BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2

C.P. (I.B) No.380/NCLT/AHM/2019

Coram: **HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL**
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 18.12.2020

Name of the Company: Bank of India
V/s
Raghukul Cottex & Processing Pvt Ld

Section 7 of the Insolvency and Bankruptcy Code, 2016

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER
(Through Video Conferencing)

Advocate, Mr. Ketan M. Parikh is present on behalf of the petitioner. Advocate, Ms. Khyati Punjabi is present on behalf of A.R. Gupta & Associates, Advocate for the respondent.

The order is pronounced in the open court, vide separate sheet.

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)

MANORAMA KUMARI
MEMBER (JUDICIAL)

Dated this the 18th day of December, 2020.

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BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

IA No. 248 of 2020
IN/AND
C.P. (IB) No. 380/7/NCLT/AHM/2019

IA 248 of 2020

Raghukul Cottex & Processing Pvt. Ltd.
244/6-7, GIDC Industrial Estate,
Waghodia, Vadodara,
Gujarat

...... Applicant
(Original Respondent)

Versus

Bank of India
Atkot Branch, Atkot,
Jasdan, Rajkot,
Gujarat

..... Respondent
(Original Applicant)

CP (IB) No. 380 of 2019

Bank of India,
Having its registered office at
Star House, Bandra-Kurla Complex, C-5,G Block,
Bandra (E),
Mumbai-400051

And Branch Office at:

Bank of India, Atkot Branch,
Atkot, Jasdan,
Rajkot (Gujarat)

.... Petitioner
(Financial Creditor)

Versus

M/s. Raghukul Cottex & Processing Pvt.Ltd.
R.S. No. 318/1,
Nr. Dhuadhar Khodiyar Temple,
Jasdan – Ahmadabad Highway,
Lilapur, Jasdan, Rajkot,
Gujarat-360050

....Respondent
(Corporate Debtor)

Order delivered on 18/12/2020

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance: IA 248 of 2020:

Mr. Mohit Gupta Learned Lawyer for the Applicant.
Mr. K.M. Parikh Learned Lawyer for the Respondent.

Appearance: CP (IB) No. 380 of 2019:

Mr. K.M. Parikh Learned Lawyer for the Petitioner.
Mr. Mohit Gupta Learned Lawyer for the Respondent.

COMMON ORDER

[Per se: Mr. Chockalingam Thirunavukkarasu, Member (T)]

1. Shri Raj Kumar Gautam, Chief Manager of Bank of India, on behalf of the Bank of India, Financial Creditor has filed this Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the IB Code"] read with Rule 4 of the insolvency and Bankruptcy Application to Adjudicating Authority Rules, 2016 (hereinafter referred to as "the Rules") for initiating corporate insolvency resolution process [hereinafter referred to as "CIRP") against M/s. Raghukul Cottex & Processing Pvt. Ltd., the Respondent company, the Corporate Debtor.

2. M/s. Raghukul Cottex & Processing Pvt. Ltd., the Corporate Debtor, a company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at R.S. No. 318/1, Nr. Dhuadhar Khodiyar Temple, Jasdan-Ahemdabad Highway, Lilapur, Jasdan, Gujarat. The Company is engaged in the business activity of Cotton ginning or textile substances.

3. The Authorised Share Capital of the Respondent Company is Rs. 50,00,00,000/-. The Paid-Up Share Capital is Rs. 47,50,000/-.

4. As per Part IV of the application, the total amount of debt sanctioned by the Bank of India, the Financial Creditor to the Corporate Debtor amounted to Rs. 1485 lacs (Term Loan of Rs.185 lacs and Cash Credit i.e. Hypothecation of Stock Rs.1300 lacs). It is further stated that the defaulted amount as of 04.06.2019 is Rs. 23,07,58,224.09. The date of NPA is 07.06.2016. The date of default is 07.06.2016.

5. The Applicant Bank classified the account of the Respondent Company as NPA on 07.06.2016 and issued a notice under Section 13(2) of the SARFAESI Act on 08.06.2016 to the Borrower and Guarantor M/s. Raghukul Cottex & Processing Pvt. Ltd. and its Directors.

6. It is further submitted that Applicant Bank filed O.A. No. 1295 of 2017 on 07.12.2017 for a claim of Rs. 18,12,95,657.33 and Corporate Debtor also filed S.A. No. 170 of 2017 on 09.06.2017 against the Financial Creditor before the Hon'ble Debts Recovery Tribunal-II at Ahmedabad and the said matter is pending.

7. The Applicant Bank has annexed the following documents along with the application:
   - Copy of Memorandum of Association and Articles of Association of Corporate Debtor
   - Copy of working showing the amount claimed to be in default and its calculation in tabular form as on 04/06/2019
   - Copy of statement of Accounts of the Corporate Debtor maintained by Applicant Bank along with Certificate issued under Banker's Book Evidence Act,1891
   - Copy of Hypothecation cum Loan Agreement dated 31.03.2014 by the Corporate Debtor in favor of Applicant Bank
   - Copy of Memorandum of Entry dated 22.05.2014 executed by & between the Corporate Debtor and it's Mortgagors & Guarantors with Applicant Bank
   - Copy of Deed of Guarantee executed on 31.032014 by the Guarantors of the Corporate Debtor in favor of Applicant Bank
   - Copy of ROC search report dated 08.01.2019 issued by Company Secretary in respect of Corporate Debtor
   - Copies of Valuation Reports of Movable & Immovable Properties
   - Copy of Resolution passed in the meeting of the Board of Directors of the Corporate Debtor held on 04.05.2015, 08.06.2016
   - CIBIL Report dated 08.01.2019
   - Copies of Demand Notices u/s. 13(2) of the SARFAESI Act,2002 dated 08.06.2016 issued by the Financial Creditor to its Corporate Debtor and its Guarantors
   - Copy of Power of Attorney dated 03.02.2018

8. The Respondent Company has contended that the date of default has been stated by the Applicant bank to be 07.06.2016 which is denied. The Respondent further stated that on 07.06.2016, the Applicant bank had declared the account of the Respondent as NPA, the date of NPA cannot be the same as the date of default. It is further stated that from the statement of accounts produced by the Applicant Bank the installment of January 2016 remains unpaid and therefore, the default started on 28.01.2016. That in fact, the installments of interest debited in the account remained unpaid for January to June. Therefore, the Applicant has wrongly stated that the date of default is 07.06.2016 within the limitation period by misleading the Hon'ble Tribunal.

9. The Respondent Company has contended that the officer of the Applicant Bank, who signed the aforesaid Insolvency Application on behalf of the Applicant Bank, has no authority to file the present Insolvency Application on behalf or in the name of the Applicant Bank. The said authorized officer has no power or authority even to sign the present insolvency application.

10. The Respondent Company has also stated that the aforesaid Insolvency Application is not filed within the period of limitation and claimed that the present insolvency application is barred by limitation.

11. The Petitioner filed an affidavit on 10.01.2020 enclosing Statement of Accounts of Corporate Debtor. Further, an Additional Affidavit is filed by the Petitioner on 05.10.2020 with a Copy of Acknowledgement of Debt dated 20/11/2018 signed by the two directors of the Corporate Debtor/Respondent.

12. Heard the Learned Counsels for both sides.

13. The counsel for the Respondent submitted that the said application is not filed by the authorized person competent to file the same. It is submitted by the counsel for the Respondent that the petition is required to be discarded.

14. It is noted that Shri Raj Kumar Gautam Chief Manager of Bank Of India who has filed the application, has the power to make advances, grant loans, to take bankruptcy or insolvency or liquidation proceedings for any debt due to the Bank. Hence, in line with the decisions of Hon'ble NCLAT in Palogix case and in Gouri Prasad Goenka Vs. Punjab National Bank Case, Shri Rajkumar Gautam has the authorization to file this application.

15. The second contention put forth by the Corporate Debtor that the present petition is barred by limitation and not maintainable. The respondent Corporate Debtor also argued that the affidavit filed on 05-10-2020 with a copy of the acknowledgment of debt should not be considered at this stage and it will not extend the limitation period. The petitioner has filed an affidavit on 05.10.2020with a copy of acknowledgment of debt dated 20.11.2018 signed by two directors of respondent – corporate debtor and argued that considering the acknowledgment of debt, the petition is filed well within the limitation period.

16. It is noted that the last date of the transaction in the Bank account is on 27.01.2016 and an Affidavit is filed with a copy of the Acknowledgment of debt dated 20.11.2018 signed by the two directors of the Respondent/Corporate Debtor. In view of this and in line with the decision of Hon'ble NCLAT in Yogesh Kumar Jaswantlal Thakkar Vs. Indian Overseas Bank, the application filed under section 7 of IB Code filed on 06.06.2019 is within time.

17. In an affidavit filed on 08.10.2020 the respondent –Corporate Debtor has submitted that the additional affidavit filed by the petitioner should not be taken on record at such belated stage and stated the acknowledgment letter signed by Mr Kamlesh G. Pansuriya is forged and it was never signed by Mr. Kamlesh G. Pansuriya. The petitioner also enclosed a copy of the complaint sent to the police sub-Inspector by Post along with the Affidavit. However, it is noticed that the acknowledgment of the debt is signed by two directors and not one and on the face of it, the signature matches with that of the two directors who have signed the loan documents. Hence, the objections of the respondent is not sustainable.

18. During the pendency of the petition CP (IB) 380/2019, IA 248 of 2020 is filed by the Respondent. The averments in the IA are similar to the objections filed by the Respondent and hence do not require detailed deliberation. The IA 248 of 2020 is dismissed as not maintainable.

19. The Petitioner has proposed the name of Mr. Shalabh Kumar Daga having Registration No. IBBI/IPA-001/IP-P00071/2017-18/10157 to act as IRP under Section 13(1)(b) of the IB Code and written communication in Form-2 of IBIBI has been filed by the proposed IRP.

20. From the documents placed on record, this Adjudicating Authority is satisfied that default has been committed by the Corporate Debtor in repayment of loan amount to the Bank. The petition is complete. As a consequence, the instant petition is admitted in terms of Section 7 of the IB Code, and the moratorium as envisaged under the provisions of Section 14(1) of IB Code and extracted hereunder shall follow concerning the Respondent Corporate Debtor.

(1) Subject to provisions of sub-Section (2) and (3), on the Insolvency Commencement date, the Adjudicating Authority herein declares moratorium for prohibiting all of the following viz;-

(i) the institution of suits or continuation of pending suits 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.

(ii) Transferring, encumbering, alienating, or disposing of by the Corporate Debtor, any of its assets or any legal right or beneficial interest therein;

(iii) 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(54 of 2002);

(iv) the recovery of any property by an owner as lessor where such property is occupied by or in the possession of the Corporate Debtor.

(2) The supply of goods and essential services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

(3) The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of receipt of an authenticated copy of this order till the completion of the 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.

21. This Adjudicating Authority hereby appoints Mr. Shalabh Kumar Daga having Registration No. IBBI/IPA-001/IP-P00071/2017-18/10157 to act as "Interim Insolvency Resolution Professional" under Section 13(1)(b) of the IB Code.

22. The petition CP(IB) 380 of 2019 along with IA No. 248 of 2020 stands disposed of accordingly with no order as to costs.

23. Communicate a copy of this order to the Petitioner, Respondent, and the Interim Insolvency Resolution Professional.

Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

Ms.Manorama Kumari
Adjudicating Authority
Member (Judicial)

R.S.