

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT 1**



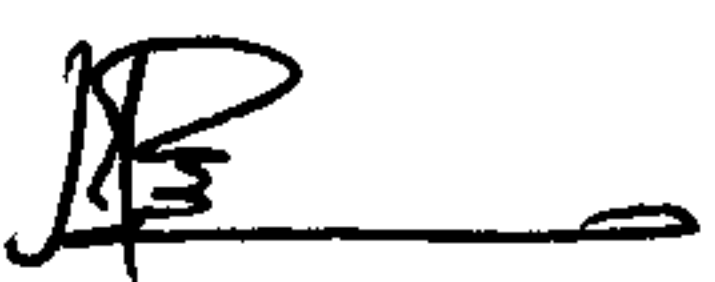

C.P. (I.B) No.345/7/NCLT/AHM/2018

**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 05.02.2020**

Name of the Company: Bank of India
V/s.
Jyoti Power Corporation Pvt. Ltd.

Section: Section 7 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	NIPUN SINGHVI	ADV.	CORPORATE	
2.	VISMAL J. DAVE		DEBTOR	
3.	KETAN. M. PARJICH	Adv.	Applicant DEBTOR Financial creditor	
	KULDEEP K. APESARA	ADV	APPLICANT FINANCIAL CREDITOR	

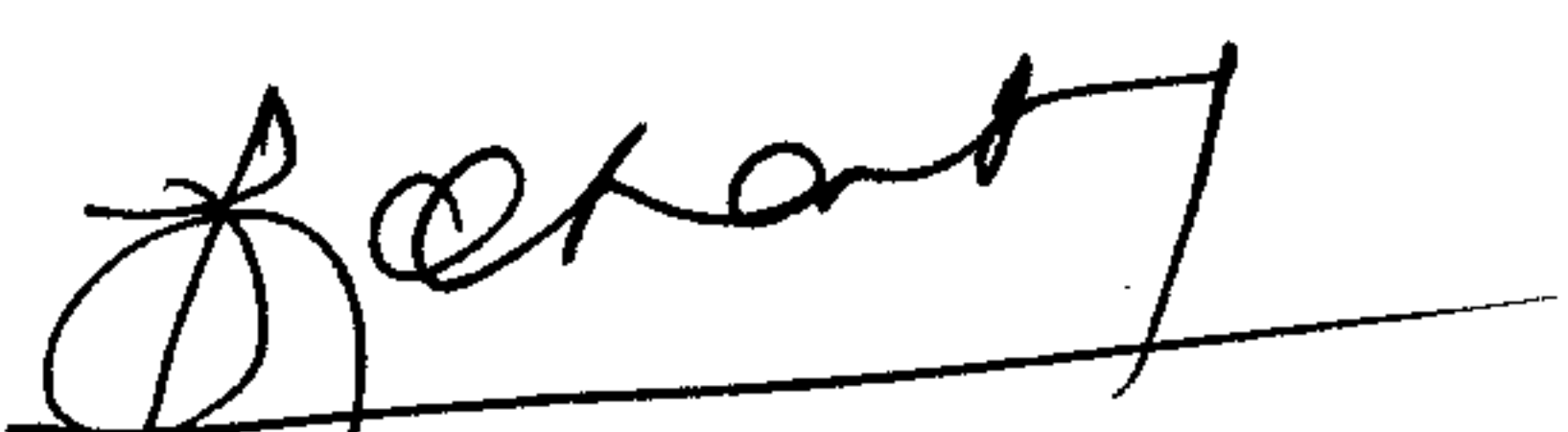
ORDER


The Parties are represented through their respective Counsel(s).

Today, the present matter is kept for pronouncement of order.

The present matter i.e., CP (I.B) No. 345/7/NCLT/AHM/2018, is admitted.

The detailed order is recorded vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 5th day of February, 2020
sen

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

C.P. (I.B.) No.345/7/NCLT/AHM/2018

In the matter of:

BANK OF INDIA,
A Bank, constituted under the
Banking Companies (Acquisition
and Transfer of Undertakings) Act,
1980 and having its Head Office at
Bandra-Kurla Complex, Star House,
C-5, G Block, Bandra(E), Mumbai-
400051 and one of its Branch Office
amongst other places at University
Road Branch, Fortune Square
Building, 1st Floor, New Kotecha
Chowk, University Road, Rajkot-
360005.

..... Petitioner

Versus

JYOTI POWER CORPORATION
PRIVATE LIMITED
A Company incorporated under the
provisions of Companies Act, 1956
having its Registered Office at Matru
Jyot, 1st Floor, Opp. Agro Petrol
Pump, Gondal - 360311, District -
Rajkot, Gujarat.

.....Respondent

Order delivered on 5th February, 2020

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
And
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**





Appearance:

Mr.Ketan M.Parikh, Advocate for the Applicant/Financial Creditor
Mr.Nipun Singhvi, Mr.Vishal J.Dave & Ms.Pragati Tiwari, Advocates
for the Respondent/Corporate Debtor

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

1. The present I.B. Petition is filed by the Financial Creditor Bank of India under Section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) against the Corporate Debtor namely, Jyoti Power Corporation Private Limited for the default committed by the Corporate Debtor in making repayment of various credit facilities availed from the Bank. The Applicant (FC), Bank of India 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 Dineshchandra Maganlal Patel, Bank of India, University Road Branch, Rajkot.
2. The Respondent Corporate Debtor (CD) Company, namely Jyoti Power Corporation Private Limited was incorporated on 30.03.2006 with CIN: U45204GJ2006PTC048048.
3. The nominal share capital of the Respondent (CD) Company is Rs.40,50,00,000/- divided into

Rs.4,05,00,000/- Equity Shares of Rs.10/- each and the paid-up capital of the company is Rs.39,04,45,150/- divided into Rs.3,90,44,515/- Equity Shares of Rs.10/- each. The Registered Office of the Corporate Debtor Company is situated at: Matru Jyot, 1st Floor, Opp. Agro Petrol Pump, Gondal – 360311, District – Rajkot, Gujarat. As per the copy of Memorandum of Association and Articles of Association of Corporate Debtor reveals that the erstwhile company, Jyoti Engineers and Contractors Private Limited changed its name to Jyoti Power Corporation Private Limited and are carrying on the business of engineering and contract work on job work basis or otherwise of all kinds of electricity works including erection of towers and electricity lines for government, semi government or private parties.

4. It is gathered from the records that initially the Corporate Debtor had availed working capital credit facilities with limits of Rs.140.00 crores with Bank of India (Applicant Bank herein) at its Rajkot Mid Corporate Branch and credit facilities aggregating to Rs.71.75 Crores with IDBI Bank Ltd., at its Specialized Corporate Branch, Rajkot. Thereafter, at the request of the Corporate Debtor, the IDBI Bank Limited with Bank of India, Applicant Bank herein as the lead bank of **'BOI consortium' granted Working Capital credit facilities, both fund and non-fund based**

to an aggregate limit of **Rs.314.25 Crores** as set out in the letters of sanction of the said Banks under the terms and conditions as contained in the sanction letters therein.

To secure the aforesaid credit facilities, the Corporate Debtor hypothecated its movable assets, (detailed description of the same is mentioned at Third Schedule of annexed at Annexure I/8 at page no.201 to 213 of the paper book of the petitioner) by execution of Joint Deed of Hypothecation. Further, the Corporate Debtor Company, as borrower through its Director, Mortgagors - Shri Niteshbhai M. Kataria & Shri Mavjibhai M. Kataria and Corporate Guarantor, M/s.Jyoti Power Transmission Pvt. Ltd., also executed a memorandum of entry over their immovable property in favour of the BOI consortium. Descriptions of mortgaged property are described in Second Schedule Part -A, B, C & D in Annexure I/6 of the Petition by memorandum of entry, dated 08.11.2011. The said mortgage has been registered with Sub-Registrar, Sanand vide serial no. 7339 on 08.11.2011.

5. Thereafter, at the request of the Corporate Debtor company, BOI Consortium **was reconstituted by inducting SBI as member of consortium and the said BOI consortium** reconstituted consisting of Applicant Bank herein being BOI, IDBI Bank Limited and SBI.

Accordingly, necessary Inter-se agreement was executed on **12.02.2013**. Subsequently, the BOI Consortium under their respective sanction letters enhancing the total aggregate limits to Rs.398.00 Crores, wherein the Applicant Bank herein granted Cash Credit of **Rs.117.00 Crores on the terms and conditions** contained in the sanction letter no.RMCB/ADV/04/674, dated 26.11.2012 of Applicant Bank and against the execution of various security documents in favour of the BOI Consortium.

6. It is further submitted that the Corporate Debtor company continued to approach the said BOI consortium Banks to sanction/ restructure/ revise/ renew/ enhance various credit facilities periodically and **such requests were favourably considered** by the aforesaid BOI consortium Banks to meet the credit needs of the Corporate Debtor Company. It is further submitted that upon request of the borrower company, the aforesaid BOI consortium banks, lastly sanctioned/ restructured/ revised/ renewed/ enhanced the credit facilities vide their respective sanction letters, wherein the Applicant Bank, as per the sanction letter dtd:27.03.2014, granted Fund Based Term Loans/FITL limits of Rs.103.00 Crores, Fund Based Working Capital of Rs.70.00 Crores and Non Fund Based Limits of Rs.106.00 Crores (total Rs.279.00 crores)

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7. In consideration thereof and in order to avail the above sanctioned/ restructured/ revised/ renewed/ enhanced Credit Facilities, the Corporate Debtor company, through its Director, Mortgagors - Shri Niteshbhai M. Kataria & Shri Mavjibhai M. Kataria and Corporate Guarantor, M/s.Jyoti Power Transmission Pvt. Ltd., signed and executed Bank's standard loan documents on 07.08.2014 in favour of the BOI Consortium in their respective capacities by passing necessary Board Resolution on 07.08.2014 for accepting all the stipulated terms and conditions.
8. Accordingly, to secure the aforesaid credit facilities, the Corporate Debtor company executed Second Supplemental Joint Deed of hypothecation dated 07.08.2014 in favour of the BOI consortium creating a charge over its movable assets. Further, the Corporate Debtor company through its Director, Mortgagors - Shri Niteshbhai M. Kataria & Shri Mavjibhai M. Kataria and Corporate Guarantor, M/s.Jyoti Power Transmission Pvt. Ltd., executed Supplemental Indenture of Mortgage over their immovable property in favour of the BOI consortium. Descriptions of mortgaged properties are described in First Schedule Part -A, B, C, D, E, G, H, I, J and Second Schedule Part-A & B in Annex: I/43 of the Application. The

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said mortgage has been registered with Sub-Registrar, Sanand vide serial no. 5287 on 08.08.2014.

9. Thus, the Corporate Debtor company availed the following credit facilities granted by the Applicant Bank -

Sanction date	Facilities		Limit (Rs. In Crores)
12.09.2011	Fund Based	Hypo. Of stocks	90.00
	Non-fund Based	Bank Guarantee (I/F)	125.00
		Total Limit	215.00
26.11.2012	Fund Based	WCFBL - Cash Credit - Stock	117.00
	Non-fund Based	Bank Guarantee (I/F)	133.00
		Total Limit	250.00
Restructured Limits			
27.03.2014	Fund Based	Cash Credit - Stock	70.00
		WCTL-I	47.00
		WCTL-II	27.00
		FITL	29.00
	Non Fund Based	BG(I)	106.00
		Total Limit	279.00

Thus, total aggregate limit of **Rs.279.00 Crores of Fund Based and Non-Fund Based Limits** were sanctioned by the Applicant Bank vide various sanction letters with terms and conditions including **hypothecation of plant and machineries, mortgage of immovable properties, personal guarantee** of (i)Shri Mavjibhai M. Kataria, (ii)Shri Nitesh M. Kataria (iii)Shri Kamlesh M. Kataria (iv) Smt.Naynaben N. Kataria and Corporate Guarantee of (i) Jyoti Power Trans. Pvt. Ltd., & (ii) JHT Power Eng. Pvt. Ltd.



10. It is further submitted that thereafter Corporate Debtor continued the operations in their various accounts with the Financial Creditor and ultimately, **Corporate Debtor failed to repay the secured debts** in all the credit facilities of restructured debts and Corporate Debtor stopped its accounting operation in its various restructured debts/credit facilities with the Financial Creditor, Bank of India.

11. It is further submitted that as the Corporate Debtor failed to adhere to the terms and conditions of the said restructuring of various credit facilities and as per RBI policies and directives and guidelines applicable to classification of accounts as NPA, **in case of restructured facilities, the accounts of the Corporate Debtor came to be classified as NPA with effect from 28.10.2013 as per such applicable guidelines and directives of RBI.** However, on **30.05.2015**, various credit facilities of Corporate Debtor were classified as NPA with effect from **28.10.2013** (date of NPA as recorded in the system) in the books of the accounts of the Financial Creditor as per applicable directives and guidelines as applicable to restructured credit facilities of Corporate Debtor.

12. Subsequently, the Applicant **recalled the loan and invoked the guarantees** and initiated measures under

RDDDBFI Act and SARFAESI Act. It is submitted that the Financial Creditor has filed Original Application No.717/2017 against the Corporate Debtor and others, which is pending before the DRT-I, Ahmedabad. Further, it is submitted that the Corporate Debtor and others have filed Securitisation Application No.45/2016 against the Petitioner Financial Creditor before DRT-I, Ahmedabad, challenging the measures taken by the authorised officer of the Financial Creditor under the SARFAESI Act, which is allowed vide orders dtd:15.03.2018 against which the Financial Creditor has filed an Appeal before the Appellate Tribunal at Mumbai, which is also pending for adjudication.

13. The Corporate Debtor has defaulted payment and the **date of default is 30.05.2015** as stated by the Petitioner Bank (page no. 11 of paper book). CIBIL Report annexed as Annexure-I/48 (page no. 1031 to 1101 of the paper book) has been filed by the Bank which confirms that the Account is **in default**.

14. The statement of accounts of the Corporate Debtor maintained by the Financial Creditor along with Certificate to this effect under Banker's Book of Evidence Act, 1891 (Page no. 130 to 146 of paper book) confirms the amount

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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 07.07.2018 is annexed and marked as Annexure -I/4. The Petitioner Bank has claimed their dues of **Rs.310,21,71,498.38Ps (Rupees: Three Hundred Ten Crores Twenty One Lakhs Seventy One Thousand Four Hundred Ninety Eight and Thirty Eight Paise Only)** as on 07.07.2018, more particularly calculated in tabular form annexed as Annexure I/5, which is reproduced as under: -

Outstanding balance in respect of Principal amount as on 30.05.2015.	Rs.168,27,86,528.36Ps
Plus : Other Debits	Rs.46,21,03,559.85 Ps
Un-debited Interest upto 07.07.2018	Rs.1,01,19,95,519.02Ps
Penalty upto 07.07.2018	Rs.11,07,79,446.18Ps
Less : Recovery made after NPA	Rs.16,54,93,555.03Ps
Total Outstanding amount payable as on 07.07.2018	Rs.3,10,21,71,498.38Ps.

15. 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, statement of accounts, workings showing the amount claimed to be in default and its calculation in tabular form as on 07.07.2018 along **with CIBIL report** and Valuation reports.



16. The present application has been filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy before this Adjudicating Authority to **initiate the Corporate Insolvency Resolution Process.**

17. The Financial Creditor, to substantiate its claim, has enclosed following documents: -

- i. Copies of all sanction letters (Page no.77 to 116 of paper book);
- ii. The statement of accounts of the Corporate Debtor maintained by Bank of India along with Certificate issued under Banker's Book Evidence Act (Page no.130 to 146 of paper book);
- iii. Copy of Second Supplemental Joint Deed of Hypothecation dated 07.08.2014 executed by the Corporate Debtor in favour of BOI consortium consisting of Bank of India, IDBI Bank Limited and State Bank of India annexed at Annexure I/34(Page no.482 to 500 of paper book);
- iv. Copy of Second Supplemental Working Capital Consortium Agreement dated 07.08.2014 executed by the Corporate Debtor in favour of BOI consortium consisting of Bank of India, IDBI Bank

- Limited and State Bank of India annexed at Annexure I/35(Page no.501 to 529 of paper book);
- v. Copy of Deed of Guarantee dated 07.08.2014 executed between M/s.Rajkamal Power Engineering, a Proprietorship concern through its Proprietor Shri Kamlesh Mavjibhai Kataria, as guarantor of Corporate Debtor in favour of the BOI Consortium consisting of Bank of India, IDBI Bank Limited and State Bank of India annexed at Annexure I/36(Page no.530 to 542 of paper book);
- vi. Copy of Deed of Guarantee dated 07.08.2014 executed between M/s.EMC Engineering Enterprise, a guarantor of Corporate Debtor in favour of the BOI Consortium consisting of Bank of India, IDBI Bank Limited and State Bank of India annexed at Annexure I/37(Page no.543 to 555 of paper book);
- vii. Copy of Deed of Guarantee dated 07.08.2014 executed between M/s.Jyoti Power Transmission Pvt. Ltd., a guarantor of Corporate Debtor in favour of the BOI Consortium consisting of Bank of India, IDBI Bank Limited and State Bank of India annexed at Annexure I/38(Page no.556 to 567 of paper book);

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- viii. Copy of Omnibus Guarantee Dated 07.08.2014 is attached at Annexure I/39 (Page no.568 to 572 of paper book);
- ix. Copy of Second Supplemental Inter Se Agreement dated 07.08.2014 between Bank of India, IDBI Bank Limited and State Bank of India collectively known as BOI Consortium annexed at Annexure I/40(Page no.573 to 583 of paper book);
- x. Copy of Letter of Pledge of Shares dated 07.08.2014 between Shri Niteshbhai Mavjibhai Kataria and Shri Kamlesh Mavjibhai Kataria as Pledgors and BOI Consortium consisting of Bank of India, IDBI Bank Limited and State Bank of India annexed at Annexure I/41(Page no.584 to 590 of paper book);
- xi. Copy of Master Restructuring Agreement dated 08.08.2014 between the Corporate Debtor and BOI Consortium consisting of Bank of India, IDBI Bank Limited and State Bank of India annexed at Annexure I/42(Page no.591 to 652 of paper book);
- xii. Copy of Supplemental Indenture of Mortgage dated 08.08.2014 between the Corporate Debtor along with its Mortgagors and BOI Consortium consisting of Bank of India, IDBI Bank Limited and State Bank of India annexed at Annexure I/43(Page no.653 to 729 of paper book);



- xiii. Copy of ROC charge certificate dated 10.10.2014 & 13.11.2014 annexed at Annexure I/44 & I/45(Page no.730 to 731 of paper book);
 - xiv. Copies of Valuation Reports (Page no.852 to 1030 of paper book)
 - xv. Copy of CIBIL Report (Page no.1031 to 1104 of paper book)
18. In the present matter, this Tribunal, vide its order dated 31.07.2018 had issued a formal notice to the Corporate Debtor for filing their objections and accordingly, the Petitioner filed the proof of service of notice before this Tribunal on 14.08.2018. Thereafter, the Respondent, Corporate Debtor appeared before this Tribunal on 05.09.2018 and sought time to file objections within two weeks. On 23.10.2018, the Learned Counsel appearing on behalf of the Respondent submitted that on 30.08.2018, the bank has issued a letter to the Respondent accepting their OTS proposal and the Respondent has written a letter to the bank on 25.09.2018, which is to be considered by the Bank. Hence, time was sought. Thereafter the matter was adjourned to 17.12.2018, 29.01.2019, 18.03.2019, 27.05.2019, 04.07.2019, 27.08.2019, 23.09.2019, 04.10.2019 & 25.11.2019.

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19. In response to the present I.B. Petition filed by the Petitioner Bank, the Respondent has filed its affidavit in reply on 29.01.2019, raising preliminary objections with regard to the maintainability of the application –

19.1 It is submitted there is no specific power of attorney granted by the Applicant bank for initiation of the CIRP, since the power of attorney was executed prior to coming into effect of the Code and cannot form the basis for filing proceedings under the Code.

19.2 It is submitted that the Applicant bank has not annexed the complete statement of accounts, since it has failed to produce the account statement for two financial facilities. It is submitted further the Applicant bank has classified the account as NPA on 28.10.2013 and thereafter against on 30.05.2015.

19.3 It is submitted that certain documents produced along with the Petition are in vernacular language and hence cannot be relied upon. It is also submitted that the agreements submitted by the Applicant are not adequately stamped and therefore could not be relied upon.

20. Further, the Respondent also filed Affidavit-in-reply in support of their contentions, wherein -

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20.1 It is submitted that the Corporate Debtor company being a power sector company is facing difficulties beyond its control like the change of government policy and economic slowdown.

20.2 It is submitted that no details have been given pertaining to the facilities, interest charged from time to time, payments received, manner and mode of creation of alleged charge and nature of defaults committed, entitling the bank to classify the account as NPA.

20.3 It is submitted that the Respondent **has sent revised proposals to the bank for amicable settlement of the outstanding dues, however the same has not been considered.** It is submitted that the company is going through financial difficulties and the same is a temporary phase and if requisite assistance is provided by the Bank, then the Corporate Debtor company will be in a position to clear all dues in a phased-out manner.

21. Further, IA 620 of 2019 in CP(IB) 345/7/NCLT/AHM/2018 is filed by the Corporate Debtor –

i. IA 620 of 2019 in CP(IB) 345 of 2018 filed by the Jyoti Power Corporation Pvt. Ltd., V/s. Bank of India – The

instant Interlocutory Application is filed by the Applicant (Respondent herein) under Section 60(5) read with Section 442 of Companies Act, 2013 read with Rule 11 of NCLT Rules, 2016 against the Respondent (Applicant Bank herein) for **seeking permission of this Adjudicating Authority for referring the matter to mediation and conciliation panel.**

The Applicant has filed its written submissions, wherein the Applicant has relied upon the judgement of Hon'ble NCLAT in the matter of *Parvinder Singh v. Intee Capital Limited and Anr.* and judgement of Hon'ble Supreme Court in the matter of *Swiss Ribbons Pvt. Ltd., v. Union of India & Ors.* and thus submitted that the mediation **process can be conducted and the insolvency application can be set aside thereon.**

It is further submitted that as per the provisions of the Companies Act, 2013, this Adjudicating Authority can **suo moto also refer the matter for mediation and conciliation and no consent of the other side is required for such reference.** It is also submitted that the Corporate Debtor had proposed an amount of Rs.77.00 crores towards full and final settlement against the finance provided by the consortium of Banks against which

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the banks had also replied vide letter dated 30.08.2018. It is submitted that inspite of sending continuous letters to the Applicant Bank, no substantive reply has been received from the Applicant bank. Hence, it is vital to mention here that the Corporate Debtor has made all the efforts to settle the dues with the banks, but banks have shown least interest in settling the matter.

22. The matter was finally heard. The counsels of the Petitioner and the Respondent were present on different dates and put forth their submissions before the Bench on all the above aspects.

23. 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

24. It is found that the Petitioner Bank has submitted the documents duly executed by the Corporate Debtors and guarantors along with the Statement of Accounts with Certificate under the Banker's Book of Evidence Act,

1891, in support of their IB Petition for initiation of C.I.R.P.

25. The Fund Based and Non Fund Based credit facilities were sanctioned and released by the Petitioner Bank along with other consortium lenders and the same were availed by CD, Jyoti Power Corporation Pvt. Ltd. **The charges have been** registered by the CD with the ROC in favour of the Petitioner Bank on **10.10.2014 & 13.11.2014** for Rs.432.85 Crores vide charge ID No.10317502.
26. The CD has defaulted in making repayment of credit facilities to the Petitioner Bank and **the date of default is 30.05.2015**. The statement of accounts as on 07.07.2018 along with the Banker's Book Evidence Certificate annexed with the Petition confirms the amount in default is **Rs.310,21,71,498.38Ps** as on 07.07.2018. Further, the **CIBIL Reports** submitted by the Applicant Bank **confirm the existence of liability to the Financial Creditor and default** committed by the Corporate Debtor.
27. The Petitioner Bank has filed the petition **within the period of limitation**, as the last payment into the account has come on **20.08.2015** and the application

**has been filed on 13.07.2018 besides submission of
OTS Proposal on 25.09.2018.**

The date of mortgage of the property is 08.08.2014,
SARFAESI proceeding has been initiated by the
Financial Creditor by filing OA. No.717/2017 and appeal
has been filed before the Debts Recovery Appellate
Tribunal, Mumbai which is also pending for
adjudication.

28. 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.
29. The Corporate Debtor has submitted a revised and final OTS proposal on 25.09.2018 for Rs.77.00 Crores to be paid on or before 31.03.2020; however, the Financial Creditor advised the Corporate Debtor to submit the assets and liabilities statement of the Corporate Debtor company, its Director, personal guarantors and corporate guarantors etc., however, such conditions were not complied by the Corporate debtor.
30. The Financial creditor had sanctioned a total limit of **Rs.250.00 Crores of Fund Based and Non Fund Based**

facilities to the Corporate debtor and thereafter also restructured the limit to Rs.279.00 Crores against which the FC has claimed an amount of **Rs.153,89,88,763.98Ps** in Cash Credit Facility A/c. No.311930110000002, **Rs.76,81,73,985.81Ps** in Term Loan A/c. No.313065410000018, **Rs.43,38,09,181.08Ps** in Term Loan A/c. No.313065410000019 and **Rs.36,11,99,567.51Ps** in Funded Interest Term Loan A/c. No.313065510000004.

31. The Financial Creditor has submitted at page no.11 of the Petition that the CD has **paid an amount of Rs.16,54,93,555.03Ps after the classification of the account as NPA.**

32. The present I.B. Petition is filed by the duly authorised official of the Applicant Bank 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).

33. **IA 620 of 2019** is filed by the Respondent under Section 60(5) read with Section 442 of Companies Act, 2013

against the Applicant Bank with a prayer to **refer the matter for mediation and conciliation panel.**

Heard the Sr. Learned Counsel appearing for the Corporate Debtor. During the arguments, the Corporate Debtor could not clarify how the present IA seeking permission from Adjudicating Authority for referring this Insolvency Application filed under Section 7 filed to Mediation and Reconciliation Panel is maintainable, when the application under Section 7 of IBC was filed on 13.07.2018, further, hearing from 25.07.2018 to 04.12.2019 have already taken place and the **Corporate Debtor has filed its reply.** At this stage, this Adjudicating Authority is only to decide whether the petition filed by the Financial Creditor under Section 7 of IBC is to be admitted or rejected, considering the facts that whether the default has occurred or not and the application under Section 7 filed under Sub Section 2 of the IBC is complete or not in all respects. When the **application is yet to be admitted, the question of referring the petition to the Mediation and Conciliation panel does not arise** and moreover the Ld. Lawyer of the Financial Creditor strongly opposed to this prayer of the Corporate Debtor as the Applicant Bank has not accepted the OTS proposal submitted on 27.08.2018 and they are not giving consent



for referring the mater to Mediation and Conciliation Panel.

ORDER

- 34.** Considering the material papers filed by the Petitioner Bank, arguments of both the parties and the facts mentioned in the **Para No.24, 25, 26, 27, 28, 29, 30, 31 & 32, this Adjudicating Authority is satisfied that,**
- a) The Corporate Debtor **availed the loan** /credit facilities from the Financial Creditor Bank(Bank of India).
 - b) Existence of debt is **above Rs. One Lac;**
 - c) Debt is due;
 - d) Default has occurred on 30.05.2015;
 - e) Petition has been filed **within the limitation period,** as the existence of debt due is found in the statement of accounts **as on 07.07.2018, CIBIL Report** and the **last payment into the account has come on 20.08.2015,** when this petition under Section 7 has been filed on **13.07.2018;**
 - f) Further, the Corporate Debtor is acknowledging the debts **by offering OTS proposal of Rs.77.00 crores on 25.09.2018** after the application is filed before the adjudicating authority on 13.07.2018.
 - g) Copy of the Application filed before the Tribunal has been sent to the Corporate Debtor and the

application filed by the **Petitioner Bank under Section 7 of IBC is found to be complete for the purpose of initiation of 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 05.02.2020.**

35. IA 620 of 2019 is filed by the Respondent under Section 60(5) read with Section 442 of Companies Act, 2013 against the Applicant Bank with a prayer to refer the matter for mediation and conciliation panel.

Having heard the arguments from both sides, we do not find any merit in the IA filed by the Corporate Debtor, while disposing the application filed under Section 7 of IBC, 2016 by the Financial Creditor. Hence, the prayer made in the IA 620 of 2019 in CP(IB) 345/7/NCLT/AHM/2018 is rejected.

36. 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: -

I. (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including

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execution of any judgement, decree or order in any court of law, tribunal arbitration panel or other authority.

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.

(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

II. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

III. The provisions of sub-section (1) shall not apply to

(a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

IV. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.

37. This Adjudicating Authority hereby appoints, as proposed,
Mr.Chandra Prakash Jain, having Insolvency Professional Registration No.IBBI/IPA-001/IP-P00147/2017-18/10311, Email ID: jain_cp@yahoo.com, Mob. no.9824036127, Address: D-501, Ganesh Meridian, Opp. Gujarat High Court, Ahmedabad - 380060 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 and to act further as per the order/direction 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.

- 38.** The **IRP is hereby advised to adhere the time limit** as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP" in short) and perform the duties as specified Under Section 17, 18, 20 and 21 of I.B Code. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, in Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnels connected with the Corporate Debtor, its promoters or any other persons associated with the Management of the Corporate Debtor are under legal **obligation under Section 19 of the Code** to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution

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Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

39. It is also observed that the CD has paid **Rs.16.54 crores after the account became NPA** and the Petitioner Bank has claimed an aggregate amount as under –

Outstanding balance in respect of Principal amount as on 30.05.2015.	Rs.168,27,86,528.36Ps
Plus : Other Debits	Rs.46,21,03,559.85 Ps
Interest upto 07.07.2018	Rs.1,01,19,95,519.02Ps
Penalty upto 07.07.2018	Rs.11,07,79,446.18Ps
Less : Recovery made after NPA	Rs.16,54,93,555.03Ps
Total Outstanding amount payable as on 07.07.2018	Rs.3,10,21,71,498.38Ps.

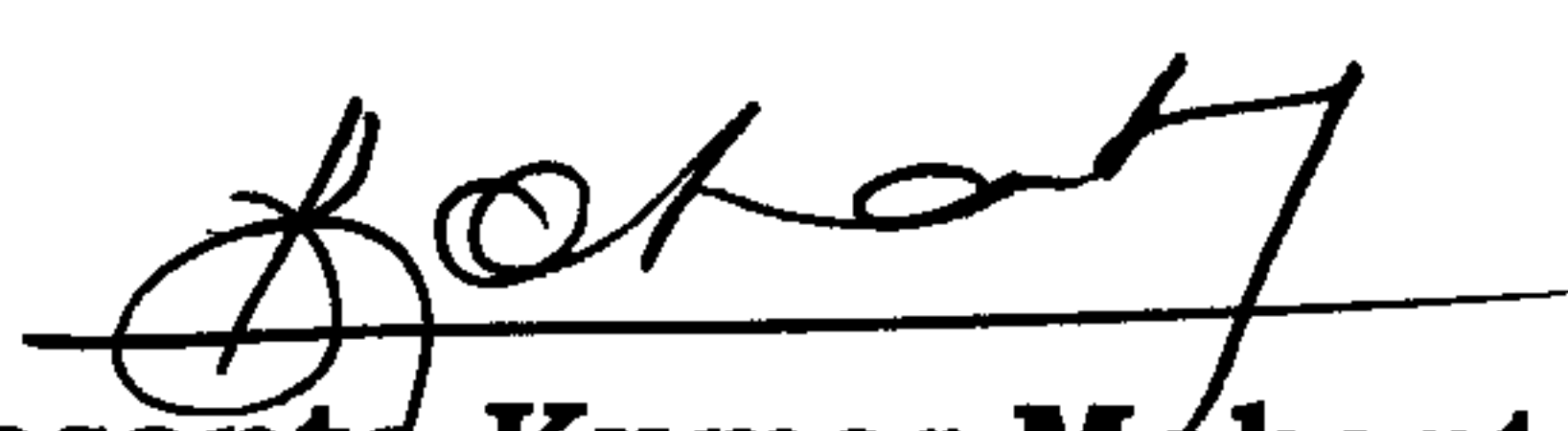
One of the **prime objective** of the Insolvency and Bankruptcy Code, 2016 is to **quickly find out a viable Insolvency Resolution Plan for the Corporate Debtor and in order to have a Resolution Plan Viable, feasible and implementation successful, in the era of Minimum Cost of funds-based Lending Rate ("MCLR" in short)/Repo Linked Interest Rate/Interest rate falling regime 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 rate of Petitioner Bank's One Year MCLR or One Year MCLR + 1% without any penal /overdue interest.

40. The **Registry is hereby directed to communicate** the authenticated 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.

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

Thus the present I.B petition filed under Section 7 of the IBC **stands admitted on 05.02.2020 with the above Observation and Directions.**


(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member(T)

[Per: Shri Harihar Prakash Chaturvedi, Member (Judicial)]

1. I have been benefited to peruse the judgment of my Learned Technical Member. While in agreement with the conclusion of the present I.B. Petition by admitting the same under Section 7 of the I.B. Code, I will express my opinion in respect of the disposal of the I. A. No. 620 of 2019 on its merits as the same was filed by the Corporate Debtor for referring it to the mediators.

2. It is a matter of record that in the present I.A, oral submissions of the Ld. Counsels for both the parties were heard. However, the Counsel for the Financial Creditor has opposed such application for referring the matter for mediation. At such belated stage, while the main I.B. Petition came to be filed in the year 2018. Since then the efforts were being made by the Corporate Debtor for settling the matter, but the same has not so far been materialized.

3. As per the material available on record, the Corporate Debtor, at earlier point of time proposed for making settlement of its debt for an amount of **Rs.77.00 Crore**, which was not acceptable to the Bank. Hence, it did not make any effective reply to the same and the Bank has shown its reluctance for proposal for settlement.

4. During the course of arguments, the Learned Senior Advocate Mr. Sandeep Singhi invited our attention to a decision of Hon'ble NCLAT in the matter of **Arvinder Singh Vs. NT Capital Ltd.** Read with judgment of Hon'ble Supreme Court's decision of **Swiss Ribbon Vs. Union of India**, that, a Mediation process can be conducted and the Insolvency application can be set aside. Further, this Adjudicating Authority is vested with necessary jurisdiction to refer the matter for mediation for which, no express consent from the other side is required.
5. We duly considered the above stated contention in the aspect of the present case in the light of main theme and object of the Insolvency and Bankruptcy Code i.e. to bring revival and resolution of the Corporate Debtor.
6. However, in our humble view, while Mediation can be very effective and viable measure to bring an amicus settlement between the parties and to give **quietus** to the dispute involved in the present I.B. Petition but, such important aspect also should not lose sight of that the time is essence of the code. As in the present matter, earlier efforts from the side of Corporate Debtor for making settlement could not be materialized and there seems a rigid stand of financial creditor, then there

remain only remote possibility that mediation would work for settlement of debts and would materialize the resolution for the Corporate Debtor.

7. Therefore, for the above stated reasons, the admission or otherwise of the present I.B. Petition cannot be further stalled for the purpose of mediation.
8. Moreover, such issue/aspect has been taken care of in subsequent amendment brought in the I.B. Code by introducing Section 12A, that even at post admission stage, the settlement with the Financial Creditor and Operational Creditor has been made permissible with the consent of a 90% voting of the members of the Committee of Creditors ("CoC").
9. In addition to the above, the Hon'ble Supreme Court, in its decision of ***Swiss Ribbon Vs. Union of India*** has further held that - if, a settlement is arrived at between the parties even at the post admission stage but prior to the formal constitution of the CoC, such settlement, should be accepted and this adjudicating authority can recall the C.I.R.P. under rule 11 of NCLT, by exercising its inherent powers so as to meet the end of the justice.




10. For the aforesaid reason, in our view, it is not appropriate to refer the matter for conciliation for want of willingness from the Financial Creditor side because, the Financial Creditor itself through its counsel has not given any expressed consent for referring the matter to mediation.

11. Notwithstanding the above, in our view, it is always open for both the parties to make amicable settlement even at the post admission stage before this Court under the provisions of Rule 12(A) of the I.B. Code or Rule 11 of the NCLT Rules and thereafter, this Court may pass an appropriate in accordance with the law. Therefore, at this stage, I.A. No.620 of 2019 is not having adequate force nor it can be a pre-requisite to refer the matter to mediation before making final disposal of the present I.B. Petition filed under Section 7 of the I.B. Code.

12. Hence, for the aforesaid reasons, the present I.A. No.620 of 2019 is hereby rejected. Consequently, this Adjudicating Authority can proceed for disposal of main I.B. Petition, CP (IB) No.345/7/NCLT/AHM/2018, on its merit. Thus, I am with an agreement with my Learned Member (Technical) for admission of the petition under the I.B. Code. Hence, the present I.B. Petition is admitted

with the directions given and order contained in Para 36
to 41 of the present order.

No order as to cost.


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (Judicial)

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