

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

C.P. (I.B) No.262/NCLT/AHM/2018

**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 12.11.2020**

Name of the Company: State Bank of India
V/s
Jyoti Limited.

Section 7 of the Insolvency and Bankruptcy Code,
2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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ORDER

(Through Video Conferencing)

Sr. Advocate, Mr. Navin Pahwa appeared on behalf of the respondent.

The order is pronounced in the open court, vide separate sheet.



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)**



**MANORAMA KUMARI
MEMBER (JUDICIAL)**

Dated this the 12th day of November, 2020.

**BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**Intervention Petition No. 79 of 2018
IN/WITH
C.P. (IB) No. 262/7/NCLT/AHM/2018**

In the matter of: -

Rare Asset Reconstruction Ltd.
104-106, Gala Argos, Nr. Harikrupa Tower,
Ellisbridge Gymkhana, Gujarat College
Road, Ahmadabad-380009

..... Applicant
(Intervener)

In the matter between: -

Central Bank of India,
Through its authorised officer,
Mid Corporate Finance Branch-Baroda,
G/F, Peridot Complex, Urml Society,
Nr. Urml Cross Road, Akota, Vadodara-390007

And

State Bank of India,
Through its authorised officer,
Stressed Assets Management Branch
"Paramsiddhi" Complex,
2nd Floor, Opp. V.S. Hospital,
Ellisbridge, Ahmadabad-380006

.... Applicants
(Financial Creditors)

Versus

M/S Jyoti Ltd.
Nanubhai Amin Marg
Industrial Area, Vadodara-390003

.... Respondent
(Corporate Debtor)

Order delivered on 12.11.2020.

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Adhinar

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

Mr.Jaimin Dave, Learned Lawyer for the Applicant/Intervener.
Mr. Sandip C Bhatt, Learned Lawyer for the Financial creditors.
Mr. Ravi Pahwa, Learned Lawyer for the Corporate Debtor.
Mr. Navin Pahwa, Learned Senior Counsel for the Corporate Debtor.

COMMON ORDER

[Per se: Mr. Chockalingam Thirunavukkarasu, Member(Technical)]

1. Mr. Arvindbhai Shankarbhai Tadvi, Manager of Applicant No. 1 i.e. Central Bank of India and Mr. Amarsingh Parihar, Assistant General Manager of Applicant No. 2 i.e. State Bank of India have jointly filed this Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the IB Code"] read with Rule 4 of the Insolvency and Bankruptcy Application to Adjudicating Authority Rules, 2016 (hereinafter referred to as "the Rules") for initiating Corporate Insolvency Resolution Process [hereinafter referred to as "CIRP") against M/s. Jyoti Limited (hereinafter referred to as Respondent Company/Corporate Debtor).
2. M/s. Jyoti Limited, the Respondent Company/Corporate Debtor, is a public limited company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at Nanubhai Amin Marg, Industrial Area Vadodara-390003, Gujarat. The Company is engaged in the manufacture and marketing of a range of electrical and hydraulic engineering equipment.

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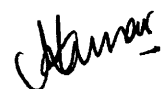
3. The Authorised Share Capital of the Respondent Company is Rs.25,00,00,000/-. The Paid-Up Share Capital is Rs. 17,12,89,920/-.
4. The Applicants submitted that the Respondent Company availed credit facilities with the Applicants sanctioned under the Consortium Banking Arrangement with Central Bank of India, Dena Bank, Bank of Maharashtra and State Bank of India as the members.
5. As per Part IV of the application, the total amount of debt sanctioned by the Applicant No. 1 - Central Bank of India, the Financial Creditor to the Corporate Debtor amounted to Rs. 481.71 crores (Fund Based of Rs.286 and Non-Fund Based of Rs.195.57 crores) and the total amount of debt sanctioned by the Applicant No.2 -State Bank of India, the Financial Creditor to the Corporate Debtor amounted to Rs. 48.58 crores (Fund Based of Rs.48.58 crores). It is further stated that the Applicant No. 1 i.e. Central Bank of India claimed the amount in default as on 25.05.2018 as Rs. 414.50 crores (Fund Based Rs.342.25 crores and Non-Fund Based Rs.72.24 crores). The date of default is 29.09.2015 and the date of NPA is 29.12.2015. The Applicant No.2 i.e. State Bank of India claimed the amount in default as on 25.05.2018 as Rs. 61, 32, 38, 567.74. The date of default is 25.02.2013 and the date of NPA is 31.03.2013.
6. It is submitted by the Applicant that State Bank of India has issued a notice under Section 13(2) of the SARFAESI Act on 09.12.2016 to the Borrower and to Guarantor M/s. Jyoti Ltd. and its Directors.

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7. The applicants submitted that the respondent company approached the CDR Mechanism along with proposal for restructuring of debts of the Respondent Company. The CDR proposal was sanctioned on 05.12.2013, the cut-off date for CDR was 31.03.2013 and repayment to the consortium to start from June 2015 quarter. The respondent company paid dues for June 2015 quarter and thereafter defaulted from September 2015 quarter onwards. The CDR package failed due to non-compliances of terms & Conditions, mainly about timely repayment of dues of banks.
8. The applicants submitted that the Respondent Company has submitted DRS proposal in February 2016 but Central Bank of India Consortiums rejected the DRS proposal due to huge amount of haircut. It is further submitted that Respondent Company had submitted the Asset Monetization & Debt Rework proposal, wherein Respondent Company has requested to waive of Rs.263.00 crores against the outstanding dues of Rs. 700 crores, however, it was rejected by CBI Consortium due to huge amount of haircut.
9. The applicants submitted that the Respondent Company achieved sales of Rs. 212 crores during 2016-17 and the consortium received Rs. 12.89 crores through cut back arrangements. However, the Respondent could not bring any concrete resolution for turn around and the Account still remains as NPA.
10. It is further submitted that State Bank of India filed O.A. No. 1189 of 2017 on 27.11.2017 for a claim of Rs. 56, 95, 93, 436 .30 /- with further interest before the Debts Recovery Tribunal-II at Ahmedabad and the present status is that the matter is





before the Registrar Board, DRT-II Ahmedabad for compliance and notice and summons issued to it.

11. It is stated by the Applicant Banks that aforesaid Credit Facilities were secured by mortgage of immovable property by deposit of title deeds and hypothecation of Movable Assets (Plant and Machinery, Raw materials, Stock in process, finished goods etc.) of the Corporate Debtor.
12. The Applicants submitted that the Respondent Company has also acknowledged the various dues and financial facilities availed from the Central Bank Consortium through acknowledgement of debt executed by its Directors on 19.01.2017.
13. The Applicants submitted the following documents in support of their claim.
 - Particulars of Security held is enclosed as Annexure –A6.
 - Authorisation Letter by Applicant No.1 in favour of the Authorised Officer and authority letter issued by Applicant No.2.
 - Copy of an Application filed by the State Bank of India, i.e. OA No. 1189 of 2107 before the Hon'ble DRT-II Ahmadabad.
 - Copy of CIBIL Reports.
 - Copy of the Company Master Details
 - Copy of the Sanction letter dated 09.08.2010, 20.07.2012, 05.12.2013(issued by Applicant No.1 i.e. Central Bank of India)

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- Copy of Working Capital Consortium Agreement dated 06.12.2013 between the Respondent Company and the Consortium Banks
- Copy of the Board Resolution of the Respondent Company dated 28.08.2012, 30.09.2013
- Copy of the Memorandum of Entry dated 23.07.2012.
- Copy of the Supplemental Memorandum of Entry of Title Deeds for creation of Equitable Mortgage on 31.08.2012, 09.12.2013
- Copy of the Inter se Agreement dated 06.12.20103 amongst the lenders.
- Copy of Supplemental Joint Deed of Hypothecation has been executed between the Respondent and the Central Bank of India Consortium dated 06.12.2013
- Copy of letter CDR(PMJ) No.209/2016-17 dated 30.08.2016
- Copy of Revival Letter dated 26.09.2016 and copy of the Board of Resolution dated 23.09.2016 with covering letter dated 27.09.2016
- Copy of the Certificates under the Bankers Book Evidence act issued by both the applicants.
- Copy of the Acknowledgement of Debt dated 19.01.2017 executed by the respondent company. (page no. 376 & 377 of the application)
- Statements of Applicant No.1 and statement of accounts of Applicant No.2 for all accounts of the respondent company evidencing the liabilities.

14. During the pendency of the main petition an Inv. P. No. 79 of 2018 is filed on 06.12.2018 by Rare Asset Reconstruction

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Limited under Section 60(5) of the IBC with the following prayer:


- a) Admit the Intervention petition and join the present application as an intervener to Company Petition (IB) No. 262 of 2018.
 - b) Direct/Advise Respondent No. 2 i.e. Central Bank of India and Respondent No. 3 i.e. State Bank of India to consider/explore proposal of applicant dated 27.04.2018, 04.06.2018 and 29.06.2018 in accordance with RBI Guidelines on sale of stressed assets by bank.
 - c) Pending the hearing and final adjudication of this petition, stay further proceedings of Company Petition No.262 of 2018.
 - d) Pass any other order as the court may deem fit in the interest of justice.
15. The Intervener submitted that they have acquired the debts (32.19%) of the Corporate Debtor from Dena Bank and during the course of the proceedings, they have also acquired the debt from the Central Bank of India, one of the Petitioner. There are ongoing talks for assignment of debt of the Corporate Debtor with Bank of Maharashtra and State Bank of India. The intervener prayed for the rejection of the main application on the ground that they have acquired 81.39% of the debt of the Corporate Debtor and State Bank of India having only 5.41% of debt of the Corporate Debtor cannot insist for the CIRP process.

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16. The intervener has not acquired the entire financial debt of the Corporate Debtor, any Financial Creditor having his financial debt due and in default can file an application to initiate Corporate Insolvency Resolution Process under Section 7 of IB Code, and hence, the intervention petition is not maintainable.
17. The Corporate Debtor in his objection has stated that 81.39% of debt of the Corporate Debtor is assigned to Rare Asset Reconstruction Limited by Dena Bank and Central Bank of India. Bank of Maharashtra having 13.2% exposure, has not preferred any claim. Hence, the application jointly filed by Central Bank of India and State Bank of India in the present form and substance is not maintainable. Further, counsel for the Respondent submitted that based on developments of assignment of debt, during the hearing, on 26.02.2020, adjournment sought by both sides on the ground of withdrawal of the application. Now, State Bank of India having only 5.41% of the debts cannot insist for the admission of the petition. It is also submitted that the debt of the Corporate Debtor can be resolved and restructured without resorting to the mechanism of the IBC.
18. In response to this, the learned lawyer appearing for the Applicant submitted that though the Respondent/Corporate Debtor claimed that the debts of Applicant No. 1 stands assigned to ARC but the debts of Rs. 61.32 crores of Applicant No. 2 are still outstanding and that the default thereof is still continuing and insisted for admission of petition.
19. As per the Section 7 of the IB Code, a Financial Creditor either by itself or jointly with other Financial Creditor may file an application for initiating Corporate Insolvency Resolution

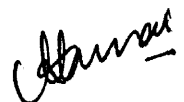




Process. The debts of one of Applicants i.e Applicant No. 2, State Bank of India are still due and payable by the Corporate Debtor. Hence, the objection of the Respondent regarding the maintainability of the petition is not sustainable.

20. Gone through the application filed and documents submitted by the Petitioner's Bank, there is a Financial debt owed by the Corporate Debtor to State Bank of India and it is due and in default. The Application is filed within the period of limitation.
21. The Petitioner has proposed the name of Mr. Nosal Hasmukh Shah having Registration No. IBBI/IPA-001/IP-P00337/2017-18/10607 to act as IRP under Section 13(1)(b) of the IB Code and written communication in Form-2 of IBBI has been submitted by the proposed IRP.
22. From the documents placed on record, this Adjudicating Authority is satisfied that default has been committed by the Corporate Debtor in repayment of loan amount to State Bank of India. The petition is complete. As a consequence, the instant petition is admitted in terms of Section 7 of the IB Code and the moratorium as envisaged under the provisions of Section 14(1) of IB Code and extracted hereunder shall follow in relation to the Respondent/Corporate Debtor.
 - (1) Subject to provisions of sub-Section (2) and (3), on the Insolvency Commencement date, the Adjudicating Authority herein declares moratorium for prohibiting all of the following viz;-
 - (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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(54 of 2002);
 - (iv) the recovery of any property by an owner as lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (2) The supply of goods and essential services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) 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.
- (4) The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the

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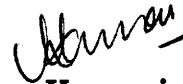
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completion of the Corporate Insolvency Resolution Process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.

23. This Adjudicating Authority hereby appoints Mr. Nosal Hasmukh Shah having Registration No. IBBI/IPA-001/IP-P00337/2017-18/10607 to act as "Interim Insolvency Resolution Professional" under Section 13(1)(b) of the IB Code.
24. Inv. P. No. 79 of 2018 in CP(IB) 262 of 2018 is dismissed as not maintainable.
25. Accordingly, CP(IB) No.262 of 2018 is admitted with no order as to costs.
26. Communicate a copy of this order to the Petitioner, Respondent and to the Interim Insolvency Resolution Professional.



Chockalingam Thirunavukkarasu
Adjudicating Authority &
Member (Technical)



Manorama Kumari
Adjudicating Authority &
Member (Judicial)

SAPNA