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

C.P. (LB) No. 89/7/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 12.09.2017

Name of the Company: Punjab National Bank.
V/s.
Siddhi Vinayak Logistics Ltd.

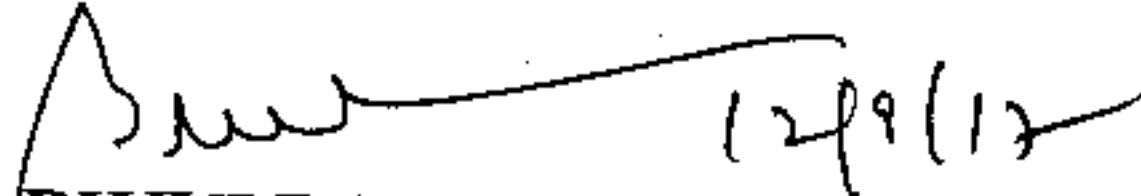
Section of the Companies Act: Section 7 of the Insolvency and Bankruptcy
Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	ANIP A. GANDHI	ADVOCATE	<u>APPLICANT</u> PNB	A. Gandhi
2.	DIGANT KAKKAD For, YUG LAW CHAMBERS	ADVOCATE	DEFENDANTS	D. Kakkad

ORDER

Learned Advocate Mr. Anip Gandhi present for Financial Creditor/ Applicant.
Learned Advocate Mr. Digant Kakkad i/b Yug Law Chambers present for
Respondent.

Order pronounced in open Court. Vide separate Sheet.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 12th day of September, 2017.

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

C.P. No.(IB) 89/7/NCLT/AHM/2017

In the matter of:

Punjab National Bank
Registered Office at
7, Bhikhaji Cama Place
Africa Avenue
New Delhi-110607
Inter alia Branch at
12/14, Brady House,
V.N. Road, Fort,
Mumbai-400 023

: Applicant.
[Financial Creditor]

Versus

Siddhi Vinayak Logistics Limited
Plot No. 14/15, Bhatpore, GIDC,
Opposite-ONGC Gate No.2,
Hazira,
Surat

: Respondent.
[Corporate Debtor]

Order delivered on 12th September, 2017.

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

Appearance:

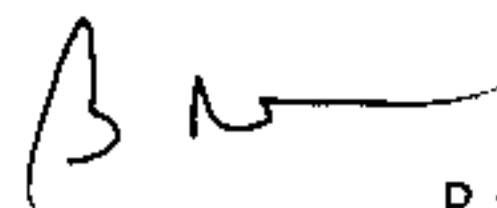
Mr. Anip Gandhi, learned Advocate for the Applicant.

Mr. Rashesh Sanjanwala, learned Senior Advocate with Mr. Dignat Kakkad, on behalf of Yug Law Chambers, learned Advocate for the Respondent.



ORDER

1. Punjab National Bank, styling itself as 'Financial Creditor, filed this Application 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, ("IB Rules" for short) with a request to initiate Corporate Insolvency Resolution Process against Siddhi Vinayak Logistics Ltd., treating it as 'Corporate Debtor'.
2. Applicant is a Bank constituted under the provisions of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having its Registered Office in New Delhi. The Respondent is a Company incorporated under the Companies Act, 1956 having its Registered Office in Surat, Gujarat State. The Authorised Share Capital of the Respondent Company is Rs. 25,00,00,000. The Paid-up Share Capital of the Company is Rs. 23,56,93,718.
3. The Applicant Bank, vide its Sanction Letter dated 13th June, 2013 sanctioned Term Loan Facility of Rs. 100.00 Crores to the Respondent. Respondent Company in its Board Meeting dated 24th June, 2013 accepted the terms and conditions mentioned in the Sanction Letter. Respondent executed various documents for the facilities availed by it. Respondent also hypothecated 335 commercial vehicles valuing 125.37 Crores to the Applicant Bank. Respondent also pledged Fixed Deposits of Rs. 10 Crores with the Applicant Bank. Respondent hypothecated second-hand vehicles having resale value of Rs. 10 Crores with the Applicant Bank. As per the terms of the Sanction Letter a joint Deed of Guarantee was executed by the Respondent Company. Respondent Company also gave an undertaking to the Applicant Bank on 25th June, 2013. The Charge created by the Respondent Company in favour of the Applicant Bank was duly registered with the Registrar of Companies, Gujarat on 29.6.2013.



4. On the request of the Respondent, Applicant Bank held a meeting of Joint Lenders on 9.12.2014 and restructured the financial facilities. After the restructure of the financial facilities Respondent executed necessary loan and security documents, Deed of guarantee on 26.3.2015 in favour of the Applicant Bank. Pursuant to the fresh Sanction Letter dated 9.3.2015 the account of the Respondent Company became irregular since July 2015. Applicant classified the Respondent Company as 'Non Performing Asset' on 23.7.2015. Applicant issued notice under Section 13(2) of the SARFAESI Act against the Respondent Company, its Directors and Guarantors to pay outstanding amount of Rs. 98,48,76,598/- as on 23.7.2015 with further interest thereon.

5. Applicant proposed the name of Shri Dushyant C. Dave as 'Interim Resolution Professional' and filed his Written Communication.

6. Applicant filed all the documents executed by the Respondent Company pursuant to both the Sanction Letters. Applicant also filed Certificate of Charge and CIBIL Report. Applicant stated that Bank filed Original Application No. 108 of 2017 before Debt Recovery Tribunal under Section 19 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993, praying for order against the Respondent, its Directors and Guarantors for an amount of Rs. 1,06,86,68,106/- and for taking possession of the hypothecated vehicles etc., and the said proceedings are pending. Applicant also filed the documents giving details of security documents. Applicant also filed copy of Statement of Accounts and Interest Calculation Sheet calculating the interest as 'Annexure D' and the Ledger Copies.

7. This Application was listed before this Adjudicating Authority on 21st August, 2017. Applicant despatched copy of the Application to the Respondent and filed its proof. On directions by this Adjudicating Authority, the Applicant served the notice of date

of hearing on the Respondent and filed proof thereof. Respondent appeared through Advocate and filed its objections on 31st August, 2017. Applicant also filed Certificates issued by the Bankers under the Bankers' Books Evidence Act.

8. The objections filed by the Respondent contain the following;

8.1. Deponent, to the Applicant, Shri B. Tiwari is not holding valid Power of Attorney and the Power of Attorney is not sufficiently stamped.

8.2. The Application is signed by one Shri B. Tiwari, Chief Manager of the Punjab National Bank. Along with the Application Applicant filed copy of the Power of Attorney dated 28.7.1990 and Authority Letter dated 29.7.2017. A perusal of the Power of Attorney and the Authority Letter clearly goes to show that Shri B. Tiwari is properly authorised to file this Application. Therefore, this objection is not tenable.

8.3. Respondent denied the existence of default. But the documents filed by the Applicant clinchingly establish that Respondent has committed default in payment of the amount. Applicant also filed Original Application No. 108 of 2017 before the Debt Recovery Tribunal, Ahmedabad under Section 19 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993. The Ledger Account of the Statement of Account also show that financial debt is due from the Respondent/Corporate Debtor to the Applicant/Financial Creditor. Moreover, at the request of the Respondent Company the loans were restructured. No doubt, there was a moratorium for payment of principal amount for 18 months and interest for 12 months.

8.4. It is contended by the learned Counsel for the Respondent that Applicant Bank treated the Respondent Company as 'NPA' on

23rd July, 2015 inspite of the moratorium granted in the Restructuring Agreement.

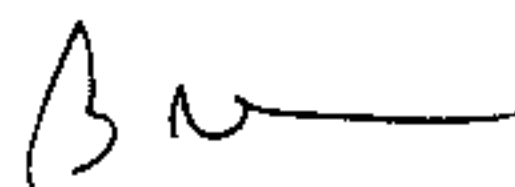
8.4(a) The moratorium was only in respect of the principal amount for 18 months and the interest for 12 months. But the Respondent committed default in payment of amount of interest and as well as principal amount and therefore the Applicant rightly classified the Respondent Company as 'NPA'. The contention, that classification of the account of the Respondent as 'NPA' on 23rd July, 2015 is a breach of the terms of Sanction dated 10th March, 2015 and is in violation of RBI Guidelines, does not merit acceptance, for the simple reason that no Reply was given to the notice issued by the Applicant under the provisions of the SARFAESI Act. More over, any breach committed in repayment of the loan amount enables the Bankers to treat the amount as 'NPA'. No material is placed on record by the Respondent to show that treating the Respondent as 'NPA' is against the terms of the Sanction. The objection, that the Statements of Account are not duly certified under the Bankers' Books Evidence Act, has been cleared by the Applicant by filing the Certificate under the Bankers' Books Evidence Act.

8.5. Respondent's learned Counsel stated that all the books of the Respondent Company were taken over by the Enforcement Directorate under the provisions of Prevention of Money Laundering Act, 2002 and therefore Respondent is handicapped in making defence in this case. It is also stated in the Objections that CBI investigation is going on against the Company on a complaint filed by Bank of Maharashtra.

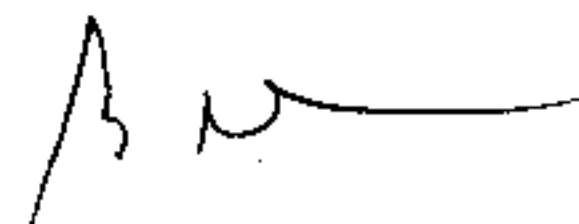
8.5(a) This aspect would go to show that all is not well with the Respondent Company. The material on record clearly go to show that Respondent Company committed default in making payment of financial debt.



9. 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**, has held that the Adjudicating Authority has to satisfy only about the existence of the default and whether the Application is complete in all respects or not. In the case on hand, the Application is complete in all respects. As can be seen from the Written Communication, no disciplinary proceedings are pending against the Interim Resolution Professional proposed by the Applicant. Respondent Company committed default in repayment of the loan amount-Financial Debt.
10. In view of the above discussion, this Application deserves to be admitted and it is accordingly admitted under Section 7(5) of the Code.
11. This Adjudicating Authority hereby appoint Shri Dushyant C. Dave, having address at 1101, Dalamal Tower, B Wing, Free Press Journal Marg, Nariman Point, Mumbai, and having Registration No. IBBI/IPA-003/IP-N00061/2017-18/10502 under Section 13 (1) (c) of the Code.
12. The Interim Insolvency Resolution Professional is hereby directed to cause public announcement of the initiation of 'Corporate Insolvency Resolution Process' and call for submission of claims under Section 13(1)(b) read with Section 15 of the Code and Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
13. This Adjudicating Authority hereby order moratorium under Section 13(1)(a) of the IB Code prohibiting the following as referred to in Section 14 of the Code;

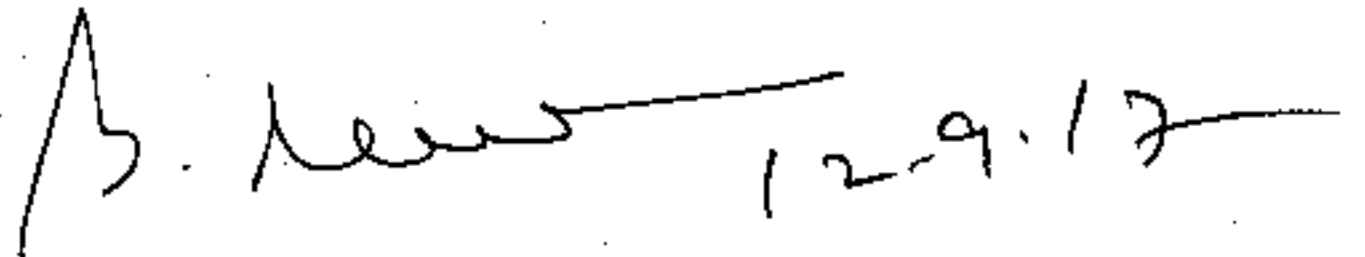


- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the corporate 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.
- (i) However, the order of moratorium shall not apply in respect of supply of essential goods or services to Corporate Debtor.
- (ii) 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.
- (iii) 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.



14. The moratorium declared by this Adjudicating Authority is not applicable to the criminal proceedings, if any, initiated under the provisions of Prevention of Money Laundering Act, 2002 by the Enforcement Directorate and to the criminal case, if any, initiated by the Central Bureau of Investigation against the Respondent Company.
15. This Application stands disposed of accordingly. No order as to costs.
16. Communicate a copy of this order to the Applicant Financial Creditor, and to the Respondent Corporate Debtor and to the Interim Insolvency Resolution Professional.

Signature:



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