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

ITEM No.145

C.P.(IB)/9(AHM)2021

Order under Section 7 IBC

IN THE MATTER OF:

Bank of India ....**Applicant**

V/s

Shree Rajeshwaranand Paper Mills Ltd. ....**Respondent**

Order delivered on ..07/12/2022

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)
Mr.Kaushalendra Kumar Singh, 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 open court vide separate sheet.

-SD-	-SD-
KAUSHALENDRA KUMAR SINGH	**DR.MADAN B GOSAVI**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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

C.P.(IB)/9(AHM)2021

In the matter of :

[An application filed 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]

Bank of India A body corporate constituted under the provisions of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its Head Office at Star House, C-5, G-Block, Bandra-Kurla Complex, Bandra (East), Mumbai-51 and one of its Branches at Vadodara (Main) Branch, Opp. Ushakiran Building, Raopura, Vadodara-390 001, Gujarat.	.... Applicant / Financial Creditor
Versus	
M/s.Shree Rajeshwaranand Paper Mills Limited Village : Govali Bharuch – Jhagadia Road Taluka : Jhagadia District : Bharuch Gujarat	.... Respondent/ Corporate Debtor

Order pronounced on: 07.12.2022

Coram: Dr. Madan B. Gosavi-Member (Judicial)
Mr.Kaushalendra Kumar Singh-Member (Technical)

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

For the Respondent : Ms. Natasha Dhruman Shah, Advocate.

ORDER

1. This application is filed under Section 7 of the IBC, 2016 by Bank of India (Financial Creditor) against M/s. Shree Rajeshwaranand Paper Mills Limited (Corporate Debtor) for initiating the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor on the ground that the Corporate Debtor committed a default in paying the financial debt of Rs.21,23,21,623/- (Rupees Twenty One Crores Twenty Three Lakhs Twenty One Thousand Six Hundred Twenty Three only). The date of default as per Part-IV of Form-1 is 31.01.2020.

2. The following facts are not in dispute:-

2.1 At the request of the Corporate Debtor, the Financial Creditor granted and disbursed in favour of the Corporate Debtor in five loan accounts on various dates. In the said accounts, the disbursements were made between 21.03.2014 and 19.12.2018. The loans were reviewed on 19.08.2017.

2.2 The Corporate Debtor committed default in paying the debt in accordance with the loan agreement, there is no dispute about that. The Corporate Debtor went on to acknowledge the debts. On 18.11.2019, the Corporate Debtor requested the Financial Creditor to sanction the Overdraft facility and that was granted.

2.3 Since the Corporate Debtor committed defaults in paying the debts, this application is filed to initiate the CIRP of the Corporate Debtor.

2.4 The Corporate Debtor has been served with notice of this application. The Corporate Debtor appeared through one of its representatives, viz. Mr. Prakashchandra Rasiklal Vora, and filed an affidavit in reply dated 25.09.2021. It is contended that this application is not filed by the duly authorised officer of the bank. Hence, this application is not maintainable. The bank has already filed recovery proceedings before the Debts Recovery Tribunal-II (DRT), Ahmedabad and has taken the symbolic possession of the assets of the Corporate Debtor. This Application is filed only for recovery of that amount and not for insolvency resolution of the Corporate Debtor. Hence, this application is not maintainable.

3. Heard Ld. Counsel for the Financial Creditor and Ld. Counsel for the Corporate Debtor at length. We have gone through the evidence and the materials on record.

4. At the outset, we note that there is no dispute over the fact that the Corporate Debtor defaulted in paying the financial debts of more than Rs.1 crore (as per Section 4 of the IBC). From evidence and material on record, we also hold that the application is filed by properly authorized officer of the Bank.

5. Ld. Counsel appearing for the Corporate Debtor submitted that as on today the Financial Creditor is in possession of the assets of the Corporate Debtor worth Rs.81,41,06,008.88 as against the default amount of Rs.21,23,21,623.99 (as claimed in the application). The Ld. Counsel appearing for the Corporate Debtor relying on the judgment of the Hon'ble Supreme Court in the case of ***Vidarbha Industries Power Limited Vs. Axis Bank Limited*** submitted that this Adjudicating Authority may reject this application by directing the Financial Creditor to sell the properties it has in possession by way of mortgage. Ld. Counsel relied on paragraphs 82 and 84 of the said judgment, which is as follows:-

> *"82 The Adjudicating Authority (NCLT) failed to appreciate that the question of time bound initiation and completion of CIRP could only arise if the companies were bankrupt or insolvent and not otherwise. Moreover the timeline starts ticking only from the date of admission of the application for initiation of CIRP and not from the date of filing the same.*
>
> *84 The judgment of this Court* ***Swiss Ribbons*** *(supra), which was rendered in the context of a challenge to the vires of the IBC, does not consider the question of whether Section 7(5)(a) of the IBC is mandatory or discretionary. It is well settled that a judgment is a precedent for the question of law that is raised and decided. The language used in a judgment cannot be read like a statute. In any case, words and phrases in the judgment cannot be construed in a truncated manner out of context".*

6. We look into the facts of this case in order to see whether the ratio laid down by the Hon'ble Apex Court in the above ruling applies herein?

7. In the case before the Hon'ble Apex Court, the Corporate Debtor was to receive its dues from the Government Department(s) and those were much more than the amount in default. Considering those facts, the Hon'ble Apex Court held that the Adjudicating Authority ought to have used discretion in not admitting the viable company in CIRP.

8. In this case, admittedly, the Corporate Debtor has closed down unit for years together. The proceedings of the recovery of debts against the Corporate Debtor were initiated by the Bank, which is pending before DRT-II, Ahmedabad.

9. The Corporate Debtor could not pay the debt amount for a couple of years. In such a situation, we have no alternative but to hold that the Corporate Debtor is now an insolvent company and its insolvency need to be resolved. We cannot direct the Financial Creditor herein to sell the mortgaged properties in its possession at least in this proceedings before this Adjudicating Authority. We hold that the ruling is not applicable.

10. Coming back to the facts, the Corporate Debtor admitted its default. This application is defect free. The Financial Creditor has proposed the name of Insolvency Professional Ms. Vineeta Maheshwari, Chartered Accountant, having Registration No. IBBI/IPA-001/IP-P00185/2017-2018/10364 and e-mail Id: ipvineetak@gmail.com for appointment as an Interim Resolution

Professional ("IRP"). There is no disciplinary proceeding against the Insolvency Professional whose name is suggested for IRP. There is no reason to reject this application. Hence, we pass the following order:-

ORDER

i) The Corporate Debtor, viz., M/s. Shree Rajeshwaranand Paper Mills Limited, is admitted in the Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.

ii) We appoint Ms. Vineeta Maheshwari, Chartered Accountant, having Registration No. IBBI/IPA-001/IP-P00185/2017-2018/10364 and e-mail Id: ipvineetak@gmail.com and having an address at M-19, Metro Tower, Ring Road, Surat-395 002 under section 13(1) (c) of the IB Code as IRP as proposed by the Financial Creditor.

iii) The Moratorium under Section 14 of the Code shall come to effect from the date of this order 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.

iv) The Adjudicating Authority hereby prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Debtor including the execution of any judgment, decree or order in any Court of law and further prohibits Tribunals, Arbitration Panels or other Authority(s), transferring, encumbering, alienating or disposing of any of Corporate Debtor 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.

v) Further, litigation or application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to the pronouncement of this order such proceedings are expected to be dealt with in accordance with law i.e., Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.

v) 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 assets and management of the Corporate Debtor.

vi) The IRP so appointed shall make a Public announcement of the Corporate Insolvency Resolution Process (CIRP) immediately as specified under Section 13 of the Code and by calling for submissions of the claim under Section 15 of the Code.

viii) The IRP shall perform all her functions as contemplated, *inter-alia,* by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with the management of the Corporate Debtor are under legal obligation as per Section 19 of the Code to 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 the IRP, do not assist or co-operate, the IRP is at liberty to make an appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

ix) The IRP shall be under a 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 an obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

x) We direct the Financial Creditor / Applicant to pay the IRP a sum of **Rs.1,00,000/- (Rupees One lakh)** as fees & expenses till the CoC decides about her fees/expenses.

11. The Registry is directed to communicate a copy of this order to the Financial Creditor, the 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 the website immediately after pronouncement of the order.

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

13. Accordingly, C.P.(IB)/9(AHM)2021 is allowed.

-SD-	**-SD-**
KAUSHALENDRA KUMAR SINGH	**DR.MADAN B. GOSAVI**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Sudha