,000/- and paid up share capital of ₹47,30,000/-. The CIN of the respondent-corporate debtor is U15132HR2012PTC044850 and its registered office is situated in District Gurugram in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of the master data of the respondent-corporate debtor is at Annexure A-2 of the petition.

4. The facts of the case, briefly stated, are that the petitioner-financial creditor is a body corporate, constituted under Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970. The respondent-corporate debtor is a company registered under Companies Act, 1956 and is engaged in the business of manufacturing, distributing, supplying and trading of food grains and items. In Part IV of Form No.1, it is stated that respondent-corporate debtor through its Directors had approached the petitioner-financial creditor for sanction of Cash Credit (Hypo) Limit of Rs.201 Lacs and a Term Loan of Rs.148 Lacs for business

requirements. The petitioner-financial creditor after considering the aforesaid proposal and after obtaining the relevant documents sanctioned Cash Credit (Hypo) Limit of Rs.201 Lacs and a Term Loan of Rs.148 Lacs, vide sanction letter dated 06.06.2014 (Annexure A3). Terms and Conditions of the said sanction letter are also attached as Annexure A4. Annexure A5 is the acceptance letter dated 06.06.2014, wherein the credit facilities, communicated vide sanction letter dated 06.06.2014, has been accepted by the respondent-corporate debtor.

5. It is stated that to secure the sanctioned limits of Cash Credit (Hypo) Limit of ₹201 Lacs and a Term Loan of ₹148 Lacs, respondent-corporate debtor executed various loaning and security documents, namely, board resolution dated 06.06.2014 (Annexure A6), hypothecation of goods & book debts to secure CC facility dated 06.06.2014 (Annexure A7), Term loan Agreement dated 06.06.2014 (Annexure A8), hypothecation of assets to secure term loan dated 06.06.2014 (Annexure A9), hypothecation of moveable assets forming part of fixed/block assets dated 06.06.2014 (Annexure A10), letter of undertaking dated 06.06.2014, (Annexure A11) and undertaking dated 06.06.2014 (Annexure 12).

6. It is also stated that that the above said Cash Credit (Hypo) Limit of ₹201.00 Lacs and a Term Loan of ₹148.00 lacs sanctioned by the petitioner-financial creditor were secured by way of mortgage of residential house at 641/2-E, New No.641/8/2, (944/5), 150 Sq. Yard, Khasra No.2541/1441, Min 32, Waka Mouja, Hidayatpur Chawni, Patel Nagar, Gurgaon; Industrial land and building situated at Araji Jarai, Khewat/Khata No.254, Mustil-20, Kila No.8(8-0), 13/1 (2-0), Kita 2, Rakba 10 Kanal 0, Marla ka 134/1800 Bhag Bakdar 0 Kanal 14, Marla 8, Sarsai 450 Sq. Yard, Waka Siwana, Mauja Kadipur, Gurgaon; Industrial land

and building situated at Araji Jarai, Khewat/Khata No.254, Mustil-20, Kila No.8(8-0), 13/1 (2-0), Kita 2, Rakba 10 Kanal 0, Marla ka 81/1800 Bhag Bakdar 0 Kanal 9, 270 Sq. Yard, Waka Siwana, Mauja Kadipur, Gurgaon; and hypothecation of stocks and assignment of book debts. It is further stated that equitable mortgage of property was created by the respondent-corporate debtor by depositing title deeds. Vide letters of intent dated 27.06.2014 and 28.06.2014 (Annexure A13 Colly), creation of mortgage by deposit of title deeds was confirmed and acknowledged by the petitioner-financial creditor.

7. Thereafter, in June 2014, the respondent-corporate debtor approached the petitioner-financial creditor for sanction of car loan and upon the proposal of respondent-corporate debtor, the petitioner-financial creditor, vide sanctioned letter dated 06.06.2014, Annexure A14 (colly), sanctioned ₹11,18,389/- to the respondent-corporate debtor for purchasing Mahindra Scorpio VLX 2.2 Car. It is stated that to secure the term loan of the car, the aforesaid vehicle was hypothecated. Letter of Hypothecation for car loan dated 06.06.2014, is appended with the petition at Annexure A15 (colly).

8. It is submitted that after availing the credit facilities, the respondent-corporate debtor failed to abide by the terms and conditions of the aforesaid agreements and the respondent-corporate debtor failed to pay the dues as per schedule agreed upon. The petitioner-financial creditor time and again requested the respondent-corporate debtor to regularize Cash Credit account and to adhere to the norms of banking and maintain financial discipline, but the petitioner-financial creditor failed to regularize their account and the account of the respondent-corporate debtor was classified as Non-Performing Asset (‘**NPA**’) on

31.12.2015 as per the direction of the Reserve Bank of India and internal guidelines of the petitioner-financial creditor.

9. As per Part IV of Form 1, the following credit facilities were payable by the corporate debtor.

	Cash Credit	Term Loan	Car Loan
Principal	2,69,81,850/-	1,39,80,371/-	9,92,731/-
Interest	86,70,422/-	48,23,613/-	3,82,008/-
Additional Interest	6,55,366/-	3,45,963/-	27,668/-
Expenses	1,00,283/-	16,24,190/-	36,275/-

10. It is stated that two demand notice, both dated 19.03.2016, Annexure A16 (colly) under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as '**SARFAESI**') was issued by the petitioner-financial creditor to the respondent-corporate debtor. As per these notices, an amount of ₹4,13,54,061/- in Cash Credit (Hypo) and ₹10,08,541/- in Car Loan, as on 29.02.2016 with further interest until payment in full, was due and payable to the petitioner-financial creditor by the respondent-corporate debtor. Subsequently, possession notices dated 08.08.2016 and 28.04.2017, Annexure 17 (Colly) under Section 13(4) of the SARFAESI Act, was issued by the petitioner-financial creditor to the respondent-corporate debtor for taking physical possession of the property mortgaged with the bank.

11. The petitioner-financial creditor thereafter, exercising powers under Section 13(4) of the SARFAESI Act, 2002, took possession of hypothecated plant and machinery of respondent-corporate debtor, lying at F-150(A), Matsya Industrial Area, Alwar, Rajasthan. The said plant and machinery was put on e-

auction for 19.05.2017 for a reserve price of ₹31,00,000/- and the same was sold at an amount of ₹31,30,000/- and was adjusted in the Term Loan Account No.001300IB00026733.

12. Vide order dated 03.05.2019, notice of the petition was directed to be issued to the respondent-corporate debtor.

13. The petitioner-financial creditor filed affidavit of service, vide Diary No.4016 dated 09.08.2019, wherein it was stated that the notice sent through e-mail was duly served upon the respondent-corporate debtor. Accordingly, opportunity was afforded to the respondent-corporate debtor to file its reply, but there has been no representation from the side of the respondent-corporate debtor so far.

14. When the matter was listed on 21.01.2020, the following order was passed:-

> *On 13.08.2019, recording service of notice on the respondent-corporate debtor, time was granted to file reply to the respondent-corporate debtor. Again on 19.09.2019, further time was granted observing that if the respondent failed to file the reply before the next date of hearing i.e. on 18.10.2019 his right to file reply stands forfeited. Inspite of the same even on 18.10.2019, no reply was filed. On 25.11.2019 also, no representation for the respondent-corporate debtor and no reply was filed. In view of the same, respondent is set ex-parte and heard learned counsel for the petitioner. It is stated that different credit facilities were granted to the respondent-corporate debtor during June, 2014 and that the account was declared as NPA on 31.12.2015 and that the respondent has confirmed that the respondent has confirmed the balance and security vide his letters dated 09.06.2016 filed at Annexures A-19 (Colly).*
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> *2. Orders reserved.*

15. We have heard the learned counsel for the petitioner and have carefully perused the records.

16. The Hon'ble Supreme Court in the case of ***Innoventive Industries Ltd. Versus ICICI Bank and Another; (2018) 1 Supreme Court Cases 407,*** held as under:-

> *27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or financial creditor. A distinction is made by the Code between debts owed to financial creditors and financial creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an financial creditor means a person to whom an financial debt is owed and an financial debt under Section 5(21) means a claim in respect of provision of goods or services.*
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> *28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), 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, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.*

> *29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an financial creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the financial debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the financial creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing—i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the financial creditor gets out of the clutches of the Code.*

17. The present petition is filed under Section 7 of the Code. The application is filed in the prescribed Form 1. As discussed above, the petition is submitted on behalf of the financial creditor by Shri Vinay Prakash, Senior Manager (Credit) Punjab National Bank. A copy of General Power of Attorney issued by the Punjab National Bank, New Delhi, authorizing Shri Vinay Prakash to file the petition against corporate debtor is annexed as Annexure A1 of the petition. In view of the filing of General Power of Attorney, it is held that Form No.1 was submitted by duly authorized person of the financial creditor.

18. Section 7(5) of the Code reads as under:-

> *(5) Where the Adjudicating Authority is satisfied that—*
>
> > *(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or*
> >
> > *(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:*
>
> *Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.*
>
> *(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).*
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> *(7) The Adjudicating Authority shall communicate—*
>
> > *(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;*
> >
> > *(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.*

19. Section 7(5) of the Code provides for admission of the application where the Adjudicating Authority is satisfied that (a) a default has occurred; (b) the application under sub-section (2) of Section 7 is complete; (c) there is no disciplinary proceedings pending against the proposed Resolution Professional. The satisfaction of the three conditions is being examined below.

20. The first condition is that a default has occurred. From the facts narrated above, we find that the default has occurred.

21. The second condition is that the application under Section 7(2) is complete. No objections in this regard, were raised during the hearing of the petition. We have discussed the contents of the application above and we conclude that the application is complete.

22. The third condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, Mr. Ajay Kumar Jain, IBBI/IPA-002/IP-N00415/2017-2018/11188, has been proposed as Interim Resolution Professional. Form 2 filed by the proposed Interim Resolution Professional is at Page 212 of the petition. Mr. Ajay Kumar Jain has certified that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professional of ICAI. He has also affirmed that he is eligible to be appointed as a Resolution Professional in respect of the corporate debtor in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporation Persons) Regulations, 2016.

23. In view of the satisfaction of the conditions provided for in Sections 7(5) of the Code, the petition for initiation of CIRP in the case of M/s Maruti Kesari Nandan Agro Foods Pvt. Ltd., is admitted.

24. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

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.

25. 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.

26. 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.

27. The Law Research Associate of this Tribunal has checked the credentials of Mr. Ajay Kumar Jain and there is nothing adverse against him. The following directions are issued in respect of the appointment of the Interim Resolution Professional: -

i.) Appoint Mr. Ajay Kumar Jain, E-15/209, Sector-8, Rohini, Delhi- 110085 having Registration No. IBBI/IPA-002/IP-N00415/2017-2018/11188 and email address ajayjain721@gmail.com, Mobile No.9811045969, as an Interim Resolution Professional;

ii.) The term of appointment of Mr. Ajay Kumar Jain, shall be in accordance with the provisions of Section 16(5) of the Code;

iii.) 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;

iv.) 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;

v.) 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;

vi.) 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;

vii.) 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

viii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

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.

Sd/-	Sd/-
(Pradeep R.Sethi)	(Ajay Kumar Vatsavayi)
Member (Technical)	Member (Judicial)

February 06, 2020
Mohit Kumar