

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

CP(IB) 321 of 2020

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER (JUDICIAL)
HON'BLE Mr. VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE
AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 24.02.2021

Name of the Company:

Bank of Baroda
V/s
Sintex Prefab & Infra Ltd


Section:

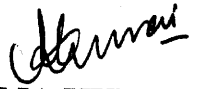
7 of Insolvency and Bankruptcy Code, 216

ORDER

The case is fixed for pronouncement of order.

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


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MANORAMA KUMARI)
MEMBER (JUDICIAL)

Dated this the 24th day of February, 2021.

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
COURT - 1**

C.P. No.(IB) 321/7/NCLT/AHM/2020

In the matter of:

Bank of Baroda

Baroda Bhavan

Alkapuri

Vadodara

GUJARAT STATE

:

Petitioner

[Financial Creditor]

Versus

M/s. Sintex Prefab and Infra Ltd.

7th Floor, Abhijeet-1 Building

Nr. Mithakhali Six Roads

Navrangpura

Ahmedabad 380 006

GUJARAT STATE

:

Respondent

[Corporate Debtor]

Order delivered on 24th February, 2021

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

Hon'ble Mr. Virendra Kumar Gupta, Member (T)

Appearance:


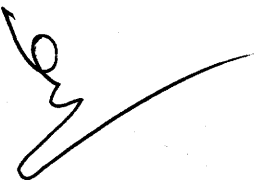
Advocate Mr. Biju Nair for financial creditor/petitioner

Advocate Mr. Tirth Nayak for respondent.

ORDER

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

1. Mr. Surendra Prasad Singh, Assistant General Manager, being authorised signatory, on behalf of **Bank of Baroda**, 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 Bank, incorporated on 19.07.1969, having its registered office at Vadodara, Gujarat State having identification No. U99999MH1911PLC007676, is in the banking business of providing various types of financial facilities including business loans, personal loans, consumer loans, loan against property, home equity loans, term loan etc.
3. M/s. Sintex Prefab and Infra Limited is a company incorporated under the Companies Act, 1956 on 25th November, 2009 having identification No. U45201GJ2009PLC058702 having its registered office at Ahmedabad, Gujarat State. That Authorised share capital of the respondent company is Rs. 70,00,00,000/- and paid up share capital is Rs. 46,20,07,480/-.
4. That, the applicant/financial creditor has submitted that the respondent is in default towards principal and interest against the term loans, inland letter of creditor/foreign letter of credit and cash credit sanctioned to the respondent/corporate debtor as per detailed computation placed at page No. 205-220 to the application.
5. The applicant has submitted copy of the following documents in support of their claim: -

Sl. No.	Particulars	Page Nos.
1	Application by financial creditor for initiation of corporate insolvency against respondent company under Section 7 of IBC	1-13
2	Resolution dated 14.11.2017 passed by the Board of Directors of the applicant bank in respect of authority to the executives of the applicant bank for signing of original application, plaints, affidavits etc.	15-16
3	Company Master Data from the website of MCA	17-18
4	Certificate of commencement of business	19
5	Certificate of incorporation	20
6	Memorandum of Association/Articles	21-110
7	Sanction letter	111-121
8	Board Resolution	122-123
9	D.P. Note for Rs. 175.00 crores	124
10	Term loan agreement	125-154
11	Letter of authority to make payment directly to the dealers	155
12	Letter of instalment with acceleration clause	156
13	Composite hypothecation agreement (for stocks/book debts/vehicles/moveable machinery)	157-170
14	Undertaking	171
15	Letter of undertaking (in respect of book-debts)	172-173
16	Power of attorney in respect of book debts	174-175



17	Undertaking not to withdraw deposit by the partners/directors etc. till advances is liquidated	176-181
18	Declaration's cum undertakings cum authority	182-187
19	Sanction letter	188-197
20	Letter of acknowledgement of debt for term loan	198-199
21	Letter of acknowledgement of debt for term loan	200-201
22	Demand notice under section 13 (2) of SARFAESI Act, 2002 for applicant bank to all defendants	202-204
23	Statement of account of current account	205-220
24	Statement of unapplied interest of current account	221
25	Certificate of Bankers Book Evidence Act, 1891 of current account	222-223
26	Statement of account of term loan	224-253
27	Statement of unapplied interest of term loan	254
28	Certificate of Bankers Book Evidence Act, 1891	255-256
29	Balance sheet of the defendant for the period 2018-19	257-283
30	ROC search report given by practicing CS	284-291
31	Copy of original application in O.A. No. 117/2020 filed by the Financial Creditor before DRT-1, Ahmedabad	292-324
32	CIBIL report showing the default	325-327
33	Original written communication by the proposed IRP	328-330
34	Proof of specified application fee paid	331
35	Affidavit in support of Insolvency application	332-351
36	Letter of notice written by financial creditor to the corporate debtor intimating about filing of the present insolvency application	352

6. That, the petitioner being financial creditor has to recover a total outstanding amount of **Rs. 395,00,00,000/- (Rupees three hundred ninety-five crores only)** as on 02.03.2020. That, the above amount include principal amount of loans sanctioned under different schemes, accrued interest and penal interest, as applicable as on 02.03.2020 as per the calculation in tabular form annexed to the application.
7. That, learned advocate for the respondent filed purshis dated 12.02.2021 inter alia stating that he has been instructed by corporate debtor not to oppose admission of the petition and the corporate debtor is unable to place valuable and admissible facts before the Adjudicating Authority, therefore, the Adjudicating Authority may pass necessary orders in the matter.

Findings


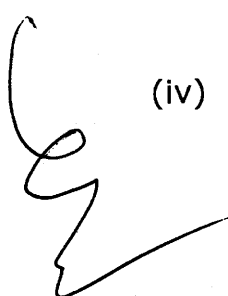
8. Heard both sides and perused the documents annexed to the application/purshis filed by the corporate debtor.
9. On perusal of the records it is found that the Applicant granted several facilities including Cash Credit Facility to the Corporate

Debtor and the Corporate Debtor fully availed those facilities. Those facilities carry interest applicable from time to time as per the terms and conditions mentioned in the Sanction Letters. Therefore, the amount due to the Financial Creditor from the Corporate Debtor is a financial debt. In view of the Judgment of the **Hon'ble National Company Law Appellate Tribunal, in case of M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr., in Company Appeal (AT)(Insolvency) No. 1 & 2 of 2017**, this Adjudicating Authority has to satisfy whether a default has occurred; whether the Application is complete; and whether any disciplinary proceeding is pending against the proposed Insolvency Resolution Professional.

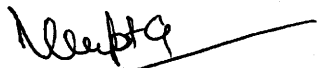
10. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the Corporate Debtor committed default in paying the financial debt to the Applicant. As can be seen from the Written Communication of the proposed Insolvency Resolution Process, no disciplinary proceedings are pending against him.
11. In the instant case, the documents produced by the Financial Creditor clearly establish the 'debt'. Section 13 (2) Notice issued by the Financial Creditor clearly indicates that entire debt was recalled. There is a default on the part of the Corporate Debtor in payment of the 'financial debt'.
12. 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. Chandra Prakash Jain, Chartered Accountant, to act as an interim resolution professional. Therefore, this Adjudicating Authority hereby appoint Mr. Chandra Prakash Jain, (cpjain@cacpjain.com) D-501, Ganesh Meridian, Opp. Gujarat High Court, S.G. Road, Ahmedabad 380 006, Gujarat State having IBBI registration No. IBBI/IPA-001/IP-P00147/2017-18/10311. Form 2 along with the certificate of registration of the

proposed interim resolution professional has been furnished by the applicant separately where declaration is made that no disciplinary proceeding is pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.

13. 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.
14. 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.
15. 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.

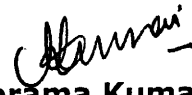


16. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.
17. 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.
18. This Petition stands disposed of accordingly with no order as to costs.
19. Communicate a copy of this order to the Applicant/Financial Creditor, Respondent/Corporate Debtor and to the Interim Resolution Professional.



Virendra Kumar Gupta
Adjudicating Authority
Member (Technical)

Nair



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)