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**NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH
CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 19/12/2017 AT 10.30 AM**

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL

**APPLICATION NUMBER :
PETITION NUMBER : CP/649/IB/2017
NAME OF THE PETITIONER : A. PANDIAN
NAME OF THE RESPONDENT : KOTHARI INDUSTRIAL CORPORATION LTD
UNDER SECTION : 7 RULE 4**

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
		REPRESENTATION BY WHOM	
1.	ROMAN RATASEKARAN	Counsel for Petitioner	Roman R
2.	S. SIVARAMAN S. SIVARAMAN.	Counsel for Respondent	Siv

IN THE NATIONAL COMPANY LAW TRIBUNAL,
SINGLE BENCH, CHENNAI

CP/649/ (IB)/CB/2017

Under Section 7 of the Insolvency And Bankruptcy Code
2016 R/W Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016

In the matter of

Mr. A. Pandian

Vs

M/s. Kothari Industrial Corporation Limited

Order delivered on 19th December, 2017


CORAM :

CH MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

For Financial Creditor(s) : Mr. Rohan Rajasekaran, Counsel
For Corporate Debtor(s) : Mr. Sivaraman, Counsel

ORDER


Per: CH MOHD SHARIEF TARIQ, MEMBER (J)

1. Under adjudication is an Application that has been filed by Mr. A. Pandian (hereinafter referred to as 'Financial Creditor') under Section 7 of the Insolvency and Bankruptcy Code 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/s. 


Kothari Industrial Corporation Limited (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. Heard the Counsels for Financial Creditor and the Corporate Debtor and perused the record.

3. The case of the Financial Creditor is that the Corporate Debtor had approached the Financial Creditor for short term advances for the purpose of trading in rock and phosphate. Based on the assurances and representations of the Corporate Debtor, the Financial Creditor had advanced money during the period from 04.01.2013 to 19.06.2014.


4. The Counsel for the Financial Creditor has referred to the loan amount statement dated 31.12.2014, which is placed at page 109 of the typed 

set filed with the Application, wherein the detail of the loan advanced to the Corporate debtor are given. The total amount that has been disbursed is Rs.1,25,00,000/- out which the Corporate Debtor has made payments on several dates amounting to Rs.97,00,000/- and the balance amount due as on 10.06.2013 was Rs.28,00,000/-. As on 31.12.2014, the total amount after calculating interest @ 18% p.a. became Rs.49,20,305/- which now have become Rs.66,67,271/- (including further interest).

5. The Counsel for the Financial Creditor has also referred to the document placed at page 104 of the typed set filed with the Application, which has been signed by the General Manager (Finance) of the Corporate Debtor, wherein the liability amounting to Rs.44 Lakhs as loan facility availed from the Financial Creditor has been admitted, the Corporate Debtor was willing to transfer some loan in favour of the Financial Creditor in lieu of the payment of the loan amount. The document has been signed on 

07.03.2014. It has also been submitted by the Counsel for the Financial Creditor that in order to pay the debt two Cheques were issued by the Corporate Debtor to the Financial Creditor amounting to Rs.28,00,000/- and Rs.16,14,210/- each on 30.09.2014, which were dishonoured on 23.12.2014, for which a separate proceedings under Section 138 of the Negotiable Instruments Act, 1881 have already been initiated against the Corporate Debtor. The photo copy of the Cheques are placed are pages 105 and 106 of the typed set filed with the Application.

6. Counsel for the Corporate Debtor filed the counter and submitted that the document dated 07.03.2014 has been signed by the Executive of the Company wrongly for which a separate action has been initiated against him. When a query was raised by this Bench about the Cheques which were signed by the Chairman and authorized signatory of the Company, the Counsel for the Corporate Debtor submitted that the Financial Creditor has manipulated all the documents.



However, the Counsel for the Corporate Debtor has not been able to show any documentary evidence that the Cheques have been manipulated or letter dated 07.03.2014 has not been written by the executive of the Corporate Debtor. Therefore, the submissions made by the Corporate Debtor are devoid of merits and stand rejected.

7. The Application along with the record placed on file has been perused and there is default on the part of Corporate Debtor in making payment of the outstanding debt to the Financial Creditor/Applicant.

8. The Financial Creditor has fulfilled all the requirements of law and has also proposed the name of IRP after obtaining the written consent in Form-2. Therefore, CP/649/(IB)/CB/2017 is admitted and the commencement of the Corporate Insolvency Resolution Process is ordered which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

9. Mr. C. Ramasubramaniam, as IRP is hereby appointed as proposed by the Financial Creditor. There is no disciplinary proceedings pending against the IRP as evidenced from Form-2 and his name is reflected in IBBI website. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

10. The moratorium is hereby declared which shall have effect from the date of this Order till the completion of corporate insolvency resolution process, for the purposes referred to in Section 14 of the I&B Code, 2016. It is hereby ordered to prohibit all of the following, namely:

- (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. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

12. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The directors of the Corporate Debtor, its promoters or any person associated with the Management of the Corporate Debtor is expected to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.

13. The Financial Creditor and the Registry are directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

14. The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor. The address details of the IRP are as follows: -

Mr. C. Ramasubramaniam,
Insolvency Resolution Professional
IP Registration No.IBBI/IPA-002/IP-N00052/2016-
2017/10096,
'SRINIDHI' G4 RMC Flats
No.1 Venkatesapuram Colony,
Vadapalani, Chennai – 600 026.


[CH.MOHD SHARIEF TARIQ]
MEMBER (Judicial)

P.ATHISTAMANI