

**NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD
BENCH**

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD
BENCH, ALLAHABAD
(In Company Petition (IB) No. 113/Ald/2017)**

Dated 30th November, 2017

Quorum: Mr. H. P. Chaturvedi, Member-Judicial

IN THE MATTER UNDER SECTION 7 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016 READ WITH RULE 4(1) OF THE
INSOLVENCY AND BANKRUPTCY (APPLICATION TO ADJUCATING
AUTHORITY) RULES, 2016

IN THE MATTER OF:

The Punjab National Bank *Petitioner*

Versus

Parerhat Gas Industries Ltd.....*Respondent /Debtor*

Judgement delivered on 30.11.2017

Coram: Shri H.P. Chaturvedi, Member (J)

For the Petitioner: Shri Nath Tewari , Advocate

For the Corporate Debtor: Shri P.K. Bajpai , Advocate

JUDGEMENT

(Per Shri H.P. Chaturvedi)

1. The Punjab National Bank (for brevity Financial Creditor') has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code'), to trigger an Insolvency Resolution Process in respect of **M/S Parerhat Gas Industries Ltd.** (for brevity the 'Corporate Debtor').
2. The brief facts of the case are that the present 'Financial Creditor', **Punjab National Bank** is a body corporate, which is constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act V of 1970 and having its head Office at 7 Bhikha



Ji Cama Place, New Delhi -110607 and a branch office amongst the other places, at Colonelganj, Allahabad. U.P. Established on 12.04.1895.

3. The 'Corporate Debtor' company to the present petition is M/s. **Parerhat Gas Industries Ltd** (CIN No. U31300UP 1982 PLC005567) which was incorporated on 24.02.1982 having Incorporation No. 20-5567, with Registrar of Companies Kanpur. The Corporate Debtor Company is having Authorised Capital Rs.10,00,00,000/- and paid up share Capital of Rs.9,98,06,000\.. The Registered Office of the Corporate Debtor Company situates at Village Moorka, Tehsil Mau, Shakergarh, District Chitrakoot, U.P.210208, further it is also having Corporate office at 110, Ram Bagh, Allahabad, and it Factory is situated at Industrial Colony Daud Nagar, Naini, Allahabad U.P.
4. The 'Financial Creditor' has given all the details of its financial debt disbursed to the Corporate Debtor Company as per the I&B Code. In part-IV of the application in prescribed Pro-forma under Rule-4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code, which are described as under: -

5. Total amount of Debt granted Date(s) of Sanction	Loan Amount and nature of facility	Date of Disbursement
15.02.2007	Cash Credit Limit of Rs.3 Crore comprises of C.C Hypothecation Limit of Rs.2.35 Crore and C.C. Book Debt of Rs.65 Lac	20.02.2007
18.03.2008	Cash Credit Limit of Rs.3 Crore enhanced to Rs.15 Crore wherein Inland letter of credit of Rs.2 Crore was allocated and Bank guarantee (performance)	29.03.2008



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	Limit Rs.1 Crore and Tem Loan of Rs.8.04 Crore	
03.11.2008	Additional Term Loan of Rs.2.20 Crore. Cash Credit Limit of Rs.15 Crore was enhanced to Rs.20 Crore	04.11.2008
12.09.2009	Cash Credit Limit of Rs.15 Crore was enhanced to Rs.20 Crore and Inland letter of Credit of Rs.3 Crore allowed separately and Bank Guarantee (performance) remained Same.	22.09.2010
28/30/4/2010	Cash Credit Limit of Rs.20 Crore was enhanced to Rs.32 Crore and Inland letter of Credit of Rs.3 Crore enhanced to Rs.5 Crore and B.F. Remain same.	22/5/2010
29.09.2011	The Cash Credit Limit of Rs.32 Crore was enhanced to Rs.42.50 Crore and the unpaid interest of C.C. Limit of Rs.0.90 Crore was converted into funded interest term loan.	12.10.2011
04.09.2012	The Cash Credit Limit of Rs.42.50 Cr. Was enhance to Rs.50 Cr. the B.G. (performance) Limit of Rs.1 Cr. and inland letter of credit of Rs.5 CR. were allowed interchangeability to each other and the Term Loan of Rs.8.04 Cr. and additional Term Loan of Rs.2.20 Cr. and funded interest term loan of Rs.0.90 CR. remained same ad accordingly the total credit facility of Rs.66.22 Cr. was granted.	05.09.2012

Amount claimed to
be default and the
date on which the
default occurred .

All the Accounts aforesaid become N.P.A. on
28.02.2013 and in C.C. Account a sum of
Rs.6,94,36,883.21 became due, in Term Loan
Account Rs.8,33,23,227.75 became due, in
Additional Term Loan Rs.2,66,24,122/-
became due, in funded interest Term Loan the
sum of Rs.1,24,23,273/- and a sum of
Rs.4,19,22,454/- total amounting to
Rs.86,37,29,959.96 became due and also a
sum of Rs.3,08,35,446.92 became due in
respect of Bank Guarantee Performance
Limit total amounting to Rs.89,45,65,406.88
became due inclusive of interest upto
26.02.2015 the Bank filed O.A. No. 113 of
2015 before D.R.T. Allahabad and the said
case is still pending and the sum of



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	Rs.1,18,41,92,137.17 inclusive of interest upto 31.08.2017 has become due which is claimed herewith with interest and cost and the working for computation of amount with days of default in tabular form is been attached.
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5. In part V of the present application details Particulars of Financial Debt and Documents, Records and Evidence of Default are well mentioned for the sake of convenience the same are also being reproduced herein below:

1.	<p>Particulars of security held, if any, the date of its creation, its estimated value as per the creditor.</p> <p>Attach a copy of a certificate of Registration of Charge issued by the Registrar of Companies (if the Corporate Debtor is a Company)</p>	<p>The entire Plant and Machinery and the stock were hypothecated and charged by the corporate debtor detailed in the loan and security documents and the list of hypothecated goods besides the corporate debtor has mortgaged equitably on 20.02.2007 its Factory, land and Building constructed over Arazi No. 428/1, measuring 0.429 Hec, 428/2 measuring 0.122 Hec. Arazi No.425 Min. measuring 0.062 Hec. total measuring 0.613 Hec. and Arazi No.423 measuring 0.735 hec. Arazi No.426 measuring 0.394 Hec. Arazi No.427/1 measuring 0.096 hec. total measuring 1.838 hec. i.e. 4.54 Acres = 18380 Sq. Meters situated at Village Moorka Tahsil Mau, District Chitrakoot (U.P.) Bounded on North by : Allahabad to Chitrakoot Road, on South by : Plot of M/s. Parerhat Steel Ltd., on East by : Property of Pt. Ram Sunder and on West by : About 15 ft. wide Private Lane thereafter property of Shri Brij Bhan by deposit of original title deeds which are also filed as Evidence and the charges of the financial creditor moving this petition is duly recorded in R.O.C Kanpur, a copy of the Certificate of registration of charges issued by the Registrar of Companies is also attached.</p> <p>Besides the above securities the financial credits were granted on the personal guarantees of Shri. Ashok Kumar Bajpai son of Shri D.N. Bajpai, Resident of 109- Ram Bagh, Allahabad, and Shri, Chiraunji Lal son</p>
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of Shri Lalta Prasad, Resident of Village and Post Bemra, Shankergarh, Allahabad, the directors of the corporate debtor and also on the corporate guarantees of M/s. Bharat Straw Boards & Paper Mills Pvt. Ltd., a duly incorporated Company having its office at 42, Industrial Colony, Daud Nagar, Naini, District Allahabad through its Managing Director Shri Ashok Kumar Bajpai adult, son of Shri D.N. Bajpai, M/s. Allahabad Distributors Pvt. Ltd., a duly incorporated Company having its office at 122-128, Nawab Yusuf Road, Civil Lines, Allahabad through its Director Shri. Kuldeep Pandey, M/s. Parerhat Steel Limited, a duly incorporated Company having its Registered office at village Mora Tehsil Mau, District Chitrakoot and office at 38 Industrial Colony, Daud Nagar, Naini, Allahabad through its Managing Director Shri Ashok Kumar Bajpai, adult, son of Shri D.N. Bajpai and M/s. Parerhat Industris Pvt. Ltd. , a duly incorporated Company having its office at 9, Industrial Estate, Teliyerganj, Allahabad through its Director Shri Harshwardhan Bajpai, adult, son of Shri Ashok Bajpai and M/s. Bharat Straw Board Pvt. Ltd., created charge/extended charge on 20.05.2010 to secure the said financial assistance granted by the financial creditor the Petitioner by way for equitable mortgage in respect of its Factory, land and Building constructed over Plot Nos. 34, 36, 38 and 40 total measuring 10837.71 Sq. Yards i.e. 9910 Sq. Meters situated at Industrial Colony, Daud Nagar, Naini, Allahabad, bounded on North by : Green Bel, on South by : Plot No. 42, on East by : 80 wider Road, and on West by : Plot No. 33, 35, 37 and 39 and also M/s. Allahabad Distributors Pvt. Ltd, also created charge/extended the charges to secure the credit facilities granted by the Petitioner equitably in respect of its House No.152 (New) 110 (Old) Portion B, which is a part of Old House No.110 A, situated at Ram Bagh Allahabad, bounded on North by : House of Lalloo Ji & Sons, on South by : 25 ft. wide Road, on East by : House of the defendant No.5, and on West by : House of 109/110 and the respective copies of the title deeds and relevant papers are filed.



6. In view of the above stated facts of the present application, a formal notice was issued to the Corporate Debtor Company as per the existing practise of this Tribunal. The Respondent Corporate Debtor Company in reply to the such notice has filed a memo by expressing its no objection for initiation of the CIRP in respect of it. However, it has shown some reservation and raised some question on actual amount due under Debts and Liability of the corporate Debtor Company. Hence, for the sake of convenience the Memo filed by the Corporate Debtor Company is also reproduced as under:

"1. That a meeting of the Board of Directors of Corporate Debtor M/s Parerhat Gas Industries Ltd was held 16.10.2017 at its Registered Office.

2. In the said meeting it has been resolved that Shri Ashok Kumar Bajpai; the Managing Director of the company is authorized to represent the company in the matter of Resolution /insolvency vide case No. (IB) 113/ALD/ 2017 at National Company Law Tribunal, Allahabad bench, Allahabad.

*3. That by said resolution Shri Ashok Kumar Bajpai has been authorized to file /withdraw/submit objections on behalf of the company and **that the company has no objection in respect of Application filed by Financial Creditor / PNB U/S 7 for initiation of CIRP under the Insolvency and Bankruptcy Code, 2017.***

4. That it has been further resolved that the Company reserves its rights to raise the issues of quantum of liabilities and the creation of alleged security by the corporate Guarantors before the Resolution Professional (RP) / Hon'ble Adjudicating Authority at appropriate stage."



7. We have gone through the above stated averments of the present petition and the memo of the Corporate Debtor Company. A perusal

of the present application filed by Financial creditor shows that the same appears to be complete and in conformity with the provision of Section 7 of the Code and Rules applicable.

Section 7 of the Code reads as under:

7. Initiation of corporate insolvency resolution process by financial creditor.

(1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation. - For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(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



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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).

(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.

8. From the perusal of documents annexed it is evident the default has occurred, which meets the requirement of Section 3(11) & (12) of the Code to trigger the CIRP in respect of Corporate Debtor Company.

The relevant provisions 3(11) and 3(12) of the Code reads as under:

3(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

3(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;



9. The 'Financial Creditor' has proposed the name of **Shri Anupam Tiwari**, W-37 MIG Keshav Nagar, Juhi Gaushala. Kanpur Nagar U.P.

Registration No. IBBVIPA-03/ IP-N 00018/2016-17/10131. Email

Address ipanupam@gmail.com in the Insolvency application i.e. CP No. (IB) 113/ALD/2017, which satisfied the requirement of Section 7(3)(b) of the Code. However financial Creditor has also annexed a Written Communication received from the proposed Interim Resolution Professional for giving consent in prescribed Form No. II wherein he has mentioned his Registration No. IBBI/IPA-003/IP-N 00018/2017-18/10131. Email Address tiwari.anupam23@gmail.com and there is no disciplinary proceeding pending against the proposed IRP.

10. Thus It is established there is default of Debts which comes to Rs. 1,18,41,92,137.17/- and which is in excess of Rs.1,00,000/- (Rupees One Lakh only). Hence, the present application can be considered for its Admission.

11. Having heard the submission of Shri Nath Tiwari Advocate for Financial Creditor as well as of Shri P.K Bajpai, Advocate for Corporate Debtor, the present petition deserves admission. Hence, it is admitted under the Section 7 of the I & B Code, with consequential directions given as under:

- I. This bench being adjudicating Authority hereby appoints Shri Anupam Tiwari, W-37 MIG Keshav Nagar, Juhi Gaushala. Kanpur Nagar U.P. Registration No. IBBI/IPA-003/IP-N 00018/2017-18/10131. Email Address tiwari.anupam23@gmail.com. (as provided by IRP). The Interim Resolution Professional is required to carry out the functions as mentioned under the Code in CIRP for the Corporate Debtor Company.



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II. That the order of moratorium u/s 14 shall have effect from **30.11.2017** till the completion of corporate insolvency resolution process or until this Bench approves the resolution plan under subsection (1) of Section 31 or passes an order for liquidation of corporate debtor under section 33 as the case may be.

III. That the Bench hereby prohibits the institution of suits or continuation of pending suit 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 SARFESI Act, 2002; the recovery of any property by an owner or less or where such property is occupied by or in the possession of the corporate debtor.

IV. However, the supply of essential goods or services to corporate debtor, continuing, shall not be terminated or suspended or interrupted during the Moratorium period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of the Corporate Debtor.

V. That the provisions of Section 14 sub – section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.



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- VI.** That the public announcement of corporate insolvency resolution process be made immediately as specified under Section 13 of the code and calling for submissions of claim under Section 15 of the Code.
- VII.** The Interim Resolution Professional shall perform all his functions strictly which are contemplated, *interalia*, by Sections 17, 18, 20, 21 of the Code. It is further made clear that all the personnel connected with Corporate Debtor, its promoter or any other person associated with Management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and cooperation to the Interim Resolution Professional. Where any personnel of the corporate debtor, its promoter or any other person required to assist or co-operate with IRP, does not assist or co-operate, IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order.
- VIII.** The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of its obligation imposed by Section 20 of the I& B Code, 2016.
- IX.** The Registry is hereby directed to communicate this order to the Financial Creditor and the Corporate Debtor after the completion of necessary formalities.
- X.** A Copy of this order be communicated to the IRP as well as to Insolvency and Bankruptcy Board of India for information and

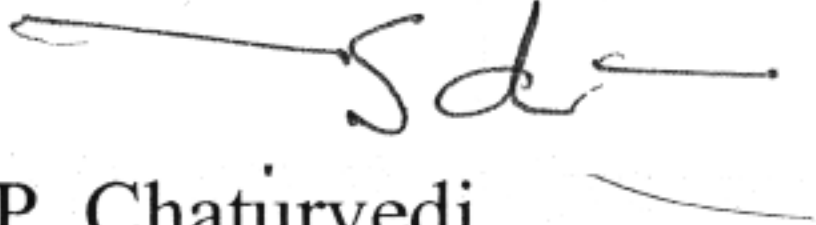


further needful action in the matter. The present application stands admitted and is accordingly disposed of.



No order as to cost.

Typed By:
Md. Zaid


H.P. Chaturvedi,
(Member Judicial)
Date : 30.11.2017