

**BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B) No.572/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 01.01.2020**

Name of the Company: Bank of Baroda
V/s.
Shree Khodal Cot-Gin 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>
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1.

2.


ORDER

None appeared on behalf of the parties.

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


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 1st day of January. 2020


MANORAMA KUMARI
MEMBER JUDICIAL

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

C.P. No.(IB) 572/7/NCLT/AHM/2018

In the matter of:

Bank of Baroda
10-C, "G" Block,
Bandra Kurla Complex
Bandra (East)
MUMBAI 400 051

Having Branch at
Dhebar Road
Rajkot 360 002
Gujarat State

:

Petitioner
[Financial Creditor]

Versus

M/s. Shree Khodal Cot-Gin Private Limited
Survey No. 1/2/1
Hadmatiya Road
Chanol Fatepar Bypass
Fatepar
Taluka Paddhari
Dist. Rajkot 360 110
Gujarat State

:

Respondents
[Corporate Debtor]

Order delivered on 1st January, 2020

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

Appearance:

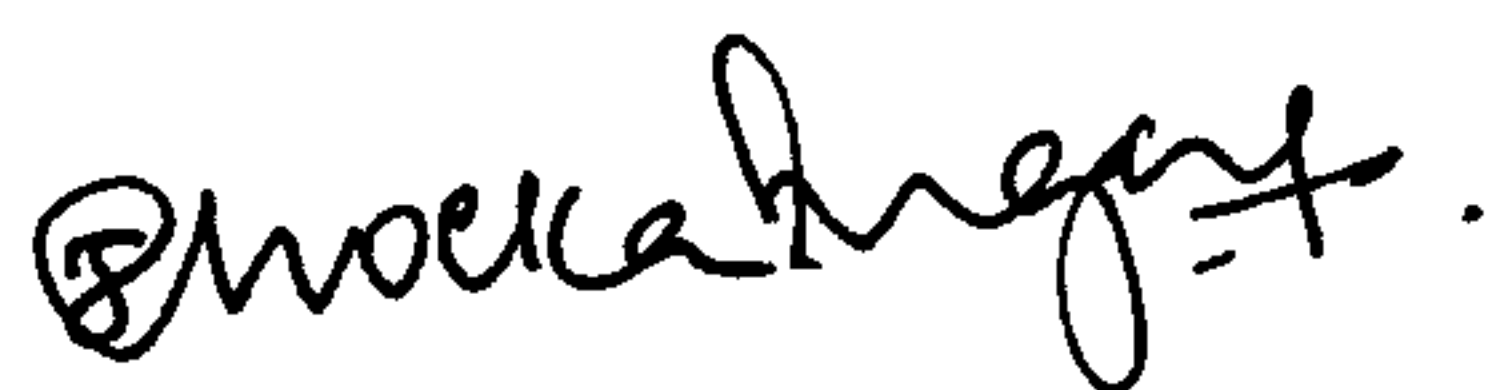
Advocate Mr. Dhruvkumar Chauhan & Advocate Mr. S.S. Panesar
for petitioner.

Advocate Ms. Archana Raval & Advocate Ms. Jigisha Raval for
respondent.

ORDER

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

1. Mr. S.K. Misra, Assistant General Manager, being authorised signatory of Bank of Baroda, filed this petition under section 7 of The Insolvency and Bankruptcy Code, 2016 (hereinafter




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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 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 at Dena Corporate Centre, C-10, G-Block, Bandra Kurla Complex, Bandra E, Mumbai 400 051 and branch at Dhebar Road, Rajkot 360 002, Gujarat State.
3. During pendency of this application, Dena Bank is merged with Bank of Baroda vide Government of India Gazette Notification dated 02.01.2019. Accordingly cause title of the instant application is amended vide order 15.04.2019.
4. The respondent/corporate debtor M/s. Shree Khodal Cot-Gin Private Limited is a company incorporated under the Companies Act, 1956 on 22.10.2012, having identification No. U17200GJ2012PTC072418, having its registered office at Taluka Paddhari, Dist. Rajkot, Gujarat State. That, Authorised share capital of the respondent company is Rs. 3,50,00,000/- and paid up share capital is Rs. 3,25,00,000/-





5. That, the applicant bank has submitted that through its Dhebar Road Branch, Dist. Rajkot granted various financial credit facilities to the corporate debtor as per the details given below and disbursement of the said facilities were made from 27.12.2014 onwards:
- (i) CC facility of Rs. 6,50,00,000.00
 - (ii) Term Loan of Rs. 1,84,58,000.00
6. The financial creditor has further stated that the corporate debtor is in default of **Rs. 8,78,45,010.73 (Rupees eight crores seventy-eight lacs forty-five thousand ten and paise seventy-three only)** as on **29.10.2018** together with further interest at contractual rates till the date of realisation of all the outstanding dues and the **date of default is 31.03.2017.**
7. It is stated that the financial creditor holds first and exclusive charge on hypothecated assets viz. entire current assets including stock, book-debts, receivables and all other movable assets lying in the possession of the corporate debtor, plant and machinery and stores and spares lying in the possession of the corporate debtor created under hypothecation agreement dated 20.12.2014. That, the financial creditor holds first and exclusive charge on mortgaged properties also. 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.



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 Dhebar Road Branch, Rajkot, Gujarat State.

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

Sl. No.	Particulars	Page Nos.
1	Form 1	1-7
2	Affidavit in support of form 1	8
3	Vakalatnama	9
4	Power of attorney	10-12
5	Master data of corporate debtor	13
6	Consent of interim insolvency resolution professional and registration certificate	14-16
7	Working for computation of amounts of default	17
8	CIBIL report of the corporate debtor	18-22
9	Sanction letter dated 04.12.2014	23-32
10	Resolution passed by the Board of Directors of the corporate debtor dated 15.12.2014	33-37
11	Demand promissory note dated 20.12.2014	38
12	Letter of continuity dated 20.12.2014	39
13	Agreement of hypothecation dated 20.12.2014	40-52
14	Letter of general lien and set off dated 20.12.2014	53
15	Declaration & undertaking for consent dated 20.12.2014	54
16	Power of attorney (book-debts) dated 20.12.2014	55-58
17	General undertaking dated 20.12.2014	59-66
18	Registered instrument relating to deposit of title deeds dated 20.12.2014	67-76
19	ROC certificate dated 06.01.2015 for registration of charge	77-83
20	Demand notice dated 27.09.2018 u/s 13(2) of Securitisation Act	84-86
21	Copies of entries in a bankers book in accordance with the Bankers Book Evidence Act, 1891	87-133
22	Audited balance sheet submitted by the corporate debtor to the applicant along with letter dated 27.12.2016 for the year 2015-16	134-162
23	Proof of dispatch of the present application along with the supporting documents	163

9. Respondent appeared and filed affidavit in reply accompanied by certain documents. Respondent has denied the averments made in the application filed by the applicant.

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It is further stated by the respondent that the bank has charged excess interest in the account of respondent No. 1 of Rs. 11,56,696.83 and, therefore, the applicant bank advised the corporate debtor to pay the rest of the overdue amount in cash credit and term loan and regularise the account immediately.

10. Apart from the above objections, respondent has not made any objection against the application so made by the petitioner. However, the corporate debtor has submitted that the bank has initiated proceedings under SARFAESI Act and served notice u/s. 13 (2) on 28.03.2018.

Findings

11. At the time of last hearing also only proxy lawyer remained present on behalf of the respondent. On perusal of the records it is found that the matter is pending since long for hearing. Heard learned lawyer appearing for the financial creditor.
12. On perusal of the records it is also found that no dispute has been raised by the corporate debtor. That, the application is filed on 29th October, 2018. On perusal of the records it is found that from time to time the corporate debtor has made payments towards the outstanding loan and thus acknowledged the debt. That, the application filed by the financial creditor is well within limitation. That, the

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documents filed along with the application is sufficient to prove that there exists financial debt.

13. On perusal of the records it is found that the letter of authority dated 12.09.2018 issued by General Manager of the applicant bank authorising Mr. S.K. Misra is proper and valid.
14. 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

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under Section 5 (7) as a person to whom a financial debt is owed 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 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

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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.

15. 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.....".

16. That, the application is found to be complete in all respect. Hence it does not warrant any rejection or dismissal.
17. 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 27.09.2018. Records available shows that the respondent has not cared to reply the notice issued by the applicant.
18. 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

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Debtor committed default in paying the financial debt to the Applicant and the respondent company has acknowledged the debt.

19. 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'.
20. 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 Mr. Prawin Charan Dwary. The Adjudicating Authority hereby appoint Mr. Prawin Charan Dwary, 407, Akchhat Tower, Pakwan Cross Road, S.G. Highway, Bodakdev, Ahmedabad 380 054 (Email ID dwaryprawin@gmail.com) having registration No. IBBI/IPA-002/IP-N00331/2017-18/10937 to act as an interim resolution professional. Form 2 of the proposed interim resolution professional has been annexed and placed at page No. 14-15 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.
21. In the aforesaid background and as also discussed above, the application under Section 7 (2) of the IB Code is

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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.


22. 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.
23. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -
- (i) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

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24. 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.
25. 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.
26. This Petition stands disposed of accordingly with no order as to costs.
27. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Resolution Professional.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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