

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD**

**COURT - II**

**CP (IB) 38/NCLT/AHM/2020**

(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:**

**IDBI BANK LIMITED**

**APPLICANT/  
FINANCIAL CREDITOR**

**Versus**

**SUMEET INDUSTRIES LIMITED**

**RESPONDENT/  
CORPORATE DEBTOR**

**Order Pronounced on: 20/12/2022**

**CORAM:**

**DR. DEEPTI MUKESH**

**HON'BLE MEMBER (JUDICIAL)**

**AJAI DAS MEHROTRA**

**HON'BLE MEMBER (TECHNICAL)**

**MEMO OF PARTIES**

**IDBI Bank Limited**

IDBI Tower, WTC Complex

Cuffe Parade

MUMBAI 400 005 ...

**Applicant/Financial Creditor**

**Versus**

**Sumeet Industries Limited**

504, Trividh Chambers, 5<sup>th</sup> Floor

Opp. Fire Brigade Station

Ring Road

SURAT 395 002

Gujarat State ...

**Respondent/Corporate Debtor**

**Appearance:**

For the Applicant : Mr. Akshat Khare, Advocate

For the Respondent : Mr. Navin Pahwa, Senior Advocate

## **ORDER**

1. The Present Application is filed on 18.12.2019 under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by IDBI Bank Limited through its Deputy General Manager, Mr. Madan Kumar Kanti, (for brevity 'Applicant'), with a prayer to initiate the Corporate Insolvency process against **Sumeet Industries Limited** (for brevity 'Corporate Debtor').
  
2. The applicant is a banking company incorporated on 27.09.2004 and registered under Companies Act, 1956 (1 of 1956) and within the meaning of Section 2 (20) of Companies Act, 2013, bearing CIN L65190MH2004GO1148838, and a banking company within the meaning of Section 5 (c) of the Banking Regulation Act, 1949 (10 of 1949), having its registered office at IDBI Tower, WTC Complex, Cuffe Parade, Mumbai 400 005 and branch office at IDBI Complex, NMG Ahmedabad, Opp. Municipal Staff Quarters, Near Lal Bunglow, Off. C.G. Road, Ahmedabad 380 006. The applicant is in the banking business providing various types of financial facilities

including business loans, personal loans, consumer loans, loan against property, home equity loans, term loan etc.

3. The corporate debtor is a limited company, incorporated under the provisions of The Companies Act, 1956 on 01.08.1988, duly registered with Registrar of Companies, Ahmedabad with CIN: L45200GJ1988PLC011049 and having registered office at 504, Trividh Chambers, 5<sup>th</sup> Floor, Opp. Fire Brigade Station, Ring Rod, Surat 395 002, Gujarat State. The Authorized share capital of the Respondent is Rs. 175,00,00,000/- and paid up share capital of the company is Rs. 103,64,24,000/-. The respondent company is engaged in the business of manufacturing polyester filament yarn.
  
4. It is submitted by the applicant that various credit facilities were sanctioned to corporate debtor on various dates and the same were revised from time to time, under consortium arrangement with Bank of Baroda, State Bank of India, Union Bank of India, Dena Bank and Canara Bank. The last renewal of working capital of Rs. 140.70 crore and review of corporate loan of Rs. 19.90 crore was sanctioned and disbursed to the corporate debtor vide sanction letter dated 03.02.2018. Details are as under:

(Rs. In crore)

Type of Facility	Facility forming part of the overall limit (Rs. 93.48 crores)
Cash Credit	33.40
EPC/PCFC/FBP/FBD/FBN/EBR (inner limit to CC)	(25.00)
ILC/FLC (DA/DP)/BC	68.80
Bank guarantee	8.00
FITL	4.45
LC/BC (inner limit of CC)	(33.40)
LER	3.50
LCBD (outside Consortium)	20.00
CMS	7.00
Corporate Loan (Review) [Original Sanction Rs. 25.00 crore)	19.90
<b>Total</b>	<b>160.60</b>

5. It is submitted by the applicant that the above financial assistance was approved and accepted by the corporate debtor and also approved by its Board of Directors by way of Board Resolution held on 14.02.2018.

6. The applicant has further submitted the particulars of outstanding as on 01.11.2019 as under:

A. Financial Assistance

(Rupees)

Facility	Principal outstanding	Interest outstanding	Total outstanding
Working capital	101,69,21,535.11	18,70,60,580.07	120,39,82,115.18
Rupee term loan	15,27,77,631.00	2,20,23,862.10	17,48,01,493.10
<b>Total</b>	<b>116,96,99,166.11</b>	<b>20,90,84,442.17</b>	<b>137,87,83,608.28</b>

B. Non-fund based assistance

Facility	Outstanding as on 01.11.2019
Bank guarantee	15,00,000.00
<b>Total</b>	<b>15,00,000.00</b>

**Grand total A + B****Total outstanding dues as on 01.11.2019**

**Rs. 137,87,83,608.28 (One hundred thirty-seven crores eighty-seven lacs eighty-three thousand six hundred and eight and twenty eight paise only) + further outstanding of bank guarantee No. 1703841BGP00085 of Rs. 15,00,000/- (Rupees fifteen lacs only) + further interest thereon with effect from 02.11.2019 at contractual rate.**

7. The financial creditor holds hypothecation charge in respect of first charge on corporate debtor's stocks of raw material, stock in process, semi-finished and finished goods and first pari passu charge on immovable properties owned by the corporate debtor details of which are annexed to the application. The financial creditor also holds irrevocable and unconditional guarantee of promoter directors of the corporate debtor.
  
8. It is further submitted by the applicant that the financial assistance sanctioned to the corporate debtor was enhanced/renewed from time to time at the request of the corporate debtor and the applicant had issued various sanction letters dated 08/06/2010, 16/07/2011, 14/06/2012, 27/09/2013, 26/04/2014, 22/08/2014, 29/09/2015, 24/08/2016 & 24/04/2017.

9. It is further submitted by the applicant that as the corporate debtor failed to repay overall credit facility granted by the applicant as per the terms and conditions of the restructuring, loan account of the corporate debtor was classified as NPA (non-performing assets) and the applicant had issued recall notice dated 08.04.2019 calling upon the corporate debtor to pay the entire outstanding amount together with accrued interest. The corporate debtor neither responded to the call notice nor made any payment. Therefore, the applicant invoked personal guarantee by letter dated 15.05.2019. Both corporate debtor and guarantors failed to respond to the said notices.
  
10. Thereafter, the financial creditor issued a notice dated 05.11.2019 under Section 13 (2) of the SARFAESI Act, 2002 calling upon the corporate debtor to pay of Rs. 137,87,83,608.28 as on 01.11.2019.
  
11. The corporate debtor filed affidavit in reply inter alia stating that:
  - The application is defective as the application is filed by a person not holding any valid authority;
  - In absence of certificate from Information Utility, occurrence of default is not proved and therefore also, the present application is not maintainable;

- The corporate debtor has received expression of interest dated 29.02.2020 from Saanika Industries Private Limited to acquire controlling equity stake in the company;
  - The corporate debtor had already moved Bank of Baroda, the lead bank in the consortium of which the petitioner is also a member for restructuring of the debt.
12. The applicant filed objection on affidavit for the reply filed by the corporate debtor inter alia stating that despite giving several opportunities, the corporate debtor failed to file reply/objections, therefore, the present application is required to be heard based on pleading of the applicant.
13. In compliance of order dated 01.01.2020, the applicant filed purshis along with copy of online tracking report from Indian Postal Department evidencing that the copy of the application was delivered to the corporate debtor on 20.12.2019.
14. The applicant filed rebuttal documents on affidavit countering contention of the corporate debtor that the application is signed by a person without proper authority. The applicant filed a copy of “Delegation of Power” of the applicant bank which authorise Dy.

General Manager to sign legal documents in court of law. The applicant filed copy of orders dated 12.05.2020 & 13.08.2020 issued by NCLT Principal Bench which inter alia clarifies that submission of proof of default from Information Utility is applicable only for new petitions, whereas, the present petition is filed on 18.12.2019. Further, even in the absence of such certificate, the present application cannot be dismissed as the corporate debtor had acknowledged the debt by issuing balance confirmation dated 25.04.2018 and revival letter dated 07.09.2019. As regards proposal of equity sale of corporate debtor pending for consideration with the consortium banks, the applicant has contended that, though the proposal letter of the corporate debtor dated 05.03.2020 was marked to the applicant, no such letter was received by the applicant. Furthermore, Bank of Baroda to whom such letter was addressed, had supplied copies of said proposal letter to other consortium member banks in Joint Lenders Meeting on 17.03.2020 and all the consortium banks rejected such proposal. The applicant has further submitted that even otherwise the said expression of interest does not absolve corporate debtor from liability towards the applicant, because the proposal of M/s. Saanika Industries does not reveal that after such acquisition of 26% stake and equity infusion would be utilised for reduction of debt liability of the corporate debtor. Mr. Anil Kumar Jain who has filed objection to the application, has

not disclosed his authority and supporting documents like Board Resolution.

15. The applicant filed additional affidavit inter alia stating that Joint Lenders Meeting (JLM) was likely to be held on 15.06.2022. As on 03.06.2022 none of the lenders, either verbally or in writing, had called for/proposed such JLM to be conducted on 15.06.2022. No JLM was conducted on 15.06.2022 or any day from the date of last hearing i.e. 03.06.2022. Therefore, the statement made by the corporate debtor as regard to JLM is baseless and misleading. Further, the last formal One Time Settlement (OTS) proposal sent by the corporate debtor to the applicant vide e-mail dated 06.01.2022 was rejected by the applicant via email on the same day itself.
16. In compliance of order dated 18.08.2022, the applicant filed copy of account statement reflecting disbursement of loan and copy of Form 2 - written communication by proposed Interim Resolution Professional, replacing the IRP originally proposed in the application.
17. The corporate debtor filed Resolution Plan submitted to the lead bank- Bank of Baroda and other members of the consortium including the applicant bank.

18. As per Form 1, part IV, the corporate debtor is in default of total Rs. 137,87,83,608.28/- (Rupees one hundred thirty-seven crores eighty-seven lacs eighty-three lacs six hundred eighteen and paise twenty-eight only) as on 01.11.2019. Taking into consideration various sanction letters dated 08/06/2010, 16/07/2011, 14/06/2012, 27/09/2013, 26/04/2014, 22/08/2014, 29/09/2015, 24/08/2016, 24/04/2017 and renewal of working capital sanction letter dated 03.02.2018 issued by the applicant, balance confirmation letter dated 25.04.2018 and revival letter dated 07.09.2019 issued by the corporate debtor, the present application filed on 18.12.2019 is within limitation.
19. The registered office of the corporate debtor is situated in Surat, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.
20. Heard the submissions and perused the documents on record. The arguments of both sides are dealt with as under:
  - (a) The first objection raised by the corporate debtor is that the application is defective as the application is filed by a person not holding any valid authority.

On perusal of the records it is found that each page of the application is sealed and signed by a Senior Officer of the bank who is duly authorised by delegation of powers annexed to the application.

- (b) Second objection raised by the corporate debtor is that in absence of certificate from Information Utility, occurrence of default is not proved and therefore also, the present application is not maintainable.

On perusal of orders dated 12.05.2020 & 13.08.2020 issued by NCLT, Principal Bench it is found that submission of proof of default from Information Utility is mandatory only for new petitions. Therefore, the contention raised by the corporate debtor is not applicable in the instant case.

Other contentions raised by the corporate debtor like expression of interest received from Saanika Industries Private Limited and application for restructuring of debt with lead bank of the consortium is pending for consideration, are for only delaying the admission of the application. Even after the present order was reserved for pronouncement, the corporate debtor filed IA

838 of 2022 requesting to hold the matter as fresh proposal is being given to the applicant IDBI Bank. On categorical statement of IDBI Bank that no proposal is pending, IA 838 of 2022 was rejected on 24.11.2022.

21. In light of the above discussions, it is evident that the debt is due and payable and default has occurred. The present application is complete in terms of Section 7 (5) of the Code and is within limitation. The applicant is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. In light of the above facts and records the present application is admitted and CIRP is ordered to be initiated against corporate debtor.
  
22. The applicant has proposed the name of Mr. Kuresh Hatim Khambati as Insolvency Resolution Professional, who is hereby appointed as IRP of corporate debtor having registration number IBBI/IPA-001/IP-P-01521/2018-19/12454 having office at GT Restructuring Service LLP, Kaledonia, 1<sup>st</sup> Floor, C Wing (Opposite J & J Office), Sahar Road, Andheri East, Mumbai 400 069, Maharashtra State, subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2 along with disclosures as

required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is filed, which is on record.

23. We direct the Financial Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Kuresh Hatim Khambati to meet the expenses for performing functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Financial Creditor.
24. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.

25. A copy of the order shall be communicated to the applicant, IRP and the corporate debtor. A copy of order along with complete copy of application be served to IRP by the applicant within 7 days of order. In addition, a copy of the order shall also be forwarded to IBBI for its records and taking steps for updating the Master Data of the corporate debtor in MCA portal and shall forward the compliance report to the Registrar, NCLT.

Sd/-

**AJAI DAS MEHROTRA**  
**MEMBER (TECHNICAL)**

Sd/-

**DR. DEEPTI MUKESH**  
**MEMBER (JUDICIAL)**

*Nair/Mansi*