

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**

ITEM No.139  
C.P.(IB)/197(AHM)2021

**Order under Section 7 IBC**

**IN THE MATTER OF:**

INTEC Capital Ltd

.....Applicant

V/s

Heaven Textiles Pvt Ltd

.....Respondent

**Order delivered on ..19/07/2022**

**Coram:**

Madan B. Gosavi, Hon'ble Member(J)  
Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in open court vide separate sheet.

-SD-

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

-SD-

**MADAN B GOSAVI**  
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT-I**

**C.P.(IB)/197(AHM)2021**

**In the matter of :**

[An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016]

**INTEC CAPITAL LIMITED  
CIN: L74899DL1994PLC057410**

Having its address at:  
At 708, Manjusha Building,  
57, Nehru Place, New Delhi-110019

**....Financial Creditor**

**Versus**

**HEAVEN TEXTILES PRIVATE LIMITED  
CIN U17120GJ2011PTC065865**

Having its address at:  
Plot No. 31-32, Narayan Industrial Estate  
Village Jolwa, Taluka Palsana,  
Surat-394305 (Gujarat)

**....Corporate Debtor**

Order Reserved On : 28.06.2022  
Order Pronounced On : 19.07.2022

**Coram: MADAN B. GOSAVI, MEMBER (J)  
KAUSHALENDRA KUMAR SINGH, MEMBER (T)**

**PRESENTS:**

For the Financial Creditor : Ld. Adv. Mr. Urvesh Gor along with  
Ld. Adv. Mr. Dhruv Parwal, Ld.  
Adv. Mr. Aabhas Singh and Ld.  
Adv. Ms. Nidhi Saini

For the Corporate Debtor : None

**ORDER**

1. This instant Company Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) by Intec Capital Ltd.-the Financial Creditor against Heaven Textiles Pvt. Ltd.-the Corporate Debtor for initiating the Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor on the ground that the Corporate Debtor committed the default in paying the financial debt of Rs. 2,26,46,307/- (Rupees Two Crores Twenty Six Lakhs Forty-Six Thousand Three Hundred and Seven Only) including interest. The date of default is stated to be 21.03.2018.

2. The Financial Creditor made the averments which are summarised as under:

I. The Financial Creditor is a Non-Banking Financial Company duly registered with the Reserve Bank of India engaged inter-alia in the business of providing the financial credit facility.

II. The Corporate Debtor approached the Financial Creditor for availing the financial facility. The Financial Creditor sanctioned a loan of Rs. 50,90,400/- under loan account no. LNSUR024-150004504 to the Corporate Debtor which was duly disbursed. The Corporate Debtor on grant of the aforesaid loan executed a Loan Agreement thereby inter-alia agreeing to repay the said loan amount with interest @ 14% P.A. in 60 equal monthly installments of Rs. 1,18,445/- each.

III. The Corporate Debtor defaulted in payment of the installment on various dates as per the repayment schedule. Hence, on 30.10.2015, the Financial Creditor invoked clause

12.1 of the Loan Agreement and recalled the aforesaid loan facility vide legal notice dated 30.10.2015 wherein the Corporate Debtor was called upon to repay the entire loan amount with interest and other charges as agreed in the aforesaid Agreement amounting to Rs. 49,25,592/- which was due and payable on 23.10.2015. As the Corporate Debtor failed to pay the aforesaid dues despite the issuance of the aforesaid notice of demand dated 30.10.2015, the Financial Creditor filed an application before the Arbitral Tribunal of Mr. Suman Tripathi-Sole Arbitration, New Delhi (in Arbitration Case No. ST/ARB/08/2015).

IV. The Sole Arbitrator passed an Award on 01.06.2016 in favour of the Financial Creditor wherein the Sole Arbitrator had directed the respondent to pay Rs. 49,25,592/- as the outstanding principal loan amount along with recovery of interest @ 18% on Rs. 49,25,592/- from 23.10.2015 till the date of award i.e., 01.06.2016 and further directed to recover the future interest @ 18% P.A. on the amount awarded above from 23.10.2015 till the actual date of payment. The recovery cost of Rs. 12,000/- was also awarded in favour of the Financial Creditor. In the aforesaid proceeding, there were four respondents including the Corporate Debtor, and the award was passed against all the Respondents and all the Respondents were liable to pay the aforesaid award amount jointly and severally. No one had appeared for the respondents in that proceeding.

V. After the passing of the award in favor of the Financial Creditor, the Corporate Debtor made various installments through cheques, out of which few cheques got

bounced. The Financial Creditor received the last payment through cheque on 21.03.2018, bearing cheque no. 10683 for an amount of Rs. 3,00,000/- against repayment of the loan amount.

3. We issued the notice to the Corporate Debtor but the Corporate Debtor neither appeared nor filed the reply. Hence, the matter proceeded ex-parte against the Corporate Debtor.

4. This Adjudicating Authority vide order dated 05.04.2022 had directed the Financial Creditor to file the details of Bank Statement reflecting the entires with respect to the post-dated cheques deposited by the Corporate Debtor which got bounced. Pursuant to the directions given by us, the Financial Creditor inquired about the Bank Statement showing the ECS and it has come to the knowledge that bounced ECS entries do not reflect under the official Bank Statements due to the mechanism of the Bank pertaining to the ECS mandate. But the Financial Creditor has filed the Bank Statement for the period between 01.03.2018 to 31.03.2018 showing the last payment of Rs. 3,00,000/- received under the said Loan Account on 21.03.2018.

5. As per the last amount received on 21.03.2018, the period of three years for filing of this application ended on 21.03.2021. On the ground of limitation, Learned Counsel for the Financial Creditor relied upon the judgment of the Hon'ble Supreme Court in Misc Application No. 665 of 2021 under Suo Motu Writ Petition (Civil) No. 3 of 2020 dated 10.01.2022 wherein the Hon'ble Supreme Court took the cognizance of the difficulties that were faced by the litigants in filing petition/application/all other proceedings in view of the situation arising from the massive outbreak of COVID-19 pandemic and subsequently excluded the

period from 15.03.2020 to 28.02.2022 for the purpose of computing the limitation. This application is filed on 13.10.2021. In view of the aforementioned order passed by the Hon'ble Supreme Court, this application is within the stipulated period under section 7 of the IBC, 2016, and meets the threshold limit as prescribed under IBC, 2016. This application is otherwise complete and defect-free.

6. The Financial Creditor has proposed the name of Insolvency Professional Mr. Anurag Nirbhaya, having Registration No. IBBI/IPA-001/IP-P00870/2017-2018/11468 and e-mail Id: [anurag@canirbhaya.com](mailto:anurag@canirbhaya.com) for appointment as an Interim Resolution Professional ("IRP") against whom no disciplinary proceedings are pending. Hence, we pass the following orders:

### **ORDER**

- I. The Corporate Debtor M/s. Heaven Textiles Private Limited is admitted in the Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.
- II. We appoint Mr. Anurag Nirbhaya, having Registration No. IBBI/IPA-001/IP-P00870/2017-2018/11468 and E-mail Id: [anurag@canirbhaya.com](mailto:anurag@canirbhaya.com), and having an address at 204, Sagar Plaza, District Centre, Laxmi Nagar, New Delhi-110092 under section 13(1) (c) of the IB Code as IRP as proposed by the Financial Creditor.
- III. The Moratorium under Section 14 of the Code shall come to effect from the date of this order 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.

IV. The Adjudicating Authority hereby prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Debtor including the execution of any judgment, decree or order in any Court of law and further prohibits Tribunals, Arbitration Panels or other Authority(s), transferring, encumbering, alienating or disposing of any of Corporate Debtor 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.

V. Further, litigation or application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to the pronouncement of this order such proceedings are expected to be dealt with in accordance with law i.e., Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.

VI. 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 assets and management of the Corporate Debtor.

VII. The IRP so appointed shall make a Public announcement of the Corporate Insolvency Resolution Process (CIRP) immediately as specified under Section 13 of the Code and by calling for submissions of the claim under Section 15 of the Code.

VIII. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with the management of the Corporate Debtor are under legal obligation as per Section 19 of the Code to 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 the IRP, do not assist or co-operate, the IRP is at liberty to make an appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

IX. The IRP shall be under a 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 an obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

X. We direct the Financial Creditor / Applicant to pay the IRP a sum of **Rs. 1,00,000/- (Rs. One lakh)** as fees & expenses till the CoC decides about his fees/expenses.

XI. The Registry is directed to communicate this order to the Financial Creditor, Corporate Debtor, and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within

three working days and upload the same on the website immediately after pronouncement of the order.

XII. The commencement of the Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.

XIII. Accordingly, C.P.(IB)/197(AHM)2021 is allowed.

-SD-

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

-SD-

**MADAN B. GOSAVI**  
**MEMBER (JUDICIAL)**

Rajeev Kr. Sen/Stenographer