

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B) No. 397/7/NCLT/AHM/2018

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 06.09.2019**

Name of the Company: M/s Abhinandan Multitrade Pvt Ltd & Anr
V/s
M/s KSL & Industries

Section of the Companies Act: Section 7 of the Insolvency and Bankruptcy Code

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

- | | | | | |
|----|----------------------|------|-----------|---------|
| 1. | NATASHA DHRUMAN SHAM | ADV. | APPLICANT | Devasha |
| 2. | | | | |

ORDER

The petitioner is represented through learned counsel.

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

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**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 06th day of September, 2019

Manorama

**MANORAMA KUMARI
MEMBER JUDICIAL**

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD**

C.P. No. (IB) 397/7/NCLT/AHM/2018

In the matter of:

Abhinandan Multitrade Private Limited

Unit No. 3, 1st Floor
Kamat Industrial Estate
396, Veer Savarkar Marg
Prabhadevi
MUMBAI 400 025

Petitioner No.1
Operational Creditor

Express Suitings Private Limited
RM081, Sudarshan Nagar
MIDC, Phase II,
Domivli (East)
Thane 421 201
Maharashtra State

Petitioner No.2
Operational Creditor

Versus

KSL and Industries Ltd.

69 A Dhanu Udyog Industrial Area
Piperia
SILVASSA 396 230 UT of DNH

Respondent
Corporate Debtor

Order delivered on 06th September, 2019.

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

Appearance:

Advocate Ms. Natasha Shah for petitioner
Advocate Mr. Harmish Shah for respondent

ORDER

[Per: Ms. Manorama Kumari, Member (Judicial)]

1. Mr. Shailesh Thakur, authorised representative, on behalf of the operational creditors viz. M/s. Abhinandan Multitrade Private Limited and M/s. Express Suitings Private Limited filed this Petition under section 7 of The Insolvency and

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Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules") seeking reliefs under Section 7(5)(a) and Section 13(1)(a)(b)(c) of the Code.

2. The 1st applicant/operational creditor is a private limited companies registered under the Companies Act having identification No. U51101MH2009PT192447 and having registered office at Kamat Industrial Estate, Prabhadevi, Mumbai 400 025. The 2nd applicant/operational creditor is a private limited companies registered under the Companies Act having identification No. U1729MH2009PTC194390 and having registered office at MIDC, Dombivli (E), Thane, Maharashtra State.
3. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 11.01.1983 having identification No. L17119DN1983PLC000074 having registered office at Dhanu Ydyog Industrial Area, Piperia, Silvassa, UT of DNH. Authorised share capital of the respondent company is Rs.105,00,00,000/- and paid up share capital is Rs. 80,26,73,000/-.
4. As per the computation submitted by the applicants placed at page **No. 15** and marked as **Annexure-3** of the application, the first applicant had disbursed an unsecured



loan of Rs. 35,00,00,000/- (Rupees thirty-five crores only) on 03.08.2012 which has fallen due on 30.09.2017 and the second applicant had disbursed an unsecured loan of Rs. 45,00,00,000/- (Rupees forty-five crores only) on 01.08.2012 which has fallen due on 30.09.2017. It is further submitted by the applicants that against the total loan of Rs. 80.00 crores disbursed to the corporate debtor, on maturity, as on 30.09.2017, the respondent is in default of **Rs. 230,08,11,067/- (Rupees two hundred thirty crores eight lacs eleven thousand sixty-seven only)**. The said amount includes interest @ 18% up to 31.07.2018.

5. In support of their claim, the petitioners have submitted copy of the following documents: -

Sr. No.	Particulars	Page No.
1	Form No. 2 - written communication by proposed IRP	9-10
2	Board resolution and authorisation letter of Mr. Shailesh Thakur	11-14
3	Working computation sheet as on 31.07.2018	15
4	Financial contracts reflecting amendments and waivers to date	16-43
5	Entries in a bankers book in accordance with the Bankers Books Evidence Act.	44-45
6	Other documents to prove the existence of financial debt with amount and date of default	46-84
7	Proof of service	

6. The respondent/corporate debtor filed reply in affidavit inter alia stating that the application filed by the financial creditors under Section 7 of the I & B Code is barred by limitation since the credit facilities were availed somewhere in the year 2012. That, the instant application is not maintainable in the law, being filed by two applicants

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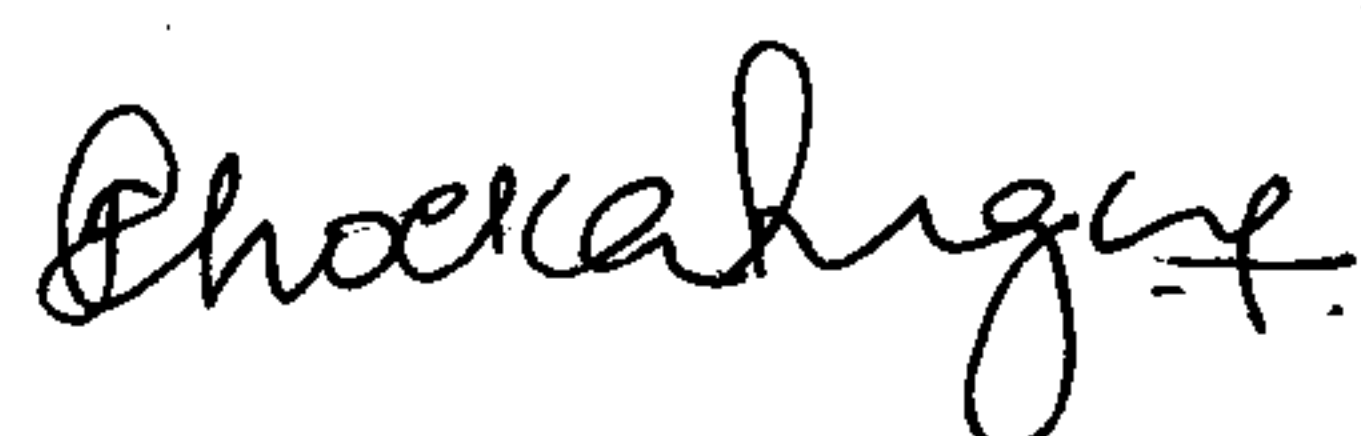
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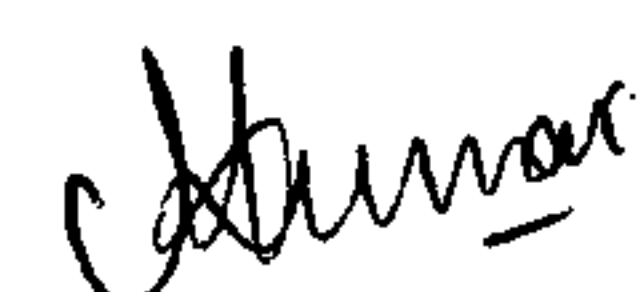
without having any inter-se agreement in between them. That, the amount in question has not become due and payable. That, during last one year, several discussions were held individually as well as in the Joint Lenders Meeting with all financial creditors to reach at an amicable resolution plan, but the applicants did not consent to the said plans floated by the respondent.

Findings

7. Heard both sides at length as also perused the documents annexed with application.

8. On perusal of the record it is found that duly sealed and signed promissory demand note was executed between the first applicant and respondent on 01.08.2012 for Rs. 35,00,00,000/-, placed at **page No. 47** to the application, which clearly envisages that the loan amount along with interest @ 18% per annum shall be paid at the time of maturity by the corporate debtor on 30.09.2017. Copy of similar demand promissory note entered between the second applicant and the corporate debtor for a sum of Rs. 45,00,00,000/- dated 30.07.2012 is placed at **page No. 52** to the application. Therefore, the first and foremost objection raised by the corporate debtor that the application is barred by limitation is not sustainable.





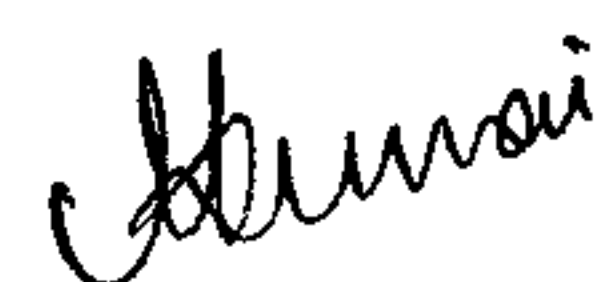
9. On perusal of the record it is found that vide letter dated 30.06.2015, placed at **page No. 54** to the application, the corporate debtor has confirmed having executed demand promissory note dated 30.07.2012 between the first applicant, acknowledged and confirmed the outstanding unsecured loan of Rs. 45,00,00,000/- excluding interest @ 18% p.a. payable by the corporate debtor on the date of maturity i.e. on 30.09.2017. Relevant gist of letter dated **16.01.2018** placed at page **No. 60** to the application, addressed to the first applicant by the corporate debtor is reproduced here below:

"We refer to your letters dated 15.12.2017 and earlier correspondence in this regard, we regret to inform you that despite our best efforts we could not arrange funds to repay the amount on **31.12.2017** as per our commitment. We are in the process of arranging funds and looking forward to have a resolution towards the credit facilities obtained by us."

Similar letter dated 31.01.2018 has been issued by the corporate debtor to the second applicant wherein the corporate debtor has promised to arrange funds latest by 31.03.2018.

10. On perusal of the record it is also found that the unsecured loan sanctioned by the applicants has been acknowledged by the respondent company from time to time. Further, copy of letter dated 16.05.2018 placed at page No. 82 of the application shows that the respondent had assured to pay Rs. 5.00 crores by 5th July, 2018 to the applicant No. 2.





In respect of applicant No. 1, the respondent had issued letter dated 16.01.2018 showing his inability to repay the outstanding amount and requested for some accommodation. Vide letters dated 30.06.2015 and letter dated 30.06.2017 issued to applicant No. 1 & 2, placed at page No. 49 & 50 and page No. 54 & 55 respectively, the respondent has confirmed having executed demand promissory notes and outstanding thereon. Thus, objection raised by the respondent with regard to limitation is not sustainable. Otherwise also when the date of maturity as per the demand promissory note is shown as **30.09.2017**, the limitation starts from 30.09.2017 and the application is filed on 28.08.2018 well within time.

11. The second objection raised by the respondent is that the petition is not maintainable as the petition is filed jointly without entering into any agreement between the first and second applicants. Section 7 (1) envisages that...

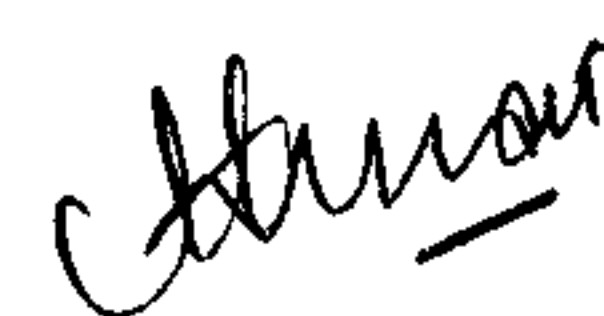
"7(1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the adjudicating authority when a default has occurred."

Thus, there is no bar in filing an application either by self or jointly with other financial creditors. Thus, the second objection raised by the respondent is also not sustainable.

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12. The third objection raised by the respondent is that in order to initiate CIRP it is mandatory that a default in repayment of the financial debt has occurred. On perusal of the record it is found that while executing demand promissory note with the applicants the respondent had promised to pay back the amount on 30.09.2017 along with interest @ 18% per annum with quarterly rest as reflected in demand promissory note placed at page No. 52 to the application. Thus the date of default admittedly would be 30.09.2017. On perusal of record it is found that on one hand the respondent has stated that the amount in question has not become payable and on the other hand respondent denies having taken any loan from the applicant. Record also shows that the respondent has been making continuous efforts to resolve the issue and has written number of letters to the applicants for purchasing time to make part payment.
13. It is pertinent to mention here that during the course of hearing learned lawyer appearing on behalf of the respondent filed affidavit admitting the amount payable to the financial creditors.
14. On perusal of the record it is found that, despite promises, the respondent company has miserably failed to repay the unsecured loan with interest to the applicants and, therefore, the applicants have filed this joint petition before this authority.



15. In view of the above, while going through the documents so filed by the petitioner, it is found that, corporate debtor admitted and acknowledged liability by letters of acknowledgement of debt/balance confirmation letters from time to time in favour of the petitioner.
16. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the Corporate Debtor committed default in paying the financial debt to the Applicant and the respondent company has acknowledged the debt.
17. In the instant case, the documents produced by the Financial Creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'financial debt'.
18. To decide the issue, it is desirable to refer to the Judgment delivered by the Hon'ble Supreme Court, in the matter between ***M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr.***, in Civil Appeal Nos. 8337-8338 of 2017, in Para No. 30 has clearly held as follows;

*"30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. **It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or***

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has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

19. Along with the application, the applicant proposed the name of the Resolution Professional namely Mr. Anil Kumar. The Adjudicating Authority hereby appoint Mr. Anil Kumar, Krishna Kunj Complex, Vapi Silvass Road, Imran Nagar, Opp. Sahara Market, Vapi 396 191, Gujarat State (Email ID anil2566@gmail.com) having registration No. IBBI/IPA-001/IP-P00144/2017-18/10308 to act as an interim resolution professional. Form 2 of the proposed interim resolution professional has been annexed and placed at page No. 9-10 to the application where declaration is made that no disciplinary proceeding is pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.
20. On perusal of record and as also discussed above, it is held that there is existence of default and that the application under Section 7 (2) of the Code is also complete in all respect.
21. In view of the above, the petitioner/financial creditor having fulfilled all the requirements of Section 7 of the Code, the instant petition deserves to be admitted.

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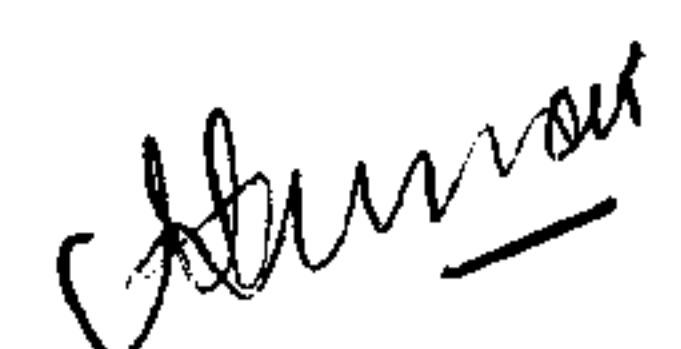
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22. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -

- (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.


23. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transaction as may be notified by the






Central Government in consultation with any financial sector regulator.

24. The order of moratorium shall have effect from the date of receipt of 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.
25. This Petition stands disposed of accordingly with no order as to costs.
26. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.


Chockalingam Thirunavukkârasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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