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

CP (IB) No. 144/Chd/Pb/2021

Under Section 7 of the Insolvency & Bankruptcy Code, 2016

In the matter of:
Punjab National Bank
through its Chief Manager Sh. Jasbir Singh Meelu.
having its Head office at:
Plot No.4, Sector-10, Dwarka,
New Delhi-110075,
Branch Office at: Sector 28-C,
Chandigarh

….Petitioner-Financial Creditor

Vs.

M/s Delcray Cables Pvt. Ltd.
through its Directors/Principal Officer.
having its Registered Office at:
29, S.B.S. Colony, Rajpura Distt.
Patiala, Punjab-147001
CIN No. :U31300PB1993PTC013429

…Respondent-Corporate Debtor

Judgment delivered on: 13.01.2023

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

Present:

For the Petitioner-Financial Creditor : Mr. Charanjiv Singh Pasricha, with Mr. K.V. Singhal, Advocates

For the Respondent-Corporate Debtor : Proceeded *ex parte* vide order dated 02.08.2022.

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed by **Punjab National Bank** (hereinafter referred to as 'Petitioner/Financial Creditor') through its Chief Manager, Sh. Jasbir Singh Meelu 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 **M/s Delcray Cables Pvt. Ltd.** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Jasbir Singh Meelu with the affidavit verifying the contents of the application appended thereto.

2. The Corporate Debtor is stated to be incorporated on 10.06.1993 The company having its registered address at having its Registered Office at: 29, S.B.S. Colony, Rajpura Distt. Patiala, Punjab-147001 CIN No. :U31300PB1993PTC013429.Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is attached as Annexure-P-3 of the petition.

3. Brief facts of the case are that the corporate debtor availed financial assistance by way of CC Limit of Rs.4.15 crores and OD Limit of Rs.3 crores from the financial creditor and executed necessary documents. The corporate debtor deposited the title deed No.6659 (Annexure P-8) dated 03.03.2010 on 04.07.2012 with a financial creditor bank with an intention to create security and executed a memorandum of deposit of title deeds (Annexure-P-7). The corporate debtor availed financial assistance by way of an Adhoc Limit of Rs.80 Lakhs (later

adjusted) in addition to the existing CC Limit of Rs.4 Crore. The corporate debtor executed a supplementary agreement evidencing and accepting the chance of base rate system to MCRLR as per Directives of RBI. The account of the corporate debtor was classified as Non-Performing Assets on 31.03.2019. The balance confirmation letter was executed by the corporate debtor on 14.02.2019 for admitting the balance in both loan facilities. Demand notice under Section 13(2) of the SARFAESI Act, 2002 was issued by financial creditor bank. The financial creditor filed its Original Application No.2402/2019 before DRT-II, Chandigarh.

4. It is stated in Part-IV of Form No.1 that the total amount claimed to be in default is Rs. 10,09,71,983.37/- (Rupees Ten Crores Nine Lakhhs Seventy-One Thousand Nine Hundred Eighty-Three and Paisa Thirty-Seven Only inclusive of interest) and date of default is 31.03.2019 i.e. corporate debtor was classified Non-Performing Asset. Copy of Statements of Account (Annexure-P-5 & P-6), Memorandum of Deposit of Title Deeds (Annexure-P-7), ROC Charge (Annexure-P-9), CERSAI Registration (Annexure-P-10), Balance Confirmation Letter (OD & CC) (Annexure-P-11), Board Resolutions of Corporate Debtor (Annexure-P-15, P-17& P-20), Agreement of Hypothecation (Annexure-P-16), Sanction letter (Annexure-P-18), Overdraft Agreement (Annexure-P-19), Hypothecation of Goods and Book Debts to secure CC Facility (Annexure-P-21), Supplementary Agreement (Annexure-P-22), Valuation Report (Annexure-P-23, Stock Audit Report (Annexure-P-24), & Unit Inspection Report (Annexure-P-25) are attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor vide order dated 04.08.2021 to show cause as to why this petition be not admitted.

The Affidavits of service were filed vide Diary No. 00730/2 dated 14.09.2021 and Diary No.00730/24 dated 26.07.2022. None appeared on behalf of respondent corporate debtor, therefore, vide order dated 02.08.2022, the respondent-corporate debtor has been proceeded against ex parte. The short written submissions were filed by the applicant vide Diary No.00730/25 dated 17.10.2022. Vide order dated 29.11.2022, learned counsel for the petitioner-financial creditor was directed to place on record a short note on maintainability i.e. filed vide Diary No.00730/26 dated 07.12.2022 relying upon the judgment of ***"Hon'ble NCLAT, Chennai Bench in Company Appeal No.(AT)(CH)(Ins) No.130 of 2022 titled as Mr. Amar Vora Vs. City Union Bank Ltd. decided on 11.05.2022"*** in which the issue of maintainability of petitions under Section 7, 9 & 10 of the Code in the presence of the pendency of proceedings before other fora including DRT has been taken into consideration. It is held by Hon'ble NCLAT in Para No.9 of the judgment thereof:-

"*In view of the above provision of law the financial Creditor/Operational Creditor/Corporate Persons can file an application under Section 7, 9 & 10 of the I & B Code, 2016 before the respective Adjudicating Authorities even though in respect of same any proceeding pending before other forums on the ground that the provisions of I & B Code, 2016 is overriding effect of other laws. In view of the aforesaid reasons the Appellant cannot take a stand that the proceedings are pending before DRT and PBPT and the application under Section 7 of the I&B Code, 2016 cannot be maintained does not merit. The application under Section 7 filed by the financial Creditor before the Adjudicating Authority is very well maintained. Accordingly, the point is answered against the Appellant".*

Hence, the present petition is maintainable.

6. We have heard the learned counsels for the petitioner and have also perused the record carefully.

7. 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 is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application."*

8. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is 31.03.2019 i.e. corporate debtor was classified Non-Performing Asset. The present petition is filed vide diary No.00730 dated 09.06.2021 and was re-filed on 23.06.2021. It can be said that the present petition is well within the period of limitation of three years.

9. Another issue for consideration is whether there is a default in payment or not. It is observed from the record that in the present case, the default is evidenced by Statements of Account (Annexure-P-5 & P-6), Memorandum of Deposit of Title Deeds (Annexure-P-7), ROC Charge (Annexure-P-9), CERSAI Registration (Annexure-P-10), Balance Confirmation Letter (OD & CC) (Annexure-P-11), Board Resolutions of Corporate Debtor (Annexure-P-15, P-17& P-20), Agreement of Hypothecation (Annexure-P-16), Sanction letter (Annexure-P-18), Overdraft Agreement (Annexure-P-19), Hypothecation of Goods and Book Debts to secure CC Facility (Annexure-P-21), Supplementary Agreement (Annexure-P-22), Valuation Report (Annexure-P-23, Stock Audit Report (Annexure-P-24), & Unit Inspection Report (Annexure-P-25) attached with the main petition. As per the financial records, it is evident that an amount of Rs. 10,09,71,983.37/- (Rupees Ten Crores Nine Lakhhs Seventy-One Thousand Nine Hundred Eighty-Three and Paisa Thirty-Seven Only inclusive of interest) is still due towards corporate debtor which amounts to default.

10. 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 Resolution Professional. In the present case, in Part III of Form 1, Mr. Jalesh Kumar Grover, has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 28.05.2021 along with the certificate of IBBI issued in favour of the proposed Interim Resolution Professional i.e. Mr. Jalesh Kumar Grover, is attached at Annexure-P-4 of the petition. Form B has been submitted vide Diary No.00730/27 dated 22.12.2022. The Law Research Associate of this Tribunal has checked the credentials of Mr. Jalesh Kumar Grover, and there is nothing adverse against him. In view of the above, we appoint Mr. Jalesh Kumar Grover, Registration No.IBBI/IPA-001/IP-P00200/2017-18/10390, Email: jk.grover27@gmail.com, Mobile No. 9501081808, the Interim Resolution Professional with the following directions: -

i.) The term of appointment of Mr. Jalesh Kumar Grover 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 requests 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.

11. 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.

12. 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.

13. 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 email address forthwith.

14. The petition is admitted accordingly.

Sd/-	Sd/-
(Subrata Kumar Dash)	**(Harnam Singh Thakur)**
Member (Technical)	**Member (Judicial)**

January 13, 2023

SD/TB