

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

C.P. (I.B) No.507/7/NCLT/AHM/2018

Coram: Hon'ble Mr. MADAN B. GOSAVI, MEMBER (JUDICIAL)
Hon'ble Mr. VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE
NATIONAL COMPANY LAW TRIBUNAL , AHMEDABAD BENCH ON 24.07.2020

Name of the Company: Bank of India
V/s.
M/s. FNL AAC Block Ltd.

Section: Section 7 of the Insolvency and Bankruptcy Code

ORDER

The case is fixed for the Pronouncement of Order.

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



(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)



(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Dated this the 24th day of July, 2020.

**IRPBEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CP (IB) No.507/7/NCLT/AHM/2018

(Application for initiating Corporate Insolvency Resolution Process under Section 7 of the Insolvency & Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency & Bankruptcy Code, 2016 (Application to Adjudicating Authority Rules, 2016))

In the matter of :

Bank of India

CIN: U99999MH1906PLC000243

Registered Office at:

Star House, C-5, G- Block,

Bandra Kurla Complex,

Bandra (East), Mumbai-400051

..Financial Creditor

Versus

FNL AAC Block Private Limited

CIN: U26931GJ2013PTC073245

Registered Office at :

Block No. 294, Nr. Vadoli Circle,

Besides FNL Bricks Works,

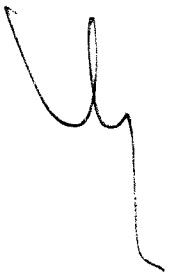
Vadoli-Olpad- Surat-394110

..Corporate Debtor

Date of Pronouncement of Order 24th July, 2020

Coram: HON'BLE MR. MADAN B. GOSAVI, MEMBER(J)

HON'BLE MR. VIRENDRA KUMAR GUPTA, MEMBER (T)



Appearance:

Learned Counsel Mr. Karan Sanghani for the Financial Creditor

No one appeared for the Corporate Debtor.

ORDER

[Per: HON'BLE MR. VIRENDRA KUMAR GUPTA, MEMBER (T)]

1. An Application is filed by the **Bank of India** (hereinafter referred to as the 'Financial Creditor') through its Authorised Signatory under Section 7 of the Insolvency & Bankruptcy Code, 2016, r.w. Rule 4 of the Insolvency & Bankruptcy Code, 2016, to start Corporate Insolvency Resolution Process (hereinafter referred to as the 'Corporate Insolvency Resolution Process') against the **M/s. FNL AAC Block Pvt. Ltd**, the Corporate Debtor, on the ground that, it has committed a default in paying the outstanding debt of Rs. 14.85 Crores. The date of default is stated as 31st December, 2017.

2. The brief facts of the case are as under :

1. The Financial Creditor sanctioned and disbursed loan/credit facilities vide sanction letter dated 12.03.2014 annexed at Annexure- B (Colly.) with the Application to the tune of Rs. 15.30 Crores as depicted in following tabular form :



Sr. No.	Nature of Loan	Sanctioned Limit (In Crores)
1	Term Loan-I (for construction of factory building)	2.00
2	Term Loan-II (for Indigenous and imported machinery)	4.80
3	Term Loan- III (for imported machinery (to be commenced on the date of payment of L/C))	4.00
4	Cash Credit Limit	4.50
	Total	15.30

Thereafter, sufficient negotiations happened in between the Financial Creditor and the Corporate Debtor for repayment including settlement, however, nothing materialised successfully ultimately, this Application has been filed.

2. The Learned Counsel for the Financial Creditor appeared and submitted that the Corporate Debtor was not appearing in the matter and in the past also had taken adjournments for one or another reason and Substantial sum was involved, hence, this matter could be heard on priority. The Bench accepted this request and proceeded to hear the matter after considering the fact that matter is quite old and Corporate Debtor is not appearing in the matter.

3. The Learned Counsel Financial Creditor, thereafter, narrated the basic facts and submitted that there was

a debt due and payable and default had occurred. It was pointed out that the Corporate Debtor had taken the ground of defect in Power of Attorney (hereinafter referred to as "PoA") for insufficient payment of Stamp Duty and also that there was no proper authorisation in favour of the person, who filed this petition under Section 7 of the Insolvency & Bankruptcy Code, 2016. In this regard, it was contended that the Officer of the rank of Chief Manager had sanctioned and disbursed the loan and also filed this Petition, which was duly Authorised by General sanction/approval by the Board of Directors/top management of the Bank. In this regard, he also relied on the decision of the Hon'ble National Company Law Appellate Tribunal (NCLAT) in the case of **Palogix Infrastructure(P) Ltd. Vs. ICICI Bank Ltd.**, the relevant portion is reproduced herein below :

" 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."

As regard to the other contentions, it was contended that these were having no bearing on initiation of Corporate Insolvency Resolution Process under Insolvency & Bankruptcy Code, 2016, hence, deserve to be rejected.

4. We have considered the submissions made by the Learned Counsel for the Financial Creditor and have carefully gone through the records. It is noted that the Corporate Debtor has not appeared on numerous

occasions. A detailed reply running into 214 pages has been filed. However, on going through this, we find that the pleas which have taken have no bearing on the admissibility of this Petition, because there is a debt due for payment since 31.12.2017, hence, not barred by limitation and there is a default in payment thereof. The plea of the Corporate Debtor that loan was not disbursed is repudiated by the correspondence made by the Corporate Debtor itself with the bank from time to time, wherein settlement proposals have been made, hence, rejected.

5. As far as the technical ground regarding insufficient Stamp Duty on 'PoA' is concerned, we are of the view that present proceedings are governed by the provisions of the Insolvency & Bankruptcy Code, 2016 and in particular Section 238 thereof, hence, such plea has got no legs to stand. Thus, rejected.

6. As far as the Authorisation of the person who filed this Petition is concerned, we are of the view that, the Bank has given general instructions and the person who has filed falls into the category of 'Authority', who can file this Petition. We further of the view that, when the disbursement is made by the same

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Authority that is good exercise of Authorisation and once it comes to recovery that exercise by the same authority becomes bad one or inappropriate. One cannot approbate and reprobate at the same time. Even otherwise, no specific format has been provided under Insolvency & Bankruptcy Code, 2016 and Regulations made thereunder and, therefore, such authorisation is valid. Thus, this plea is also rejected.

7. The Petition is otherwise is complete and defect free in all respect. The name of IRP has also been proposed and his consent is on record. It has also been stated that no disciplinary proceedings are pending. Hence, we would appoint her.

8. Accordingly, we admit this Petition and pass following order :

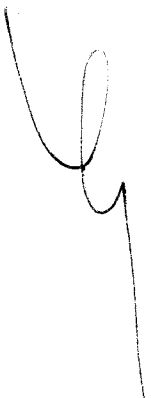
ORDER

1. The Corporate Debtor **M/s. FNL AAC Block Private Limited having CIN: U26931GJ2013PTC073245 is admitted in Corporate Insolvency Resolution Process (CIRP).** The commencement of Corporate

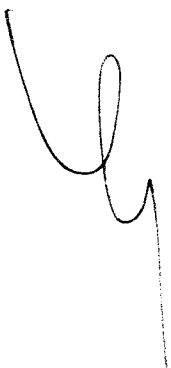
Insolvency Resolution Process (CIRP) shall be effective from the date of this order.

2. That the Moratorium under Section 14 of the Code shall come to effect from the date of this 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.

3. That the Bench 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. 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 lessor where such property is occupied by or in the possession of the Corporate Debtor.



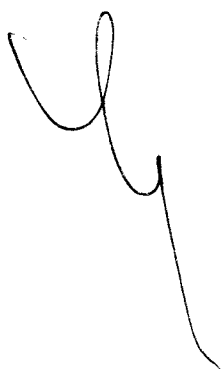
4. Further, litigation or any application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to pronouncement of this order such proceedings are expected to be dealt with in accordance with law r.w. Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.
5. 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.
6. This Adjudicating Authority hereby appoints proposed **IRP Ms. Vineeta Maheshwari, registration no. IBBI/IPA-001/IP-P-00185/2017-2018/10364 having address M-19, Metro Tower, Ring Road, Surat-395002, Gujarat.** under section 13(1) (c) of the IB Code.
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



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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 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, 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. **The Financial Creditor is directed to pay an advance of Rs. 2,00,000/- (Rupees Two lacs only)**



to the proposed IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority alongwith First Progress Report.

10. The Registry is directed to communicate a copy of 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.
11. **CP(IB) No. 507/7/NCLT/AHM/2018 is allowed.**
12. **List the matter for consideration of Progress Report of IRP on 28.09.2020, wherein, IRP to appear in person.**


(VIRENDRA KUMAR GUPTA)
ADJUDICATING AUTHORITY &
MEMBER (T)


(MADAN B GOSAVI)
ADJUDICATING AUTHORITY &
MEMBER (J)

Signed on this, the 24th July, 2020.