

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

C.P. No. (IB) 550/7/NCLT/AHM/2018

In the matter of:

Central Bank of India
MIC Corporate Finance Branch,
CBI Building, 1st Floor,
Lal Darwaja
AHMEDABAD 380 001

Petitioner No. 1
[Financial Creditor]

State Bank of India
Stressed Assets Management Branch,
2nd Floor, Paramsiddhi Complex, Opp. VS Hospital
Ellisbridge
Ashram Road,
Ahmedabad 380 006

Petitioner No. 2
[Financial Creditor]

Versus

M/s. Shreem Spa & Resorts Private Limited
3rd Floor, Solitaire Building
Nr. Shahibaug Garnala
Opp. Bomba Garage
Shahibaug
Ahmedabad 380 004

Respondent
[Corporate Debtor]

Order delivered on 23rd September, 2019

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

Appearance:

Advocate Mr. Sunil Bhavsar for applicant.
Advocate Mr. Arpit Sanghvi i/b Mr. Shravil Majmudar for respondent

ORDER

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

1. This joint petition is filed by Central Bank of India and State Bank of India under section 7 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the



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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 1st applicant/financial creditor Central Bank of India is a body corporate constituted under the provision of the Banking Companies (Acquisition and Transfer of Undertaking) Act, having its central office situated at Chandermukhi, Nariman Point, Mumbai and branch at MID Corporate Finance branch, 1st Floor, Central Bank of India Building, Lal Darwaja, Ahmedabad 380 001, Gujarat State.
3. The 2nd applicant/financial creditor State Bank of India (erstwhile State Bank of Bikaner and Jaipur) is a body corporate constituted under the provisions of the State Bank of India 1955, having its corporate office situated at State Bank Bhavan, Madam Cama Road, Mumbai and branch at Ellisbridge, Ashram Road, Ahmedabad.
4. M/s. Shreem Spa & Resorts Limited is a company incorporated under the provisions of the Companies Act, 1956 on 19th February, 2009, having identification No. U55100GJ2009PLC056191, having its registered office at Solitaire Building, Shahibaug, Ahmedabad 380 004, Gujarat State. That, Authorised share capital of the respondent



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company is Rs. 70,00,00,000/- and paid up share capital is Rs. 48,97,23,450/-.

5. That, the applicants/financial creditors have submitted that at the request of the corporate debtor company, the first applicant bank vide sanction letter dated 21.09.2012 sanctioned term loan of Rs. 50,00,00,000/- (Rupees fifty crores only) with sub limit of Inland/Foreign L/C for Rs. 25,00,00,000/- (Rupees twenty-five crores only) and as per Board Resolution of the corporate debtor company dated 24.09.2012, authorised director of the respondent company had executed security documents on 10.11.2012 for the said facility as per the details given at page No. 57 to the application. Thereafter, at the request of the corporate debtor company, additional term loan of Rs. 30.00 crores were granted by State Bank of Bikaner & Jaipur (now State Bank of India) under the consortium arrangements Central Bank of India being a lead bank. As per resolution dated 08.12.2013, the respondent company executed the consortium documents on 11.03.2013 in favour of consortium members bank.
6. The applicant banks have submitted that in terms of sanction, the charge of mortgage was also created over the properties to secure the aggregate facilities sanctioned for a sum of Rs. 80.00 crores together with interest cost and other charges being a first and exclusive paripassu charge.



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That, the properties owned by the guarantors are also mortgaged to secure the credit facility sanctioned to corporate debtor company by consortium member banks for an aggregate amount of Rs. 80.00 crores. That, the term loan facility was disbursed from time to time as per the construction carried out by the respondent company.

7. The applicant banks have submitted that the consortium members bank has also filed original application being No. 62/2017 before DRT-1 at Ahmedabad for recovery of dues on 03.02.2017 as under: -

Claim of Central Bank of India -	Rs. 55,58,53,320.00
Claim of State Bank of Bikaner & Jaipur	Rs. 33,14,16,773.00
	Rs. 88,72,70,093.00
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together with interest @ 12.70% p.a. with monthly rests and 13.50% p.a. with monthly rests respectively in favour of the respective banks. That, the said application is finally allowed by DRT-1, Ahmedabad and as per the final judgement and order dated 24.07.2018, the corporate debtor company is directed to pay the total dues of Rs. 88,72,70,093/- (claim of CBI Rs. 55,58,53,320/- and claim of SBBJ - now merged with SBI Rs. 33,14,16,773/-) together with interest and costs as per the final judgement and decree. Thus the debt is adjudicated in terms of decree.

8. The applicant banks have submitted that the amounts sanctioned of term loan were disbursed to the corporate



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debtor company from time to time as per the statement of account. However, the company failed to repay the principle dues as well as accrued interest thereof for more than 90 days. Therefore, as per the guidelines issued by RBI and as per IRAC norms, the account of corporate debtor company is classified as NPA on 30.09.2015 and, thereafter, further action under SARFAESI Act were taken by both the banks and also took symbolic possession of the property mortgaged with the bank. However, present S.A. No. 111/2016 filed by corporate debtor company is pending for final judgement before DRT, Ahmedabad.

9. The applicant banks have submitted that as per the judgement and final order passed in OA No 62/2017 by DRT-I, Ahmedabad, the following amounts are due and payable by the corporate debtor company to the corporate creditors.

I) Amount due to Central Bank of India

Rupees	Particulars
55,58,53,320.00	Being the decretal amount allowed by the DRT-I, Ahmedabad in O A No. 62/2017 dated 26.07.2018
11,72,47,485.00	Being the interest accrued from 03.02.2017 to 31.07.2018
23,44,950.00	Being the penal interest at the rate of 2% as per decree
6,98,135.00	Cost awarded by DRT, Ahmedabad as per order passed in OA 62/2017 dated 26.07.2018
67,61,43,890.00	Total amount due to financial creditor No. 1 - Central Bank of India together with further current and running interest at the rate of 12.70% p.a. with monthly rests



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II) Amount due to State Bank of India – erstwhile State Bank of Bikaner and Jaipur

Rupees	Particulars
33,14,16,773.00	Being the decretal amount allowed by the DRT-I, Ahmedabad in O A No. 62/2017 dated 26.07.2018
7,34,11,925.85	Being the interest accrued from the date of filing of application i.e. 07.02.2017 till the date 31.07.2018
1,00,19,221.15	Being the penal interest at the rate of 2% as per decree
76,670.00	Cost awarded by DRT, Ahmedabad as per order passed in OA 62/2017 dated 26.07.2018
41,49,24,590.00	Total amount due to financial creditor No. 2 – State Bank of India together with further current and running interest at the rate of 13.50% p.a. with monthly rests

Date of Default/N.P.A.: 30.09.2015

Thus a total sum of **Rs. 109,10,68,480.00 (Rupees one hundred and nine crores ten lacs sixty-eight thousand four hundred eighty only)** (Rs. 67,61,43,890/- + Rs. 41,49,24,590/-) is due and payable by the respondent company to the financial creditors along with further current and running interest at the respective rate of interest as mentioned herein above with monthly rests + 2% simple penal interest from the date of filing of this petition, till the date of realisation thereof.

10. The financial creditors have submitted the following summary of loan account.

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Date of Default/NPA 30.06.2015

Account No. and nature of facility	Led. o/s Rs. As on 30.09.2015 (NPA Date) Rs.	Unpaid interest from NPA + as per decree	Total days of default	Total amount claimed to be in default Rs.
A/c. No. 329360267 with Central Bank of India, Mid Corporate Finance Branch. Term loan of Rs. 50.00 crores	55,58,53,320.00 amount due on the date of filing of original application No. 62/2017 dated 07.02.2017. (Rs.48,49,02,997/- being the ledger outstanding amount of term loan with interest calculated up to 31.10.2015. However, the date of NPA is 30.09.2015 as per MOC + Rs. 6,93,22,147.00 being the interest accrued but not charged from 01.10.2015 to 03.02.2017 @ 12.70% p.a. with monthly rests + Rs. 6,28,176.00 being the penal interest accrued but not charged from the date of NPA till 03.02.2017. Total outstanding amount of Rs. 55,58,53,320/- as per original application No. 62/2015	Rs. 12,02,90,570/- together with unapplied interest, cost and penal interest awarded by the DRT as per Judgment and decree (detail referred in part-IV (2)	1127	Rs. 67,61,43,890/- total amount due and payable by the corporate debtor to Central Bank of India as per decree passed in OA No. 62/2017 as per details given in part IV(2)
A/c. No. 61181877489 with State Bank of India, Term loan of Rs. 30.00 crores sanctioned by the SBBJ now merged with State Bank of India, SME Branch, Law Garden, Ahmedabad	33,14,16,773.00 amount due on the date of filing of original application No. 62/2017 dated 07.02.2017. (Rs.27,57,70,116.00 being the ledger outstanding amount in respect of term loan facility as on dated 30.09.2015 + Rs. 5,56,46,657.00 being the interest accrued but not charged from 31.09.2015 till 03.02.2017. Thus total amount of due of Rs. 33,14,16,773/- as per recovery certificate granted in O A No. 62/2017	8,35,07,817/- together with unapplied interest, cost and penal interest awarded by the DRT as per Judgment and decree (detail referred in part-IV (2)	1127	Rs. 41,49,24,590/- total amount due and payable by the corporate debtor to State Bank of India (SBBJ) as per decree passed in OA No. 62/2017 as per details given in part IV(2)



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11. The applicants have submitted copy of the following documents in support of their claim: -

Sl. No.	Particulars	Page Nos.
1	Application u/s 7 of IB Code	1-15
2	Affidavit in support of Insolvency application of Central Bank of India	16-36
3	Affidavit in support of Insolvency application of State Bank of India	37-54
4	Certificate of decretal dues of Central Bank of India in respect of decree passed in OA No. 62/17 in DRT-I, Ahmedabad	55
5	Certificate of decretal dues of State Bank of India in respect of decree passed in OA No. 62/17 in DRT-I, Ahmedabad	56
6	Sanction letter of applicant No. 1 & 2 bank for granting of term loan facility for a sum of Rs. 50.00 crores on various terms and conditions which were accepted and acknowledged by the borrowers/guarantors	57-58
7	Resolution passed by Board of Directors of the respondent company	79
8	Deed of hypothecation executed by and between respondent and applicant No. 1 in respect of stocks, book debts and all other current assets of the borrower company duly executed on a stamp of Rs. 3.00 lacs	80-109
9	Letter of interest signed and executed by respondent company through its authorised director agreeing to repay the dues of the bank on such higher rate of interest till realisation of suit	110-111
10	Letter of negative lien signed and executed by respondent company through its authorised director and undertaken not to sale the assets to any third party or not to create any kind of charge over the property without prior permission of the bank	112
11	Letter of general lien and set off signed by executed by respondent company through its authorised director	113-114
12	Letter of discloser signed and executed by respondent company through its authorised director agreeing if company become default in repayment of dues of the bank, the RBI has right to disclose or publish the name of the company and its directors/guarantors as defaulters.	115
13	Letter of undertaking regarding promoters contribution duly signed by respondent	116
14	Letter of undertaking of respondent company regarding withdrawal of capital and unsecured loan duly signed by authorised person	117
15	Certified true copy of resolution passed by Board of Directors of the respondent company	118
16	Certified true copy of resolution passed by Board of Directors of respondent company	119
17	Deed of corporate guarantee executed by respondent company in favour of applicant No. 1 bank and guaranteed for repayment of dues of the bank	120-133
18	Deed of corporate guarantee executed by respondent company in favour of applicant No. 2	134-137



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	bank and guaranteed for repayment of dues of the bank	
19	Letter of undertaking of the corporate guarantor	148
20	Declaration given by corporate guarantor	149
21	Letter of undertaking of the guarantors regarding receipt of consideration duly signed by respondent	150-151
22	Declaration given by directors/guarantors of respondent company	152-153
23	Affidavit regarding over dues in CIBIL DATA BASE duly executed by directors of respondent company	154-157
24	Letter of undertaking regarding payment of consideration to guarantors duly signed	158
25	Memorandum of deposit of title deeds executed by directors of the respondent company in favour of 1 st applicant bank against security of loan sanctioned	159-175
26	Minutes of the JLF meeting of the respondent company regarding sanction of loan of Rs. 80.00 crores	176-179
27	Certified true copy of resolution passed by Board of Directors of the respondent company	180
28	Letter of authority given by Mr. Anandbhai H Patel regarding execution of various security documents in favour of applicants	181-182
29	Inter-Se Agreement executed by and between applicant No. 1 & 2 regarding granting of term loan facilities for a sum of Rs. 80.00 crores	183-202
30	Facility consortium agreement	203-243
31	Joint deed of hypothecation executed by and between the respondent and applicant No. 1 & 2	244-272
32	Deed of guarantee executed by respondent in favour of applicant No. 1 & 2 and guaranteed for repayment of dues of the bank	273-286
33	Deed of corporate guarantee executed by Shreem Soil Development P. Ltd. in favour of applicant No. 1 & 2 and guaranteed for repayment of dues of the banks	287-300
34	Memorandum of deposited title deeds executed by respondent company against security of loan/ credit facilities sanctioned by the bank	301-327
35	Deed of rectification executed by and between Mr. Anand H. Patel and applicant No. 1 in registered mortgage deed dated 11.02.2013	328-337
36	Supplementary agreement executed by and between borrower/guarantors of defendant companies/firm in respect of term loan for a sum of Rs. 50.00 crores	338-340
37	Verification of documents given by Shiddhartha Samal, advocate in respect of accounts of the respondent company	341-342
38	Letter of borrower company to the first applicant bank regarding transfer of escrow account of Mr. Anandkumar H. Patel to term loan account of respondent company	344
39	Letter of borrower company to the first applicant bank regarding transfer of escrow account of Mr. Vijaynarayan R. Jaju to term loan account of respondent company	345
40	ROC Certificate of Shreem Soil Development Pvt. Ltd. company for registration in the ROC	346
41	Recall notice given by HR Shah & Co., Advocates to all directors of the respondent company at their respective addresses by RPAD along with receipt of registration of recall notices	347-359



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42	Valuation report given by Hitesh Parekh (valuer) in respect of properties belonging to directors of respondent company	360-376
43	Valuation report given by Darshana Gajjar and JB Mistri (valuers) in respect of land, buildings, plant and machinery belonging to defendants	377-402
44	Statement of accounts in respect of credit facility granted by CBI	403-405
45	Statement of accounts in respect of credit facility granted by SBI	406-407
46	Judgement/decree passed in OA No. 62/2017	408-427
47	CIBIL reports	428-440
48	Written communication by proposed interim resolution professional in form No. 2	441-442
49	Master data	443
50	Particulars of charges registered in ROC as on date	444
51	Particulars of signatory details registered with ROC	445
52	Ledger account certified under the Banker Books Evidence Act of Central Bank of India	446-447
53	Ledger account certified under the Banker Books Evidence Act of State Bank of India	448-449

12. On receipt of the notice respondent appeared and filed affidavit of no objection on behalf of the respondent towards admission of the case. On perusal of the affidavit it is found that the deponent has inter-alia stated that he had submitted settlement proposal on 24.01.2019 to the Assistant General Manager, Central Bank of India and the said settlement proposal is still pending and the petitioner has not given any enhanced offer. The respondent further categorically submitted in the affidavit at para No. 3 that he has no objection if the captioned petition CP (IB) 550 of 2018 is admitted and consequential actions are taken in accordance with the provisions of IB Code.

Findings

13. Heard at length learned lawyers appearing for both the sides and also seen the documents on record.



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14. On perusal of the record, it is evident that the applicant banks had sanctioned cash credit limit and term loans to the respondent company in the year 2012, as per the details placed at page **No. 57-78** to the application and the said loans were disbursed to the corporate debtor company from time to time as per the statement of account placed at page **No. 403 - 407** to the application. Moreover, documents made available by the financial creditors clearly shows that from time to time the respondent company has acknowledged and admitted the debt. Letters dated 02.02.2016 and 17.02.2016 written by Directors of the respondent company, placed at page **No. 344 and 345** the application, requesting the applicant banks to transfer escrow account of the directors of the respondent company to term loan account of the respondent company clearly establishes existence of debt and admission of such debt by the respondent company. That, the applicant bank had issued recall notice through advocate dated 18.01.2017 to the respondent demanding the entire dues and informing about the initiation of insolvency proceedings under IB Code, 2016 but the corporate debtor failed to repay the same. Consequent upon which the petitioner had to file the instant application which is within time. 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



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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.

15. 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.
16. 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'.
17. 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.
18. Along with the application, the applicant proposed the name of the Resolution Professional namely Mr. George Samuel, 9-B, Vardan Complex, Nr. Vimal House, Lakhudi Circle, Navrangpura, Ahmedabad 380 014 having registration No.



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IBBI/IPA-003/IP-N 000343/2017-18/10319 to act as an interim resolution professional. Form 2 of the proposed interim resolution professional has been annexed and placed at page No. 441-442 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. 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.
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;



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- (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.

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.



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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.

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Chockalingam Thirunavukkarasu
Member (Technical)
Adjudicating Authority

Manor

Ms. Manorama Kumari
Member (Judicial)
Adjudicating Authority

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