

**IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD**  
**COURT - 1**

ITEM No 152  
CP(IB) 385 of 2020

**Order under Section 7 IBC**

**IN THE MATTER OF:**

State Bank of India

.....Applicant

V/s

Shreebhav Polyweaves Pvt Ltd

.....Respondent

**Order delivered on ..31/08/2021**

**Coram:**

Madan B. Gosavi, Hon'ble Member(J)

Virendra Kumar Gupta, Hon'ble Member(T)

**PRESENTS:**

For the Applicant :

For the IRP/RP :

For the Respondent :

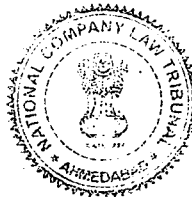
**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

(VIRENDRA KUMAR GUPTA)  
MEMBER (TECHNICAL)

(MADAN B GOSAVI)  
MEMBER (JUDICIAL)



**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD**

**C.P.(IB) 385/NCLT/AHM/2020**

[An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016]

**In the matter of:**

State Bank of India,  
Corporate Centre, Madam Cama Road,  
Nariman Point, Mumbai-400031  
and one of the branches at and known as  
Stressed Assets Management Branch,  
2<sup>nd</sup> Floor, Paramsiddhi Complex,  
Nr. Mahakant Building, Opp. V.S. Hospital, Ellisbridge,  
Ahmedabad-380006 .... Financial Creditor

**Versus**

Shreebhav Polyweaves Pvt. Ltd.  
238-240, Unity Estate,  
Next to Batliboi Ltd., Bhestan,  
Surat, Gujarat-395023. ...Corporate Debtor

**Order Reserved on 16.08.2021  
Order delivered on 31.08.2021**

**Coram: MADAN B. GOSAVI, MEMBER (J)  
VIRENDRA KUMAR GUPTA, MEMBER (T)**

Appearance...

For the Applicant : Advocate, Mr. Biju A Nair.

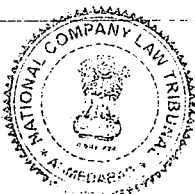


For the Respondent : Advocate, Mr. Mohit Gupta.

**ORDER**

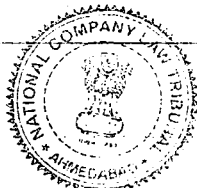
**[ Per : VIRENDRA KUMAR GUPTA, MEMBER (T) ]**

- 1) This application has been filed by Financial Creditor, namely, State Bank of India under Section 7 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "**IBC, 2016**") for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as "**CIRP**") against the Corporate Debtor, namely; Shreebhav Polyweaves Pvt. Ltd. The amount of default has been stated as Rs. 25,21,71,006.79/- and date of default has been stated as 08.12.2018 being 90 days prior to declaration of account of the Corporate Debtor as NPA on 09.03.2019.
- 2) The learned counsel for the Applicant/Financial Creditor appeared and submitted that various loans were granted from time to time. Necessary documentation was done as regard to such facilities. It is also pleaded that last sanctioned letter for grant/continuation of facilities was executed on



24.07.2018. It was also pleaded that the Application has been filed on 02.12.2020, hence, within limitation.

- 3) The learned counsel for the Respondent appeared and submitted that the person who filed the application was not authorised to file the application and for this proposition, the learned counsel has referred to Regulation 76, 77 and 79 of State Bank of India General Regulations, 1955 and based upon its interpretation such regulations do not authorise to file application under Section 7 of IBC, 2016. It has also been pleaded that there is a breach of Rule 4(3) of (Application to Adjudicating Authority) Rules, 2016 to serve the same both on Corporate Debtor as well as IBBI and which has not been done. Hence, the prescribed manner has not been followed which ought to have been. Thus, making this application not maintainable. For this proposition, the learned counsel has placed reliance on the decision of the Hon'ble Supreme Court in the case of *Deepak Babaria V. State of Gujarat*, (2014) 3 SCC 502.



- 4) In the rejoinder, the learned counsel for the Financial Creditor has pointed out that in terms of Gazette notification dated 02.05.1987, the said executive had every authority to sign the present application and accordingly the same has been filed and an affidavit to that effect has also been enclosed.
- 5) As regard to service of copy of the Application to the Corporate Debtor, it was contended that said fact had not been disputed, however, the only plea which has been made is that the copy of the same was not served on IBBI, which is a procedural requirement and does not affect the rights of the Corporate Debtor in any manner, hence, the same being of directory nature, cannot make this application as not maintainable.
- 6) We have considered the submissions made by both the sides and material on record.
- 7) As far as amount of disbursement of loan is concerned that is not in dispute. Further, it is also not in dispute that account of the Corporate Debtor has been declared NPA as



on 09.03.2019. The aspect of limitation has also not been disputed. Thus, there is a debt which is due, both in law and in fact and the applicant is complete in all respects except two points raised on behalf of Corporate Debtor. As far as first ground of validity of authorization is concerned, we have gone through the said regulations which are wide enough to grant such power to the person who has signed the application on behalf of State Bank of India being the Financial Creditor. It is also not in dispute that the said person is an officer of the Financial Creditor. Further, it is not the case of the Corporate Debtor that such Financial Creditor did not want to proceed with this application or application had been filed in violation of norms of the Bank.

- 8) The Respondent has not reproduced the Regulation 79 of said Regulations which by itself goes to show that it is just technical plea to avoid its liability and which is in our view without any substance, particularly when there is an enforcement of rights of a Financial Creditor under economic law. Even otherwise, banking business cannot be interpreted in a narrow manner as contended by the Respondent as



business of banking includes not only granting of loans but recovery thereof as well. Thus, this plea of the Corporate Debtor is rejected.

- 9) As far as second plea of non-service of copy of application to the IBBI is concerned, we are unable to comprehend as to how it affects the maintainability of this application, as the same has admittedly been served on the Corporate Debtor.

As far as non-compliance of Rule 4 towards IBBI is concerned, the proper forum to be approached is IBBI who can take appropriate action against Financial Creditor. We may also point out that NCLT, being Adjudicating Authority, carries out its function under Section 424 of the Companies Act, 2013 and is governed by principles of natural justice. Hence, technical compliances, in strict sense, may not vitiate any proceeding unless it is so fundamental that makes the initiation of CIRP either malicious, fraudulent or totally without jurisdiction. This is not the case here. The name of the name of the IRP has already been proposed whose consent along with declaration as per prescribed procedure

is also on record. It is also noted that no material has been



brought on record to show that any disciplinary proceeding is pending against proposed IRP or said person is otherwise not eligible to become IRP.

10) Accordingly, we admit this application and order as under:

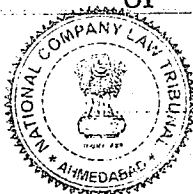
**ORDER**

1. Corporate Debtor M/s Shreebhav Polyweaves Private Limited, is admitted in Corporate Insolvency Resolution Process under Section 7 of Insolvency and Bankruptcy Code, 2016.
2. We appoint Mr. Nirav Anupam Tarkas, registration no. IBBI/IPA-02/IP-N-00776/2018-2019/12375, having address 201-209 B.N Chambers, Respondent Company Dutt Road, Opposite Welcom Hotel, Vadodara-390007, Gujarat, under section 13(1) (c) of the IB Code as IRP.
3. That the Moratorium under Section 14 of the Code shall come to effect from 31.08.2021 till the completion of 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.

4. That the Bench hereby prohibits the institution of suits or continuation of pending suit 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(s), transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; 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 SARFAESI Act, 2002 the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
5. Further, litigation or any application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to



pronouncement of this order such proceedings are expected to be dealt with in accordance with law r.w. Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.

6. That the supply of essential goods or services to Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium, period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of the Corporate Debtor.
7. The IRP so appointed shall make Public announcement of Corporate Insolvency Resolution Process (CIRP) be made immediately as specified under Section 13 of the Code and by calling for submissions of claim under Section 15 of the Code.
8. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person



associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

9. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.
10. We direct the Financial Creditor / Applicant to pay the IRP a sum of Rs. 2,00,000/- (Rs. Two lakh) as fees & expenses till the COC decides about his fees / expenses.



11. The Registry is directed to communicate a copy of this order to the Petitioner-Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on website immediately after pronouncement of the order.
12. The commencement of Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.
13. CP(IB) No. 385/7/NCLT/AHM/2020 is allowed and stands disposed of.


  
(VIRENDRA KUMAR GUPTA)  
MEMBER (TECHNICAL)

  
(MADAN B GOSAVI)  
MEMBER (JUDICIAL)

Abhishek



Certified to be True Copy of the Original

  
Joint Registrar  
NCLT, Ahmedabad Bench  
Ahmedabad