

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**

ITEM No.301

TP(IBC)/3(AHM)2022  
In  
C.P./119(HC)2015

**Order under Section 7 of IBC, 2016**

**IN THE MATTER OF:**

Dineshbhai Khimjibhai Patel

v/s

.....Applicant

Dhara Cements (India) Pvt Ltd

.....Respondent

**Order delivered on: 13/02/2024**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)  
Mr. Sameer Kakar, Hon'ble Member(T)

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

**-SD-**  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

**-SD-**  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH - COURT-I**

**TP(IBC)/3(AHM)2022  
in  
C.P/119(HC)2015**

*(An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

**IN THE MATTER OF:**

**DINESHBHAI KHIMJIBHAI PATEL**

148, Shukla Pole, Matar, TA Matar,  
Kheda-387530,  
Gujarat, India.

**...Applicant/Financial Creditor**

**VERSUS**

**DHARA CEMENTS (INDIA) PRIVATE LIMITED**

CIN: U26941GJ2008PTC055352

Registered office at:

M/s Dhara Cement (India) Pvt Ltd

At Gadu, TA-Khedbrahma,

Sabarkantha-383255,

Gujarat, India

**...Respondent/Corporate Debtor**

**Order Pronounced On: 13.02.2024**

**CORAM:**

**SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)**  
**SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCE**

For the Applicant :Mr. Tirth Nayak, Ld. Adv. a.w. Mr. Manish  
Buchasia, Ld. PCS

For the Respondent :Ms. Rajni Bankar, Ld. Adv. for Mr. Harmish  
K Shah, Ld. Adv.

**O R D E R**

1. This petition is filed on 07.06.2022 by the Financial Creditor **Dineshbhai Khimjibhai Patel** (hereinafter referred to as **“Applicant/Financial Creditor”**) against the Respondent **Dhara Cements (India) Private Limited** (hereinafter referred to as **“Respondent/The Corporate Debtor”**) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **“IBC, 2016”**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent, to appoint Interim Resolution Professional (hereinafter referred to as **“IRP”**) and declare the moratorium for having defaulted payment of its outstanding dues **Rs.1,51,32,072/-**. The date of default is stated to be **30.04.2013**.

2. On perusal of Part-I of the Form-1 reveals that the Applicant is an Individual having Identification Number (Pan Number)-AKVPP5877B. The office of the Applicant is situated at Mohanpura Farm, Juni Sarotari, Iqbalgadh, TA Amirgadh, Distt- Banaskantha - 385134.
3. On perusal of Part-II of the Form-1 reveals the Respondent is a private limited company incorporated on 04.11.2008 having CIN No.U26941GJ2008PTC055352. The registered office of the Company is situated at Gadu, TA-Khedbhrahma, Sabarkantha-383255, Gujarat, India.
4. Part-III of the Form-1 reveals that the Applicant has proposed the name of the Interim Resolution Professional (**'IRP'**) **Mr. Gyaneshwar Sahai**, having registration No. IBBI/IPA-002/IP-N00130/2017-2018/101546, Address: Second Floor, OS-2, The Next Door, Sector-76, Faridabad-121004, Haryana, India. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or in Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by him as per the requirement of the IBBI Regulations.
5. Part-IV of the Form-1 reveals that total dues as claimed by the Applicant is **Rs.1,51,32,072/-** (One Crores Fifty One Lakhs Thirty Two Thousand and Seventy Two only.) in which

Principal amount being **Rs.57,29,675** (Fifty Seven lakh Twenty Nine thousand six hundred seventy five) and Interest amount @**18% p.a. Rs94,02,397** (Ninety four lakh Two Thousand three hundred Ninety seven). The date of default is stated to be **30.04.2013**.

6. The averments made by the Applicant in its application are summarized hereunder:-

a) One Dineshbhai Khimjibhai Patel (original lender) asserts that the Respondent sought Short Term Funds for meeting working capital demands in its day-to-day business transactions. In response the Applicant extended Short Term Loans to the Respondent as needed. As of 31.03.2013, the Applicant has disbursed a total of Rs.60,79,675/- to the Respondent, reflecting the unsecured loan in the Respondent's books and Balance Sheet.

b) On 30.04.2013, the Respondent repaid Rs.3,50,000/- to the Applicant via Bank of Baroda cheque No. 14801. Consequently, the outstanding amount owed by the Respondent to the Applicant is Rs.57,29,675/-.

c) It is further submitted by the Applicant that the Auditors' Reports for the financial years 2011-2012, 2012-2013 & 2013-2014 indicate an outstanding

sum of Rs.57,29,675/- as an unsecured loan. Copies of the Auditors' Reports is annexed (marked up as Annexure-D) to the Application.

- d) The Applicant maintains that, despite issuing a Legal Notice, the Respondent has failed to make the required payment. Consequently, the Respondent is deemed responsible for an 18% per annum interest on the delayed amount of Rs.57,29,675.00, despite repeated pleas and follow-ups by the Applicant.
  
- e) Thus the Applicant filed Winding up Application before the Hon'ble High Court under section 433 of Companies Act, 1956 on 17.04.2015 for initiation of winding up process against The Respondent.
  
- f) It is submitted that the financial records from the fiscal year ending 31.03.2009 to 31.03.2016 reflect a breakdown of unsecured loans, including amounts and lenders' names. However, post 31.03.2016, a consolidated amount is presented, leading to a potential violation of Schedule III of the Companies Act, 2013.
  
- g) It is submitted that the matter was admitted by the Hon'ble High Court vide order dated 20.06.2017,

however, thereafter matters was adjourned from time to time and was never heard on merits.

h) In the view of the aforesaid, and by relying on observation made by the the Hon'ble Supreme Court in case of **Action Ispat and Power Pvt. Ltd. Vs. Shyam Metalics and Energy Ltd;** the Hon'ble High Court transferred the present Application to this Tribunal vide order dated 30.11.2021.Hence, the present application for initiating Corporate Insolvency Resolution Process against the Respondent.

i) The Applicant has relied upon below-mentioned documents to prove its case:

Sr.	Particulars	Anne xures	Page No.
1.	Consent of Proposed IRP(Form 2)	A	11-14
2.	Master data of the Respondent obtained from the website of MCA	B	15
3.	Law Relating to transfer of Proceedings from High Court to NCLT	C	16-19
4.	Section 433 and 439 of the Companies Act, 1956	D	20-22
5.	Interest Calculation on debt due till date	E	23
6.	Financial Debt Ledger as per books of Account of The Respondent	F	24

7.	Audited Financial statement showing debt due for year ended 31.03.2016	G	25-44
8.	Citation: Supreme Court Order: Entries in Financial Statement being acknowledgement of debt.  Asset Reconstruction Company (India) Limited v. Bishal Jaiswal & Anr. SLP(C) No.1168 of 2021	H	45-49
9.	Summary of Order and all orders passed by the High Court of Gujarat	I	50-61
	Authority letter authorize counsel to file case on behalf of the Financial Creditor	J	62
9.	Memorandum of Appearance(Vakalatnama)	K	63
10.	High Court Application	L	64-88
11.	Reply of Respondent along with Affidavit filed by Mr Mukeshbhai Jayantibhai Patel	M	189-192
12.	Rejoinder along with Affidavit	N	193-205
13.	Affidavit for service of notice of Application advertisement	O	206-210

7. In Compliance of order dated 03.01.2023, the Respondent has filed an affidavit in Reply before this Tribunal on 11.02.2023 vide Filing No.:2401105008592022 to place on record below mentioned averments:

- a) It is submitted that the Respondent, herein referred to as the Respondent, is duly registered under the Companies Act, 1956, with its registered office located at Gadu, Tal Khedbhramma, Sabarkantha, and is primarily engaged in the business of cement and allied products. The Respondent asserts its current status as a going concern.
- b) The Respondent refutes any existing agreement between the parties, characterizing the funds disbursed by the Applicant as mere payments. Additionally, the Respondent maintains that there is no lawful debt or liability owed to the Applicant.
- c) Furthermore, the Respondent challenges the Applicant's authority to advance a short-term loan, citing the absence of documented authorization. The Respondent argues for the dismissal of the Application, citing the Applicant's failure to submit details of default recorded with the information utility (IU).
- d) It is pleaded that the debt is asserted to be time-barred, rendering the Application legally untenable. It is argued that the Applicant's claimed amount falls below the threshold limit, making the Application non-maintainable post the March 2020 amendment.

8. The Applicant filed a rejoinder through affidavit to the reply of the Respondent on 09.08.2023 and made the following submissions:

- a) It is pleaded that the audited financial statement of The Respondent as of 31.03.2016 reveals an unsecured loan from the Applicant.
- b) It is pleaded that this case involves the transfer of the matter from the High Court, and the IBBI (IU) Regulations came into effect on 31.03.2017. Thus non-compliance does not arise if the financial default is not furnished within the Information Utility (IU). In our specific case, the Application in the High Court was filed on 31.03.2015, making it inapplicable.
- c) It is contended that Pursuant to the Hon'ble High Court's order for case transfer from the High Court to the National Company Law Tribunal (NCLT), the matter is now under the jurisdiction of NCLT, Ahmedabad. The Tribunal is instructed to take appropriate actions in accordance with the law to proceed with the case from its transferred stage. It is emphasized that the limitation provision does not apply to transfer cases. The legal precedent, as established in the case of *"Rampur Engineering Company Limited Vs. Syed Raza Ali Khan Bahadur"*

*and Ambika Mills Limited Vs. I.T. Commissioner,* affirms that a Balance Sheet serves as an acknowledgment of subsisting liability under the Limitation Act, 1963. For reference a table consisting List of dates has been presented below:

Particular	Dates
<b>Date of filing application in High Court</b>	<b>31.03.2015</b>
<b>Date of transfer petition</b>	<b>30.11.2021</b>
Last Balance sheet showing the acknowledging debt.	31.03.2016

- d) In submission the Applicant refuted the Respondent's claim on the grounds that the One Crore threshold limit does not pertain to this application, given its status as a transferred winding-up Application from 2016. In accordance with the Hon'ble Gujarat High Court's order, the case has been transferred from its original stage, rendering the threshold limit inapplicable and establishing the maintainability of the application.
- e) It is submitted that Dinesh K Patel, the Applicant, resigned from the directorial position on February 25,

2013, and the financial statements for the years ending March 31, 2013, 2014, 2015, and 2016 were subsequently endorsed by the remaining director. The outstanding amount remained unsettled until March 31, 2016. Despite Dinesh K Patel's resignation, the financial statement for the mentioned period continues to reflect the unsecured loan, indicating that no settlement occurred.

f) The application before the high court was filed on March 31, 2015, well within the stipulated time frame under the Insolvency and Bankruptcy Code (IBC).

9. Interim Order dated 12.09.2023 records as under:

“The applicant has claimed 18% interest in Form-1 filed in the transfer case and submitted that though there was no written agreement for the same. Let a proof of interest if any, claimed or applied in books of accounts by the applicant during the subsistence of advance/loan be filed by way of Additional Affidavit along with relevant documents with advanced copy to the opposite side within 7 days. Thereafter, the reply/counter if any, to be filed by the respondent within 7 days.”

10. The Applicant on 29.11.2023 for compliance of order dated 12.09.2023 sought further time to file relevant documents and filed an affidavit dated 28.11.2023 before this Tribunal

on 05.01.2024 vide diary no. D116 to place on record below mentioned documents:

- i. Ledger of Financial Creditor showing bank & cash payment to the Respondent.
- ii. Bank statement of the Respondent showing payment received from the Financial Creditor.
- iii. Bank statement of Financial Creditor showing payment to the Respondent.

11. We have heard the Ld. Counsel for the Applicant and perused the documents available on record.

12. It is noted that this Application was originally filed before Hon'ble High Court of Gujarat in which it was asserted by the Applicant that he had provided financial assistance amounting to Rs.57,29,675/- to the Respondent which the Respondent failed to repay. Further the matter was admitted by the Hon'ble High Court, however no substantive proceeding took place and later matter was transferred to this Tribunal vide Order dated 30.11.2021. Relevant paragraphs of the said order have been reproduced below:

Paragraph 3 of the Order:

*“This Court (Coram: Hon'ble Mr. Justice Vipul M. Pancholi) issued notice on 11th June, 2015 in these petitions. It appears that thereafter, learned advocate appearing for the respondent company sought permission to withdraw his appearance in these matters and therefore, this Court*

*(Coram: Hon'ble Smt. Justice Abhilasha Kumari, As her Ladyship was then) vide order dated 4 March, 2016 permitted the learned advocate to withdraw the appearance for the respondent company and issued fresh notice in these matters. This Court (Coram: Hon'ble Mr. Justice R.M. Chhaya) admitted the matters vide order dated 20th June, 2017, however, the order of advertisement was deferred. Thereafter, this Court (Coram: Hon'ble Mr. Justice R.M. Chhaya) vide order dated 1 August, 2017 in these matters directed that the order of advertisement be advertised in two newspapers of Himmatnagar Editions. It appears that thereafter, the matters have been adjourned from time to time at the request of the parties and matters have never been heard on merits and no progress has been made in the matters.”*

Further, Paragraph 7 of the Order

*“...Tribunal to do the needful in accordance with the law to proceed with the matters from the stage at which it is transferred.”*

13. The total amount claimed to be in default is Rs.1,51,32,072/- (Principal amount Rs.57,29,675/- and Rs.94,02,397/- as an Interest amount @ 18% p.a.) which is above the threshold limit. In order to establish 'debt' and 'default' it is necessary to see whether the amount was disbursed to the Respondent; which has been established by

the Applicant through Audited Financial statement of the Respondent showing debt due for the year ended 31.03.2016 has been annexed (page no.38 Paragraph 4 marked as Annexure-g) to the Application. Thus acknowledgement of debt of the Applicant by the Respondent.

14. It is noted that there is acknowledgement of the Principle amount of the debt i.e. Rs.57,29,675; which is above to the required threshold limit of Rs.1,00,000 and thus satisfying the requirement of Section 4 of Insolvency & Bankruptcy code (I&B code) before amendment of 2020.
15. It is noted that this Application was originally filed before Hon'ble High Court of Gujarat which has been transferred from the stage of admission vide order dated 30.11.2021 and the present Application been filed on date 07.06.2022 thus within limitation.
16. In view of above, the present application is complete in terms of Section 7 (5) of the Code. The Applicant is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. The outstanding financial debt is of more than rupees One Lakh which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Moreover, the said default is not covered under the period exempted under Section 10A of IBC, 2016.

17. Hence, the Application filed under section 7(2) of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/The Respondent deserves to be admitted.
18. During the course of hearing a query was raised by the Bench to the Ld. Counsel appearing on behalf of the respondent as to the present status of the loans advanced by the applicant to the respondent and its statement in the audited Financial Statement. The learned counsel for the respondent sought leave to seek instructions in this regard. Therefore, vide order dated 03.10.2023 the Respondent was directed to submit the latest audited Balance Sheet, accompanied by a certificate from the statutory auditor, reflecting the Respondent's loan details from the Applicant as on the latest available audited Balance Sheet.
19. However, despite a subsequent order on 30.10.2023, granting the Respondent a final opportunity to comply, the Respondent failed to adhere to the initial directive. The Tribunal, in its order on 09.01.2024, noted the Respondent's continued non-compliance and acknowledged the Applicant's submission of the account statement verifying the disbursed amount.
20. In view of continued disobedience of the order of this Court, the Respondent was directed by this Tribunal vide order

dated 09.01.2024 to deposit a sum of Rs.2.00 Lakhs in Prime Minister National Relief Fund within a period of seven days. However, It is seen that the Respondent has not to complied with the order dated 09.01.2024.

21. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

- (i) The Respondent/Corporate Debtor **Dhara Cements (India) Private Limited** is **admitted** in Corporate Insolvency Resolution Process (**CIRP**) under section 7 of the Code.
- (ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
  - a. *The institution of suits or continuation of pending suits or proceedings against the Respondent/Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
  - b. *Transferring, encumbering, alienating or disposing of by the Respondent/Corporate Debtor any of its*

*assets or any legal right or beneficial interest therein;*

- c. *Any action to foreclose, recover or enforce any security interest created by the Respondent/Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2022;*
- d. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Respondent/Corporate Debtor.*
- e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a The Respondent/Corporate Debtor.*

- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the

Respondent/Corporate Debtor under Section 33 of the IBC 2016, as the case may be.

- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the Respondent/Corporate Debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The Respondent/Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the Respondent/Corporate Debtor.
- (v) As proposed by the Applicant/Financial Creditor, we appoint **Mr. Gyaneshwar Sahai**, having registration No. IBBI/IPA-002/IP-N00130/2017-2018/101546, Address: Second Floor, OS-2, The Next Door, Sector-76, Faridabad-121004, Haryana, India. (E-mail ID gyanesghwar.sahai@gmail.com, having AFA valid till 10.12.2024) under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the Respondent/Corporate Debtor, its promoters, or any other person associated with the management of the Respondent/Corporate Debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the Respondent/Corporate Debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (viii) The IRP is expected to take full charge of the Respondent/Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all

assistance as may be required by the IRP in this regard.

- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'The Respondent/Corporate Debtor company' and manage the operations of the Respondent/Corporate Debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Respondent/Corporate Debtor.
- (xi) We direct the Applicant/Financial Creditor to pay IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the Applicant/Financial Creditor, The Respondent/Corporate Debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board

of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Respondent/Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

22. Accordingly, this Application **TP(IBC)/3(AHM)/2022 in CP(IB)/141/AHM/2023** is allowed and disposed of. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**-SD-**  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

**-SD-**  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

Anish keshari/LRA