

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD

COURT - 2

ITEM No148
CP(IB) 732 of 2019

Order under Section 7 IBC

IN THE MATTER OF:

Canara Bank

.....Applicant

V/s

Ashapura Garments Ltd

.....Respondent

Order delivered on ..27/09/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)

Virendra Kumar Gupta, Hon'ble Member(T)

PRESENTS:

For the Applicant :

For the Respondent :

ORDER

ORDER

The matter is listed for pronouncement of order.

The order is pronounced vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B GOSAVI)
MEMBER (JUDICIAL)

nair

198

CP (IB) 732/NCLT/AHM/202019

**IN THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 2**

CP (IB) No. 732/NCLT/AHM/2019

(An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

Bank Canara
112, J C Road,
Bangalore 560 002

And

Branch at
Mittal Tower, "C" Wing
Nariman Point
Mumbai 400 021

... Financial Creditor

Versus

M/s. Ashapura Garments Limited
CIN:U17119GJ2002PTC040800
Registered Office at:
238-240, Unity Estate,
Next to Batliboi Limited
Bhestan
Surat 395 023
Gujarat State

.... Corporate Debtor

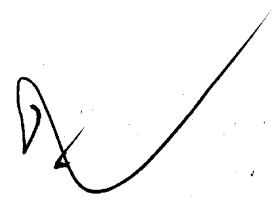
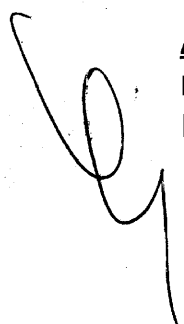
Date of Hearing: 21.09.2021

Date of Pronouncement of Order 27.09.2021

**Coram: MADAN B. GOSAVI, MEMBER (J)
VIRENDRA KUMAR GUPTA, MEMBER (T)**

Appearance :

Learned Counsel Mr. Ashok Mishra for the Financial Creditor.
Learned Counsel Mr. Deepan Dixit for the Corporate Debtor.



ORDER**[Per: VIRENDRA KUMAR GUPTA, MEMBER (T)]**

1. This application filed under Section 7 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as CODE). The amount of default has been claimed at **Rs.236,57,49,170.13** (Rupees two hundred thirty-six crores fifty-seven lacs forty-nine thousand one hundred seventy and paise thirteen only) as on 30.06.2019 and date of classification of account as NPA has been stated as 18.02.2015.
2. The facts in brief are that the Financial Creditor had sanctioned and thereafter renewed/modified the sanction of various credit facilities to the corporate debtor during the period from 12.08.2008 to 06.05.2014. The corporate debtor had filed its annual returns/balance sheets for the period 1st April, 2017 to 31st March 2018, (page 489) wherein, it has been acknowledged that the corporate debtor's account was classified as non-performing asset as on 18th February, 2015 and that an amount of Rs. 165,18,75,793/- is due and payable by the corporate debtor to the applicant. Further, the corporate debtor had inter alia made following part payments to the applicant on 26th August, 2015 and 20th April, 2018.
3. The corporate debtor filed affidavit in reply on 05.03.2021 inter alia raising various objections. The first objection raised by the corporate debtor is that the financial creditor filed this application on 01.10.2019 and subsequently filed additional affidavit dated 25.06.2020, affidavit in rebuttal dated 24.09.2020 and further additional affidavit dated 09.02.2021, thus, simply wasting precious time of the Adjudicating Authority.

Another point which has been raised by the corporate debtor is that during the course of hearing via video conference/online the counsels of the financial creditor were unable to answer the questions raised by the Adjudicating Authority, in multiple affidavits filed by the financial creditor multiple dates of defaults and none of the said dates of defaults are/were true and correct, the financial creditor made attempt to mislead the Adjudicating Authority by giving different dates of default and so on.

4. We have considered the submissions made by both the sides and material placed on record. The Corporate Debtor has filed its reply. On consideration of facts of the case, it is noted that there is a debt which is more than threshold limit prescribed for initiation of insolvency proceedings under Section 7 of IBC, 2016. This debt has not been repaid, thus, the event of default has occurred. Moreover, the financial creditor has filed copy of annual returns/balance sheets for the period 1st April, 2017 to 31st March, 2018, wherein, it has been acknowledged that the corporate debtor's account was classified as a non performing asset on 18th February, 2015 and that an amount of 165,18,75,793/- is due and payable by the corporate debtor to the financial creditor. Thus debt is not barred by limitation as it is appearing in the auditor's report as on 31st March, 2018. Moreover, statement of accounts of the corporate debtor produced by the financial creditor (page 135-148) clearly shows that the corporate debtor had made a payment of Rs. 5,00,000/- on 26.08.2015 and Rs. 45,550/- on 20.04.2018 thereby acknowledging the debt.
5. The application is otherwise complete and defect free. The Financial Creditor has proposed the name of Mr. Ramchandra Dallaram Choudhary to act as IRP which is mandatory for an application filed under Section 7 of CODE and whose consent is on record. It is also noted that no material exists on record as regard to disciplinary

proceedings, if any, being pending against such person. Hence, we admit Corporate Debtor in CIRP and pass following order:

ORDER

1. Corporate Debtor M/s Ashapura Garments Ltd. is admitted in Corporate Insolvency Resolution Process under Section 7 of Insolvency and Bankruptcy Code, 2016.
2. We appoint Mr. Ramchandra Dallaram Choudhary, 9-b, Vardan Complex, Nr. Vimal House, Lakhudi Circle, Navrangpura, Ahmedabad, having Registration No. IBBI/IPA-001/IP-P00157/2017-2018/10326, as Interim Resolution Professional.
3. That the Moratorium under Section 14 of the Code shall come to effect from 08.09.2021 till the completion of 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.
4. That the Bench hereby prohibits the institution of suits or continuation of pending suit 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(s), transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the SARFAESI Act, 2002 the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

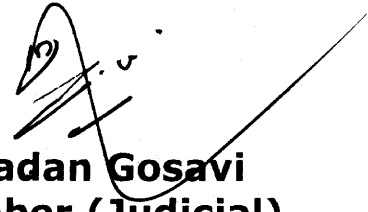
5. Further; litigation or any application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to pronouncement of this order such proceedings are expected to be dealt with in accordance with law r.w. Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.
6. That the supply of essential goods or services to Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium, period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of the Corporate Debtor.
7. The IRP so appointed shall make Public announcement of Corporate Insolvency Resolution Process (CIRP) be made immediately as specified under Section 13 of the Code and by calling for submissions of claim under Section 15 of the Code.
8. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
9. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage

the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

10. We direct the Financial Creditor / Applicant to pay the IRP a sum of Rs. 5,00,000/- (Rs. Five Lakh) as advance against fees & expenses till the COC decides about his fees / expenses.
11. The Registry is directed to communicate a copy of this order to the Petitioner-Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on website immediately after pronouncement of the order.
12. The commencement of Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.
13. CP(IB) No. 732/7/NCLT/AHM/2019 is allowed and stands disposed of.



Virendra Kumar Gupta
Member (Technical)



Madan Gosavi
Member (Judicial)