**IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD**
**COURT - 2**

ITEM No 130
**CP(IB) 349 of 2018**

**Order under Section 7 IBC**

**IN THE MATTER OF:**

Bank of India ........**Applicant**
V/s
Multi Arc Coating and Straps Ltd ........**Respondent**

**Order delivered on ..13/09/2021**

**Coram:**

Madan B. Gosavi, Hon'ble Member(J)
Virendra Kumar Gupta, Hon'ble Member(T)

**PRESENT:**

For the Applicant :FCA Mr. Kiran Shah
For the Respondent :Mr. M.K. Shah, Advocate

**ORDER**

The matter is listed for pronouncement of order.

The order is pronounced vide separate sheet.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

vc

# BEFORE ADJUDICATING AUTHORITY (NCLT)
# AHMEDABAD BENCH
# COURT - 2

**C.P. No.(IB) 349/7/NCLT/AHM/2018**

[An application under Section 7 of the Insolvency and Bankruptcy Code, 2016]

**In the matter of:**

**Bank of India**
Star House, C-5,
G Block, Bandra Kurla Complex
Bandra (East)
Mumbai 400 005 : **Petitioner**
[Financial Creditor]

**Versus**

**M/s. Multi Arc Coating and Straps Limited**
Survey No. 7/8/9
National Highway No. 8
Bharuch 392 015
GUJARAT STATE : **Respondent**
[Corporate Debtor]

**Order reserved on 06th September, 2021**
**Order delivered on 13th September, 2021**

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

**Appearance:**

For the applicant : PCA Mr. Kiran Shah with advocate Mr. Dhruvit Shah

For the respondent : Advocate Mr. Masoom K. Shah

**ORDER**

1. This application has been filed by Financial Creditor - **Bank of India**, 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") to initiate Corporate Insolvency Resolution Process (CIRP) against the corporate debtor - Multi Arc Coating and Straps Limited. The amount of default has been claimed as Rs. 22,01,85,312.00 (Rupees twenty-two crores one lac eighty-five thousand three hundred only).

4. That, the instant petition filed by the financial creditor on 11th July, 2018 came to be rejected vide impugned order of this Tribunal dated 23rd July, 2019 observing that the petition is barred by limitation, consequent upon which, the applicant had moved Company Appeal (AT) (Insolvency) No. 891 of 2019 dated 06.02.2020 before Hon'ble NCLAT. Owing to the fact that the Hon'ble NCLAT had remitted the present matter to this Adjudicating Authority setting aside the order passed on 23rd July, 2019 with further directives to admit the instant petition under Section 7 of the IBC, and pass further suitable orders required to be passed on admission of application under section 7 of IBC, 2016. Relevant portion of the observations made by Hon'ble NCLAT are as follows: -

> *"Letter dated 09.06.2016 from the Corporate Debtor to Financial Creditor and other banks (page-420) has heading "request for one-time settlement of outstanding dues as per OTS agreed upon for Rs. 12.30 crores". Letter reads as under:*
>
> *Respected Sir,*
>
> *With reference to the above referred subject, I would like to bring to your kind notice that this property of the undersigned, situated at Bharuch, being plot No. 7, 8 & 9 was mortgaged with the consortium of Banks consisting of Bank of India and Punjab*

*National Bank, wherein the Bank of India was lead bank in the consortium of the Bank.*

*As per the one-time settlement (OTS) agreed upon, the consortium of Banks was agreeable to one-time settlement proposal for amount of Rs. 12.30 crores. In response to this the undersigned has already deposited Rs. 1.00 crore in the 'no lien account' as well as the Bank has already recovered the amount of Rs. 6,00,40,000/- by auction sale of Thane property and have recovered the further amount of Rs. 1,17,00,000/- from auction sale of plant & machinery of Bharuch property.*

*Further, I am in receipt of communication dated 07.06.2016 from a proposed buyer, who is interested in purchasing the plot Nos. 7 & 8 of Village Vadadala, Dist. Bharuch, which are mortgaged to Bank of India and Punjab National Bank after clearing the differential outstanding OTS amount, out of the total amount of Rs. 12.30 crores. It is further even stated in the said proposal that the said proposed buyer will also take the responsibility of clearing all the statutory dues that has been imposed on the lands in question.*

*In the light of above, if the bank is agreeable to abide by the one-time settlement as agreed upon for a total amount of Rs. 12.30 crores, wherein substantial amount has already been recovered by the Bank, then buyer who is interested in purchasing the said land as agreeable to pay the differential outstanding amount from the total amount of Rs. 12.30 crores as per OTS.*

*The aforesaid proposal is without prejudice to the rights and contentions of the undersigned of the pending proceedings.*

*In view of above, I would request your goodselves to take immediate steps on the aforesaid proposal and intimate us with regard to the decision of both the banks so that the immediate steps can be taken by the proposed buyer and the issue can be resolved at the earliest in the interest of all the parties."*

*Section 18 of the Limitation Act reads as under:*

*"18. Effect of acknowledgement in writing: -*

*(1) Where, before the expiration of the prescribed period for a suit <u>or application</u> in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.*

*(2) Where the writing containing the acknowledgement is undated, oral evidence may be given of the time when it was signed, but subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received.*

*Explanation – for the purposes of this section –*

*(a) an acknowledgement may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right:*

*(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf; and*

*(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right"*

*For the above reasons, the appeal is allowed, the Impugned order is quashed and set aside. The matter is remitted back to the Adjudicating Authority.*

*The Adjudicating Authority will admit the application under Section 7 of the IBC and pass further suitable orders required to be passed on admission of Application under Section 7 of IBC. The parties to appear the Adjudicating Authority on 26.02.2020."*

5. In view of the views/directives given by Hon'ble NCLAT, we admit this application and order as under: -

**ORDER**

1. Corporate Debtor M/s. Multi Arc Coating and Straps Limited is admitted in Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.

2. We appoint Mr. Bhavi Shreyans Shah, having address C-201, Embassy Apartment, Nr. Ketav Petrol Pump, Dr. V.S. Road,

Ahmedabad - 380 015 (ca.bhavishah@gmail.com), and having registration No. IBBI/IPA-001/IP-P00915/2017-2018/11521.

3. That, the moratorium under Section 14 of the Code shall come to effect from 31.08.2021 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.

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 judgement, 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 lesser 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 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 personal of the Corporate debtor, its promoter of 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. 2,00,000/- (Rupees two lacs only) as fees & expenses till the CoC decides about his fees/expenses.

11. The Registry is directed to communicate a copy of tis order to the petitioner-financial creditor, corporate debtor and to the Interim Resolution Processional and the concerned Registrar of

Companies, after completion of necessary formalities, with 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. 349/7/NCLT/AHM/2018 is allowed and stands disposed of.

**(VIRENDRA KUMAR GUPTA)**
**MEMBER (TECHNICAL)**

**(MADAN B GOSAVI)**
**MEMBER (JUDICIAL)**

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