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**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD  
Court 2**

**C.P.(I.B) No.324/NCLT/AHM/2019**

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL  
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 01.06.2020**

Name of the Company: Union Bank of India  
V/s  
RK Infratel Ltd

Section : Section 7 of the Insolvency and Bankruptcy Code

**S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE**

1.


2.

**ORDER**  
**(through video conferencing)**

The Order is pronounced in the open court vide separate sheet.

  
**CHOCKALINGAM THIRUNAVUKKARASU**  
**MEMBER TECHNICAL**

Dated this the 1st day of June, 2020

  
**MANORAMA KUMARI**  
**MEMBER JUDICIAL**

**BEFORE ADJUDICATING AUTHORITY (NCLT)  
AHMEDABAD BENCH**

**C.P. No.(IB) 324/7/NCLT/AHM/2019**

**In the matter of:**

**Union Bank of India**  
Having head office at  
239, Union Bank Bhavan  
Vidhan Bhavan Marg  
Nariman Point  
MUMBAI 400 021

Through

Branch Office at  
Saifee Building  
Opp. Dutch Garden, Nanpura  
SURAT 395 003

:

**Petitioner**  
[Financial Creditor]

**Versus**

**M/s. R.K. Infratel Limited**  
Block No. 13-14, 2<sup>nd</sup> Floor  
Annapurna Centre  
Adajan Patia Coircle  
Rander Road  
SURAT 395 009

:

**Respondent**  
[Corporate Debtor]

**Order delivered on 1<sup>st</sup> June, 2020**

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)  
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

**Appearance:**

Advocate Mr. Mahendra Parmar for financial creditor/petitioner

**ORDER**

**[Per: Ms. Manorama Kumari, Member (Judicial)]**

1. Mr. Praveen Kumar Gupta, Chief Manager, being authorised signatory of the petitioner, filed this petition under section 7 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules") seeking reliefs under Section 7(5)(a) and Section 13(1)(a)(b)(c) of the Code.

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*Manorama*

2. That the applicant Bank, incorporated on 11<sup>th</sup> November, 1919, having its head office at Nariman Point, Mumbai 400 021, having corporate identity number U99999MH1919PTC000615, is in the banking business of providing various types of financial facilities including business loans, personal loans, consumer loans, loan against property, home equity loans, term loan etc.
3. M/s. R.K. Infratel Limited is a company incorporated under the Companies Act, 1956 on 8<sup>th</sup> December, 2011, having identification No. U74999GJ20000PLC038720 and having its registered office at Rander Road, Surat, Gujarat State. That Authorised share capital of the respondent company is Rs. 20,00,00,000.00 and paid up share capital is Rs. 9,12,00,000.00.
4. That, the applicant/financial creditor has submitted that the respondent has defaulted in payment towards principal and interest against the working capital, letter of credit, term loan etc., sanctioned/disbursed to the respondent as per the details annexed to the application at page 3.
5. The applicant has submitted copy of the following documents in support of their claim: -

Sl. No.	Particulars	Page Nos.
1	Application by financial creditor for initiation of corporate insolvency against respondent company under Section 7 of IBC and general affidavit	1-9
2	Power of attorney of authorised signatory of the applicant	10-14
3	Form No. 2 – written communication by proposed interim resolution professional	15-17
4	Applicant's sanction advice dated 11.05.2009	18-19
5	Applicant's renewal of limit and sanction of fresh term loan dated 06.03.2010	20-25
6	Applicant's sanction advice dated 12.10.2011	26-29
7	Applicant's sanction letter dated 06.03.2013 for Rs. 20,26,50,000/-	30-41
8	Corporate debtor's Board resolution dated 09.02.2009 for availing credit facilities from the applicant	42
9	Corporate debtor's Board resolution dated 26.03.2011	43-44
10	Corporate debtor's board resolution dated 06.03.2013 accepting the terms and conditions of sanction	45-48
11	D.P. Note dated 15.05.2009 for Rs. 50.00 lacs	49
12	D.P. Note dated 19.03.2010 for Rs. 4.50 crores	50
13	D.P. Note dated 30.03.2011 for Rs. 50.00 lacs	51
14	D.P. Note dated 19.01.2012 for Rs. 1.5 crores	52
15	D.P. Note dated 19.01.2012 for Rs. 3.72 crores	53
16	D.P. Note dated 07.03.2013 for Rs. 2.50 crores	54
17	D.P. Note dated 07.03.2013 for Rs. 3.50 crores	55

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18	D.P. Note dated 07.03.2013 for Rs. 3.50 crores	56
19	Composite hypothecation deed executed on 19.03.2010 to the extent of Rs. 4.50 crores	57-68
20	Composite hypothecation deed executed on 19.01.2012 to the extent of Rs. 3.72 crores	69-80
21	Composite hypothecation deed executed on 07.03.2013 to the extent of Rs. 5.00 crores	81-94
22	Certificate of charge registration dated 29.04.2011 issued by ROC, Gujarat	95
23	Certificate of charge registration dated 01.04.2013 issued by ROC, Gujarat	96-103
24	Personal guarantee for Rs. 3,72,00,000/- dated 19.01.2012 Rs. 1,50,00,000/ dated 19.01.2012, Rs. 2,50,00,000/- dated 07.03.2013, Rs. 5,00,00,000/- dated 07.03.2013, Rs. 3,50,00,000/- dated 07.03.2013	104-123
25	Memorandum of extension of deposit of title deeds registered with sub registrar dated 22.05.2009	124-136
26	Memorandum of extension of deposit of title deeds registered with sub-registrar, Surat City dated 19.03.2010	137-162
27	Memorandum of extension of deposit of the title deeds registered with Sub-Registrar, Surat City dated 17.01.2012	163-192
28	Instrument of extension of deposit of the title deeds dated 06.03.2013	193-225
29	Valuation report obtained in 2017	226-333
30	CIBIL report dated 28.12.2018 obtained by applicant	334-360
31	Recall notice dated 01.10.2014 issued by the applicant	361-362
32	Statement of accounts in respect of loan account	363-637
33	Company's master data of corporate debtor	638
34	Corporate debtor's letter dated 09.12.2011 showing change of name	639-652
35	Account-wise simple <b>debit balance confirmation dated 07.04.2016</b> signed by the corporate debtor	653-657

6. That, the petitioner being financial creditor has to recover an amount of **Rs. 24,62,98,391/- (Rupees twenty-four crores sixty-two lacs ninety-eight thousand three hundred ninety-one only)** as on **31.03.2019**. That, the above amount include principal amount of loans sanctioned under different schemes, accrued interest and penal interest as applicable as per the calculation in tabular form annexed to the application at **page No. 3**.
7. That, the respondent filed affidavit in reply inter alia raising various objections. The first and foremost objection raised by the respondent is that the present application filed in 29<sup>th</sup> April, 2019 is time barred as the petition is filed on the basis of the documents which pertain to the period from 2000 to 2014. It is alleged that the applicant has suppressed material facts with regard to the action already taken under the provisions of RDDB Act, 1993. That, the counter claim application filed under the relevant provisions of RDDB Act which has the same effect as of the claim application filed by the applicant and having filed the said application (O.A.) before DRT for recovery of its dues, the present

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action of the applicant bank u/s 7 of the IBC 2016 is redundant. That, since the alleged default in the instant case is not crystalized as on date and as such the instant petition is legally untenable. That, the applicant has not relied upon any recall notice in the entire application to establish that the account of perpetual nature was ever recalled. It is further alleged that the entire set of papers enclosed with the application does not disclose the account of the respondent was classified as NPA as on 30.09.2014. That, **no amount is due and payable** to the applicant for which the instant petition has been filed.

### **Findings**

8. Heard the learned counsel appearing for the applicant at length as also perused the documents annexed with application/reply. On perusal of the records it is observed that despite repeated calls none appeared on behalf of the respondent and, therefore, final hearing of the application is made in absence of the representative of respondent.
9. On perusal of the records prima facie it appears that the objections/allegations raised by the respondent are illusory and not supported by any valid document, whereas, the applicant bank has filed volumes of papers documenting sanction, disbursement, recall/demand notice, reply of corporate debtor to the demand notice etc. to substantiate its claim.
10. On perusal of the records it is found that the applicant has placed on record (**page No. 18 to 41**) documents like sanction advice dated 11.05.2009, renewal of limit and sanction of fresh term loan dated 06.03.2010, sanction advice dated 12.10.2011, and sanction letter dated 06.03.2013 wherein it is categorically stated that the credit facilities offered to the corporate debtor are subject to the broad terms and conditions laid down in the sanction advice issued from time to time.

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11. On perusal of the records it is found that the first and foremost objection raised by the respondent is that the application is barred by limitation. On perusal of the records it is found that the applicant bank has placed on record simple debit balance confirmation letter dated **07.04.2016 (Annexure A/34 of petition at page No. 653-657)** issued by the respondent and addressed to the applicant acknowledging the debt. Moreover, the account statements show that there are **regular credit entries after 7<sup>th</sup> April, 2016 till May, 2018**. The corporate debtor by its letter dated 17.11.2018 has also given the details of amount repaid till 30.09.2018 and also acknowledged the amount outstanding in the respective account as on 30.09.2018. Moreover, the corporate debtor in para 29(a) of its reply, has admitted that it has paid **Rs. 16.17 lacs during the financial year 2019-20**. Further, the records reveal that from time to time the respondent has executed/entered into various documents acknowledging the debt. This itself shows that the respondent company has acknowledged the debt in the financial year 2019-20. Since the application is filed on 29.04.2019, it is well within time.
12. Another objection raised by the respondent is that the power of attorney holder is not competent to file an application on behalf of financial creditor is not maintainable in as much as the application has been filed on the basis of Power of Attorney which does not permit the officer of the applicant to file such application under the provisions of the Act. It is a matter of record that the seal affixed at the foot of the said power of attorney is the seal of the said bank and the name of signatures of Shri P.Y. Nagar, Shri T.K. Sharma and Shri D.K. Jain thereto subscribed are as those of the General Managers of said Bank of Mumbai are of the proper respective handwriting of the said Shri P.Y. Nagar, Shri T.K. Sharma and Shri D.K. Jain and the power of attorney is granted as per resolution passed by the Board of Directors of the Bank.
13. The second objection raised by the respondent is that petitioner has failed to establish the default on the part of the respondent. It is a matter of record that the petition reveals that the corporate

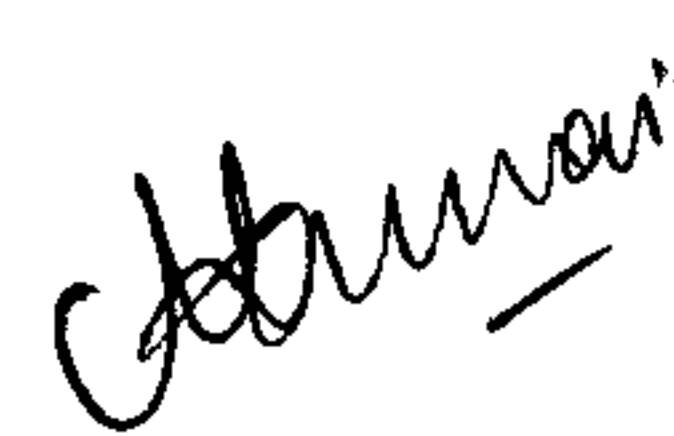
*Shri P.Y. Nagar*

*Shri T.K. Sharma*

debtor had availed term loan, fund/non fund based limits, working capital limits etc. from the petitioner bank and the respondent has acknowledged the debt from time to time.

14. The debt recovery proceedings are initiated by the Financial Creditor to recover the amount. Simply because the Financial Creditor initiated proceedings before the Debt Recovery Tribunal, it does not lie in the mouth of the corporate debtor to say that no default occurred. As such there is no bar in filing IB application during the pendency of DRT proceedings. Moreover, Corporate Debtor did not disclose any bona fide defence based on substantial grounds for the claim made by the Financial Creditor before this Authority. The above said evidence is sufficient to substantiate the plea of the Applicant that a default has been committed by the Corporate Debtor in payment of amount due and payable to the Applicant.
15. It is also a matter of record that the Applicant had granted several facilities including Cash Credit Facility to the Corporate Debtor and the Corporate Debtor fully availed those facilities. Those facilities carry interest applicable from time to time as per the terms and conditions mentioned in the Sanction Letters. Therefore, the amount due to the Financial Creditor from the Corporate Debtor is a financial debt. In view of the Judgment of the **Hon'ble Supreme Court, in case of M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr., in Company Appeal (AT)(Insolvency) No. 1 & 2 of 2017**, this Adjudicating Authority has to satisfy whether a default has occurred; whether the Application is complete; and whether any disciplinary proceeding is pending against the proposed Insolvency Resolution Professional.
16. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the Corporate Debtor committed default in paying the financial debt to the Applicant. On perusal of record and as also discussed above, it is held that there is existence of default and that the application under Section 7(2) of the Code is also complete in all respect.






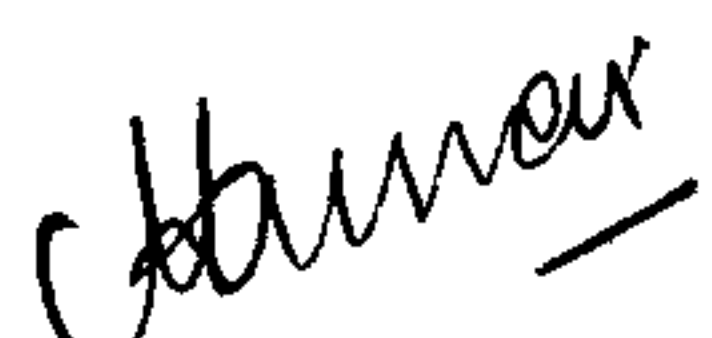
17. In the instant case, the documents produced by the Financial Creditor clearly establish the 'debt'. Section 13 (2) Notice issued by the Financial Creditor clearly indicates that entire debt was recalled. There is a default on the part of the Corporate Debtor in payment of the 'financial debt'.
18. There is no dispute in the case that the petitioner is the financial creditor. The application is also furnished in the prescribed form - 1 of the Rules and the prescribed fee has also been paid. Along with the application, the applicant has proposed the name of the Interim Resolution Professional namely Mr. Chandra Prakash Jain. Therefore, this Adjudicating Authority hereby appoint Mr. Chandra Prakash Jain of C.P. Jain & Co., Chartered Accountants, D-501, Ganesh Meridian, Opp. High Court, S.G. Road, Ahmedabad 380 060 having IBBI registration No. IBBI/IPA-001/IP-P00147/2017-18/10311. Form 2 along with the certificate of registration of the proposed interim resolution professional has been furnished by the applicant separately where declaration is made that no disciplinary proceedings are pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.
19. In view of the above, the petitioner/financial creditor having fulfilled all the requirements of Section 7 of the Code, the instant petition deserves to be admitted.
20. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -
- (i) 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;
  - (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);
- (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
21. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.
22. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the 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 corporate debtor under Section 33 as the case may be.
23. This Petition stands disposed of accordingly with no order as to costs.
24. Communicate a copy of this order to the Applicant/Financial Creditor, Respondent/Corporate Debtor and to the Interim Resolution Professional.

  
**Chockalingam Thirunavukkarasu**  
**Adjudicating Authority**  
**Member (Technical)**

  
**Ms. Manorama Kumari**  
**Adjudicating Authority**  
**Member (Judicial)**