

BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT 1

C.P. (I.B) No. 607/7/NCLT/AHM/2019

Coram: Hon'ble Mr. MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)  
Hon'ble Mr. VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE  
AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 02.09.2020

Name of the Company:

State Bank of India  
V/s  
CLS Industries Pvt Ltd

Section:

Section 7 of the Insolvency and Bankruptcy Code

**ORDER**

Learned Counsel Mr. Rasesh appeared for the Financial Creditor.

Learned Counsel Mr. Mohit Gupta appeared for the Corporate Debtor.

The case is fixed for pronouncement of order. The order is pronounced in open Court vide separate sheet.

(VIRENDRA KUMAR GUPTA)  
MEMBER (TECHNICAL)

Dated this the 2nd day of September, 2020

(MADAN B GOSAVI)  
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT 1**

**CP (IB) No.607/7/NCLT/AHM/2019**

**In the matter of :**

State Bank of India  
Stressed Assets Management Branch,  
2<sup>nd</sup> Floor, Paramsiddhi Complex,  
Opp: V.S. Hospital, Ellisbridge,  
Ashram Road,  
Ahmedabad-380006  
Through its Assistant General Manager  
(Mr. Sunil D Rachchh)

..Financial Creditor

Versus

M/s CLS Industries Pvt. Ltd.,  
CIN:U20200GJ2008PTC052872  
Registered Office at :  
120, 1<sup>st</sup> Floor, Rishab Corner,  
Plot No.93, Sector-8,  
Gandhidham- 370 201  
District: Kutch  
And Factory at Plot  
No.38,43,44, 45, Meghpar  
Borichi, Kutch-370110

..Corporate Debtor

**Date of Pronouncement of Order 2<sup>nd</sup> September, 2020**

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

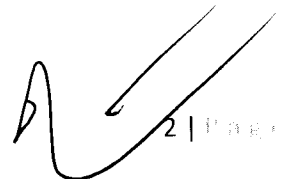
**Appearance:**

Learned Counsel Mr. Rasesh Parikh for the Financial Creditor.  
Learned Counsel Mr. Mohit Gupta for the Corporate Debtor.

**ORDER**

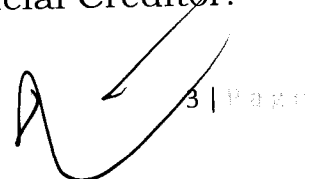
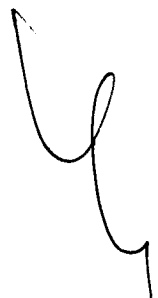
**[Per: MADAN B. GOSAVI, MEMBER(J)]**

1. State Bank of India – Financial Creditor has filed this application under Section 7 of the Insolvency and Bankruptcy Code, 2016 against M/s CLS Industries Pvt. Ltd. having CIN No. U20200GJ2008PTC052872 and Registered Office at 120, 1<sup>st</sup> Floor, Rishab Corner, Plot No.93, Sector-8, Gandhidham, Kutch-370201 to initiate Corporate Insolvency Resolution Process of the Corporate Debtor on the ground that the Corporate Debtor has committed default in paying the financial debt of Rs.20,53,85,216/-.
2. The following facts are not in dispute.
3. Firstly, on 02.02.11, the Financial Creditor granted and disbursed in favour of the Corporate Debtor Term Loan and Cash Credit Facilities to the extent of Rs.11,50,00,000/-. The term of the repayment of the amount was extended from time to time. Lastly, in year 2016, term of repayment of the loan was extended. On 28.06.2017, loan account was declared non-performing assets. On 03.07.2017. Bank served on the Corporate Debtor notice under Section 13(2) of the SARFAESI Act, 2002 and started recovery proceedings in DRT-Ahmedabad.



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4. Hon'ble Presiding Officer of the DRT-Ahmedabad vide order dated 06.12.2018, cancel and set aside the notice under Section 13 (2) of the SARFAESI Act, 2002 issued by the bank (in SA No.251/2018) holding that date of NPA of the loan account of the Corporate Debtor was not correct date. The bank filed Appeal bearing No.04 of 2019 against the above order. However, DRAT-Mumbai by order dated 25.09.2019 dismissed the appeal.
5. This application is filed by the bank to start Corporate Insolvency Process of the Corporate Debtor on the ground that Corporate Debtor committed default of the financial debt due and payable.
6. Notice of this application was served on the Corporate Debtor. It has appeared through one Mr. Mohit Sharma, authorized representative of the Corporate Debtor. He filed affidavit in reply.
7. We have gone through the affidavit in reply. Corporate Debtor raised only defence which appears in para-7 of affidavit in reply as, "*date of default has been stated by the Applicant bank to be 28.06.2017.*" which is totally denied. It is stated that the said date cannot be taken as date of default. Thus, the present application is barred by the provision of law of Limitation Act, 1963. Further, there is no default committed by the Corporate Debtor and no proof of default is produced by the Financial Creditor.

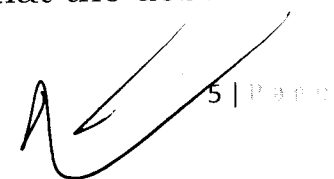


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8. We heard Learned Counsel Mr. Risabh Parikh for the Financial Creditor and Learned Counsel Mr. Mohit Gupta for the Corporate Debtor at length.
9. The Corporate Debtor did not dispute that it has taken a loan from the bank. It is not its defence that loan has completely been repaid and nothing is due and payable. It appears to us that it is the Corporate Debtor's defence that since it has not committed default in paying the debt this proceeding is not maintainable. To sustain its defense, the Corporate Debtor mainly relied on the order passed by Hon'ble DRT.
10. We have gone through the orders passed by Hon'ble DRT and DRAT. In para 34 of the order, Hon'ble Presiding Officer, DRT Ahmedabad held that *"therefore, in view of the account being classified as non-performing assets contrary to the guidelines issued by Reserve Bank of India and details of secured assets being contrary to mandatory provision of Section 13(2) of SARFAESI Act, 2002, the demand notice dated 03.07.2017 is not sustainable at law hence the same is quashed and set aside."*
11. It is also not in dispute that even Hon'ble DRAT approved the above finding of DRT. What we could gather from the perusal of above order is that DRT, DRAT held that date of declaration of loan account of the Corporate Debtor to be

NPA is not correct and demand notice under Section 13(3) of SARFAESI Act, 2002 is not sustainable at law. We are not expressing any other or contrary opinion thereto. We only note that this proceeding is not a proceeding for recovery of the loan amount. This proceeding is for resolution of Insolvency of the Corporate Debtor because the Corporate Debtor committed default in paying the financial debt.

12. Section 7(1) of the Insolvency and Bankruptcy Code, 2016 makes it clear that the application under section 7 of IB Code, 2016 is maintainable before us once it is proved that default has occurred (by the Corporate Debtor), Section 3(12) of Insolvency and Bankruptcy Code, 2016 defines default as *non-payment of debt when whole or any part or instalment of the account of the debt is become due and payable and is not paid by the debtor or the Corporate Debtor, as the case may be.*
13. In this case, it is not in dispute that Corporate Debtor has committed default in paying the debt in entirety. From the documents produced by the Financial Creditor, it is apparent that as per revised payment schedule arrived at after restructuring of Term Loan, the amount is payable in 2015-2016, 2016-2017, 2017-2018 & 2018-2019. Further, record of default as per Information Utility Report dated 24.08.2020 has also been produced by the Financial Creditor. These facts clearly establish that the debt is due



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and payable both in law and in fact. It is now well settled law that in the proceeding under Section 7 of the Insolvency and Bankruptcy Code, 20, Adjudicating Authority has to see only two relevant facts (i) whether debt more than Rs.1 lakh before 24.03.2020 in case of default prior to that date is due and payable by the Corporate Debtor & (ii) whether the Corporate Debtor committed default in paying the debt. In this case, both facts have been established by evidence on record. We have also taken into consideration all the decisions cited by the Corporate Debtor and hold that these are not applicable as the same are clearly distinguishable on facts. It is also been claimed that application was not maintainable as the false information has deliberately been provided by the Financial Creditor as far as date of default is concerned. In view of our decision on the basis of other material on record and considering the fact that such date was mentioned on the basis of earlier actions, we do not find any substance in this contention of the Corporate Debtor also.

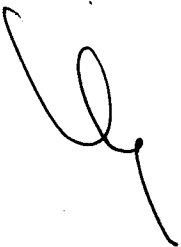
14. For all above reasons, we hold that the Corporate Debtor is required to be admitted in Corporate Insolvency Resolution Process as per Section 7 of the Insolvency and Bankruptcy Code, 2016.

15. The name of proposed IRP with requisite consent of such person is on record. It is also noted that no disciplinary

proceedings are pending against such person. In view of the above facts, this Adjudicating Authority hereby admit IB application filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, for initiation of Corporate Insolvency Resolution Process, in respect of the Corporate Debtor with the following directions:

**ORDER**

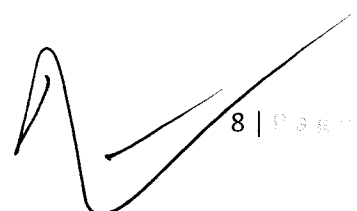
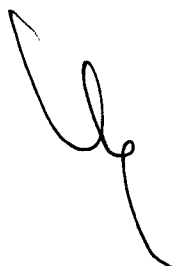
1. Corporate Debtor M/s CLS Industries Pvt. Ltd is admitted in Corporate Insolvency Resolution Process under Section 7 of Insolvency and Bankruptcy Code, 2016.
2. We appoint Mr. Dharmendra Dhelaria, registration no. IBBI/IPA-001/IP-P00251/2017-2018/10480, having address A-201, Suryadeep Tower, Near Navneet Prakashan, Gurukul Road, Memnagar, Ahmedabad-380052, Email dhelariya@gmail.com 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 **02.09.2020** 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.



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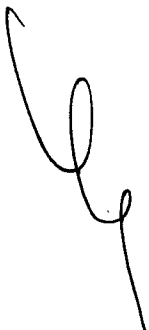
4. That the Bench hereby prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any Court of law. Tribunal, Arbitration Panel or other Authority(s), transferring, encumbering, alienating or 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



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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. 50,000/- ( Rs. Fifty Thousand) 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. 607/7/NCLT/AHM/2019 is allowed and stands disposed of.

  
29/9/2020

**(VIRENDRA KUMAR GUPTA)**  
**ADJUDICATING AUTHORITY &**  
**MEMBER (T)**

  
29/9/2020

**(MADAN B GOSAVI)**  
**ADJUDICATING AUTHORITY &**  
**MEMBER (J)**

Signed on this, the 2<sup>nd</sup> day of September, 2020.

**PC**