

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

CP (IB) No. 277/Chd/Pb/2018

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

In the matter of:-

Punjab National Bank
 having its head office at
 Plot No.4, Sector 10, Dwarka,
 New Delhi-110075

Branch office at Large
 Corporate Branch, Sector 17,
 Chandigarh – 160017
 through its Senior Manager
 Shri Gagandeep Singh Narang

....Petitioner-Financial Creditor

Vs.

M/s Kudos Chemie Limited
 having its registered office at
 Village Kuranwala, Barwala Road,
 Tehsil Dera Bassi, District SAS Nagar,
 Punjab – 140507

...Respondent-Corporate Debtor

Judgment delivered on: 5.07.2019

**Coram: HON’BLE MR. M.K. SHRAWAT, MEMBER (JUDICIAL)
 HON’BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Petitioner : Mr. R.S. Bhatia, Advocate

For the Respondent : Mr. Vaibhav Sahni, Advocate, proxy counsel
 for Mr. Gaurav Mankotia, Advocate.

Per: Pradeep R. Sethi, Member (Technical)

JUDGMENT

Punjab National Bank (PNB) incorporated on 31.03.1970 under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, Act 5 of 1970 with head office in New Delhi, has filed this petition as a financial creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code') for initiating the Corporate Insolvency Resolution Process (CIRP) against Kudos Chemie Limited (Corporate Debtor). The petition has been filed by PNB through Mr. Gagandeep Singh Narang, Senior Manager of the Large Corporate Branch, Sector 17, Chandigarh, whose affidavit verifying the contents of the application in Form No. 1 is a part of the petition. The authority letter dated 02.06.2018 issued by the Zonal Office of PNB authorizing Shri Gangandeep Singh Narang for filing the present petition is at Annexure A/2. General Power of Attorney dated 17.03.2016 of PNB authorizing Sh. Gagandeep Singh Narang is a part of the petition.

2. PNB has filed application in Form 1 as prescribed in Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity the 'Rules'). The corporate debtor was incorporated as a company on 09.09.1988, under the Companies Act, 1956. Its CIN is U24231PB1988PLC008663. Its authorized share capital is ₹45 crores and paid-up share capital is ₹20,64,52,950/-. The corporate debtor is stated to be a manufacturer of Caffeine and its related products. The corporate debtor has its registered office at District SAS Nagar, Punjab and therefore, the matter falls within the territorial jurisdiction of this Tribunal. The master data of the respondent is at Annexure A/4 of the petition.

3. It is stated that the corporate debtor has been availing loan facilities since the year 1994 and the financial facilities were enhanced from time to time. Further, the last sanction was granted on 16.01.2015, when the following credit facilities were sanctioned:-

PARTICULARS OF FINANCIAL DEBT	
Limit	Amount
Fund Based	215.61 Crore
Non Fund Based	122.58 Crore (Sub Limit of WCTL-II)
Term Loan	116.81 Crore
WCTL-I	143.02 Crore
WCTL-II	209.89 Crore
WCTL-III	192.27 Crore
WCTL-IV	324.26 Crore
FITL-I	24.12 Crore
FITL-II	23.54 Crore
FITL-III	112.65 Crore
FITL-IV	34.04 Crore
Total	1396.21 Crore

The total sanctioned credit limit is ₹1396.21 Crores as per Part-IV (Particulars of the Financial Debt). Copies of the latest sanction letters dated 15.03.2013 are stated to be enclosed at Annexure A/11 of the petition. It is stated that the corporate debtor's account became irregular and was considered for restructuring and the CDR Group approved the restructuring vide letter dated 18.12.2014 (Annexure A-21 of the petition). It is stated that the competent authority of the financial creditor also sanctioned the restructuring vide meeting dated 16.01.2015 (Annexure A-22 of the petition).

4. It is stated that the Board of Directors of the corporate debtor vide resolution passed on 01.11.2013 unanimously resolved and admitted Sh. Jitendra

Singh, Managing Director to execute the necessary security documents to avail of the said facilities by using the company seal and that the copy of the resolution is at Annexure A/12 of the petition. It is stated that the following loan and security documents were executed in favour of the PNB Consortium:- working capital consortium agreement Annexure A/13, joint deed of hypothecation Annexure A/14, agreement of second charge for hypothecation Annexure A/15, letter of revival Annexure A/17, letter of undertaking (Annexure A-18), second charge agreement Annexure A/19, inter se agreement (Annexure A-20). The documents executed for restructured limit on 29.12.2014 are stated to be (i) resolution dated 27.12.2014 (Annexure A/23), (ii) Master Restructuring Agreement dated 29.12.2014 (Annexure A/24), (iii) Facility Agreement dated 29.12.2014 (Annexure A/25), (iv) Trust and Retention Account Agreement dated 29.12.2014 (Annexure A/26), (v) Power of Attorney executed by Kudos Chemie Ltd. (corporate debtor) in favour of Punjab National Bank being the monitoring institution and lead bank of the consortium dated 29.12.2014 (Annexure A/27) and (vi) Letter of Undertaking dated 29.12.2014 (Annexure A/28). The repayment of loan is stated to be guaranteed and the guarantee deeds by different guarantors are stated to be at Annexures A/29 to A/33 which are the part and parcel of the petition.

5. The details of securities held are stated to be attached as Annexure A/6 of the petition and details of the title deed deposited are at Annexure A/7 of the petition.

6. The charge is stated to be registered with the Registrar of Companies and the record of registration of charge available with the Registrar of Companies is at Annexure A/8 of the petition.

7. It is stated that that the cash credit limit was payable on demand and the term loan was payable in installments and default occurred in both cash credit and term loan on 01.12.2015 and due to non-payment of interest installments of term loan, the account was classified as NPA on 31.03.2016. The bank also issued a notice under Section 13(2) of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) claiming the corporate debtor to be in default to the tune of ₹13,68,64,86,131.22 inclusive of interest and other charges upto 29.02.2016 and stating that the bank classified the account as NPA as per the Reserve Bank of India guidelines and the entire outstanding together with interest and other charges was demanded/recalled on 18.10.2016. The Demand Notices dated 18.10.2016 and 13.06.2016 under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI 2002) is at Annexure A/10 of the petition.

8. The financial creditor has also lodged a First Information Report with Central Bureau Investigation on 21.02.2017. Copy of the said complaint is attached as Annexure A/34 of the petition.

9. It is further stated that the joint application dated 30.10.2017 (Annexure A/9) with other members of the consortium i.e. State Bank of India, IDBI Bank Ltd., Corporation Bank, Central Bank of India and UCO Bank (dated 30.10.2017) bearing OA No. 5222/2017 was instituted before the Debts Recovery Tribunal-II, Chandigarh for the recovery of ₹27,07,03,65,202.45 alongwith pendentelite and future interest from 26.10.2017 till realization. Out of the aforesaid amount, the dues of PNB for which the recovery application is filed is

stated to be ₹18,43,27,30,582/-. The OA is stated to be pending for adjudication before the Debts Recovery Tribunal.

10. In Part IV of Form No.1, it is stated that the outstanding of the corporate debtor towards PNB is ₹20,11,42,08,400/- as on 31.05.2018. The Bank Account statements duly certified as per Banker's Books Evidence Act, 1891 are stated to be attached as Annexure A/33 to A/48 of the petition.

11. Vide order dated 18.09.2018, notice of the petition to the respondent-corporate debtor was directed to be issued. It was also noted that the learned counsel for the petitioner submitted that the registered parcel dispatched at the time of filing of petition has been returned though it was sent to the registered office of the corporate debtor.

12. In order dated 12.11.2018, it is noted that as per office report, the authorized representative of the petitioner has filed affidavit dated 05.11.2018 vide Diary No. 4315 dated 06.11.2018 with regard to the dispatch of the application and complete paper book sent at the time of filing of the petition and it is stated that the same was returned and bears the endorsement of the postal employee that the factory is lying closed.

13. The order dated 12.11.2018 further notes that in compliance of the order dated 18.09.2018, another affidavit of service has been filed vide Diary No. 4316 dated 06.11.2018 stating that notice alongwith copy of application and complete paper book was sent by speed post on 12.10.2018 and the same was returned and from the endorsement made on the postal envelope, similar report has been made that the factory is lying closed. The order dated 12.11.2018 notes that the learned counsel for the petitioner also submits that the notice was sent at

the e-mail address as per the master data, but the same bounced back. Affidavit to this effect was filed vide Diary No. 4761 dated 04.12.2018.

14. PNB filed CA No. 546/2018 for substituted service of the respondent-corporate debtor. On being satisfied that the service cannot be effected except through substituted mode, the directions were accordingly given by order dated 07.12.2018 for notice to the respondent-corporate debtor for 31.01.2019 by publication in two newspapers. The affidavit of service was filed by Diary No. 233 dated 17.01.2019.

15. On 30.01.2019, Shri Gaurav Mankotia, Advocate filed his Memo of Appearance on behalf of the respondent-corporate debtor and submitted that the Power of Attorney and Board Resolution of the respondent-corporate debtor will be filed alongwith the reply. The matter was thereupon listed for arguments on 19.03.2019 and the respondent-corporate debtor was directed to file reply/objections, if any, within five weeks with copy advance to the counsel opposite and rejoinder, if any, be also filed at least three days before the date fixed. It was made clear in the order dated 31.01.2019 that no request for further adjournment shall be granted.

16. On 19.03.2019, it was noted that though the matter was fixed for arguments as per the previous order, the learned Senior Counsel Shri Anand Chhibbar for the respondent prays for adjournment. The matter was thereupon listed on 10.04.2019 for arguments. Due to paucity of time, the matter could not be taken up on the next date of hearing and was adjourned to 14.06.2019 (order dated 12.04.2019). On 14.06.2019, Shri Vaibhav Sahni, Advocate appeared as proxy counsel for Shri Gaurav Mankotia, Advocate for the respondent-corporate debtor and sought adjournment. Sufficient opportunity was already given earlier

and despite the grant of the opportunity, even the reply was not filed. The request for adjournment was overruled.

17. The learned counsel for the petitioner was heard. The learned counsel for PNB relied on the petition and Form No. 1 and pleaded that there is complete compliance of the provisions of Section 7 of the Code and therefore, the application for initiation of CIRP in the case of the corporate debtor be admitted.

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

19. It is observed that evidence of issue of sanction letter and execution of the documents of loan has been furnished. The copies of the statement of account maintained by PNB under Banker's Books Evidence Act, 1891 have also been furnished. The same are at Annexure A-36 to A-48 of the petition. A certificate is attached with the statements certifying that it is a true copy of the print out of such entries of books of accounts maintained by the bank in ordinary books of accounts of the bank made in the usual and ordinary course of business and the said books are still in the custody of the bank. Therefore, there is a presumption of correctness attached to the statements of account submitted. It is a proven fact that the corporate debtor has defaulted in making the payment despite issuance of the demand notices dated 13.06.2016 and 18.10.2016 under Section 13(2) of the SARFAESI Act, 2002. The evidence of default is also borne out from the CIBIL record dated 29.05.2018 relied upon by the petitioner bank as Annexure A/35 of the petition.

20. On occurrence of the default, the financial creditor has to move an application in the prescribed form which has been done in this case in Form 1 as

prescribed in Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The petitioner has thus, been able to satisfy the requirement of Sub-section (1) and (2) of Section 7 of the Code.

21. Section 7(5)(a) 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”

22. In the instant case, the petitioner-financial creditor has adduced abundant evidence to show the default which has been committed by the respondent-corporate debtor. The respondent-corporate debtor is also stated to have executed the balance and security confirmation letter dated 09.03.2016 are at Annexure A/49 of the petition. Despite grant of sufficient opportunity, the respondent-corporate debtor has neither filed any reply nor made any arguments to prove that there is no such default as is being shown by PNB.

23. We have discussed above the contents of the application in Form No. 1. We find that the application is complete and satisfies the requirements of Section 7 of the Code and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. We have already noted above that despite grant of sufficient opportunity, the respondent-corporate debtor has not made any submission that the application under Section 7(2) of the Code is not complete. Therefore, we hold that the application under Section 7(2) of the Code is complete.

24. As per clause (b) of Section 7(3) of the Code, the financial creditor is bound to propose the name of the Resolution Professional to be appointed as Interim Resolution Professional.

25. In Part III of the application in Form No.1, the petitioner has proposed the name of Mr. Rajender Kumar Jain, a registered Resolution Professional proposed to be appointed as Interim Resolution Professional. The written communication in Form 2 furnished by Mr. Rajender Kumar Jain is at Annexure A/5 dated 25.05.2018 furnishing the required particulars. He is not serving as a Resolution Professional in any of CIRP proceedings under the Code so far. It is further certified that there are no disciplinary proceedings pending against Mr. Rajender Kumar Jain with the Board or Indian Institute of Insolvency Professional of ICAI. We have perused Form No.2, the written communication furnished by the Resolution Professional which is found to be in order. The certificate of registration issued by the IBBI is at Page 84 of the paper book.

26. In view of the above discussion, we are satisfied that the conditions provided for in Section 7(5)(a) of the Code are satisfied. We therefore, admit the application filed for initiating CIRP against the corporate-debtor Kudos Chemie Limited.

27. The moratorium in terms of sub-section (1) of Section 14 of the Code is declared 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.

28. 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 regulator and to a surety in a contract of guarantee to a corporate debtor.

29. 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 pass an order for liquidation of corporate debtor under Section 33 as the case may be.

30. The following directions are also issued in respect of the appointment of the Interim Resolution Professional:-

- i) Appoint Mr. Rajender Kumar Jain, registered insolvency professional bearing Registration No. IBBI/IPA-001/IP-P00543/2017-

2018/10968, Mobile No. 99155-98862, email ID: amicusthe@gmail.com as Interim Resolution Professional.

- ii) The term of appointment of Mr. Rajender 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 morality;

- 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 at his e-mail address. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Pronounced in open court
Sd/- 5.7.2019 Sd/- 5/7/19

Sd/-
(M.K. Shrawat)
Member(Judicial)

Sd/-
(Pradeep R. Sethi)
Member (Technical)

July 5, 2019
Yashpal