BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

C.P. (I.B) No. 322/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 10.10.2019

Name of the Company: State Bank of India
V/s.
Galaxy Cotton & Textiles Pvt. Ltd.

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

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Dhruvin M Dossani for VISHWAS K. SHAH	Adv.	Respondent	
2.				

ORDER

The Respondent 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 10th day of October, 2019

BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH

C.P. No.(IB) 322/7/NCLT/AHM/2018

In the matter of:

State Bank of India
Corporate Centre
State Bank Bhavan
Madam Cama Road
Nariman Point
MUMBAI 400 021 : **Petitioner**
[Financial Creditor]

Versus

Galaxy Cotton & Textiles Private Limited
Aditya Centre
Phulchhab Chowk
RAJKOT 360 001
Gujarat State : **Respondent**
[Corporate Debtor]

Order delivered on 10th August, 2019

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

Appearance:

Advocate Mr. M.A. Gogia led by Sr. Advocate Mr. Navin Pahwa for applicant/Financial creditor
Advocate Mr. Vishwas K. Shah, Advocate Mrs. Bhama V. Shah and advocate Mr. Dhruvia Dossani for respondent

ORDER

1. State Bank of India, through authorised signatory Mr. Nitin Kanaiyalal Chauhan, Assistant General Manager, 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. That the applicant State Bank of India, incorporated on 01.07.1955, having its corporate office at Corporate Centre, State Bank Bhavan, Madam Cama Road, Nariman Point, Mumbai 400 021 and having stressed assets management branch at "Paramsiddhi" complex, 2nd Floor, Opp. V.S. Hospital, Ellisbridge, Ahmedabad 380 006, Gujarat State 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. Galaxy Cotton & Textiles Private Limited is a company incorporated under the Companies Act, 1956 on 07.12.1994 having identification No. U17119GJ1994PTC023788 and having its registered office at Aditya Centre, Phulchhab Chowk, Rajkot 360 001, Gujarat State. That Authorised share capital of the respondent company is Rs. 6,00,00,000.00 and paid up share capital is Rs. 5,00,00,000.00.

4. That, the applicant/financial creditor has submitted that the applicant had granted total financial assistance of Rs. 34.10 crores under different heads to respondent/corporate debtor as per the details given below: -

Sr. No.	Facility	Amount sanctioned/ disbursed (Rs. In crores)	Date of disbursement/ Remarks
01	Cash Credit	14.00	13.04.2015 No single date of disbursement can be specified as date of disbursement, hence dates of sanction be treated as date of disbursement.
02	SLC	2.10	Date of sanction – 14.06.2013 which was disbursed on various dates
03	WHR	18.00	Date of sanction – 28.10.2013 which was disbursed on various dates

5. The applicant bank has submitted that the date on which the account has been classified as Non-Performing Assets i.e. 27.09.2015 is taken as date of default and as on **30.04.2018** exclusive of penal interest and costs, an amount of **Rs. 35,21,38,641.14 (Rupees thirty-five cores twenty-one lacs thirty-eight thousand six hundred forty-one and paise fourteen only)** is outstanding.

6. The applicant bank has further submitted that Debt Recovery Tribunal – II, Ahmedabad passed order on 08.12.2015 and 03.01.2018 in favour of the applicant bank in Original Application No. 726 of 2017 and Original Application 07 of 2018 respectively. That, the respondent(s) company along with others have filed Securitization Application No. 213 of 2016 before Debt Recovery Tribunal – II, Ahmedabad challenging the actions initiated by the bank under the provisions of SARFAESI Act which is pending. That, the secured creditor(s) – Bank had

auctioned the cotton bales vide auction notice dated 16.01.2018 and 17.01.2017.

7. The applicant bank has also submitted copy of the financial contracts reflecting all amendments and waivers in respect of various credit facilities availed by the respondent company and copy of documents executed by the respondent company against different credit facilities. In support of its claim, the applicant bank has submitted copy of the following documents: -

Sr. No.	Particulars	Page Nos.
01	Details of share capital	20-24
02	Valuation reports	25-59
03	Certificate of registration of charges with ROC along with copy of latest ROC search report dated 04.12.2016 issued by Company Accountant to the applicant bank in respect of corporate debtor	60-88
04	Order(s) dated 08.12.2015 & 03.01.2018 passed by DRT-II, Ahmedabad in O.A. No. 726 of 2015 & summons in OA 07 of 2018 respectively along with summons notice	89-94
05	Sanction letter dated 08.10.2008	109-115
06	Board resolution of the respondent company dated 30.09.2008	109-115
07	C1 Agreement of Loan for overall limited dated 09.10.2008	116-176
08	C2 Agreement for hypothecation of goods and assets dated 11.10.2008	177-195
09	C4 deed of guarantee for overall limit dated 11.10.2008	196-208
10	C5 letter regarding grant of individual limits within the overall limit dated 11.10.2008	209-211
11	Undertaking for maintaining the level of USL dated 11.10.2008	212
12	Consent clause for CIBIL by respondent company dated 11.10.2008	213
13	Consent clause for CIBIL by guarantors dated 11.10.2008	214
14	Memorandum relating to deposit of title deeds for creation of charge for term loan/overall limit (date of deposit ROR 18.11.2008) dated 21.11.2008	215-224
15	Letter of confirmation for creation of mortgage	225-229
16	Sanction letter for continuation of limit dated 23.04.2011, revival letter dated 05.10.2011 along with Board Resolution dated 05.10.2011	230-239
17	Sanction letter dated 12.04.2012	240-247
18	Sanction letter dated 12.4.2012	248-255
19	Board resolution of the company dated 25.04.2012	256-257
20	Sanction letter dated 29.05.2012	258-260

21	C1A supplemental agreement of loan for increase in overall limit dated 30.05.2012	261-263
22	C2A supplemental agreement of loan for hypothecation of goods and assets for increase in overall limit dated 30.05.2012	264-269
23	C4A supplemental deed of guarantee for increase in overall limit dated 30.05.2012	270-273
24	Memorandum relating to deposit of title deeds for creation of further charge for term loan overall limit where the initial charge is created by way of mortgage by deposit of title deeds dated 30.05.2012	274-282
25	Sanction letter dated 07.06.2013	283-290
26	Board resolution dated 12.06.2013	291-292
27	C1A supplemental agreement of loan for increase in overall limit dated 12.06.2013	293-294
28	C2A supplemental agreement of loan for hypothecation of goods and assets for increase in overall limit dated 12.06.2013	295-300
29	C4A – supplemental deed of guarantee for increase in overall limit dated 12.06.2013	301-304
30	C5-letter regarding the grant of individual limits with the overall limit dated 12.06.2013	305-306
31	Consent clause for CIBIL by company dated 12.06.2013	307
32	Consent clause for CIBIL by guarantors dated 12.06.2013	308
33	Certificate by company on facility of loans dated 12.06.2013	309
34	Undertaking from company for maintaining USL and capital dated 12.06.2013	310
35	Memorandum relating to deposit of title deeds for creation of further charge for term loan overall limit where the initial charge is created by way of mortgage by deposit of title deeds dated 12.06.2013	311-321
36	Letter of confirmation of mortgage dated 12.06.2013	322-325
37	Letter of arrangement dated 17.02.2014	326-333
38	Board resolution of the company dated 10.04.2014	334-335
39	C5 letter regarding grant of individual limits within the overall limit dated 17.06.2014 along with revival letter dated 17.06.2014	336-340
40	Letter of arrangement dated 13.04.2015	341-357
41	Board resolution of the company dated 13.04.2015	358-359
42	Undertaking from the company for maintaining USL and capital dated 29.06.2015	360-361
43	Title deeds of different properties offered in guarantee	362-389
44	Application form dated 15.10.2013	390-391
45	Letter of arrangement dated 29.10.2013	392-402
46	Demand promissory notes dated 29.10.2013	403-404
47	Annexure – III specimen of undertaking dated 29.10.2013	405
48	Guarantee dated 29.10.2013	406-410
49	Pledge agreement dated 29.10.2013	411-415
50	Warehouse/storage receipts issued by Star Agriwarhousing and Collateral Management Ltd.	416-435
51	Board resolution dated 29.10.2013	436-437
52	Letter of arrangement dated 17.02.2015	438-446
53	Revival letter dated 17.02.2015	447
54	Affidavit dated 20.01.2014 furnished/executed by Shri Dhirajlal Lakkad and Shri Harsukhbhai Lakkad	448-455
55	Account statement of different accounts	456-486
56	CIBIL report	487-52

57	Proof of publication of possession notice under SARFAESI Act in English daily and in vernacular language both dated 06.03.2016	515
58	Original application No. 726 of 2015 between SBI v/s. respondent company	516-577
59	Original application No. 7 of 2018 between SBI v/s. respondent company	578-613
60	Written communication by IRP	614
61	Resolution authorising Mr. Nitin K. Chauhan to initiate action under IB Code q	616-617
62	Proof of dispatch	619

8. Mr. Dhirajlal Parbatbhai Lakkad, Director of the respondent company filed reply in affidavit inter alia raising objections that the IB petition filed by the financial creditor is neither legal nor true. That the mater cannot be heard by bench of two judicial members as it is against statutory law and hence may be placed before appropriate bench for adjudication. That, the applicant bank cannot resort to parallel remedies under Section 7 of the IB Code when OA filed by the bank before Debts Recovery Tribunal, Ahmedabad are pending for adjudication. That, there is nothing on record to indicate that Mr. Nitin K. Chauhan is AGM of Financial creditor and authorised to file the instant petition. That, the instant application is hit by period of limitation. That, there exists dispute between the parties and hence the matter be freed from clutches of the Code and may be agitated in regular courts of law.

Findings

9. Heard both sides at length as also perused the documents annexed with application and the reply/objections filed by the respondent. We deem it appropriate to first deal with the objections so raised in the reply filed by the corporate debtor.

10. The **first and foremost** objection raised by the corporate debtor is that the matter cannot be heard by the bench consisting of two judicial members as it is against statutory law and hence may be placed before appropriate bench for adjudication. In this respect we make it clear that in a similar case where decision of a bench consisting of two judicial members were challenged before the Hon'ble Supreme Court, in ***Swiss Ribbon***, Hon'ble Supreme Court has not observed anything in this respect. In the instant case, on appointment of the new Member (Technical) and having heard the matter by a bench consisting of one Technical Member as well as one Judicial member, the objection so raised by the corporate debtor has become infructuous now.

11. The **second** objection raised by the corporate debtor is that the bank cannot resort to parallel remedies under Section 7 of the IB Code when OA filed by the bank before DRT, Ahmedabad is pending for adjudication. In this regard the law has already been settled by the higher authorities and pendency of proceedings before any other forum as mentioned in the Code would not cause any impediment with regard to the initiation of Corporate Insolvency Resolution process (CIRP) because under Section 7 of the Code, pendency of such proceeding is not barred to admission of the petition and initiation of CIRP. Accordingly, this argument is also rejected as unfounded.

12. The **third** objection raised by the respondent is that there is nothing on record to indicate that Mr. Nitin K. Chauhan is AGM of the financial creditor and authorised to file the instant petition. On perusal of the record it is found that the financial creditor has produced letter of authority dated 06.07.2018 issued by Dy. General Manager of the financial creditor bank certifying that Mr. Nitin K. Chauhan AGM, in Grade of SMGS-V at State Bank of India, Stressed Assets Management Branch, Ahmedabad is authorised under Regulation 76 (1) of the SBI General Regulations 1955, framed under Section 50 of the SBI Act, 1955, to file application before National Company Law Tribunal, Ahmedabad for and on behalf of SBI. Hence, instant objection regarding authority of Mr. Nitin K. Chauhan is AGM of SBI is also met out.

13. The **fourth** objection raised by the petitioner is that the instant application is hit by period of limitation. On perusal of the record it is found that the applicant has submitted all the documents relating to the disbursement of loan since 2008 till July, 2015. During this period, the bank, from time to time i.e. before expiry of three years, restructured the loan and/or entered into C-1 agreement of loan for overall limit and C5 letter regarding grant of individual limits within the overall limit dated 11.10.2008. Record also shows that, subsequently, C4 deed of guarantee for overall limit dated 11.10.2008 has also been executed between the financial

creditor and corporate debtor. On perusal of the statement of account placed at page **No. 484** to the application shows that on 08.07.2015 the corporate debtor has deposited an amount of Rs. 1.00 lac in favour of the applicant bank, whereas the instant application is filed on Monday, 9th July, 2018. So, even if it is assumed that 08.07.2018 is the last day for filing application, 08.07.2018 being Sunday, the same has been filed on the immediate and next working day i.e. Monday, 9th July, 2018 and, therefore, it is well within limitation. Thus, the application is not time barred.

14. The respondent has also raised dispute between the parties. In this respect it is desirable to refer to the decision in ***Unigreen Global (P) Ltd. vs. Punjab National Bank***, wherein The Hon'ble Supreme Court has clarified the position that while dealing with the application the Adjudicating Authority has to see that, only when the default took place, in the sense when the debt became due and is not paid, the IRP begins. Hon'ble Supreme Court also observed that the scheme of the Code under Section 7, stands in contrast with the scheme under section 9 and observed as follows: -

> ***"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 tell 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 a 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 owed 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 owned and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.

Thus, the issue regarding dispute between the parties and hence the matter be freed from clutches of the Code and may be agitated in regular courts of law is set at rest by The Hon'ble Supreme Court.

15. On perusal of the record it is also found that the objections so raised by the respondent regarding admission of the petition cannot be accepted since all the requirements of Section 7 of the IB Code for initiation of CIRP by the financial creditor has been fulfilled. In all respect the application is complete as per the requirement of Section 7 (2) of the Code and other conditions prescribed by Rule 4 (1) under The Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

16. 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.

17. 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'.

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 proposed the name of the Resolution Professional namely Shri Tejas Shah. The Adjudicating Authority hereby appoint Shri Tejas Shah, B/201, Narayan Krupa Avenue, Opp. Prernatirth Derasar, Satellite, Ahmedabad 380 060 (Email ID tejasshah44@yahoo.com) (Mobile No. 9825703183) having registration No. IBBI/IPA-001/IP-P00089/2017-18/10185 to act as an interim resolution professional. Form 2 of the proposed interim resolution professional has been annexed and placed at page No. 513-515 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.

19. 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.

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, Corporate Debtor and to the Interim Insolvency Resolution Professional.

Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

Nair