

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD  
Court 2**

**C.P. (I.B) No.496/NCLT/AHM/2019**

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL  
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 09.12.2020**

Name of the Company: Nilu R Ahuja  
V/s  
Ethan Textile India Pvt Ltd

Section 7 of the Insolvency and Bankruptcy Code,  
2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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- 1.
- 2.

**ORDER**

Advocate, Mr. Vishal Dave appeared on behalf of the Applicant. Advocate, Mr. Tirth Nayak appeared on behalf of the Respondent.

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

  
**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

Dated this the 9th day of December, 2020

**BEFORE ADJUDICATING AUTHORITY (NCLT)  
AHMEDABAD BENCH**

**C.P. No.(IB) 496/7/NCLT/AHM/2019**

**In the matter of:**

**Nilu R. Ahuja**

A-21 Orchid Wood,  
Corporate Road  
Prahladnagar  
AHMEDABAD 380 015

:

**Applicant**  
[Financial Creditor]

**Versus**

**M/s. Ethan Textile India Private Limited**

(earlier known as R. Kumar Puntex P. Ltd.)  
3701 Phase – IV, GIDC, Vatva  
AHMEDABAD 382 445

:

**Respondent**  
[Corporate Debtor]

**Order delivered on 9<sup>th</sup> December, 2020**

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)**

**Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

**Appearance:**

Petitioner : Mr. Nipun Singhvi, Advocate along  
with Mr. Vishal J. Dave, Advocate  
Respondent : Mr. Tirth Nayak, Advocate

**ORDER**

**[Per: Ms. Manorama Kumari, Member (J)]**

1. Mrs. Nilu R. Ahuja filed the instant petition under section 7 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules") seeking reliefs under Section 7(5)(a) and Section 13(1)(a)(b)(c) of the Code.





2. That the applicant/financial creditor is an individual and shareholder of the respondent company having residence at Ahmedabad, Gujarat State.
3. The respondent/corporate debtor is a company incorporated under the Companies Act, 1956 on 18.05.1988, having identification No. U18109GJ1988PTC010729 and having its registered office at GIDC, Vatva, Ahmedabad is involved in the activity of manufacturing and processing of textile fabrics and wearing apparel. That, Authorised share capital of the respondent company is Rs. 90,00,000/- and paid up share capital is Rs. 90,00,000/-.
4. The applicant submits that, she being a shareholder, gave loans to the respondent company various times. That, she has right towards debt obligation of corporate debtor for a sum of **Rs. 32,10,258/- (Rupees thirty-two lacs ten thousand two hundred fifty-eight only)** which includes outstanding principal balance amount of Rs. 23,60,484/- as on 31.03.2018 as per ledger statement and interest of Rs. 8,49,774/- till 31.03.2018 excluding running interest charged @ 12% from 01.04.2018 till actual realisation of debt. That, the respondent company did not repay the loan given by the applicant and hence this application.
5. The applicant has submitted copy of all the documents in support of her claim like; ledger account in respect of respondent company, audited balance sheet of respondent company, bank statement for the period from 01.04.2016 to 30.06.2019, confirmation of accounts, annual tax statement for financial year 2015-16 to 2018-2019, general affidavit verifying the application etc.
6. The respondent filed affidavit in reply raising various objections. It is stated that the instant application under

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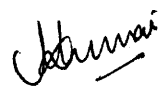
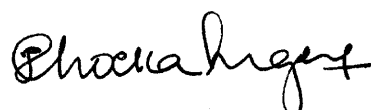
Section 7 of the IBC has been filed by the applicant who is wife of Mr. Rajendra Ahuja, who is the shareholder of the present respondent company and was also the Director of the respondent company (earlier known as R. Kumar Puntex P. Ltd.) and there are/were various disputes between Mr. Rajendra Ahuja and the deponent who is a Director, shareholder of the corporate debtor as on date. That, Mr. Rajendra Ahuja holds 3% share in the corporate debtor company.

7. It is further stated by the respondent that the purported loans based on which the present application is filed were given to the corporate debtor (erstwhile R. Kumar Puntex P. Ltd.) and at the relevant point of time when the said loans were given, the corporate debtor company was controlled and operated by Mr. Rajendra Ahuja, husband of the applicant. That, the respondent company was taken over by the present management only in the year 2017 and the name of the company was thereafter changed to Ethan Textile India P. Ltd. That, the present application is solely filed in furtherance to the said disputes which have arisen between the husband of the applicant and the corporate debtor. That, the notices and communication exchanged between the corporate debtor company and husband of the applicant shows existence of disputes.
8. The respondent has further stated that there is no loan agreement between the corporate debtor and the applicant, no details with respect to when the said loans were disbursed or that the terms on which the said loans were disbursed. That, the instant application is filed only on the basis of the purported admission made by the corporate debtor in its statement of accounts. That, the debt claimed by the applicant does not fall within the definition of "financial debt" as per Section 5 (8) of the IBC. That, in the instant case there is no agreement in respect of the

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purported loans, no agreement in respect of interest and there has been no payment of interest. Therefore, the same does not fall within the definition of "financial debt" as per Section 5 (8) of the IBC.

9. It is further submitted by the respondent that ledger account of the applicant annexed to the application is unilateral and not admitted. That, the instant application is filed solely on the basis of a purported admission made in the balance sheet and there are no other admissions with respect to the said loan amounts. That, the corporate debtor was earlier engaged in business with Partex Corporation which is a sole proprietorship concern of the applicant and as per the balance sheets produced by the applicant herself, an amount of Rs. 13,87,045/- as on 31.03.2019 is due and payable to the corporate debtor. That, the corporate debtor has several outstanding payments which are due and payable by the applicant, entities controlled by the applicant and Mr. Rajendra Ahuja.
  
10. The respondent has further stated that at the relevant point of time the corporate debtor was owned and controlled by husband of the applicant and various transactions were made inter se the corporate debtor and the entities controlled by husband of the applicant. That, the demand made in the instant petition is for one such transaction which pertain to the same period and therefore also the same cannot be called as a financial debt in the present proceedings. That, the application is incomplete as the application has not been signed on each page by the applicant. That, about 250 employees are working in the respondent company and initiation of CIRP against the respondent company will result into starvation of many families.



## Findings

11. Heard the counsels and perused the documents annexed to the application/reply and additional documents filed by both the parties.
12. The applicant has claimed that being a shareholder of the respondent company, had extended financial assistance to the respondent company on different occasions. On perusal of the records it is found that nowhere the applicant has stated the date of disbursement of such loan to the corporate debtor. Page No. 162 annexed to the application is a Xerox copy of self-certified confirmation of accounts prepared by the applicant wherein an amount of Rs. 23,60,484/- has been shown as "opening balance" as on 1<sup>st</sup> April 2015 which clearly indicates that the so-called debt under claim was passed before April, 2015. This clearly indicates that the debt is time barred and the present application is filed solely on the basis of the self-certified balance sheet. The instant application is not supported by any vital documents like; copy of loan agreement, date of sanction/disbursement, mode of payment, rate of interest, terms and conditions on which the loans were sanctioned/dispensed etc. In short, claim of the applicant is based on confirmation of accounts dated 30.06.2019 prepared by the applicant herself and no proof of sending the same to the corporate debtor has been filed.
13. Page No. 54 to the application is a photocopy of balance sheet prepared on a plain paper without header or footer, wherein, under the head "**unsecured loans from shareholders - Nilu R. Ahuja**", an amount of Rs. 23,60,484/- has been shown. However, no document is filed by the applicant to confirm authenticity of sanction/disbursement of such loan.



14. On perusal of the record it is found that part IV of form 1 does not contain pre-requisite information like; date of sanction/disbursement of the loan, due date etc.
15. The applicant has taken plea that she is "Financial Creditor" within the meaning of Section 5 (8) of the I & B Code. For the sake of brevity, Section 5 (8) is reproduced here below:

**Section 5 (8)** – "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes –

- (a) money borrowed against the payment of interest;
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds; notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
- (e) receivables sold or discounted other than any receivables sold on non-recourse basis;
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
- (h) any counter-indemnity obligation in respect of a guarantee indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
- (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clause (a) to (h) of this clause;

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16. Under these circumstances it is amply clear that the debt claimed by the applicant does not fall within the definition of "financial debt" as per Section 5 (8) of the I & Code.
17. It is desirable to refer to the observation made in **Sanjay Kewalramani vs. Sunil Parmanand Kewalramani & Ors, (2018 SCC online NCLAT 310)**, wherein, in para 12 & 13, the Hon'ble National Company Law Appellate Tribunal held as under: -

*"12. there is nothing on the record to suggest that 2<sup>nd</sup> and 3<sup>rd</sup> respondents had given loan in favour of the corporate debtor which can be termed to be disbursement of an amount for consideration for the time value of money as required under Section 5(8). Merely grant of loan and admission of taking loan will ipso facto not treat the respondent as "financial creditor", till they show that it complies with the substantive definition or any one or other clause of Section 5 (8).*

*"13. Mere fact that the company paid interest @ 12% per annum, during certain period cannot be the ground to hold that the 'debt' comes within the meaning of 'financial debt' to treat the 2<sup>nd</sup> and 3<sup>rd</sup> respondents as financial creditors.*

18. In view of what is discussed above, this Adjudicating Authority is of the considered view that the instant application is not maintainable on the following grounds: -
- (i) the instant application is barred by limitation,
  - (ii) the debt claimed by the applicant does not fall within the definition of "financial debt" as per Section 5 (8) of the I & Code.
  - (iii) the applicant has not filed any valid document showing that the respondent is indebted to the applicant any amount.
  - (iv) the application is incomplete as vital information like date of sanction/disbursement of loan, date of default, agreement of loan etc. has not been provided with the application.

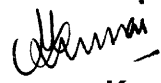




19. In the result, company petition No. CP (IB) 496 of 2019 stands dismissed and disposed of without cost. However, this will not stand in the way of the Petitioner approaching the appropriate forum seeking to enforce its claim against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration the provisions of IB Code, 2016.



**Chockalingam Thirunavukkarasu**  
**Adjudicating Authority**  
**Member (Technical)**



**Ms. Manorama Kumari**  
**Adjudicating Authority**  
**Member (Judicial)**

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