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BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD

C.P.(I.B) No. 630/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 26.09.2019

Name of the Company: Bank of Baroda  
V/s.  
Shree Hari Cotex Pvt. Ltd.

Section of the Companies Act : 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.				
2.				

ORDER

None appeared on behalf of the parties.

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



*Chockalingam*  
CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL  
Dated this the 26th day of September, 2019

*Manora*  
MANORAMA KUMARI  
MEMBER JUDICIAL

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

**C.P. No. (IB) 630/7/NCLT/AHM/2018**

**In the matter of:**

**Bank of Baroda**

Para Bazar Branch  
Toral Building  
Opp. Shastri Maidan  
RAJKOT 360 001  
GUJARAT STATE

:

**Petitioner**  
[Financial Creditor]

**Versus**

**M/s. Shree Hari Cotex Private Limited**

7/8, Shivalik Complex  
3<sup>rd</sup> Floor, Solitaire Building  
Nr. Shahibaug Garnala  
Opp. Bomba Garage  
Shahibaug  
Ahmedabad 380 004

:

**Respondent**  
[Corporate Debtor]

**Order delivered on 26<sup>th</sup> September, 2019**

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

**Appearance:**

Advocate Mr. Raju Kothari with Advocate Mr. Anip Gandhi for applicant.

**ORDER**

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

1. This petition is filed by Mr. Nijasure Janardan Shankar, Assistant General Manager, authorised representative of Bank of Baroda under section 7 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016



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(hereinafter referred to as "the Rules") seeking reliefs under Section 7(5)(a) and Section 13(1)(a)(b)(c) of the Code.

2. That the applicant/financial creditor Bank of Baroda is a body corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertaking) Act 1970, having its Registered office situated at Dena Corporate Centre, C-10, G-Block, Bandra Kurla Complex, Bandra E, Mumbai 400 051 and branch at Para Bazar, Rajkot 360 001, Gujarat State.
3. M/s. Shree Hari Cotex Private Limited is a company incorporated under the provisions of the Companies Act, 1956 on 10<sup>th</sup> October, 2010 having identification No. U17115GJ2010PTC062553, having its registered office at Shivalik Complex, 150 Feet Ring Road, Rajkot 360 007, Gujarat State. That, Authorised share capital of the respondent company is Rs. 1,00,00,000/- and paid up share capital is Rs. 1,00,00,000/-.
4. That, the applicant/financial creditor has submitted that at the request of the corporate debtor company, the applicant bank vide sanction letter dated 07.12.2012 sanctioned cash credit hypothecation of stock-cum book debts of Rs. 1200.00 lacs and term loan (plant & machinery) of Rs. 117.50 lacs. Enhancement in cash credit limit from Rs. 1200.00 lacs to Rs. 1500.00 lacs were made vide sanction



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letter dated 16.01.2014 as per the details given at **page No. 19-33** to the application.

5. The applicant bank has submitted that an amount of **Rs. 25,92,02,567/- (Rupees twenty-five crores ninety-two lacs two thousand five hundred sixty-seven only)** is outstanding against the aforesaid financial assistance sanctioned to the corporate debtor which include interest and penal interest as on 31.10.2018. That, the default occurred on 30.06.2014, the date on which the account was classified as Non-Performing Assets on 30.09.2014.
6. The applicant has submitted copy of the following documents in support of their claim: -

Sl. No.	Particulars	Page Nos.
1	Insolvency application	01-12
2	Power of attorney dated 28.08.2012 and authority letter dated 25.10.2018	13-18
3	Sanction letter dated 07.12.2012	19-25
4	Sanction letter dated 16.01.2014	26-33
5	Certificate of registration of Modification dated 28.02.2014	34-36
6	Agreement of hypothecation of goods, book debts and other movable assets dated 14.12.2012	37-49
7	General lien and set-off from guarantors dated 14.12.2012	50
8	Demand promissory note dated 14.12.2012	51
9	Instrument relating to deposit of title deeds dated 26.12.2012	52-74
10	Letter of guarantee dated 14.12.2012	75-85
11	Unattested memorandum of modification of hypothecation agreement from the company dated 27.01.2014	86-90
12	Letter of guarantee dated 27.01.2014	91-100
13	Letter of guarantee dated 13.02.014	101-109
14	Instrument extension relating to title deeds dated 30.01.2014	110-138
15	Demand promissory note dated 27.01.2014	139
16	Letter of continuity dated 27.01.2014	140
17	Power of attorney (Book debts dated 27.01.2014)	141-144
18	Ordinary resolution passed by the company dated 28.11.2012	145-146
19	CIRF report dated 24.10.2012	147-149



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20	Statement of accounts under Bankers' Books Evidence Act	150-180
21	Notice under Section 13 (2) of SARFAESI Act	181-186
22	Notice issued under section 13(4) of SARFAESI Act	187-192
23	O.A. No. 749 of 2016 filed before DRT-II, Ahmedabad	193-241
24	Affidavit in support of Insolvency Application	242-256
25	Written communication by the proposed Interim Resolution Professional as set out in form No. 2 of IB Code	257-258
50	Particulars of charges registered in ROC as on date	444

### Findings

7. Heard learned lawyer appearing on behalf of the applicant bank and also seen the documents annexed to the application.
  
8. On filing of the instant application, notice for the first time was issued but none appeared on behalf of the respondent. Therefore, again, fresh notice was issued by the registry which is returned with postal remark "left". Under such circumstances, this bench, passed an order advising the petitioner to effect paper publication in widely circulated newspaper where registered office of the respondent is situated. Accordingly, the applicant effected paper publication and filed proof thereof on 02.07.2019. Even after such paper publication, none appeared. Then, ultimately this Adjudicating Authority had to hear the matter in absence of respondent. and as per the track report,
  
9. On perusal of the record, it is evident that the applicant bank had sanctioned cash credit limit and term loan to the respondent company in the year 2012, as per the details placed at page **No. 19-33** to the application and the said



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loans were disbursed to the corporate debtor company. Moreover, documents made available by the financial creditor clearly shows that from time to time the respondent company has acknowledged and admitted the debt. Letter of continuity dated 27.01.2014 placed at page **No 140** to the application shows that the corporate debtor had acknowledged and accepted the debt. Statement of accounts of the respondent company placed at page **No. 180** to the application shows that the respondent company had transferred a sum of Rs. 17,00,000/- from their current account towards the outstanding loan account.

10. On perusal of the record it is found that for the first time the matter was notified for hearing on 20.12.2018. Thereafter, despite giving several opportunities, the respondent has neither in person/through advocate appeared before the Adjudicating Authority nor filed any reply/objections. The application is filed on 6<sup>th</sup> November, 2018.
  
11. The amount due to the Financial Creditor from the Corporate Debtor is a financial debt. In view of the Judgment of the Hon'ble National Company Law Appellate Tribunal, in case of ***M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr., in Company Appeal (AT)(Insolvency) No. 1 & 2 of 2017,*** this Adjudicating Authority has to satisfy whether a default has occurred; whether the Application is complete; and whether any disciplinary proceeding is pending against the proposed Insolvency Resolution Professional.



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12. 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 by way of affidavit.
13. 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'.
14. There is no dispute in the case that the petitioner is the financial creditor. The application is also furnished in the prescribed form – 1 of the Rules and the prescribed fee has also been paid. Moreover, Director of the respondent company has filed affidavit in reply inter alia admitting the debt.
15. Along with the application, the applicant proposed the name of the Resolution Professional namely Mr. Atul Mittal, 174, Balco Apartments, Plot No. 58, IP Extension, Delhi – 110 092 ([a.mittalmc@gmail.com](mailto:a.mittalmc@gmail.com)) having registration No. IBBI/IPA-001/IP-P 000439/2017-18/10762 to act as an interim resolution professional. Form 2 of the proposed interim resolution professional has been annexed and placed at page No. 257-258 of the application where declaration is



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made that no disciplinary proceeding is pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.

16. On perusal of record, 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.
17. 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.
18. 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);



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(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.

19. 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.
20. 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.
21. This Petition stands disposed of accordingly with no order as to costs.
22. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.



*Chockalingam*  
**Chockalingam Thirunavukkarasu**  
**Member (Technical)**  
**Adjudicating Authority**

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**Ms. Manorama Kumari**  
**Member (Judicial)**  
**Adjudicating Authority**



