

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

**CA No.1103/2019
 And
 CP (IB) No.135/Chd/Hry/2018**

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

In the matter of:

Bank of India

having its Head office at
 Star House, C-5,
 G Block, Bandra Kurla,
 Bandra East
 Mumbai - 400051

Also:

Branch Office at
 Panipat Mid Corporate Branch,
 1st Floor Garg Plaza,
 Near Hotel Gold,
 G.T. Road, Panipat - 132103

...Applicant/Financial Creditor

Versus

M/s Anand Tex India Pvt. Ltd.

Having its registered office at
 Brahman Majra Israna Panipat,
 Haryana - 132103

...Respondent/Corporate Debtor

Judgement delivered on: 29.11.2019

**Coram: HON'BLE CHIEF JUSTICE (RETD.) M.M. KUMAR, PRESIDENT
 HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Petitioner : 1. Mr. R.S. Badhran, Advocate
 2. Ms. Shina Sehgal, Advocate

For the Respondent : Ms. Reena Chaudhary, Advocate

Per: Pradeep R. Sethi, Member (Technical)

JUDGEMENT

CA No.1103/2019

This Company Application was filed before this Tribunal to place on record Form-2 under Rule 9 of the Code. It is stated that the proposed Interim Resolution Professional (**IRP**), Mr. Naresh Kumar Sood in CP (IB) No.135/Chd/Hry/2018, due to personal reasons has withdrawn his consent. The learned counsel for the petitioner submitted that the written consent (Form-2) from newly proposed IRP, Mr. Anup Sood has been taken and filed along with the CA, requesting to change the name of the proposed Interim Resolution Professional in the Company Petition filed earlier. The written consent of Mr. Anup Sood bearing Registration No. IBBI/IPA-003/IP-N000114/2017-18/11218 has been taken on record and the request for change of name of the proposed Interim Resolution Professional is allowed. Accordingly, CA No.1103/2019 stands disposed of.

CP (IB) No.135/Chd/Hry/2018

The application in the prescribed Form No.1 is filed by Bank of India (hereinafter referred to as **Bank**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of Anand Tex India Private Limited (hereinafter referred to as **Corporate Debtor**). The application is filed under

Section 7 of the Insolvency and Bankruptcy Code, 2016 (**Code**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**Rules**). The application is signed by Shri Ashwani Kumar, Assistant General Manager, Bank of India, Chandigarh, MCB, SCO 81-82, Bank Square, 2nd Floor, Sector 17-B, Chandigarh - 160017.

2. The Corporate Debtor is stated to be incorporated on 08.06.2012 and the registered address is stated to be at Brahman Majra, Israna Panipat, Panipat, Haryana - 132103. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. It is stated in Column 1 of Part-IV of Form No.1 that the debt granted is as under:-

S. No.	Facility	Amount (₹)
1.	FB	29.65 crores
2.	NFBL	5 crores
	Total Exposure	34.65 crores

As per Column No.2 of Part-IV of Form No.1, the total amount due towards the corporate debtor as on 22.03.2018 is ₹39,74,26,257.41. It is stated that the loan accounts of the Corporate Debtor were declared NPA on 31.12.2015.

4. In Column 1 of Part-V of Form No.1, the particulars of security held are given. It is stated that the credit facilities are secured by way of equitable mortgage of factory land and building and other structure, machinery, plant and other fixtures and fittings erected or installed thereon (both present and future) situated at village Krishanpura, Gaddiwara Shiv Nagar within Municipal limit of Panipat measuring 923.50 sq. yd. in the name

of Sh. Suresh Kumar Garg and equitable land and building Plot No.192, Sector 25, HUDA, Panipat.

5. It is stated that the sanction letters dated 14.12.2012 and 27.06.2014 are filed at Annexures-1A-(1) and 1A-(14) of the petition and that the terms and conditions of the sanction letters were duly acknowledged by the Corporate Debtor through its authorised Director(s)/signatories vide Declaration and Undertaking dated 26.12.2012, 02.07.2014, 28.10.2014 and 02.07.2015. In addition to the principal and collateral security, personal guarantee of Shri Suresh Kumar Garg, Smt. Shruti Bansal and Smt. Megha Garg was executed and corporate guarantee of Anand Tex International Private Limited and of Briston Infotech Private Limited was also executed. Copies of the Guarantee Deeds are the part of the petition. Also, copy of a Registration of Charge dated 02.01.2015 is attached as Annexure-1A-(39) of the petition. Copies of Credit Facility Agreement, Term Loan Agreement dated 02.07.2014 and agreement for term loan and hypothecation dated 02.07.2014 are at Annexures-1A-(11), 1A-(17) and 1A-(27) of the petition. The statement of accounts pertaining to the credit facilities duly certified under the Banker's Books Evidence Act, 1891 are stated to be attached as Annexure-1A-(46), 1A-(47) and 1A-(48) of the petition. Copy of certificate under Banker's Book of Evidence is attached as Annexure-1A-(50) of the petition. Copy of Assessed Value Securities is at Annexure-1A-(51) of the petition.

6. Due to the default in repayment of loan instalments, the corporate debtor failed to maintain the financial discipline of the financial creditor and the loan account of the corporate debtor was declared NPA on

31.12.2015. Further, the financial creditor issued notice to the corporate debtor under Section 13(2) of the SARFAESI Act dated 04.02.2016. As per the notice, the Corporate Debtor demanded the following facilities from the Financial creditor:-

S. No.	Nature of Facility	Sanctioned Limit	Outstanding dues
1.	Term Loan (675365410000044)	₹15,00,00,000/-	₹13,17,22,114.25
2.	Term Loan (675365410000053)	₹4,90,00,000/-	₹4,87,54,000.00
3.	Cash Credit (675330110000012)	₹9,75,00,000/-	₹17,89,51,717.27
	Total	₹29,65,00,000/-	₹35,94,27,831.52

7. In Part-III of Form No.1 Mr. Naresh Kumar Sood, Regn. No.IBBI/IPA-003/IP-N00026/2017-18/10176 has been proposed as Interim Resolution Professional (**IRP**). Form No. 2 dated 12.03.2018 submitted by the proposed IRP is stated to be attached as Annexure-II A-(1) of the petition.

8. CA No.1103/2019 was filed before this Tribunal requesting to change the name of the proposed IRP as stated in Part-III of Form-1. It was submitted that the proposed IRP, Mr. Naresh Kumar Sood has withdrawn his consent due to personal reasons and Mr. Anup Sood bearing Registration No. IBBI/IPA-003/IP-N000114/2017-18/11218 has now been proposed as the Interim Resolution Professional. Form No.2 of Mr. Anup Sood is at page No.2 of CA No.1103/2019. In view of the reason given, CA No.1103/2019 is allowed and the name of the proposed Resolution Professional is now changed to Mr. Anup Sood.

9. We have carefully heard the learned counsel for the bank and the Corporate Debtor and have also perused the record.

10. During the course of the hearing, the learned counsel for the Bank relied on the petition filed and stated that the requirements of Section 7 of the Code are satisfied and the petition be admitted.

11. The learned counsel for the Corporate Debtor has submitted that the loan security documents and personal guarantee were signed by the Corporate Debtor but the details were filled by the Financial Creditor after the Corporate Debtor has signed the same. It is also submitted that there was a blast in dyeing house factory in August 2014 in the associate company of the Corporate Debtor in which three persons died and many other got seriously injured. It is pleaded that the factory had to remain closed for seven months due to labour unrest and district administration disruptions and owing to that, the company has to incur losses, which could be witnessed from the audited balance sheets from the company. No other pleas have been raised during the course of the arguments.

12. We have carefully considered the contentions raised by the learned counsel for the Corporate Debtor. No evidence has been furnished to show that the details were filled in by the Financial Creditor after the Corporate Debtor executed the loan security documents and personal guarantee. The learned counsel for the Corporate Debtor has referred to a blast in dyeing house factory in August 2014 in the associate company of the Corporate Debtor. These facts are not relevant for the present case where the issue involved is whether a default has occurred. In Part-IV of Form-I, the bank has stated that the account was declared NPA on 31.12.2015. The fact

that the account became NPA on 31.12.2015 is not disputed by the Corporate Debtor. Further, the Bank issued notice to the Corporate Debtor under Section 13(2) of the SARFAESI Act on 04.02.2016 in which the outstanding dues of ₹35,94,27,831.52 were demanded. The bank has filed the account statements at page 31 to 81 of Diary No.316 dated 21.01.2019 and vide Diary No.3460 dated 17.07.2019, the bank has filed Certificate under Section 2A(a) and 2A(b) of the Banker's Book Evidence Act, 1891 in support of the account statement submitted vide Diary No.316 dated 21.01.2019. At Annexure 1A-(49), the details of the amount in default as on 23.03.2018 are given as follows:-

Facility	Date of Default	Amount Due as on	Amount Paid	Days in default
Cash Credit (Stocks)	31.12.15	228127102.41	--	820
Term Loan 1	31.12.15	123359584	--	820
Term Loan 2	31.12.15	45939571	--	820
	Total	397426257.41		

Therefore, the occurrence of the default is proved.

13. As already discussed above, the date of NPA is given as 31.12.2015. The present application in Form-I is filed on 16.04.2018 and is therefore, within a period of limitation.

14. Section 7(5)(a) of the Code is as follows:-

*“(5) Where the Adjudicating Authority is satisfied that—
(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”*

15. We have already held above that the occurrence of default in the present case is proved. We find that the application filed in the prescribed Form-I is complete. The proposed Interim Resolution Professional, Mr. Anup Sood has filed Form No.2 (Pages 2 to 4 of CA No.1103/2019) certifying that there are no disciplinary proceedings pending against him with the Board or Insolvency Professional Agency of ICAI. It is also stated that he is currently serving as Interim Resolution Professional and Resolution Professional in one case each.

16. The conditions provided for by Section 7(5)(a) of the Code being satisfied in the present case, we direct that the application for initiation of CIRP against M/s Anand Tex India Private Limited be admitted. The directions regarding moratorium and appointment of IRP are given below.

17. We declare the Moratorium in terms of sub-section (1) of Section 14 of the code 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.

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

19. 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.

20. The Law Research Associate of this Tribunal has checked the credentials of Mr. Anup Sood and there is nothing adverse against him. In view of the above, we appoint Mr. Anup Sood, Registration No. IBBI/IPA-003/IP-N000114/2017-18/11218, R/o Flat No.185, Block-H, 5th Floor, Spangle Condos, Old Ambala Road, Gazipur, Tehsil Dera Bassi, Mohali, Sahibzada Ajit Singh Nagar, Punjab – 140603, Mobile No.9888606330, E-mail: anupsood1954@gmail.com, as an Interim Resolution Professional with the following directions: -

- i) The term of appointment of Mr. Anup Sood, 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 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 morality;

- 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 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

- vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

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

Pronounced in the open Court.

Sd/-
(Chief Justice M.M. Kumar)
President, NCLT,
Camp at Chandigarh

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

Nov. 29, 2019
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