

55
**BEFORE THE AJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B) No. 78/7/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 28.08.2017**

Name of the Company: Kalol Nagrik Sahakari Bank Ltd.
V/s.
Shakti Nutraceuticals 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 present for Financial Creditor/ Applicant. None present for Respondent.

Order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 28th day of August, 2017.

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

C.P. No.(IB) 78/7/NCLT/AHM/2017

In the matter of:

The Kalol Nagrik Sahakari Bank Limited,
Registered Office at
Nagrik Bank Char-Rasta
College Road
Kalol-382721
Gujarat

: Applicant.
[Financial Creditor]

Versus

M/s. Shakti Nutraceuticals Pvt.Ltd.,
Registered Office at
Plot No. 1464 Paiki 2,
Post Mouje, Moti Bhoyan,
Taluka-Kalol
Gandhinagar-3800308

: Respondent.
[Corporate Debtor]

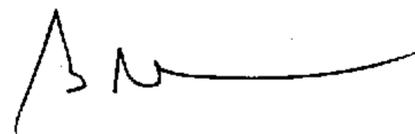
Order delivered on 28th August, 2017.

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

Appearance:

Shri Rasesh Parikh, learned Advocate for Applicant/Financial
Creditor.

None present for Respondent.



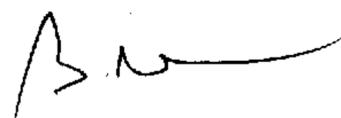
ORDER

1. This Application is filed by The Kalol Nagrik Sahakari Bank Limited, styling itself as 'Financial Creditor', seeking Corporate Insolvency Resolution Process against M/s.Shakti Nutraceuticals Pvt.Ltd., under Section 7 of the Insolvency and Bankruptcy Code, 2016 ["IB Code" for short] read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ["Adjudication Rules" for short] .

2. The facts, that are germane for disposal of this Application, are as follows;

2.1. The Kalol Nagrik Sahakari Bank Limited, [hereinafter referred to as "the Bank"] gave loan of Rs. 1,05,00,000 to M/s. Shakti Nutraceuticals Pvt.Ltd.,[hereinafter referred to as "the Respondent Company"] on 18.3.2015. In evidence of the said borrowing, the Company and its two Directors executed a Demand Promissory Note dated 18.3.2015. The two Directors of the Respondent Company, i.e., Dhiren Kaniyalal Thakkar and Vinodchandra K. Pandya stood as Guarantors. Gunvant Kantibhai Patel and Gitaben Gunvantbhai Patel also stood as 'Guarantors' for the above said loan amount and also mortgaged their immovable property detailed in Part-V Column 1 of Form 1. The Company and its two Directors agreed to pay interest at the rate of 13% per month. They also agreed to pay interest as determined by the Bank from time to time. They also agreed to pay monthly interest for 120 months at the rate of Rs. 87,500/- commencing the first instalment from 18.4.2015. It has also been agreed upon that in case of non-payment of any instalment or non-payment of interest the borrower shall be liable to pay penal interest at 3% and liable to pay entire ^{amount} ~~month~~ in one go.

2.2. The Applicant issued Demand Notices dated 2.7.2016 23.5.2017 and 20-6-2017. In spite of the Demand Notices and

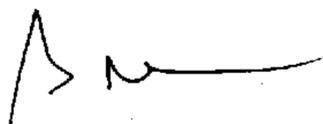


repeated demands, the Company, its Directors and Guarantors did not choose to repay the loan amount.

3. Applicant filed copy of Demand Promissory Note dated 18.3.2015, Undertaking dated 18.3.2015 to repay the loan amount, Affidavits of the Respondent Company and its Directors dated 12.5.2015, Deed of Guarantee dated 18.3.2015, Memorandum of Deposit of Title Deeds dated 13.3.2015 relating to mortgage of residential Plot No. 96, Vraj Vihar Co-op. Housing Society, Mouje-Bopal, Taluka Dascroi, District Ahmedabad. The Applicant also filed Statements of Accounts of the Respondent Company maintained with the Bank. The Applicant stated that the amount in default is Rs. 1,10,09,041/-. The Applicant named the Insolvency Resolution Professional of Mr. Pinakin Shah and filed his Written Communication in Form No.2. The Applicant filed proof of despatch of service of Application on the Respondent Company.

4. This Application was listed before this Adjudicating Authority on 11.8.2017. The Applicant was directed to comply with the requirements in Columns 2, 7 and 8 of Part-V of Form No.1. and directed to file proper authorisation letter to file this Application. Applicant has accordingly given Notice as per Proviso to Section 7(5) of the Code. This Adjudicating Authority also directed the Applicant to service notice of date of hearing and file proof of service. The Applicant also filed proof of despatch informing the date of hearing on Respondent. Applicant also filed proof of service of date of hearing. Applicant also served notice of date of hearing by E-Mail to the Respondent Company. In spite of service of notice, Respondent Company did not choose to appear before this Adjudicating Authority. Heard the arguments of learned counsel for the Applicant.

5. The Applicant rectified the defects in the Application and as such there are no defects in the Application filed by the Applicant. The documents filed by the Applicant along with the Application as evidenced by Promissory Note etc., clearly establish that an amount



of Rs. 1,05,00,000 was given as loan to M/s. Shakti Nutraceuticals Pvt.Ltd. The loan was also guaranteed by the Guarantors by executing the Guarantee Agreement and by deposit of Title Deeds. The borrower agreed to pay interest on the loan amount and agreed to repay the loan amount in instalments and in case of failure to pay the instalments, Borrower is liable to pay the entire amount at once. The Applicant issued Notices dated 2.7.2016, 23.5.2017 and 20.6.2017 to the Principal Borrower and Guarantors. But the Respondent Company and its Directors and Guarantors did not choose to repay the loan amount.

6. In view of the above stated facts, the amount due to the Applicant Bank from the Respondent Company is a 'financial debt' within the meaning of clause (a) of sub-section (8) of Section 5 of the IB Code. Therefore, the Applicant Bank is a Financial Creditor and Respondent Company is a Corporate Debtor. In view of the above said documents, it is clear that Respondent Company committed default in repayment of the loan amount.

7. In an application under Section 7 of the Code, this Adjudicating Authority is required to ascertain existence of default from the records of information utility or on the basis of other evidence furnished by the Financial Creditor, as laid down in the decision of the Hon'ble National Company Law Appellate Tribunal, on 17th January, 2017, in **Company Appeal (AT) (Insolvency) No. 1 & 2 of 2017** in the matter of **M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr**, in the following paragraphs;

"82. As discussed in the previous paragraphs, for initiation of corporate resolution process by financial creditor under sub-section (4) of Section 7 of the Code, 2016, the 'adjudicating authority' on receipt of application under sub-section (2) is required to ascertain existence of default from the records of Information Utility or on the basis of other evidence furnished by



the financial creditor under sub-section (3). Under Section 5 of Section 7, the 'adjudicating authority' is required to satisfy –

- (a) Whether a default has occurred;*
- (b) Whether an application is complete; and*
- (c) Whether any disciplinary proceeding is against the proposed Insolvency Resolution Professional.*

83. Once it is satisfied it is required to admit the case but in case the application is incomplete application, the financial creditor is to be granted seven days' time to complete the application. However, in a case where there is no default or defects cannot be rectified, or the record enclosed is misleading, the application has to be rejected."

8. Further, the Applicant proposed the name of "Insolvency Resolution Professional and also filed his Written Communication in Form-2. This Adjudicating Authority hereby appoint Mr. Pinakin Shah, CS, having address at M/s. Pinakin Shah & Company, A-201, Siddhi Vinayak Towers, Next to Kataria House, Makarba, Ahmedabad-380051 with Registration No. IBBI/IPA-002/IP-00106/2017-2018/10248, as 'Interim Insolvency Resolution Professional'. In view of the above discussions, the Application deserves to be admitted and it is accordingly admitted under Section 7(5) of the IB Code.

9. This Adjudicating Authority also directs that the Interim Resolution Professional shall make public announcement about initiation of 'Corporate Insolvency Resolution Process', as required by Section 13(1)(b) of the Code and call for submission of claims under Section 15 of the IB Code.

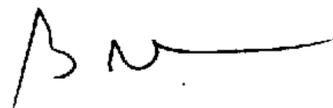
10. This Adjudicating Authority hereby declares moratorium under Section 13(1)(a) of the Code prohibiting the following as laid down in Section 14 of the Code;

- (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.

11. However, the supply of goods and essential services to the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period.

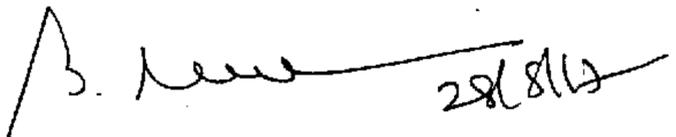
12. The provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

13. 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.



14. The Application is disposed of accordingly. No order as to costs.

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

Signature:  28/8/17

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