

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD**


C.P. (I.B) No.561/7/NCLT/AHM/2018

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 21.01.2020**

Name of the Company: State Bank of India
V/s.
Vrundavan Ceramic Pvt. Ltd.

Section: Section 7 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Raju Kothari	Adv.	Petitioner	
2.	Anif Gandhi			

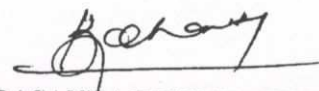
ORDER


The Petitioner is represented through respective Learned Counsel(s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.

The CP(IB) No. 561/7/NCLT/AHM/2018 is **allowed** and stands disposed of accordingly.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 21st day of January, 2020.

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**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B.) No. 561/7/NCLT/AHM/2018

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (Technical)**

In the matter of:

M/s. State Bank of India,
Stressed Assets Management Branch,
2nd Floor, Paramsiddhi Complex,
Opp. V. S. Hospital, Ashram Road,
Ellisbridge,
Ahmedabad-380006.

..... **Petitioner/ Financial Creditor**

Versus

M/s. Vrundavan Ceramic Pvt. Ltd.
Survey No.143/2,
8-A, National Highway,
B/h. Gangotri Glazed Tiles,
Village: Dhuva, Ta:Vankaner,
District: Morbi,
Gujarat-363622.

.....**Respondent/ Corporate Debtor**

Appearance:

Mr. Raju Kothari along with Mr. Anip Gandhi, Advocates for the
Petitioner/Financial-Creditor.

Mr. Harmish K. Shah along with Mr. Shivprasad Kr, Advocates, for
the Respondent/Corporate-Debtor.

Order delivered on 21st January, 2020.



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ORDER

[Per: Mr. Harihar Prakash Chaturvedi, Member (Judicial)]

1. The present I.B. Petition is preferred by the Financial-Creditor **M/s. State Bank of India** under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code"), seeking initiation of Corporate-Insolvency-Resolution-Process ("CIRP" in Short) in respect of the Corporate-Debtor-Company namely, **M/s. Vrundavan Ceramic Pvt. Ltd.** The Petitioner/Financial-Creditor, M/s. State Bank of India is a Corporate Body constituted under the State Bank of India Act, 1955 (23 of 1955) and having its corporate office at: State Bank Bhawan, Madame Cama Road, Nariman Point, Mumbai is having its Branch being Stressed Assets Management Branch at: 2nd Floor, Paramsiddhi Complex, Near Mahakant Building, Ellisbridge, Ashram Road, Ahmedabad - 380006.
2. The Respondent/Corporate-Debtor-Company, namely **M/s. Vrundavan Ceramic Private Limited** is stated to be incorporated on 06.07.1999 with CIN: U26914GJ1999PTC036237. As submitted, the nominal equity share capital of the company is Rs.8,50,00,000/- (Rupees Eight Crore Fifty Lakh only) divided into 8,50,000 equity shares of Rs.10=00 (Rupees Ten) each. The paid up



share capital is Rs.8,50,00,000=00 (Rupees Eight Crore Fifty Lakh only) divided into 8,50,000 equity shares of Rs.10=00 (Rupees Ten) each. It is stated that the Respondent Company is engaged in the business of ceramic products. The registered address of the Respondent/ Corporate-Debtor-Company is: Survey No.143/2, 8-A, National Highway, Behind Gangotri Glazed Tiles, village Dhuva, Taluka: Vankaner, District: Morbi, Gujarat-363622. Gujarat, India.

3. It is the case of the Financial Creditor that the Corporate Debtor has availed certain loan facilities from the State Bank of India. The details thereof and respective limits of loan sanctioned are described and tabulated as under:

Sr. No.	Nature of Loan/ Facility	Sanction Limit (Rs. In Crore)
1	Cash Credit (Takeover from Punjab National Bank)	7.00
2	EPC/FBD within overall Cash Credit (Takeover from Punjab National Bank)	1.00
3	Standby Line of Credit (in the form of Cash Credit)	1.00
4	Term Loan-I (Taken over from PNB)	3.95
5	Term Loan-II (Taken over from PNB)	1.70
Total		13.65



4. It is stated that the facilities/Loans so sanctioned were renewed and enhanced /reduced from time to time at the request of the Respondent Company and the required documents were being executed for the same purpose accordingly.
5. In order to secure the above stated loan disbursed facilities availed, the Respondent Company duly furnished its requisite security, the details thereof are described in the present I.B. Petition as well as in the written submission dated 24.10.2019 of the Petitioner – State Bank of India.
6. It is contended that the Respondent/Corporate Debtor failed in making payment of its debts/ outstanding dues. Hence, the account of the Respondent/Corporate-Debtor was classified as a “Non-Performing-Asset” (“NPA”) on **31.07.2013**. The Bank/Financial Creditor further states that the Corporate Debtor Company kept confirming the balance of loan and duly acknowledged its debts by executing revival letter on 30.12.2015. The Guarantors of the loan being director of the company have also signed executed revival letter and on confirmation of the balance along with the Corporate Debtor Company. It is also stated that above stated loan liabilities and acknowledgement of debts and confirmation of balance amount has further been



further made by the Corporate Debtor Company as well as its guarantor on 31.03.2017.

7. It is further stated that thereafter, the Petitioner Bank initiated SARFAESI proceedings against the Respondent/Corporate-Debtor and issued a notice under Section 13(2) of the above stated Act. The Petitioner Bank also preferred an Original Application (O.A.) No.24 of 2018 before the Hon'ble Debts Recovery Tribunal ("DRT"), Ahmedabad for claim of **Rs.23,32,06,327=83 paisa** against the debts due, which, is still pending.

8. Hence, the Bank has preferred the present I.B. Petition under Section 7 of the I.B. Code seeking for Corporate Insolvency Resolution Process ("CIRP") in respect of the Respondent/ Corporate-Debtor-Company.

9. In response of the present I.B. Petition, the Respondent/Corporate Debtor has filed its objection on 18.06.2019 contending as under:

"... the application is otherwise barred by limitation, as the same was filed beyond the period of three years from the accrual cause of action."

It is further contended that:

".. the financial facility was sanctioned vide letter dated 02.04.2005 as stated by the bank and



modification was lastly carried out in the year 2013 and therefore, the application is not maintainable. Even the date on which default was occurred was of 31.07.2013 as the account was classified as NPA and therefore, also the application is filed beyond the period of three years and not maintainable in the eyes of law the application is liable to be dismissed as being barred by the law of limitation and particularly per section 238A of the Insolvency and Bankruptcy Code, 2016..”

10. The Respondent has further opposed the present petition stating that, it is filed by the unauthorised person and having no proper authorisation letter in his favour. Hence, the present I.B. Petition is liable to be dismissed on this ground also.

11. To rebut the above stated objection made by the Corporate Debtor in its reply, the Petitioner Bank duly filed 'Rebuttal cum Clarificatory' affidavit by answering to the objection of the Corporate Debtor in respect of the present I.B. Petition, the Bank, in its rebuttal cum clarificatory affidavit has contended that, despite the account of the Company was declared as NPA on 31.07.2013, however, the Respondent/Corporate Debtor has kept on admitting its loan liability acknowledging the debts vide its revival letter dated 30.12.2015 and further dated 31.03.2017, which are



annexed as Annexure A-V-N and Annexure AQ with I.B. Petition.

12. The Petitioner has further clarified about the authority letter dated 19.10.2018 the same was issued in favour of the signatory Mr. Yogesh M. Avasia (Assistant General Manager) and purported only for SARFAESI proceedings. However, the Petitioner Bank now clarifies that, such letter was submitted due to inadvertence. The original authority letter dated 19.10.2018, which is meant for I.B.C. proceedings could not be placed on record at the time of filing the present I.B. Petition. It is further clarified that an appropriate authority letter was already issued on 17.10.2018 by the Deputy General Manager of the State Bank of India in favour of the present signatory of the Petition, Mr. Yogesh Avasia (AGM). The same is now produced and has been annexed (as Annexure A-W, page 10). Wherein, both, the DGM, SBI as well as Mr. Yogesh Avasia (AGM) have signed and such authority letter has been issued in favour of Mr. Avasia for the specific purpose of filing of I.B.C. proceedings in this Tribunal. The Hon'ble NCLAT in the matter of ***Palogix Infrastructure Pvt. Ltd. Vs. ICICI Bank Ltd. (Company Appeal (AT) (Insol.) No. 30 of 2017*** has ruled that even there is some defect in authorisation letter or to be, and the Court is of the



view that the Petition is incomplete, then the Court is required to issue notice under Section 7(5) of the I.B. Code for removing such objection/such defect or to give suitable reply to such objection, the Petitioner can also file an appropriate and valid authorization or to ratify the action taken by the signatory of the Petition on behalf of the bank.

For the sake of convenience, the relevant portion of the order is being reproduced herein below:

Palogix Infrastructure Private Limited vs. ICICI Bank Limited (20.09.2017 - NCLAT)

"31. As per Section 7 of the 'I & B Code' an application for initiation of 'Corporate Insolvency Resolution Process' requires to be filed by 'Financial Creditor' itself. The form and manner in which an application under section 7 of the 'I & B Code' is to be filed by a 'Financial Creditor' is provided in 'Form-1' of the Adjudicating Authority Rules. Upon perusal of the Adjudicating Authority Rules and Form-1, it may be duly noted that the 'I & B Code' and the Adjudicating Authority Rules recognize that a 'Financial Creditor' being a juristic person can only act through an "Authorised Representative". Entry 5 & 6 (Part I) of Form No. 1 mandates the 'Financial Creditor' to submit "name and address of the person authorised to submit application on its behalf. The authorization letter is to be enclosed. The signature block of the aforementioned Form 1 also provides for the authorised person's detail is to be inserted and also includes inter alia the position of the authorised person in relation to the 'Financial Creditor'. Thus, it is clear that only an "authorised



person" as distinct from "Power of Attorney Holder" can make an application under section 7 and required to state his position in relation to "Financial Creditor".

32. The 'I & B 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.

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36. In so far as, the present case is concerned, the 'Financial Creditor'-Bank has pleaded that by Board's Resolutions dated 30th May, 2002 and 30th October, 2009, the Bank authorised its officers to do needful in the legal proceedings by and against the Bank. If general authorisation is made by any 'Financial Creditor' or 'Operational Creditor' or 'Corporate Applicant' in favour of its officers to do needful in legal proceedings by and against the 'Financial Creditor'/'Operational Creditor'/'Corporate Applicant', mere use of word 'Power of Attorney' while delegating such power will not take away the authority of such officer and Tor all purposes it is to be treated as an 'authorization' by the 'Financial Creditor'/'Operational Creditor'/'Corporate Applicant' in favour of its officer, which can be delegated even by designation. In such case, officer delegated with power can claim to be the 'Authorized Representative' for the purpose of filing any application under section 7 or Section 9 or Section 10 of 'I & B Code'.

37. As per Entry 5 & 6 (Part I) of Form No. 1, 'Authorised Representative' is required to write his name and address and position in relation to the 'Financial Creditor'/Bank. If there is any defect, in such case, an application under



section 7 cannot be rejected and the applicant is to be granted seven days' time to produce the Board Resolution and remove the defect.

38. This apart, if an officer, such as senior Manager of a Bank has been authorised to grant loan, for recovery of loan or to initiate a proceeding for 'Corporate Insolvency Resolution Process' against the person who have taken loan, in such case the 'Corporate Debtor' cannot plead that the officer has power to sanction loan, but such officer has no power to recover the loan amount or to initiate 'Corporate Insolvency Resolution Process', in spite of default of debt.

39. If a plea is taken by the authorised officer that he was authorised to sanction loan and had done so, the application under section 7 cannot be rejected on the ground that no separate specific authorization letter has been issued by the 'Financial Creditor' in favour of such officer designate.

40. In view of reasons as recorded above, while we hold that a 'Power of Attorney Holder' is not empowered to file application under section 7 of the 'I & B Code', we further hold that an authorised person has power to do so."

13. Thus, the Petitioner, in reply regarding the maintainability has **averred by saying that the Respondent has acknowledged its liability vide Revival Letter dated 30.12.2015, annexed at page 426 of the Petition. It is further submitted that the Respondent has further confirmed its balance as on 31.03.2017 which is at page no. 433 of the Petition. Therefore, the said acknowledgment would extend the period of limitation and hence, the Petition is not time barred. It is further**



averred that the Respondent /Corporate-Debtor has made a payment of Rs.3,83,985=00 on 10.07.2017 which is reflected in the Statement of Account produced (page 461). Furthermore, the Respondent sought an adjournment on the pretext of settlement on 13.09.2019. Thus, it is evident that the Respondent / Corporate – Debtor has confirmed its liability and thus, the Petition is not time barred or it is within the limitation.

14. Therefore, we are of the view that the objection raised by the Corporate Debtor in respect of the limitation of the filing of the present petition or on proper authorization is not sustainable as the Petitioner Bank has properly explained and clarified such objection. Further, the I.B. Petition is found to be filed within the limitation from the date of latest revival letter issued, i.e. on **30.12.2015** and **31.03.2017** by the Corporate Debtor as well as by the guarantors and the Director of the Company.

15. That apart, the rebuttal affidavit of Mr. Yogesh M. Avasia dated 01.07.2019 shows established this fact that he has filed the present I.B. Petition bonafiedly and signed as per the authority letter dated 09.10.2019 issued in his favour by the Deputy General Manager, wherein, it is categorically



stated that Mr. Avasiya to exercise all the rights / powers, take action and further to act on behalf of the State Bank of India as a financial/secured creditor under the provision of the Insolvency and Bankruptcy Code, 2016. Such satisfies the requirement of the present I.B. Petition.

16. Hence, we don't find any substance in the objection raised by the Corporate Debtor in its reply/objection with regard to limitation or on authority letter. Hence, the same is liable to be rejected as being devoid of merits.
17. Therefore, the present I.B. Petition is complete and deserves for admission because, the debt of the principal amount of Rs.19.65 Crore along with interest is well established and it is duly admitted by the Corporate Debtor. The petition is found to be filed well within the limitation with proper authorisation and signatory on behalf of State Bank of India being the Financial Creditor. Hence, it is found complete.
18. Therefore, the present I.B. Petition deserves for admission and the Corporate Insolvency Resolution Process ("CIRP") can be triggered in respect of the Corporate Debtor Company namely M/s. Vrundavan Ceramic Pvt. Ltd.



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19. In the present matter, the Petitioner Bank has suggested the name of an Interim Resolution Professional, Mr. Arvind Gaudana, who, vide his letter dated **26.09.2018** has given his affirmative consent to act as an Interim Resolution Professional in the present matter. He also certified himself for not having any disciplinary proceedings pending against him with the Board or ICSI, Insolvency Professional Agency.

20. Hence, this Adjudicating Authority hereby appoints, as proposed, **Mr. Arvind Gaudana**, having Insolvency Professional Registration No. **IBBI/IPA-002/IP-N00283/2017-18/10841**, Email **arvindg_cs@yahoo.com**, ID: **Mobile No. +91-9879566756**, Phone No. **+91-79-40324567/68**, Address: **307, Ashiravad Paras, Nr. Prahladnagar Garden, Corporate Road, Prahladnagar, Satellite, Ahmedabad-380015** as **an Interim-Resolution-Professional**. The Interim-Resolution-Professional is further directed to make public announcement of moratorium in respect of Corporate-Debtor-Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating-Authority and to follow the provisions Under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code.



21. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this **Adjudicating Authority declares moratorium with effect from today** for prohibiting all of the following, namely: -

I. (a) *The institution of suits or continuation of pending suits 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.*

(b) *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.*

(c) *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);*

(d) *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

II. *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*

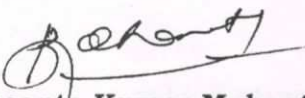
III. *The provisions of sub-section (1) shall not apply to*

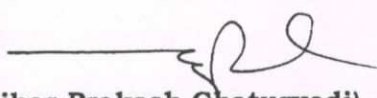
(a) *such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

IV. *The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.*



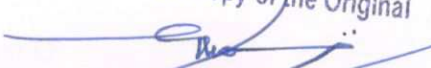
22. The **IRP is hereby advised to adhere the time limit** as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP" in short) and perform the duties as specified Under Section 18, 20, 21 of I.B Code. Further the personnel of the Corporate Debtor are advised to extend co-operation to Interim Resolution Professional as required Under Section 19 of IB Code.
23. An authentic copy of this order to be communicated by the Petitioner as well as by this Registry to the Corporate-Debtor-Company, as well as to the Interim-Resolution-Professional and the Registrar of Companies at the earliest.
24. Accordingly, the present IB-Petition stands admitted.


(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (Technical)


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (Judicial)

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Certified to be True Copy of the Original

Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad