

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

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C.P.(LB.) No. 396/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 01.01.2020

Name of the Company: Bank of Baroda
V/s.
Gaurinandan Fashion Pvt. Ltd.

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

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1.	Raju Kethaw	Advy	Petitioner	R.
2.	Ajay Gandhi			

ORDER

The Petitioner is represented through learned counsel.

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

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CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Manora
MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 1st day of January, 2020



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07/01/2020

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

C.P. No.(IB) 396/7/NCLT/AHM/2018

In the matter of:

Bank of Baroda
10-C, "G" Block,
Bandra Kurla Complex
Bandra (East)
MUMBAI 400 051

Having Branch at
Reshamwala Market
Yaksha Kamal
Ring Road,
Surat 395 002
Gujarat State

:

Petitioner
[Financial Creditor]

Versus

M/s. Gaurinandan Fashion Private Limited
4th Floor, Shop No. 6405
Raghukul Market
Wing - D,
Ring Road
Anjana
SURAT 395 002
Gujarat State

:

Respondents
[Corporate Debtor]

Order delivered on 1st January, 2020

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

Appearance:

Advocate Mr. Raju Kothari with advocate Mr. Anip Gandhi for
petitioner.
Advocate Mr. Sandeep C. Bhatt for respondent.

ORDER

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

1. Mr. Tapan Kumar Paul, Chief Manager, being authorised signatory of Bank of Baroda, filed this petition under section 7 of The Insolvency and Bankruptcy Code, 2016 (hereinafter



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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/financial creditor Bank of Baroda is a body corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertaking) Act 1970, having its Registered office at Dena Corporate Centre, C-10, G-Block, Bandra Kurla Complex, Bandra E, Mumbai 400 051 and branch at Reshamwala Market, Ring Road, Surat, Gujarat State.
3. During pendency of this application, Dena Bank is merged with Bank of Baroda vide Government of India Gazette Notification dated 02.01.2019. Accordingly cause title of the instant application is amended vide order 03.05.2019.
4. The respondent/corporate debtor M/s. Gaurinandan Fashion Private Limited is a company incorporated under the Companies Act, 1956 on 04.05.2013, having Identification No. U17120GJ2013PTC074874, having its registered office at Ring Road, Surat, Gujarat State. That, Authorised and paid up capital is Rs. 6,00,000/-.



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5. That, the applicant bank has submitted that through its Reshamwala Market Branch, Dist. Surat granted various financial credit facilities to the corporate debtor and disbursement was made as per the details given below: -

(i) **Cash Credit facility of Rs. 4,50,00,000/-**

(ii) **Enhancement of cash credit limit of Rs. 4,50,00,000/- to Rs. 4,95,00,000/-**

6. The applicant bank has claimed that the respondent is in default of **Rs. 4,94,75,089/-** plus uncharged interest of **Rs. 67,37,426.66** up to **31.07.2018** aggregating to **Rs. 5,62,12,515.66** (Rupees five crores sixty-two lacs twelve thousand five hundred fifteen and paise sixty-six only) as on **31.10.2017** (the date on which the account was classified as Non-Performing Asset).

7. It is stated that the financial creditor holds registered equitable mortgage of fourteen shops situated at 5th Floor of Raghukul Textile Market with undivided proportionate land underneath the said building having realizable value of **Rs. 480.69 lacs**. That, the present Insolvency Resolution Application is filed under Section 7 of the IB Code, 2016 for the purpose of initiating corporate insolvency resolution process against the corporate debtor since it has lost its substratum and is unable to repay outstanding debt. That, the corporate debtor has already committed default of its debt towards the financial creditor by non-payment of instalment and/or interest of the various financial facilities



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Page 3 | 11

availed through its Reshamwala Market Branch, Surat,
Gujarat State.

8. The applicant bank has submitted copy of the following documents in support of their claim: -

Sl. No.	Particulars	Page Nos.
1	Form 1	1-14
2	Power of attorney dated 04.06.1992 and authority letter dated 01.08.2018	13-15
3	Sanction details dated 17.12.2014 of cash credit facility of Rs. 4,50,00,000/-	19-24
4	Sanction letter dated 18-12-2015 for renewal cum enhancement of cash credit limit	25-30
5	Resolution passed at the meeting of the Board of Directors of respondent company dated 19.12.2014	31-32
6	Demand promissory note of Rs. 4,50,00,000/- dated 23.12.2014	34-46
7	Hypothecation agreement dated 23.12.2014	34-46
8	Letter of guarantee dated 23.12.2014	47-55
9	General undertaking	56-60
10	Instrument relating to deposit of title deeds dated 24.12.2014	61-79
11	Deposit of title deeds dated 24.12.2014	80-83
12	Certificate of Registrar of Companies, Gujarat, Ahmedabad	84
13	Extract of resolution passed at the meeting of the Board of Directors of the respondent company on 18.12.2015	85-85A
14	Memorandum of modification of hypothecation agreement dated 18.12.2015	86-107
15	Demand promissory note of Rs. 4,95,00,000/- dated 18.12.2015	108
16	Letter of guarantee dated 18.12.2015	109-119
17	General undertaking	120-123
18	Declaration by guarantor/mortgagor on affidavit for extension dated 23.12.2015	124-133
19	Instrument of extension relating to deposit of title deeds dated 23.12.2015	134-159
20	Certificate of Registrar of companies, Gujarat	160
21	CIBIL report	161-168
22	Statement of account under Bankers' Books Evidence Act	169-454
23	Notice dated 10.11.2017 Issued under section 13 (2) of the SARFAESI Act	458-463
24	Notice under section 13(4) dated 18.01.2018 under SARFAESI Act	464-466
25	O.A. No. 717 of 2018 filed before DRT-1, Ahmedabad	467-534
26	S.A. No. 71 of 2018 filed by the borrower	535-548
27	Affidavit in support of insolvency application	549-562
28	Written communication by proposed IRP in form 2	563-564

9. Director of the respondent company filed affidavit in reply inter alia raising the following objections: -

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Page 4 | 11



- (i) Form No. 1 filed by the applicant bank is not correctly filled up, hence, only on this ground alone the application is required to be rejected;
- (ii) Signatory of the petition is not the authorised person to file the present petition;
- (iii) The account of the respondent company was never become NPA and the classification of NPA done by the applicant bank is already under challenge before DRT-II, Ahmedabad;
- (iv) The applicant bank has not disclosed about the interim order dated 07.06.2018 passed by DRT-II which itself proves that the applicant bank have not come with clean hands;

Findings

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

11. On perusal of the records it is found that from time to time the corporate debtor has made payments towards the outstanding. That, the last payment is made by the corporate debtor on 31st October, 2017 towards interest which is reflected in the statement at page No. 454 to the application. That, the documents filed along with the application is sufficient to prove that there exists financial debt.



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12. On perusal of the records it is found that the letter of authority dated 12.09.2018 issued by General Manager of the applicant bank authorising Mr. Tapan Kumar Paul is proper and valid.
13. Though the respondent has tried to refute the statement made by the applicant, could not succeed to defend himself because no convincing documents are being filed so as to believe that the corporate debtor is not a defaulter.
14. In view of the above discussions, the Adjudicating Authority is of the considered view that there is a debt due to "financial creditor" 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 a



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Page 6 | 11

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 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



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

15. 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.....".

16. That, the application is found to be complete in all respect.
Hence it does not warrant any rejection or dismissal.

17. That, the records available shows that the applicant bank had sanctioned cash credit limit and term loans to the respondent company, to be repaid within the stipulated period as per the terms and conditions agreed between the parties. That, the applicant bank had issued notice dated 10.11.2017. Records available shows that the respondent has not cared to reply the notice issued by the applicant.



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18. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respects and the Corporate Debtor committed default in paying the financial debt to the Applicant and the respondent company has acknowledged the debt.
19. 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'.
20. 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. Bhupendra Singh Narayan Singh Rajput. Therefore, this Adjudicating Authority hereby appoints Shri Bhupendra Singh Narayan Singh Rajput, A-309, ATMA House, Opp. Old Reserve Bank of India, Ashram Road, Ahmedabad 380 009 (cabsrajput309@gmail.com Mobile 9426014155) having registration No. IBBI/IPA-001/IP-P00397/2017-2018/10715 to act as an Interim Resolution Professional under Section 13(1)(c) of the Code. Form 2 of the proposed Interim Resolution Professional has been annexed and placed at page No. 563-564 of the application where declaration is made that no disciplinary proceeding is pending against him.



Bhupendra Singh Rajput

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with the Board or Indian Institute of Insolvency Professionals of ICAI.

21. 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.
22. 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.
23. 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





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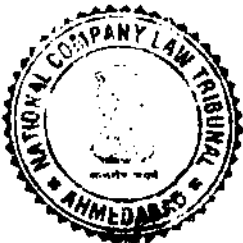
and Enforcement of Security Interest Act, 2002 (54 of 2002);

- (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.
24. 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.
25. 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.
26. This Petition stands disposed of accordingly with no order as to costs.
27. 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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Page 11 of 11
Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad