



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

**CP(IB) No.141/Chd/Hry/2023**

**Under Section 7 of the Insolvency  
and Bankruptcy Code, 2016 read  
with Rule 4 of the Insolvency and  
Bankruptcy (Application to  
Adjudicating Authority) Rules, 2016**

**IN THE MATTER OF:**

**Madan Gopal Banga**

S/o Shri Moti Lal Banga

Resident of House No. 1105, Huda Sector 4

Gurgaon 122001, Haryana

PAN: ACXPB8232C

..... Financial Creditor

VS

**M/s Newgen Ecotronics Private Limited**

Through its Director Mr. Anupam Gulati

Having its registered office address at:

1G-89, NIT Faridabad,

Haryana- 121001 IN

PAN-AAICN6448E.

..... Corporate Debtor

**Judgment delivered on: 21 .08.2024**

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

**Present:**

For the Petitioner-Financial Creditor : Mr. Prateek Gupta, Advocate

For the Respondent-Corporate Debtor : Mr. Prashant Puri, Advocate

**PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)**



## **JUDGEMENT**

The present petition has been filed by Madan Gopal Banga. (hereinafter referred to as 'Petitioner/ Financial Creditor') 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 **Newgen Electronics Private Limited** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Madan Gopal Banga with the affidavit verifying the contents of the application appended thereto.

2. The Corporate Debtor is stated to be incorporated on 13.12.2022 The company is having its registered address at IG-89, NIT Faridabad, Haryana-121001, India. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is attached as Annexure-3 of the petition.

### **FACTS OF THE CASE**

3. The brief facts of the case, as stated in the petition are as below:

- (i) The Corporate Debtor was earlier a partnership firm going by the name of Navyug Industries consisting of 2 partners- Mr. Anupam Gulati and Mr. Madhur Gulati. The Navyug Industries through its partners approached the Financial Creditor sometime in July 2020 to avail loan facility to meet its working capital and business requirements and the loan was granted vide Loan Agreement dated 10.07.2020 for an amount of Rs 3,00,00,000/- (INR Three Crores) to be repaid by 15.04.2023 along with interest @ 12% per annum payable on pro-rata basis. The loan amount was disbursed on 29.09.2020. Thereafter, on 16.10.2022 a public notice was published in two



newspapers to convert Navyug Industries from a partnership firm into a private limited company by the name of Newgen Ecotronics Private Limited having the same 2 persons as Directors who were the partners in the erstwhile M/s Navyug Industries. The new company came into existence on 13.12.2022 taking over all the business, including the assets and liabilities, of the erstwhile partnership firm. However, despite the repeated reminders the corporate debtor defaulted in repaying the loan amount.

- (ii) It is stated in Part-IV of the Application that the total amount claimed to be in default is Rs. 3,33,26,020/- (Three Crores Thirty Three Lakhs Twenty Six Thousand and Twenty) (including Principal loan amount of Rs.2,89,38,291/- and interest amount for Rs.43,87,729/-) as on 15.04.2023, along with further interest payable @ 12% from 16.04.2023 till the date of actual payment. The date of default is 15.04.2023 based upon the loan agreement dated 10.07.2020, wherein the loan was to be repaid by the said date. Copy of loan agreement signed between the parties (Annexure-1), newspaper publication dated 16.10.2022 (Annexure-2), MOA and AOA of Newgen Ecotronics Pvt. Ltd. (Annexure-4), ledger account (Annexure-5), emails written by financial creditor to the corporate debtor demanding repayment of loan (Annexure-6) are attached with the petition. The additional documents are filed vide Dairy No. 00327 dated 25.01.2024 including the deed of partnership (Annexure -9), Balance Sheet for the year ending 31.03.2021 (Annexure-10).
- (iii) The notice of this petition was issued to the respondent corporate debtor to show cause as to why this petition be not admitted. The reply was filed by the respondent-corporate debtor vide Diary No. 01724/2 dated 09.10.2023



wherein it is stated that the petitioner is not a financial creditor under IBC, 2016 and the petitioner advanced the money to the partnership firm for personal purposes and not as the financial creditor under IBC. Further, it is stated that as per the loan agreement dated 10.07.2020, the Corporate Debtor could utilize the amount till the end of the financial year 2022-23 and the principal amount along with interest accrued on the lender had to be repaid by 15.04.2023. However, during the year of 2020, due to the nationwide lockdown and the continued wave of Covid-19, the Corporate Debtor faced financial constraints and was unable to work effectively for 2 years. Further, it is stated that the Corporate Debtor ensured the Financial Creditor that he wants to discharge its liability as the earliest but is struggling with limited resources. The reliance is placed on the judgment stating the purpose of IBC, 2016 being not a recovery forum in the matter of ***M/s Invent Asset Securitization and Reconstruction Pvt. Ltd Vs. M/s Girnar Fibres Limited (2022 SCC Online SC 808)*** wherein it was held that: *"Time and again, it has been expressed and explained by this Court that the provisions of the Code are essentially intended to bring the corporate debtor to its feet and are not of money recovery proceedings as such. The intent of the Appellant had only been to invoke the provision of the code so as to enforce recovery against the Corporate Debtor. We find no fault in the Tribunal and the Appellate Tribunal having declined the prayer of the appellant."*

- (iv) Further, it is averred that the Corporate Debtor has the intention to pay and comply with the loan agreement dated 10.07.2020 and he may be allowed to seek more time to repay the dues of the Financial Creditor.



- (v) The affidavit was filed by the petitioner vide Dairy No. 01724/6 dated 05.04.2024 wherein it is stated that they are not related party and the present petition is not collusive.

### **REPLY BY THE CORPORTATE DEBTOR**

4. The affidavit had been filed by the respondent vide Dairy No. 01724/5 dated 05.04.2024 wherein it is stated that they are not related party and the present petition is not collusive. It is further deposed that the petitioner is not a Financial Creditor in terms of IBC, 2016 and the present proceedings have been invoked for recovery of money.

5. We have heard the learned counsels for the parties and have also perused the record carefully.

6 The first issue for consideration is "*Whether the present application is filed within limitation*".

(i) It can be seen from the records that the date of default is 15.04.2023 based upon the loan agreement dated 10.07.2020 wherein the loan was to be repaid by the said date. The present petition is filed vide diary No. 01724 dated 22.05.2023 and therefore, it is well within the period of limitation of three years.

(ii) It is submitted on behalf of the corporate debtor that due to Covid-19, the Corporate Debtor faced financial constraints and it was unable to work effectively for 2 years. Further, it is submitted that the Corporate Debtor insured the Financial Creditor that he wants to discharge its liability at the earliest but is struggling with limited resources. It is averred that the Corporate Debtor had the intention to pay and comply with the loan agreement dated 10.07.2020 and he may be allowed to seek more time to repay the dues of the Financial Creditor. Therefore, this is the case of



admitted liability and the amount is due which is to be paid by the corporate debtor to the financial creditor.

7 The last issue for consideration is "*Whether there is a default in payment or not*".

(i) It is observed from the record that in the present case, the loan amount was disbursed as per loan agreement signed between the parties (Annexure-1), newspaper publication dated 16.10.2022 (Annexure-2), MOA and AOA of Newgen Ecotronics Pvt. Ltd. (Annexure-4), ledger account (Annexure-5), emails written by financial creditor to the corporate debtor demanding repayment of loan (Annexure-6) are attached with the main petition. The additional documents are filed vide Dairy No. 00327 dated 25.01.2024 including the deed of partnership (Annexure -9), Balance Sheet for the year ending 31.03.2021 (Annexure-10). It is evident that an amount of Rs. 3,33,26,020/- (Three Crores Thirty Three Lakhs Twenty Six Thousand and Twenty) (including Principal loan amount of Rs 2,89,38,291/- and interest amount for Rs 43,87,729/-) as on 15.04.2023, along with further interest payable @ 12% from 16.04.2023 till the date of actual payment is still pending for payment, which amounts to default by the corporate debtor. The payment was not made by the corporate debtor despite repeated requests by the Financial Creditor.

(ii) Although, it is contended on behalf of the Ld. counsel for the corporate debtor that the petitioner is not a financial creditor under IBC, 2016 and the petitioner advanced the money to the partnership firm for personal purposes and not as the financial creditor under IBC. However, this contention of the Ld. counsel for the respondent-corporate debtor is devoid of legal force because the partnership firm was transformed into a private limited company i.e. M/s Newgen Ecotronics Private Limited, respondent-corporate debtor having two same partners as directors of the corporate debtor. Thus, whatever liabilities were owned by the partnership firm have



been transferred to the present corporate debtor, therefore, the corporate debtor cannot at all act on this frivolous plea.

8 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, 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 is directed to take effect as below:

- (i) Moratorium under section 14 (1) for prohibiting all of the following, namely:
  - (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - (b) transferring, encumbering, alienating or disposing off 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
- (ii) It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force,



shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;

- (iii) The provisions of sub-section of section 14(1) shall not apply to such transactions, agreements or other arrangement, as may be notified by the Central Government in consultation with any financial sector regulator or any other authority; and also to a surety in a contract of guarantee to a corporate debtor.
- (iv) 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, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances, as may be specified.
- (v) The order of moratorium shall have effect from the date of this order till the 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.

9 In Part III of Form-I, Mr. Ravindra Kumar Goyal has been proposed as IRP. Form No. 2 dated 18.05.2023 is attached with the main petition as Annexure-7. The Law Research Associate of this Tribunal has checked the credentials of Mr. Ravindra Kumar Goyal and there is nothing adverse against him. His AFA Certification is valid



upto 30.06.2025. In view of the above, we appoint Mr. Ravindra Kumar Goyal, Registration No. IBBI/ IPA-001/ IP-P-02019/ 2020-21/ 13098, Email: ravindra1960\_goyal@yahoo.co.in, Mobile No. 9978094218, the Interim Resolution Professional with the following directions:-

- (i) The term of appointment of Mr. Ravindra Kumar Goyal 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 IRP and the officers and the managers of the Corporate Debtor shall report to the IRP, who shall be enjoined to exercise all the powers, as are vested with IRP and strictly perform all the duties as are enjoined on the IRP 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 IRP is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;
- (iii) The IRP shall strictly act in accordance with the Code, all the rules framed there under 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;
- (iv) The IRP 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 CIRP 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 IRP 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 IRP 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. A reference is made to the provisions of Section 128(5) of the Companies Act 2013, whereby every company should maintain its books of accounts for not less than eight financial years immediately



preceding a financial year. Minutes and statutory records are the principal documents of the company that should be maintained and preserved since inception.

- (vii) In view of the above mandatory provisions, the suspended directors of the board will ensure that the books of accounts for the eight previous financial years preceding the date of this order be made available to the IRP/ RP within 15 days of the initiation of the CIRP order. The statutory auditor is also directed to share the records maintained by him in the course of the audit of the accounts of the corporate debtor for the period of three years prior to the date of initiation of this CIRP order within the same period of 15 days.
- (viii) 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 IRP is also directed to make a specific mention of noncompliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.



- (ix) The IRP/RP 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 CIRP. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the RP to enable him to conduct the CIRP as per law.
- (x) The IRP 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 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
- (xi) The IRP is directed to send a regular progress report to this Tribunal as prescribed in IBC.

10 The Financial Creditor is directed to deposit a sum of ₹5,00,000/- (Rupees Five\*-Lakhs 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.



11 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.

12 The petition is admitted accordingly.

Sd/-

**(Umesh Kumar Shukla)**  
**Member (Technical)**

Sd/-

**(Harnam Singh Thakur)**  
**Member (Judicial)**

August 21, 2024

PKA/TB