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

C.P. (I.B) No. 116/7/NCLT/AHM/2017


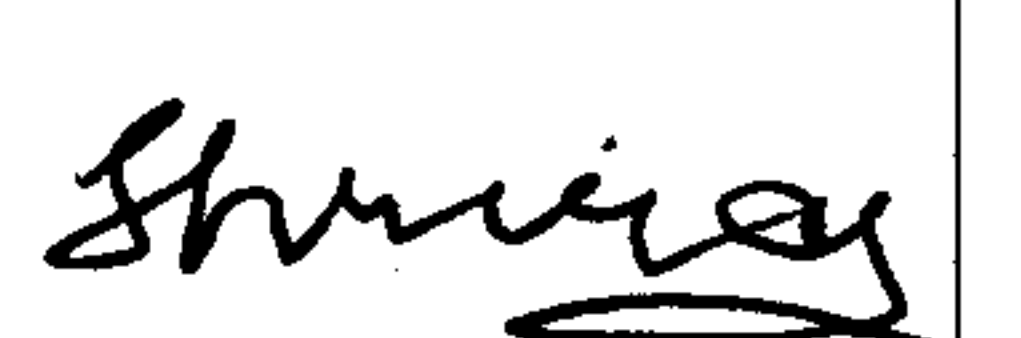
Coram:

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 30.11.2017

Name of the Company: Allahabad Bank
V/s.
Gujarat Foils 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.	PRANAV DESAI	ADVOCATE	Petitioner	
2.	SHRIRAJ KHAMBETE	ADV	Resp	

ORDER

Learned Advocate Mr. Pranav Desai present for Financial Creditor/Petitioner.
Learned Advocate Mr. Shriraj Khambete i/b Nanavati Associates present for
Respondent.

Order pronounced in open Court. Vide separate sheets.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 30th day of November, 2017.

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

C.P. No.(IB) 116/7/NCLT/AHM/2017

In the matter of:

Allahabad Bank
Having Head Office and
Registered Office at
2, Netaji Subhash Road
Kolkata-700001
Branch Office at
Industrial Finance Branch
37, Mumbai Samachar Marg,
Fort,
Mumbai-400023

: Petitioner.
[Financial Creditor]

Versus

Gujarat Foils Ltd.,
3436-3449 Chhatral GIDC,
Phase IV, Taluka Kalol
Dist. Gandhinagar-308001

: Respondent.
[Corporate Debtor].

Order delivered on 30th November, 2017.

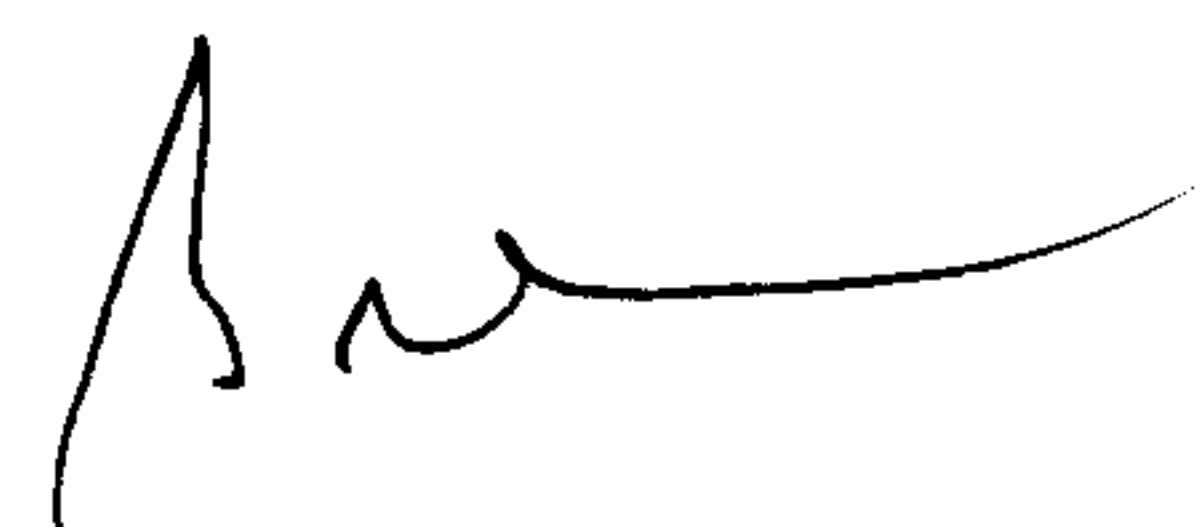
Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J).

Appearance:

Mr. Saurabh Soparkar, learned Senior Advocate with Mr. Pranav Desai, and Mr. Mohan Solanki, learned Advocates for Financial Creditor.

Mr. Raheel Patel with Mr. Shriraj Khambete on behalf of Nanavati Associates, learned Advocates for the Respondent.

ORDER



1. Allahabad Bank, through its Authorised Signatory 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) against M/s. Gujarat Foils Limited, with a request to initiate Corporate Insolvency Resolution Process treating it as 'Corporate Debtor'.

2. It is the case of the Financial Creditor that Gujarat Foils Limited ["the Corporate Debtor"] was sanctioned loan of amount of Rs. 55,00,00,000. Financial Creditor has furnished dates of disbursement of various amounts in Column 2 of Form-1. In proof of the debt, Financial Creditor filed the following documents;

- (a) Sanction letter dated 26.5.2011;
- (b) Modification of sanction letter dated 30th July 2017;
- (c) Sanction letters dated 28.9.2012; 6.11.2012; 16.4.2014; and 19.5.2015;
- (d) Registered extension of mortgage dated 8.7.2013 for credit facilities of Rs. 175 crores;
- (e) Registered extension of mortgage dated 18.5.2012 for credit facilities of Rs. 135 crores;
- (f) Demand Promissory Note of Rs. 12 crores dated 9.10.2012;
- (g) Letter of continuing security dated 9.12.2012;
- (h) Letter of hypothecation dated 9.10.2012;
- (i) Demand Promissory Note for Rs. 14 Crores dated 11.12.2012;
- (j) Letter of continuing security dated 11.12.2012;
- (k) Undertaking dated 11.12.2012;
- (l) Letter of hypothecation dated 11.12.2012 for Rs.14 crores;
- (m) Demand Promissory Note for Rs. 175 crores dated 25.3.2013;

- (n) 2nd Supplemental Hypothecation Agreement dated 25.3.2013;
- (o) 2nd Supplemental Deed of Hypothecation dated 25.3.2013;
- (p) Letter of hypothecation dated 4.6.2014;
- (q) Demand Promissory Note for Rs. 5 Crores dated 4.6.2014;
- (r) Letter of continuing security dated 4.6.2014;
- (s) 3rd Supplemental Working Capital Consortium Agreement dated 2.3.2015;
- (t) 3rd Supplemental Interse Agreement dated 2.3.2015;
- (u) Revival Letter dated 2.3.2015;
- (v) Board Resolutions of the Company dated 4.2.2015; 14.8.2012; 12.2.2014; and 28.3.2014;
- (w) Letters of Guarantee executed by Mr. Abhay N. Lodha dated 21.3.2013; 2.4.2013; and 2.3.2015;
- (x) Certified account statement of the company;
- (y) Certificate under Section 2-a of the Banker's Book Evidence Act, 1891;
- (z) Notice under Section 13(2) of the SARFAESI Act;
- (aa) Demand Notice dated 24.7.2017 demanding outstanding dues as on 24.7.2017 of Rs. 61,67,37,712/- inclusive of interest.

3. It is the case of the Financial Creditor that Corporate Debtor has committed default in payment of the debt. Financial Creditor proposed the name of Interim Resolution Professional and filed his Written Communication. Financial Creditor served a copy of the Application on the Corporate Debtor. The Corporate Debtor filed its objections.

4. The following are the objections raised by the Corporate Debtor;


- (a) Lack of authority to file the petition;

- (b) Non-filing of Working Computation separately and showing date of default as 30th September, 2016, charging penal interest. Unilateral transfer of the LC Limit to CC Limit;
- (c) Not adjusting the Fixed Deposit of the Corporate Debtor lying with Financial Creditor till January, 2017 instead of 28th February, 2016;
- (d) Loan documents are hit by Gujarat Stamp Act;
- (e) Financial Creditor alone filed this petition ignoring the understanding reached in the JLF meeting of all creditors.

5. Petitioner filed Additional Affidavit stating that General Power of Attorney is given to the Authorised Person by the Financial Creditor and further produced authority letter issued by the Assistant General Manager, Shri S.K. Panigrahi, dated 30th August, 2017 authorising Mr. Kalu Ram Meena, Chief Manager to file this petition. Along with the additional affidavit, petitioner also filed Working for Computation of the amount.

6. A perusal of the additional affidavit filed by Financial Creditor, Power of Attorney dated 8th October, 1996; Power of Attorney dated 31st January, 2014; and the Authority Letter dated 30th August, 2017 clearly indicate that Mr. Kalu Ram Meena is authorised to file this petition on behalf of Financial Creditor, Allahabad Bank.

7. The contention of the learned counsel appearing for the Respondent is that the General Power of Attorney holder cannot file this petition. In support of his contention, he relied upon the decision of the *Hon'ble National Company Law Appellate Tribunal in Company Appeal (AT) (Insol.) No. 30 of 2017* in the matter between ***Palogix Infrastructure Private Limited Vs. ICICI Bank Limited.***



The findings in Paras No. 33 and 36 are relevant for the purpose of taking a decision in this matter;

Para No. 33 reads as follows;

“33. Therefore, we hold that a ‘Power of Attorney Holder’ is not competent to file an application on behalf of a ‘Financial Creditor’ or ‘Operational Creditor’ or ‘Corporate Applicant’.

Para No. 36 reads as follows;

“36. In so far as, the present case is concerned, the ‘Financial Creditor’ Bank has pleaded that by Board’s Resolutions dated 30th May, 2002 and 30th October, 2009, the Bank authorised its officers to do needful in the legal proceedings by and against the Bank. If general authorisation is made by any ‘Financial Creditor’ or ‘Operational Creditor’ or ‘Corporate Applicant’ in favour of its officers to do needful in legal proceedings by and against the ‘Financial Creditor’/’Operational Creditor’/’Corporate Applicant’, mere use of word ‘Power of Attorney’ while delegating such power will not take away the authority of such officer and for all purposes it is to be treated as an ‘authorization’ by the ‘Financial Creditor’/’Operational Creditor’/’Corporate Applicant’ in favour of its officer, which can be delegated even by designation. In such case, officer delegated with power can claim to be the ‘Authorised Representative’ for the purpose of filing any application under section 7 or Section 9 or Section 10 of ‘I&B Code’.”

A reading of Para 36 goes to show that a general authorisation made by ‘Financial Creditor’ or ‘Operational Creditor’ or ‘Corporate Applicant’ in favour of its officers to do needful in legal proceedings by and against the ‘Financial Creditor’/’Operational Creditor’/’Corporate Applicant’, is sufficient. It is further stated in Para 36 that mere use of word ‘Power of Attorney’ by delegating such power will not take away the authority of such officer and for all purposes it is to be treated as an ‘authorization’ by the ‘Financial Creditor’/’Operational Creditor’/’Corporate Applicant’ in favour of its

officer, which can be delegated even by designation. It is further stated in Para 36 of the Judgment, in case such officer delegated with power can claim to be the 'Authorised Representative' for the purpose of filing any application under section 7 or Section 9 or Section 10 of 'I&B Code.

7.1. In that Judgment in Para No. 38, it is further held that if an officer of a Bank such as Senior Manager who has been authorised to grant loan, for recovery of loan can also initiate 'Corporate Insolvency Resolution Process'.

8. Financial Creditor also filed the detailed Working for Computation along with the Additional Affidavit. Therefore, the second objection raised by the Corporate Debtor is not tenable.

9. The delayed adjustment of F.D. amount of Corporate Debtor to the outstanding loan amount is not a valid defence available to Corporate Debtor.

10. The objection of the Corporate Debtor that the loan documents are not properly stamped is not an issue to be gone into in this petition at the admission stage. More over, what is pleaded is sanction letter is not stamped as per the provisions of the Gujarat Stamp Act. Respondent did not specify what Section of Gujarat Stamp Act, 1958 require payment of stamp duty on sanction letters.

10.1. Generally, Sanction Letters will not bear any stamp. It is only the Loan Agreements, Hypothecation Agreements and other loan documents will bear the stamp duty as required by the Stamp Act. Therefore, the objection raised by the Corporate Debtor is not tenable.

11. Coming to the fourth objection, the material on record show that the JLF decided to go for forensic audit and initiate proceedings under the SARFAESI Act individually by issuing notices

under Section 13(4) of the SARFAESI Act. Even if there is an understanding amongst the JLF that all lenders to initiate proceedings under the SARFAESI Act it will not bar any of the Financial Creditors who are part of JLF to initiate proceedings under Section 7 of the Insolvency Code for triggering Corporate Insolvency Resolution Process. On this aspect, there is a decision of the *Hon'ble National Company Law Appellate Tribunal, New Delhi*, reported in 2017 SCC OnLine NCLAT 225, in the matter **Asian Natural Resources (India) Limited Vs. IDBI Bank Limited**. In the said Judgment, it is clearly held by the Hon'ble Appellate Tribunal, "*Inter-se Agreement between different banks is not binding in nature, the 'Corporate Debtors' not being signatories cannot derive advantage of such Inter-se Agreement.*" It is further held in that Judgment, "*financial creditors*" are having right to file application under Section 7 of the I&B Code, individually or jointly on behalf of other 'financial creditors' as quoted below." It is also held that "*Inter-se Agreement between the 'financial creditors' cannot override the provisions of the IB Code nor can take away the right of the Financial Institution to file an application under Section 7 of the Code*". Therefore, the above objection is not tenable.

12. Learned counsel for the Respondent relied upon the decision reported in Indian Law Reports (1991) I Delhi, at Page 303, in the matter between **M/s. Nanak Builders and Investors Pvt. Ltd., Vs. Sh. Vinod Kumar Alag**. The said decision is not applicable to the facts on hand as the said decision deals with only the case relating to specific performance of the contract.

13. The Hon'ble Supreme Court, in the Judgment delivered in the matter between **M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr.**, in Civil Appeal Nos. 8337-8338 of 2017, in Para No. 30 has clearly held as follows;

"30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial

debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

In the case on hand, the documents produced by the Financial Creditor clearly establish the 'debt'. Section 13 (2) Notice issued by the Financial Creditor clearly indicates that entire debt was recalled. There is a default on the part of the Corporate Debtor in payment of the 'financial debt'.

14. A perusal of the Application goes to show that it is complete in all respects. The material on record clearly establish that the 'financial debt' is due from the Corporate Debtor to the Financial Creditor.

15. In view of the above said findings and discussion, this Petition deserves to be admitted and it is accordingly admitted under Section 7(5) of the Code.

16. This Adjudicating Authority hereby appoint Shri Alok Kailash Saksena, as 'Interim Resolution Professional" having address at C/o. Desai Saksena & Associates, Chartered Accountant, First Floor, Laxmi Building, SIR P.M. Road, Fort, Mumbai-400001, and having Registration No. IBBI/IPA-001/IP-P00056/2017-18/10134 under Section 13 (1) (c) of the Code.

17. 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.

18. 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;

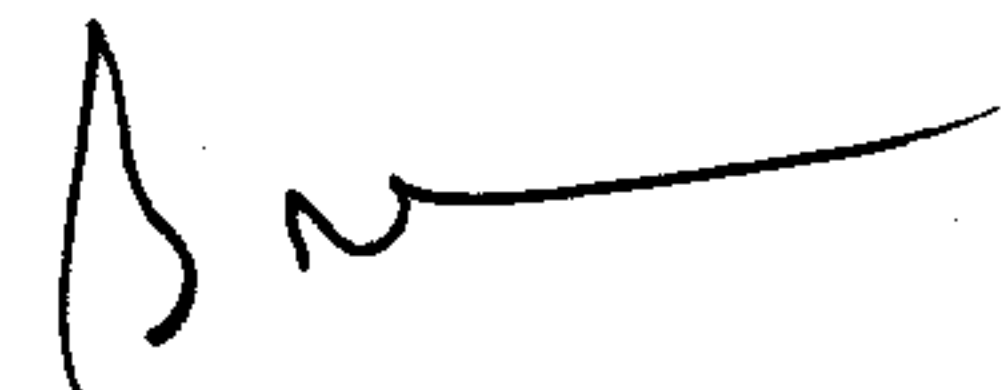
(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(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, there shall not be any termination, suspension or interruption in respect of supply of essential goods or services to Corporate Debtor.

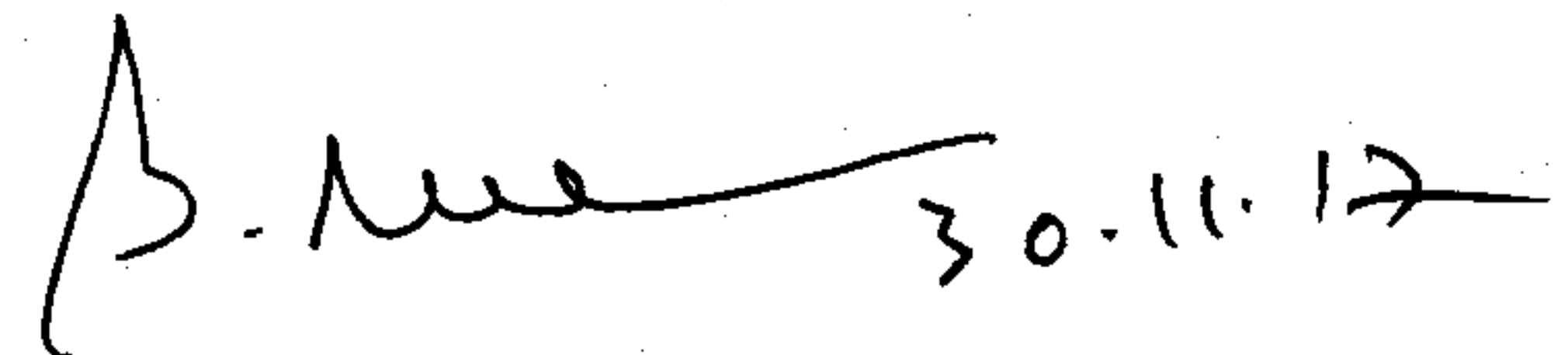


- (ii) The order of moratorium is not applicable to the transactions that may be notified by the Central Government in consultation with any financial sector regulator.
- (iii) The order of moratorium comes into force from the date of the order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.

19. This Application stands disposed of accordingly. No order as to costs.

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

Signature:

Handwritten signature of Sri Bikki Raveendra Babu, dated 30.11.17.

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