



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD**

**COURT - II**

**CP (IB) 298/NCLT/AHM/2022**

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

**In the Matter of:**

**INDIAN BANK  
(Erstwhile Allahabad Bank)**

**APPLICANT/  
FINANCIAL CREDITOR**

**Versus**

**RAJKAMAL LOGISTIC  
PRIVATE LIMITED**

**RESPONDENT/  
CORPORATE DEBTOR**

**Order Pronounced on: 07/02/2023**

**CORAM:**

**DR. DEEPTI MUKESH  
HON'BLE MEMBER (JUDICIAL)  
AJAI DAS MEHROTRA  
HON'BLE MEMBER (TECHNICAL)**



## MEMO OF PARTIES

### **Indian Bank**

(Erstwhile Allahabad Bank),

Head office at 254-260,

Avvai Shanmugam Salai

Royapettha,

Chennai 600 014

And

Branch Office at

Indian Bank

Stressed Asset Management (SAM) Branch

2<sup>nd</sup> Floor, Deshna Chambers

Behind Kadva Patidar Vadi

Usmanpura Cross Road

Opp. AMC Water Tank, Ashram Road

Ahmedabad 380 014

Gujarat State

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**Applicant/Financial Creditor**

**Versus**

### **Rajkamal Logistic Private Limited**

Having Rergistred Office at

Plot No. 14/15, Bhatpore GIDC

Opp. ONGC Gate No. 2

Hazira, Surat 394 510

Gujarat State

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**Respondent/Corporate Debtor**

### **Appearance:**

For the Applicant : Mr. Sumit Parikh, Advocate

For the Respondent : None



## **ORDER**

1. The Present Application is filed on 20.10.2022 under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by **Indian Bank** through its Authorised Officer Mr. Bhoopendra Singh (for brevity 'Applicant'), authorised vide uniform/common power of attorney dated 20.06.2022, with a prayer to initiate the Corporate Insolvency process against **Rajkamal Logistic Private Limited** (for brevity 'Corporate Debtor').
2. The applicant is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 incorporated on 19.07.1969, having identification No. AAACII607G and having its head office at No. 66, Rajaji Salai, Chennai 600 001 and corporate office at 254-260, Avaal Shanmugham Salai, Chennai 600 014. The applicant is in the banking business providing various types of financial facilities including business loans, personal loans, consumer loans, loan against property, home equity loans, term loan etc.



3. The corporate debtor is a private limited company, incorporated under the provisions of the Companies Act, 1956 on 01.07.2002, duly registered with Registrar of Companies, Ahmedabad with CIN: U63090GJ2002PTC040918 and having registered office at Plot No. 14/15, Bhatpore, GIDC, Opp. ONGC Gate No. 2, Hazira, Surat 394 510, Gujarat State. The Authorized share capital of the Respondent is Rs. 2,00,00,000/- and paid up share capital of the company is Rs. 1,37,00,000/-.
  
4. The applicant states that one M/s. Siddhi Vinayak Logistic Ltd. (hereinafter referred to as “borrower”) through its directors had approached the applicant for sanction of term loan facility for purchase of 188 new commercial vehicles. The applicant considered the request and sanctioned term loan of Rs. 47.75 crores to the borrower vide sanction letter dated 29.03.2010. As per the terms of the sanction letter, the borrower had offered and agreed to give primary and collateral security. The present corporate debtor had executed the corporate guarantee for the said loan of original borrower on 30.03.2010. The copy of said guarantee, executed by this corporate debtor with the applicant, is annexed with the application.



5. The borrower, again, through its directors had approached the applicant for renewal of existing term loan and sanction of additional term loan facility for purchase of 405 new commercial vehicles. The applicant considered the request and renewed the existing term loan and sanctioned additional term loan of Rs. 120.00 crores vide sanction letter dated 23.11.2012. As per the terms of sanction letter the borrower again had offered and agreed to give primary and collateral security. The present corporate debtor had executed corporate guarantee for the said additional term loan of original borrower on the 04.12.2012. The copy of said guarantee executed by this corporate debtor is annexed.
  
6. The borrower again approached the applicant bank for review/restructure of its term loan accounts, which the applicant agreed vide letter dated 29.12.2014. For availing such facility, the borrower had offered and agreed to give primary and collateral security. Upon review/restructure of term loans, the borrower along with present corporate debtor as corporate guarantor executed guarantee documents on 31.12.2014 accepting their liabilities.



7. Due to default in payment of loan amount to the applicant, the account of original borrower was declared as NPA (non-performing asset) in the Books of the applicant on 30.09.2015 and the said default continues thereafter, till date. Total amount claimed to be in default as on 13.10.2022 is Rs. 278,62,49,265/-.
  
8. The applicant further states that despite numerous follow up, the borrower failed to repay the dues of the applicant as per agreed terms and the guarantors also failed to honour their commitments given in the guarantee agreements. Ultimately the applicant recalled the loan on 05.11.2015. The applicant initiated recovery proceedings against the principal borrower i.e. M/s. Siddhi Vinayak Logistic Limited and guarantors by issuing notice on 23.02.2016 under Section 13 (2) of SARFAESI Act, 2002. The applicant had also initiated recovery proceedings against the principal borrower and its guarantors, before DRT-II, Ahmedabad on 28.04.2017 by filing Original Application (OA) No. 515/2017 and the same has been decided by DRT-II in favour of the applicant vide order dated 04.03.2020 wherein the present corporate debtor was arrayed as respondent No. 10. Relevant portion of the order is reproduced below:

*“That the Original Application No. 515 of 2017 initiated by the Applicant Bank for issuance of Recovery Certificate to the tune of Rs. 168,74,53,914.30 (Rupees one hundred*



*sixty-eight crores seventy-four lacs fifty-three thousand nine hundred fourteen and paise thirty only) together with interest @ 10% per annum with monthly rests from the date of filing of O.A. till full realisation of entire dues and costs is hereby succeeds and is allowed against the defendant No. 1 to 13 with costs jointly and severally.”*

9. Thereafter, on an application made by the applicant bank, the Adjudicating Authority, ordered of initiation of CIRP against the principal borrower i.e., M/s. Siddhi Vinayak Logistic Limited, on 12.09.2017 and, thereafter, order for initiation of liquidation process against the principal borrower was passed on 19.11.2018.
10. It is submitted by the applicant that a total sum of Rs. 278,62,49,265/- (Rupees two hundred seventy-eight crores sixty-two lacs forty-nine thousand two hundred sixty-five only) which includes unpaid interest of Rs. 141,08,69,492/- (Rupees one hundred forty-one crores eight lacs sixty-nine thousand four hundred ninety-two only) and penal interest of Rs. 15,95,31,243/- (Rupees fifteen crores ninety-five lacs thirty-one thousand two hundred forty-three only) is due and payable by the corporate debtor.
11. The applicant filed present application against the respondent corporate guarantor on 20.10.2022 and notice was issued on 04.11.2022. The applicant has filed affidavit of service along with



copy of speed post receipt and track consignment report dated 12.12.2022 which mentions that “item returned addressee left without instructions.

12. In compliance of order dated 04.11.2022, during the course of hearing on 22.11.2022, counsel for the applicant informed that the notice was also served through e-mail and they had received a response from one Mr. Pawan Kabra stating that he is no longer associated with the present respondent corporate debtor for the last five years.
13. Despite serving notice none appeared on behalf of the corporate debtor on 04.11.2022, 22.11.2022 and 16.12.2022. Therefore, vide order dated 16.12.2022 the corporate debtor was proceeded ex parte.
14. The applicant has submitted copies of the following documents:

Sl. No.	Particulars
01	Power of attorney dated 20.06.2022
02	Master data of corporate debtor obtained from MCA portal
03	Form No. 2 i.e. written consent of IRP dated 15.10.2022
04	Sanction letters dated 29.03.2010, 23.10.2012 and 29.12.2014
05	Working of computation of amount claimed to be in default
06	Decision of DRT-II, Ahmedabad dated 04.03.2020
07	Order of NCLT, Ahmedabad bench dated 12.09.2017 for initiation of CIRP against the principal borrower.
08	Order of NCLT, Ahmedabad Bench dated 19.11.2018 for initiation of liquidation process against the principal borrower.
09	Board resolutions of principal borrower, corporate guarantors and guarantee deeds dated 30.03.2010, 03.12.2012 and 30.12.2014



10	Statement of account of principal borrower for the period from 31.03.2010 to 13.10.2022
11	Loan recall letter dated 05.11.2015
12	Notice under Section 13 (2) of SARFAESI Act dated 23.02.2016
13	Financial statement of the corporate debtor for financial year 2013-2014
14	Certificate under Bankers' Book Evidence Act, 1891

15. As per Form 1, part IV, the corporate debtor is in total default of Rs. 278,62,49,265/- (Rupees two hundred seventy-eight crores sixty-two lacs forty-nine thousand two hundred sixty-five only) which includes unpaid interest of Rs. 141,08,69,492/- (Rupees one hundred forty-one crores eight lacs sixty-nine thousand four hundred forty-two only) and penal interest of 15,95,31,243/- (Rupees fifteen crores ninety-five lacs thirty-one thousand two hundred forty-three only). As per Form 1, part IV date of default is 30.09.2015. DRT, Ahmedabad has passed order against this corporate debtor in the capacity of corporate guarantor on 04.03.2020. This application is filed on 20.10.2022 which is within the period of limitation and not barred by law.
16. The registered office of the corporate debtor is situated in Surat, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.



17. Heard submissions and perused the documents on record. On perusal of the records it is found that the applicant had extended credit facilities to M/s. Siddhi Vinayak Logistic Ltd. (borrower) initially in the year 2010 which were renewed/extended/enhanced from time to time at the request of the borrower and on the strength of the security documents executed not only by the borrower but also by the corporate guarantors, including the present corporate debtor. Guarantee for payment of debt of original borrower continued vide corporate guarantees executed on 30.03.2010, 04.12.2012 and 31.12.2014 for various limits by corporate debtor. The terms of guarantee deed clearly manifest liability of corporate debtor to repay the debt. Relevant clauses are extracted hereunder:

I/We declare that my/our liability under this guarantee shall be limited and restricted to the sum of Rs. 129.25 crores with interest at the rate aforesaid, but, subject to such limit shall nevertheless be a continuing guarantee to the bank as hereinafter specified for all sums whatsoever which may at any time be or become payable by the principal to the bank with interest at the rate aforesaid till repayment together with commission.

Demand/legal notice dated 05.11.2015 served on the corporate guarantor as well as the decree passed by DRT against the corporate debtor confirms the debt and default.



18. In light of the above discussions, it is evident that the debt is due and payable and default has occurred. The present application is complete in terms of Section 7 (5) of the Code. The applicant is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. Moreover, since the application is not contested and submissions of applicant are not disputed/objected by corporate debtor, the same will amount to deemed admission. It is beyond doubt that corporate debtor is incapable of discharging its debts and requires resolution. In light of the above facts the present application is admitted and CIRP is ordered to be initiated against the corporate debtor.
  
19. The applicant has proposed the name of Mr. Iqbal Singh Gandhi as Insolvency Resolution Professional, who is hereby appointed as IRP of corporate debtor having registration number IBBI/IPA-001/IP-P-02365/2021-2022/13524 having office at C/302, Rosewood Estate, Nr. Prerna Tirth Jain Derasar, Satellite, Ahmedabad 380 015, Gujarat State, subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2 along with disclosures as required under IBBI (Insolvency Resolution



Process for Corporate Persons) Regulations, 2016 is filed, which is on record.

20. We direct the Financial Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Iqbal Singh Gandhi to meet the expenses for performing functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Financial Creditor.
  
21. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.



22. A copy of the order shall be communicated to the applicant, IRP and the corporate debtor. A copy of order along with complete copy of application be served to IRP by the applicant within 7 days of order. In addition, a copy of the order be forwarded to IBBI for its records and taking steps for updating the Master Data of the corporate debtor in MCA portal and to forward the compliance report to the Registrar, NCLT.

**Sd/-**

**AJAI DAS MEHROTRA  
MEMBER (TECHNICAL)**

**Sd/-**

**DR. DEEPTI MUKESH  
MEMBER (JUDICIAL)**

*Nair/Abhishek LRA*