

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

CP (IB) No. 133/Chd/HP/2023

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

In the matter of:

PUNJAB NATIONAL BANK,

a body corporate, constituted under Banking Companies
(Acquisition & Transfer of Undertakings) Act, 1970,
having its Corporate Office at Plot No.4, Sector 10,
Dwarka, New Delhi-110075
and amongst others one of its
Branch Office- Circle SASTRA Centre,
Solan, Himachal Pradesh-173212
through its Attorney Sh. Parul Upadhyay, Chief Manager.
PAN No. AAACP0165G

...Financial Creditor

Versus

M/s Sturdy Industries Limited,

a company registered under The Companies Act, 1956,
having its Registered Office at: Mauza Bhatoli Khurd,
Hadbast No.213, Tehsil- Baddi, District -Solan, Himachal Pradesh.
Second Address:- Plot No. 21, District Industrial Area,
Baddi, District Solan, Himachal Pradesh.

...Corporate Debtor

Judgment delivered on: 06.06.2024

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. L. N. GUPTA, MEMBER (TECHNICAL)**

Present:

For the Petitioner-Financial Creditor : Mr. DK Gupta, Advocate
Ms. Garima, Advocate

For the Respondent-Corporate Debtor : Mr. Aalok Jagga, Advocate
Mr. APS Madaan, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
L. N. GUPTA, MEMBER (TECHNICAL)

JUDGMENT

The present petition has been filed by Punjab National Bank. (hereinafter referred to as 'Petitioner/Financial Creditor') through its Chief Manager, Sh. Parul Upadhyay 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 **Sturdy Industries Ltd.** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Sh. Parul Upadhyay, Chief Manager with the affidavit verifying the contents of the application appended thereto.

2. The Corporate Debtor is stated to be incorporated on 27.07.1989 The company is having its registered address at Mauza Bhatoli Khurd, Hadbast No. 213, Tehsil-Baddi, Solan, Himachal Pradesh. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is attached as Annexure-A3 of the petition.

3. The brief facts of the petition are submitted as below:-

(i) It is averred that the corporate debtor carries on the business of manufacturing of Asbestos Corrugated Cement (AACC) sheets and plain boards as well as manufacturing of aluminium conductors steel etc. In the year 1989, the corporate

debtor approached the financial creditor for financial assistance and loan facility which was granted from time to time. On 12.05.2011, the CC(H) of Rs. 50.25 crores, Letter of Gurantee of Rs. 20 crores, Term Loan Assam Unit of Rs. 32 crores, Term Loan (Fresh) Hydro Power Electric Project of Rs. 7.25 crores were granted to the corporate debtor. The loan and security documents were executed and delivered to corporate debtor alongwith his gurantor/ mortgagors for this. Thereafter, the ad-hoc limit was raised from time to time i.e. for Rs. 200 lakh vide sanction letter dated 29.05.2012 and Rs. 300 lakh vide Sanction letter dated 14.06.2012. Later on, the credit facility was raised to Rs. 144.75 crore vide sanction letter dated 25.08.2012. The corporate debtor further availed credit facilities from the consortium of banks i.e. PNB and Indian Bank. Thereafter, the corporate debtor submitted Financial Creditor the resolution dated 14.05.2013 passed by the Board of Directors of company wherein one of the directors was authorised to sign and execute the necessary joint documentation for credit facilities which were executed on 17.06.2013. Thereafter, on the request of corporate debtor, fund based and non-fund based credit facilities were also restructured by financial creditor vide sanction dated 02.07.2014. In the meanwhile, the joint documentation was executed by the corporate debtor on 24.11.2014. Further, the credit facility was raised upto Rs. 262.91 crores. Thereafter, the Financial Creditor vide sanction letters dated 17.06.2019 and 25.06.2019 approved the Resolution Plan by way of restructuring of existing exposure. However, financial creditor vide letter dated 28.11.2019 informed the corporate debtor that the account has been downgraded to NPA category on 30.09.2019 due to certain non-compliances.

(ii) Thereafter, the financial creditor issued three bank guarantees on behalf of the corporate debtor in favour of the beneficiary named M/s Bharat Aluminium Company Limited and these guarantees were extended. The beneficiary M/s Bharat Aluminium Company Limited informed the financial creditor vide letter dated 19.08.2021 that the Corporate debtor has defaulted to pay the amount due to them and invoked the Bank Guarantees and credited the amount in its account in terms of Clause 3 of the said bank guarantee. In response to the letter M/s Bharat Aluminium Company Limited beneficiary, financial creditor released the amount of the Bank Guarantee in favour of the beneficiary and debited the account of the corporate debtor. Thereafter, the financial creditor vide recall notice dated 20.08.2021 recalled the entire outstanding loan accounts and requested the corporate debtor to pay the same within 10 days and informed that failing which the bank will be constrained to take legal steps against them and enforce the securities held.

(iii) It is submitted that the corporate debtor vide Balance & Security Confirmation Letters dated 06.10.2017 & 30.09.2021 and Audited Balance Sheet dated 11.06.2021 acknowledged its debt in each account. However, the bank under Section 13(2) of SERFAESI Act, 2002 issued notice dated 17.09.2021 upon corporate debtor for Rs. 260,90,24,112.61 as on 31.07.2021. Further, a notice dated 15.02.2023 was served upon the corporate debtor for Rs. 3,11,27,95,062/- as on 15.02.2023, the corporate debtor had replied to the said notice. Moreover, a recovery suit bearing OA No. 1715/2022 titled, 'PNB & Anr. v. M/s Sturdy Industries Limited & Ors. was filed before the DRT-I Chandigarh on 30.07.2022 jointly by the Financial Creditor and Indian Bank for Rs. 384,29,14,742 as on 29.07.2022 (Rs. 311,27,95,062/- share of PNB bank and Rs. 73,33,19,671/- share

of Indian Bank). However, in view of the Govt. Of India Notification No. 4509 dated 04.10.2022, the suit has been transferred to DRT-3 Delhi.

4. It is stated in Part-IV of Form No.1 that the total amount claimed to be in default is Rs. 330,20,80,367/- (Rupees Three Thirty crores Twenty lakhs Eighty thousand Three hundred sixty seven Only) as on 28.02.2023 and date of default is 30.09.2019 i.e. the date on which the account was declared Non-performing Asset. Copy of GBPA (Annexure-A1), Specific Permission (Annexure A2), Sanction letter dated 12.05.2011, 25.08.12, 02.07.2014, 25.06.2019 (Annexure A6, A7, A20, A34), ROC charge dated 17.06.2013 and 18.10.2019 (Annexure A9), DRT Complaint dated 29.07.2022 filed before DRT Chandigarh (Annexure A10), notice dated 17.09.2021, 20.09.2021 under Section 13(2) SARFAESI Act, 2002 (Annexure A11), notice dated 15.02.2023 (Annexures A12), reply dated 20.03.2023 to notice dated 15.02.2023 (Annexures A13), resolutions dated 11.05.2011, 15.06.2012, 24.08.2012, 27.08.2012, 29.09.2012, 14.05.2013, 31.05.2014, 22.12.2016, 22.06.2019 (Annexures A14-A19, A21, A34), agreement for movable assets dated 29.12.2016 (Annexures A23), master agreement dated 29.12.2016 (Annexures A24), agreement of guarantee dated 29.12.2016, 30.03.2017, 07.10.2017 (Annexures A25, A26, A31, A32), supplementary agreement dated 30.03.2017 (Annexures A27-30), Letter by Financial creditor dated 28.11.2019 (Annexures A35), communication dated 30.07.2021 (Annexures A36), bank guarantee dated 27.11.2015, 11.09.2019, 30.09.2019 (Annexures A37, A38, A39), extended bank guarantee dated 30.10.2020, 25.02.2021, 19.03.2021 (Annexures A40-A42), letters by beneficiary dated 19.08.2021 (Annexures A43), audited balance sheet dated 11.06.2021 (Annexures A44), BC Letter (Annexures A44/A and A44/B), CIBIL Report dated 04.03.2023 (Annexures A45), statement of

accounts (Annexures A46-52), computer certificate (Annexures A53) are attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor to show cause as to why this petition be not admitted. The Affidavits of Service were filed vide Diary No. 01021/01 dated 22.06.2023. The reply was filed by the respondent-corporate debtor vide Diary No. 01021/3 dated 03.04.2024 wherein it is stated as under:-

(i) The date of default is incorrectly mentioned as the first default took place on expiry of 30 days, when the first installment fell due and non-payment led to classification of account as SMAO, however, continuous default of next 30 days will lead to SMA1 and then, SMA2. Thus, the default did not take place on the date of NPA. Further, it is submitted that the requirement of Form-1 requires description of date of default and not date of NPA. Thus, the petition is incomplete. Moreover, in the present petition, there are two Financial Creditors i.e. P.N.B. (applicant) and Indian Bank (erstwhile Allahabad Bank), where applicant claims to be the Lead Bank. No inter se agreement is placed on record between the two Banks, to check whether petition can be filed singularly by the Financial Creditor without taking consent from the other Creditor or not. Even the OA No. 1715/2022 is filed by both the banks. Therefore, the date of default cannot be considered without considering the date of default of the Indian Bank, there is no description of determination of date of default of the creditor.

(ii) The present petition is time barred as date of default is mentioned as 30.09.2019, however, the present petition is filed on 23.03.2023 relying on the Audited Balance Sheet dated 11.06.2021. The present petition is not filed within 3 years of date of NPA.

(iii) It is alleged that the present petition is in violation of Regulation 20 (1A) wherein it is mandatory that before filing an application under Section 7, the creditor shall file the information of default with information utility. The sub-regulation 3 is violated as the applicant places reliance on the CIBIL report which cannot be treated to be information utility. It is further submitted that the person signing the petition is not authorised to maintain the present petition. The Power of Attorney is dated 14.07.2016 attested on 29.08.2019 whereas IBC was introduced on 01.12.2016. The certificate has been placed on record which is inadmissible as the PNB is a body corporate under Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 and resolution can only be passed by persons competent to take decision i.e. Board of Directors. The certificate is signed by zonal head which is not equivalent to Board of Director. By no means, a certificate cannot be treated as substitution of resolution. The person issuing the certificate is not authorised to delegate his power.

(iv) It is further alleged that there is concealment of material facts. After declaring the account as NPA, the respondent submitted a Resolution Plan by way of restructuring of the loan account. The copy of the approved plan is in the custody of the Bank and a sanction dated 25.06.2019 was accorded to the defendants by the Bank. As per the resolution plan, 0.01% Redeemable Preference Shares amounting to Rs. 114.60 crores were issued, which were redeemable in Five Equal yearly installments commencing after ten years from the date of issue. The Demat Account details of the Banks i.e. PNB and Indian Bank were requested to be provided and the Applicant No. 1 PNB vide letter dated 03.10.2019 and Indian Bank vide letter dated 07.10.2019 provided the requisite details (ANNEXURE R-2 and 3). Thereafter, on 07.10.2019, the respective shares amounting to Rs. 110.92

crores had been allotted to PNB and shares amounting to Rs. 3.68 crores were allotted to Indian Bank, which can be duly fortified from the documents executed with National Securities Depository Limited dated 24.04.2020 (Annexure R-4).

By no provision of law an amount converted into redeemable preference shares can be treated as debt which will be contrary to the terms and conditions of allotment of such shares.

(v) It is further submitted that the Applicant bank has not disclosed that the assets at Baddi and Parwanoo are already sold off by the bank. Only assets left are at Assam which have been put to sale by the bank. Section 20 of IBC provides for retaining the going concern status of the units. Therefore, the present petition is not maintainable as two assets have already been sold by the bank. Moreover, the applicant bank vide its letter 18.07.2020 and 31.07.2020 agreed to proposal that the Financial Guarantees shall be issued in a phased manner upon the deposit of amount as agreed amongst the bank and defendants. Therefore, the company deposited Rs. 3 crores on 25.08.2020 and Rs. 1,36,01,485/- in July, 2020 with the bank. The non-issuance of the financial guarantees caused huge loss. The statement of account appended is uncertified and not in consonance with Regulation 2A of CIRP Regulations, 2016.

6. The rejoinder has been filed by the petitioner bank vide Dairy No. 01021/6 dated 01.05.2024 wherein it is stated that:-

(i) Sh. Subhash Lohat, Senior Manager at Circle Sastra Centre , Solan, Himachal Pradesh is competent to pursue the present proceedings and take all steps for the conduct of the case pursuant to General Power of Attorney dated 28.07.2011 executed by the competent authority of the bank in his favour to file reply, swear affidavits, replication, rejoinder, file and reply Misc. applications etc. and to

execute all documents connected with legal proceedings and to do all acts necessary for the proper adjudication of the case (Annexure AA-1 of IA 715 of 2024). Moreso, the General Power of Attorney (GPA) dated 07.07.2016 in favour of Sh. Parul Upadhyay, Chief Manager of the bank has been issued by the competent authority (Head Office at New Delhi).

(ii) It is submitted that the Financial Creditor vide letter dated 28.11.2019 (Annexure A-35 of the main petition) referred to the sanction letter dated 25.06.2019 and informed the Corporate Debtor that since certain important terms & conditions of Head Office approval especially the condition relating to the transfer of 10.71% shares of Indian Bank (e-Allahabad Bank) in favour of the new investor i.e. M/s Greenway Advisors Private Limited, were not complied with, as such, the Loan Account of the Corporate Debtor was downgraded to NPA category on 30.09.2019. Therefore, the date of NPA is treated as date of default. All documents have been placed on record.

(iii) It is further averred that the OA No 1715 of 2022 is jointly filed by the Indian Bank and PNB. Under the IBC there is no bar against filing of a petition by one of the banks of a consortium. The debt mentioned in the present petition only pertains to the debt of the PNB bank.

(iv) Further, it is submitted that the filing of default information with Information Utility in compliance with Rule 20(1A) of IBBI Regulations, 2017 is not mandatory compliance. The default can be proved by the Financial Creditor through its records under Section 7(3) of IBC. As per Regulation 2A of CIRP Regulation, 2016. The financial creditor is allowed to produce certified copies of the entries in the relevant account in the banker's book as defined in clause (3) of Section 2 of the Bankers Book Evidence Act 1891.

7. The short written submissions are filed by the petitioner vide Diary No.01021/7 dated 01.05.2024, additional written synopsis vide Dairy No. 01021/9 dated 9.05.2024 and by the corporate debtor vide Dairy No. 01021/8 dated 08.05.2024 reiterating the above-mentioned facts.

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

9. 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 30.09.2019 i.e. the date on which the account was declared Non-performing Asset. The reliance can be placed on the decision passed by the National Company Law Appellate Tribunal, New Delhi decided on 25.04.2024 in the case of ***Milind Kashiram Jadhav Vs State Bank of India Company Appeal (AT) (Insolvency) No. 1589 of 2023*** wherein it is stated that-

“48. Section 3(12) of the IBC deals with the expression 'Default' to mean non-payment of debt when the whole or any part of installment of the amount has become due and payable, thus, when on the loan accounts being classified as Company Appeal (AT) (Insolvency) No. 1589 of 2023 17 of 26 NPA the whole of the debt is due and payable - it is a 'Default' under the IBC, thus, the date of NPA can be taken as the date of default”.

However, it is seen that the corporate debtor through its Directors confirmed the outstanding balance in all loan accounts and acknowledged their debt vide Balance and Security Confirmation Letters dated 06.10.2017 and 30.09.2021 (Annexure A-44/A and A-44/B), audited balance sheet as on 31.03.2021 (Annexure A-44). The acknowledgment of debt dated 30.09.2021 through the Balance Confirmation Letters within 3 years of date of default. Thus, new limitation period of 3 years would commence from 30.09.2021. The reliance is placed on the

judgments passed by ***Hon'ble Apex Court in the case of State Bank of India vs. Krishidhan Seeds Private Limited, 2023(1) SCC 209 and in Asset Reconstruction Company (India) Limited vs. Bishal Jaiswal, 2021(6) SCC 366*** in which it is held that entries made in company's balance sheets amounts to acknowledgment of debt for the purpose of extending the limitation under Section 18 of the Limitation Act.

The present petition is filed vide diary No. 01021 dated 30.03.2023 and was re-filed on 25.04.2023, and therefore, it is well within the period of limitation of three years.

10. It is contended on behalf of the corporate debtor that there is no inter se agreement placed on record between the two creditor Banks, and the present petition has been filed without taking consent from the other Creditor Bank. However, this contention of the corporate debtor cannot be considered as the Inter Se Agreement dated 18.10.2019 between PNB and Indian Bank has been placed on record by the petitioner, wherein certain terms and conditions were agreed as below:-

3. Notwithstanding anything to the contrary contained in or arising out of or implied by the said Consortium Agreement and/or the Joint deed of Hypothecation and/or the Second Charge, it is hereby agreed and declared by and between the said Banks as follow: -

(a) PNB shall act as the Lead Bank of the A Bank Consortium and all the Members shall act in the spirit of the Consortium and all the decisions should, as far as possible, be arrived at unanimously including those relating to sharing of ancillary business and drawings under different facilities sanctioned to the Borrowers:

(b) The Member of the Consortium do hereby agree to execute in favour of the Lead Bank a power of attorney or other authorization as may be deemed appropriate for constituting in their name and on their behalf to do, execute and perform all acts, deeds and things as to the Lead Bank may deem appropriate, necessary or expedient in the given circumstances as the Leaders of the A Bank Consortium and to take decisions for and on behalf of the Consortium and communicate the same to the general interest of the A Bank Consortium. The Member do hereby agree to ratify and confirm whatever all acts, deeds and things lawfully and bonafide done, taken or effected by the Lead Bank as such attorneys in exercise of

the powers, authorities and liberties hereby conferred upon, under and by virtue of this Agreement.

9. The Lead Bank shall take all the necessary appropriate steps and actions to ensure compliance by the borrower with all the terms, conditions and stipulations in respect of the said facilities, the repayment and payment obligations of the Borrower or the Guarantor/s to the said Banks, the quality, quantity and sufficiency of the security therefore and shall undertake at the cost and expense of the Borrower the requisite inspection of the said securities in accordance with the relevant provisions of the said Consortium Agreement and/or the joint deed of hypothecation and/or the second charge. Whenever the Lead Bank takes any action, which in its opinion and discretion is

necessary or appropriate in pursuance, or for the enforcement, of its rights over the said securities or other security by taking possession of the said securities, dealings therewith, or disposal thereof, or any other manner or by filing suits, actions or other proceedings or in any other manner in accordance with the terms, conditions and stipulation contained in the said Consortium Agreement and/or the joint deed of hypothecation and/or the second charge or otherwise, such actions shall be taken for itself and for and on behalf of the Member Banks and where such actions have not been specifically so taken they shall be deemed to have been taken for itself and for and on behalf of the Member Banks.

10. Each of the said Banks hereby agree that all acts, deeds and things done in accordance with the agreement by the Lead Bank shall be construed as acts, deeds and thing done by each of them and each of the said banks undertakes to ratify and confirm all and whatsoever the Lead Bank shall do or cause to be done for itself and on their behalf. The Lead Bank shall not be liable to the Member Banks for any act, deeds or things done or omitted to be done in good faith under this agreement.

The Master Agreement is also placed on record vide IA 2352/2023 wherein the clauses are as below:

5. In case of occurrence of any of the event of default on the part of the borrower, the PNB shall be authorised and well within its own rights to review the existing credit limits and report to take all necessary steps including recalling of the credit limits invoking guarantees, filing of suit or reference with the court, tribunal, authorities etc in line with the bank guidelines and terms and conditions already agreed between the parties

6. This Agreement shall become effective from the date of its execution and this Agreement shall remain in force till all outstanding amount are fully paid, or terminated earlier in terms hereof.

As per above mentioned clause (5) of the Master Agreement, PNB Bank-Financial Creditor is competent to file this present petition, thus, this plea of the corporate debtor cannot be considered.

Another contention raised by the corporate debtor is regarding the authorisation for filing the present petition as the Power of Attorney is dated 14.07.2016 attested on 29.08.2019 whereas IBC was introduced on 01.12.2016. It is stated that the certificate has been placed on record which is inadmissible as the PNB is a body corporate under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 and resolution can only be passed by persons competent to take decisions i.e. Board of Directors. The certificate is signed by the zonal head which is not equivalent to the Board of Director. By no means, a certificate cannot be treated as substitution of resolution. The person issuing the certificate is not authorised to delegate his power. On the other hand the financial creditor has denied this contention of corporate debtor.

It is seen from the records that there is a General Power of Attorney dated 07.07.2016 in favour of Sh. Parul Upadhyay, Chief Manager of the bank with specific permission dated 07.03.2023 from Umakant Chaudhary, Zonal Sastra Head, the competent authority of the bank has been placed on record authorising Sh. Parul Upadhyay to file the present petition (Annexure A-1 & A-2 of the petition), which is valid in the eyes of law.

11. Further, it is submitted by the corporate debtor that the petition has to be filed alongwith the consultation and consent of other Financial Creditors i.e. Indian Bank which is missing in present case. The reliance is placed by corporate debtor on the judgment passed by the ***Hon'ble NCLAT, Principal Bench, New Delhi in the case of Rakshit Dhirajlal Doshi v. IDBI Bank- Company Appeal (AT) (Insolvency)658 of 2022, decided on 15.11.2022***, stating that the Joint consortium Agreement as existed in that case. The final finding was that where the Joint Lending Agreement, makes mandatory for the consent to be taken from

the other Bank, for the purpose of declaring default of further proceedings, it is mandatory that the said consent be taken without which, further proceedings cannot be initiated. On the other hand, the financial creditor has placed on record the letter of authority dated 18.10.2019 issued by the Indian bank in favour of the PNB Bank vide IA 2352/2023 as below:-

LETTER OF AUTHORITY

Dated 18-10-2019

To

The Chief Manager,
Punjab National Bank
Parwanoo (H.P.)

Dear Sir,

We refer to the allocation of Credit limits made to us under the Consortium Arrangement of Working Capital Facilities sanctioned and/or agreed to be sanctioned to **M/s Sturdy Industries Limited**, a Company within the meaning of the Companies Act, 1956 and having its Registered office at Plot No. 21, Industrial Area, Baddi, Distt. Solan (H.P.) referred to as "the Borrower" of which Consortium YOU, Punjab National Bank is recognized and appointed by us as the Lead Bank of the Consortium, known as "A PNB Consortium". To enable you to take all actions and decisions, within the overall framework of the stipulations contained in the Master Restructuring agreement, Inter-se Agreement dt. 18-10-2019 and other documents for and on behalf of us and the remaining members of the The PNB Consortium, WE HEREBY NOMINATE, APPOINT AND CONSTITUTE YOU, Punjab National Bank as our true and lawful attorney for us, in our name and on our behalf to do, execute and perform all acts, deeds and things as YOU may deem appropriate, necessary of expedient as the Lead Bank of the said The PNB Consortium and to execute for an on our behalf and in our name the Working Capital Consortium Agreement and Joint Deed of Hypothecation, Master Restructuring agreement and other documents to be entered into with the Borrower.


WE FURTHER HEREBY AGREE TO RATIFY AND CONFIRM whatever acts deeds and things lawfully and bonafide done, taken or effected by YOU, as the Lead bank and as our attorney in exercise of the powers, authorities and liberties conferred upon, under and by virtue of the Working Capital Consortium Agreement and the Joint Deed of Hypothecation entered into with the borrower as also the INTER SE AGREEMENT between the members of the The PNB Consortium.

We hereby declare and confirm that this authority given to you by us is and shall be irrevocable and unconditional and WE are aware that on the strength of this Authority, YOU have agreed to act as the Lead Bank of the The PNB Consortium.

Yours Faithfully

Member Banks

SIGNED AND DELIVERED for and on behalf of Allahabad Bank, SCO 12-A , Sector 11, Panchkula by the hand of Sh. Varinder Singh its duly Authorized Official in this behalf;

 कृते अलाहाबाद बैंक
For Allahabad Bank
Varinder Singh
मुख्य प्रबन्धक/Chief Manager
प्लॉट नं. 12, सेक्टर 11, पंचकुला/SCO 12A, Sec. 11, Panchkula

However, this contention of the corporate debtor is devoid of legal force as the documents placed on record proves the consent of the Indian Bank appointing PNB Bank as lead bank of consortium to execute, perform all acts, deeds and things.

12. Further, the corporate debtor has contended that two of the assets were already sold by the bank. The company offered to apply a tagging arrangement @8% in the loan account on loan deposits and interest falling due at the end of the month was offered to be recovered from the same. From 01.10.2019 to 30.09.2022, an amount of Rs. 24,06,82,074.39/- was recovered by the bank PNB by way of tagging arrangement which has not been disclosed by the bank.

On the other hand, the financial creditor has stated that in the meeting dated 09.07.2021 attended by Sh. Ramesh Gupta, Director of Corporate Debtor, the resolution plan sanctioned on 17.6.2019 (Annexure R-88) was treated as failed by the banks due to non-compliance of terms and conditions by the corporate Debtor, the factum of which was communicated to the Corporate Debtor vide communication dated 30.07.2021 (Annexure A-36). Further, the proceeds from the sale of the two properties-Baddi and Parwanoo are appropriated in the loan account of the corporate debtor. The relevant communication dated 30.07.2021 is reproduced as below:-



PNB B.O. PARWANOO EMAIL: BO2912@PNB.CO.IN
 Bank's Square, Sector-1 Parwanoo Tehsil Kasauli District Solan H.P.
 173220

Dated: 30-07-2021

The Director M/S Sturdy Industries Ltd. Plot No.21, District Industrial area Baddi, Distt. Solan H.P.	M/S Sturdy Industries Ltd. 55, Industrial area Sector 1 Parwanoo Tehsil Kasauli District Solan H.P.
Sh. Ramesh Gupta S/o Sh. Chanan Mal Gupta House no. 406, Sector-6 Panchkula Haryana	

Sir,

Regarding-Failure of resolution plan sanction dated 17.06.2019 due to non-compliance of terms and conditions in NPA account M/S Sturdy Industries Ltd.

Please refer to the consortium meeting held on 19.07.2021 at Zonal Office Shimla in NPA account M/S Sturdy Industries Ltd.

The meeting was attended by representatives from both the lender banks Punjab National Bank, Indian Bank and Sh. Ramesh Gupta (Director in M/S SIL).

It was decided by both the lender banks in the meeting to treat the Resolution plan dated 17.06.2019 as failed as company has failed to comply with the various terms and conditions of the Resolution plan as informed to the party from time to time.

In view of your non-cooperation in compliance of terms of Resolution Plan dated 17.06.2019 despite giving you extended time, the consortium of lenders have no choice but to initiate recovery actions in NPA account M/S Sturdy Industries ltd.

Please act accordingly.

Authorized Signatory
 Punjab National Bank



Therefore, the present contention of the corporate debtor is devoid of merits as the documents placed on record clearly show that the resolution plan submitted by the corporate debtor failed, which was duly communicated to the corporate debtor.

13. The last 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 GBPA (Annexure-A1), Specific Permission (Annexure A2), Sanction letter dated 12.05.2011, 25.08.12, 02.07.2014, 25.06.2019 (Annexure A6, A7, A20, A34), ROC charge dated 17.06.2013 and 18.10.2019 (Annexure A9), DRT Complaint dated 29.07.2022 filed before DRT Chandigarh (Annexure A10), notice dated 17.09.2021, 20.09.2021 under Section 13(2) SARFAESI Act, 2002 (Annexure A11), notice dated 15.02.2023 (Annexures A12), reply dated 20.03.2023 to notice dated 15.02.2023 (Annexures A13), resolutions dated 11.05.2011, 15.06.2012, 24.08.2012, 27.08.2012, 29.09.2012, 14.05.2013, 31.05.2014, 22.12.2016, 22.06.2019 (Annexures A14-A19, A21, A34), agreement for movable assets dated 29.12.2016 (Annexures A23), master agreement dated 29.12.2016 (Annexures A24), agreement of guarantee dated 29.12.2016, 30.03.2017, 07.10.2017 (Annexures A25, A26, A31, A32), supplementary agreement dated 30.03.2017 (Annexures A27-30), Letter by Financial creditor dated 28.11.2019 (Annexures A35), communication dated 30.07.2021 (Annexures A36), bank guarantee dated 27.11.2015, 11.09.2019, 30.09.2019 (Annexures A37, A38, A39), extended bank guarantee dated 30.10.2020, 25.02.2021, 19.03.2021 (Annexures A40-A42), letters by beneficiary dated 19.08.2021 (Annexures A43), audited balance sheet dated 11.06.2021 (Annexures A44), BC Letter (Annexures A44/A and A44/B), CIBIL Report dated 04.03.2023 (Annexures A45), statement of accounts (Annexures A46-52), computer certificate (Annexures A53). As per the financial records, it is evident that an amount of Rs. 330,20,80,367/- (Rupees Three Thirty crores Twenty lakhs Eighty thousand Three hundred sixty seven Only) as on 28.02.2023 is still pending for payment, which amounts to default by

corporate debtor. The payment was not made by the corporate debtor despite the repeated requests by the Financial Creditor.

14. 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:

- 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.

15. Vide IA No. 715 of 2024 (disposed of vide order dated 01.04.2024), Mr. Anurag Goel has been proposed as new IRP by the Applicant. Form No.2 dated 08.03.2024 along with the certificate of IBBI issued in favour of the proposed Interim Resolution Professional i.e. Mr. Anurag Goel is attached with the IA. The Law Research Associate of this Tribunal has checked the credentials of Mr. Anurag Goel and there is nothing adverse against him. His AFA Certification is valid upto 26.10.2024. In view of the above, we appoint Mr. Anurag Goel, Registration No. IBBI/IPA-001/IP-P00876/2017-18/11460, Email: agoel@caanurag.com, Mobile No. 9212117008, the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Anurag Goel 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.

16. The Financial Creditor is directed to deposit a sum of ₹4,00,000/- (Rupees Four 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.

17. 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.

18. The petition is admitted accordingly.

Sd/-

(L. N. Gupta)
Member (Technical)
June 06, 2024

PKA/TB

Sd/-

(Harnam Singh Thakur)
Member (Judicial)