

**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. 333/Chd/Hry/2019

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

In the matter of:

Punjab National Bank
through **Sh. Rabindra Kumar, Chief Manager,**
having its Registered Office at:
H.O. at Plot No.4, Sector 10,
Dwarka, New Delhi 110075
Branch Office at ARMB, 1st Floor,
Rajendra Bhawan, Rajendra Place,
New Delhi 110125

....Petitioner-Financial Creditor

Vs.

M/S Nuchem Limited, a company
having its Registered Office at
54, Industrial Area NIT Faridabad Haryana PIN 121001
CIN No: U25209HR1951PLC001694

...Respondent-Financial Creditor

Judgment delivered on: 24.11.2022

**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. H.S. Bhatia, Advocate

For the Respondent-Corporate Debtor : Proceeded *ex parte* vide
order dated 11.02.2020

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, Mr. Rabindra Kumar, 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 Nuchem Limited** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Rabindra Kumar, with the affidavit verifying the contents of the application appended thereto.

2. The Corporate Debtor is stated to be incorporated on 08.08.1951. The company having its registered address at 54, Industrial Area NIT Faridabad Haryana PIN 121001. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is stated to be filed on page 62A of the petition.

3. Brief facts of the case are that the corporate debtor had availed various working capital credit facilities from the financial creditor along with Canara Bank, Allahabad Bank, and Punjab and Sind Bank in the consortium from time to time. The consortium sanctioned a working capital facility of Rs.2421.00 Lakh and a non-fund-based facility of Rs.801.00 Lakh. The share of the applicant's financial creditor was Rs.1159.00 Lakh as fund based facility and Rs.360.00 Lakh as a non-fund-based facility. The loan was secured by hypothecation of stocks, plant and machinery, book debts, and mortgage immovable property. Due to

non-payment of interest, and installments of the term loan, the account was classified as Non-Performing Asset (NPA) on 30.09.2011. The action under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has been initiated and a demand notice was issued on 25.07.2015 (Annexure A6). OA No.161/2019 is pending adjudication before Debts Recovery Tribunal-II, New Delhi (Annexure A5).

4. It is stated in Part-IV of Form No.1, the total amount claimed to be in default is Rs. 44,78,67,822.00/- (Rupees Forty Four Crores Seventy-Eight Lakhs Sixty Seven Thousand Eight Hundred Twenty-Two Only) (with interest up to 31.03.2019) and date of default is 30.09.2011. Copy of Sanction letter (Annexure-A7), Term Loan Agreement (Annexure-A9), Agreements of hypothecation (Annexure-A10 & A11, A12, A13, & A16), Statement of account (Annexure A23, A24, A25 & A26), Balance confirmation letter (Annexure A27, A28, A30, A31, A32, A33, A34, & A35), Annual return (Annexure A38) are attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor vide order dated 18.07.2019 for 02.09.2019 and 02.09.2019 for 07.10.2019 to show cause as to why this petition be not admitted. An affidavit of service was filed vide Diary No. 5208 dated 30.09.2019. None appeared on behalf of the respondent-corporate debtor nor any reply was filed. Therefore, the respondent-corporate debtor proceeded *ex parte* vide order dated 11.02.2020 of this Bench.

6. We have heard the learned counsel 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 are no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”*

8. The first 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 mentioned as 30.09.2011. The financial creditor has submitted the Statement of Account (for Account Numbers- 0153008700002996,0153008700003241, 015300IC00488818, and 015300NG00488972) duly certified under Bankers' Books Evidence Act and Balance Confirmation Letters pertaining to Nuchem Limited-Corporate Debtor.

The details are:-

1. The Statement of account for Account No.0153008700002996 period from 01.04.2010 till 30.04.2019 indicates the receipt amount as Rs.44,74,41,389.57/- (Forty-Four Crores Seventy Four Lakhs Forty One Thousand Three Hundred Eighty Nine and Paise Fifty Seven Only), the working capital computation chart provides BPLR at 14.25% and rate of 19.50% from 30.09.2011 till 31.03.2019.
2. The statement of account for Account No.0153008700003241 from period 01.04.2010 till 30.04.2019, receipt amount is mentioned as Rs.5,07,25,104/- (Five Crores Seven Lakhs Twenty Five Thousand One Hundred and Four Only), the working capital computation chart provides BPLR at 14.25% and rate of 19.50%.
3. The statement of account for Account No.015300IC00488818 period from 31.12.2008 till 30.04.2019, the receipt amount is mentioned as Rs.23,14,32,793/- (Twenty Three Crores Fourteen Lakhs Thirty Two Thousand Seven Hundred Ninety-Three Only), the working capital computation chart provides BPLR at 14.25% and rate of 20% from period 30.09.2011 till 31.03.2019.

4. The statement of account No.015300NG00488972, the receipt amount is mentioned as Rs.63,42,324/- (Sixty Three Lakhs Forty Two Thousand Three Hundred Twenty Four Only) from period 22.08.2007 till 30.04.2019, the working capital computation chart provides BPLR at 14.25%, 14.00% and rate of 15.75%, 15.50% from period 30.09.2011 till 31.03.2019.

From the data provided above, the total dues of Nuchem Limited as on 31.03.2019 comes out to be Rs.44,78,67,822/- (Forty Four Crores Seventy Eight Lakhs Sixty Seven Thousand Eight Hundred Twenty-Two Only) (principal amount including interest). The financial creditor has also submitted various balance confirmation letters wherein the corporate debtor Nuchem Limited has confirmed the correctness of the debit balances. The details are mentioned as below:-

Account Number	Date of Balance Confirmation Letters	Amount
0153008700002996	29.06.2011	Rs.25,39,858.01/- inclusive of interest at the rate of 15.75% per annum
	24.02.2016	Rs.3,55,61,716.5/-
0153008700003241	29.06.2011	Rs.19,90,567/-inclusive of interest at the rate of 15.75% per annum
015300IC00488818	29.06.2011	Rs.6,44,81,774/- inclusive of interest at the rate of 16.25% per annum
	24.02.2016	Rs.6,31,47,385/-
015300NG00488972	29.06.2011	Rs.3,66,835/- inclusive of interest at the rate of 11.75% per annum
	17.01.2013	Rs.1,22,908/- inclusive of interest at the rate of 11.75% per annum
	31.12.2015	Rs.1,22,908/-

The last correctness of debit balances was given on 24.02.2016. The present petition is filed vide Diary No. 2841 dated 06.06.2019. The learned counsel for the petitioner-financial creditor has placed reliance upon the above-mentioned

statements of accounts till 30.04.2019 (Annexure A23 to A26) and the last amount due comes to Rs.44,78,67,822/- (Forty Four Crores Seventy Eight Lakhs Sixty Seven Thousand Eight Hundred Twenty-Two Only). Apart notice was issued on 02.09.2019 for 07.10.2019 was served upon respondent-corporate debtor (Annexure A6), but no response was filed. There is no rebuttal to the said statements of accounts which are otherwise duly certified under the Bankers Books Evidence Act and the entries have been done during the course of business of the petitioner-bank. In absence of a rebuttal to the entries, these cannot be discarded and thus, it can be safely 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 a Sanction letter (Annexure-A7), Term Loan Agreement (Annexure-A9), Agreements of hypothecation (Annexure-A10 & A11, A12, A13, & A16), Statements of account (Annexure A23, A24, A25 & A26), Balance confirmation letter (Annexure A27, A28, A30, A31, A32, A33, A34, & A35), Annual return (Annexure A38) are attached with the main petition. As per the financial records it is evident that an amount of Rs. 44,78,67,822.00/- (Rupees Forty Four Crores Seventy-Eight Lakhs Sixty Seven Thousand Eight Hundred Twenty-Two Only) is still pending along with the interest up to 31.03.2019 which amounts to default.

10. 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.

11. 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. Sandeep Kumar Agrawal, has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 22.03.2019 along with the certificate of IBBI issued in favour of the proposed Interim Resolution Professional i.e. Mr. Sandeep Kumar Agrawal is attached at Annexure-A3 of the petition. The Law Research Associate of this Tribunal has checked the credentials of Mr. Sandeep Kumar Agrawal, and there is nothing adverse against him. In view of the above, we appoint Mr. Sandeep Kumar Agrawal, Registration No.IBBI/IPA-001/IP-P01135/2018-2019/11828,Email:ipsandeepagrawal@gmail.com, Mobile No.9811337758, the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Sandeep Kumar Agrawal 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 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
- viii.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

12. We direct the Financial Creditor to deposit a sum of ₹70,000/- (Rupees Seventy Thousand 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 e-mail address forthwith.

14. The petition is admitted accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

November 24 , 2022

SD/TB