

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


C.P. (I.B) No. 458/7/NCLT/AHM/2018

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 19.07.2019**

Name of the Company: Bank of India
V/s.
Eagle Cotton Pvt. Ltd.

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


S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	KULDEEP K. ADESARA FOR KETAN M. PARIKH	ADVOCATE	FINANCIAL CREDITOR	
2.				


ORDER

The Petitioner is 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.


MANORAMA KUMARI
MEMBER (JUDICIAL)


HARIHAR PRAKASH CHATURVEDI
MEMBER (JUDICIAL)

Dated this the 19th day of July, 2019.

**BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

CP (IB) No.458/7/NCLT/AHM/2018

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

Bank of India

Incorporated under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Act V of 1970). Registered/Head Office at Bandra-Kurla Complex, Star House, C-5, G Block, Bandra (E), Mumbai-400 051

Bank of India
Rajkot Zonal Office, Para Bazaar
Rajkot-360 001

..... Petitioner
(Financial Creditor)

Versus

Eagle Cotton Private Limited

Office No.13, Sarathi Complex
Opp. Diamond Market
Liliya Road
Amreli-365 601

..... Respondent
(Corporate Debtor)

Order delivered on 19th July, 2019.

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)

And

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

Appearance:

Mr. Ketan M. Parikh, Advocate, for the Petitioner/Financial Creditor.

Mr. Sunil Bhavsar, Advocate, on behalf of Mr. Ritesh Patadia, Advocate, for the Respondent/Corporate Debtor.

ORDER

[Per: Mr.Harihar Prakash Chaturvedi, Member (J)]

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Manorama Kumari

1. The present Application is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "I & B Code)" read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ["Adjudication Rules" for short] to initiate 'Corporate Insolvency Resolution Process' against M/s. Eagle Cotton Pvt. Ltd. [hereinafter called as "Respondent/Corporate Debtor"].
2. The Applicant, Bank of India, is incorporated under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its Registered/Head Office at Bandra-Kurla Complex, Bandra (E), Mumbai-400 051 and one of its Branches, i.e. Rajkot Main Branch, Para Bazaar, Rajkot-360 001.
3. The Corporate Debtor, M/s. Eagle Cotton Pvt. Ltd., is a company registered under the Companies Act, 1956, (date of incorporation 18.01.2012, vide CIN: U17121GJ2012PTC068665), having its Registered office at: 13, Sarathi Complex, Opp. Diamond Market, Liliya Road, Amreli-365 601.
4. The Nominal Share Capital of the corporate debtor company is Rs.10,50,00,000/- (Rupees Ten Crore Fifty Lac only) divided into 1,05,00,000 (One Crore Five lac) Equity Shares of Rs.10/- each. The Paid Up Capital is

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Rs.10,39,00,000/- (Rupees Ten Crore Thirty Nine Lac only) divided into 1,03,90,000 (One Crore Three Lac Ninety Thousand) Equity Shares of Rs.10/- each.

5. The petitioner bank submitted that it has provided the requisite details in the application of loan advanced to the Corporate Debtor company as per the provisions of I & B Code. The Part-IV of the present application [which is prescribed Proforma under Rule-4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, read with Section 7 of the Code], describes following particulars of loan;

Part-IV Particulars of Financial Debt	
1	<p>Total amount of debt granted date(s) of disbursement</p> <p>(A) Amount of Financial Debt granted with date of disbursement:</p> <p>(i) Sanction Letter dated 18/09/2012</p> <p>(ii) Facilities granted of Rs.16.75 Crore</p> <p><u>Fund Based Limits:</u></p> <p>(a) Term Loan Rs.12.25 Crore</p> <p>(b) Cash Credit Hypothecation of Stock Rs.4.5 Crore</p> <p>(c) Cash Credit Hypothecation of Book Debts not more than 90 days Rs.1.60 Crore</p> <p>Maximum of (b) & (c):Rs.4.50 Crore</p> <p>Total Fund Based Limits Rs.16.75 Crore</p> <p>(iii) Date of Disbursement: 18/09/2012</p> <p>(B) Amount of Financial Debt granted with date of disbursement:</p>

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		<p>(iv) Sanction Letter dated 16/01/2014 Fund Based Limits: (For F.Y. 2013-14) (d) Term Loan Rs.12.25 Crore (e) Term Loan Rs.1.12 Crore</p> <p><u>Total Term Loan Rs.13.37 Crore</u> (f) Cash Credit Hypothecation of Stock Rs.8 Crore (g) Cash Credit Hypothecation of Book Debts not more than 90 days Rs.1.50 Crore Maximum of (f) & (g): Rs.8 Crore</p> <p>Total Fund Base Limits: Rs.21.37 Crore</p> <p>(v) Date of Disbursement : 16/01/2014</p> <p>(C) Amount of Financial Debt Granted with date of disbursement: Fund Based Limits: (For F.Y. 2014-15) (h) Term Loan: Rs.12.25 Crore (i) Term Loan: Rs.1.12 Crore Total Term Loan: Rs.13.37 Crore</p> <p>(j) Cash Credit Hypothecation of Stock Rs.12 Crore (k) Cash Credit Hypothecation of Book Debts not more than 90 days Rs.4 Crore Maximum of (j) & (k) Rs.12 Crore</p> <p>Total Fund Based Limits Rs.25.37 Crore</p> <p>Note: The enhanced limit of Rs.4 Crore in Cash Credit facility was not disbursed on account of non-fulfilment of terms and conditions mentioned in the Sanction Letter.</p> <p>Copies of all the Sanction Letters are annexed and marked as Annexure-I/3.</p>
2	Amount claimed to be in default and the date on which the default occurred	Total aggregate amount claimed to be in default in respect of various credit facilities are as under:- (details of facilities in which dues are pending)

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(1) Cash Credit Facility (A/c. No.313030110000017)	
Outstanding balance in respect of Principal amount as on 31.12.2015	Rs.7,84,14,047.00
Add: Other Debits (Excluding interest)	Rs.63,73,747.00
Add: Interest upto 27.07.2018	Rs.3,65,96,245.44
Add: Penalty upto 27.07.2018	Rs.48,31,187.52
Less: Recovery Made	Rs.76,20,201.93
Total outstanding amount payable as on 27.07.2018	Rs.11,85,95,025.03
(2) Term Loan (A/c. No.313065410000008)	
Outstanding balance in respect of Principal amount as on 31.12.2015	Rs.10,31,77,357.50
Add: Other Debits (Excluding interest)	NIL
Add: Interest upto 27.07.2018	Rs.5,49,12,151.39
Add: Penalty upto 27.07.2018	Rs.65,35,136.22
Less: Recovery Made	NIL
Total outstanding	Rs.16,46,24,645.11

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	amount payable as on 27.07.2018	
	Summary of all accounts	
	Outstanding balance in respect of Principal amount as on 31.12.2015	Rs.18,15,91,404.50
	Plus: Other Debits	Rs.63,73,747.00
	Interest upto 27.07.2018	Rs.9,15,08,396.83
	Penalty upto 27.07.2018	Rs.1,13,66,323.74
	Less: Recovery Made after NPA	Rs.76,20,201.93
	Total outstanding amount payable as on 27.07.2018	Rs.28,32,19,670.14
	<p>The workings showing the amount claimed to be in default and its calculation in tabular form (together with the principal amounts, accrued interest and penal interest, as applicable) as on 27.07.2018 is annexed and marked as Annexure-I/4.</p> <p>The Statement of Accounts of the Corporate Debtor maintained by Bank of India is annexed herewith and marked as Annexure-I/5.</p> <p>Date of default 31/12/2015</p>	

6. In order to secure the aforesaid credit facilities, the Corporate Debtor company has duly signed and furnished

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various security documents. The details of documents executed by the Corporate Debtor company as well as its directors, being guarantors, are described as below;

- (i) Copy of Registered Memorandum of Entry dated 21.09.2012 (registered at sr. no.3248 with SRO-Amreli).
- (ii) Copies (three) of letter of Deposit of title Deeds dated 21.09.2012
- (iii) Copy of an extract from the Minutes of the Board of Directors dated 20.09.2012
- (iv) Copy of Hypothecation cum Loan Agreement dated 21.09.2012
- (v) Copy of Deed of Guarantee dated 21.09.2012
- (vi) Copy of Confirmation of Deed dated 25.09.2012
- (vii) Copy of an extract from the Minutes of the Board of Directors of the Corporate Debtor held on 19.01.2014
- (viii) Copy of Supplemental Deed of Hypothecation dated 21.01.2014
- (ix) Copy of Deed of Guarantee dated 21.01.2014
- (x) Copy of Supplemental Memorandum of Deposit of Title Deeds dated 21.01.2014
- (xi) Copy of Supplemental Term Loan Agreement

7. The applicant bank further submitted that at the time of availing the credit facilities, the respondent/corporate debtor has assured to the bank that the credit facilities availed by company would be repaid as per the terms and

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conditions stipulated in the schedule of the Loan Agreement(s) for repayment of loan.

8. However, the respondent/corporate debtor company became irregular in making repayment of its loan instalments as per the agreed terms and conditions of the loan facilities availed by it.
9. It is further contended that despite repeated requests made and reminders issued, the respondent/corporate debtor company had failed in making payment the amount due and payable to the Petitioner/Financial Creditor. Hence, its account has been classified as NPA, with effect from 31.12.2015. Therefore, the bank, being Financial Creditor, has filed the present IB petition before this Adjudicating Authority for triggering Corporate Insolvency Resolution Process in respect of the corporate debtor company M/s. Eagle Cotton Pvt. Ltd.
10. On notice being issued to the respondent/corporate debtor, it appeared through its counsel and has filed its reply/objection to the present IB Petition. The relevant paragraphs of the such objection for opposing the IB Petition are being reproduced hereinbelow;

“3. The present proceedings seeking initiation of corporate insolvency resolution process by the applicant claiming to be a financial creditor cannot be admitted on the following amongst other grounds:

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- a. *The present proceeding against the present applicant is not maintainable in the eyes of law. Since, the applicant has provided an absurd and an accounted amount as its source of default.*
- b. *That the petitioner herein as preferred the said petition in the capacity of financial creditor and filed by Chief Manager of Bank of India as officer under grade-4 through power of attorney holder of the petitioner company i.e. Bank of India. Here, according to SEBI regulation 76 and 77 stipulates that all officers of bank above grade-4 is authorized to sign complaints affidavit; where financial creditor through its Assistant General Manager filed instant application to initiate insolvency resolution process only. Here, petition would like to dismiss on the grounds that petition filed by petitioner having no any authority to file petition before this Tribunal.*
- c. *That, the said petition file by chief manager of the bank being a power of attorney holder of the Petitioner Company. Here, power of attorney holder is not empowered to file application on behalf of financial creditor and only authorized person has power to do so. Further, according to State Bank of India act, 1955 that Assistant General Manager to file insolvency petition against corporate debtor is valid and considering the same petition file by Chief Manager of the bank lies with need to be dismiss.*
- d. *The applicant has not disclosed the exact nature the default that is alleged to have occurred. Hence, in absence of such disclosure, the present process cannot be admitted at all.*
- e. *That, the present petition cannot be admissible at all, it is stated that the amount due and payable in the books of the bank is not correctly mention in the petition in tabular format. The penal interest has been capitalized contrary to the law settled by the Honorable Supreme Court. Even the interest charge in the account is in excess of the contractual amount. Further, there is no more information about the amount mentioned in the petition in terms of other debits excluding interest.*
- f. *That, here the petitioner has not given the true figure of the default amount and amount claim is highly exaggerated and excessive and so, the respondent is herein not liable to pay the penal interest, no breakup of amount mentioned in terms of other debits.*
- g. *That, the petitioner has only annexed the documents which was signed by them from the respondent company only at the time of sanctioned but not annexed herewith any of the supportive*

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document in relation the amount mentioned in tabular format in terms of "OTHER DEBITS" i.e. Rs.63,73,747.00.

- h. That, petitioner company has also charged huge amount of interest as well as penal interest which totally against in the eyes of law.
- i. That, it is further submitted that the petitioner has adopted arbitrary, high-handed and UN business like attitude that respondent company herein did not paid the dues. In spite of having sufficient securities at their disposal, the petitioners company had acted maliciously and had deliberately adopted adamant and unreasonable stand and put the respondent company in financial ruins.
- j. That, further is stated that in spite of knowing that the business of the respondent is viable, the petitioner has failed to co-operate and with predetermined and vindictive mind refuse to assist respondent company, in the result of which all the efforts and attempts of respondent were rendered futile. Under the circumstances, the action of the petitioner under the Act is an entirely wrongful and illegal.
- k. The applicant has not disclosed the details pertaining to the default that is alleged to have occurred. Hence, in absence of such details, the present process cannot be admitted at all.
- l. The present proceeding cannot be admitted since the respondent is seriously disputing the amount of Rs.28,32,19,470.14 which has been alleged to be the amount that is due and payable by the respondent. Additionally, the respondent is also seriously disputing the execution of the documents that have been annexed by the applicant for the process of initiation of the present proceedings.
- m. Even otherwise, the present proceedings are not mandatory in nature since, section 7(5) (a) of the Code categorically provides that if the adjudicating authority is satisfied that default has occurred then it 'may' admit such application. Hence, discretion has been vested in the Honorable Tribunal which acts as a safeguard so that it does not have mechanically admit all applications filed by the Financial Creditors such as the present applicant.
- n. The present proceedings even otherwise cannot be admitted since the applicant has not provided the entire set of documents based on which the present proceedings have been initiated. In absence of such documents, the respondent has no means to ascertain the

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actual default and the same does satisfy the requirement of record of the default as has been prescribed in the Code.

- o. The present application is a frivolous application which is nothing but, an attempt of the applicant to arm twist the respondent into giving into their unreasonable demands. Moreover, the admission of the present application would unnecessarily put the corporate debtor into insolvency resolution proceedings for extraneous consideration.*
- p. Even otherwise, the admission of the present proceedings cannot be undertaken in such a casual and lackadaisical manner and the same warrants an elaborate inquiry into the facts of the matter and not a summary inquiry as has been sought to be canvassed by the applicant. Prior to admitting the present proceedings, the Hon'ble Tribunal will have to ascertain and satisfy itself as to the existence of the default, the completion of the application and also about the fact whether disciplinary proceedings are pending against the proposed resolution professional. Unless satisfaction in relation to all the aforementioned criteria are met, the present proceedings cannot be admitted.*
- q. Under such circumstances, the present application cannot be admitted and needs to be dismissed with exemplary costs”.*

11. We have gone through the averments made by both parties in their respective pleadings. In the light of the above stated reply/objection filed by the corporate debtor company, we further examined the merits of the present IB Petition, which appears to be filed in conformity with the provisions of Section 7 of the I & B Code and Rules Applicable.

The provisions of Section-7 of the Code reads as under;

7. Initiation of Corporate Insolvency Resolution Process by Financial Creditor.

(1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation.—*For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.*

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(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.

12. From the perusal of the documents annexed with the present IB petition, it is evident that the Corporate Debtor company had applied for loan facilities to be sanctioned from the Petitioner Bank and passed necessary Board Resolution for availing the loan, which was duly sanctioned and disbursed to the corporate debtor company. It is also evident that

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corporate debtor company further executed deed of guarantee so as to secure the loan, the company also executed deed of Hypothecation of the fixed assets of the company to secure the loan under the seal and signature of the Director of the corporate debtor company, which cannot be denied. It is also evident that the availed loan facilities were to the tune of Rs.28 crores and above, which were encashed and utilized by the corporate debtor company. But later on it became irregular in making repayment of its instalment in terms of loan agreement, which is still outstanding. Therefore, the bank has classified its loan account as Non-Performing Asset (NPA) since 31.12.2015. It is also matter of record that admitted/undisputed amount of debts dues is more than rupees one lakh, hence, the objection raised by the corporate debtor company is not legally sustainable in view of the decision of the Hon'ble NCLAT in the matter of *The Dhar Textile Mills Ltd. vs. Asset Reconstruction Company (India) Ltd. (Company Appeal (AT) [Insolvency] No.11 of 2019)*, dated 07.01.2019, wherein Their Lordship has observed that the mis-match of 'debt' cannot be a ground to reject the claim of the bank/financial creditor if the amount due is more than **Rupees One Lakh** and if there is a 'default'. Under Section 7(5), the Adjudicating Authority is to be satisfied that a 'default' has been occurred. If the 'debt' is more than Rupees One lakh, then the Adjudicating Authority is required to admit the application, except where

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there is defect, which can be removed within seven days from the date of receipt of the notice from the Adjudicating Authority.

13. In addition to the above, we further considered the objection of the corporate debtor regarding the dispute of outstanding loan amount due to the corporate debtor company. According to the corporate debtor, the claim of the petitioner bank for Rs.28,32,19,407.14 is not the correct figure as per the loan agreement and rate of interest is exorbitant.

14. Be it so, it is undisputed position in the present matter that the corporate debtor company had itself approached the petitioner-financial creditor bank for grant of certain credit facilities, i.e. **Term Loan and Cash Credit facilities**. The petitioner bank, at the request of the respondent-corporate debtor company, sanctioned the aforesaid credit facilities and disbursed the amount of loan to the corporate debtor company. The amount quantified as a principal loan has been availed by the corporate debtor company comes to around to Rs.25.37 crores. No explanation was given by the corporate debtor in its reply that such amount has never been credited in its bank account or nor was encashed nor utilized. That apart, it did not specifically dispute that its director or authorized signatory never executed any loan agreement documents including



guarantee given by them as well as hypothecation of stock and book debts in favour of the bank. They never disputed their signatures over the deed of guarantee nor disputed authenticity of Board Resolution dated 20th September, 2012 and on 19th January, 2014, passed by the Board of Directors of the corporate debtor company by passing necessary resolution for availing loan/credit facilities on behalf of the company from the financial creditor/bank and execution of loan agreement/ documents by its Directors.

15. In addition to the above, the Hon'ble NCLAT in the matter of Palogix Infrastructure (P) Ltd. vs. ICICI Bank Ltd. [2017] 141 CLA 83 (NCLAT) [in Company Appeal (AT) (Insolvency) Nos. 30, 37 and 54 of 2017 at para-38] has pleased to observe and held as such;

"If an officer, such as senior manager of a Bank has been authorized 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 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".

Therefore, in view of the above stated observations, the objections raised by the corporate debtor company that the present petition could only be signed and filed by an authorized officer not below the rank of the Assistant General

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Manager is not tenable and liable to be rejected, as it has no legal force. Hence, it is hereby rejected.

16. We further find that advancement of various loan facilities to the corporate debtor meets the requirement of Section 3(11) and (12) of the I & Code so as to trigger the CIRP in respect of the Corporate Debtor company. The relevant provisions of Section 3(11) and 3(12) of the Code reads as under;

3(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

3(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.

17. Moreover, 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 well settled the legal position by observing as such;

"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

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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 subsection (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be”.*

18. By placing reliance on the above stated proposition laid-down by the Hon'ble Supreme Court and by perusal of the record of the case, we find that it is well established that corporate debtor company availed various loan/credit facilities from the petitioner bank for amount of more than **Rs.25 crores** towards Terms Loan and Cash Credit facilities, which is an undisputed amount towards principal loan liability. While there is default of debts for Rs.28,32,19,670.14ps at the time of filing of the present IB Petition. Hence, the present IB Petition can be considered

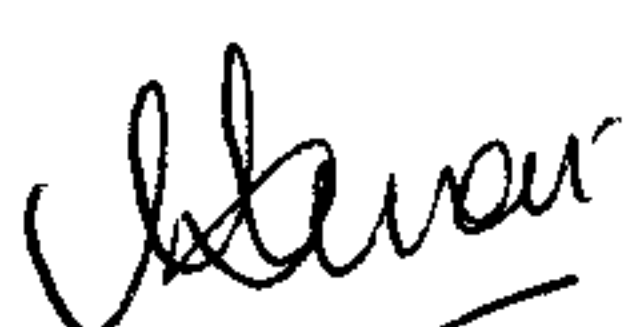
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well for initiation of CIRP in respect of corporate debtor company.

19. The Financial Creditor has proposed the name of **Mr.Chandra Prakash Jain** [Registration No.IBBI/IPA-001/IP-P00147/2017-18/10311] in the present Insolvency Application, which satisfied with the requirement of Section 7(3)(b) of the I & B Code. Further, the Financial Creditor duly annexed with a Written Communication received from the proposed Interim Resolution Professional with the present IB Petition giving consent in prescribed Form 2, wherein he has mentioned his Registration No.IBBI/IPA-001/IP-P00147/2017-18/10311 and there is no disciplinary proceeding pending against the proposed IRP.

20. We heard the submission of Mr. Ketan M. Parikh, Advocate for the Petitioner/Financial Creditor as well as Mr. Sunil Bhavsar, Advocate, on behalf of Mr. Ritesh Patadia, Advocate, for the Respondent/Corporate Debtor, we are of the view that the present IB petition deserves for admission. Hence, it is admitted under Section 7 of the I & B Code, for initiation of the C.I.R.P. in respect of the Corporate Debtor company with consequential directions/order given as under;

- (i) That **Moratorium** under Section 14 of the Code is declared in respect of the corporate debtor



company and it shall have effect from 19.07.2019 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.

- (ii) This Adjudicating Authority hereby appoint **Mr.Chandra Prakash Jain**, as **“Interim Resolution Professional”** having address at D-501, Ganesh Meridian, Opp. Gujarat High Court, Ahmedabad-380 060, [Mobile No.98240 36127, E-mail: jain_cp@yahoo.com] and having Registration No.IBBI/IPA-001/IP-P00147/2017-18/10311 under Section 13 (1) (c) of the Code.
- (iii) 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; 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.





- (iv) 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.
- (v) That the provisions of Section 14 sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (vi) The IRP so appointed shall make public announcement of Corporate Insolvency Resolution Process be made immediately as specified under Section 13 of the Code and by calling for submissions of claim under Section 15 of the Code.
- (vii) The Interim Resolution Professional shall perform all his functions strictly which are contemplated, *inter alia*, by Sections 17,18,20, 21 of the Code. It is further made clear that all the 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, does not assist or co-operate, IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order.

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(viii) 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 its obligation imposed by Section 20 of I & B Code, 2016.

(ix) The Financial Creditor is directed to communicate a copy of this order to the Interim Resolution Professional, the Respondent Corporate Debtor and the Registrar of Companies, Gujarat.

21. Registry is directed to communicate a copy of this order to the Applicant-Financial Creditor, Respondent-Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities.

22. The present IB Petition stands admitted and the Corporate Insolvency Resolution Process is commenced from the date of pronouncement of this order.


Manorama Kumari
Adjudicating Authority &
Member (Judicial)


Harihar Prakash Chaturvedi
Adjudicating Authority &
Member (Judicial)