

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

C.P. (I.B) No.165/7/NCLT/AHM/2019

Coram: MADAN B. GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE
AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 09.06.2021

Name of the Company: Mapaex Remedies Pvt Ltd
V/s
Silventa Ceramic Tiles Ltd

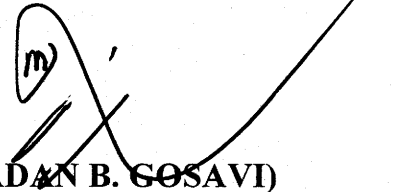
Section: 7 of the Insolvency & Bankruptcy Code, 2016

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Dated this the 9th day of June, 2021.

**BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1**

C.P.(IB) No. 165/NCLT/AHM/2019

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

M/s.Mapex Remedies Private Limited

Tapovan, Near Patel Boarding,
60 Feet Road, Wadhwan City,
Surendranagar,
Gujarat-363030

Applicant
(Financial Creditor)

Versus

M/s. Silventa Ceramic Tiles Limited

Jetpar Road, Survey No.464,
Near Pavariyadi Mataji Temple,
Jasmatgadh, Rajkot
Gujarat-363630

Respondent
(Corporate Debtor)

**Order Reserved on 7th June 2021
Order delivered on 9th June 2021**

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

Appearance:

Learned Counsel Mr. Monaal J Davawala appeared for the Financial Creditor.

Learned Counsel Mr. Vijay Patel appeared for the Corporate Debtor.

ORDER

[Per Bench]

1. The Applicant M/s. Mapaex Remedies Private Limited has filed this application under Section 7 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as **"the IB 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 [hereinafter referred to as **"CIRP"**] against M/s. Silventa Ceramic Tiles Limited for the default Amount of Rs.27,64,301/-and the date of default is 31.10.2018.
2. In this application, the issue of not payment of an outstanding amount of loan has involved to the tune of Rs. 27,64,301/-.The interest has been paid and TDS deducted and deposited.
3. We have heard both counsels and perused the records. This case was adjourned from time to time on the ground that settlement talks were under process.
4. The counsel of the Corporate Debtor had also given a cheque to the Financial Creditor bearing no.000450 for Rs 5,00,000/- dated 08.03.2021 and Rs.7,50,000 bearing no. 000451 dated 31.03.2021 drawn on Bank as a full and final settlement of outstanding liabilities.
5. During the course of the hearing, the learned counsel for the Financial Creditor submitted that the settlement talks had failed. However, the learned counsel of Corporate Debtor submitted that cheque given for full and final payment settlement, had yet not been returned by the Financial Creditor. Hence, this matter was adjourned again.

6. On the date of hearing, it was confirmed by the counsel of the Financial Creditor as well as Corporate Debtor that the cheque had been returned.
7. In view of the above fact, various pleas such as no written agreement, no board resolution or debt not being due and payable taken by the Corporate Debtor are not of any value. Even otherwise, a written agreement is not a mandatory requirement as per the provision of the Indian Contract Act, 1872. It would not be out of place to mention that even the requirement of resolution to disburse the money is not that crucial as far as proceedings under IBC are concerned and that is so in view of the provision of Section 238 of the IB Code, 2016. Further, once money is taken and utilized by the Corporate Debtor, as such, Corporate Debtor on the occasion of repayment of such loan cannot be allowed to take such plea. Also, a part payment has been done in 2017. In absence of a written agreement, the Corporate Debtor has also failed to prove that debt is not due and payable and has only made assertion without bringing any cogent material on record. The debt is not barred by limitation. The default has taken place in the payment of outstanding loans. The outstanding amount is more than the minimum threshold amount. Penal interest claim, however, remains unsubstantiated. considering the facts and circumstances of the case, we hold that the application filed u/s 7 deserves to be admitted.
8. The name of IRP has also been proposed which is mandatory as per the Provision of IB Code, 2016, whose consent is on record. There exists no material which shows that any disciplinary

proceeding is going on against said proposed IRP. Hence, we appoint the same to conduct the CIRP in a time-bound manner.

9. As a result, this petition is allowed and stands admitted. We pass the following order:

ORDER

- I. Corporate Debtor M/s Silventa Ceramic Private Limited is admitted in the Corporate Insolvency Resolution Process under Section 7 of Insolvency and Bankruptcy Code, 2016.
- II. We appoint **Mr. Arvind Gaudana**, registration no. **IBBI/IPA-002/IP-N00283/2017-2018/10841** under section 13 (1) (c) of the IB Code as IRP.
- III. That the Moratorium under Section 14 of the Code shall come to effect from the date of the 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 a Tribunals, Arbitration Panels or other Authority(s), transferring, encumbering, alienating or disposing (of by the Corporate Debtor) 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.

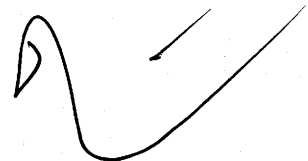
V. Further, litigation or any application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to the pronouncement of this order such proceedings are expected to be dealt with in accordance with law i.e

Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.


- VI. 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 assets and management of the Corporate Debtor.
- VII. The IRP so appointed shall make the Public announcement of the Corporate Insolvency Resolution Process (CIRP) be made 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 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 the Corporate Debtor, its Promoter, or any other person associated with 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 IRP, do not assist or Co-operate, the IRP is at liberty to make the 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 the 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. 50,000/- (Rs. Fifty thousand only.) as fees & expenses till the COC decides about his fees/expenses.



- XI. The Registry is directed to communicate this order to the Petitioner-Financial Creditor, Corporate Debtor, and 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.
- XII. The commencement of the Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.
- XIII. This CP(IB) no. 165 of 2019 stands allowed and disposed-off.


(Virendra Kumar Gupta)
Member (Technical)


(Madan B. Gosavi)
Member (Judicial)

R.S.