

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



**C.P. (I.B) No.460/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 15.01.2020**

Name of the Company: Bank of India  
V/s.  
L.G Fibre 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>
1.	KULDEEP K. ADESKARA FOR KETAN M. PATEL	ADVOCATE	APPLICANT BANK	
2.	Jaymin R. Doree Priyanka S. Doree Shivam D. Parikh Hirva R. Doree	ADV.	ROSH.	


**ORDER**

The parties are represented through learned counsels.

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

  
**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

Dated this the 15th day of January, 2020

  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

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

**C.P. No.(IB) 460/7/NCLT/AHM/2018**

**In the matter of:**

**Bank of India**  
Memnagar Branch  
Sahajanan Complex  
Nr. Helmet Circle  
Memnagar  
AHMEDABAD 380 052

:

**Petitioner**  
[Financial Creditor]

**Versus**

**M/s. L.G. Fibre Private Limited**  
G-19, Basement, Sarthi Avenue  
Behind Satellite Police Station  
Satellite  
AHMEDABAD 380 015

:

**Respondent**  
[Corporate Debtor]

**Order delivered on 15<sup>th</sup> January, 2020**

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

**Appearance:**

Advocate Mr. Kuldeep K. Adesara i/b. Advocate Mr. Ketan M. Parikh  
present for financial creditor/petitioner  
Advocates Mr. Jaimin R. Dave, Mr. Priyank Dave and Mr. Hirwa R. Dave  
for respondent.

**ORDER**

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

1. Mr. Dineshkumar Vashrambhai Chavda, being authorised signatory, 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.

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2. That the applicant Bank, incorporated on 19.07.1969, having its registered office at Star House, Bandra Kurla Complex, Bandra (East), Mumbai 400 005, having PAN No. AAACB0472C, 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. L.G. Fibre Private Limited is a company incorporated under the Companies Act, 1956 on 21<sup>st</sup> February, 2013, having identification No. U17200GJ20113PTC073653 having its registered office at G-19, Basement, Sarthi Avenue, Behind Satellite Police Station, Satellite, Ahmedabad 380 015. That Authorised share capital of the respondent company is Rs. 4,00,00,000.00 and paid up share capital is Rs. 4,00,00,000.00.
4. That, the applicant/financial creditor has submitted that the respondent is in default towards principal and interest against the term loans, working capital fund based limited and non-fund based limits sanctioned to the respondent/corporate debtor as per detailed computation placed at page No. 98-103, **Annexure - I/6** 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	1-23
2	Power of attorney dated 14.10.2016	24-41
3	Memorandum of Association and Articles of Association of corporate debtor	42-67

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4	Form - 2 - consent form of the IRP	68-70
5	Sanction letters	71-97
6	Workings showing the amount claimed to be in default and its calculation in tabular form (together with principal amounts, accrued interest and penal interest as applicable) as on 31.07.2018	98-103
7	Statement of accounts of the corporate debtor maintained by Bank of India along with certificate issued under Banker's Book Evidence Act, 1891	104-169
8	Registered memorandum of entry dated 29.03.2014 executed by & between the corporate debtor with Bank of India	170-181
9	Resolution of Board of directors of the corporate debtor dated 28.03.2014	182-185
10	Certificate for creation of charge dated 29.03.2014	186-192
11	Certificate for creation of charge dated 31.03.2014	193-199
12	Omnibus guarantee for FBP/FBC limits dated 29.03.2014 by corporate debtor	200-203
13	Omnibus indemnity for imports dated 29.03.2014 by corporate debtor	204-205
14	Form of guarantee for letters of credit dated 29.03.2014 by corporate debtor	206-208
15	Credit facility agreement dated 29.03.2014	209-239
16	Deed of guarantee dated 29.03.2014 executed by guarantors of corporate debtor	240-251
17	Term loan agreement dated 29.03.2014	252-258
18	Hypothecation cum loan agreement dated 31.03.2014	259-290
19	Counter guarantee & indemnity dated 12.08.2015	291-293
20	Counter guarantee & indemnity dated 6.09.2015	294-296
21	Indemnity bond dated 02.04.2016 by corporate debtor	297-304
22	Resolution of Board of Directors of the corporate debtor dated 25.02.2016	305-306
23	Supplemental deed of hypothecation dated 01.03.2016 executed between the parties	307-323
24	Certificate of modification of charge dated 21.10.2016	315-323
25	Extension of memorandum of deposit of title deed dated 02.04.2016 executed between the parties	324-351
26	Extracts of the minutes of the Board meeting of the corporate debtor held on 26.02.2016	352
27	Search report dated 22.07.2018	353-385
28	Valuation report dated 03.01.2018	386-402
29	CIBIL report	403-419
30	Demand notice dated 02.06.2018	420-424

6. That, the petitioner being financial creditor has to recover an amount of **Rs. 10,85,68,092.75 (Rupees ten crores eighty-five lacs sixty-two thousand ninety-two and paise seventy-five only)** as on **31.07.2018**. That, the above amount include principal amount of loans sanctioned under different schemes, accrued interest and penal interest, as applicable as on 31.07.2018 as per the calculation in tabular form annexed to the application at **page No. 98-103**. That, date of default is **31.05.2018**.

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7. That, the respondent filed affidavit in reply inter alia raising the following objections: -
- (a) power of attorney holder is not competent to file an application on behalf of financial creditor;
  - (b) petitioner has failed to establish the default on the part of the respondent;
  - (c) respondent company is a going concern and a viable company;
  - (d) corporate debtor has made an offer for one-time settlement.

### **Findings**

8. Heard both sides at length as also perused the documents annexed with application.
9. The first objection raised by the respondent is that the power of attorney holder is not competent to file an application on behalf of financial creditor.
10. In this context, it is desirable to refer to the decision of the *Hon'ble National Company Law Appellate Tribunal in Company Appeal (AT) (Insol.) No. 30 of 2017* in the matter between **Palogix Infrastructure Private Limited Vs. ICICI Bank Limited**. The findings in Para 36 are relevant for the purpose of taking a decision in this matter. Para No. 36 reads as follows;

*"36. In so far as, the present case is concerned, the 'Financial Creditor' Bank has pleaded that by Board's Resolutions dated 30<sup>th</sup> May, 2002 and 30<sup>th</sup> October, 2009, the Bank authorised its officers to do needful in the legal proceedings by and against the*

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*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 'Authorised Representative' for the purpose of filing any application under section 7 or Section 9 or Section 10 of 'I&B Code'."*

11. A bare reading of **Para No. 36** goes to show that a general authorisation made by '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', is sufficient. It is further stated in Para 36 that mere use of word 'Power of Attorney' by 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. It is further stated in Para 36 of the Judgment that, in case such officer delegated with power can claim to be the 'Authorised Representative' for the purpose of filing any application under section 7 or Section 9 or Section 10 of 'I&B Code.

12. In that Judgment in **Para No. 38**, it is further held that if an officer of a Bank such as **Senior Manager** who has been authorised to

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grant loan, for recovery of loan can also initiate 'Corporate Insolvency Resolution Process'.

13. The Hon'ble Supreme Court, in the Judgment delivered in the matter between ***M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr., in Civil Appeal Nos. 8337-8338 of 2017***, in Para **No. 30** has clearly held as follows;

*"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."*

14. On perusal of the records it is found that pursuant to the notice under sub clause (b) if clause (5) of section 7 of the I & B Code dated **05.04.2019** issued by this bench, the petitioner bank has submitted copy of letter of authorisation dated **22<sup>nd</sup> February, 2019** issued by Shri Ramesh Chand Thakur, General Manager of the applicant bank authorising Mr. Dineshkumar V. Chavda to file application under section 7 of the I & B Code.

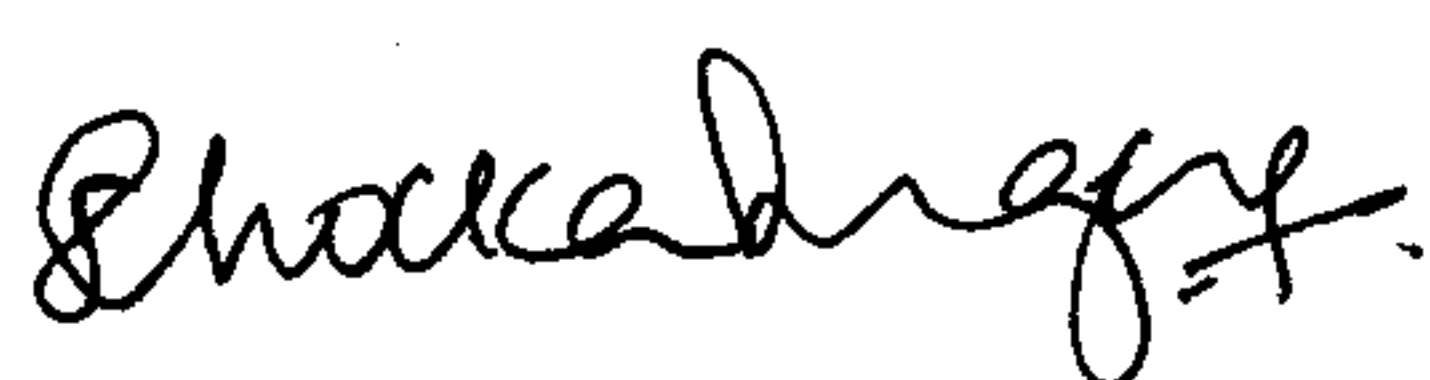
15. The second objection raised by the respondent is that petitioner has failed to establish the default on the part of the respondent. A bare reading of the petition reveals that the corporate debtor had availed term loan, fund/non fund based limits, working capital

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limits etc. from the petitioner bank and the respondent has acknowledged the debt from time to time.

16. The debt recovery proceedings are initiated by the Financial Creditor to recover the amount. Simply because the Financial Creditor initiated proceedings before the NCLT, it does not lie in the mouth of the corporate debtor to say that no default occurred. Corporate Debtor did not disclose any bona fide defence based on substantial grounds for the claim made by the Financial Creditor before this Authority. The above said evidence is sufficient to substantiate the plea of the Applicant that a default has been committed by the Corporate Debtor in payment of amount due and payable to the Applicant.
17. 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.





18. 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.
19. 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'.
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 Ms. Vineeta Maheshwari to act as an interim resolution professional. Therefore, this Adjudicating Authority hereby appoint Ms. Vineeta Maheshwari, M-19-20-21, Metro Tower, Ring Road, Surat 395 002, Gujarat State having IBBI registration No. IBBI/IPA-001/IP-P00185/2017-18/10364. 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.




21. 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.
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);


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- (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.

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, Respondent/Corporate Debtor and to the Interim Resolution Professional.

  
**Chockalingam Thirunavukkarasu**  
Adjudicating Authority  
Member (Technical)

  
**Ms. Manorama Kumari**  
Adjudicating Authority  
Member (Judicial)