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**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**


C.P. (I.B) No. 143/7/NCLT/AHM/2017

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 26.07.2019**

Name of the Company: Canbank Factors Ltd.
V/s.
Accord Industries 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.	Nipun singhvi	Advocates	Respondent	m
2.	Vishay .J Dave			v
	Pragati Tiwari			P
3.	Lalit M. Patel	Advocate	Petitioner	

ORDER

The parties are represented through their respective learned counsels.

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


MANORAMA KUMARI
MEMBER JUDICIAL
Dated this the 26th day of July, 2019


HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL

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(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
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C.P. (I.B.) No. 143/7/NCLT/AHM/2017

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)
Hon'ble Ms. Manorama Kumari, Member (Judicial)**

In the matter of:

M/s. Canbank Factors Limited
Having its registered office at:
67/1, Kanakpura Main Road,
Basavanagudi,
Bangalore – 560 004.

.....Petitioner/Financial Creditor

Versus

M/s. Accord Industries Limited,
Alindra Plot No.15,
Alindra GIDC,
Manjusar, Savli,
Vadodara – 391 775.
Gujarat State.

.....Respondent/ Corporate Debtor

Appearance:

Mr. Lalit Patel, Learned Advocate for the Petitioner/Financial-Creditor.

Mr. Vishal Dave, Learned Advocate for the Respondent/ Corporate-Debtor.

Order delivered on 26th July, 2019



ORDER

[Per: Shri Harihar Prakash Chaturvedi, Member (Judicial)]

1. The present I.B. Petition is preferred by the Petitioner/Financial-Creditor M/s. Canbank Factors Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code") so as to trigger the Corporate Insolvency Resolution Process ("CIRP" in Short) in respect of the Corporate-Debtor-Company namely, M/s. Accord Industries Limited.

2. The Petitioner, M/s. Canbank Factors Limited is a limited company incorporated under the provisions of Companies Act, 1956 having CIN: U85110KA1991PLC011960. It claims to be a subsidiary company of the M/s. Canara Bank. The present I.B. Petition is filed through its Assistant Vice-President namely, **Mr. Sohan Singh** S/o Mr. Monohar Lal, who is the authorised signatory of the Petition. The registered office of Canbank Factors Limited is situated at: 303, 3rd Floor, Shivalik-V, Mahalaxmi Cross Road, Paldi, Ahmedabad – 380007, Gujarat.

3. It is stated that the Corporate-Debtor, M/s. Accord Industries Limited is a company incorporated on 21.01.2003 with CIN: U30007GJ2003PLC041867. The authorised share capital of the company is





Rs.5,00,00,000/- (Rupees Five Crores only) consisting of 50,00,000 (Fifty Lakhs) Equity Shares of Rs.10/- (Ten) each and the paid-up share capital is **Rs.4,16,15,000/-** (Rupees Four Crores Sixteen Lakhs Fifteen Thousand Only) consisting of 41,61,500 Equity Shares of Rs.10/- (Ten) each and having its registered office at: Alindra, Plot No. 15, Alindra GIDC, Manasar, Savli, Vadodara - 391 775, Gujarat, India.

4. The petitioner company is a subsidiary company of the Canara Bank, a nationalised bank. Hence, the petitioner claims itself to be a Financial Creditor for the purpose of of Section 7 of the I.B. Code read with Rule 4 of The Insolvency and Bankruptcy Rules, 2016 (hereinafter referred to as "the Rules") seeking reliefs under Section 7(5)(a) and Section 13(l)(a)(b)(c) of the Code.
5. It is the case of the Petitioner that the Respondent, M/s. Accord Industries Limited, Vadodara, Gujarat had approached the Petitioner/Financial Creditor to grant the sale bill factoring limit which meant for initially repayment limit of sales bill discounting of **Rs.8.00 Crores** (debt purchase limit of **Rs.8.89 Crores** and invoice discounting limit (backed by LC Sales) of Rs.10.00 Crores. The said facility was sanctioned by the Petitioner through its sanction letter No. CBF/AHD/ACCORD INDUSTRIES

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LTD/SANCTION/DK/12-13 dated 25.10.2012 and made available to the Respondent/Corporate-Debtor as per the agreed terms and conditions as stipulated in loan documents i.e. sanction letter factoring cum prepayment agreement (domestic-sale bill/invoice) agreement dated 03.12.2012. It is further stated that the aforesaid limit was further renewed vide sanction letter No. CBFIVAHM/ACCORD/SANCTION/DK/13-14 dated 28.01.2014 and pursuant thereto the **Corporate-Debtor entered into a supplemental agreement** on 15.02.2014 whereby the debt purchase limit was enhanced from Rs.889.0 lakhs to Rs.1111.00 Lakhs and prepayment limit was enhanced from Rs.800.00 Lakhs to Rs.1000.00 lakhs. The aforesaid limit was again renewed by sanction letter No. CBFL7AH M/ACCORD/SANCTION/DK/14-15 dated 05.08.2014 and in pursuance thereof the corporate debtor entered into a supplemental agreement on 05.08.2014 whereby the debt purchase limit was enhanced from Rs.1111.0 Lakhs to Rs.1334.00 Lakhs and repayment limit was enhanced from Rs.1000.00 Lakhs to Rs.1200.00 Lakhs. The dates of disbursement of the amount of financial assistance are well reflected in ledger account and in statement of outstanding. Therefore, as per the Petitioner/Financial-Creditor, an amount of **Rs.9,48,11,879.05** is due and payable by the respondent as on 31.03.2017.

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6. It is alleged that the Corporate-Debtor has committed default and failed in making payment of the outstanding amount due and payable on the due date. Despite notification of receivables was duly acknowledged by the financial creditor in the month of November, 2014 for the goods which were sold and to be delivered to the purchasers and despite of reminders issued from time to time. The Petitioner also contended that the Respondent/Corporate-Debtor had agreed to make payment of the entire outstanding amount latest by **31.12.2015** hence, it issued six cheques for **Rs.1.00 Crore** each dated **31.08.2015**, two cheques for **Rs.1.00 Crore** each dated **31.08.2015** and two cheques for **Rs.1.00 Crore** each dated **31.11.2015**. but these cheques were bounced from and dishonoured by the drawee banker. Thereafter, the Petitioner/Financial Creditor issued a legal notice dated 11.07.2017 to the Corporate-Debtor as well as to its guarantors by calling upon them to make payment of the remaining outstanding amount of **Rs.9,34,82,001.53**. However, the Respondent/Corporate-Debtor has failed in making payment thereof not it replied to such Demand Notice.

7. This compelled to the Financial Creditor to file a commercial suit No. 53 of 2017 before the City Civil Court,

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Ahmedabad against the Corporate-Debtor, which is now pending before it.

8. The Petitioner/Financial-Creditor so as to prove its claim has furnished a copy of relevant loan documents i.e. **the factoring agreement cum payment agreement dated 03.12.2012, factoring cum prepayment agreement regarding sale bill discounting under LC dated 03.12.2012, acknowledgement of debt & security dated 15.02.2014, extracts of minutes of meeting dated 10.02.2014, supplemental agreement dated 15.02.2014, bill of exchange dated 01.11.2014 & 01.12.2014, notifications of receivables dated 06.11.2014, 07.11.2014, 03.11.2014, 02.12.2014, letter of confirmation of outstanding dated 01.05.2015.**

In addition to the above, various letters/e-mails and communications entered between the parties are annexed with the present petition. Further, the petitioner duly furnished copies of entries in banker's book as per the Bankers Books Evidence Act and ledger account for the period from 17.02.2012 to 03.02.2017 with statement of outstanding to establish its debts due against the Corporate-Debtor.

9. The Petitioner has also filed proof of service of despatch of the present I.B. Petition/Application to the Corporate-

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Debtor and necessary certificate of the Canara Ban, Paldi, Branch, Ahmedabad dated 06.09.2017 by certifying about payments received if any, in applicant's account and on remaining dues. The Petitioner has proposed the name of an Interim-Resolution-Professional and enclosed communication as received from him to act as an I.R.P. which is a requisite of section 7 of The Insolvency and Bankruptcy Code, 2016. Thus, the petitioner duly proposed the name of Mr. Ravi Kapoor, 402, Shaival Plaza, Near Gujarat College, Ellisbridge, Ahmedabad - 380006 to act as an Interim Resolution Professional.

10. In response to the above stated I.B. Petition, the Respondent/Corporate-Debtor filed its affidavit-in-reply dated 27.11.2017 whereby, it opposed the above stated Petition contending that the present petition is not bonafide and has been filed with extraneous considerations and even otherwise, it involves serious disputed questions of facts which can be adjudicated only by a competent civil court or in appropriate arbitration proceedings and not before this Adjudicating Authority. It is further contended that there are serious existing disputes in respect of all claims as there is no crystallised debt in favour of the financial creditor. Hence, there is no default nor it gives any right to the financial creditor to initiate proceedings under the Insolvency Code. Hence, these proceedings are liable to be

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summarily rejected. It is also alleged that the present proceedings initiated by the financial creditor is nothing but an arm twisting tactics against the Corporate-Debtor. The financial creditor has already filed a **commercial suit** (bearing No. 53 of 2017) against the corporate debtor before a commercial court of commercial division of the City Civil Court at Ahmedabad for the recovery of its alleged dues which is disputed and is pending for adjudication. It is alleged that in the midst of pending commercial suit, the financial creditor, surprisingly and shockingly has taken such action under the Insolvency Code which is unwarranted and an arm-twisting for a going concern.

11. The Corporate-Debtor also contended that the financial creditor had provided **factoring facility to corporate debtor on receivables due from another company**. But, without prejudice, it is submitted that, the alleged claim amount is already under dispute being there a pre-existing commercial dispute between the parties before filing of the present I.B. Petition by the financial creditor. Therefore, this Adjudicating Authority cannot have jurisdiction to entertain the present I.B. Petition and it is for the competent forum of law to adjudicate such pre-existing dispute between the applicant and the respondent. Thus, the Financial-Creditor is therefore not entitled to make

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claim of alleged amount nor its any of such proceedings are bon fide, hence, are liable to be rejected.

12. The Respondent further contends that the financial creditor has already filed a commercial suit for recovery before the city Civil Court, Ahmedabad against the Respondent. The term 'commercial dispute' has been defined in **THE COMMERCIAL COURTS, commercial division and commercial appellate division of High Courts Act, 2015**, with an intent to, include almost all such disputes in respect of a 'commercial transaction' understood in the most generic way. As such the definition broadly includes disputes relating to transactions between merchants, bankers, financiers, traders, etc. and also includes disputes in relation to shareholders' agreements, mercantile documents, partnership agreements, joint venture agreements, intellectual property rights, insurance etc. It is further submitted that since, there exist a commercial dispute between the parties and even there is a provision for appeal under the said act as well as the provisions of the Code of Civil Procedure are also made applicable to such proceedings, the present I.B. Petition is liable to be rejected.

13. In view of pendency of litigation of such dispute, the present petition is not maintainable. It is further stated

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that this Tribunal is not empowered nor have jurisdiction to adjudicate a commercial dispute pre-existing between the financial creditor and the corporate debtor. Hence, the financial creditor cannot force to the Corporate-Debtor under the shield of the Insolvency Code to enforce its claim against the Corporate-Debtor before the present Tribunal.

14. It is also contended that, the corporate debtor is a going concern and in the process of complete revival. **It is also evident from the record that the corporate debtor gave many proposals to settle the issue though there exists a commercial dispute.** However, the Financial Creditor with mala fide intention did not adhere to any such **proposals for settlement.** Such fact itself goes to show that the Financial Creditor intends the corporate debtor to go for insolvency. The Corporate Debtor further submits that it has financial exposure to other financial institutions also but there is no dispute with them. It is also submitted that the status of the present financial creditor is of a non-secured creditor and amount of debt is small in comparison to other financial institutions. Hence, by looking to the quantum of debt, the corporate debtor is owing to its other financial institutions, even the present financial creditor succeeds in initiating the insolvency proceedings against the corporate debtor, it will not be able to receive substitute amount of alleged claims of its debts from the assets of the

company. Hence, as per the Applicant, the present proceedings are initiated with an ulterior motive of financial creditor and is abuse process of law, therefore, on this count also , the present proceedings are liable to be rejected.

15. Thus, in view of the above given facts and circumstances, the present case of the petitioner is not entitled for any of the reliefs as prayed for in the petition and the petition is liable to be rejected.
16. Notwithstanding the above stated rival pleadings from both sides, it is a matter of record that during the course of hearing, the Learned Counsel appearing from both sides informed that some settlement talks were going on, as the Respondent had made a proposal for settlement with the petitioner but such settlement could not be materialised.
17. Thereafter, the Respondent/Corporate-Debtor came to file its objections cum affidavit-in-reply by strongly opposing the present I.B. Petition. That apart, corporate debtor filed another affidavit-in-reply on 30.01.2018 by challenging the affidavit of the Financial-Creditor with regard to its clarification and ratification on the power of attorney/authorisation to initiate present insolvency proceedings which, the Financial Creditor had filed on

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23.01.2018. The Petitioner, by replying to the above stated objection also enclosed a copy of authorisation letter which was issued by the Petitioner/Financial-Creditor on 17.11.2017, by authorising Mr. Sohan Singh to the present signatory to file the present I.B. Petition and further ratified and confirmed the action of Mr. Sohan Singh in this respect. Therefore, we are of the view that such authority letter fulfil the requirement of the I.B. Code. Hence, the same is found to be in order. In the light of a decision of Hon'ble NCLAT in the matter of **M/s. Palogix Infrastructure Private Limited Vs. ICICI Bank in Company Appeal (AT) (Insol.) No. 30 of 2017**. The relevant portion of the above stated judgment is referred to herein and being quoted as below:

*"36. In so far as, the present case is concerned, the 'Financial Creditor'-Bank has pleaded that by Board's Resolutions dated 30th May, 2002 and 30th October, 2009, **the Bank authorised its officers to do needful in the legal proceedings by and against the Bank. If general authorisation is made by any 'Financial Creditor' or 'Operational Creditor' or 'Corporate Applicant' in favour of its officers to do needful in legal proceedings by and against the 'Financial Creditor'/ 'Operational Creditor'/ 'Corporate Applicant', mere use of word Power of Attorney' while delegating such power will not take away the authority of such officer and 'for all purposes it is to be treated as an 'authorization' by the 'Financial Creditor'/ 'Operational Creditor'/ 'Corporate***

Applicant' in favour of its officer, which can be delegated even by designation. **In such case, officer delegated with power can claim to be the 'Authorized Representative' for the purpose of filing any application under section 7 or Section 9 or Section 10 of 'I & B Code'.**

37. As per Entry 5 & 6 (Part I) of Form No. 1, 'Authorised Representative' is required to write his name and address and position in relation to the 'Financial Creditor'/Bank. If there is any defect, in such case, an application under section 7 cannot be rejected and the applicant is to be granted seven days' time to produce the Board Resolution and remove the defect.

38. This apart, if an officer, such as senior Manager of a Bank has been authorised to grant loan, for recovery of loan or to initiate a proceeding for 'Corporate Insolvency Resolution Process' against the person who have taken loan, in such case the 'Corporate Debtor' cannot plead that the officer has power to sanction loan, but such officer has no power to recover the loan amount or to initiate 'Corporate Insolvency Resolution Process', in spite of default of debt.

39. If a plea is taken by the authorised officer that he was authorised to sanction loan and had done so, the application under section 7 cannot be rejected on the ground that no separate specific authorization letter has been issued by the 'Financial Creditor' in favour of such officer designate.

40. In view of reasons as recorded above, while we hold that a 'Power of Attorney Holder' is not empowered to file application under section 7 of the 'I&B Code', **we further hold that an authorised person has power to do so.**

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41. For the reasons aforesaid, we find no ground to interfere with the impugned order(s). All the appeals are dismissed, the order of admission of application under section 7 is affirmed. However, in the facts and circumstances of the case, there shall be no order as to cost.”

18. Therefore, by following the above decision of the Hon'ble NCLAT, we hold that the present I.B. Petition is filed by an authorised signatory of the petitioner and its action has further been ratified by the petitioner, M/s. Canbank Factors Ltd. vide its authorisation letter dated 17.11.2017 issued in favour of Mr. Sohan Singh, its Asst. Vice President and Branch Head of Ahmedabad.

19. Further, it is evident that such authorisation letter is further supported by necessary board dated 22.02.2016 of the Petitioner Company by giving such authority to its Managing-Director to act on behalf of the Financial-Creditor Company. Therefore, in exercise of the authority given by the Managing Director of the company has issued authorisation letter in favour of Mr. Sohan Singh to file the present application under Section 7 of the I.B. Code against the Corporate-Debtor-Company. By another ratification letter dated 23.01.2018, the Managing Director has further ratified the action initiated by Mr. Sohan Singh, being an Asst. Vice President of Ahmedabad Branch of the company filed petition under Section of the I.B. Code. Thus, it has

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ratified the General Power of Attorney and as well as the action taken by Mr. Sohan Singh or by the Managing Director of the company on the strength of such power of attorney executed by the Petitioner Company in his favour. Hence, the authorisation is found to be in order and is acceptable.

20. In the light of above given facts of the case, we examined the pleadings of the present I.B. Petition, filed under Section 7 by the Petitioner/Financial-Creditor and the reply filed by the Corporate-Debtor. We have gone through the contentions made therein and considered the merits of the same, specifically objections of the present Corporate-Debtor on maintainability of the present I.B. Petition and competency of this Court due to a pre-existing dispute/commercial suite filed by the Petitioner before the commercial Court at City Civil Court at Ahmedabad in the year 2017 for recovery of an amount of **Rs.9,48,11,879/- (Rupees Nine Crores Forty-Eight Lakhs Eleven Thousand Eight Hundred Seventy-Nine Only).**

21. As the Corporate-Debtor has raised such objection when the amount of Debt is under dispute and is subject matter of the Competent Civil Court, it cannot be held that such debts has become due and is payable. Therefore, the





C.I.R.P. cannot be triggered till the amount of debt is not adjudicated and quantified by a competent Court of Law.

22. Our attention was further invited to the provisions of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts' Act, 2015. Hence, as per the Corporate-Debtor, this Court cannot adjudicate the commercial dispute nor it is vested with such jurisdiction under the I.B. Code.

23. we carefully examined the above stated averments made by the Corporate Debtor in its pleadings, wherein, it has also been pleaded that the Corporate-Debtor already made many proposals to the financial creditor for making settlement of debts but the same could not be materialised even during the course of hearing of the present I.B. Petition. Thereafter only, it filed its objection which means, there exists some admitted amount of debt payable by the Corporate Debtor to the Petitioner but its reply affidavit is totally silent in respect of admitted amount of debts payable because certain (6) cheques were already issued by it in favour of the financial creditor towards the payment of amount outstanding against it. However, the said cheques are reported to have been bounced/ dishonoured by the Bank. As per the said post-dated cheques, the amount was to be paid latest by the 31.12.2015. despite this, the



Corporate-Debtor did not chose to give reply to the demand notice of the Financial Creditor nor gave any explanation as to why these cheques were not honoured and what is the exact amount payable to the Financial-Creditor. Even assuming so, there is dispute on the quantum of debts and amount payable to the petitioner. But no explanation is given by the Corporate-Debtor that what prompted it to issue post-dated cheques to the extent of **Rs.10/- Crores** to the Petitioner that itself makes clear that the Corporate Debtor has admitted its loan liability to the extent of **Rs.10/- Crores** but has fallen back from its commitments and undisputedly, the payment of such amount has been defaulted which gives cause of action to this Adjudicating Authority to trigger the C.I.R.P. in respect of the Corporate-Debtor-Company.

24. Moreover, it is now a well settled legal position that the I.B. Code is a self-contained Code and its Section 238 gives an overriding effect on any other law for time being in force.
25. Therefore, in our humble opinion the provisions of I.B. Code would certainly have overriding effect and prevail over the provisions of Commercial Courts Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and Jurisdiction of this Court cannot be excluded.





26. Therefore, it is not legally correct to say that this Adjudicating Authority is not competent enough to initiate C.I.R.P. against the Corporate-Debtor-Company.

27. In fact, under the statutory provision of scheme of the I.B. Code when a claim of the Petitioner falls under the Financial debts, then there can no bar for even a pre-existing dispute pending in other Court(s)/ forum(s) of law.

28. In order to understand such legal preposition under the code, the relevant Section(s) 3, 5 and 7 of the Insolvency and Bankruptcy Code may be reproduced herein below:

Section 7

“7. Initiation of corporate insolvency resolution process by financial creditor

(1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as maybe notified by the Central Government,] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

explanation: For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

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(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish-

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional, and

(c) any other information as may be specified by the Board

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the Adjudicating Authority is satisfied that

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

PROVIDED that the Adjudicating Authority shall before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

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(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate-

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.”

Section 3 (10), (11) & (12)

“(10) “Creditor” means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder;

(11) “debt” means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.

(12) “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not “[paid]” by the debtor or the corporate debtor, as the case may be.”

Section 5 (C), (E) & (F)

“(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(e) receivables sold or discounted other than any receivable sold on non-resource basis;

(f) any amount raised under any transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;”

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29. By going through the above stated provisions of the I.B. Code, nowhere it speaks about pre-existing dispute in respect of 'Financial Debts,' nor it **estop** the Financial Creditor to file the I.B. Petition.

The Hon'ble Supreme Court in its decision of **M/s. Mobilox Vs. Kirusha Software** has already held that the provisions of the Section 7 or in contrast to provision of the Section 9 of the Code (with regard to Operational Debts) by its reiterated view already taken in the matter of **M/s. Innovative Vs. ICICI Bank**. The relevant portion of the above decision is reproduced herein below:

"This has to be contrasted with financial debts that may be owed to financial creditors, which was the subject matter of the judgment delivered by this Court on 31.8.2017 in Innoventive Industries Ltd. v. ICICI Bank & Anr. (Civil Appeal Nos.8337-8338 of 2017). In this judgment, we had held that the adjudicating authority under Section 7 of the Code has 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 within 14 days. The corporate debtor is entitled to point out to the adjudicating authority that a default has not occurred; in the sense that a debt, which may also include a disputed claim, is not due i.e. it is not payable in law or in fact. This Court then went on to state:

29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational

creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

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 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.”

By placing reliance on the above stated Judicial Precedent, we find that there is admitted debt of **Rs.10/- Crores**, which is well evident on the strength of post-dated cheques issued by the Corporate Debtor in its petition and it is also well found that the default of the above stated amount has been occurred because these cheques have been dishonoured. As, the default has also been established. This satisfies the requirements of the Section 7 to trigger the Corporate Insolvency Resolution Process in respect of the Corporate-Debtor-Company.

30. Moreover, this Adjudicating Authority, while dealing with a petition filed under Section 7 of the I.B. Code is not

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required to look into issues those are not necessary for deciding the I.B. Petition.

31. Hon'ble Supreme Court, in the matter of **M/s. Innoventive Industries Ltd. Vs. M/s. ICICI Bank and another [2017] 82 taxmann.com 190/142 SCL 11 (NCL-AT)** has pleased to deal with above raised objection and held as such:

“29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

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“58. There can be no doubt, therefore, that the Code is a Parliamentary law that is an exhaustive code on the subject-matter of insolvency in relation to corporate entities, and is

made under Entry 9, List III in the Seventh Schedule which reads as under:

59. On reading its provisions, the moment initiation of the corporate insolvency resolution process takes place, a moratorium is announced by the adjudicating authority vide Sections 13 and 14 of the Code, by which institution of suits and pending proceedings, etc. cannot be proceeded with. This continues until the approval of a resolution plan under Section 31 of the said Code. In the interim, an interim resolution professional is appointed under Section 16 to manage the affairs of corporate debtors under Section 17.

60. It is clear, therefore, that the earlier State law is repugnant to the later Parliamentary enactment as under the said State law, the State Government may take over the management of the relief undertaking, after which a temporary moratorium in much the same manner as that contained in Sections 13 and 14 of the Code takes place under Section 4 of the Maharashtra Act. There is no doubt that by giving effect to the State law, the aforesaid plan or scheme which may be adopted under the Parliamentary statute will directly be hindered and/ or obstructed to that extent in that the management of the relief undertaking, which, if taken over by the State Government, would directly impede or come in the way of the taking over of the management of the corporate body by the interim resolution professional. Also, the moratorium imposed under Section 4 of the Maharashtra Act would directly clash with the moratorium to be issued under Sections 13 and 14 of the Code. It will be noticed that whereas the moratorium imposed under the Maharashtra Act is discretionary and may relate to one or more of the matters contained in Section 4(1), the moratorium imposed under the Code relates to all

matters listed in Section 14 and follows as a matter of course. In the present case, it is clear, therefore, that unless the Maharashtra Act is out of the way, the Parliamentary enactment will be hindered and obstructed in such a manner that it will not be possible to go ahead with the insolvency resolution process outlined in the Code. Further, the non obstante clause contained in Section 4 of the Maharashtra Act cannot possibly be held to apply to the Central enactment, inasmuch as a matter of constitutional law, the later Central enactment being repugnant to the earlier State enactment by virtue of Article 254(1), would operate to render the Maharashtra Act void vis-a-vis action taken under the later Central enactment. Also, Section 238 of the Code reads as under:

“238. Provisions of this Code to override other laws: —the provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

32. Further, the Coordinate Bench, Hon'ble NCLT, Allahabad in its decision of **M/s. Bank of Baroda Vs. Rotomac Global (P.) Ltd [2018] taxmann.com 117 (NCLT – All.)** has held that the Adjudicating Authority is not required to look into question, whether the Operational-Creditor is required to obtain a permission or consent or otherwise from the Joint Lender Forum to initiate Corporate Insolvency Resolution Process against a Corporate Debtor Company.

Utkarsh

33. That apart, the pendency of SARFAESI proceedings or recovery application before the Debts Recovery Tribunal as held, can be no valid ground for rejection of the present I.B. Petition because the I.B. Code has overriding effect on the provisions of the other courts.

34. The Hon. NCLT, Delhi in the matter of **M/s. Power Grid Corporation of India Ltd. Vs. M/s. Jyoti Limited** has also pleased to held that there is no bar for filing an application under Section 7 of the I.B. Code and seeking the initiation of C.I.R.P. against the Corporate-Debtor while and through pendency of Arbitration proceedings under Section 34 of the Arbitration and Conciliation Act. Thus, the above stated legal proposition over rule such objections raised by the Corporate-Debtor that during the pendency of a Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 or before the City Civil Court, the NCLT cannot have a jurisdiction to proceed in the I.B. Code.

35. The Hon. NCLT and NCLAT have further held that even pendency of criminal proceeding cases under Section 138 also cannot have any bar to initiate the C.I.R.P. against the Corporate-Debtor-Company.

Chaman

36. In the light of the above discussion, we find that the present I.B. Petition is filed in conformity with the provisions of the I.B. Code and the Rules made thereunder and is properly signed by an authorised signatory and authorisation letter issued in favour of the signatory of the petition is found to be in order. Hence, is valid. Therefore, the present I.B. Petition is found complete **so as to trigger the Corporate Insolvency Resolution Process in respect of the Corporate-Debtor-Company deserves for admission**. Therefore, the present I.B. Petition is hereby admitted that the C.I.R.P. is initiated in respect of the Corporate-Debtor-Company with following directions/ observations.

37. The Adjudicating Authority hereby appoints **Mr. Ravi Kapoor, 402, Shaival Plaza, Near Gujarat College, Ellisbridge, Ahmedabad 380 006 having Registration No. IBBI/IPA-002/IP- 00121/2017-2018/10290 as Interim Resolution Professional** under Section 13(l)(a) of the Code.

38. Further, this Adjudicating Authority hereby order for declaration of moratorium under Section 13(l)(a) prohibiting the following as laid down in Section 14 of the Code, which reads as under:







- I.a. *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;*
- b. *transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- c. *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);*
- d. *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
 - i. *The moratorium order in respect of (a), (b), (c) and (d) above shall not apply to the transactions notified by the Central Government.*
 - ii. *However, the order of moratorium shall not apply in respect of supply of essential goods or services to Corporate Debtor.*
 - iii. *The Applicant shall also make public announcement about initiation of Corporate Insolvency Resolution Process, as required by Section 13(1)(b) of the Code.*

39. This order of moratorium shall be in force from the date of order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.



40. An authentic copy of this order be communicated by the Petitioner as well as by this Registry to the Corporate-Debtor-Company, as well as to the Interim-Resolution-Professional and the Registrar of Companies at the earliest.
41. The present IB-Petition is disposed of accordingly.


Ms. Manorama Kumari,
Adjudicating Authority
Member (Judicial)


Harihar Prakash Chaturvedi,
Adjudicating Authority
Member (Judicial)

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