

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. (IB) 3708/2019

Under section 7 of the IBC, 2016

In the matter of

Corporation Bank

Registered Office at: Post Box No. 88, Mangladevi
Temple Road, Pandeshwar, Mangaluru-575001.

Branch at: Thane Branch, A wing, Ground floor,
Oasis Sapphire, Opp. S.T. Bus Depot, Khopat,
Thane West-400601, Maharashtra.

.... Applicant/Financial Creditor

versus

Nihar Cotspin Private Limited

S.No. 21/22, Bhairav Compound Shelar Village,
Bhiwandi, Thane - 421302, Maharashtra.

.... Respondent/ Corporate Debtor

Order delivered on: 13.03.2020

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble Shyam Babu Gautam, Member (Technical)

Appearance:

For the Petitioner: Adv. Amey Hadwale i/b Adv. Geeta
Lundwani

For the Corporate Debtor: Adv. Ameya Mahajan.

Per: Bhaskara Pantula Mohan, Member (Judicial)

ORDER

1. This Company Petition is filed by Corporation Bank, (hereinafter called "Financial Creditor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Nihar Cotspin Private Limited (hereinafter called "Corporate Debtor") by invoking the provisions of Section 7 of Insolvency and Bankruptcy Code (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016

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alleging that the corporate debtor committed default in making repayment to the petitioner of the loan facility availed by it from the petitioner.

2. The financial creditor is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 whereas the corporate debtor is a company incorporated on 24.05.2013 bearing CIN U17200MH2013PTC243583 and having authorized share capital of Rs.5,00,000/- and paid up share capital of Rs.1,00,000/-
3. The counsel appearing on behalf of the financial creditor submitted that they provided Loans/Financial facility to the corporate debtor through creation of accounts in the name of the corporate debtor vide Sanction Letter-1 dated 13.05.2014 bearing Ref No. THN/ZO/ADV/VPG/ZLCC/13/2014-15, for an amount tuning to Rs. 15,91,00,000/-. The aforesaid amount was disbursed in the form of term loans, forward sale contracts, inland letter of credit, import letter of credit and cash credit facilities.
4. The counsel appearing on behalf of the financial creditor submitted that they revised the terms of the Loans/Financial facility, mentioned in Sanction Letter-1, given to the Corporate Debtor vide Sanction letter-2 dated 09.12.2015 bearing Ref No. THN/ZO/ADV/DRK/ZLCC/051/2015-16, for an amount tuning to Rs. 12,00,00,000/-, thereby decreasing the total amount of the facility provided. The aforesaid amount was disbursed in the form of term loans, forward sale contracts, inland letter of credit, import letter of credit and cash credit facilities. However, pursuant to the aforesaid sanction letter, the financial creditor disbursed a total amount of Rs. 9,24,99,840/-.
5. The total amount claimed by the financial creditor to be in default is Rs.12,68,54,381.91/- which includes the principal amount of Rs. 9,10,23,253.17/- along with interest of Rs.3,58,31,128.74/- as on 22.07.2019. Also, due to non-payment of debt on regular basis, the corporate debtor's account was declared as a Non -Performing Asset on 01.12.2016.

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6. The financial creditor also mentioned the said term loan was also secured by Guarantee by two Deed of Guarantees, dated 08.07.2014 for an amount of Rs.8,50,00,000/- and the other one dated 12.08.2015 for an amount of Rs.9,50,00,000/- which was issued by three persons namely Mr. Chirag Thakkar, Mrs. Reema Chirag Thakkar and Mrs. Sonal Suresh Thakkar. This Deed of Guarantee is enclosed with the petition at Annexure- M. The said Term Loans were also secured by Hypothecation of assets of the corporate debtor and recorded in the Common Deed of Hypothecation dated 08.07.2014 and a Supplemental Common Deed of Hypothecation dated 12.08.2015. This Deed of Hypothecation was filed with the Registrar of Companies in Form No. CHG-1 dated 08.07.2014, 24.08.2015 and 23.01.2016 wherein the stock, book debts, all other current assets movable and equitable mortgage of factory land and building situated at Sr. No. 21/22, Bhairav Compound, Shelar Village, Bhivandi, Thane, Maharashtra, India 421302 were hypothecated.
7. The counsel for the financial creditor also mentioned about the demand promissory notes being executed in their favour by the corporate debtor for an amount of Rs.2,50,00,000/- @12.85% p.a. dated 08.07.2014 and Rs.1,50,00,000/- @18.25%, dated 12.08.2015.
8. There were collateral securities also which were in the form of immovable properties situated at village Shelar, Bhivandi, Thane and one at Dhamkar Naka, Bhivandi, mortgaged with the financial creditor, out of which the Shop No. 5, Ground Floor, Sainath Complex, Municipal House 282/7, Telipada, Dhamkar Naka, Bhivandi was sold through e-auction and an amount of Rs.32,50,000/- was recovered which was credited to the account of the corporate debtor.
9. The counsel appearing on behalf of the financial creditor further mentioned that they had sent a notice dated 04.01.2017 to the corporate debtor under Section 13(2) read with Section 13(3) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (herein after called "SARFAESI Act"), demanding payment of the dues as on that day and thereafter took symbolic possession of the said assets of the corporate debtor due to failure in payment of the outstanding

amount within the prescribed time limit of 60 days which is evident vide Possession Notice dated 24.08.2017. Thereafter, the financial creditor also obtained an order, dated 05.05.2018, from the Court of District Magistrate, Thane, for taking physical possession of the property, however the same is not being pursued by the bank upon coming into effect of the Code and it thus preferred a petition before this Tribunal for initiation of CIRP against the defaulting corporate debtor.

10. The Financial Creditor has annexed the following documents in support of the contentions made:

- i. Copy of Sanction Letters bearing No.
 - a. THN/ZO/ADV/VPG/ZLCC/13/2014-15, dated 13.05.2014 and
 - b. THN/ZO/ADV/DRK/ZLCC/051/2015-16, dated 09.12.2015.
- ii. Tabular working for computation of amount and dates of default.
- iii. Master Data of the corporate debtor downloaded from the website of MCA.
- iv. Copy of Consent from the proposed Interim Resolution Professional in Form 2.
- v. Copy of Agreements of Term Loan dated 08.07.2014.
- vi. Copy of notice dated 04.01.2017 under section 13(2) read with Section 13(3) of the SARFAESI Act.
- vii. Copy of the Possession Notice dated 24.08.2017.
- viii. Copy of Deed of Guarantee dated 08.07.2014 and 12.08.2015.
- ix. Copy of Deed of Hypothecation dated 08.07.2014 and Supplemental Common Deed of Hypothecation dated 12.08.2015.
- x. Copy of Counter Guarantee of Bank Guarantee.
- xi. Copy of Demand Promissory Notes dated 08.07.2014 and 12.08.2015.
- xii. Copy of Mortgage Deed dated 22.07.2014.

11. The counsel appearing on behalf of the corporate debtor on the contrary has denied all the averments made by the financial creditor and mentioned that they have not come before this Tribunal with clean hands and has filed this petition with an intention of arm-twisting and recovering the amounts from them.

He mentioned that the financial creditor has intentionally and deliberately suppressed material facts regarding the payments made in part by them to the financial creditor thereby misleading this tribunal.

12. The counsel appearing on behalf of the corporate debtor also submitted that an unfortunate fire accident had taken place in their factory on 18.02.2018. The factory was insured under the standard fire and Special Perils Policy for an aggregating sum of Rs.9,00,00,000, jointly by both the parties herein and they submitted a claim for Rs. 5,26,72,613 but due to pressure from the financial creditor upon the corporate debtor, the corporate debtor accepted final claim of Rs.1,98,69,642 which is paid to the financial creditor of which there is no mention in the petition.

13. The counsel appearing for the corporate debtor submitted that the abovementioned order dated 05.05.2018 passed by the Court of District Magistrate, Thane, was passed ex-parte and the papers were never served upon the corporate debtor and therefore, it is in the process of challenging the aforesaid order before the appropriate Court.

14. the corporate debtor has annexed the following documents in their reply in support of their contentions:

- i. Copy of Bank Statements
- ii. Copy of photographs taken by the New India Assurance after fire in the factory of the corporate debtor
- iii. Copy of Police Punchnama a/w. translated copy
- iv. Copy of the Forensic Investigation Report of the incident of fire accident evidencing the actual cause of fire.
- v. Copy of the Standard fire and Special Perils Policy
- vi. Copy of fire insurance claim form
- vii. Copy of receipt in which the corporate debtor had protested about the part payment
- viii. Copy of Sale Certificate issued by the financial creditor a/w the bank statement of the corporate debtor.

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7. Therefore, upon taking into consideration all the statements, averments, contentions made by both the parties and hearing them at length, the following order is hereby passed:

FINDINGS

9. We have heard the counsels appearing on behalf of the financial creditor as well as the corporate debtor and after perusal of all the documents submitted by them, there remains no doubt that the financial creditor advanced loan/financial facilities vide revised sanction letter, Sanction letter-2, bearing Ref No. THN/ZO/ADV/DRK/ZLCC/051/2015-16, dated 09.12.2015, for an amount to the tune Rs.12,00,00,000/- in favour of the corporate debtor. A total amount of Rs.9,10,23,253.17/- was disbursed by the financial creditor to the corporate debtor. Therefore, as claimed by the financial creditor, a total amount of Rs.12,68,54,381.91 /- which includes the principal amount of Rs. 9,10,23,253.17/- along with an interest of Rs.3,58,31,128.74/- is due and payable by the corporate debtor.
10. Also, the Financial Creditor sent a notice dated 04.01.2017 under section 13(2) read with Section 13(3) of the SARFAESI Act, demanding payment of the dues as on that day and thereafter took symbolic possession of the said assets. Therefore, this Bench is of the firm view that this petition fulfils all the requisite conditions necessary to admit a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016.
11. However, the Corporate Debtor denied all claims of any amount being due and also submitted that the order of the District Magistrate, dated 05.09.2018, was passed ex-parte, as well as that he was not served with the papers of the said proceedings.
12. Moreover, the corporate debtor has underwent a recent fire accident on 18.02.2018 and is therefore, not in a position to pay the dues which they owe to the financial creditor. The financial creditor accepted an amount of Rs.1,98,69,642 after recovering the same from the insurance company. According to the corporate debtor this amount is paid by them which is to be deducted from the total amount due and payable. Also, an amount of

Rs.42,50,000/- has been recovered from the proceeds of sale of Shop of the corporate debtor situated at Padga. The corporate debtor has admitted in his reply in a tabular format that an amount of Rs.4,48,89,892/- has been paid by them to the financial creditor whereas, an amount of Rs.5,67,15,272/- is yet to be paid. Therefore, there is an admission by the corporate debtor as to the sanction of the said facilities to them by the financial creditor and thus an amount above minimum required amount for admission of a petition under Section 7 of the Code i.e. Rs.1,00,000/- is due and payable by them to the financial creditor. Also, it is evident from the documents and submissions of both the sides that there was a fire accident and in view of it, the corporate debtor is not in a position to pay the said amount. Hence, we find this to be a fit case to admit the petition under Section 7 of the Code.

13. However, this Bench having been satisfied with the Petition filed by the Financial Creditor which is in compliance of provisions of section 7 of the Insolvency and Bankruptcy Code admits this petition declaring moratorium with the directions as mentioned below:

- (a) That this Bench hereby prohibits 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; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest 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.
- (b) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

- (c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) That the order of moratorium shall have effect from 13.03.2020 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.
- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (f) That this Bench hereby appoints Dharit Kishorbhai Shah, C/o. Bipin & Co., Chartered Accountants, having his registered office at 302, Centre Point, R.C. Dutt Road, Alkapuri, Vadodara-390007 and having Registration No: IBBI/IPA-001/IP-P00993/2017-18/11640 as an interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code.
14. Accordingly, this Petition is admitted.
15. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

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SHYAM BABU GAUTAM
Member (Technical)

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BHASKARA PANTULA MOHAN
Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

37. C.P.(IB)-3708(MB)/2019

CORAM :SHRI BHASKARA PANTULA MOHAN, MEMBER (J)

SHRI SHYAM BABU GAUTAM, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **13.03.2020**

NAME OF THE PARTIES:-Corporation Bank

V/s

NiharCotspin Pvt Ltd

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Company petition admitted vide separate orders.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)
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Sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)