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

CP(IB) 247 of 2020

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 03.02.2021

Name of the Company: State Bank of India
V/s
Surya Exim Ltd

Section: 7 of Insolvency and 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 3rd day of February, 2021.

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

CP (IB) No.247/7/NCLT/AHM/2020

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

In the matter of :

State Bank of India,
(Mr. Nitin K. Chauhan)
Having Corporate Office at
State Bank Bhavan,
Madame Cama Road, Nariman Point,
Mumbai-400021

Also at
State Bank of India,
Stressed Assets Management Branch,
2nd Floor, Paramsiddhi Complex,
Opp: V.S. Hospital, Ellisbridge,
Ashram Road, Ahmedabad-380006 ..Financial Creditor

Versus

M/s Surya Exim Ltd.,
CIN:U51100GJ1989PLC012428
Registered Office at :
172/B, Moje Aarak,
Taluka Jalalpore,
Navsari .. Corporate Debtor

Date of Hearing: 1st day of January, 2021
Date of Pronouncement of Order 3rd day of February, 2021

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

Appearance:

Learned Counsel Nitu Chaturvedi appeared for the Financial Creditor.

Learned Counsel Ms. Khyati Punjabi appeared for Corporate Debtor.

ORDER

[Per: VIRENDRA KUMAR GUPTA, MEMBER (T)]

1. The facts, in brief, are that the application filed under Section 7 by Financial Creditor to initiate CIRP against the Corporate Debtor M/s. Surya Exim Ltd. The amount of debt in default has been claimed at Rs.82,79,25,184.70/- including interest. The date of default has been stated as 27.11.2018.

2. The facts, in brief, are that the Financial Creditor gave money under various facilities to the Corporate Debtor from time to time. The relevant documents were also executed by and between both parties. However, the Corporate Debtor defaulted on its committed which laid filing of this application.

3. Learned Counsel Ms. Nitu Chaturvedi for the Financial Creditor narrated these basic facts and submitted that in the present case, the amount in default was more than threshold limit for initiation of CIRP under Section 7 of IBC, 2016. It was also submitted that application is not barred by limitation. It was also contended that there was a default in payment of debt which was due and payable. It was also submitted that name of IRP Mr. Sunil Kumar Kabra proposed whose consent is on record. Further, from the material on record, it is evident that no disciplinary proceedings is pending against such IRP. We may accordingly, appoint Mr. Sunil Kumar Kabra to act as IRP to take CIRP.

4. Learned Counsel Ms. Khyati Punjabi appeared for Corporate Debtor and made two pleas viz. one application has not been filed by the properly authorized person and secondly it was a case of consortium financing wherein action could be initiated after consent of all members of consortium.

In this regard, it was also submitted that there was a violation of the guidelines of RBI.

5. We have considered the submissions made by both sides and material on record. Admittedly, there is an outstanding debt which is more than Rs. 1 lakh being the minimum at the relevant time for filing an application under Section 7 of IBC, 2016. The debt is due and payable to the Financial Creditor by the Corporate Debtor and default occurred in doing so. These basic conditions required to be fulfilled for filing an application under Section 7 are met.

6. We have gone through the material on record and find that there is no merit in both pleas made by the Corporate Debtor. There are several decisions of co-ordinate benches as well as Hon'ble NCLAT against the Corporate Debtor in respect of rejection of these pleas. Further, there is no pre-condition of consent of all members of JLF to file a petition in a matter relating to section 7 application, even a Financial

Creditor is entitled to file application when there is default in payment of loan by another Financial Creditor only. The name of IRP has also been proposed which is mandatory in case of an application filed under Section 7 of IBC, 2016.

7. Considering the above facts and applicable legal position, we hold that this application is liable to be admitted.

8. Accordingly, we admit this application and order as under:

ORDER

1. Corporate Debtor M/s Surya Exim Limited is admitted in Corporate Insolvency Resolution Process under Section 7 of Insolvency and Bankruptcy Code, 2016.

2. We appoint Mr. Sunil Kumar Kabra, registration no. IBBI/IPA-001/IP-P01011/2017-2018/11662,

having address M-19, Metro Tower, Ring Road, Surat-395002 under section 13(1) (c) of the IB Code as IRP.

3. That the Moratorium under Section 14 of the Code shall come to effect from 03.02.2021 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 Adjudicating Authority hereby prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Debtor including 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.

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 i.e 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 assets and management 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 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 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. **1,00,000/- (Rs. One lakh)** as fees & expenses till the COC decides about his fees / expenses.

11. The Registry is directed to communicate this order to the Petitioner-Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within 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. 247/7/NCLT/2020 is allowed and stands disposed of.

(Virendra Kumar Gupta)	**(Madan Bhalachandra Gosavi)**
Member (Technical)	**Member (Judicial)**

Signed on this, the 3rd day of February, 2021.

Prakash