

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

C.P.(I.B) No. 754/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 30.03.2021**

Name of the Company: Bhaskar Enterprises
V/s
Shree Jagdamba Dyeing & Printing Mills
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>
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1.
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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 30th day of March, 2021



**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P.(IB) No. 754/NCLT/AHM/2019

In the matter of:

M/s BHASKAR ENTERPRISES

Having Office at:

A-100, Siddhi Ganesh Township,
GIDC, Sachin, Surat.

....Petitioner
(Financial Creditor)

Versus

M/s SHREE JAGDAMBA DYEING AND
PRINTING MILLS PVT LTD.

Registered Office at:

Estate, Surat
Bardoli Road, Vill. Tantithaiya,
Ta.Palsana,
Surat, Gujarat-394327 IN

.... Respondent
(Corporate Debtor)

Order delivered on 30.03.2021.

Coram:

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

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

Appearance:

Ms. Richa Goyal, PCS... for the Petitioner.
Mr. Dhiren Dave, PCS... for the Respondent.

Manorama Kumari

Chockalingam

ORDER

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

1. Shri. Jagdish Harlalka, sole proprietor of M/s Bhaskar Enterprises, 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 referred to as "CIRP"] against M/s Shree Jagdamba Dyeing and Printing Mills Pvt Ltd., the Respondent company, the Corporate Debtor.
2. The Financial Creditor is a sole proprietorship firm and is engaged in the business of trading in dyes, chemicals, Textile Fabrics and Imported Coa.
3. M/s Shree Jagdamba Dyeing and Printing Mills Pvt Ltd., the Respondent, a company incorporated on 30.07.1997, under the provisions of the Companies Act, 1956 having its Registered Office at Estate, Surat Bardoli Road, Vill. Tantithaiya, Ta. Palsana, Surat Gujarat-394327 IN. The Company is engaged in manufacturing of textiles.
4. The Authorised Share Capital of the Respondent Company, the Corporate Debtor is Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs Only). The Paid-Up Share Capital of the Respondent Company, the Corporate Debtor is Rs. 79,76,840/-(Rupees

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Seventy-Nine Lacs Seventy Six Thousand Eight Hundred Forty Only). The Respondent is having its CIN: U17119GJ1997PTC032742.

5. As per Part IV of the application, the total amount of debt given as unsecured loans by M/s Bhaskar Enterprises, the Financial Creditor amounted to Rs. 50,00,000/- (Rupees Fifty Lakhs Only) to the Corporate Debtor on 12% interest per annum through 7(Seven) cheques between 05.01.2017 to 16.01.2017. The said loan was granted with the agreement between both parties that the entire amount will be repaid within a period of two months at 12% interest p.a.
6. It is stated by the Petitioner that despite making repeated oral requests and reminders to clear its dues, the Corporate Debtor has failed to clear the outstanding amount. The total unrecovered amount of Rs. 50,00,000/- is still remained unpaid by the Corporate Debtor as on 05.09.2019.
7. The Petitioner has further submitted that on the website www.mca.gov.in, the audited balance sheets of the Corporate Debtor were downloaded and it was surprised to see that the Corporate Debtor had not shown the name of the Financial Creditor in the list of entities, the Corporate Debtor owes payment. The said fact is reflected as **ANNEXURE-E** of the petition.

Shankar Singh

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8. The Petitioner has further submitted that after getting no response from the side of Corporate Debtor after several reminders, we send demand notice dated 22.08.2019 for recovery of the dues to the Corporate Debtor as well as the chartered accountant through registered speed post and also sent an email on their email id. The said fact is reflected as **ANNEXURE-F**.
9. The Petitioner submitted the following documents in support of his claim against the Corporate Debtor.
- Bank Account Statements.
 - Copy of the audited balance sheet of the Corporate Debtor for the year ended on 2017 and for the year ended on 2018.
 - Copy of the notice along with the speed post receipt and copy of email.
10. The Respondent has denied all the allegations made by the Petitioner in toto in his reply. It is submitted by the Respondent that Petitioner wanted to take over the company, took possession of the factory of the company, ruin the manufacturing unit by selling many parts and machinery of the company leaving the manufacturing unit in completely shattered condition.
11. The Respondent submitted the fact that the Petitioner along with three other persons have committed fraud with the Respondent by entering in to an agreement dated 11.10.2016 (at **ANNEXURE-A**) with the director of the Respondent for

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Chakraborty

takeover of the Company. After taking the possession of the Company, they never paid full consideration as stated in the agreement and on the contrary they did some major structural damages in the factory as tenant and sold many machineries of the unit and thereafter run away from the unit sometime in 2017 without making any payment of rent.

12. The Respondent has further submitted that Petitioner has not even made the payment of loss incurred in the unit of Company, he himself made police complaint on 15.09.2017 against the directors of the company and in the police complaint he made a statement that "*the amount claimed by the Applicant in this false application was paid towards takeover of this company but that deal failed*". Hence, the said statement made by the Petitioner in the police complaint clearly shows that he has not given any loan to the Respondent and he was not a Financial Creditor. The said fact is reflected as **ANNEXURE-B(Colly)**.
13. The Respondent has further submitted that the application is also defective and is liable to be rejected as information in Part-IV- Para-2 with regard to the amount claimed to be in default and the date on which the default occurred is not available and Part-V with regard to the Particulars of a Financial Debt (Documents, Records and Evidence of Default is also not mentioned. The Respondent in his affidavit dated 04.12.2020 has stated that the payments are made for Sale of goods.

Shakir Hussain

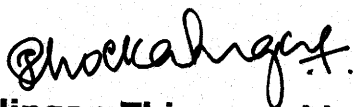
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14. The Petitioner has rebutted all the points in written submissions that Respondent has denied in his reply. The Petitioner has submitted that the Corporate Debtor/Respondent had produced the agreement dated 11.10.2016 with regard to take over the possession of the Corporate Debtor Company is totally unrelated to the Financial Creditor/Petitioner, as it is not written anywhere that the Petitioner is a party to the agreement or in any way involved in transaction with the Respondent Company.
15. The Petitioner has further submitted in his written submission that, the police complaint produced by the Respondent as **ANNEXURE-B** has not been filed by the Financial Creditor/Petitioner. The said fact is evident from the police complain documents itself produced by the Respondent.
16. The Petitioner further submitted with regard to the defective application that the workings for computation of the amount and days of default are not a mandatory requirement for the petition. It is further submitted that petition under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence or existence of default. The date of default is 16.03.2017.
17. The Petitioner has proposed the name of Mr. Narayan Gajanan Vidvans having Registration No. IBBI/IPA-002/IP-N00378/2017-18/1112 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.

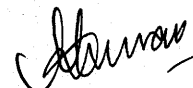
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18. Heard the learned counsels of both sides and perused the documents filed them. In case of application filed by the Financial Creditor, the Adjudicating Authority is required to see the existence of the finance and existence of default. The Petitioner has not enclosed any documents to show the existence of Financial Debt such as agreement or promissory note or letter of request or letter of acknowledgement or payment of Interest or Income Tax 26 AS Statement or other documents. He has shown only Bank entries to show that the payment is made to Corporate Debtor. On the other hand, the Respondent has stated that the amount received is for Sale of goods, for Sale of Business. The Petitioner failed to prove the debt due is financial debt and hence he cannot be considered as a Financial Creditor as per Section 5(7) of the IB Code. As per Section 7 of IB Code, only a Financial Creditor can initiate Corporate Insolvency Resolution Process.
19. For the reasons state above, this Adjudicating Authority is of the view that the present petition filed under Section 7 of IB Code, does not qualify for admission. Hence, the present IB Petition i.e., CP(IB) No. 754 of 2019 is rejected. No order as to costs.
20. It is made clear that the observation made in this order will not come in the way of the Petitioner in seeking remedy before any other forum.
21. Registry is directed to communicate this order to both parties.



Chockalingam Thirunavukkarasu
Adjudicating Authority &
Member (Technical)



Manorama Kumari
Adjudicating Authority &
Member (Judicial)