

BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH

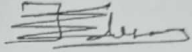
C.P. (I.B) No.589/7/NCLT/AHM/2018

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 02.12.2019

Name of the Company: Bank of Baroda  
V/s.  
Harikrishna Tradex Ltd.

Section of the Companies Act : Section 7 of the Insolvency and Bankruptcy Code

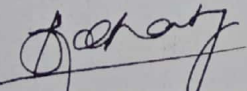
S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	KULDEEP K. APESARA FOR KETAN M. PARIKH	ADVOCATE	FINANCIAL CREDITOR	
2.				

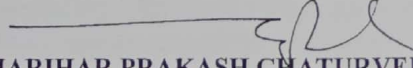
**ORDER**

The Financial Creditor is represented through its Counsel.

The CP(IB) 589 of 2018 Bank of Baroda Vs Harikrishna Tradex Limited, **application is admitted.**

Detailed order is annexed vide separate sheet.

  
(PRASANTA KUMAR MOHANTY)  
MEMBER (TECHNICAL)

  
(HARIHAR PRAKASH CHATURVEDI)  
MEMBER (JUDICIAL)

Dated this the 2nd day of December, 2019.



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

C.P. (I.B.) No. 589/7/NCLT/AHM/2018

Coram:

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

In the matter of:

**BANK OF BARODA (earlier name  
DENA BANK)**

Incorporated under the Banking  
Companies (Acquisition and Transfer of  
Undertakings) Act, 1970 (Act V of 1970)

Having Registered/Head Office at: Dena  
Corporate Centre, C-10, G Block,  
Bandra Kurla Complex Bandra (E),  
Mumbai - 400051

Having its Branch Office at:  
G.H. 4, MIB Estate, Sector 16,  
Gandhinagar, Gujarat - 382016.

.....**Applicant - Petitioner - Financial Creditor (FC)**

**Versus**

**HARIKRISHNA TRADEX PRIVATE  
LIMITED**

Having its Registered Office at:  
708-709, Golden Triangle,  
Opp. Sardar Patel Stadium,  
Naranpura, Ahmedabad,  
Gujarat - 380013.

.....**Respondent-Corporate Debtor (CD)**

Appearance:

Advocate, Shri Ketan M. Parikh for the Applicant/Financial Creditor



Advocate, Shri Ishan Shah for the Respondent/Corporate Debtor

Order Pronounced and delivered on 02/12/2019.

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present I.B. Petition is filed by the Financial-Creditor **Bank of Baroda (Earlier name Dena Bank)** 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) against the Corporate-Debtor-Company namely, Harikrishna Tradex Private Limited for the default committed by the Corporate Debtor in making repayment of the Cash Credit facility availed from the Bank. The Applicant (FC) Bank of Baroda (earlier name Dena Bank) is a Bank, incorporated under the provisions of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970. The application has been filed by the duly authorised officer, Shri Madhav Das Motwani, Assistant General Manager at Dena Bank now known as Bank of Baroda, Gandhinagar Branch, G.H. 4, MIB Estate, Sector 16, Gandhinagar, Gujarat 382016.
2. The Respondent Corporate Debtor (CD) Company, namely Harikrishna Tradex Private Limited was incorporated on 10/04/2013 with CIN: U01403GJ2009PLC057280.



3. The nominal share capital of the Respondent (CD) Company is Rs.5,00,00,000/- (Rupees Five Crores Only) divided into 50,00,000 (Fifty Lakhs) equity shares of Rs.10/- (Ten) each and the paid-up capital of the company is Rs.4,50,00,000/- (Rupees Four Crores Fifty Lakhs Only) divided into 45,00,000 (Forty-Five Lakhs only) equity shares of Rs.10/- (Ten) each. The Registered Office of the Corporate Debtor Company is situated at: 708-709, Golden Triangle, Opp. Sardar Patel Stadium, Naranpura, Ahmedabad, Gujarat - 380013.

4. The main objects of the company, by which the Respondent (CD) Company is incorporated, are mentioned in the Memorandum of Association which are briefly mentioned as:

*"To carry on the business as importers, exporters, buyers, sellers, dealers, clearing and forwarding agents, warehousemen, import and export consultancy, commission agents and to act a manufacturer's representatives in all kinds of consumer and industrial goods, products and commodities."*



5. It is submitted that the Respondent Company applied for various Cash Credit facilities and it sanctioned on 14/08/2014 granted of PCH-CUM-FBP limit of Rs.3.5 Crores and further enhanced of PCH-CUM-FBP limit extended to Rs.4.95 Crores, on 31/12/2014 by the petitioner Bank with certain terms and conditions including collateral securities of properties. The Corporate Debtor availed the Cash Credit limit executing various documents and some documents executed by the mortgagors/guarantors in favour of the Bank binding themselves as liable to pay the Cash Credit facilities availed by the Corporate Debtor. Various Cash credit facilities granted by the applicant Bank are narrated as under:

I Amount of Financial Debt Granted with Date of Disbursement:

- a) Sanction Letter Dated 14/08/2014
- b) Facilities granted of Rs.3.5 Crores:  
Fresh Sanction granted of PCH-CUM-FBP limit of Rs. 350 Lakhs for exports.
- c) Date of Disbursement: 14/08/2014

- II a) Sanction Letter Dated 31/12/2014
- b) Facilities granted of Rs.4.95 Crores:  
Enhancement of PCH-CUM-FBP; limit extended to Rs.4.95 Crores for exports.
- c) Date of Disbursement: 31/12/2014

- III a) (i) Sanction Letter dated 23.05.2015 for Rs.4.65 Crores.  
(ii) Sanction Letter dated 26.05.2015 for WCDL of Rs.30 Lakhs.

- b) Facilities granted of Rs.4.65 Crores:



- (i) Conversion of Packing Credit (Hypothecation) of Rs.4.95 Crores into Cash Credit Hypothecation (Against Stock & Book-Debts) amounting to Rs.4.65 Crores.
- (ii) Working Capital Demand Loan granted amounting to Rs.30 Lakhs i.e. as per request made by the Corporate Debtor to the Financial Creditor vide letter dated 22/04/2015 and 26/05/2015, Applicant Financial Creditor accepted the request and agreed for conversion of existing PCH of Rs.495 Lakhs into CCH of Rs.495 Lakhs and conversion of Rs.30 Lakhs of PCH into Working Capital Demand Loan of Rs.30 Lakhs as per the terms and conditions conveyed by Applicant to the Corporate Debtor vide letter dated 26/05/2015.

Thus, total aggregate limit of Rs.7,19,71,461.07 (Rupees: Seven Crores Nineteen Lakhs Seventy-One Thousand Four Hundred Sixty-One and Seven Paise Only) was sanctioned by the Applicant Bank with certain terms and conditions including hypothecation of goods, book debts and other moveable assets to secure multiple facilities which was duly accepted/acknowledged by the Corporate Debtor (Page no. 203 to 233 of the paper book). Mortgage of the property has been registered on 31/12/2014 (Page no. 182 to 202 of the paper book) and extension of Mortgage Deed registered at Serial No. 6027 on 11/06/2015 (Page no. 269 to 280 of the paper book).

6. The Corporate-Debtor has defaulted payment and the **date of default is 29/02/2016** as stated by the Petitioner Bank (page no. 8 to 11 of paper book). CIBIL Report (page no.



635 to 686 of the paper book) has been filed by the Bank which confirms that the Account is **in default**.

7. The statements of accounts of the Corporate debtor have been filed and the Petitioner Bank has submitted a Certificate to this effect under Banker's Book of Evidence Act, 1891. (Page no. 85 to 92 of paper book). The Petitioner Bank has claimed their dues of **Rs.7,19,71,461.07Ps (Rupees: Seven Crores Nineteen Lakhs Seventy-One Thousand Four Hundred Sixty-One & Seven Paise Only)** as on 24.09.2018 as computed in the page no. 8 and 11 of the paper book which is given below:

Sr. No.	Details	Amount (Rs.)
1	<b>Outstanding balance</b> in respect of principal amount as on 30.11.2015	5,16,87,598.83
2	<b>Interest</b> up to 24.09.2018	1,69,67,135.75
3	<b>Penalty</b> up to 24.09.2018	30,98,376.49
4	<b>Add: Legal Expenses</b>	2,18,350.00
<b>Total outstanding amount payable as on 24.09.2018</b>		<b>7,19,71,461.07</b>

8. The Petitioner Bank, in support of its contentions has annexed the details of Financial Debt, Records and evidences of default including copies of all the sanction



letters, the workings showing the amount claimed to be in default and its calculation in tabular form as on 24/09/2018 along with ROC search report and Valuation reports.

9. The present application has been filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy Code before this Adjudicating Authority to initiate the Corporate Insolvency Resolution Process.

10. The Financial Creditor, to substantiate their claim, has enclosed following documents: -

- i. Copy of Memorandum of Association and Articles of Association of Corporate Debtor. (Page no. 28 to 43 of paper book)
- ii. Copy of the Form 2 - Consent Form of the IRP. (Page no.44 to 46 of paper book)
- iii. Copies of all the Sanction Letters. (Page no.47 to 79A of paper book)
- iv. Copy of the working showing the amount claimed to be in default and its calculation in tabular form (together with the principal amounts, accrued interest and penal interest, as applicable) as on 24/09/2018. (Page no.80 to 84 of paper book)



- v. Statement of Accounts of the Corporate Debtor maintained by Bank of Baroda along with Certificate issued under Banker's Book Evidence Act, 1891. (Page no.85 to 92 of paper book)
- vi. Copy of the Instrument relating to Deposit of Title Deeds registered on 9657 executed on 10/10/2014 by Komal Nimesh Barot in favour of the Financial Creditor. (Page no.93 to 101 of paper book)
- vii. Copy of the Instrument relating to Deposit of Title Deeds registered at Sr. No. 10859 executed on 30/08/2014 by (1) Mr. Hasmukhbhai J. Brahmbhatt & (2) Mrs. Prafullaben Hasmukhlal Brahmbhatt in favour of the Financial Creditor. (Page no.102 to 139 of paper book)
- viii. Copy of the Instrument relating to the Deposit of Title Deeds registered at Serial No. 12125 executed on 29/09/2014 by Hasmukhbhai J. Brahmbhatt in favour of the Financial Creditor. (Page no.140 to 165 of paper book)
- ix. Copy of the abstract from the minutes of the meeting of the Board of Directors of Corporate Debtor held on 01/07/2014. (Page no.166 to 168 of paper book)
- x. Copy of abstract from the minutes of the meeting of the Board of Directors of Corporate Debtor held on 27/08/2014. (Page no.169 to 172 of paper book)



- xi. Copy of Board Resolutions passed at the meeting of the Board of Directors of Corporate Debtor held on 20/11/2014. (Page no.173-174 of paper book)
- xii. Copy of Board Resolutions passed at the meeting of the Board of Directors of Corporate Debtor. (Page no.175 to 181 of paper book)
- xiii. Copy of Extension of Mortgage Deed registered at Serial No. 15601 on 31/12/2014. (Page no.182 to 202 of paper book)
- xiv. Copy of the Agreement of Hypothecation dated 31/12/2014 between the Corporate Debtor and the Financial Creditor. (Page no. 203 to 233 of paper book)
- xv. Copy of the Memorandum of Modification of Hypothecation Agreement dated 31/12/2014 between the Corporate Debtor and the Financial Creditor. (Page no.234 to 244 of paper book)
- xvi. Copy of the Letter of Guarantee dated 31/12/2014. (Page no.245 to 255 of paper book)
- xvii. Copy showing the details of charges registered of the Corporate Debtor. (Page no.256 of paper book)
- xviii. Copy of the Application for registration of creation of charge dated 30/08/2014. (Page no.257 to 262 of paper book)



- xix. Copy of the Application for registration of modification of charge dated 31/12/2015. (Page no.263 to 268 of paper book)
- xx. Copy of the Extension of Mortgage Deed registered at Serial No. 6027 on 11/06/2015. (Page no.269 to 280 of paper book)
- xxi. Copy of the ROC search report dated 08/10/2018 issued by the Company Secretary in respect of Corporate Debtor. (Page no.281 to 294 of paper book)
- xxii. Copies of the Valuation Reports (Page no.295 to 634 of paper book)
- xxiii. CIBIL Report dated 25/09/2018 (Page no. 635 to 686 of paper book)

11. In the present matter, this Tribunal, vide its order dated 30/11/2018 had directed the Petitioner Bank to serve the notice of date of hearing to the Corporate Debtor and file the proof of service of notice before this Tribunal. Thereafter, the Respondent, Corporate Debtor appeared before this Tribunal on 17/01/2019 and sought time to file objections within two weeks.

12. The Learned Lawyer of the Applicant Bank clarified their positions and put forth their arguments **relying on the documents submitted by them, which were executed**



by the Corporate Debtor and the Mortgagors  
/Guarantors.

They have also referred the CIBIL report filed with their  
application **which confirms the debt is in default.**

ROC report filed by them is in support of the charge  
created in their favour by the Corporate Debtor.

The Learned Lawyer has also stated the Principal  
Borrower and the Guarantors have failed to honour the  
terms and conditions of the credit facilities granted by  
the Applicant Bank and hence, the Applicant Bank had  
classified the account as **"Non-Performing Asset" (NPA)**  
**on 30/11/2015.**

It is further submitted that the pursuant to the said  
default, the Applicant Bank issued a Notice under Section  
13(2) of the SARFAESI Act on 16/12/2015 demanding the  
outstanding amount of Rs.5,26,80,598.83/- (Rupees Five  
Crores Twenty-Six Lakhs Eighty Thousand Five Hundred  
Ninety-Eight and Eighty-Three Paise Only).

13. The matter was taken up and heard both sides at this  
Bench on 30.11.2018, 17.01.2019, 05.03.2019,  
29.04.2019, 27.06.2019, 13.08.2019, 13.09.2019, and  
03.10.2019. The counsels of the Petitioner and the  
Respondent were present and put forth their submissions  
before the Bench.



14. It is a settled legal position that the pendency of SARFAESI proceeding or other dispute does not prevent a Financial Creditor to trigger the C.I.R.P. because the nature of remedy being sought for under the provisions of the I.B. Code is "Remedy in Rem" in respect of the CD.

15. The Petitioner Bank has suggested the name of Insolvency Professional to be appointed, if this petition is allowed and the proposed I.R.P. has also given his affirmation/consent in writing, which is annexed with the present I.B. Petition.

16. It is also found, that the Petitioner Bank has submitted the documents duly executed by the Corporate Debtor and guarantors along with a Certificate under the Banker's Book of Evidence Act, 1891, in support of their IB Petition for initiation of C.I.R.P. (Page no. 85 to 92 of paper book)

16.1 The Cash Credit limit was sanctioned and released by the Petitioner Bank and the same were availed by CD, Harikrishna Tradex Private Limited. **The Charges have been** filed by the CD with the ROC in favour of the Petitioner **Bank on 30/08/2014.**

16.2 The CD has defaulted in making repayment of Cash Credit facilities to the Petitioner Bank and **the date of default is 29/02/2016.** The Statement of



accounts and the **CIBIL Reports** submitted by the applicant Bank **confirm the default** committed by the Corporate Debtor.

16.3 The Petitioner Bank has filed the petition **within the period of limitation**, as the date of mortgage of the property is 31/12/2013 and 11/06/2015, SARFAESI proceeding initiated on 16/12/2015. Last payment in the **account came on 31/10/2015**.

16.4 The present I.B. Petition is filed by the duly authorised official of the Applicant Bank in a prescribed format under **Section 7** of the I.B. Code annexing copies of loan documents **confirming the existence of debt default** and proposed a name of Resolution Professional to act as an Interim Resolution Professional (IRP)

#### **ORDER**

17. Considering the material papers filed by the Petitioner Bank and the facts mentioned in the **Para No.16, 16.1, 16.2, 16.3, & 16.4**, this Adjudicating Authority is satisfied that,

(a) The Corporate Debtor availed the loan /credit facilities from the Financial Creditor Bank.



- (b) Existence of debt is above Rs. One Lac;
- (c) Debt is due;
- (d) Default has occurred on **29/02/2016**;
- (e) Petition had been filed within the limitation period;
- (f) Copy of the Application filed before the Tribunal has been sent to the Corporate Debtor and the application filed by the **Petitioner Bank Under Section 7 of IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process** against the Corporate Debtor.

Hence, **the present IB Petition is admitted** with the following Directions/observations. **The date of admission of this petition is 02/12/2019.**

18. This Adjudicating Authority hereby appoints, as proposed, **Mr. Chandra Prakash Jain, having Insolvency Professional Registration No. IBBI/IPA-001/IP-P00147/2017-18/10311, Email ID: jain\_cp@yahoo.com Mobile No. 9824036127, Address: D-501, Ganesh Meridian, Opp. Gujarat High Court, Ahmedabad - 380060, India as an Interim-Resolution Professional.** The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor 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.

19. 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: -

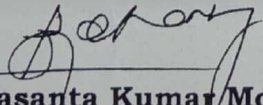
- I. (a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal arbitration panel or other authority.*
- (b) *Transferring, encumbering, alienating or disposing of by the 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.*

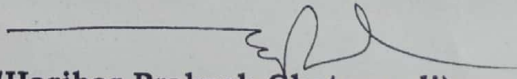


possibility of loading maximum interest at the Applicant Bank's Base Rate (BR) +1% from the date of default to the date of implementation of MCLR and further from the date of implementation of MCLR till the date of approval of the Resolution Plan interest at the rate of Petitioner Bank's One Year MCLR or One Year MCLR + 1% without any penal /overdue interest.

22. The **Registry is hereby directed** to communicate the authenticate copy of this order to the Financial Creditor, Corporate Debtor Company, the I.R.P and also to the Registrar of Companies, Gujarat immediately through speed post / registered post.

23. Thus the present I.B petition filed Under Section 7 of the **IBC stands admitted with the above direction and observations.**

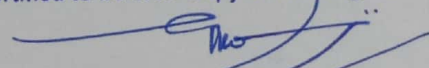
  
(Prasanta Kumar Mohanty)  
Adjudicating Authority &  
Member (Technical)

  
(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

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