

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

CP(IB) No.270/NCLT/AHM/ 2020

**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 30.03.2021**

Name of the Company: Jitendra Mehta & Ors
V/s
Indtext India Pvt Ltd

Section 7 of Insolvency and Bankruptcy Code, 2016.

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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ORDER

(through video conferencing/physical)

None appeared on behalf of parties.

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



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 30th day of March, 2021



**MANORAMA KUMARI
MEMBER JUDICIAL**

**BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court -2**

CP (IB) No.270/7/NCLT/AHM/2020

In the matter of:

1 Jitendra Mehta
19, Vijaynagar Society
Amroli
Surat-394 107

2 Minaxi Mehta
19, Vijaynagar Society
Amroli
Surat-394 107

3 Mohit Jitendra Mehta
19, Vijaynagar Society
Amroli
Surat-394 107

.....Petitioners

Versus

Indtext India Private Limited
703, Vasupujya Residency
Madhuvan Circle
L.P. Savani Road
Adajan
Surat

..... Respondent

Order delivered on 30th March 2021

Coram:

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

And

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T).

Appearance:

Mr. Dhiren R. Dave, PCS, for the petitioners.

Mr.Kunjil Dalal, PCS, for the respondent.

ORDER

[Per se: Mr. Chockalingam Thirunavukkarasu, Member (T)]

1. This Petition is filed by Mr. Jitendra Mehta, Ms. Minaxi Mehta and Mr.Mohit Jitendra Mehta, under Section 7 of the Insolvency and





Bankruptcy Code, 2016 [hereinafter referred to as "I&B Code"] read with Rule 4 of the Insolvency and Bankruptcy Application to Adjudicating Authority Rules, 2016 (hereinafter referred to as "the Rules"), for the purpose of initiating Corporate Insolvency Resolution Process [hereinafter referred to as "CIRP"] against M/s. Indtext India Private Limited [hereinafter referred to as Respondent/Corporate Debtor].

2. M/s. Indtext India Private Limited, the Respondent, is a company incorporated on 08.01.2015, under the provisions of the Companies Act, having its Registered Office at 703, Vasupujya Residency, Madhuvan Circle, Adajan, Surat and its CIN: U74900GJ2015PTC081807.
3. The Authorised Share Capital of the Respondent Company / Corporate Debtor is Rs.1,00,000/- (Rupees One Lakh only) and the Paid-Up Share Capital is Rs.1,00,000/- (Rupees one Lakh only).
4. As per Part IV of the application, the Financial Creditor submitted that it has granted an amount of Rs.1,10,58,574/- to the Corporate Debtor. It is further stated that as on 30th November, 2018 the default amount is Rs.1,29,33,381/-. The date of default is 30.11.2018.
5. The Petitioner submitted following documents in support of its claim against the Corporate Debtor.
 - i) Copy of Demand Notice
 - ii) Copy of undated security cheques

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iii) Copy of Memorandum of Understanding in vernacular language and copy of English Translation

6. The Petitioner has proposed the name of Mr. Jigar Shah, having address at B/801, Gopal Palace, Nr. Shiromani Complex, Nehrunagar Cross Road, Nehrunagar, Ahmedabad-380 015, to act as an Interim Resolution Professional (IRP), who is having Registration No. IBBI/IPA-001/IP-P-01121/2018-19/11820 to act as Interim Resolution Professional under Section 13(1)(b) of the I&B Code and written communication in Form-2 of IBBI has been submitted by the proposed IRP.
7. On receipt of notice, corporate debtor appeared through its advocate and filed his reply. In his reply it is stated that
1. The RoC, vide its order / notice STK-7 dated 25.10.2019, has struck off the name of the company from the Register of Companies. Thus, on the date of execution / filing of present application the corporate debtor was not in existence and no action can be initiated against the corporate debtor in view of fact that corporate debtor stands dissolved.
 2. It is further submitted that the order in M/s. Elektrans Shipping Private Limited matter Company Appeal (AT) (Insolvency) No. 754 of 2019 is not applicable in the present case since corporate debtor in the said matter was active company at the time of initiating insolvency resolution process and was struck off after application of initiating resolution process was filed by operational creditor.
 3. That the applicant has relied on Memorandum of Understanding dated 27.11.2017 to prove the financial debt, however, the applicant has not provided any proof regarding various amounts claimed under said agreement. That the applicant has claimed reimbursement of interest payable to Aditya Birla Finance Company and Bajaj Finance Company and also claimed household expenses of various parties referred to on page 46 of application.
 4. That the application is not made in prescribed format.
 5. That the applicant has not produced any details for documents proving that debt amount has been disbursed to the respondent. That the applicant has not produced any

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bank statement or ledger account or his income tax records proving that the debt amount has been disbursed to the corporate debtor.

6. That the applicant has stated that date of default is 30.11.2018, however, it has not provided any evidence to prove the date of default. In absence of establishment of date of default, default cannot be established and the applicant is not entitled to make application. Hence, the application should, therefore, be dismissed.

8. Heard the arguments of the learned counsel for the petitioners as well the respondent. Gone through the application as well as documents submitted by the Petitioners. This application preferred by the applicant under Section 7 of the IB Code as Financial Creditor for initiation of Corporate Insolvency Resolution Process, under Section 7 of the IB Code the Adjudicating Authority is required to see the existence of financial debt and ascertain the existence of default.

9. The date of default is 30.11.2018. The application is filed on 02 July 2020.

10. As per the documents submitted, the claim is based on the Memorandum of Understanding dated 18.03.2017 and 27.11.2017. The petitioners have annexed translated copy of Memorandum of Understanding dated 18.03.2017 and 27.11.2017 executed between the petitioners and the directors of the corporate debtor. The claim is towards (a) consideration for retirement of Shri Mohit Jitendra Mehta as Director from 01.10.2016 (b) reimbursement of interest payable for vehicle loan in which the loan is taken in the name of the applicant and not in

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the name of corporate debtor and (c) for reimbursement of some expenses. The Vehicle is not in the name of Corporate Debtor. The applicant has not paid any amount to the Corporate Debtor. The nature of claim is not falling under the definition of Financial debt as defined under Section 5(8) of the IB Code. Hence, the claim is not towards financial debt and the applicant is not a financial creditor as per Section 5(7) of the IB Code. The application is filed under Section 7 of the IB Code. As per Section 7 of the IB Code only Financial Creditor can initiate Corporate Insolvency Resolution Process.

11. For the reasons stated above, this Adjudicating Authority is of the view that the present petition does not qualify for admission under Section 7 of the I & B Code. Hence, the present IB Petition, i.e. CP (IB) No. 270/7/NCLT/AHM/2020 is rejected. No order as to costs.
13. It is made clear that the observation made in this order will not come in the way of the petitioner in seeking remedy before any other forum.
14. The Registry is directed to communicate a copy of this order to both the parties.



Chockalingam Thirunavukkarasu
Adjudicating Authority &
Member (Technical)



Manorama Kumari
Adjudicating Authority &
Member (Judicial)