

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

IA/147(AHM)2021 in CP(IB) 848 of 2019

**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 06.04.2021**

Name of the Company: Sintex Industries Ltd.
V/s
Invesco Asset Management (India) Pvt.
Ltd
Section 60(5) of IBC,2016.

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

**ORDER
(through video conferencing/physical)**

Mr. Maulik Nanavati, Advocate appeared on behalf of Respondent.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 6th day of April, 2021


**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No.(IB) 848/7/NCLT/AHM/2019

In the matter of:

Invesco Asset Management (India) Private Limited

2101 A, 21st Floor, A-Wing

Marathon Futurex

N.M. Joshi Marg,

Lower Parel

MUMBAI 400 013

:

Petitioner

[Financial Creditor]

Versus

M/s. Sintex Industries Limited

Kalol (North Gujarat)

District Gandhinagar 382 721

GUJARAT STATE

:

Respondent

[Corporate Debtor]

IA/38(AHM) 2021 in

C.P. No.(IB) 848/7/NCLT/AHM/2019

In the matter of:

M/s. Sintex Industries Limited

Kalol (North Gujarat)

District Gandhinagar 382 721

GUJARAT STATE

:

Applicant

Versus

Invesco Asset Management (India) Private Limited

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Shoebadighe

Chunna

Versus

Invesco Asset Management (India) Private Limited

2101 A, 21st Floor, A-Wing

Marathon Futurex

N.M. Joshi Marg,

Lower Parel

MUMBAI 400 013

:

Respondent

Order delivered on 6th April, 2021

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Petitioner : Mr. Maulik Nanavati, Advocate
Respondent : Mr. Arjun Sheth, Advocate

ORDER

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

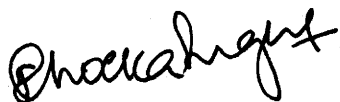
1. Ms. Nupur Tainwala, being authorised signatory, on behalf of **Invesco Asset Management (India) Private Limited**, filed this petition under section 7 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of The Insolvency and Bankruptcy (Application 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. The applicant/financial creditor is an investment manager, incorporated on 20.05.2005, having its registered office at Mumbai, having identification No. 153471, is in the investment management business.
3. The respondent/corporate debtor - M/s. Sintex Industries Limited is a company incorporated under the Companies Act, 1956 on 1st

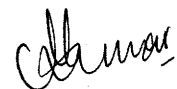
Manorama Kumari

Chockalingam

June, 1931 having identification No. L17110GJ1931PLC000454 having its registered office at Kalol, Dist. Gandhinagar, Gujarat State. That Authorised share capital of the respondent company is Rs. 65,00,00,000/- and paid up share capital is Rs. 59,40,95,088/-.

4. That, the applicant/financial creditor in its capacity as the Investment Manager for Invesco India Credit Risk Fund, a scheme of Invesco Mutual Fund and duly authorised by Invesco Trustee Private Limited, in pursuance of the Investment Management Agreement dated 27th April, 2006, acting in its capacity as the Investment Manager, granted Rs. 15,00,00,000/- (Rupees fifteen crores only) being 150 secured non-convertible debentures of face value of Rs. 10,00,000/- each bearing ISIN INE429C07507 and bearing coupon of 10.70% p.a. and aggregating to Rs. 15,00,00,000/-.
5. The applicant has submitted that the date of allotment under the Information Memorandum and DTD as defined, was 30th September, 2014, however, the financial creditor invested in the said debentures for the fund from the secondary market on 04th December, 2014.
6. The applicant has stated that the corporate debtor defaulted on the due date mentioned in the total principal amount of Rs. 15,00,00,000/- along with interest @ 10.70% p.a. amounting to **Rs. 15,40,01,506.85 (Rupees fifteen crores forty lacs one thousand five hundred six and paise eighty-five only)** as on 30th September, 2019 along with 2% p.a. default interest till the

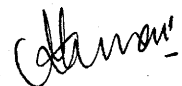




date of payment of all outstanding amounts. That, a sum of Rs. 20,00,000/- (Rupees twenty lacs only) has been paid by the corporate debtor on 23rd October, 2019 as part payment towards the amount outstanding and further sum of Rs. 10,00,000/- (Rupees ten lacs only) and Rs. 10,01,507/- (Rupees ten lacs one thousand five hundred seven only) have been paid by the corporate debtor on 8th November, 2019 and 11th November, 2019 respectively. That, the default occurred on 30th September, 2019 towards principal of Rs. 15,00,00,000/- along with interest @ 10.70% per annum. That, the applicant holds first charge (pari passu) over the fixed assets of the corporate debtor being immovable property (excluding fixed assets at Nagpur and Kolkata) with minimum security cover of 1.25 times of the outstanding amount of all non-convertible debentures.

7. The applicant has further stated that pursuant to the issue of debentures, a Debenture Trust Deed(DTD) dated 2nd August, 2014, Deed of Modification and Confirmation dated 1st November, 2014 were also duly executed between the corporate debtor and one Debenture Trustee. That, the Financial Creditor is a beneficial owner under the said DTD.
8. The applicant has further stated that The Bombay Stock Exchange and National Stock Exchange were informed on 1st October, 2019 of the default by the corporate debtor which included the put option exercised by the applicant.
9. The applicant has further stated that by way of email dated 30th July, 2019 the corporate debtor was requested to acknowledge





the exercise of put option and the corporate debtor acknowledged the exercise of put option on 1st August, 2019. That, on 3rd August, 2019 the financial creditor issued two notices to the corporate debtor, one for providing certain information and the other one to confirm in writing an unconditional undertaking pursuant to the exercise of the put option. That, on 14th August, 2019, the financial creditor received letter dated 25th July, 2019 from corporate debtor duly acknowledging the liability and showing its inability to pay the debts.

10. The applicant further submitted that on 1st October, 2019, through advocate, sent notice to the corporate debtor to redeem the Invesco Debentures pursuant to the put option exercised by the financial creditor and to honour such repayment in consonance with the DTD and Information Memorandum. The said notice is annexed at **Annexure-Y** at Page No. 540-543.
11. The applicant has submitted copy of the following documents in support of its claim: -

Sl. No.	Particulars	Page Nos.
1	Investment Management agreement dated 27.04.2006	23-51
2	Scheme information document dated 27.04.2019 as per Securities and Exchange Board of India (Mutual funds) Regulations, 1996 (as amended)	52-145
3	Boar Resolution dated 18.10.2019 of Invesco Trustee Private Limited authorising Ms. Nupur Tainwala to submit the application	146-147
4	Form 2 – consent of IRP	149-150
5	Computation of default	151
6	Certificate of registration of charge issued by RoC.	152
7	Record of debt maintained by Information Utility in form C	153-154

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8	Information Memorandum dated 29.09.2014	155-198
9	Statement of holdings dated 3.10.2019 of National Securities Depository Limited	198A
10	Debenture Trust Deed dated 02.08.2012 and confirmation dated 01.11.2014	199-513
11	Record of default with credit information utility	514
12	Bank certificate issued by Deutsche Bank	515-516
13	Intimation to stock exchange dated 12.06.2019 of downgrade in credit rating due to default by the corporate debtor	517
14	Letter dated 14.06.2019 written by financial creditor to the corporate debtor	518-520
15	Electronic advice dated 25.07.2019 sent to the corporate debtor	521
16	Email dated 30.07.2019 by the financial creditor to the corporate debtor, requesting the corporate debtor to acknowledge exercise of put option	522-526
17	Email dated 01.08.2019 by corporate debtor to the financial creditor acknowledging exercise of put option by the financial creditor	527-528
18	Notice dated 03.08.2019 issued by the advocates of financial creditor providing information to the corporate debtor	529-532
19	Notice dated 03.08.2019 issued by the advocates of financial creditor calling upon the corporate debtor to give unconditional undertaking pursuant to exercise of put option	533-534
20	Acknowledgement of receipt of letters dated 03.08.2019 written by advocates of financial creditor to the corporate debtor	535-536
21	Letter dated 25.07.2019 received on 13.08.2019 written by corporate debtor and financial creditor acknowledging its inability to pay the due debt	537-538
22	Receipt dated 13.08.2019 showing receipt of letter dated 25.07.2019 by the financial creditor on that date	539
23	Notice dated 01.10.2019 written by advocates of financial creditor to the corporate debtor to redeem Invesco Debentures pursuant to exercise of put option	540-543
24	Receipt of acknowledgement for notice dated 01.10.2019 written by advocates of financial creditor to the corporate debtor	544
25	Bank statement given by Deutsche Bank for the period from June 2019 to 26.11.2019	545


12. On receipt of the notice Respondent appeared and filed his detailed reply denying information made in Form-1 i.e. Application

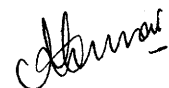
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by Financial Creditor to initiate Corporate Insolvency Resolution Process under Chapter II of Part II of the Code.

13. The learned lawyer appearing on behalf of the Respondent raised an objection in reply affidavit that the instant insolvency application is not filed by the trustee of the fund. It is submitted that the application is signed by one Ms. Nupur Tainwala in her capacity as Assistant Vice President-Legal of Invesco Asset Management (India) Pvt Ltd. It is submitted that by way of board resolution dated 18.10.2019 passed by the board of one Invesco Trustee Pvt. Ltd., whereby, the authority is given to Ms Nupur Tainwala, Vice President to file suit, actions, claims, petition is initiated by or against the Invesco Asset Management (India) Pvt Ltd./ Invesco Mutual Fund/ the 'Company', where the 'Company' is not defined in such board resolution.
14. Respondent further objected by way of reply affidavit that the Form-1 of Insolvency Application under the head 'position with or in relation to financial creditor', it is set out as Assistant Vice President-Legal has filed the case in its capacity as purported delegating of the purported power to file the present insolvency application pursuant to purported board resolution given by the trustee of the fund being Invesco Trustee Pvt. Ltd.
15. It is further raised by the Respondent in reply affidavit that the Hon'ble NCLAT in the case of **Palogix Infrastructure Pvt. Ltd. Vs. ICICI Bank Ltd. 2017 SCC Online NCLAT 266** observed that *Applicant must be an authorized representative of the Financial Creditor and also must hold a position in relation to the*





Financial Creditor. Therefore, the Applicant is not the Financial Creditor but is deriving authority from the Financial Creditor being Invesco Trustee Pvt. Ltd. and Ms Nupur Tainwala is not holding the position of Assistant Vice President-Legal of such Financial Creditor being Invesco Trustee Pvt. Ltd. and she does not hold any position in relation to the Applicant. In view of that, the instant application is required to be rejected.

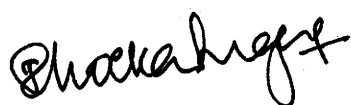
16. It is further raised by way of objection that this kind of delegation of power, wherein, the Financial Creditor delegates its power to another person to file an insolvency application, is not permitted.
17. It is further objected by Respondent that IB Code is a complete code by itself. The provision of the Power of Attorney Act, 1882 cannot override the specific provision of a statute which requires that a particular act should be done by a person in the manner as prescribed thereunder. Hence, the Power of Attorney holder is not competent to file the instant application.
18. Gone through the records also seen the documents. The only objection is raised by the corporate debtor is the authorization given to the Ms Nupur Tainwala.
19. On perusal of the record, it is found that on 18.10.2019 a board resolution was passed by Invesco Trustee Pvt. Ltd., whereby, Ms Nupur Tainwala, Assistant Vice President- Legal of Invesco Asset Management (India) Pvt Ltd. is authorised to file any case/suit etc. before any court of law, tribunals, quasi-judicial process etc. The said **Annexure-C** i.e. the Board Resolution is annexed at Page No. 146, which contained the detail power/authorization provided

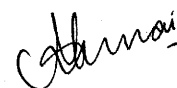



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to Ms. Nupur Tainwala by one Ms. Deepti Dave being authorized signatory of Invesco Trustee Pvt. Ltd. Since, the specific power has been given to the Ms. Nupur Tainwala, it cannot be discarded on the ground of technicalities.

20. Further, on perusal of the record, it is found that the Applicant has annexed debenture trust deed at page no. 264 executed on second day of August, 2014 by Corporate Debtor and IL&FS Company Limited. Thereafter, again executed a deed of modification and confirmation on first day of November, 2014 with certain terms and conditions.
21. On perusal of the record, it is found that the Applicant issued a letter on 14.06.2019 to the Corporate Debtor calling upon the Respondent to redeem and accordingly pay all amount outstanding due in relation to the non-convertible debenture bearing IS INE429C07057 owing to the credit rating downgrade of the Corporate Debtor, which lead to an event of default under DTD and Information Memorandum. The Applicant has also annexed the copy of letter dated 14.06.2019 as **Annexure-O**. It is also seen that the Deutsche Bank AG, the custodian and banker of the fund, exercised "put option" by way of electronic devise sent to the Corporate Debtor on 25.07.2019 on the instruction of the Financial Creditor. However, by way of E-mail dated 30.07.2019, the Financial Creditor requested the Corporate Debtor to acknowledge the exercise of "put option" by the Financial Creditor.
22. It is also seen that the Corporate Debtor acknowledged the put option by Financial Creditor and have also acknowledged the






receipt of put option notice by the Financial Creditor. The same is annexed as **Annexure-R** at page no. 527 of the Application. It is also found that on 03.08.2019, Advocate of the Financial Creditor has issued a notice to the Corporate Debtor as reflected from **Annexure-T** at page no. 533-534 calling upon the Corporate Debtor to confirm in writing and unconditional undertaking pursuant to the exercise of put option by the Financial Creditor for redemption of the Invesco Debenture within 3 days of the receipt of the notice. It is also found that the Corporate Debtor issued a letter on 25.07.2019 to the Applicant by which said letter the Respondent/Corporate Debtor has duly acknowledged its liability and also expressed its inability to pay its debts. The copy of the said letter dated 25.07.2019 is annexed by the Applicant as **Annexure-W** at Page No. 537. Vide said letter the Corporate Debtor stated inter alia that, *"SIL, over the years, has been regularly honouring all its debt service obligation to lenders. However, in the recent period, as already informed to you, the company is passing through financial stressful face and is facing severe liquidity problems due to which there has been delay in servicing debt obligation and further requested to support the company in its debt resolution efforts"*. Thus, Respondent has admitted dues, as claimed by the Petitioner.

23. From the above, it is clear that there is "debt" and "due" and the "default" is occurred, which said debt has duly been acknowledged by the Corporate Debtor. This Adjudicating Authority is only required to consider whether there is any "default" and "debt" is due and payable. In the instant case the Applicant has placed on






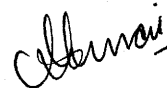
record enough documents evidencing the default. Hence, the present application deserves to be admitted.

24. On perusal of the record, it is found that the instant petition is filed by the Applicant is well within limitation. That apart, the Application is also complete in all respect.
25. The documents so produce by the Financial Creditor clearly establish the 'debt and there is default on the part of the Corporate Debtor in payment of financial debt. Thus, under the facts and circumstances and as discussed herein above, the Applicant fulfils the requirement of the IB Code and the Applicant is a Financial Creditor within the meaning of Section 5 (7) & 5(8)(C) of the IB Code. For the sake of convenience Section 5(8) (C) is produced herein below:

5(8) (C) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

26. From the above stated facts and the material available on record, it is evident that Respondent has committed a default in payment of financial debt and therefore, it is a fit case to initiate Corporate Insolvency Resolution Process by admitted the instant application.
27. 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;





**IA/38(AHM) 2021 and IA/147(AHM)2021 in
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- (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 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.

28. 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 transactions as may be notified by the Central Government in consultation with any financial sector regulator.

29. 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.

30. The applicant/financial creditor has proposed the name of Mr. Pinakin Shah to act as Interim Resolution Professional. This Adjudicating Authority hereby appoint Mr. Pinakin Shah, A-201, Siddhi Vinayak Towers, b/h DCP office, next to Kataria House, Off. S.G. Highway, Makaraba, Ahmedabad-380051 (pinakincs@yahoo.com) (Mobile 9227223377) having registration No. IBBI/IPA-002/IP-N00106/2017-2018/10248 to act as an





interim resolution professional under Section 13(1)(c) of the Code.

31. This Petition is accordingly admitted. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
32. Registry is directed to inform the office of Registrar of Companies that the respondent company is under corporate insolvency resolution process and, therefore, no proceedings for striking of name of the respondent company be initiated arising out of non-compliance of Sections 159 to 162 & 220 etc. of the Companies Act, 2013 as it would be detrimental to the process of liquidation and sale of assets to realise the amount of all the stakeholders.

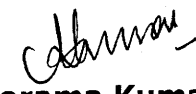
ORDER in IA/38(AHM) 2021

1. The instant IA is filed by the Applicant/Org. Respondent with a prayer to allow the Respondent to take on record his affidavit in reply in application filed under Section 7 of the IB Code. Since, Respondent/Org. Petitioner has no objection, the affidavit in reply is taken on record.
2. Accordingly, the instant IA is allowed and stands disposed off.

ORDER in IA/147(AHM)2021

1. In view of the admission of C.P. (I.B) 848/2019, the instant IA become infructuous.
2. Accordingly, the instant IA is dismissed as infructuous.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

AB