

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

C.P. (I.B) No.593/7/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 THE NATIONAL COMPANY LAW TRIBUNAL ,
AHMEDABAD BENCH ON 04.03.2020**

Name of the Company:

Omkara Assets Reconstruction Pvt. Ltd.
V/s.
Avadh Fibres Pvt. Ltd.

Section:

Section 7 of the Insolvency and Bankruptcy Code

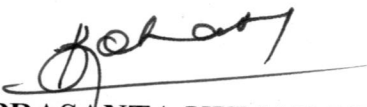
S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Ragu Kothari	Adv.	Petitioner	
2.	Anip Gaudin			


ORDER

The Petitioner is represented through respective Learned Counsel(s).

The case is fixed for pronouncement of order.

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


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 4th day of March, 2020.

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

C.P. (I.B.) No. 593/7/NCLT/AHM/2018

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

In the matter of:

OMKARA ASSETS RECONSTRUCTION
PRIVATE LIMITED (Erstwhile DENA
BANK, Now BANK OF BARODA)
(Amendment carried out as per
Hon'ble Court Order Dated 02.02.2019
in I.A. 579/19)
Incorporated under the Companies
Act, 1956 and registered as a
Securitization and Assets
Reconstruction Company pursuant to
Section 3 of SARFAESI Act.

Having Registered Office at:
9, M.P. Nagar,
First Street, Kongu Nagar Extension,
TIRUPUR-641607

Having its Corporate Office at:
C/515, Kanakia Zillion, Junction of
C.S.T. Road and L.B.S. Road, B.K.C.
Annexe, Near Equinox,
Kalina, Kurla(West)
Mumbai-400070

.....Petitioner

Versus

AVADH FIBRES PRIVATE LIMITED
Having its Registered Office at:
Street No.9, B/s Piyush Pendawala,
Kedarnath Society, Kothariya Road,
Rajkot

.....Respondent

Appearance:

Advocate, Mr. Raju Kothari and Mr. Anip Gandhi for the Applicant/Financial Creditor

Advocate, Ms. Jigisha Raval for the Respondent/Corporate Debtor.

Order Pronounced and delivered on **04.03.2020**

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

1. The present I.B. Petition is filed by the Financial-Creditor **Omkara Assets Reconstruction Private Limited (erstwhile Dena Bank, Now Bank of Baroda)** 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, Avadh Fibres Private Limited for the default committed by the Corporate Debtor in making repayment of the CC facility availed from the Financial Creditor (erstwhile Dena Bank now Bank of Baroda). As Amendment Carried out as per this Court Order Dated 02.02.2019 in I.A. 579/19 Dena Bank now Bank of Baroda assigned its loans to the present Applicant i.e. Omkara Assets Reconstruction Private Limited on the basis of Assignment Agreement dated 14.12.2018 between Dena Bank now Bank of Baroda as Assignor and Omkara Assets Reconstruction Private Limited as Assignee. The Applicant (FC), Omkara Assets Reconstruction Private Limited (erstwhile Dena Bank, now Bank of Baroda) is a Company, incorporated under the

Companies Act, 1956 and registered as a Securitization and Asset Reconstruction Company pursuant to Section 3 of SARFAESI Act. The original application has been filed by the duly authorised officer, Shri S.K Mishra, Assistant General Manager, Dena Bank, Dhebar Road Branch, Rajkot.

2. It is submitted that C.P.(IB) No.593 of 2018 is filed by Dena Bank against the Respondent Company under Section 7 of Insolvency & Bankruptcy Code,2016 with the prayers as mentioned therein.
3. It is submitted that the said Application is pending before this Hon'ble Tribunal. It is submitted that during the pendency of the said Application, Dena Bank had assigned the loans, disbursed under the financing documents together with all its rights, title and interest in the financing documents and any underlying security interest, pledges and/or guarantees in respect of such loans. The assignment Agreement dated 14.12.2018 registered on 21.12.2018 is enclosed and marked as (Annexure-A of the Paper book).
4. It is respectfully submitted that accordingly, Dena Bank had assigned its loans to the present Applicant i.e. Omkara Assets Reconstructions Pvt. Ltd. All rights of erstwhile Dena Bank have been vested in Omkara Assets Reconstructions Pvt. Ltd. and Omkara Assets Reconstruction is entitled to proceed further in the matter.

✓



5. The Respondent Corporate Debtor (CD) Company, Avadh Fibres Private Limited was incorporated on 21/08/2008 with CIN: U01405GJ2008PTC054834.
6. The nominal capital and Paid-up Capital of the Respondent (CD) Company is Rs.2,95,00,000/- (Rupees Two Crore Ninety Five Lakhs Only). The Registered Office of the Corporate Debtor Company is situated at: Sreet No.9, B/s Piyush Pendawala, Kedarnath Society, Kothariya Road, Rajkot, Gujarat.
7. The Respondent (CD) Company **is a Principal Borrower and is engaged in the business of Cotton ginning, Pressing and Oil Mills.**
8. It is submitted that the Respondent Company applied for Cash Credit Limit and the Financial Creditor sanctioned Cash Credit Limit of Rs.14,00,00,000/-(Rupees Fourteen Crores Only) and Term Loan of Rs.57,00,000/- on 11/10/2012 and further the Financial Creditor enhanced the Cash Credit Limit from Rs.14,00,00,000/- to Rs.17,50,00,000/- on 23/12/2013 at the request of the Corporate Debtor with certain terms and conditions including Collateral securities of properties. The Corporate Debtor availed the Cash Credits Limit executing various documents and some documents executed by the mortgagors/guarantors in favour of the Applicant binding themselves as liable to pay the Cash Credit Term Loans facilities availed by the Corporate Debtor.

Thus, total aggregate limit of Rs.17,50,00,000/-(Rupees Seventeen Crores Fifty Lacs Only) were sanctioned by the Applicant Company (erstwhile Dena Bank now Bank of Baroda) vide sanction letter dated 11/10/2012 and 23/12/2013 with certain terms and conditions including hypothecation of entire current assets including goods, raw materials, packing materials, all work in process , other spares and stores, etc. and finished goods lying at company's factory premises or elsewhere the same may be including movable properties, plant and machineries, book-debts and receivables of the company which was duly accepted /acknowledged by the Corporate Debtor and Mortgage of the property has been created on 11.01.2014.

9. The Corporate Debtor has defaulted payment and the **date of default is 30/06/2016** as stated by the Petitioner. (Page no. 401 of paper book).
10. The statements of accounts of the Corporate debtor have been filed and the Applicant has submitted a Certificate to this effect under Banker's Book of Evidence Act, 1891. (Page no. 255 to 404 of paper book). The Applicant has claimed its dues of **Rs.22,59,00,544.65Ps (Rupees: Twenty Two Crores Fifty Nine Lakhs Five Hundred Forty Four Only)**as on 07.10.2018 as computed in the Page no.5 of the paper book which is given below:

↙

↘

Particulars	Outstanding (Principal + Interest + Penal Interest as on 07/10/2018)
CCH	Rs.22,59,00,544.65/-
Total	Rs.22,59,00,544.65/-

11. The Financial Creditor also filed an IA 579 of 2019 for **substituting the name of Dena Bank (Now Bank of Baroda) with Omkara Assets Reconstruction Private Limited** on account of the Assignment agreement executed between Dena Bank and Omkara Assets Reconstruction Private Limited on 14/12/2018. Thus, the IA 579 filed has been admitted by this Adjudicating Authority dated: 02.12.19 and the name of the Dena Bank (Now Bank of Baroda) substituted with Omkara Assets Reconstruction Private Limited.
13. The Applicant Company, 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 occurred is **30.06.2016**.
14. 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.

15. The Financial Creditor, to substantiate its claim, has enclosed following documents: -

- i. Copy of the Sanction Letter details dated 10/10/2012. (Page no.17 to 19 of paper book)
- ii. Copy of the Demand Promissory Note dated 25.10.2012. (Page no.30 of paper book)
- iii. Copy of the Letter of continuity dated 25/10/2012. (Page no.31 to 32 of paper book)
- iv. Copy of the Agreement of Hypothecation dated 25.10.2012. (Page no.33 to 45 of paper book)
- v. Copy of the Letter of General Lien and Set-Off for borrowing Arrangements from Guarantors dated 25.10.2012. (Page no. 47 of paper book)
- vi. Copy of the Power of Attorney in respect of Book debts dated 25/10/2012. (Page no.48 to 51 of paper book)
- vii. Copy of the General Undertaking dated 25/10/2012. (Page no.52 to 60 of paper book)
- viii. Copy of the Letter of Guarantee dated 25/10/2012. (Page no.61 to 71 of paper book)
- ix. Copy of the Instrument deposit of Title Deeds dated 09.11.2012 (Page no.72 to 101 of paper book)



- x. Copy of the Sanction Letter dated 23/12/2013.
(Page no.105 to 114 of paper book)
- xi. Copy of the Resolution passed by the Respondent Company dated 07.01.2014. (Page no.115 to 119 of paper book)
- xii. Copy of the Demand Promissory Note dated 11.01.2014. (Page no.120 of paper book)
- xiii. Copy of the Letter of continuity dated 11.01.2014.
(Page no.121 to 122 of paper book)
- xiv. Copy of the Letter of General Lien and Set off from the Borrower dated 11.01.2014. (Page no.127 to 128 of paper book)
- xv. Copy of the Letter of continuity dated 25/09/2013. (Page no.163of paper book)
- xvi. Copy of the Letter of Lien and Set off from Guarantor dated 25/09/2013. (Page no.164 of paper book)
- xvii. Copy of the Letter of continuity dated 07/02/2015. (Page no.171 of paper book)
- xviii. Copy of the Letter of General Lien and Set off from the Borrower dated 07/02/2015. (Page no.178 of paper book)
- xix. Copy of the Letter of Guarantee dated 11.01.2014.
(Page no.148 to 159 of paper book)
- xx. Copy of the Sanction Letter dated 15.05.2015.
(Page no.195 to 203 of paper book)

- xxi. Copy of the CIBIL Report (Page no. 233 to 254 of paper book)
 - xxii. Copy of the Statement of Account under the Banker's Books Evidence. (Page no.255 to 404 of paper book)
 - xxiii. Copy of the Assignment Agreement dated 14.12.2018. (Page no. 6 to 116 of paper book)
 - xxiv. Copy of the Affidavit in support of Insolvency Application. (Page no. 472 to 484 of paper book)
 - xxv. Copy of the Written Communication by the proposed Interim Resolution Professional as set out in Form No.2 IRP (Application to Adjudicating Authority) Rules, 2106. (Page no. 485 to 486 of paper book)
16. In the present matter, this Adjudicating Authority, vide its order dated 03/12/2018 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 Adjudicating Authority. Thereafter, the Counsel of the Corporate Debtor appeared before this Tribunal on 01.03.2019 and sought time to file Vakalatnama and Prayer was granted to file objection within two weeks.
17. The Learned Lawyer of the Applicant Bank(FC) clarified its 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 has also stated that the Principal Borrower and the Guarantors have failed to honour the terms and conditions of the credit facilities granted by the Applicant and hence, the applicant had classified the account as **“Non Performing Asset” (NPA) on 27.12/2016.**

17.1 It is submitted that the pursuant to the said default, the Applicant Bank issued a Notice under Section **13(2) of the SARFAESI Act on 07.03.2017 demanding the outstanding amount of Rs.18,37,42,410.89Ps.** The Applicant Company further issued Notice under Section 13(4) of the SARFAESI Act on 30.05.2017.

17.2 It is submitted that the Applicant Company filed O.A. No. 678 of 2016 before the Hon'ble Debts Recovery Tribunal, Ahmedabad and the said Application is pending before the Hon'ble Debts Recovery Tribunal of Ahmedabad.

18. The matter was taken up and heard by this Bench on 03.12.2018, 21.01.2019, 05.03.2019, 01.05.2019, 23.07.2019, 05.09.2019, 20.09.2019, 27.09.2019, 02.12.2019 and 17.11.2019. The counsel of the Petitioner was present and put forth its submissions before the Bench.

19. It is submitted that the Petition is not barred by Law of Limitation as **the last Payment come into the account was on 16/05/2016**, when the Petition is filed on **25/10/2018**.
20. It is a settled legal position that the pendency of SARFAESI proceeding or other disputes **do 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.
22. 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.

23. **Observations**

23.1 It is observed that the Applicant Financial Creditor Dena Bank sanctioned the Loans and the Corporate Debtor availed the same.

23.2 The Applicant Bank amalgamated with Bank of Baroda and the Debts have been assigned by the Financial Creditor to the Omkara Assets Reconstruction Company vide agreement deed dated 14.12.2018.

23.3 Date of NPA i.e. 27.12.2016 as per the documents/CIBIL Reports submitted.

f



23.4 **The last payment has come to the account on 16.05.2016 whereas the application has been filed on 25.10.2016 which is within 3 years of last payment.**

23.5 The Petitioner has filed the petition **within the period of limitation.**

23.6 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 due and defaulted** and proposed a name of Resolution Professional to act as an Interim Resolution Professional (IRP).

ORDER

24. **Considering the material papers filed by the Petitioner Bank,** arguments of the counsels of both parties and the facts mentioned in the **Para No.23, 23.1, 23.2, 23.3, 23.4, 23.5 & 23.6** this **Adjudicating Authority is satisfied that,**

- (a) The Corporate Debtor availed **the loan /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**, as the last credit has come to the account on **16.05.2016** whereas this petition has been filed on **25.10.2018**;
- (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 04.03.2020**

25. This Adjudicating Authority hereby appoints, as proposed, **Shri. Atul Mittal, having Insolvency Professional Registration No. IBBI/IPA-001/IP-P000439/2017-18/10762, Email ID: a.mittalmc@gmail.com Address: 174, Balco Apartments, Plot No.58 I.P Extension, Delhi-1100092 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 the 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 Code.**

↙



26. 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** is 04/03/2020 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.*

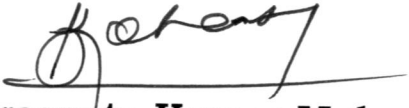
↖




27. 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. **The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, in Sections 15, 17, 18, 20 & 21 of the Code and transact proceedings with** utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the **personnels connected with the Corporate Debtor, its promoters or any other persons associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional/RP** as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution **Professional/RP would be at liberty to make appropriate application to this Tribunal** with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to **protect and preserve the value of** the property of the '**Corporate Debtor**' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
28. It is also observed that the Petitioner Bank has claimed **total outstanding amount Rs.22,59,00,544.65.00** 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) Repo Linked Interest Rate/Interest rate falling Regime and Competitive market condition, the **Committee Of Creditor(s) (COC) may explore**, while finalizing the Resolution Plan for the Corporate Debtor, the **possibility of loading maximum interest** at the rate of Petitioner Bank's Base Rate (BR) + 1% from the date of default to the date of implementation of MCLR and further from the date of implementation of MCLR till the date of approval of the Resolution Plan interest at the rate of Petitioner Bank's One Year MCLR or One Year MCLR + 1% without any penal/overdue interest.

29. 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, Ahmedabad immediately through speed post/registered post immediately.
30. 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)