

14.

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

**C.P. (I.B) No. 51/7/NCLT/AHM/2017**

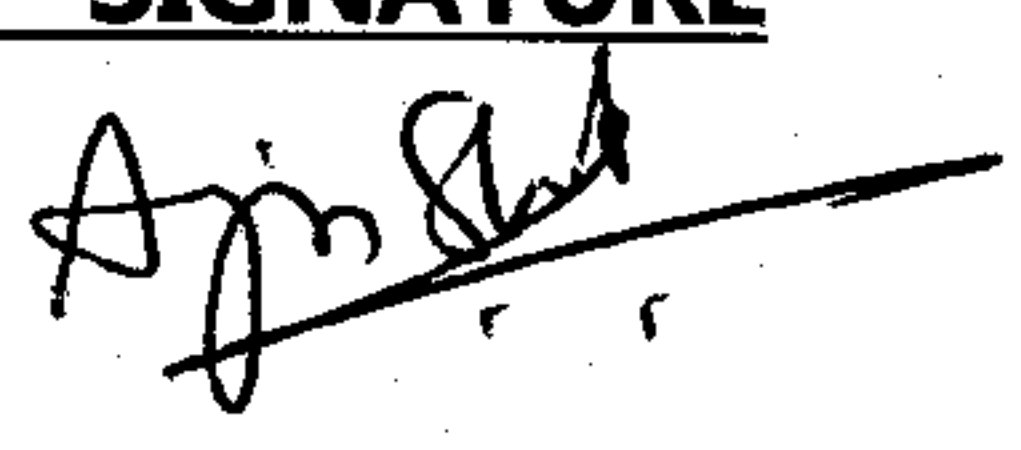
Coram:

**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 07.08.2017**

Name of the Company: State Bank of India  
V/s.  
Radheshyam Fibres 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.	A. R. Sheth	Adv. & Solicitor	Corporate Debtor	
2.				

**ORDER**

None present for Petitioner. Learned Advocate Mr. Arjun Sheth present for Respondent.

Order pronounced in open Court. Vide Separate Sheet.

  
**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

Dated this the 7th day of August, 2017.

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

**C.P. No.(I.B) 51/7/NCLT/AHM/2017**

**In the matter of:**

State Bank of India  
Registered Office at  
Corporate Centre  
Madam Cama Road  
Nariman Point  
Mumbai-400031

: Applicant.  
Financial Creditor.

Versus

M/s. Radheshyam Fibers Private Ltd.,  
134, Sardar Patel Marketing Yard  
National Highway-8 B,  
Gondal  
Rajkot-360311  
Gujarat.

: Respondent.  
Corporate Debtor.

Order delivered on 7<sup>th</sup> August, 2017.

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

**Appearance:**

Shri Biju Nair, learned Advocate for Applicant/Financial Creditor.

Shri Arjun Sheth, learned Advocate for Respondent/Corporate Debtor.

**ORDER**

1. State Bank of India filed this Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ["Code" for short] read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ["Adjudication Rules" for



short] to trigger 'Insolvency Resolution Process' against M/s. Radheshyam fibers Private Limited [hereinafter called as "Respondent/Corporate Debtor"].

2. The Application is signed by Shri Yogesh M. Avasia, Assistant General Manager & Relationship Manager for and on behalf of State Bank of India, Stressed Assets Management Branch, Ahmedabad.
3. M/s. Radheshyam fibers Private Limited is a Private Limited Company incorporated under the Companies Act, 1956 having its Registered Office at 134, Sardar Patel Marketing Yard National Highway-8 B, Gondal Rajkot-360311 Gujarat.
4. The Authorised Share Capital of the Corporate Debtor is Rs. 3,00,00,000/- (30,00,000 shares of Rs. 10 each). The Paid-up Capital of the Corporate Debtor is Rs. 2,99,75,000/- (29,97,500 shares of Rs. 10/- each. The main object for which the Corporate Debtor was incorporated is to carry out the business of printing, weaving, finishing etc. The other objects of the Corporate Debtor are set out in the Memorandum and Articles of Association. Corporate Debtor originally approached the Applicant Bank at its Commercial Branch, Noble House, Rajkot, Gujarat at different points of time, i.e., 2008, 2011, 2012 and 2013 for availing financial assistance in the form of Cash Credit and Standby Line of Credit facilities of the nature of Demand Cash Credit of Rs. 16.00 Crores subject to the terms and conditions contained in the Sanction Letter dated 30.10.2008. The Working Capital facilities are repayable on demand. As per the rate of interest applicable from time to time, the Board of Directors of Corporate Debtor passed necessary Resolutions on 01.11.2008 authorising availment of above said credit facilities by the Corporate Debtor and executed various documents and securities by the Corporate Debtor in

consideration of the above said Working Capital Term Loan. Corporate Debtor executed Agreement of Loan dated 03.11.2008, Agreement of Hypothecation of Goods and Assets dated 03.11.2008 for securing the aforesaid Credit Facility Limit of Rs. 16 Crores. The Deed of Guarantee dated 3.11.2008 was also executed for the security of the above said facilities by Mr. Ramniklal C. Bhalala and others. Corporate Debtor also mortgaged the immovable properties being Plot No. 12, land admeasuring 1519.13 sq.mtrs. with building thereon situated in Hadmatala, Rajkot District and Plots No. 3, 4, and 5 in Survey No. 51 Paiki of Hadmatala. The Corporate Debtor also mortgaged all the immovable properties situated in Rajkot. Corporate Debtor deposited the title deeds by executing Memorandum of Deposit of Title Deeds. Subsequently in the year 2011 on the request of the Corporate Debtor, Applicant again renewed the Working Capital Facilities and enhanced the sanction by Rs. 9.00 Crores making it to Rs. 25.00 Crores. Vide Sanction Letter dated 01.01.2011, Board of Directors approved the enhancement of Working Capital Limits and in consideration of the same security documents were executed. Corporate Debtor fully availed the aforesaid enhanced facility sanctioned by the Applicant.

5. On request of the Corporate Debtor on 9.02.2012, again Applicant renewed the Working Capital and enhanced it to Rs. 32.00 Crores. Corporate Debtor executed necessary documents and provided security documents. Corporate Debtor fully availed the Working Capital Facility.

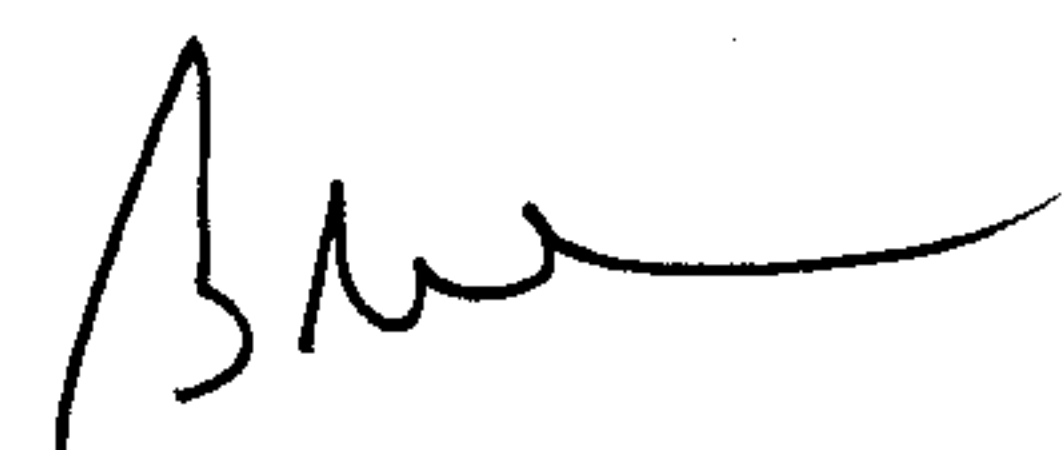
6. Again on 29.3.2013, on the request of Corporate Debtor, Applicant renewed various working capital facilities with enhancement as well as fresh limit as well as Corporate Loan as per the Sanction Letter dated 29.3.2013, viz., Cash Credit Limit of Rs. 40.00 Crores, Standby Line of Credit of Rs. 6.00 Crores and Corporate Loan of Rs. 0.50 Crores, totalling to Rs. 46.50

Crores. All the loans carry interest and repayable as and when applied. Board of Directors of the Corporate Debtor passed necessary Resolutions authorising availing of the Credit Facilities by the Corporate Debtor and executed necessary documents and also created mortgage over the immovable properties. Subsequently, on 17.4.2015, Applicant renewed the Cash Credit Facility of Rs. 40.00 Crores and Standby Line of Credit facility of Rs. 6.00 Crores. Subsequently, Corporate Debtor started committing default in repayment of obligations and consequently the relevant Working Capital facility accounts, Cash Credit and Standby Line of Credit became irregular and overdue in the books of the Applicant Bank. In spite of consistently followed up by the Applicant Bank, the Corporate Debtor did not regularize the account. Applicant issued notice dated 29.6.2016 to the Corporate Debtor, guarantors, mortgagors recalling the Cash Credit and Standby Line of Credit accounts and demanding repayment of Rs. 42,99,58,270.20 ps., which was due and payable by the Corporate Debtor to the Applicant as on 28.6.2016 with interest. But Corporate Debtor did not repay the amount.

7. Thereafter, Authorised Officer of the Applicant issued notice under Section 13(2) of SARFAESI Act, 2002 to the Corporate Debtor and guarantor-mortgagors on 01.7.2016. Applicant also filed Original Application No. 575 of 2016 before learned Debt Recovery Tribunal-II, Ahmedabad for recovery of Rs. 43,38,65,688.07. The Corporate Debtor is liable to pay the above said amount. In the Original Application No. 575/2016, DRT-II, Ahmedabad, by order dated 6.9.2017 granted various interim reliefs including injunction against alienation of charged/hypothecated/mortgaged assets by the Corporate Debtor. Corporate Debtor appeared and filed Written Statement. The Original Application is pending. After the filing of the Original Application, the accounts of the Corporate Debtor have been transferred from Applicant's Commercial

Branch, Rajkot, Gujarat to its Stressed Assets Management Branch, Ahmedabad. According to the Applicant, the Corporate Debtor is unable to pay the outstanding financial debt and that arose in the usual and ordinary course of business and that it has become commercially insolvent.

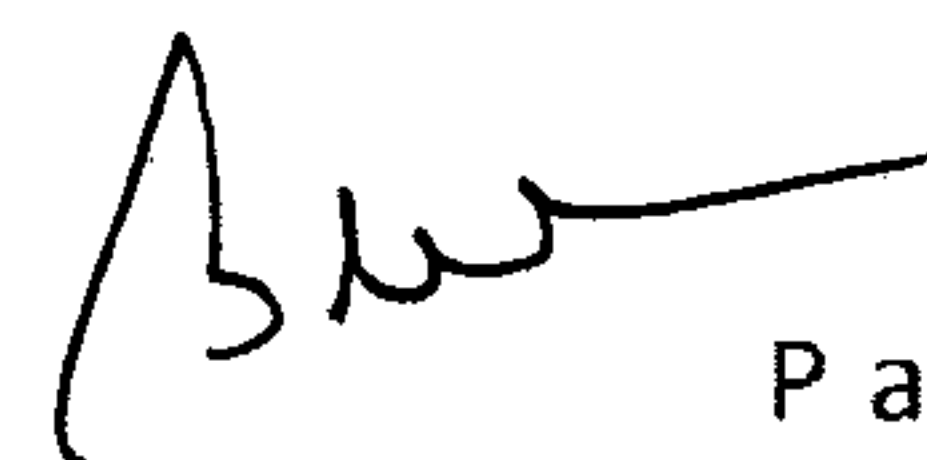
8. The Applicant proposed the name of Insolvency Resolution Professional. Applicant filed all the relevant documents as required by Form-1 of the Adjudication Rules.
9. Applicant stated that it had sent the Insolvency Application along with Annexures to the Corporate Debtor on 28.6.2017 and it was delivered to the Corporate Debtor on 30.6.2017. Applicant also filed Postal Department Tracking Report along with a Memo. Applicant also filed the Written Communication given by the proposed Interim Resolution Professional. Applicant also filed the copy of Original Application No. 575 of 2016 filed before the Debt Recovery Tribunal. Applicant filed the Revival Letter executed on 25.8.2016 apart from other Loan Agreements. Applicant also filed Statement of Accounts in respect of the Standby Line of Credit and Cash Credit facility. Applicant also filed Statement of Unapplied Interest on Cash Credit and Standby Line of Credit. Applicant also filed Certificate under Banker's Book Evidence Act, in respect of SLC Account and Cash Credit Account.
10. The Respondent appeared through learned Counsel and filed objections. The first objection raised by the Corporate Debtor is that the copy of Application served on them is not in accordance with the requirement of Rule 4(3) and it is only a draft Application that was served to them with blanks at several material places.



10.1. The second objection raised by the Corporate Debtor is that the person who signed the Application is not authorised by the Applicant Bank. The third objection is that the date of default has not been set out in the Application and the working computation of the amount and dates of default not attached in tabulation form. The fourth objection is whether default has occurred or not on the part of the Corporate Debtor is an issue which is subjudice before the DRT. It is stated by the Respondent that this Application is nothing but an arm-twisting mechanism on the part of the Applicant to somehow recover the amount.

11. Rule 4(3) of the Adjudication Rules says, the Applicant shall despatch valid copy of the Application filed with the Adjudicating Authority by Registered Post or Speed Post to the Registered Office of the Corporate Debtor. In the case on hand, Applicant filed Memorandum along with Speed Post Track Report issued by the Postal Department stating that it has despatched the copy of the Application. It is not even the case of the Corporate Debtor that it has not received the copy of the Application. It is the case of the Corporate Debtor that the copy of the Application received by it is only a draft Application with several blanks. The statement was made by the Corporate Debtor in the Reply Affidavit but Corporate Debtor did not choose to file the copy of the Application received by him.

12. It is pertinent to mention that this matter has been listed for the first time before this Authority on 13.7.2017. On that date, learned Advocate, Mr. Arjun Sheth filed Vakalatnama for the Respondent. On that date, it was not stated by the learned Advocate that the copy of the Application received by the Corporate Debtor is with blanks and it is only a draft. For the first time, in the Objections filed on 20<sup>th</sup> July, 2017 the said issue was raised. In view of the above said facts, it cannot be



said that there is non-compliance of sub-rule (3) of Rule 4 of the Adjudication Rules.

13. Learned Counsel appearing for the Corporate Debtor relied upon a decision of the Hon'ble National Company Law Tribunal, Principal Bench, New Delhi in the case of ***Indian Bank Vs. Athena Demwe Power Limited, in Company Petition No.55 of 2017***. In that case, the Application has not been served on the Corporate Debtor, as required by Rule 4(2) of the Rules. In that case, the Application was sent to some other address but not to the Registered Office address of the Corporate Debtor. In the case on hand, the Application was sent to the Registered Office of the Corporate Debtor and in fact it was received by the Corporate Debtor. It is not even the case of the Corporate Debtor that it has not received the copy of the Application but it is its case that only a draft of the Application is received. Therefore, the facts in this case are different from the facts in the case of *Indian Bank Vs. Athena Demwe Power Limited*.

- 13.1. Another decision relied upon by the learned Advocate for the Corporate Debtor is in case of ***Era Infra Engineering Ltd. Vs. Prideco Commercial Projects Pvt. Ltd., in Company Appeals (AT) No. 31 of 2017*** rendered by Hon'ble National Company Law Appellate Tribunal, New Delhi. In that case, admittedly no notice was issued by the Operational Creditor under Section 8 of the Code. Demand notice by Operational Creditor stipulated under Rule 5 in Form No.3 had not been served. But in the case on hand, it is filed by the Corporate Debtor. No Demand Notice is contemplated under the Rules. There is substantial compliance of Rule 4(3) of the Adjudication Rules by serving the copy of the Application on the Corporate Debtor. Therefore, the aforesaid decision is not applicable.

14. The Form 1 is signed by Mr. Yogesh M. Avasia, Assistant General Manager and Relationship Manager of SBI.

15. The Applicant filed Certificate issued by the Deputy General Manager of the Bank. In support of the authority of the Officer of the Bank for signing the Application, Applicant also filed extracts of relevant pages of State Bank of India General Regulations regarding signing of the Application. A perusal of Regulations 76 and 77 of the SBI General Regulations clearly goes to show that all the officers of the Bank above Grade-4 are authorised to sign the complaints, affidavits etc., and therefore it cannot be said that the person who signed on the Application is not competent to file the Application for and on behalf of the SBI.
16. The third objection raised is that the date of default is not mentioned and working computation of amount not enclosed. In fact, during the course of arguments, it is noticed that Application, Form No.1 is incomplete in respect of Part IV columns No. 1 and 2. Therefore, this Adjudicating Authority asked the Applicant to rectify the defects in Part IV of Columns 1 and 2 by 31.7.2017 and accordingly, Registry was directed to issue a notice under Section 7(5) of the Code to rectify the defect. The Registry of this Tribunal accordingly issued a notice to the Applicant. Applicant filed rectified papers of Form No.1 of Part IV and working computation of defaults. Therefore, the defect found in Form No.1 has been rectified by the Applicant within the stipulated time.
17. The last objection raised by the learned Advocate for the Corporate Debtor is that in view of the pendency of debt recovery proceedings it cannot be said that a default has been committed by the Corporate Debtor in payment of amount to the Financial Creditor.
18. The debt recovery proceedings are initiated by the Financial Creditor to recover the amount. Simply because the

Financial Creditor initiated proceedings before the Debt Recovery Tribunal, it does not lie in the mouth of the Financial Creditor 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 either before this Authority or before the Debt Recovery Tribunal.

18.1. The Financial Creditor in order to establish the defaults, filed copies of accounts certified under the Banker's Book of Evidence Act and also the loan account copies and Revival Letters executed by the Corporate Debtor. 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 to the Applicant.

19. 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.

20. In the case on hand, from the material placed on record by the Applicant, this Authority satisfied that the Corporate Debtor committed default in paying the financial debt to the Applicant. The Application, after rectification, is complete. As can be seen from the Written Communication of the proposed Insolvency

Resolution Process, no disciplinary proceedings are pending against him. In view of the above said findings, this Application is required to be admitted and accordingly it is admitted.

21. This Adjudicating Authority hereby appoint Shri Ramachandra D. Choudhary, R. Choudhary & Associates, CA, residing at 9-B, Vardan Tower, Near Vimal House, Lakhudi Circle, Navrangpura, Ahmedabad-380014, having Registration No. IBBI/IPA-001/IP-00455/2016-17/2007 to act as "Interim Insolvency Resolution Professional" under Section 13(1)(b) of the Code.
22. The Applicant is also directed to make public announcement about initiation of Corporation Insolvency Resolution Process as required by Section 13(1)(b) of the Code and call for submission of claims under Section 15 of the Code.
- 23.(i) This Authority hereby order Moratorium under Section 13(1) for the following purposes referred to in Section 14 of the Code;
  - (a) 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;
  - (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) However, the supply of goods and essential services to the Corporate Debtor shall not be terminated or suspended or interrupted during the moratorium period.

(iii) The order of moratorium is not applicable to the transactions that may be notified by the Central Government in consultation with any financial sector regulator.

(iv) The order of moratorium comes into force from the date of the order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.

24. This Application is disposed of accordingly. No order as to costs.

25. Communicate a copy of this order to the Applicant Financial Creditor, and to the Interim Insolvency Resolution Professional, and to the Respondent Corporate Debtor.

Signature:

  
**Sri Bikki Raveendra Babu, Member (J).**  
**Adjudicating Authority.**