

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

Free of Cost Copy

C.P.(LB) No. 300/NCLT/AHM/2018

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 22.10.2019

Name of the Company: Reliance Commercial Finance Ltd
V/s
Rutika Creations Pvt. Ltd.

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

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1. <i>Carla M. Patel</i>	<i>Advocate</i>	<i>Applicant</i>	<i>[Signature]</i>
2. <i>Rup Kothari</i> <i>Anip Ganshi</i>	<i>Adv.</i>	<i>Respondent</i>	<i>[Signature]</i>

ORDER

The parties are represented through learned counsels.

The order is pronounced in the open court vide separate sheet.



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CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 22nd day of October, 2019

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MANORAMA KUMARI
MEMBER JUDICIAL

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

C.P. No.(IB) 300/7/NCLT/AHM/2018

In the matter of:

Reliance Commercial Finance Limited
Reliance Centre, 6th Floor
South wing, Off. Western Express Highway
Santacruz (East)
MUMBAI 400 055

And branch at
Ground Floor, Reliance House,
Opp. HDFC Bank
Mithakhali Six Road
Navrangpura,
AHMEDABAD 380 009

: Petitioner
[Financial Creditor]
Versus

Rutika Creations Private Limited
Plot No. K1 to K5
City Industrial Estate
UdhnaNavsari Road
Udhna 394 210
Surat,
Gujarat State

: Respondent
[Corporate Debtor]

Order delivered on 22nd October, 2019

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Advocate Mr. Lalit M. Patel for applicant/Financial creditor
Advocate Mr. Raju Kothari with Advocate Mr. Anip Gandhi for respondent



ORDER

1. Reliance Commercial Finance Limited, through authorised signatory Mr. Hitesh Joshi, filed this petition on 2nd July, 2018 under section 7 of The Insolvency and Bankruptcy

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Anip Gandhi

Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules") seeking reliefs under Section 7(5)(a) and Section 13(1)(a)(b)(c) of the Code.

2. That the applicant Reliance Commercial Finance Limited, incorporated on 17.08.2000, having its corporate office at Santacruz (East), Mumbai 400 055 and having Branch at Reliance House, Navrangpura, Ahmedabad 380 009, Gujarat State, is in the banking business of providing various types of financial facilities including business loans, personal loans, consumer loans, loan against property, home equity loans, term loan etc.
3. M/s. Rutika Creations Private Limited is a company incorporated under the Companies Act, 1956 on 07.10.2010 having identification No. U17120GJ2010 and having its registered office at Udhna, Surat, Gujarat State. That Authorised share capital of the respondent company is Rs. 15,00,000.00 and paid up share capital is Rs. 15,00,000.00.
4. That, the applicant/financial creditor has submitted that the respondent had approached and applied to the petitioner company to avail credit facility/term loan facility for purchasing embroidery machines from BKN Enterprise



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Private Limited for its business. The petitioner company sanctioned term loan of Rs. 2,02,20,800/- to the respondent company as per the proforma Invoices Issued by BKN Enterprises P. Ltd. In terms of sanction letter and upon execution of various security documents viz. facility cum hypothecation agreement, demand promissory note, irrevocable power of attorney etc. In favour of petitioner company by the respondent company for security of repayment of the said facility and thereafter petitioner company disbursed the amount as per the details given below: -

Sr. No.	Agreement No.	Amount Financed
01	RLSRSUR000340294	1,04,47,800
02	RLSRSUR000340300	97,73,000
	Total	2,02,20,800

5. The applicant has submitted that at the time of availing the said term loan facility, the respondent company assured the petitioner company that the amount of the said loan facilities will be repaid by way of 48 equal monthly instalments from 10.08.2017 to 10.07.2021 as per the terms and conditions and repayment schedule of the respective loan agreements and there will be no default in making payment of the instalments and repayment of the loan facility amount. However, after availing the aforesaid facility amount, respondent company did not care to make payment of the instalments regularly as per agreed terms and conditions and made default in payment of the instalments.



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6. It is further submitted by the applicant that despite repeated requests, reminders and personal follow-up over telephone and in person to pay and clear up the outstanding instalments due, the respondent company failed and neglected to pay the pending instalments of Rs. 8,91,468/- in agreement No. RLSRSUR000340294 and Rs. 8,33,889/- in agreement No. RLSRSUR000340300, more particularly mentioned in the account statements annexed to the instant petition. That, this conduct on the part of the respondent clearly suggests inability to repay the outstanding dues of the company which is public money. That, the petitioner being financial creditor has to recover an amount of **Rs. 2,04,45,995/- (Rupees two crores four lacs forty-five thousand nine hundred ninety-five only)** which is still remaining unpaid by the respondent herein as on 15.06.2018 being corporate debtor, more particularly as per the ledger accounts annexed to the application.

7. In support of its claim, the applicant has submitted copy of the following documents: -

Sr. No.	Particulars	Page Nos.
01	Affidavit in support of the application in accordance with the IB Code	7-47
02	Written communication	48-49
03	Authority letter authorising Mr. Hitesh Joshi along with Board resolution passed in the meeting of the Board of Directors of the company	50-52
04	Proof that the specified application fee has been paid	53



8. ~~Mr.~~ Mr. Sanjaybhai Kanani, authorised representative of the respondent company filed reply in affidavit inter alia

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stating that the respondent company has availed the financial facilities, but has failed to pay the instalments as agreed with the petitioner. That, due to worst market condition, the respondent company is facing financial difficulties and hence is not in a position to pay the outstanding amount at this stage. That, the Adjudicating Authority may pass appropriate orders as may be necessary in the interest of justice.

Findings

9. Heard both sides at length as also perused the documents annexed with application and the reply filed by the respondent.
10. On perusal of the record it is found that in the reply filed by the respondent, the debt has been acknowledged and no dispute has been raised about the payment due to the applicant. Moreover, during the course of proceedings also learned lawyer appearing on behalf of the respondent fairly admitted the amount due to the petitioner.
11. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the financial debt to the Applicant and the respondent company has acknowledged the debt.



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12. In the instant case, the documents produced by the Financial Creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'financial debt'.
13. There is no dispute in the case that the petitioner is the financial creditor. The application is also furnished in the prescribed form - 1 of the Rules and the prescribed fee has also been paid. Along with the application, the applicant proposed the name of the Resolution Professional namely CA BhaviShreyans Shah. The Adjudicating Authority hereby appoint CA BhaviShreyans Shah, C-201, Embassy Apartment, Nr. Ketav Petrol Pump, Dr. V.S. Road, Ahmedabad 380 015 having registration No. IBBI/IPA-001/IP-P00915/2017-18/11521 to act as an interim resolution professional. Form 2 of the proposed interim resolution professional has been annexed and placed at page No. 48-49 to the application where declaration is made that no disciplinary proceeding is pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.
14. In the aforesaid background and as also discussed above, the application under Section 7 (2) of the IB Code is complete in all respects and there is debt due to the "financial Creditor" and there is default on the part of the "corporate debtor". Hence, there is no alternative but to admit the application in absence of any infirmity.



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15. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -

- (i) 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;
- (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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);
- (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

16. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.



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17. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the corporate Insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.
18. This Petition stands disposed of accordingly with no order as to costs.
19. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.

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Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

Manorama
Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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