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

**C.P. (I.B) No. 49/10/NCLT/AHM/2017**

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.07.2017**

Name of the Company: Somnath Textile Pvt. Ltd.  
V/s.  
State Bank of India

Section of the Companies Act: Section 10 of the Insolvency and Bankruptcy  
Code

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

1. Aayog Y. Doshi Advocate

2.

**ORDER**

Learned Advocate Mr. Aayog Doshi present for Corporate Debtor/ Applicant. None present for Respondent.

Order pronounced in open Court. Vide separate sheet.

  
**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

Dated this the 28th day of July, 2017.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH**

**CP(IB) No.49/NCLT/AHM/2017**

In the matter of :-

Somnath Textile Private Limited,  
Block No.130, Plot No.137 to 146,  
Village Tati Tahiya,  
B/H Venus Mill,  
Taluka Palsana,  
Surat – 394 315.

... Corporate Applicant

**Versus**

State Bank of India  
Stressed Assets Management Branch,  
“Paramsiddhi” Complex,  
2<sup>nd</sup> floor, opp. V S Hospital, Ellisbridge,  
Ahmedabad-380006.

... Financial Creditor/ Respondent

Order delivered on 28<sup>th</sup> July, 2017

**Coram: Hon’ble Sri Bikki Raveendra Babu, Member (J)**

**Appearance:**

Mr. Aayog Doshi, Advocate, for the Corporate Debtor/Applicant.

Mr. Biju Nair, Advocate, for the Respondent/State Bank of India.

**ORDER**

1. Somnath Textile Private Limited filed this application under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as “the Rules”).

2. The petitioner is a company registered under the Companies Act, 1956. The Registered Office of the petitioner company is situated in village Tati Tahiya, Palsana, Surat.

3. In this petition, State Bank of India is shown as the Financial Creditor of the petitioner company. The petitioner filed the resolution passed by the Board of Directors for initiating Corporate Insolvency Resolution Process. The Board of Directors of the petitioner company authorized Mr. Paresh K. Patel, one of the Directors, to file this petition on behalf of the company. It is the case of the applicant that State Bank of India sanctioned cash credit of Rs.1,00,00,000/-, term loan of Rs.17,00,00,000/- and another term loan of Rs.8,00,00,000/-, aggregating to Rs.26,00,00,000/-. Subsequently, the applicant suffered severe liquidity crisis and was unable to repay the debt. State Bank of India classified the debt as non-performing asset on 30<sup>th</sup> May, 2015. State Bank of India issued a notice under Section 13(2) of the SARFAESI Act, 2002 on 27.5.2016 to the applicant. The principal outstanding sum to the State Bank of India, as on 27.5.2016, was Rs.31,23,57,256.63 apart from interest of Rs.67,79,29,176/-. State Bank of India took symbolic possession of the secured assets of the applicant company. State Bank of India took physical possession of the secured assets of the applicant with the aid of orders of the District Magistrate, Surat, passed on 7.10.2016, by invoking Section 14 of the SARFAESI Act.

4. State Bank of India filed Original Application No.614 of 2016 before the Debit Recovery Tribunal, Ahmedabad against the

applicant herein and the same is pending for adjudication. In the said proceeding, the applicant herein was restrained from transferring the secured assets in any manner. The applicant challenged the action of State Bank of India under the SARFAESI Act by filing Securitisation Application No.3 of 2017 under Section 17 of the SARFAESI Act. It is also pending for adjudication. The applicant also filed a Reference dated 2.1.2016 before the Board of Industrial and Financial Reconstruction ("BIFR" for short) under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, being Case No.27 of 2016, which was admitted by the BIFR vide order dated 9.2.2016. The said Reference stood abated vide order dated 30.11.2016 passed by the BIFR for the reason that the State Bank of India being the sole secured creditor has already taken possession of properties of the undertaking under Section 13(4) of the SARFAESI Act.

5. The applicant furnished list of Financial Creditors, both secured and unsecured and list of Operational Creditors. The applicant also furnished the list of Statutory liabilities. The applicant also furnished entire information relating to the company, including copies of Valuation Reports of secured immovable properties. The applicant also filed an affidavit in support of the application. The applicant also served copy of the application with annexures on State Bank of India. The applicant filed various documents relating to the proceedings



before BIFR and the copies of documents relating to the action taken by the State Bank of India under the provisions of the SARFAESI Act. The applicant, in evidence of default, filed copies of sanction letters and recall notices issued by the Bank. The applicant also filed the relevant books of accounts of the applicant company along with audited financial statements for the last two financial years and provisional financial statement for the current financial year.

6. State Bank of India appeared before this Adjudicating Authority and filed objections. The main objection of State Bank of India is that it has already taken possession of the assets of the applicant company under the provisions of the SARFAESI Act and those proceedings are at advanced stage and, they are going to sell away the properties of the applicant company to realize the amounts. According to the respondent/Financial Creditor, the sole object of filing this application under the provisions of the Code is only to postpone the realization of debt and not with an intention to revive the company. It is also stated in the objection that this application, if admitted, would defeat the object of the Act. The Financial Creditors in its objection also stated about the action taken by it under the provisions of the SARFAESI Act and about the proceedings pending before the Debt Recovery Tribunal, which were already disclosed by the applicant in the application as narrated above.

7. In the case on hand, the proceedings before the BIFR stood abated not by virtue of Section 4 of the Sick Industrial Companies (Special Provisions Repeal) Act, 2003, but on account of taking possession of the assets of the applicant company by State Bank of India under the provisions of the SARFAESI Act.

8. Heard arguments of Learned Counsel appearing for both the sides.

9. The applicant is a Corporate Debtor. Therefore, it comes within the meaning of Corporate Applicant defined in sub-section (5) of Section 5 of the Code. In the case on hand, the applicant is a Corporate Person. It owes debt to secured Financial Creditor as well as Operational Creditors. Therefore, the applicant is entitled to file this application under Section 10 of the Code to trigger Insolvency Resolution Process. The main objection raised by the Financial Creditor is that proceedings are pending before the Debit Recovery Tribunal and the Financial Creditor has taken possession of the secured assets of the applicant company and that they are at the stage of auctioning those properties. The pendency of proceedings in any other forum under any other Act is not a bar for initiation of Corporate Insolvency Resolution Process under Section 10 of the Code. Moreover, in view of Section 238 of the Code, the provisions of the Code shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

In view of this overriding effect of the provisions of the Code, on the ground that proceedings are pending before other forums, the Corporate Insolvency Resolution Process cannot be rejected or postponed.

10. No doubt, this Adjudicating Authority shall also find out what is the real object of triggering Corporate Insolvency Resolution Process by the applicant in this case. The applicant did not suppress any material facts in this application. The applicant stated about all the pending proceedings and the action taken by the Financial Creditor under the SARFAESI Act. As can be seen from the list of Secured and Unsecured Financial Creditors, Operational Creditors and the amounts due to various Government Departments, it is obvious that the applicant has also got some other debts other than the debt due to the Secured Financial Creditor, State Bank of India. In these circumstances, it is only the Resolution Process that may help the company to revive and in case it is not possible, the company would go for liquidation and, in which case, the interest of the Secured Creditors will always be protected and, therefore, no prejudice or loss would cause to the Financial Creditor, State Bank of India. In that view of the matter, this Adjudicating Authority is of the view that this application is *bona fide* and it is not with a view only to have moratorium or postponement of realization of debts by the State Bank of India.



11. A perusal of the application and the annexures goes to show that the application is complete. The applicant has recommended name of Interim Resolution Professional. The applicant has also filed written communication given by the proposed Interim Resolution Professional. The applicant is admitting the existence of financial debt and occurrence of default in payment of financial debt. The books of accounts of the applicant company also substantiate the same.

12. In view of the above discussion, the application filed by the Corporate Applicant (Corporate Debtor) is admitted under Section 10(4)(a) of the Code.

13. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of Corporate Insolvency Resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional.

14. Hence, Shri Premraj Ramratan Laddha, having IP Registration No.IBBI/IPA-001/IP-P00060/2016-17/10138 and residing at 304, Abhijit-3, Above Pantaloon, Mithakhali, Law



Garden Road, Ellisbridge, Ahmedabad – 380 006, is appointed as “Interim Insolvency Resolution Professional”, who filed Form-2 and Certification of Registration issued by the Insolvency and Bankruptcy Board of India. This Adjudicating Authority also directs the Corporate Applicant to make a public announcement in terms of Clause (b) of sub-section (1) of Section 13 of the Code.

15. In view of the commencement of the Insolvency Resolution Process with the admission of this application and appointment of the Interim Resolution Professional, this Adjudicating Authority hereby passes the order declaring moratorium under Section 13(1)(a) prohibiting the following as laid down in 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

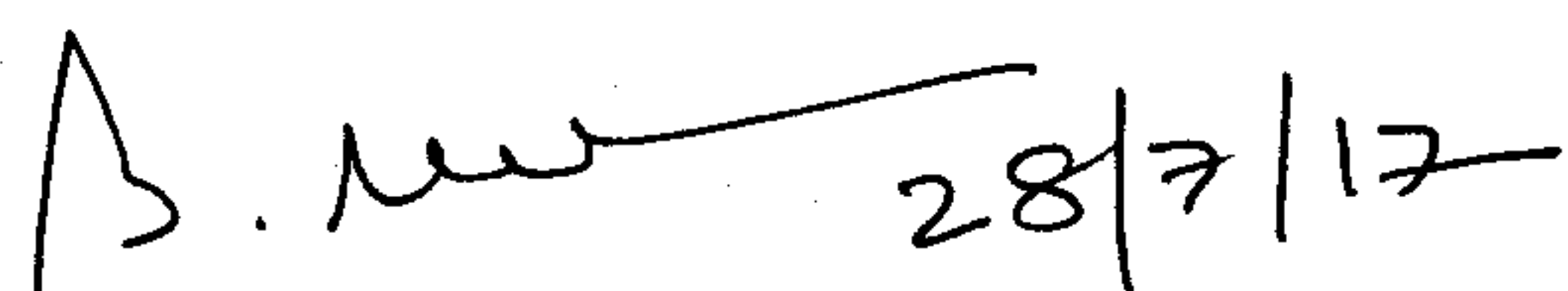
Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(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.

(a) However, the supply of goods and essential services to the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The moratorium order in respect of (i), (ii), (iii) and (iv) above shall not apply to the transactions notified by the Central Government.

16. This order of moratorium shall be in force from the date of order till the completion of Corporate Insolvency Resolution Process subject to the proviso under sub-section (4) of Section 14. ~~The~~ order of Moratorium is not applicable to the transactions notified by Central Government in view of sub section (3) of section 14.

17. This petition is ordered accordingly.

  
Signature:.....  
[Bikki Raveendra Babu, Member (J)]

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