

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH**

Company Petition (IB)No.394/ALD/2019

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

IN THE MATTER OF:

M/s AMITECH TEXTILES LIMITED

AND

IN THE MATTER OF

BANK OF INDIA

.....Applicant/Financial Creditor

VERSUS

M/s AMITECH TEXTILES LIMITED

.....Respondent/Corporate Debtor

ORDER DELIVERED ON : 03.10.2019

CORAM :

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

For the Applicant/ Operational Creditor: Sh. Ankur Goyal, Advocate
For the Respondent/ Corporate Debtor: Sh. D.N Awasthi, Advocate

AS PER: Mr. Abni Ranjan Kumar Sinha, Member , Judicial.

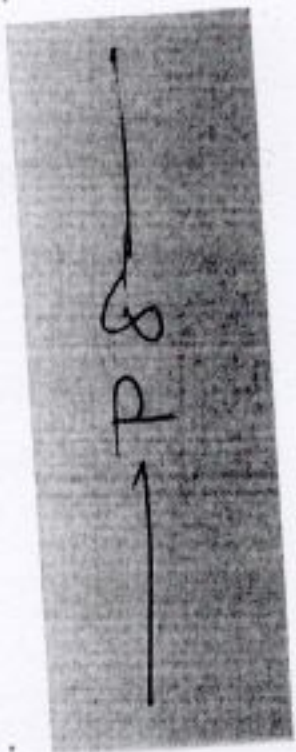
Order

1. The present petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 by the petitioner/financial creditor *i.e. Bank of India* for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate debtor company *M/s Amitech Textiles Limited*.

2. The Applicant "**Bank of India**" is a Banking Institution and corporate body constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. Having Identification No. as PAN No. AAACB0472C. **Mr. Satya Prakash**, Chief Manager, Recovery Department has been authorised to file this application on behalf of Financial Creditor (*The Power of Attorney is annexed as annexure 1 of the Application*).
3. The Respondent **M/s Amitech Textiles Limited**, incorporated on **21.05.1992** (*Having its Registered Office at, Arazi No. 153, Khanchandrapur Barah, Raina, NH-2, Kanpur Dehat-209311; CIN U17115UP1992PLC014385*). The authorised share capital of respondent is Rs. 3,00,00,000/- (Rupee Three Crores Only) and Issued Subscribed and Paid- Up share Capital is Rs. 1,80,51,750/- (Rupee One Crore Eighty Lakh fifty-one thousand Seven Hundred and Fifty Only).
4. Brief facts related to petition are as follows:
- i.* The learned counsel for the applicant submitted that earlier the name of the corporate debtor was M/s Amitech Industries Ltd. The name of the corporate debtor has changed *from M/s Amitech Industries Ltd to M/s Amitech Textiles ltd w.e.f 20.08.2013 vide Resolution dated 06.09.2013*. It was resolved that information regarding change of name of corporate debtor be provided to the entire Government Departments as well as to the customers and suppliers. (*The copy of the Certificate of incorporation upon change of name in terms of Sec 21 of The*

Companies Act, 1956 is annexed as Annexure 3 of the Application).

- ii. He further submitted that corporate debtor vide resolution dated 04.06.2007 had approached the financial creditor for grant of credit facilities and authorized Mr. Anil Kumar Pandey, the Managing Director to execute the documents and to execute any acknowledgement for confirmation of debts and or security which may be required by the financial creditor and also to execute the relevant documents pertaining to enhancement to cash credit (hypothecation of stocks) account limit from 400 Lakhs to Rs. 550 Lakhs and to extent of equitable mortgage created in favour of financial creditor.
- iii. He further submitted that on 8th November, 2013 the Corporate debtor had acknowledged all the existing credit facilities from the financial creditor in the name of M/s Aimtech Industries Limited, now stand transferred in the name of M/s Amitech Textiles Ltd.
- iv. The learned counsel for the applicant further submitted that the corporate debtor was enjoying various credit facilities/ debt from the applicant and the Corporate Debtor had acknowledged its liability as on 05.06.2007 that a sum of Rs. 1,45,40,467.64 is due in the Cash Credit (Hypothecation) and a sum of Rs.50,51,088 is due in the Cash Credit (Books Debts) Account. *(The copy of the Letters of Acknowledgment is annexed as Annexure 6 of the Application).* And also stated that after acknowledgment of the above debt the financial creditor has further granted facilities and debt which has also being



acknowledged. *(The Copy of all the aforesaid Sanction Letters and Letter of Acknowledgements are annexed as Annexure-7 of the Application.)*

- v. Further stated that the demand Notice was issued by the Financial Creditor to the Corporate Debtor dated 14th October, 2015 U/S 13(2) of the SARFAESI Act, 2002.
- vi. In the Supplementary affidavit filed by the applicant, the learned Counsel of the financial creditor stated that the account of the Corporate Debtor turned up into *NPA on 30.09.2015* and the total amount claimed to be in default is *Rs. 28,28,76,087.83 plus future interest w.e.f 09.10.2018 & other charges.*
- vii. It is further submitted in the supplementary affidavit that on 30.09.2016 an amount of Rs. 1,00,000 and then on 03.10.2016 an amount of Rs. 3,00,000 has been deposited. Therefore, Under Sec 19 of the Limitation Act, fresh limitation starts from the date of last deposit and hence this application is within limitation. He further stated that the financial facilities have been availed by the Corporate Debtor on the basis of the mortgage of immovable Assets. The Corporate Debtor had executed loan documents and mortgage documents on 06.04.2010, 22.06.2012 and 20.03. 2013. Therefore, to enforce payment of money secured by a mortgage or otherwise charged upon immovable property, the limitation period being 12 years, hence, the application is within limitation with regard to mortgage also.
- viii. In the counter affidavit filed by the Corporate Debtor, the learned counsel submitted that the entire properties of the

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Corporate Debtor are in the hands of the Financial creditor and physical possession of the properties have already been taken by the Financial creditor and the order of Hon'ble DRT (Allahabad bench) is an ex-parte order and the same has been challenged by the Corporate Debtor before the DRT.

- ix. In reply to the Counter affidavit, the learned Counsel for the applicant submitted that if the bank has not complied the provisions of the SARFAESI Act, 2002 in taking physical possession of the property of the Corporate Debtor, then Corporate Debtor was free to challenge the illegality committed by the bank before Hon'ble DRT. And Corporate Debtor had failed to repay the dues of financial creditor despite repeated demands and order passed by Hon'ble DRT. Further submitted that the Corporate Debtor had never challenged the decree passed by Hon'ble DRT, which attained finality against the Corporate Debtor.
- x. Further the learned counsel in reply to the counter affidavit submitted and prays that the application filed U/S 7 Of the IBC deserves to be admitted as the Corporate Debtor had acknowledged its liability.

5. The Learned Counsel for the Financial Creditor submitted that in order to prove the Existence of the Financial Debt; they have annexed following documents:

- i. The copy of letter of acknowledgement of debt/ Securities in favour of the financial creditors is annexed as *Annexure 6, Annexure 7 and Annexure 31 of the Application.*

- ii. The Copy of Sanction letters are annexed as *Annexure 7 of the Application.*
 - iii. The copy of the certificate of Registration of Charge is annexed as *Annexure 9 of the Application.*
 - iv. The title deeds of the immovable properties mortgaged by the Corporate Debtor in favour of the Financial creditor are annexed as *Annexure 28 of the Application.*
 - v. The entries in the statements of Accounts maintained by the Financial Creditor under The Banker's Books Evidence Act, 1891 is annexed as *Annexure 30 of the Application.*
 - vi. The Copy of the Demand Notice dated 14.10.2015 sent to the Corporate Debtor, the copy of various Board Resolutions of the Corporate Debtor and various Promissory Notes in favour of the Corporate Debtor are annexed as *Annexure 9 of the Application.*
 - vii. The chart showing details of days and amount of default is *annexed at page 5 of the supplementary affidavit.*
6. I have gone through the contents of the petition , the counter affidavits filed by the respondent and reply to the counter affidavit filed by the petitioner and documents annexed there of.
7. As on the date of hearing, the learned Counsel for the Corporate Debtor failed to produce any document to prove that there is no debt and default on the part of Corporate Debtor. So, from the perusal of averments made in the counter affidavit filed on behalf of the respondent, I find that respondent has raised the question of

maintainability on the ground referred in the counter affidavit. I have carefully examined the ground mentioned in the counter affidavit along with the provisions contained Under Section 7 of IB Code. The relevant provision of Section 7 (1), (2), (3) as quoted below:

Section 7: Initiation of corporate insolvency resolution process by financial creditor:

(1) A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] 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.

8. Mere plain reading of the provision shows that in order to make an application under Section 7 (1) the financial creditor / petitioner is required to establish:

- a. Whether there is duly established financial debt.
- b. Whether there is default in payment by the corporate debtor.
- c. Whether the documents attached with the applicant shows that there is default in payment of debt and name of resolution professional is proposed to act as IRP and no disciplinary

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proceedings are pending against the proposed resolution professional.

9. The Hon'ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank*, (2017) 205 Comp Cas 57(SC) held :

“The scheme of Sec 7 stands in contrast with the scheme under Sec 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in sec 8(1) of the Code. Under Sec 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in Sub Section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing –i.e., before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor goes out of the clutches of the Court.

On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the Adjudicating Authority has merely to see the records of the information utility or other evidence produced by the Financial Creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is ‘due’, i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some further debt. It is only when this is prove to the satisfaction of the adjudicating authority may reject an application and not otherwise”.

10. In the case *of Ajay Agarwal vs. Central Bank of India* (2018) 208 Comp Cas 402 (NCLAT) Hon'ble NCLAT held:

“When in case a “Corporate Debtor” commits a default of financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the “financial creditor” to satisfy itself that a default has occurred. Other considerations, such as the existence a dispute or discrepancy are irrelevant, so long it has not been disputed the same debt is due and is

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payable to the financial creditor and the corporate debtor has defaulted.”

11. Further, it is matter of record that the statement of account which has been filed shows that on 03.10.2016 an amount of Rs. 3,00,000 has been deposited and the Applicant/ Financial Creditor has filed this application on **30.11.2018**, and on this the learned counsel for the petitioner submitted that this petition is covered by **Section 19 of the Limitation Act**. Therefore, at this juncture I would like to refer Sec 19 of the Limitation Act which is as quoted below:

19. Effect of payment on account of debt or of interest on legacy. —

Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made\."
Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment."

Explanation. — For the purposes of this section, —

(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment; (a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;

(b) "debt" does not include money payable under a decree or order of a court. (b) "debt" does not include money payable under a decree or order of a court."

12. From the perusal of Section 19 of The Limitaion Act, it appears to this Adjudicating Authority that it is admitted position of law that subsequently if any payment is made by the borrower than the limitation shall run from the date when the last amount was paid by the Corporate

Debtor . Therefore, this Adjudicating Authority finds force in the contention of the submission placed by the learned counsel for the petitioner, that this case comes under Sec 19 of The Limitation Act.

13. The learned counsel for the petitioner further referred in the supplementary affidavit and submitted that this petition is also maintainable within the limitation period as prescribed Under Article 62 of the Limitation Act because the Corporate Debtor had executed loan and mortgage documents on 16.04.2010, 22.06.2012 and 20.03.2013 which is also within limitation with regard to mortgage. Article 62 of the Limitation act is as quoted below:

SL. NO.	DESCRIPTION OF SUIT	PERIOD OF LIMITATION	TIME FROM WHICH PERIOD BEGINS TO RUN
62.	<i>To enforce payment of money secured by a mortgage or otherwise charged upon immovable property.</i>	<i>Twelve years</i>	<i>When the money sued for becomes due.</i>

14. At this juncture I would like to refer the decision of the Hon'ble Supreme Court which is as quoted below in the case of :

Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company

In Civil Appeal No. 4952 of 2019 dated 18.09.2019 in para 6 held that :

".....what is apparent is that Article 62 is out of the way on the ground that it would only apply to suits. The present case being "an application" which is filed under Section 7, would fall only within the residuary article 137."

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15. From the perusal of Article 62 of The Limitation Act as well as the decision referred to it appears to this Adjudicating Authority that it is an admitted position of law that Article 62 will not apply to the applications filed under Section 7 of The Insolvency And Bankruptcy Code, 2016 rather it would fall only under Article 137 of the Limitation Act. Therefore, this Adjudicating Authority does not find force in the contention of the submission placed by the learned counsel for the petitioner, that this case comes under Article 62 of The Limitation Act.

16. Therefore, in view of the aforesaid decisions, I would like to consider whether the petitioner has succeeded in establishing the fact that there is a financial debt or default in part of the corporate debtor in making payment of debt.

17. From the perusal of averments made in the application filed on behalf of the petitioner, in the counter affidavit filed by the respondent and reply to the counter affidavit filed by the petitioner, this adjudicating Authority finds, the Corporate Debtor in the Counter affidavit admits the debt and his only grievance is that the entire properties of the Corporate Debtor are in the hands of the Financial creditor.

18. Hence, the application filed on behalf of the financial creditor/Applicant under Section 7 of IBC is found complete and it is within limitation. It further appears that there is a default in non-payment of the debt owed by the corporate debtor, the applicant has annexed sufficient evidence to show the default on behalf of the corporate debtor. Therefore, the application filed under Section 7 of IBC deserves to be admitted.

19. The Financial Creditor has proposed the name of **Mr Aditya Agarwal**, **Registration Number IBBI/IPA-001/IP-000529/2017-18/10954** for appointment as Interim Resolution Professional (IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. *(Copy of Form -2 is annexed as Annexure-5 of the Application)* and there is default in the payment of the financial debt which is more than Rs One Lakh. Therefore, as per section 7(5)(a) of the code, the present application filed U/s 7 of the IB Code is admitted.

20. **Mr Aditya Agarwal**, **Registration Number IBBI/IPA-001/IP-000529/2017-18/10954** is appointed as Interim Resolution Professional (IRP). Further, a moratorium under the provision of section 13 & 14 of the Code is declared prohibiting the following:

- i. *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- ii. *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- iii. *Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

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- iv. *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.*

It is further directed that:

- (i) *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*
- (ii) *The provision of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.*

21. The IRP shall comply with the Provision of Section 13(2), 15, 17 & 18 of the Code. Further, the Directors, Promoters or any person associated with the Management of the Corporate Debtor are directed to co-operate to the IRP as prescribed under Section 19 and for discharging his function under a provision of section 20 of the Code.

22. The Registry is further directed to communicate the copy of this order to Financial Creditor and Corporate Debtor and IRP through email and speed post.

23. List on **23.10.2019** for the filing of the progress report.

Date : 03.10.2019



Abni Ranjan Kumar Sinha
(Member Judicial)