

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

C.P. (I.B) No. 266/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 03.01.2020**

Name of the Company: Vighnaharta Corrugators Pvt Ltd & Ors
V/s
Jaybharat Textiles & Real Estate Ltd

Section of the Companies Act : Section 7 of the Insolvency and Bankruptcy Code


<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	NATASHA DHIRUMAN SHAH	ADV.	APPLICANT	@Nasha.
2.				

ORDER

The Petitioner is represented through learned counsel.

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


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL


MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 3rd day of January, 2020

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

C.P. No. (IB) 266/7/NCLT/AHM/2019

In the matter of:

- 1. Vignaharta Corrugators P. Ltd.**
RM - 81, Sudarshan Nagar
MIDC Phase II
Dombivali (East)
MUMBAI 421 201

- 2. Charma Holding P. Ltd.**
C/1/103 Shubh Laxmi Complex Building
Amli, Silvassa 396 230
U.T. of DNH

- 3. Eloquent Traders P. Ltd.**
8, Chamunda Darshan Building
Nr. Yogi Hospital
Kilwani Road
Silvassa 396 230
U.T. of DNH

- 4. Glean Trading P. Ltd.**
B-2/202, Vraj Darshan
Opp. Panchayat Bhavan
Masat Road
Samarvani
Silvassa 396 230
U.T. of DNH

- 5. Rajdeep Clothing and Advisory P. Ltd.**
RM - 81, Sudarshan Nagar
MIDC Phase II
Dombivali (East)
MUMBAI 421 201

- 6. Royal Compservices P. Ltd.**
RM - 81, Sudarshan Nagar
MIDC Phase II
Dombivali (East)
MUMBAI 421 201

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7. Wellworth Apparels P. Ltd.
RM - 81, Sudarshan Nagar
MIDC Phase II
Dombivali (East)
MUMBAI 421 201 :

Petitioners
Financial Creditors

Versus

Jaybharat Textiles and Real Estate Limited
Village Salav
N.H. No. 8
Taluka Pardi
Nr. Vapi
Dist. Valsad 396 191
GUJARAT STATE :

Respondent
Corporate Debtor

Order delivered on 3rd January, 2020

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

Appearance:

Advocate Ms. Natasha Dhruvan Shah for petitioner
Advocate Mr. Harmish K. Shah for respondent

ORDER

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

1. Mrs. Neeta Rameshbhai Patni, being authorised signatory, on behalf of financial creditors, 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.
2. The first applicant/financial creditor viz. M/s. Vignaharta Corrugators Private Limited is a private limited company





incorporated on 03.11.2009 having registered office at Dombivli, Mumbai having identification No. U74990MH2009PTC196826.

3. The second applicant/financial creditor viz. M/s. Charma Holding Private Limited is a private limited company incorporated on 03.11.2009 having registered office at Silvassa, U.T. of DNH having identification No. U45202DN2006PTC000207.
4. The third applicant/financial creditor viz. M/s. Eloquent Traders Private Limited is a private limited company incorporated on 23.03.2010 having registered office at Silvassa, U.T. of DNH having identification No. U51900DN2010PTC00319.
5. The fourth applicant/financial creditor viz. M/s. Glean Trading Private Limited is a private limited company incorporated on 23.03.2010 having registered office at Silvassa, U.T. of DNH having identification No. U51900DN2010PTC000323.
6. The fifth applicant/financial creditor viz. M/s. Rajdeep Clothing and Advisory Private Limited is a private limited company incorporated on 24.07.2009 having registered office at Dombivli, Mumbai having identification No. U17120MH2009PTC194351.

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7. The sixth applicant/financial creditor viz. M/s. Royal Compservices Private Limited is a private limited company incorporated on 28.07.2009 having registered office at Dombivli, Mumbai having identification No. U72900MH2009PTC194395.
8. The seventh applicant/financial creditor viz. M/s. Wellworth Apparels Private Limited is a private limited company incorporated on 15.07.2009 having registered office at Dombivli, Mumbai having identification No. U17120MH2009PTC194116.
9. The respondent/corporate debtor M/s. Jaybharat Textiles and Real Estate Private Limited is a company registered under the Companies Act, incorporated on 21.02.1985 having identification No. L99999GJ1985PLC011553 and having registered office at Taluka Pardi, Dist. Valsad, Gujarat State. Authorised share capital of the respondent company is Rs. 1,50,00,00,000/- and paid up share capital is Rs. 76,56,75,000/-.
10. The applicants/Petitioners have submitted that they have extended financial assistance by way of unsecured loan to the corporate debtor as per the computation annexed to the application at **page No. 31**. That, details of the unsecured loan sanctioned/dispensed, copy of promissory notes entered into between the parties and other communication are annexed to the application at page No. **45 to 81**. The

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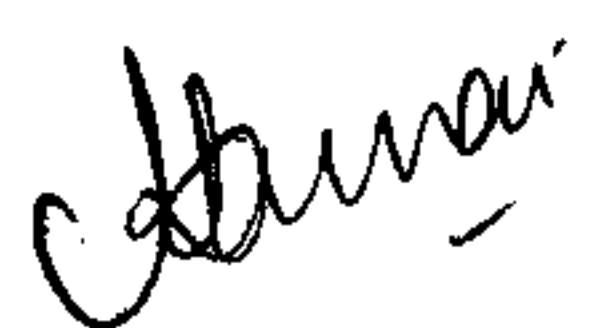
applicants have also furnished copies of Resolution/authorisation in favour of Mrs. Neeta Rameshbhai Patni, financial contracts reflecting all amendments and waivers, copies of entries in the Bankers Book in accordance with the Bankers Books Evidence Act, 1891 and written communication from the proposed IRP in form 2.

11. The financial creditors have stated that total debt granted is Rs. 10,83,03,000/- and the amount claimed to be in default as on 28.02.2019 as per the computation attached to the application is **Rs. 29,98,91,593/- (Rupees twenty-nine crores ninety-eight lacs ninety-one thousand five hundred ninety-three only).**
12. In support of its claim, the petitioners have submitted copy of all the documents referred to in this application.
13. The respondent/corporate debtor filed affidavit in reply inter alia raising several regarding maintainability of the instant petition.

Findings

14. Heard the counsels for both the sides, perused the documents annexed to the application and the reply filed by the corporate debtor.





15. On perusal of the records it is found that the learned lawyer appearing on behalf of the respondent company filed an additional affidavit admitting the total amount as claimed in the petition. That, the documents filed along with the application is sufficient to prove that there exists financial debt and the application is not barred by limitation.
16. In view of the above discussions, the Adjudicating Authority is of the considered view that there is debt due to "financial creditors" and there is default on the part of the corporate debtor. In view of the judgement of the Hon'ble Supreme Court in "**Innoventive Industries Ltd. vs. ICICI Bank & Anr.(2018) 1 SCC 407**" the Hon'ble Supreme Court while explaining section 7 and 8 of the IB Code, observed and held as under: -

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a 'debt' becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3 (12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount.

For the meaning of "debt", we have to go to Section 3 (11) which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of claim, we have to go back to Section 3 (6) which defines claim to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or by financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5 (7) as a person to whom a financial debt is owned and a financial debt is





defined in Section 5 (8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7 (1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor. It need not be a debt owed to the applicant financial creditor. Under Section 7 (2), an application is to be made under Sub-Section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in part I, particulars of the corporate debtor in part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4 (3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7 (5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt" which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is complete, in which case it may give notice to the applicant to rectify the defect within seven days of receipt of a notice from the adjudicating authority. Under Sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and

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corporate debtor within seven days of admission or rejection of such application, as the case may be.

17. It is also held in Mobilox Innovations (P) Ltd. vs. Kirusa Software (P) Ltd. (2018) 1 SCC 353 as under: -

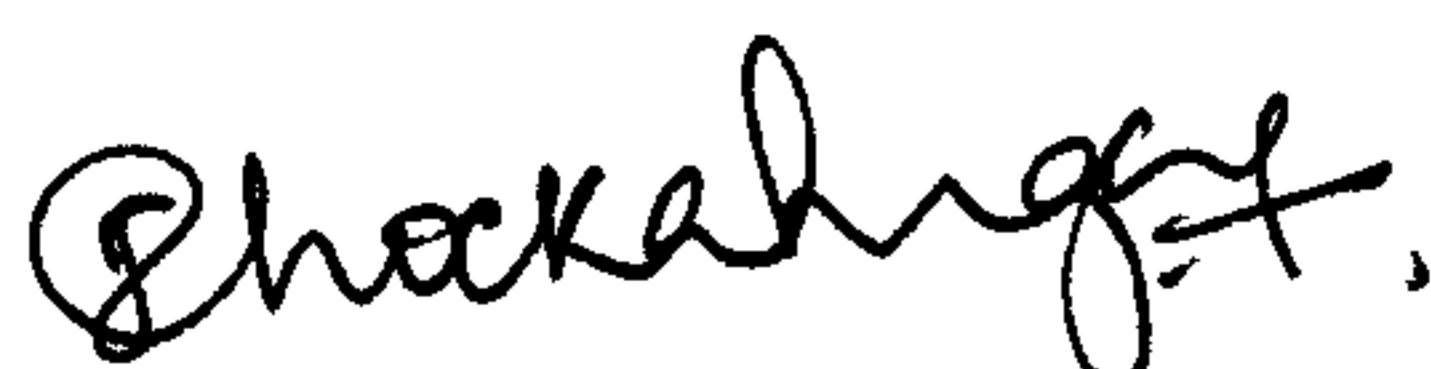
"38.....in the case of a corporate debtor who commits a default of financial debt, the adjudicating authority has merely to see the records of the information utility or other evidences produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt 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 future date. It is only when this is proved to the satisfaction of the adjudicating authority then the adjudicating authority may reject an application and not otherwise.....".

18. That, the application is found to be complete in all respect. Hence it does not warrant any rejection or dismissal.
19. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the financial debt to the Applicant and the respondent company has acknowledged the debt.
20. In the instant case, the documents produced by the Financial Creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'financial debt'.

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21. 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 proposed the name of the Resolution Professional namely Mr. Naresh Sheth. The Adjudicating Authority hereby appoint Mr. Naresh Sheth, 1014-1015, Prasad Chamber, Tata Road No. 2, Opera House (E), Mumbai 400 004 (Email ID nvsheth@mkindia.com, Mkindia58@gmail.com) having registration No. IP/P-00133-IBBI/IPA-001/IP-P00133/2017-18/10275 to act as an interim resolution professional. Form 2 of the proposed interim resolution professional has been annexed and placed at page No. 252-253 of the application where declaration is made that no disciplinary proceeding is pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.
22. In the aforesaid background and as also discussed above, the application under Section 7 (2) of the IB Code is complete in all respects and there is debt due to the "financial Creditor" and there is default on the part of the "corporate debtor". Hence, there is no alternative but to admit the application in absence of any infirmity.
23. 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.



24. 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: -

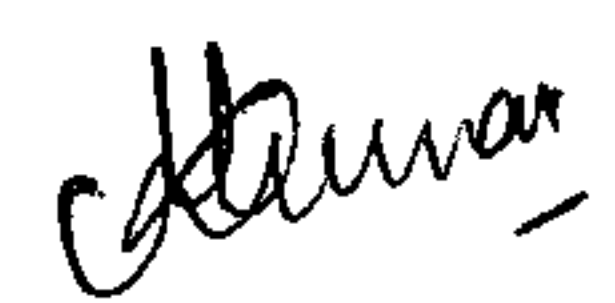
- (i) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (ii) transferring, encumbering, alienating or disposing of by the corporate 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.

25. 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.



26. 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.
27. This Petition stands disposed of accordingly with no order as to costs.
28. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Resolution Professional.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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