IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD DIVISION BENCH
COURT - 1

ITEM No. 201
CP (IB) No. 91/NCLT/AHM/2023

Order under Sections 7 of Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

Raj Radhe Finance Ltd.
….Financial Creditor

Versus

Shree Ram Cottex Industries Private Limited
….Corporate Debtor

Order delivered on: 17/07/2023

Coram:

Shammi Khan, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:
For the Applicant :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-	**-SD-**
KAUSHALENDRA KUMAR SINGH	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT NO. I)

CP (IB) 91/AHM/2023

(An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the Matter of:

Raj Radhe Finance Ltd.
(CIN: U67120GJ1985PLC007576)
Registered office at 47,
Shyamal Row House 3/B,
Near Shyamal Cross Roads,
Satellite, Ahmedabad 380015.

…Applicant / Financial Creditor

Versus

Shree Ram Cottex Industries Private Limited
(CIN: U17200GJ2013PTC076858)
Registered office is located at
Survey no. 39,opp. Biliyala
bus stop, National Highway
8-B, at Biliyala Gondal
Rajkot, Gujarat 360311.

…Respondent/ Corporate Debtor

Order Pronounced On: 17/07/2023

Coram: Shammi Khan (Member Judicial)
Kaushalendra Kumar Singh (Member Technical)

Appearance:
Advocate Jaimin Dave for the Financial Creditor and Advocate Mayur Jugtawat and Advocate Manan Shroff for the Corporate Debtor

ORDER

1. The Present Application is filed on 24.03.2023 by Raj Radhe Finance Limited through its Authorised Officer Mr. Meet F. Shah **(Applicant),** authorised vide board resolution dated 13.04.2022, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IB Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as a **Financial Creditor** for initiation of Corporate Insolvency Resolution Process (**CIRP**) against Shree Ram Cottex Industries Private Limited (**Corporate Debtor**) for having defaulted payment of its outstanding dues Rs 1,33,12,701/-. The date of default is stated to be started from month of October, 2022.

2. The Applicant is a company incorporated as on 17.01.1985 under the Companies Act, 1956 and registered as a non-banking finance company (NBFC) with Reserve Bank of India in accordance with the provisions contained under Section 45-IA of the Reserve Bank of India Act, 1934 and having identification No. U67120GJ1985PLC007576 and having registered office at 47, Shyamal Row House 3/B, Near Shyamal Cross Roads, Satellite, Ahmedabad 380015.

3. The Corporate Debtor is a company limited by shares, incorporated under the provisions of the Companies Act, 2013 on 17.09.2013 , duly registered with Registrar of Companies, Ahmedabad with CIN: U17200GJ2013PTC076858 and its registered office is located at Survey no. 39, opp. Biliyala bus stop, National Highway 8-B, at Biliyala Gondal Rajkot Gujarat 360311. The authorized share capital of the Corporate Debtor is Rs. 1,00,00,000/- and the Issued, Subscribed and Paid-up share capital of the Corporate Debtor is Rs 1,00,00,000/-.

4. The averments made by the financial creditor in its application and presented/argued by the learned counsel for the financial creditor are summarized hereunder:

(i) In April 2022, the Corporate Debtor applied for a term loan before the Financial Creditor of Rs. 1,50,00,000/- (Rupees One Crore and Fifty Lacs Only) and passed an appropriate Board Resolution in the meeting of Board of Directors held on 11.04.2022. After considering the request, the loan amount of Rs. 1,50,00,000/- was sanctioned on 11.04.2022, bearing Loan Account No. RRFLRJK1013, which was secured by way of hypothecation of book debts and stocks situated at factory premises of the Corporate Debtor i.e., Survey No. 39, Opp. Biliyala Bus Stop, National Highway 8-B, AT. Biliyala, Gondal, Rajkot – 360311, Gujarat, India, belonging to the Corporate Debtor.

(ii) The Corporate Debtor and Guarantors executed Demand Promissory Note dated 06.04.2022, Loan-cum- Hypothecation Agreement dated 06.04.2022, Personal Guarantee Deed of (i) Shri Ramnik Chakubhai Bhalala and (ii) Shri Dineshkumar Chakubhai Bhalala both dated 08.04.2022, Corporate Guarantee Deed with M/s. Zep Infratech Limited, etc. for securing the debt.

(iii) The entire business secured term loan of Rs. 1,50,00,000/- (Rupees One Crore and Fifty Lacs Only) was to be repaid in 24 (twenty-four) monthly instalments of Rs. 13,75,199.89/- (Rupees Thirteen Lacs Fifty-Seven Thousand One Hundred Ninety- Nine and Eighty-Nine Paisa Only) each by the Corporate Debtor. Such repayment of the loan amount was to commence from August 2022, ending in July 2024 with an interest rate of 18% per annum which was payable at the end of every month on the outstanding principal amount.

(iv) The loan was disbursed to the Corporate Debtor on 21.07.2022 vide a cheque bearing no. 327688 along with a covering letter for an amount of Rs. 1,46,05,200/- (Rupees One Crore Forty-Six Lacs Five Thousand and Two Hundred Only) after deduction of the processing fees of Rs. 3,94,800/- (Rupees Three Lacs Ninety-Four Thousand and Eight Hundred Only). However, the cheque was encashed in the month of August 2022. Subsequent to the disbursement of the said loan amount, the Corporate Debtor had also paid 2 (two) monthly instalments to the Financial Creditor to the tune of Rs. 13,75,200/- (Rupees Thirteen Lacs Seventy- Five Thousand and Two Hundred Only) each pertaining to the months of August 2022 and September 2022, on 20.09.2022.

(v) The Financial Creditor had not received any amount since the month of October 2022, from the Corporate Debtor towards principal amount or the interest amount. As on 28.02.2023 an amount of Rs. 1,33,12,701/- (Rupees One Crore Thirty-Three Lacs Twelve Thousand Seven Hundred and One Only) admittedly remained outstanding and payable by the Corporate Debtor.

(vi) The Financial Creditor did several personal follow-ups with the Corporate Debtor but it failed to repay the dues. The financial creditor also issued a loan recall notice to the Corporate Debtor on 02.12.2022 in pursuance to Clause 7 of the Loan-cum-Hypothecation Agreement dated 06.04.2022. However, no response was received by the Corporate Debtor. A copy of the recall notice dated 02.12.2012 is annexed with the application.

5. The Corporate Debtor filed its reply dated 18.05.2023, admitting sanction of financial assistance from the Financial Creditor on April

11, 2022 amounting to Rs. 1,50,00,000/- (Indian Rupees One Crore Fifty Lacs Only). It has also categorically accepted that as on February, 2023 an outstanding amount of INR. 1,33,12,701/- (Rupees One Crore Thirty- Three Lacs Twelve Thousand Seven Hundred and One Only) remained payable to the financial creditor. In the reply filed it was also mentioned that the Corporate Debtor suffered major setbacks in the recent past which caused financial difficulties and distress to the Corporate Debtor; and that owing to such distress, the Corporate Debtor has been unable to pay the outstanding dues to the Financial Creditor.

6. We have heard both the learned counsels and perused the material available on record. On perusal of the records, it is found that the Financial Creditor (Raj Radhe Finance Ltd.) had provided financial assistance to Shree Ram Cottex Industries Private Limited (Corporate Debtor) in the year 2022. Admittedly, the Financial Creditor had granted term loan of Rs 1.50 Cr and the Corporate Debtor defaulted its repayment; and as on February 2023, an outstanding amount of Rs 1,33,12,701/- remained payable to the applicant/Financial Creditor.

7. The present application is complete in terms of Section 7 (5) of the Code. The Financial Creditor is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. The Corporate Debtor has accepted in its reply dated 18.05.2023 admitting of taking financial assistance and facing financial difficulties to payback the outstanding dues. The outstanding financial debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 7(2) of the Insolvency and Bankruptcy

Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

8. Accordingly, we allow this petition and order as under:

(i) The corporate debtor M/s Shree Ram Cottex Industries Private Limited is admitted in Corporate Insolvency Resolution Process under section 7 of the Code.

(ii) The moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

a. *The institution of suits or continuation of pending suits 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;*
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, 2022;*
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.*

(iii) The moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this

Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.

(iv) As proposed by the Financial Creditor, we appoint **Mr. Keyur Jagdishbhai Shah** having Registration No. IBBI/IPA-002/IP-N00244/2017-18/10729, having address at Address: 1007, Sun Avenue One, Near Shreyas Foundation, Manekbaug Society, Ambawadi, Ahmedabad - 380 015, Gujarat, India (e-mail: cs.keyurshah@gmail.com) under section 13 (1)(c) of the Code to act as Interim Resolution Professional **(IRP).** He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

(v) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.

(vi) The supply of essential goods or services to the 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 assets and management of the corporate debtor.

(vii) The IRP shall perform all his functions as contemplated, *inter-alia,* by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(viii) 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 obligation imposed by section 20 of the Code.

(ix) We direct the financial creditor to pay IRP a sum of Rs 2,00,000/- as fees and expenses till the COC decides about his fees/expenses.

(x) The Registry is directed to communicate this order to the financial creditor, corporate debtor, and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order.

(xi) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST (centre), State Trade Tax etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employees associations so that they are informed of the initiation of CIRP against the Corporate Debtor timely.

(xii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

9. Accordingly, this petition CP (IB)/91/AHM/2023 is allowed and disposed of.

-SD-	**-SD-**
KAUSHALENDRA KUMAR SINGH	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

DIVYA S/LRA