

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

C.P. (I.B) No.523/7/NCLT/AHM/2018

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 17.12.2019**

Name of the Company: Bank of Baroda
V/s.
Shiv Refoils & Cakes Pvt. Ltd.

Section of the Companies Act : Section 7 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
--------------	-------------------------------	--------------------	-----------------------	------------------

1.


2.

ORDER

None appears for the Parties.

The Present Petition is admitted.

The detail order is recorded vide separate sheet.



**(PRASANTA KUMAR MOHANTY)
MEMBER (T)**



**(HARIHAR PRAKASH CHATURVEDI)
MEMBER (J)**

Dated this the 17th day of November, 2019.

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B.) No. 523/7/NCLT/AHM/2018

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

In the matter of:

**BANK OF BARODA earlier DENA
BANK (as per order dated
18/06/2019 of this Hon'ble Tribunal)
Incorporated under the Banking
Companies (Acquisition and Transfer of
Undertakings) Act, 1970 (Act V of 1970)**

Having Head Office at: Dena Corporate
Centre, C-10, G – Block, Bandra Kurla
Complex, Bandra (East), Mumbai – 400
051.

Having its Branch Office at:
Corporate Business Branch, Dena
Laxmi Building, 2nd floor, Ashram Road,
Navrangpura, Ahmedabad – 380 009.

.....Applicant-Petitioner-Financial Creditor (FC)

Versus

**SHIV REFOILS AND CAKES PRIVATE
LIMITED.
(Erstwhile Shiv Agro Industries)**

Having its Registered Office at:
Plot No. 02, G.I.D.C. Estate,
At : Chanasma, Patan, Gujarat – 384
220.

.....Respondent-Corporate Debtor (CD)

↙

↘

Appearance:

Advocate, Shri Dakshesh Nakrani & Ms. Kaushal Nakrani for the Applicant/Financial Creditor.

Advocate, Shri Ritesh Patadia & Ami Patadia for the Respondent/Corporate Debtor.

Order Pronounced and delivered on 17/12/2019.

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present I.B. Petition is filed by the Financial-Creditor **Bank of Baroda earlier Dena Bank** under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code"), **seeking initiation of Corporate Insolvency Resolution Process** ("CIRP" in Short) against the Corporate Debtor Company namely, Shiv Refoils and Cakes Private Limited (Erstwhile Shiv Agro Industries) for the default committed by the Corporate Debtor in making repayment of the Terms Loans/CC facility availed from the Bank. The Applicant (FC), Bank of Baroda earlier Dena Bank is a Bank, incorporated under the provisions of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970. The application has been filed by the duly authorised officer, Shri Manish Sharma, Chief Manager of Corporate Business Branch (CBB), Ashram Road, Ahmedabad.

2. The Respondent Corporate Debtor (CD) Company, namely Shiv Refoils and Cakes Private Limited (erstwhile Shiv Agro Industries) was incorporated on 29/06/2015 with CIN: U74140GJ2015PTC083685.
3. The nominal share capital of the Respondent (CD) Company is Rs.15,50,00,000/- (Rupees Fifteen Crores Fifty Lakhs Only) divided into 1,55,00,000 equity shares of Rs.10/- (Ten) each and the paid-up capital of the company is Rs.15,48,60,000/- (Rupees Fifteen Crores Forty-Eight Lakhs Sixty Thousand Only) divided into 1,54,86,000/- equity shares of Rs.10/- (Ten) each. The Registered Office of the Corporate Debtor Company is situated at: Plot No. 02, G.I.D.C. Estate, At: Chanasma, Patan, Gujarat – 384 220.
4. The Respondent (CD) Company is doing the business of all kinds of edible seeds and non edible oil seeds, to refine all kind of oil, to process all kinds of oils and to carry business of all kind of agro commodities and business related thereto.
5. It is submitted that the Respondent Company applied for various Term Loans/Cash Credit facilities and the same were originally sanctioned for Rs.6.00 Crores from Bank of Baroda, Patan with enhancement to Rs.16.00 Crores

under sole banking arrangement and Fresh Term Loan of Rs.2.85 Crores on 10/02/2013. Sanction of review/renewal with enhancement limit of Rs.33.42 including Fresh Term Loan of Rs.1.80 Crores done on 05/02/2015 by the petitioner Bank with certain terms and conditions including collateral securities of properties. The Corporate Debtor availed the Term Loans/CC Limit executing various documents and some documents executed by the mortgagors/guarantors in favour of the Bank binding themselves as liable to pay the loan facilities availed by the Corporate Debtor.

Thus, total aggregate limit of Rs.33,90,00,000/- (Rupees Thirty Three Crores Ninety Lakhs Only) was sanctioned by the Applicant Bank vide sanction letter dated 12/02/2013 and 05/02/2015 with certain terms and conditions including hypothecation of goods, book debts and other movable assets to secure multiple facilities which was duly accepted /acknowledged by the Corporate Debtor (page no. 61 to 81 of the paper book). Mortgage of the property has been created on 01/04/2015 and 06/07/2015 (Page no. 310 to 387 of the paper book).

6. The Corporate-Debtor has defaulted payment and the **date of default is 30/06/2016** as stated by the Petitioner Bank CIBIL Report (page no. 400 to 433 of the paper book) has

been filed by the Bank which confirms that the Account is **in default.**

7. The statements of accounts of the Corporate debtor have been filed and the Petitioner Bank has submitted a Certificate to this effect under Banker's Book of Evidence Act, 1891. (Page no. 434 to 471 of the paper book). The Petitioner Bank has claimed their dues of **Rs.40,91,06,308.16Ps (Rupees: Forty Crores Ninety-One Lakhs Six Thousand Three Hundred Eight and Sixteen Paise Only)** as on 24.09.2018 as computed in the page no. 35 of the paper book which is given below:

Sr. No.	Nature of facilities	Sanction Amount (Rs.)	Ledger Dues as on 24.09.2018 (Rs.)	Interest Accrued but not Applied at Contractual Rate till 24.09.2018(Rs.)	Total Dues (Rs.) With interest upto 24.09.2018
1	CCH	28,75,00,000/-	27,44,88,986.42/-	8,81,55,165.52/-	36,26,44,151.94/-
2	CCH(Part Limit)	50,00,000/-	49,98,960.65/-	14,26,745.55/-	64,25,706.20/-
3	Term Loan I	2,85,00,000/-	1,66,20,000.00/-	56,02,901.23/-	2,22,22,901.23/-
4	Term Loan II	1,80,00,000/-	1,34,89,385.00/-	43,24,163.79/-	1,78,13,548.79/-
Total		33,90,00,000/-	30,95,97,332.07/-	9,95,08,976.09/-	40,91,06,308.16/-

8. The Financial Creditor also filed and IA 318/19 for substituting the name of the Applicant Dena Bank with Bank of Baroda an account of the amalgamation of the Dena Bank with the Bank of Baroda vide the notification of the Government of India dated 02/01/2019. Thus, the

IA filed has been admitted by this Adjudicating Authority and the name of the Dena Bank is substituted with the Bank of Baroda.

9. The Petitioner Bank, in support of its contentions has annexed the details of Financial Debt, Records and evidences of default including copies of all the sanction letters, the workings showing the amount claimed to be in default and its calculation in tabular form as on 30/06/2016 along with ROC search report.
10. The present application has been filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy before this Adjudicating Authority to initiate the Corporate Insolvency Resolution Process.
11. The Financial Creditor, to substantiate their claim, has enclosed following documents: -
 - i. Copy of statement of amount claimed to be in default. (Page no.35 of paper book)
 - ii. Copy of loan sanction letters dated 12/02/2013 & 05/02/2015. (Page no.36 to 60 of paper book)

- iii. Copy of Agreement of Hypothecation dated 09/03/2013 and Supplementary Deed of Hypothecation dated 01/04/2015. (Page no.61 to 81 of paper book)
- iv. Copy of certificate of charge registered with ROC, Gujarat (Page no.82 to 86 of paper book) for **Rs.33.46 Crores on 06/07/2015.**
- v. Copies of Demand Promissory Notes (1) 09/03/2013 of Rs.2,85,00,000/-, (2) dated 09/03/2013 of Rs.16,00,00,000/- (3) dated 06/07/2015 of Rs.2,41,00,000/- (4) dated 06/07/2015 of Rs.1,80,00,000/- (5) dated 06/07/2015 of Rs.29,25,00,000/- (6) dated 01/04/2015 of Rs.1,80,00,000/- (7) dated 01/04/2015 of Rs.29,25,00,000/- (Page no.100 to 106 of paper book)
- vi. Copies of Confirmation dated 06/07/2015 in respect of Deed of Hypothecation dated 02/04/2013. (Page no.107 to 118 of paper book)
- vii. Copies of Letter of Guarantee dated 09/03/2013, dated 01/04/2015 & 06/07/2015 and Letter of confirmation of Guarantee by Guarantors dated 01/04/2015, 09/03/2013 & 06/07/2015. (Page no.119 to 161 of paper book)
- viii. Copies of General Undertaking dated 09/03/2013 & 01/04/2015 & Undertaking dated 09/03/2013

- & 01/04/2015, Undertaking dated 22/08/2015 & 01/04/2015, Letter of Undertaking 09/03/2013, 06/07/2015, General Undertaking dated 15/07/2015. (Page no.162 to 215 of paper book)
- ix. Copies of Letter of General Lien and set off from Borrower dated 09/03/2013, 06/07/2015 & 01/04/2015 & Letter of General Lien and set off from Guarantors dated 09/03/2013, 01/04/2015 & 06/07/2015. (Page no.216 to 231 of paper book)
- x. Copies of Letter of Continuity dated 09/03/2013, 26/11/2014, 01/04/2015 & 06/07/2015. (Page no.257 to 263 of paper book)
- xi. Copy of Deed of Indemnity dated 06/07/2015. (Page no.305 to 307 of paper book)
- xii. Copy of Mortgage Deeds dated 01/04/2015 & 06/07/2015. (Page no. 310 to 387 of paper book)
- xiii. Copy of Deed of Confirmation dated 06/07/2015. (Page no. 392 to 399 of paper book)
- xiv. Copy of CIBIL Report. (Page no. 400 to 433 of paper book)
- xv. Copy of Statement of Account under the Banker's Books Evidence Act. (Page no. 434 to 471 of paper book)
12. In the present matter, this Tribunal, vide its order dated 31/10/2018 had directed the Petitioner Bank to serve

the notice of date of hearing to the Corporate Debtor and file the proof of service of notice before this Tribunal. Thereafter, the Respondent, Corporate Debtor appeared before this Tribunal on 13/12/2018 and sought time to file objections within two weeks.

13. The Learned Lawyer of the Applicant Bank(FC) clarified their positions and put forth their arguments **relying on the documents submitted by them, which were executed by the Corporate Debtor and the Mortgagors/Guarantors.**

The Learned Lawyer of the Financial Creditor also filed a Written Submission (7 pages) on behalf of the Financial Creditor on 26/09/2019.

It is submitted that the Respondent approached to the petitioner for loan and as per request of the Respondent, the CCH-I, CCH-II, Term Loan-I and Term Loan-2 were sanctioned of Rs.33,90,00,000/- and the sanction letter dated 12/02/2013 and renewal of loan sanction letter dated 05/02/2015.

They have also referred the CIBIL report filed with their application **which confirms the debt is in default.**

ROC report filed by them is in support of the charge created in their favour by Corporate Debtor.



- 13.1 It is submitted that the Principal Borrower and the Guarantors have failed to honour the terms and conditions of the credit facilities granted by the Applicant Bank and hence, the Applicant Bank has classified the account of the Respondent Company as **Non Performing Asset (NPA) on 30/06/2016**. It is submitted that the **Bank has received from the Borrower** towards the said **credit facilities of Rs.1,54,32,239/-** (Rupees One Crores Fifty-Four Lakhs Thirty-Two Thousand Two Hundred Thirty-Nine Only) **after the date of NPA till 30/06/2018**.
- 13.2 It is submitted that the pursuant to the said default, the Application Bank issued a Notice under Section 13(2) of SARFAESI Act on 29/10/2016 demanding the outstanding amount of Rs.34.87 Crores.
- 13.3 It is submitted that the Borrower has filed SA No. 136 of 2017 before the Hon'ble Debts Recovery Tribunal-I, at Ahmedabad wherein the Hon'ble Tribunal has passed the order dated 24/05/2018, restraining the bank for taking physical possession.
- 13.4 It is submitted that the present Application is not barred by Law of Limitation.
14. The matter was taken up and heard both sides before this Bench on 31.10.2018, 13.12.2018, 01.02.2019,

02.04.2019, 18.06.2019, 01.08.2019, 29.08.2019 and 24.09.2019. The counsels of the Petitioner and the Respondent were present and put forth their submissions during the arguments.

15. It is a settled legal position that the pendency of SARFAESI proceeding or other dispute **does not prevent a Financial Creditor to trigger the C.I.R.P.** because the nature of remedy being sought for under the provisions of **the I.B. Code is "Remedy in Rem"** in respect of the CD.
16. The Petitioner Bank has suggested the name of Insolvency Professional to be appointed, if this petition is allowed and the proposed I.R.P. has also given his affirmation/consent in writing, which is annexed with the present I.B. Petition.
17. It is also found that the Petitioner Bank has submitted the documents duly executed by the Corporate Debtors and guarantors along with a Certificate under the Banker's Book of Evidence Act, 1891, in support of their IB Petition for initiation of C.I.R.P.

It is Observed that:

- 17.1 The Term loans/CC were sanctioned and released by the Petitioner Bank and the same were availed by

CD, Shiv Refoils and Cakes Pvt. Ltd. (Erstwhile Shiv Agro Industries). **The Charges have been** filed by the CD with the ROC in favour of the Petitioner **Bank on 06/07/2015.**

17.2 The CD has defaulted in making repayment of Term loans/credit facilities to the Petitioner Bank and **the date of default is 30/06/2016.** The Statement of accounts and the **CIBIL Reports** submitted by the applicant Bank **confirm the default** committed by the Corporate Debtor.

17.3 It is submitted that the **Bank has received from the** Borrower towards the said **credit facilities of Rs.1,54,32,239/-** (Rupees One Crore Fifty Four Lakhs Thirty Two Thousand Two Hundred and Thirty Nine Only) **after the date of NPA till 30/06/2018.**

17.4 The Petitioner Bank has filed the petition **within the period of limitation,** as **the date of mortgage of the property is 01/04/2015 & 06/07/2015,** SARFAESI proceeding initiated on 29/10/2016, DRT proceedings started in 2017 and the Credits have **come into the loan accounts till 20/06/2016.**

17.5 The present I.B. Petition is filed by the duly authorised official of the Applicant Bank in a prescribed format under **Section 7** of the I.B. Code annexing copies of loan documents **confirming the existence of debt default** and proposed a name of Resolution Professional to act as an Interim Resolution Professional (IRP).

ORDER

18. Considering the material papers filed by the Petitioner Bank and the facts mentioned in the **Para No.17, 17.1, 17.2, 17.3, 17.4 & 17.5** this Adjudicating **Authority is satisfied** that,

- (a) The Corporate Debtor availed the Term loans/credit facilities from the Financial Creditor Bank.
- (b) Existence of debt is above Rs.One Lac;
- (c) Debt is due;
- (d) Default has occurred on 30/06/2016;
- (e) Petition had been **filed within the limitation period;**
- (f) Copy of the Application filed before the Tribunal has been sent to the Corporate Debtor and the application filed by the **Petitioner Bank Under Section 7 of IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process** against the Corporate Debtor.

Hence, **the present IB Petition is admitted** with the following Directions/observations. **The date of admission of this petition is 17/12/2019.**

19. This Adjudicating Authority hereby appoints, as proposed, **Mr. Sanjay Gupta, having Insolvency Professional Registration No. IBBI/IPA/001/IP-P00117/2017-18/10252, Mobile No. 9873164220, Email ID: sanjay.gupta@aaacapitalservices.com, Address: E-10A, Kailash Colony, Greater Kailash-1, New Delhi-110048, India as an Interim-Resolution Professional.** The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating-Authority and to follow the provisions Under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy 1
20. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this **Adjudicating Authority declares moratorium with effect from today** for prohibiting all of the following, namely: -

- I. (a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal arbitration panel or other authority.*
- (b) *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.*
- (c) *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);*
- (d) *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
- II. *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*
- III. *The provisions of sub-section (1) shall not apply to*
- (a) *such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- IV. *The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.*

21. The **IRP is hereby advised to adhere the time limit** as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP" in short) and perform the duties as specified Under Section 17, 18, 20, 21 of I.B Code. Further the **personnel of the Corporate Debtor** are

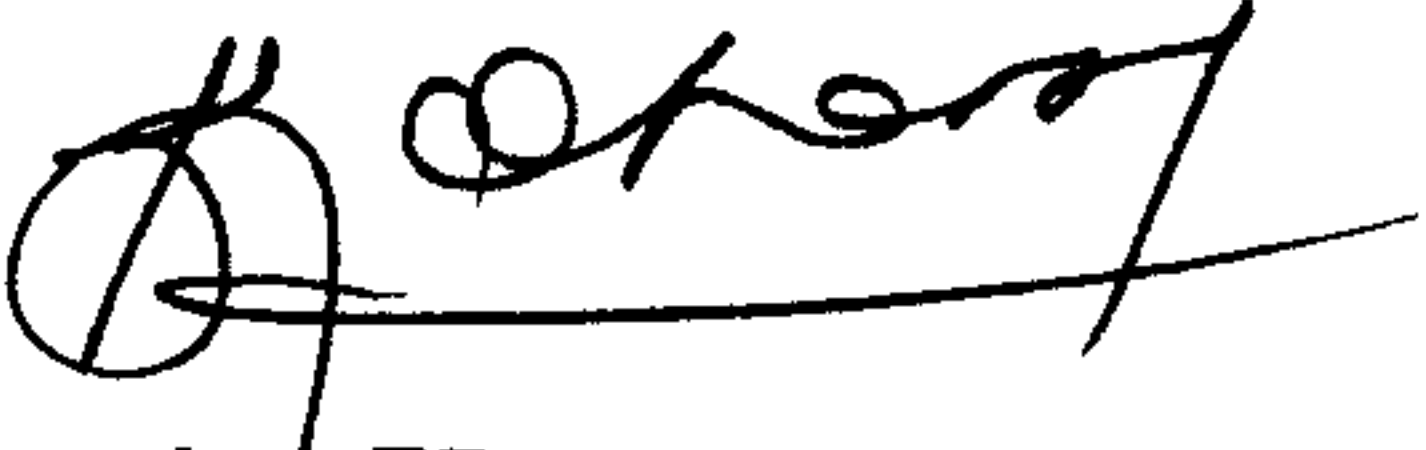
advised to extend co-operation to **Interim Resolution Professional as required Under Section 19 of IB Code.**


22. It is also observed that the Petitioner Bank has claimed **total dues of Rs.40,91,06,308.16Ps** (Rupees Forty Crores Ninety One Lakhs Six Thousand Three Hundred Eight and Sixteen Paise Only) **on 24/09/2018** which includes **undebited interest of Rs.9,95,08,976.09/-** **Bank has received from the Borrower** towards the said **credit facilities of Rs.1,54,32,239/-** after the date of **NPA till 30/06/2018**. One of the **prime objectives** of the Insolvency and Bankruptcy Code, 2016 is to **find** out an **Insolvency Resolution Plan in time** for the **Corporate Debtor** and in order to have a Resolution Plan **Viable, feasible and implementation successful, in the era of Minimum Cost of funds based** Lending Rate ("MCLR" in short) and Competitive market condition, **Committee Of Creditor(s) (COC) may explore**, while finalizing the Resolution Plan for the Corporate Debtor, the **possibility of loading maximum** at the Applicant Bank's interest, from the date of default till the date of approval of the Resolution Plan, at the rate of One Year MCLR or One Year MCLR + 1% without any penal /overdue interest.

23. The **Registry is hereby directed** to communicate the authenticate copy of this order to the Financial Creditor,

Corporate Debtor Company, the I.R.P and also to the Registrar of Companies, Gujarat immediately through speed post / registered post.

24. Thus the present I.B petition filed Under Section 7 of the IBC stands admitted **with the above direction and observations.**


(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (T)


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (J)

SK