

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - 5**

CP No. 855/IBC/NCLT/MB/MAH/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

**Bank of India**

Registered Office at: Star House, C-5, "G"  
Block, Bandra Kurla Complex, Bandra (east),  
Mumbai – 400 051 and

Branch Office at: 1162/6, University Road,  
Shivaji Nagar, Pune – 411 005

..... Petitioner

Vs.

**Gajanan Gangamai Industries LLP**

2<sup>nd</sup> Floor, Tapdia Tereces, Adalat Road,  
Mulay Bros, Aurangabad – 431 001

..... Corporate Debtor

Order pronounced on: 22.09.2021

**Coram :**

Hon'ble Suchitra Kanuparthi, Member (J)

Hon'ble Chandra Bhan Singh, Member (T)

**For the Petitioner:** Ms. Prajakta Menezes, Advocate.

**For the Respondent:** Mr. Rohan Agrawal, Advocate.

*Per: Suchitra Kanuparthi, Member (J)*

**ORDER**

1. The Petitioner/Applicant viz. 'Bank of India' (hereinafter as **Petitioner**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Petitioner" on 02.03.2020 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'Gajanan Gangamai Industries LLP' (hereinafter as '**Corporate Debtor**').

2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be Rs. 40,00,00,000/-, and the amount claimed to be in default is Rs. 50,99,94,290.22/-. The date of default is stated as 27.04.2018 and the date of NPA is stated as 29.07.2018.

**BRIEF HISTORY OF THE CASE**

3. The Petitioner is a scheduled bank and is a body corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The Petitioner is carrying on business through its different branches including one at Pune Large Corporate Branch. The present application is filed by the Petitioner through its authorised officer Mr. Ram Yadav, Chief Manager.

4. The Corporate Debtor is a limited liability partnership constituted under the Limited Liability partnership Act, 2008.

5. The Corporate Debtor has availed total credit facilities of Rs. 124.40 crores from a consortium led by Bank of India and Abhyudaya Co-operative Bank Limited, Janata Sahakari Bank Limited and Corporation Bank with a share of the Petitioner's Rs. 40,00,00,000/-.

6. Pursuant to and as per the sanction letter, the Corporate Debtor executed inter alia the following documents mentioned herein below with the Bank of India led consortium:

- a. A resolution passed by the designated partners of the Corporate Debtor in its meeting held on 23.09.2015 with respect to the credit facilities availed by the Corporate Debtor from Petitioner led consortium of Rs. 124.40 crores.
- b. Sanction letter dated 28.05.2015 and 18.09.2015 acknowledged by the Corporate Debtor with respect to the credit facilities availed of Rs. 40,00,00,000/-.
- c. Working Capital Consortium Agreement executed on 24.09.2015 with respect to the credit facilities availed from consortium of Rs. 124.40 crores.
- d. Joint Deed of Hypothecation executed on 24.09.2015 amongst the consortium lenders with respect to the credit facilities availed from consortium of Rs. 124.40 crores.
- e. Deed of Guarantee dated 24.09.2015 executed for working capital limit availed from consortium of Rs. 124.40 crores.
- f. Inter-se Agreement executed on 24.09.2015 between the working capital lenders for the credit facilities availed by the Corporate Debtor.
- g. Mortgage Deed executed on 24.09.2015 between the Corporate Debtor, Guarantors and the Petitioner for the properties mortgaged with the Petitioner.

7. The Petitioner informed the Corporate Debtor with respect to the overdue in the Cash Credit Account maintained by the Petitioner and requested them to regularize the account immediately on 23.05.2018.

8. The recall notice dated 12.09.2018 was sent by the Petitioner to the Corporate Debtor, designated partners and personal guarantors of the Corporate Debtor.

9. The Demand Notice dated 12.09.2018 was issued under Section 12(2) of the SARFAESI Act, 2002 for each property given as a security to the Petitioner.

10. The Possession Notice dated 23.01.2020 was made under Section 13(4) of the SARFAESI Act, 2002 published in two newspapers i.e.

Loksatta and Financial Express intimating symbolic possession of the properties has been taken by the Petitioner.

11. The notice of 30 days dated 17.07.2019 was issued by the Petitioner to the Corporate Debtor, Personal Guarantors, Designated Partners of the Corporate Debtor with respect to the intimation for sale of the secured assets and e-auction of the property mortgaged on 16.08.2019.

12. The notice of 30 days dated 17.01.2020 was issued by the Petitioner to the Corporate Debtor, Personal Guarantors, Designated Partners of the Corporate Debtor with respect to the intimation for sale of the secured assets and e-auction of the property mortgaged on 24.02.2020.

13. This Petition was listed on 16.04.2021, 08.07.2021, 27.07.2021 and 09.08.2021 wherein the Corporate Debtor failed to appear on first two occasions. On 27.07.2021, one Mr. Rohan Agrawal, Advocate had undertaken to file vakalatnama on behalf of the Corporate Debtor and he was directed to file reply with a direction that if the Corporate Debtor failed to file the reply within the prescribed time the right to file reply will be forfeited. On 09.08.2021 the Counsel for the Corporate Debtor was present, but no reply has been filed and right to file reply was forfeited. The Counsel for the Corporate Debtor also admitted the liability and the date of default as well.

**Findings:**

14. On going through the submissions made by the Learned Counsel from the both sides and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt. The Corporate Debtor has admitted its liability to repay the same before this Bench through its Counsel. Hence, owing to the inability of the

Corporate Debtor to pay its dues, this is a fit case to be moved under Section 7 of the I&B Code.

15. The Bench notes that as per a credit facilities of Rs. 124.40 crores from a consortium led by Bank of India and Abhyudaya Co-operative Bank Limited, Janata Sahakari Bank Limited and Corporation Bank with a share of the Petitioner of Rs. 40,00,00,000/- was granted by the Petitioner to the Corporate Debtor.

<b>Facilities</b>	<b>Amount in INR</b>
<b>Fund based limit</b>	
Cash credit (Working Capital)	40,00,00,000
<b>Sub-limit</b>	
Export Packing Credit	10,00,00,000
Foreign Bills Purchased/Discounted DP/DA 45 days	20,00,00,000
<b>Total Limit</b>	<b>40,00,00,000</b>

The credit facility carried a rate of interest @12.30% p.a. and penal interest, if any @2% p.a. Copy of the facility agreement is attached with the Petition to support the claim.

16. The total amount of Debt granted to the Corporate Debtor is stated to be Rs. 40,00,00,000/-, and the amount claimed to be in default is Rs. 50,99,94,290.22/- including interest. The date of default is stated as 27.04.2018 and the date of NPA is stated as 29.07.2018

17. The above facts clearly reveal that the Corporate Debtor is liable to pay the Petitioner and defaulted in making the payment to the Petitioner. During the hearing of this matter by this Bench, the Counsel representing the Corporate Debtor Mr. Rohan Agrawal, accepted the liability as well as default. Hence, it is a fit case for admission.

18. Considering the above facts, the Bench concludes that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor. The two essential requirements, i.e. existence of 'debt' and 'default', for admission of a petition under section 7 of the I&B Code, have been met in this case.

19. Further, the Bench also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Petitioner and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional. The Petitioner has proposed the name of Insolvency Professional. The IRP proposed by the Petitioner, Mr. Kamal Kishor Gurnani, having office at Flat No. 1301, Building No. 23, E Palazzio CHS Limited Mhada Housing Society Powai, Mumbai – 400 076, having registration No. IBBI/IPA-001/IP-P01463/2018-19/12338, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

20. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

21. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the initiation of

Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

22. That the Interim Resolution Professional shall perform the duties as assigned under **Section 18** and **Section 15** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

23. The Petition is hereby **"Admitted"**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

24. Ordered Accordingly.

**SD/-**  
**Chandra Bhan Singh**  
**Member (Technical)**

**SD/-**  
**Suchitra Kanuparthi**  
**Member (Judicial)**