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22/11/2019.

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH

Free of Cost Copy

C.P. (I.B) No.559/7/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 20.11.2019

Name of the Company: Bank of Baroda.
V/s.
Sunrise Ginning Pvt. Ltd.

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

| S.NO. | NAME (CAPITAL LETTERS) | DESIGNATION | REPRESENTATION | SIGNATURE |
|---|---|---|---|---|
| 1. | Raju Kothari | Adv. | Petitioner | |
| 2. | Anup Gandhi | | | |
| 3. | Vishwas K Shah. Nishan Majumdar | Adv. | Respondent | |

## ORDER

The parties are represented through their respective Learned Counsel(s).

The case is fixed for pronouncement of order.

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

The CP(IB) No. 559/2018 is admitted and stands disposed of accordingly.

(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)

(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

NATIONAL COMPANY LAW TRIBUNAL * AHMEDABAD *

Dated this the 20th day of November, 2019.

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

C.P. (I.B.) No. 559/7/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 (Erstwhile DENA BANK)
**(Amendment carried out as per Hon'ble Court order dated 04.06.2019 in IA No. 265/19)**
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 (East), Mumbai - 400051.
Having its Branch Office at:
Kalawad Road Branch, Rajkot.

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

**Versus**

SUNRISE GINNING PRIVATE LIMITED
Having its Registered Office at:
Survey No. 595/4, Opposite Balaji Paper Mills, Upleta Road, Dhoraji (Gujarat).

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

*Appearance:*
Advocate, Shri Anip A. Gandhi and Shri Raju Kothari for the Applicant/Financial Creditor
Advocate, Shri Vishwas K. shah for the Respondent/Corporate Debtor

**Order Pronounced and delivered on 20/11/2019.**

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

1. The present I.B. Petition is filed by the Financial Creditor **Bank of Baroda (erstwhile Dena Bank)** under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as a "Code"), **seeking initiation of Corporate Insolvency Resolution Process** ("CIRP" in Short) against the Corporate Debtor Company namely, Sunrise Ginning 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 (erstwhile 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 Dipesh Jayantilal Modi, Chief Manager at Bank of Baroda (erstwhile Dena Bank), Kalawad Raod Branch, Rajkot.

2. The Respondent Corporate Debtor (CD) Company, namely Sunrise Ginning Private Limited was incorporated on 20/02/2006 with CIN: U17110GJ2006PTC047767.

3. The nominal share capital of the Respondent (CD) Company is Rs.4,00,00,000/- (Rupees Four Crores Only) divided into 40,00,000/- (Forty Lakhs only) equity shares of Rs.10/- (Ten) each and the paid-up capital of the company is Rs.2,50,00,000/- (Rupees Two Crores Fifty Lakhs Only) divided into 25,00,000 (Twenty-Five Lakhs Only) equity shares of Rs.10/- (Ten) each. The Registered Office of the Corporate Debtor Company is situated at: Survey No.595/4, Opposite Balaji Paper Mills, Upleta Road, Dhoraji (Gujarat).

4. The Respondent Company is a Principal Borrower and is engaged in the business of Manufacturer and trading of Cotton Ginning and Pressing.

5. It is submitted that the Respondent Company applied for various Cash Credit facilities and the same were originally sanctioned for Rs.1050.00 Lakhs on 27/09/2012 and further enhanced the CC limit from Rs.1050.00 Lakhs to Rs.1200.00 Lakhs, Parking of limit of Rs.150.00 Lakhs in their Dhoraji Branch out of Rs.1200.00 Lakhs on

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21/01/2014 by the petitioner Bank with certain terms and conditions including collateral securities of properties. The Corporate Debtor availed the Cash Credits limit executing various documents and some documents executed by the mortgagors/guarantors in favour of the Bank binding themselves as liable to pay the loan facilities availed by the Corporate Debtor. Various loans/credit facilities granted by the applicant Bank are narrated as under:

I **Cash Credit Hypothecation Facility of Rs. 10,50,00,000/- (Rupees Ten Crores Fifty Lakhs only)** sanctioned, out of which:

a) **Cash Credit Hypothecation Rs.9,00,00,000/-** availed at kalawad Road Branch, Rajkot on 10/10/2012 and

b) **Cash Credit Hypothecation Rs.1,50,00,000/-** part limit availed at Dhoraji Branch on 30/10/2012.

c) The above CC limit was enhanced from Rs.10.50 Crores to Rs. 12.00 Crores i.e. Rs.10.50 Crores at Kalawad Road Branch and the rest Rs.1.50 Crores at Dhoraji Branch.

Thus, total aggregate limit of Rs.12.00 Crores (FB) were renewed by the Applicant Bank vide sanction letter dated 22/01/2014 with certain terms and conditions including hypothecation of stocks such as raw materials, semifinished goods, finished goods, spares & Plants and Book-debts facilities which was duly accepted/acknowledged by the Corporate Debtor (page no. 18 to 33 paper book). Mortgage of the property has been created by deposit of title deeds on 11/10/2012 (Page no. 84 to 96 of paper book) and extension relating to deposit of title deeds created on 31/01/2014 (page no. 168 to 179 of the paper book).

6. The Corporate-Debtor has defaulted payment and the **date of default is 28/10/2015** as stated by the Petitioner Bank (Page no. 5 and 6 of paper book). CIBIL Report (page no. 180 to 214 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. 215 to 217 of paper book). The Petitioner Bank has claimed their dues of **Rs.17,13,47,983.88Ps. (Rupees: Seventeen Crores Thirteen Lakhs Forty-Seven Thousand Nine Hundred Eighty-Three & Eighty-Eight Paise Only)** as on 30/09/2018 as computed in the page no. 5 and 6 of the paper book which is given below:

| Sr. No. | Details | Amount (Rs.) |
|---|---|---|
| 1 | Outstanding balance in respect of principal amount as on 01.06.2015 | 11,98,45,722.88 |
| 2 | Interest up to 30.09.2018 | 4,35,17,417.00 |
| 3 | Penalty up to 01.06.2015 to 30.09.2018 | 79,84,844.00 |
| Total outstanding amount payable as on 30.09.2018 | | 17,13,47,983.88 |

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 28/10/2015.

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

    i. Copy of Sanction Letter dated 27/09/2012 and 30/10/2012. (Page no.18 to 24 of paper book)

    ii. Copy of Sanction letter dated 31.01.2014 issued by the Applicant Bank. (Page no. 25 to 33 of paper book)

    iii. Copy of Certificate of Registration of Charge issued by the Registrar of Companies, Gujarat, Ahmedabad. (Page no. 34 of paper book)

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iv. Copy of Certificate of Registration of Charge issued by the Registrar of Companies, Gujarat, Ahmedabad. (Page no.35 of paper book)

v. Copy of Hypothecation Agreement dated 30/10/2012. (Page no. 53 to 64 of paper book)

vi. Copy of Letter of Guarantee dated 30/10/2012. (Page no. 65 to 75 of paper book)

vii. Copy of General Undertaking. (Page no. 76 to 83 of paper book)

viii. Copy of Deposit of Title Deeds dated 11/10/2012. (Page no. 84 to 96 of paper book)

ix. Copy of Demand Promissory Note for Rs.10,50,00,000/- (Page no. 97 of paper book)

x. Copy of Demand Promissory Note of Rs.12,00,00,000/- dated 30/01/2014. (Page no. 107 of the paper book)

xi. Copy of Letter of Guarantee dated 30/01/2014. (Page no. 108 to 151 of paper book)

xii. Copy of General Undertaking dated 30/01/2014. (Page no.152 to 159 of paper book)

xiii. Copy of Declaration by guarantor/mortgagor on Affidavits for Mortgage dated 02/10/2012 and 27/11/2012. (Page no.160 to 167 of paper book)

xiv. Copy of Instrument of Extension relating to Deposit of Title Deeds dated 31/01/2014. (Page no.168 to 179 of paper book)

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xv. Copy of CIBIL Report. (Page no.180 to 214 of paper book)

xvi. Statement of Account under the Banker's Book Evidence Act. (Page no.215 to 379 of paper book)

10. In the present matter, this Tribunal, vide its order dated 14/11/2018 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 14/12/2018 and sought time to file objections within two weeks.

11. In response to the present I.B. Petition filed by the Petitioner Bank, the Respondent has filed its Affidavit in reply on 28/01/2019, denying all statements, averments, submissions contents of Memo of Petition unless specially admitted.

11.1 It is submitted that the Petitioner of this Application has already preferred an Original Application No, 239 of 2016 before Ld. Debts Recovery Tribunal, Ahmedabad. It is submitted that the filing of present petition is multiplicity of litigation and tactic of overreaching of judicial process pending before Ld. Debts Recovery Tribunal which is special enactment

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under statue only adjudication and recovery of dues of Financial Institution. Hence, the present Petition is required to be dismissed on the above ground.

11.2 It is submitted that the parallel proceedings are barred by the law. It is submitted that the instant Application could not be maintainable in light of the pendency of the Original Application and disputes raised therein before Ld. DRT which is also preferred by the same Petitioner for recovery of same alleged dues for same transaction.

11.3 It is submitted that the notice issued under Section 13(2) and the proceedings initiated by the Petitioner for taking the physical possession under Section 14 of the Securitisation Act, 2002 is also placed on record by the Petitioner Bank.

11.4 It is submitted that the very liability is disputed and action taken by the Petitioner under Securitisation Act, 2002 vide Securitisation Application No. 155 of 2016 which is pending as on today. Hence, it is clear from the record of proceedings that there is pre-existing dispute between the Petitioner and the Respondent against the classification of their account on NPA, the alleged default and dues.

11.5 It is submitted that the IBC Code cannot go into legality and validity of the documentation, mortgaged, charge and other issues raised by the Respondent. Hence, in the interest of justice and balance of equity also it is required to allow the DRT to adjudicate and decide the matter in accordance with law.

11.6 It is submitted that the adjudication of liability and the recovery of the amount by execution of the certificates are respectively within the exclusive jurisdiction of the Tribunal and the Recovery Officer and no other Court or authority much less the Civil Court or the Company Court can go into the said questions relating to the liability and the recovery except as provided in the Act. Hence, the exclusive jurisdiction of adjudication and execution of dues of Banks and Financial Institution is lying with the Debts Recovery Tribunal.

11.7 It is submitted that the memo of petition is drafted in cavalier manner and is vague and cryptic and does not disclose cause of action. That Petitioner has failed to establish that how and why the jurisdiction of this Hon'ble Tribunal is attracted.

11.8 It is submitted that the petitioner that a documents produced by the Petitioner may be discarded as evidence and it may be permitted to cross examine the bank officer during whose period the transactions took place.

11.9 It is submitted that the Petitioner has failed to prove my liability because no credible evidence is placed on record, and they have not proved in accordance with Bankers Books Evidence Act.

11.10 It is submitted that the Petition is not filed in proforma prescribed in NCLT Rules and so also it is liable to be rejected.

11.11 It is submitted that the documents relied upon are not properly stamped and registered, and hence not admissible in evidence.

12. The Learned Lawyer of the Applicant Bank(FC) filed Rebuttal documents, 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**.

The Learned Lawyer has also stated that 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) 28/10/2015. It is submitted that the last payment received from the Borrower towards the said Credit Facilities was of 29/06/2016.

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12.1 It is further submitted that the Respondent has not denied their liability. However, they had filed an Objection mainly on the ground of Limitation and authorization of the deponent of the Petitioner Bank.

12.2 It is submitted that the Petition is not barred by Law of Limitation.

12.3 It is submitted that the account of the Respondent Company has been classified as "NPA" on 28/10/2015. It is submitted that the present Petition was filed on 24/10/2018. It is further submitted that the Respondent has acknowledged their liability in their Balance-sheet for the period 01/04/2014 to 31/03/2015. It is submitted that the acknowledgement of debt in the Balance-sheet would extend the limitation further for three years and hence the present Petition is not barred by Law of Limitation. The Petitioner herein craves leave to produce the Balance-sheet for the year 01/04/2014 to 31/03/2015.

12.4 It is submitted that the Corporate Debtor has issued a letter dated 07/03/2017 wherein they have admitted that they have availed Cash Credit Facility against hypothecation of Cotton Bales etc.

12.5 It is submitted that the Corporate Debtor has filed Interlocutory Application being I.A. No. 544 of 2018 in S.A. No. 155 of 2016 before the Hon'ble Debts Recovery Tribunal-II, Ahmedabad on 14/06/2018 whereby the

Corporate Debtor has offered to deposit the amount as per valuation report with a prayer to release the residential open plot at Jamnagar City.

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 28/12/2015 demanding the outstanding amount of Rs.12,57,86,554.88/-

13. The matter was taken up and heard both sides by this Bench on 14/11/2018, 14/12/2018, 28/01/2019, 20/03/2019, 04/06/2019, 11/09/2019, 03/10/2019, and 15/10/2019. 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.

## Observations

16. The Petitioner Bank has submitted the documents duly executed by the Corporate Debtors 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. 215 to 217 of paper book).

16.1 The Cash Credit limit was sanctioned and released by the Petitioner Bank and the same was availed by the CD, Sunrise Ginning Private Limited. **The Charges have been** registered by the CD with the ROC in favour of the Petitioner **Bank on 11/10/2012.**

16.2 The CD has defaulted in making repayment of loan/credit facilities to the Petitioner Bank and **the date of default is 28/10/2015.** 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,** the last payment received from the

Borrower towards the said credit facilities was on 29/06/2016. **The date of mortgage of the property is 11/10/2012 and 31/01/2014,** SARFAESI proceeding initiated on 28/12/2015, DRT proceedings started in 2016 vide OA No. 239 of 2016. Balance Sheet copies of the CD for the period 2013-14 & 2014-15 have been filed confirming the existence of the liability of the CD.

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

16.5 It is also observed that the stand taken by the Corporate Debtor company in its affidavit in reply dated 28.01.2019 taking such plea that the Financial Creditor/Bank has already filed an Original Application, bearing No.239 of 2016, before the Ld. Debts Recovery Tribunal (DRT), Ahmedabad, which tantamounts to the multiplicity of litigation and contrary to the theme of the I& B Code, seeking for resolution of the Corporate Debtor company, but it is a tactics of overreaching of judicial process pending before DRT.

Having duly considered the above stated stand, we are of the view that such objection is having no relevance for the purpose of the petition filed under Section 7 of the I & B Code, because the language of Section 7 is categorically different from the provisions of Section 9 of the I & B Code. Whereas as per the decision of the Hon'ble Supreme Court in the matter of ***Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt Ltd. (Civil Appeal No.9405 of 2017, decided on 21 September, 2018,*** if there is some pre-existing dispute, then IB Petition filed under Section 9 is not maintainable. Para-28 & 40 of the said judgment read as under:

*28. It is now important to construe Section 8 of the Code.*

*The operational creditors are those creditors to whom an operational debt is owed, and an operational debt, in turn, means a claim in respect of the provision of goods or services, including employment, or a debt in respect of repayment of dues arising under any law for the time being in force and payable to the Government or to a local authority. This has to be contrasted with financial debts that may be owed to financial creditors, which was the subject matter of the judgment delivered by this Court on 31.8.2017 in Innoventive Industries Ltd. v. ICICI Bank & Anr. (Civil Appeal Nos.8337-8338 of 2017). In this judgment, we had held that the adjudicating authority under Section 7 of the Code has to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor within 14 days. The corporate debtor is entitled to point out to the adjudicating authority that a default has not occurred; in the sense that a debt, which may also include a disputed claim, is not due i.e. it is not payable in law or in fact. This Court then went on to state:*

> *"29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate*

*debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.*

*30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."*

*40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.*

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Further, the Hon'ble Supreme Court in the matter of ***M/s. Innoventive Industries Ltd. vs. ICICI Bank & Anr.*** [Civil Appeal Nos.8337-8338 of 2017] has held that if the debt is established and default is committed and the IB Petition filed under Section 7 is otherwise found complete in conformity with the provisions of the I& B Code, then the Adjudicating Authority is bound to admit the petition. For the sake of convenience, the relevant portion of the above stated decision of the Hon'ble Supreme Court is being reproduced hereunder:

"27. *The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.*

28. *When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5),* ***where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete,*** *in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-Section(7), the adjudicating authority shall then communicate the order passed to the financial creditor and*

**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 20/11/2019.**

18. This Adjudicating Authority hereby appoints, as proposed, **Mr. Atul Mittal, having Insolvency Professional Registration No. IBBI/IPA-001/IP-P000439/2017-18/10762, Email ID: a.mittalmc@gmail.com, Address: 174, Balco Apartments, Plot No.58 IP Extension, Delhi – 110 092, 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. The IRP is also to act further as per the order/directions 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 2016.

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: -

specified Under Section 17, 18, 20 and 21 of I.B Code. Further **the personnels of the Corporate Debtor** are advised to extend co-operation to **Interim Resolution Professional as required Under Section 19 of IB Code.**

21. It is also observed that the Petitioner Bank has claimed **total dues of Rs.17,13,47,983.88 as on 30/09/2018 i.e. Rs.11,98,45,722.88 as Principal amount + Rs.4,35,17,417.00 as Uncharged interest from 01/06/2015 to 30/09/2018 and Rs.79,84,844.00 as Penal interest from 01/06/2015 to 30/09/2018.** One of the **prime objectives** of the Insolvency and Bankruptcy Code, 2016 is to **find out** a **viable Insolvency Resolution Plan in time** for the Corporate Debtor and in order to have a Resolution Plan Viable, feasible and implementation successful, in the era of Minimum Cost of funds-based Lending Rate ("MCLR" in short) and Competitive market condition, the Committee of Creditor(s) (COC) **may explore,** while finalizing the Resolution Plan for the Corporate Debtor, the **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 at the interest rate of Petitioner Bank's One Year MCLR or One Year MCLR +1% without any penal /overdue interest.

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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.

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| | |
|---|---|
| (Prasanta Kumar Mohanty)<br>Adjudicating Authority&<br>Member (Technical) | (Harihar Prakash Chaturvedi)<br>Adjudicating Authority&<br>Member (Judicial) |

SK

Certified to be True Copy of the Original
Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad