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24/12/2019.

BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

Free of Cost Copy

C.P. (I.B) No. 257/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 19.12.2019

Name of the Company: Indian Overseas Bank
V/s
Jason Dekor Pvt Ltd

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

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Vishwas K. Shah. / Nishan Majumdar	Adv.	Respondent.	
2.	ANIP GANDHI / RAJU KOTHARI	Adv.	Applicant	

ORDER

The parties are represented through learned counsels.

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

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 19th day of December, 2019

PC

BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH

C.P. No.(IB) 257/7/NCLT/AHM/2019

In the matter of:

Indian Overseas Bank
Asset Recovery Management Branch
Ground Floor
Sharad Shopping Centre
Chinubhai Tower
Ashram Road
AHMEDABAD – 380 009
Gujarat State : **Petitioner**
[Financial Creditor]

Versus

M/s. Jason Decor Private Limited
G-9, Mahaveer Tower
Nr. Mahalaxmi Cross Road
Paldi
AHMEDABAD 380 007
Gujarat State : **Respondents**
[Corporate Debtor]

Order delivered on 19th August, 2019

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

Appearance:

Advocates Mr. Raju Kothari and Mr. Anip Gandhi for petitioner.
Advocates Mr. Vishwas K. Shah and Mr. Nishan Majumdar for respondent.

ORDER

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

1. Mr. D. Koteshwara Rao, Chief Manager, being authorised signatory of Indian Overseas Bank filed this petition 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 (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 incorporated on 20.11.1936, is a Body Corporate constituted under Special Enactment – Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having central office at 762, Anna Salai, Madras – 2.

3. The respondent/corporate debtor M/s. Jason Dekor Private Limited is a company incorporated under the Companies Act, 1956 on 30.07.2003, having identification No. U74994GJ2003PTC042695, having its registered office at Paldi, Ahmedabad, Gujarat State. That, Authorised share capital of the respondent company is Rs. 10,00,00,000/- and paid up share capital is Rs. 3,50,00,000/-.

4. That, the applicant bank has submitted that through its Ashram Road Branch, Ahmedabad granted various financial credit facilities to the corporate debtor as per the details given below:

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Nature of facility	Sanction limit (Rs. In crores) Sanction letter dated 07/08/2012	Renewed on 31.03.2015
Term loan (with sub limit of FLC/ILC	16.75	10.83
Cash credit limit	06.00	06.00
Letter of guarantee favouring customs Dept.	00.50	00.50
Letter of guarantee favouring MGVCL	00.40	00.40
TOTAL FUND BASED	**23.65**	**17.73**

5. It is stated that the corporate debtor is in total default of **Rs. 23,45,71,390.59 (Rupees twenty-three crores forty-five lacs seventy-one thousand three hundred ninety and paise fifty-nine only)** as on 28.02.2019 with further interest till payment and/or realisation. That, default occurred on 01.01.2016 on which the account was classified as "non-performing asset" (NPA). That, the present Insolvency Resolution Application is filed under Section 7 of the IB Code, 2016 for the purpose of initiating corporate insolvency resolution process against the corporate debtor since it has lost its substratum and is unable to repay outstanding debt of more than **Rs. 23,45,71,390.59 (Rupees twenty-three crores forty-five lacs seventy-one thousand three hundred ninety and paise fifty-nine only)**. That, the corporate debtor has already committed default of its debt towards the financial creditor by non-payment of instalment and/or interest of the various financial facilities availed through its Ashram Road Branch, Ahmedabad, Gujarat State.

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6. The applicant bank has submitted copy of the following documents in support of their claim: -

Sl. No.	Particulars	Page Nos.
1	Power of attorney dated 16.08.1999 and copy of authority letter dated 04.08.2018	13-15
2	Chart showing outstanding debt as on 28.02.2019	16
3	Sanction letter dated 07.08.2012	17-26
4	Sanction letter dated 28.11.2014	27-32
5	Sanction letter dated 10.02.2015	33-37
6	Sanction letter dated 31.03.2015	38-54
7	Certificate of charges dated 04.03.2014	55
8	Order dated 18.02.2019 passed in OA/470/2017 by DRT-I	56-56
9	Order dated 05.02.2018 in securitisation application 89/2017	67-69
10	Term loan agreement (F110C) dated 01.09.2012	70-82
11	General counter guarantee (286E) dated 01.09.2012	83-93
12	Demand promissory note (DPN 14) dated 01.09.2012	94-96
13	Execution of guarantee (F111) dated 01.09.2012	97-104
14	Undertaking to pay instalment (F378) dated 01.09.2012	105-106
15	F-16 (EH) dated 01.09.2012	107
16	Hypothecation of book debts (F107A)dated 01.09.2012	108-113
17	Letter of hypothecation (F 110A) dated 01.09.2012	114-119
19	Letter of hypothecation (F 110E) dated 01.09.2012	120-129
20	Letter of pegging dated 31.08.2012	130-133
21	Letter of pegging dated 13.06.2015	134-146
22	Confirmation letter deposit of title deed dated 01.02.2013	147-148
23	Revival letter dated 30.04.2015 and 31.03.2015	149-151
24	Memorandum of deposit of title deeds dated 03.09.2012	152-159
25	Balance confirmation dated 02.04.2013	160
26	Balance confirmation dated 15.10.2013	162
27	Balance confirmation dated 05.06.2015	163
28	Balance confirmation dated 20.05.2015	164
29	Balance confirmation dated 31.03.2017	165
30	CIBIL report dated 22.03.2019	166-209
31	Statement of accounts under the Bankers' Books Evidence Act	210-282
32	Notice under section 13(2) of the SARFAESI Act dated 27.06.2016	283-288
33	Notice demanding possession dated 02.01.2017	289-290
34	Memo of O.A. No. 470/2017 dated 18.08.2017 filed before DRT, Ahmedabad	294-342
35	Securitisation appeal No. 89/2017 filed by borrower dated 17.05.2017	343-407
36	Commercial suit No. 152/2017 filed by the borrower before Commercial Court, Ahmedabad dated 24.07.2017	408-420
37	Balance sheet of the corporate debtor for the year ended 2015-16	421-446
38	Balance sheet of the corporate debtor for the year 2016-17	447-473
39	Balance sheet of the corporate debtor for the year 2017-18	474-499
40	Affidavit in support of application in accordance with I & B Code	500-512

41	Written communication by the proposed IRP as set out in form No. 2 of the I & B Code	513

7. Director of the respondent company filed affidavit in reply inter alia raising various objections that .....

(i) the petition is barred by limitation;

(ii) there is pre-existing dispute between the parties;

(iii) authority issued to the Chief Manager of the bank is invalid;

(iv) denied availing of credit facilities;

(v) no credible evidence is placed on record by the applicant;

Findings

8. Heard learned lawyers appearing for both the sides and also perused the documents annexed with the application as well as the objections so filed by the respondent.

9. On perusal of the records it is found that the first objection raised by the respondent is that the application is barred by limitation. That, the application is filed on 1st April, 2019. On perusal of the records it is found that **page No. 160 to 165** are balance confirmation letters issued by corporate debtor on different dates from 02.04.2013 to 31.03.2017 acknowledging the debt. That the said letters are duly stamped and signed by the corporate debtor confirming the outstanding debt in their loan account. That, this document itself is sufficient to prove that there exists financial debt.

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10. On perusal of the records it is found that the letter of authority dated 04.08.2018 issued by General Manager of the applicant bank authorising Mr. D Koteshwara Rao is proper and valid. As regards the other objections like denial of having taken any loan from the applicant bank appears to be illusory, imaginary and not sustainable in the eyes of law when volumes of documents produced by the bank evidencing execution of documents like term loan agreement, demand promissory note, undertaking to pay instalments, letter of hypothecation etc. are placed on record by the applicant bank. It is needless to add that all the above referred documents bear the stamp and signature of the corporate debtor.

11. In view of the above discussions, the Adjudicating Authority is of the considered view that there is a debt due to "financial creditor" and there is default on the part of the corporate debtor. In view of the judgement of the Hon'ble Supreme Court in ***"Innoventive Industries Ltd. vs. ICICI Bank & Anr.(2018) 1 SCC 407"*** the Hon'ble Supreme Court while explaining section 7 and 8 of the IB Code, observed and held as under: -

> "27. The scheme of the Code is to ensure that when a default takes place, in the sense that a 'debt' becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3 (12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount.

For the meaning of "debt", we have to go to Section 3 (11) which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of claim, we have to go back to Section 3 (6) which defines claim to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5 (7) as a person to whom a financial debt is owned and a financial debt is defined in Section 5 (8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7 (1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor. It need not be a debt owed to the applicant financial creditor. Under Section 7 (2), an application is to be made under Sub-Section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in part I, particulars of the corporate debtor in part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4 (3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or sped post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at

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> the stage of Section 7 (5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt" which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is complete, in which case it may give notice to the applicant to rectify the defect within seven days of receipt of a notice from the adjudicating authority. Under Sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within seven days of admission or rejection of such application, as the case may be.

12. It is also held in Mobilox Innovations (P) Ltd. vs. Kirusa Software (P) Ltd. (2018) 1 SCC 353 as under: -

> "38.....in the case of a corporate debtor who commits a default of financial debt, the adjudicating authority has merely to see the records of the information utility or other evidences 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 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 then the adjudicating authority may reject an application and not otherwise.....".

13. The objection with regard to maintainability of the petition so raised by the respondent is not only vague but also not sustainable in absence of any cogent evidence. Further, the application is found to be complete in all respect. Hence it does not warrant any rejection or dismissal.

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14. That, the records available shows that the applicant bank had sanctioned cash credit limit and term loans to the respondent company, to be repaid within the stipulated period as per the terms and conditions agreed between the parties. That, the applicant bank had issued notice dated 27.06.2016 to the respondent regarding overdue in different loan accounts. That, the applicant bank had issued letter of notice dated 02.01.2017 to take possession of the secured assets of the respondent company, however, the respondent company neither made payment nor given any reply to the notice. Records available shows that the respondent has not cared to reply the notice issued by the applicant.

15. Thus on perusal of the records submitted by the applicant, it is clear that the debt is not time barred. Further, the corporate debtor issued a letter on 12.09.2019 addressed to Regional Manager, Indian Overseas Bank, Ashram Road, Ahmedabad, requesting for one-time settlement of outstanding debt of the corporate debtor and its associate company. Those documents itself is the admission of debt on the part of the corporate debtor.

16. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the financial debt to the

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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. 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. Along with the application, the applicant proposed the name of the Resolution Professional namely CMA George Samuel. The Adjudicating Authority hereby appoint CMA George Samuel, 9B, Vardan Tower, Nr. Vimal House, Lakhudi Circle, Ahmedabad 380 014 (Email ID gsforgs@gmail.com) having registration No. IBBI/IPA-003/IP-N00043/2017-18/10319 to act as an interim resolution professional. Form 2 of the proposed interim resolution professional has been annexed and placed at page No. 513 of 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.

19. In the aforesaid background and as also discussed above, the application under Section 7 (2) of the IB Code is complete in all respects and there is debt due to the

"financial Creditor" and there is default on the part of the "corporate debtor". Hence, there is no alternative but to admit the application in absence of any infirmity.

20. 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.

21. 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.

22. 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.

23. 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.

24. This Petition stands disposed of accordingly with no order as to costs.

25. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.

Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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Certified to be True Copy of the Original

24/12/19

Assistant Registrar
NCLT, Ahmedabad Bench