

राष्ट्रीय कम्पनी विधि न्यायाधिकरण,  
इलाहाबाद खण्डपीठ  
(National Company Law Tribunal)  
(Bench: Allahabad)

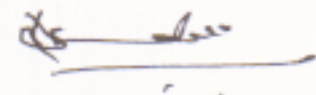

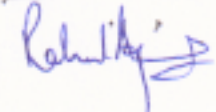
सी० पी० नं०/ C P No. 70/ALD/2017  
71/ALD/2017

राष्ट्रीय कम्पनी विधि न्यायाधिकरण, इलाहाबाद खण्डपीठ में दिनांक . २०.०९.२०१७ को सुनवाई  
का उपस्थिति-सह-आदेश पत्रक:

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 20.09.2017

कम्पनी का नाम :

NAME OF THE COMPANY: Bank of Baroda v/s Rotomac Global Pvt. Ltd.  
कम्पनी अधिनियम की धारा : Bank of Baroda v/s Rotomac Exports Pvt. Ltd.  
SECTION OF THE COMPANIES ACT: 7 of I & B Code, 2016.

क्रम संख्या Sr. No.	नाम Name	पदनाम Designation	प्रतिनिधित्व Representation	हस्ताक्षर Signature
1	Dr. Anurag Khanna	Adv.	resp.	
2	Naveen Saha	Sr. Adv.	resp.	
3	Rahul Agarwal	Adv.	Petitioner	

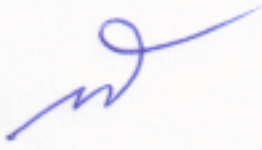
COMMON ORDER

CP (IB) No.70/ALD/2017: Rotomac Global Private Limited

CP (IB) No. 71/ALD/2017: Rotomac Exports Private Limited

The case is taken up today for pronouncement of order in respect of present Insolvency Applications i.e CP No.(IB)70/ALD/2017 and CP No.(IB)71/ALD/2017 filed by the (Bank of Baroda) as Financial Creditor against the Corporate Debtor Companies namely Rotomac Global Private Limited and Rotomac Exports Private Limited respectively.

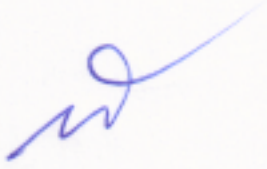
Having heard the submission of Ld. Sr. Advocate Shri Anurag Khanna assisted by Shri Rahul Agarwal, Advocate for Financial Creditor as well as



rival submission put forth by the Ld. Sr. Advocate Shri Navin Sinha alongwith Shri Dinesh Kakkar, Advocate for the Corporate Debtor Companies and by going through the factual and legal position of the present case in the light of Judicial precedents, we are of the view that the present application deserves for admission under the Insolvency & Bankruptcy Code. The reasoned order in detail is dictated separately. Our findings, conclusion may be summarized as under: -

The applicant Bank of Baroda (as a Financial Creditor) has filed the present petition U/s 7 of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process in respect of the respondent corporate debtor companies namely **Rotomac Global Private Limited and Rotomac Exports Private Limited** respectively in CP (IB) No.70& 71 /ALD/2017.

As, the total amount of default as committed by borrower company Rotomac Global Pvt. Ltd. comes to **Rs.553,78,21,954.66/-** (Rupees Five hundred and Fifty-Three Crores, Seventy-Eight Lakhs, Twenty-One Thousand, Nine Hundred and Fifty-Four and Sixty Six Paise Only) to which the corporate debtor (in CP No.71/2017) Rotomac Exports has stood as guarantor, despite this the admitted outstanding debts in respect of other secured creditors also comes around **Rs.4,420/- Crores ( Rupees Four Thousand Four Hundred Twenty Crores)** as per the company's own letter dated 14<sup>th</sup> March, 2016. As such amount of default is in excess of Rs.1,00,000/- (Rupees One Lakh only) against the loan facilities already availed by the Rotomac Global Pvt. Ltd. as being principle borrower company and further the Rotomac Export Pvt. Ltd. Company (herein the Corporate Debtor in CP No.71 of 2017) stood as corporate



guarantor. Hence, its liabilities are joint several and co-extensive with the liabilities of principal borrower. Therefore, both the applications were heard together and being disposed of by a common order in respect of both the Corporate Debtor Companies.

It is also a matter of record that the Corporate Debtor Company M/s Rotomac Global Pvt. Ltd. has further been classified and categorized as a *wilful defaulter* by the present Financial Creditor. Although such decision of the Financial Creditor (Bank of Baroda) is subject to challenge before Hon'ble Allahabad High Court, hence, such being the circumstances, the joint lender forum is not in a position to finalise a resolution plan, if any, for the Corporate Debtor Company, nor such is workable until & unless such disability is removed by a competent Court of Law. It is also evident that the JLF has not convened its meeting since long nor any resolution plan for the Corporate Debtor Company has so far been materialised.

From the perusal of document annexed with the present Insolvency & Bankruptcy Applications i.e. Statement of accounts for the Borrower, CIBIL Report, Report of the independent auditor pertaining to the Borrower, Order of the Debt Recovery Tribunal (Allahabad Bench) in OA 613 of 2006 it is evident the default in making repayment of debts due to the Banks has occurred, which meets the requirement of Section 3(11) of the I & B Code.

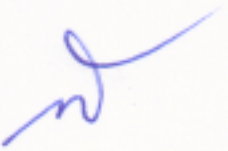
Further, the requirement of Section 3(12) also fulfilled, which is evident from reading of following documents:

- i. The letter from the Borrower to the financial Creditor dated March 14, 2016 acknowledging debt owed to it under the



Working Capital Consortium Agreement dated October 06, 2015.

- ii. The letter from the Borrower to the financial Creditor dated March 31, 2016 acknowledging debt to the tune of Rs.35 Crores.
- iii. A reply of the Borrower to notice issued by the financial creditor under Section 13(2) of the SARFAESI Act, dated November 28, 2016.
- iv. The demand Notice sent by the financial creditor to the Corporate Debtor company Rotomac Exports Pvt. Ltd. by invoking the corporate guarantee issued by it on February 03, 2014 and for demanding payment to the tune of **Rs.529,25,95,650.67/-** (as on November 21, 2016) in respect of loans availed by the Borrower.
- v. The recall Letter sent by financial Creditor to the Borrower dated May 11, 2016.
- vi. A demand Notice sent by the Financial Creditor to inter alia the Corporate Debtor Company and the Borrower dated October 04, 2016 for repayment of Rs.515,99,56,040.13/-.
- vii. The demand Notice sent by the financial Creditor to the Borrower under Section 13(2) of SARFAESI dated November 21, 2016 for repayment of Rs.529,25,95,650,67/-.



Financial Creditor has further filed the Written Communication given by the proposed Interim Resolution Professional in Form No.II and there is no disciplinary proceeding pending against the proposed IRP.

Thus, from perusal of the present applications of Financial creditor, it appears to have been filed in conformity with Section 7 of Code. Hence, the present applications/petitions are found complete to trigger the CIRP in respect of Corporate Debtor Companies in the light of legal position as recently settled by Hon'ble Apex Court in the matter of *M/s. Innoventive Industries Ltd versus ICICI Bank & Anr.*<sup>1</sup> wherein it is held that under the provision of Section 7, the moment the court is satisfied that a default has occurred, then the application of the financial creditor must be admitted (unless it is incomplete) the Hon'ble Supreme Court also observed "*that the non-obstante clause, in the widest terms possible, is contained in Section 238 of the Code, so that any right of the corporate debtor under any other law cannot come in the way of the Code*".

Further, the Hon'ble NCLAT, in the very same matter before, it has ruled that the 'Adjudicating Authority' on receipt of the application under Section 7 sub-section (2) is required to ascertain existence of default on the basis of evidence furnished by the Financial Creditor under sub-section (3). The 'adjudicating authority' is required to satisfy three things Occurrence of default; application is complete and no disciplinary proceedings is pending against the proposed Insolvency Resolution Professional. Beyond the aforesaid practice, the 'adjudicating authority' is not required to look into any other

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<sup>1</sup> Civil Appeal nos. 8337-8338 of 2017

factor; including the question whether permission or consent has been obtained from one or other authority, *including the JLF (Joint Lender's Forum).*”

It is also a matter of record that the corporate debtor M/s Rotomac Global Pvt. Ltd. vide its letter dated March 14<sup>th</sup>, 2016 No. RGPL/2015-16 addressed to AGM, Bank of India, Kanpur had proposed for reassessment of its non-fund based limits from Rs.2,250/- Crores to Rs.4,220/- Crores out of which a debt of Rs.3,100/- Crores as a non-fund based has been duly admitted. Since, such being position as the Corporate Debtor Company is not able to repay its debts then, its Board of Director cannot be expected to remain in and to keep continue with the management of the company. As per obiter dictum of Hon'ble Supreme Court in above stated matter of the Innoventive v/s ICICI Bank, the Hon'ble Supreme Court has referred to Bankruptcy Law Reforms Committee (BLRC) Report and pleased to observe in its relevant para as such:

16. At this stage, it is important to set out the important paragraphs contained in the report of the Bankruptcy Law Reforms Committee of November, 2015, as these excerpts give us a good insight into why the Code was enacted and the purpose for which it was enacted:

“The limited liability company is a contract between equity and debt. As long as debt obligations are met, equity owners have complete control, and creditors have no say in how the business is run. When default take place, control is supposed to transfer to the creditors; equity owners have no say.”

**“Speed is of essence**

Speed is of essence for the working of the bankruptcy code, for two reasons. First, while the ‘calm period’ can help keep an organisation afloat, without the full clarity of ownership and control, significant decisions cannot be made. Without effective leadership, the firm will tend to atrophy and fail. The longer the delay, the more likely it is that liquidation will be the only answer. Second, the liquidation value tends to go down with time as many assets suffer from a high economic rate of depreciation.

XXX XXX XXX XXX



Often, an enterprise may be a successful business model while still failing to repay its creditors. A sound bankruptcy process is one that helps creditors and debtors realise and agree on whether the entity is facing financial failure and business failure. This is important to allow both parties to realise the maximum value of the business in the insolvency.”

**xxx xxx xxx xxx**

“Control of a company is not divine right. When a firm default on its debt, control of the company should shift to the creditors. In the absence of swift and decisive mechanisms for achieving this, management teams and shareholders retain control after default. Bankruptcy law must address this.”

Therefore, considering the above stated facts & circumstances of the present applications and by following the Judicial Trends, as settled we find that the present applications deserve admission, hence, are admitted under Section 7 of I & B Code, 2016 with some consequential directions given as under: -

1. That this Bench hereby appoints **Mr. Anil Goel, Registration No: IBBI/IPA-001/IPP-00118/2017-2018/10253, Address : AAA, Insolvency Professionals LLP, E-10A, Kailash Colony, Greater Kailash-1, , New Delhi, National Capital Territory of Delhi 110048; Email.id anilgoel@aaainsolvency.com** as Interim Resolution Professional to carry the functions as mentioned under Insolvency and Bankruptcy Code, 2016 in respect of both the Corporate Debtor Companies.
2. That the order of moratorium u/s 14 shall have effect from **20<sup>th</sup> September, 2017** till the completion of corporate insolvency resolution process or until this Bench approves the resolution plan under subsection (1) of Section 31 or passes an order for

liquidation of corporate debtor under section 33 as the case may be.

3. That this Bench hereby prohibits the institution of suits or continuation of pending suit or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 SARFESI Act, 2002; the recovery of any property by an owner or less or where such property is occupied by or in the possession of the corporate debtor.
4. That the supply of essential goods or services to corporate debtor, continuing, shall not be terminated or suspended or interrupted during the Moratorium period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of the Corporate Debtor.
5. That the provisions of Section 14 sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
6. That the public announcement of Corporate Insolvency Resolution Process be made immediately as specified under



Section 13 of the code and calling for submissions of claim under Section 15 of the Code.

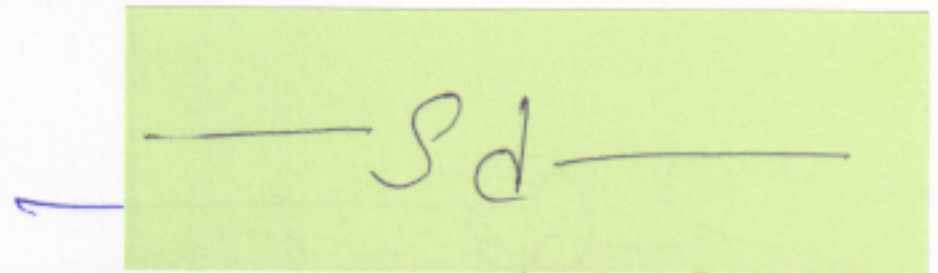
7. The Interim Resolution Professional shall perform all his functions strictly which are contemplated, *interalia*, by Sections 17, 18, 20, 21 of the Code. It is further made clear that all the personnel connected with Corporate Debtor, its promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and cooperation to the Interim Resolution Professional. Where any personnel of the corporate debtor, its promoter or any other person required to assist or co-operate with IRP, does not assist or co-operate, IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order.
8. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of its obligation imposed by Section 20 of the I & B Code, 2016.
9. Further in the light of Hon'ble Supreme Court<sup>2</sup> Judgement in the case of *Chitra Sharma & ors. Versus Union of India & ORS.*<sup>2</sup> read with decision of this bench in the matter of *Prabodh Kumar Gupta & others vs Jaypee Infratech Limited* and in the spirit of Preamble of present Insolvency and Bankruptcy Code and considering the guiding principles as described in

<sup>2</sup> Writ Petition(s)(Civil)No.744/2017

Bankruptcy Law Reform Committee Report, IRP is expected to take care of the interest of other Creditors and stakeholders, who are not necessarily coming under definition of “Financial Creditor” or “Operational Creditor” but whose needs may appear to be greater, than others.

10. The Registry is hereby directed to communicate this order to the Financial Creditor and the Corporate Debtor after the completion of necessary formalities.

11. A Copy of this order be communicated to the IRP as well as to Insolvency and Bankruptcy Board of India. No order as to cost.



**Dated: 20.09.2017**

**H.P. Chaturvedi, (Member Judicial)**

Typed by:  
(Aparna Trivedi)  
Law Research Associate