

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
"CHANDIGARH BENCH, CHANDIGARH"**

**CP (IB) NO. 67/Chd/Pb/2017**

**Under Section 7 of the Insolvency  
and Bankruptcy Code, 2016**

In the matter of:

Allahabad Bank having its head office at  
2, Netaji Subhash Road, Kolkata and having  
its branch at Industrial Finance Branch, 165,  
Industrial Area-A, Ludhiana-141001.

... Petitioner-Financial Creditor

Vs.

M/s. Supreme Tex Mart Limited (Earlier  
known as Supreme Woollen Mills Pvt. Ltd.)  
having its head office at B-72, Focal Point,  
Phase-VIII, Ludhiana (Punjab) (Erstwhile  
registered office at 424, Industrial Area-A,  
Ludhiana).

...Respondent-Corporate Debtor

**Judgement delivered on : 29.09.2017**

**Coram: Hon'ble Mr. Justice R.P. Nagrath, Member (Judicial).**

For the petitioner : Mr. Nakul Sharma, Advocate.

Proposed Interim Resolution Professional.  
: Mr. Bhupesh Gupta

For the respondent. : Mr.Gaurav Gupta, Company Secretary.

**JUDGEMENT (Oral)**

This petition is filed by Allahabad Bank having its registered office at 2, Netaji Subhash Road, Kolkata through its branch office at Ludhiana. The petition has been filed by the Bank through Mr. B.V.P. Raju, Assistant Manager of the Branch at Ludhiana in whose favour the bank has executed Power of Attorney dated 31.01.2014 (Annexure A-1).

2. When the matter was listed on 04.09.2017, it was noticed that there was no specific sanction granted in favour of Mr. B.V.P. Raju, Assistant General Manager to file the application under the Insolvency and Bankruptcy Code, 2016 (for short, hereinafter to be referred to as the 'Code'). CA No.

137/2017 was filed on 07.09.2017 with the affidavit of Mr. B.V.P. Raju, Assistant General Manager along with copy of sanction letter dated 19.06.2017 (Annexure A-26) issued by the Zonal Head of the Bank for initiating the insolvency resolution process against the respondent-Corporate Debtor. Annexure A-27 dated 19.06.2017 is the letter from the Zonal office to the Assistant General Manager of IFB Branch, Ludhiana intimating the sanction accorded by the Zonal Head and Annexure A-28 dated 19.06.2017 is letter of authority issued in favour of Mr. B.V.P. Raju for filing the petition against the respondent

3. This petition has been filed under Section 7 of the Code by the Financial Creditor in Form No. 1 as prescribed by Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, the 'Rules').

4. The Respondent-Corporate Debtor was incorporated on 25.10.1988 with CIN No. L17117PB1988PLC016933 having its authorised share capital of ₹45 crores with issued share capital of ₹34,11,51,175/- and paid up capital of ₹ 34,05,56,075/-. The respondent is having its registered office at Ludhiana and, therefore, the matter falls within the territorial jurisdiction of this Tribunal.

5. It is stated that the respondent-Corporate Debtor availed of the facility of inter corporate loan/financial assistance from the petitioner bank. Term loan of ₹14,13,00,000/- and Funded Interest Term Loan (FITL) of ₹ 3,00,00,000/- total ₹ 17,13,00,000/- was granted in the year 2015 vide sanction letter dated 30.03.2015 (Annexure A-5). The loan was sanctioned on the basis of resolution of Board of Director of the respondent-Corporate Debtor of even date which is at Annexure A-7. The respondent executed various

documents of loan i.e. Demand Promissory Note dated 31.03.2015 (Annexure A-8). The documents of hypothecation, term loan agreement, undertaking etc. are from Annexure A-6 to A-12.

6. The account of the respondent-Corporate Debtor became irregular and was declared Non Performing Asset (NPA). The petitioner-bank then issued notice dated 07.01.2016 (Annexure A-19) under Section 13 (2) of the SARFAESI Act, 2002 and thus total outstanding amount of debt was ₹ 17,19,23,278/- (page 461 of Paper Book) in respect of both the accounts. Reply to the notice was also sent by the Corporate Debtor on 04.03.2016 which is at Annexure A-20. It is also stated that the bank has filed Original Application (OA) No. 3002/2017 before the Debt Recovery Tribunal (DRT), Chandigarh which is still pending. The status report of the case pending before the DRT is at Annexure A-4. The petitioner-bank has also relied upon the copy of CIBIL report (Annexure A-13) relating to the credit information in respect of the respondent-Corporate Debtor. Apart from these documents, the petitioner-bank has also filed various documents of loan including the document of *pari-passu* charge over the assets of the company and also in respect of immovable properties the details of which are given in the application. The petitioner has also filed the entries of books of accounts in respect of both the accounts of the respondent duly certified under the Bankers Books Evidence Act, 1891 as at Annexures A-14 and 15. The interest charts in respect of these accounts are Annexures A-16 and A-17. The statements of Accounts are duly certified under the Bankers Books Evidence Act.

7. The total amount stated to be in default is ₹20,76,27,328/- as on 31.07.2017 inclusive of interest for the term loan of ₹17,59,86,476/- and ₹3,14,27,852/- under the FITL Account and expenses of ₹2,13,000/-.

8. The petitioner despatched copy of this petition along with the entire Paper Book to the respondent-Corporate Debtor on 18.08.2017 after the filing of the application and filed service affidavit of Mr. B.V.P. Raju the authorised representative of the bank with track report of the Post Office showing the delivery of the postal article to the respondent-Corporate Debtor on 21.08.2017 as at Annexure A-24..

9. When the matter was listed on 08.09.2017, notice of this petition was directed to be issued to the respondent-Corporate Debtor to show cause as to why this petition be not admitted. This notice was sent by Speed Post as well as at the e-mail address of the Corporate Debtor available on the master data of the company and compliance affidavit dated 28.09.2017 along with postal receipt and track report showing delivery of postal article on 22.09.2017 and also copy of the e-mail sent, have been filed.

10. Appearance has been made by Mr. Gaurav Gupta, Company Secretary of respondent-company who filed copy of resolution of Board of Directors dated 22.08.2017 whereby the company has authorised him to appear and to do all the necessary acts relating to the cases filed against the company. However, no reply/objections have been filed to the instant petition nor the respondent-company intends to file any objection. It is rather submitted by the Company Secretary representing the respondent-Corporate Debtor that the company would not oppose the prayer for admission of this petition.

11. I have heard the learned counsel for petitioner-bank and the Company Secretary representing the respondent and perused the record.

12. The petitioner-Financial Creditor has complied with all the requirements of law. There is complete compliance of Rule 4 (1) & (3) of the

Rules. There cannot be any dispute that the petitioner bank is a “Financial Creditor” entitled to apply under Section 7 of the Code on the occurrence of default. The default is proved overwhelmingly by documentary evidence of loan as well as with the certification of books of accounts under the Bankers Books Evidence Act which are *per se* admissible.

13. Under Section 7 (3) (a) of the Code, the Financial Creditor is required to furnish record of default recorded with the information utility or such other record or evidence of default as may be specified. The information utility has not been established so far but the petitioner bank has also relied upon the report of the CIBIL. Otherwise there is abundant evidence of default lead by the petitioner bank.

14. In reply to the notice under Section 13 (2) of the SARFAESI Act, 2002, the respondent-Corporate Debtor has not denied its liability towards the petitioner but the ground taken was that the petitioner is not the only secured creditor. It is stated that the respondent-Corporate Debtor has obtained loan from consortium of banks including State Bank of India, Central Bank of India, Punjab National Bank, UCO Bank, Union Bank of India, Punjab and Sind Bank etc. The respondent-Corporate Debtor even acknowledged the debt and submitted One Time Settle Scheme (OTS) as per the document at Annexure A-22 but the proposal was rejected by the petitioner-bank.

15. In the instant case, the requirement of sub-rule (4) of Rule 7 of the Code has also been fulfilled as there is existence of the default committed by the Respondent-Corporate Debtor. The only other requirement for the Financial Creditor is to propose the name of Interim Resolution Professional to act as the IRP which the petitioner has complied by proposing the name of Mr. Bhupesh Gupta as the Interim Resolution Professional. Mr. Gupta has

furnished written communication in Form 2 giving necessary declaration and the same is found to be in order.

16. Section 7 (5) (a) of the Code says that when the adjudicating authority is satisfied that a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application. The application filed by the Financial Creditor is complete and it is made out that no disciplinary proceedings are pending against the proposed Resolution Professional, the instant petition thus deserves to be admitted. The petition is thus admitted declaring the moratorium as per Section 14 of the Code as under :-

- 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;
- 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.

17. It is further directed that the supply of essential goods or services to the Corporate Debtor as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations,

2016 shall not be terminated or suspended or interrupted during moratorium period. This, however, shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

18. List the matter on 11.10.2017 for passing formal order of appointment of the Interim Resolution Professional. Copy of this order be communicated to both the parties.

Sd/-  
(Justice R.P.Nagrath)  
(Member (Judicial))

September 29, 2017  
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