

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

C.P.(I.B) No.68/NCLT/AHM/2020

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

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 15.03.2021**

Name of the Company: Div Realtors Pvt Ltd
V/s
Superdrawn Wire Industries Pvt Ltd

Section 7 of the Insolvency and Bankruptcy Code,
2016.

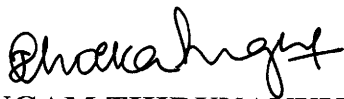
<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

ORDER

(through video conferencing/physical)

None appeared on behalf of parties.

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



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 15th day of March, 2021



**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P.(IB) No. 68/NCLT/AHM/2020

In the matter of:

M/s DIV REALTORS PVT. LTD.

Registered Office at:

93, Park Street Kolkata,
Kolkata WB 700016 IN

....Petitioner
(Financial Creditor)

Versus

**M/s SUPERDRAWN WIRE
INDUSTRIES PVT. LTD.**

(Erstwhile RealTrack Wire Industries Pvt Ltd)

Registered Office at:

21, Kamal Cooperative Industrial
Estate, Nr. Kamal Restaurant Ajod
Dairy Ahmedabad, Gujarat-380023.

.... Respondent
(Corporate Debtor)

Order delivered on 15.03.2021.

Coram:

Hon'ble Ms. Manorama Kumari, Member (J)

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Mr. Aditya Gundecha, advocate... for the Petitioner.

Mr. Mohit Gupta, advocate... for the Respondent.

ORDER

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

1. Shri. Sanjay Kumar Jain, director of M/s/ DIV Realtors Pvt. Ltd., on behalf of the Petitioner/Financial Creditor has 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 the purpose of initiating corporate insolvency resolution process [hereinafter

Shankar Singh

Chockalingam

referred to as "CIRP") against M/s Superdrawn Wire Industries Pvt. Ltd., the Respondent company, the Corporate Debtor.

2. The erstwhile name of Respondent company was M/s Real Track Wire Industries Pvt. Ltd., which is a private limited company originally incorporated on 30.08.2011. The name of the Company was changed to M/s Superdrawn Wire Industries Pvt. Ltd., under Section 13 of the Companies Act, 2013 on 02.06.2016, having its Registered Office -21 Kamal Cooperative Industrial Estate, Nr Kamal Restaurant Ajod Diary Ahmedabad, Gujarat- 380023.
3. The Authorised Share Capital of the Respondent Company, the Corporate Debtor is Rs.2,00,00,000/- (Rupees Two Crore Only). The Paid-Up Share Capital of the Respondent Company, the Corporate Debtor is Rs. 1,99,95,540/- (Rupees One Crore Ninety-Nine Lakhs Ninety-Five Thousand Five Hundred Forty Only). The Respondent is having its CIN: U28112GJ2011PTC066943.
4. As per Part IV of the application, the total amount of debt sanctioned by M/s/ DIV Realtors Pvt. Ltd, the Financial Creditor amounted to Rs. 15,00,000/- (Rupees Fifteen Lac Only) through RTGS on 14.05.2015 through its Account bearing no. 03631131001009 of Oriental Bank of Commerce. It is further stated that the total claimed amount of default along with interest as on 19.12.2015 amounted to Rs. 17,97,000/- (Rupees Seventeen Lakh Ninety-Seven Thousand Only). The date of default is on 24.07.2019.
5. The Petitioner/Financial Creditor has submitted that the aforesaid loan was granted to the Respondent Company on interest @ 13.2% per annum, payable quarterly, in advance by the Corporate Debtor by 1st day of April, July, October and January of each year of loan duration. As per the said rate, the amount of quarterly interest instalment payable was Rs. 49,500/-, which on deduction of TDS amounted to Rs. 44,550/-.

Shachin

Chatur

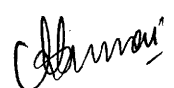
6. The Petitioner has submitted that as per the agreement, the Corporate Debtor made payment of interest instalments to the Financial Creditor in the financial year 2015-16, 2016-17 and 2017-18 after deducting the applicable TDS. Copy of the Form 26AS pertaining to TDS of the Financial Creditor for Financial Year 2015-16, 2016-17, 2017-18, 2018-19 are submitted which is marked as **ANNEXURE-6**.
7. The Petitioner submitted that the Corporate Debtor made the payment of interest upto 31.03.2018. Thereafter, no payment of interest instalment has been paid by the Corporate Debtor and as such, it has committed default. When the Corporate Debtor committed default in the payment of consecutive interest instalments, then he was asked by the Petitioner for repayment of principal amount of Rs. 15,00,000/-, to which Respondent issued a cheque of Real Track Wire Industries Pvt. Ltd. bearing no. 634351 dated 24.07.2019 of State Bank of India of Rs. 15,00,000/- with an assurance that the said cheque will be cleared. But, when the cheque was presented, it got rejected on **24.07.2019** with the remark "REFER TO DRAWER", which is annexed as **ANNEXURE-8** with the petition.
8. The Financial Creditor immediately thereafter issued a Demand Notice on 30.07.2019 under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 through its Counsel demanding the sum of Rs. 15,00,000/-, which is annexed as **ANNEXURE-9**. Even after the receipt of the aforesaid demand notice, the Corporate Debtor did not make the payment of the said loan amount.
9. The Petitioner submitted the following documents in support of his claim against the Corporate Debtor.



- The Copy of the Board Resolution.
- Fresh Certificate of Incorporation consequent upon name change of Respondent.
- Copy of RTGS reflecting bank statement dated 14.05.2015 of Oriental Bank of Commerce.
- Copy of the Loan Receipt executed by the Corporate Debtor.
- Copy of the Form 26AS pertaining to TDS of the Financial Creditor for Financial Year 2015-16, 2016-17, 2017-18.
- Copy of the Ledger Account of the Corporate Debtor.
- Copy of cheque returning memo.
- Copy of Notice.
- Copy of workings for computation of amount and days of default.
- Copy of Master Data of Corporate Debtor acquired from official website of Ministry of Corporate Affairs.
- Copy of complaint filed before the Ld. Chief Metropolitan Magistrate, at Calcutta.
- Written Communication (Form) by the proposed interim Resolution Insolvency Professional along with the copy of Registration Certificate.

10. The Respondent in his reply submitted that he has repaid the loan in cash. The Respondent further submitted in his objection that it appears from Form 26 AS produced by the Petitioner that the Petitioner is involved in the business of money lending, but to be involved in the business of money lending within the State of Gujarat, it is mandatory to be registered under the provisions of Gujarat Money Lenders Act, 2011. Hence, the Petitioner is not registered under the Gujarat Money Lenders Act, 2011, which is evident from the fact that no license has been produced





by the Respondent. The debt is not payable to the Petitioner as it is barred by law.

11. The Petitioner has contended the above said allegation of Respondent and submitted in his rejoinder that it is trite principle of Law that occasional advancement of loans to friends and acquaintance would not amount to money lending business under the Money Lenders Act and as such merely because some loans were advances by the Petitioner would not attract the provisions of Act of 2011 and did not require to seek any registrations under the Act of 2011 before advancing loan to the Respondent.

12. Heard the counsels of both sides. Gone through the application filed and documents submitted by the Petitioner Bank. The Respondent has submitted that he has repaid the loan in cash, but not produced any supporting documents and the date of repayment. The Respondent has received the loan amount from the Applicant as per Loan Receipt through RTGS dated 14.05.2015. The Respondent has paid interest upto September 2017 as evidenced in Form 26AS. As per Section 7 of IBC, for an application preferred by the Financial Creditor/Petitioner for initiation of Corporate Insolvency Resolution Process, the Adjudicating Authority is required to see the existence of financial debt and ascertain the existence of default. As per the documents submitted by the Petitioner that there is a financial debt in the form of loans availed by the Corporate Debtor. The date of default is on 24.07.2019, last date of payment of interest as per 26AS is 30.09.2017. Cheque dated 24.07.2019 given by the Respondent for repayment was also got returned unpaid. The application is filed on 07.01.2020. Hence the application is filed well within the period of limitation. The application is filed

Shreea Singh

Chhanna

by Shri. Sanjay Kumar Jain, director of the Petitioner Company with authorization papers.

13. The Petitioner has proposed the name of Mr. Brij Kishore Sharma having Registration No. IBBI/IPA-002/IP-N00036/2016-17/10075 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.
14. 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 the Petitioner. 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 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.


15. This Adjudicating Authority hereby appoints Mr. Brij Kishore Sharma having Registration No. IBBI/IPA-002/IP-






N00036/2016-17/10075 to act as "Interim Insolvency Resolution Professional" under Section 13(1)(b) of the IB Code.

16. The petition stands disposed of accordingly with no order as to costs.
17. Communicate a copy of this order to the Petitioner, Respondent and to the Interim Insolvency Resolution Professional.


Chockalingam Thirunavukkarasu
Adjudicating Authority &
Member (Technical)

SAPNA


Manorama Kumari
Adjudicating Authority &
Member (Judicial)