

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

Free of Cost Copy

3583
20/02/2020

CP(IB) 625 of 2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 05.02.2020

Name of the Company: UCO Bank
V/s
K-Lifestyle & Industries Ltd.

Section: 7 of the Insolvency and Bankruptcy Code, 2016.

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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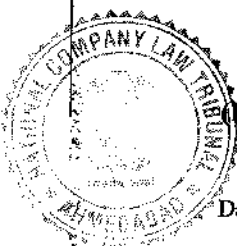
2.

ORDER

The present matter is kept for pronouncement of order today.

The present matter i.e., CP (IB) No. 625 of 2018, filed under Section 7 of the Insolvency
& Bankruptcy Code, is **admitted**.

The detailed order is recorded vide separate sheet.




(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 5th day of February, 2020

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

C.P. (I.B.) No. 625/7/NCLT/AHM/2018

Coram:

Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)

Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)

In the matter of:

UCO BANK

Body Corporate Constituted under the
Banking Companies (Acquisition and
Transfer of Undertakings) Act, 1970

Having Head Office at:

10, Biplabi Trailakya Maharaj Sarani,
Kolkata-700001.

Flagship Corporate Centre Branch-2,
India Exchange Place, Kolkata-700001

.....Petitioner

Versus

K-LIFESTYLE & INDUSTRIES LIMITED

Having its Registered Office at:

58-A, Dhanu Udyug Industrial Area,
Piperia, Silvassa, Union Territory of
Dadra & Nagar Haveli, PIN-396230.

Corporate Office - Kamat Industrial
Estate, 396, Veer Savarkar Marg,
Prabhadevi, Mumbai-400025

.....Respondent



Appearance:

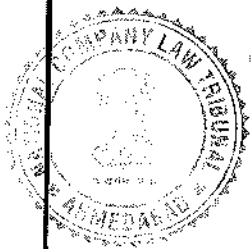
Advocate, Shri Aditya J. Pandya for the Applicant/Financial Creditor

Advocate, Shri Harmish K. Shah for the Respondent/Corporate Debtor

Order Pronounced and delivered on 05.02.2020

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present I.B. Petition is filed by the Financial Creditor **UCO Bank** under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as a "Code"), **seeking initiation of Corporate Insolvency Resolution Process** ("CIRP" in Short) against the Corporate Debtor Company namely, K-Lifestyle & Industries Limited for the default committed by the Corporate Debtor in making repayment of the Cash Credit/Term Loan facility availed from the Bank. The Applicant (FC), UCO Bank is a Bank, incorporated under the provisions of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970. The application has been filed by the duly authorised officer, Shri Arupananda Jena, Deputy General Manager, UCO Bank working for gain at its Flagship Corporate Centre Branch at 2, India Exchange Place, Kolkata-700001.



2. The Respondent Corporate Debtor (CD) Company, namely K-Lifestyle & Industries Limited was incorporated on 12/08/1987 with CIN: L74999DN1987PLC000035.
3. The nominal share capital of the Respondent (CD) Company is Rs.224,99,99,870/- (Rupees Two Hundred Twenty Four Crores Ninety Nine Lakhs Ninety Nine Thousands Eight Hundred Seventy Only) and the paid-up capital of the company is Rs.101,78,04,000/- (Rupees One Hundred One Crore Seventy Eight Lakhs Four Thousands Only). The Registered Office is situated at: 58-A, Dhanu Udyug Industrial Area, Piperia, Silvassa, Union Territory of Dadra & Nagar Haveli, PIN-396230, and the Corporate Office is situated at: Kamat Industrial Estate, 396, Veer Savarkar Marg, Prabhadevi, Mumbai-400025.
4. The main objects of the company, by which the Respondent (CD) Company is incorporated, are mentioned in the Memorandum of Association which are briefly mentioned as:
"To carry on the Business of manufacturing all kinds of Hosiery cloth and ready made Garments, knitting, weaving, combing, blending, spinning, bleaching, processing and dyeing of cotton, silk, wool, synthetic yarn or any other type of natural fibres, polyester, rayon, art silk or any other type of man made fibres.



To carry on the Business of Manufacturers, Dealers, Importers, Exporters of all kinds of Hosiery cloth, ready made Garments, Carpets, Blankets, Rugs, Line cloth and Fabrics whether Textile, felted Woven, Netted, Knitted or Looped made out of Raw Cotton, Jute, Silk, Wool, Rayon, Polyester, Velvet or any other type of Man Made fibres.

To carry on the Business of Dealers, Exporters, Importers, Commission Agents, Tradesman of all type of Yarns, Tops, Synthetics and Man Made Fibres and Textiles."

5. It is submitted that the Corporate Debtor is a borrower and enjoying credit facilities from July 2008 under a **consortium arrangement with the Financial Creditors under the leadership of UCO Bank, and the other Financial Creditors are Punjab National Bank, Dena Bank and Bank of India as its Consortium Members** (hereinafter referred to as its "Consortium Members Bank").
6. The Corporate Debtor duly accepted the terms and condition of such sanction/renewal in respect of the said Working Capital Cash Credit Limit as recorded in its Resolution dated 17/03/2010. To continue with the aforesaid renewed Cash Credit Facility, the Corporate Debtor on 23/04/2010 executed the documents in **favour of the UCO Bank and other Financial Creditors, Punjab National Bank and Dena Bank**



(hereinafter referred to as "WC Consortium Member Banks")

The following documents were executed by the Corporate Debtor:

- (i) Working Capital Consortium Agreement
- (ii) Joint Deed of Hypothecation
- (iii) Letter of Undertaking

7. It is submitted that the Consortium Member Banks confirmed in writing ceding **first pari passu** charge on current assets and second charge on fixed assets of the Corporate Debtor for the enhanced Cash Credit Limit as sanctioned by the Financial Creditor from **Rs.30 Crores to Rs.60 Crores and Non Fund Based Limit from Rs.5 Crores to Rs.10 Crores. A copy each such letters are annexed and marked with Q, R & S in the paper book.** The extend of the credit facilities granted by the financial creditors alone as per the last sanction are as follows:-

Nature of Facility	Limit (Rupees in Crores)
Working Capital Cash Credit Account	60.00
Non-Fund Based	10.00
Term Loan	100.00
Total Fund Based	160.00
Total Non-Fund Based	10.00
Total Exposure	170.00

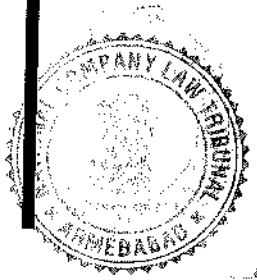
8. To collaterally secure the aforesaid credit facilities extended by the Financial Creditor in favour of the



Corporate Debtor from time to time, the Corporate Debtor and its Directors/Guarantors created mortgage/charge of their immovable properties in favour the Financial Creditor as well as the other Consortium Member Banks on 28.04.2009 and 26.02.2010 and such charge has duly been registered with the office of ROC. From the aforesaid documents executed by the Corporate Debtor, the several securities created by it in favour of this Financial Creditor and other Consortium Member Banks are enclosed in a schedule being Annexure T of the paper book.

9. It is submitted that the Corporate Debtor availed the aforesaid credit facilities but failed to operate the said accounts in conformity with the terms and conditions on the basis of which the limit was granted and the Corporate Debtor started defaulting in repaying the outstanding/dues of the Principal and Interest and the account of the corporate debtor was declared **as a non performing asset (NPA) on 31.01.2013**. The dues of the financial creditor at that point of time (without interest, penal interest etc.) is as follows:-

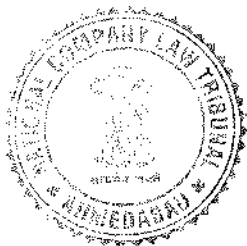
Nature of facility	Outstanding Principal Amount as on 31.01.2013 (Date of NPA)
Cash Credit	Rs.63,47,51,228/-
Term Loan	Rs.69,98,02,549/-
Total	Rs.133,45,53,777/-



10. The Corporate Debtor has defaulted payment and the **date of default is 31.01.2013** as stated by the Petitioner Bank. (Page no. 13 of paper book).
11. The statements of accounts of the Corporate debtor have been filed and the Petitioner Bank has submitted a Certificate to this effect under Banker's Book of Evidence Act, 1891. (Page no. 354 to 355 of paper book). The Petitioner Bank has claimed their dues of **Rs.231,29,11,859.67/- (Rupees: Two Hundred Thirty One Crores Twenty Nine Lakhs Eleven Thousands Eight Hundred Fifty Nine and Sixty Seven Paise only)** as on 31/08/2018 as computed in the page no.325 of the paper book which is given below:

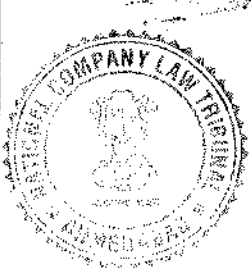
Nature of facility	Limit	Balance as of 31.08.2018	Undebited/Unapplied Interest till 31.08.2018	Total
Working Capital	Rs.70,00,00,000.00/-	Rs.64,25,00,000.00/-	Rs.48,97,79,846.44/-	Rs.113,22,79,846.44/-
Term Loan	Rs.100,00,00,000.00/-	Rs.66,76,01,229.72/-	Rs.51,30,30,783.51/-	Rs.118,06,32,013.23/-
		Rs.131,01,01,229.72/-	Rs.100,28,10,629.95/-	Rs.231,29,11,859.67/-

12. The Petitioner Bank, in support of its contentions has annexed the details of Financial Debt, Records and evidences of default including copies of all the sanction letters, the **workings** showing the amount claimed to be **in default and its calculation** in tabular form as on 31/08/2018.



13. The Financial Creditor, to substantiate their claim, has enclosed following documents: -

- i. Copy of Balance Sheet and Profit and Loss account and Annual Accounts of the Corporate Debtor as on **31/03/2017. (Page no.96 to 117 of paper book)**
- ii. Copy of Resolution of Corporate Debtor dated 17/03/2010. (Page no. 118 to 120 of paper book)
- iii. Copy of Working Capital Consortium Agreement dated 23/04/2010. (Page no. 121 to 147 of paper book)
- iv. Copy of Joint deed of hypothecation dated 23/04/2010. (Page no.148 to 162 of paper book)
- v. Copy of letter of undertaking dated 23/04/2010. (Page no. 163 to 165 of paper book)
- vi. Copy of Inter-se Agreement between UCO Bank, Punjab National Bank and Dena Bank dated 23/04/2010. (Page no. 166 to 175 of paper book)
- vii. Letter of Authority dated 23/04/2010. (Page no. 176 to 179 of paper book)
- viii. Copy of Resolution of Corporate Debtor dated 30/12/2008. (Page no. 180 to 184 of paper book)
- ix. Copy of Facility Agreement dated 13/08/2009. (Page no. 185 to 236 of paper book)



- x. Copy of Joint Deed of Hypothecation dated 13/08/2009. (Page no. 237 to 254 of the paper book)
- xi. Copy of Inter Creditor Agreement dated 13/08/2009. (Page no. 255 to 278 of paper book)
- xii. Copy of Demand Promissory Note dated 10/08/2011. (Page no.279 to 280 of paper book)
- xiii. Copy of Letter of Waiver dated 10/08/2011. (Page no.281 of paper book)
- xiv. Letter of continuity dated 10/08/2011. (Page no.282 to 284 of paper book)
- xv. Copy of Agreement for Hypothecation of Goods dated 10/08/2011. (Page no.285 to 303 of paper book)
- xvi. Copy of Agreement for Book Debts dated 10/08/2011. (Page no.304 to 312 of paper book)
- xvii. Copy of Agreement for Extension of Charge dated 10/08/2011. (Page no.313 to 317 of paper book)
- xviii. Copy of letter dated 16/09/2011 (Page no.318 of paper book)
- xix. Copy of letter dated 07/09/2011. (Page no.319 of paper book)
- xx. Copy of letter dated 05/09/2011. (Page no.320 of paper book)

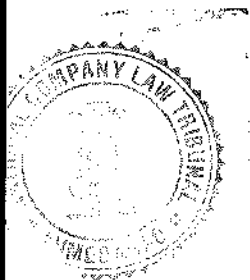


- xxi. Copy of schedule of Security created in favour of Financial Creditor and Consortium Members.
(Page no.321 to 324 of paper book)
- xxii. Copy of Schedule containing outstanding Balance.
(Page no.325 of paper book)
- xxiii. Copy of Bankers book of evidence. (Page no.354-355 of paper book)

14. In the present matter, this Tribunal, vide its order dated 20/12/2018 had directed the Petitioner Bank to serve the notice of date of hearing to the Corporate Debtor and file the proof of service of notice before this Tribunal. Thereafter, the Respondent, Corporate Debtor appeared before this Tribunal on 18/02/2019 and sought time to file objections within two weeks.

15. The Learned Lawyer of the Applicant Bank(FC) filed Rebuttal documents, clarified their positions and put forth their arguments relying on the documents submitted by them, which were executed by the corporate Debtor. It was also clarified by the counsel for the Financial Creditor that the petition has been filed by the Financial Creditor for its own Limit Sanctioned.

16.1 It is further submitted that on perusal of Affidavit-in-Reply, it transpires that the main contention raised by the Corporate Debtor is that the present application



is beyond the period of limitation and therefore the Corporate Debtor has prayed for dismissal of present petition.

16.2 It is submitted that the Corporate Debtor has failed to substantiate this averment and the same has been raised without there being any material to indicate that the present application is in the fact time barred. From the perusal of application, the applicant has produced relevant accounting documents including **Balance Sheet and Audit Report of the Corporate Debtor** to suggest that the liability towards applicant was shown by the Corporate Debtor in its accounts even for the **financial year 2016-2017**.

16.3 It is submitted that the applicant has also produced minutes of two meetings dated **14.05.2018** and **02.07.2018** to show that the Corporate Debtor had submitted a **One Time Settlement Proposal for settlement of its dues and the same was deliberated in the above two meetings in the presence of representative of Corporate Debtor and the OTS came to be rejected by the Consortium of Financial Creditors**.

16.4 It is submitted that a matter of abundant caution, the applicant also produced **two letters written by Corporate Debtor dated 10.03.2018 and 29.03.2018 titled as Resolution Plan wherein they had given**



One Time Settlement Proposal for settlement of their liability. The said letters clearly amount to acknowledgment of the liability by the Corporate Debtor in terms of Section 18 of Limitation Act read with Section 25 of Indian Contract Act.

16.5 Therefore, the objection of limitation raised by the Corporate Debtor is not **sustainable** in the eyes of law and the **present company petition is required to be admitted**, as the Corporate Debtor has failed to make out any case against the admission of petition.

It is further submitted that the pursuant to the said default, the Financial Creditor has filed a **Section 19** proceedings under the Recovery of **Debts due to the Banks and Financial Institutions Act, 1993** in DRT I, Kolkata in 2014 but however till date no **order of adjudication has been passed and the said proceedings** is in progress.

17. The matter was taken up and heard both sides by this Bench on 20.12.2018, 18.02.2019, 15.04.2019, 25.06.2019, 16.08.2019, 06.09.2019, 10.10.2019, **22.10.2019, 05.11.2019, 18.11.2019, 20.11.2019, 02.12.2019 & 17.12.2019. On 17.12.2019 the matter** was finally heard and both the counsels were granted liberty to submit their written submissions. The counsels of the Petitioner and the Respondent were



present and put forth their submissions before the Bench.

18. Further, the following two IAs were filed by the Corporate Debtor in relation to the petition filed by the Financial Debtor under Section 7 of IBC.

i) **IA 678 of 2019 in CP(IB) 625 of 2018** filed by the Corporate Debtor K-Lifestyle & Industries Ltd., V/s. **UCO Bank** - The instant Interlocutory Application is filed by the Applicant (Respondent herein) under Section 65(1) read with Section 60(5) read with Rule 11 of NCLT Rule, 2016 against the Respondent (Applicant Bank herein) **with a prayer -**

- a) That the Application of the Respondent under **Section 7** of IBC, which has been filed **with malicious intent be discarded with cost upon the Respondent.**
- b) Pending decision on the Interim Application, further proceeding in the CP(IB) No. 625/7/NCLT/AHM/2018 may kindly be stayed.
- c) That any other relief as may deemed fit.

The petitioner Counsel already argued against the relief as stated in point No.16 to 16.5 and demanded the prayer made in the IA may be rejected.

ii) **IA 714 of 2019 in CP(IB) 625 of 2018** filed by the K-Lifestyle & Industries Limited V/s. UCO Bank - The instant Interlocutory Application is filed by the Applicant



(Respondent herein) under Section 60(5) of IBC, 2016 against the Respondent (Applicant Bank herein) with a prayer that –

- a) That the Applicant under Section 7 of IBC, **filed by the Respondent be rejected at threshold being not maintainable being time barred.**
- b) That pending decision on the Interim Application, further proceeding in the CP(IB) No. 625/7/NCLT/AHM/2018, may kindly be stayed.
- c) That any other relief as may deemed fit in the interest of the Applicant.

The Counsel of the Petitioner argued against the relief sought for here and submitted their **rebuttal on 18/11/2019** claiming that the application is not time barred and the Respondent **has acknowledged the debts of the Financial Creditor in their Balance Sheet filed with ROC for the year 2016-2017.**

19. It is a settled legal position that the pendency of Case before DRT/SARFAESI proceeding or other dispute does not prevent a Financial Creditor to trigger the C.I.R.P. because the nature of remedy being sought for under the provisions of the I.B. Code is “Remedy in Rem” in respect of the CD.



20. The Petitioner Bank has suggested the name of Insolvency Professional to be appointed, if this petition is allowed and the proposed I.R.P. has also given his affirmation/consent in writing, which is annexed with the present I.B. Petition.

Observations

21. The Petitioner Bank has submitted the documents duly executed by the Corporate Debtor and guarantors along with a Certificate under the Banker's Book of Evidence Act, 1891, in support of their IB Petition for initiation of C.I.R.P. (Page no. 354-355 of paper book).

21.1 The Cash Credit limit and Term Loan were sanctioned and released by the Petitioner Bank and the same was availed by the CD, K-Lifestyle & Industries Limited. **The Charges have been** registered by the CD with the ROC in favour of the Petitioner Bank along with other consortium member Banks on 28/04/2009 and 26/02/2010. **The charges are yet to be satisfied.**

21.2 The CD has defaulted in making repayment of Term loan/credit facilities to the Petitioner Bank and **the date of default is 31/01/2013.** The Statement of accounts submitted by the applicant Bank **confirm the debt was due and default has been** committed by the Corporate Debtor.



21.3 The Petitioner Bank has filed the petition **within the period of limitation**, as the Corporate Debtor has **acknowledged its debts to the Financial Creditor in its Balance Sheet filed with the ROC in the year 2016-2017** which ultimately extends the Limitation period upto **31/03/2020** when the petition has been filed on **05/11/2018**.

21.4 Documents submitted by the Financial Creditor show that the detailed Resolution Plans have been submitted on 10/03/2018 and 29/03/2018 by the Corporate Debtor wherein they have mentioned that the Board of Directors of the Corporate Debtor have requested **to the Financial Creditor to accept their OTS with interest at 4% simple from the date of NPA to the revised cut-off date i.e. 28/02/2018**.

21.5 The Respondent filed IA 678 of 2019 in CP(IB) 625 of 2018 with a prayer to discard this petition filed by the Financial Creditor under Section 7 as the same has been filed with malicious intend but the **facts and documents submitted by the petitioner suggest otherwise and filing of this petition with malicious intent is not found**.

21.6 The Respondent Company also filed another IA 714 of 2019 in CP(IB) 625 of 2018 with a prayer that the application filed under Section 7 by the Financial Creditor be rejected on the ground of Limitation but the



Corporate Debtor has acknowledged the Debt of the Financial Creditor in their Balance **Sheet of 2016-2017**, which extends the Limitation **period upto 31/03/2020** besides their **Resolution Plans submitted to the Financial Creditor on 10/03/2018 and 29/03/2018 for consideration.**

21.7 **Income Tax Department, Government of India**, Office:

Room No.1906, 19th Floor, Air India Building, Nariman Point, Mumbai-400021 has submitted a letter dated 16/09/2019 to this Registry with a request **to intimate** them, if IRP is appointed so that they can lodge their claim of **Rs.33,81,32,467.00** being the outstanding demand made against the Corporate Debtor under different Sections of I.T. Act for the assessment year from 2007-2008 to 2014-2015.

21.8 The present I.B. Petition is filed by the duly authorised official of the Financial Creditor in a prescribed format under **Section 7** of the I.B. Code annexing copies of loan documents **confirming the existence of debt due and defaulted** and proposed a name of Resolution Professional to act as an Interim Resolution Professional (IRP).

21.9 Balance Sheet is the **Sacrosanct document of the Corporate Debtor Company which shows the Assets and Liabilities of the company prepared by the Company at the end of every Financial year, approved by**

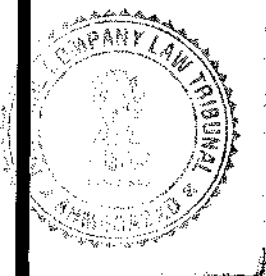


the Board, placed in Annual General Meeting for approval and thereafter the said Balance Sheet is signed by the Chairman/MD & CEO/Director/Company Secretary filed with ROC as statutorily required under Section 92(4) of the Companies Act 2013 within **sixty days from the date of Annual General Meeting**. Once the Liability to the Financial Creditor is shown in the Balance Sheet of the Corporate Debtor it extends the Limitation period for another 3 year form the date of the Balance Sheet and The Adjudicating Authority **need not look for any other document with regard to the availability of the Limitation period.**

ORDER

22.Considering the material, papers filed by the Petitioner Bank, arguments of both sides and the facts mentioned in the **Para No. 21, 21.1, 21.2, 21.3, 21.4, 21.5, 21.6, 21.7, 21.8 & 21.9** this **Adjudicating Authority is satisfied** that,

- (a) The Corporate Debtor **availed the Term Loan/Cash Credit facilities from the Financial Creditor.**
- (b) Existence of debt is **above Rs. One Lakh**
- (c) **Debt is due;**
- (d) Default has **occurred on 31.01.2013;**



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(e) Petition has been filed within the limitation period as the Corporate Debtor has acknowledged its Debts to the Financial Creditor in its Balance Sheet filed with ROC in **the year 2016-2017** which ultimately extends the period of Limitation upto 31/03/2020 when the petition has been filed on 05/11/2018;

(f) Copy of the Application filed before the Tribunal has been sent to the Corporate Debtor and the application filed by the **Petitioner Bank Under Section 7 of IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process** against the Corporate Debtor.

Hence, the present IB Petition is admitted with the following Directions/observations. The date of admission of this petition is 05/02/2020.

23. The Respondent filed IA 678 of 2019 in CP(IB) 625 of 2018 with a prayer to discard this petition filed by the Financial Creditor under Section 7 as the same has been filed with malicious intend but the facts **and documents submitted by the petitioner suggest otherwise and filing of this petition with malicious intent is not found. Hence, the prayer made in this IA is rejected.**

24. The Respondent Company also filed another IA 714 of 2019 in CP(IB) 625 of 2018 with a prayer that the application filed under Section 7 by the Financial



Creditor be rejected on the ground of Limitation but the Corporate Debtor has acknowledged the Debt of the Financial Creditor in their Balance Sheet of 2016-2017, which extends the Limitation period upto 31/03/2020 besides their Resolution Plans submitted to the Financial Creditor on 10/03/2018 and 29/03/2018 for consideration. We do not find any merit in this **IA**. **Hence**, the prayer of **the Corporate Debtor** made in this **IA** is rejected.

25. This Adjudicating Authority hereby appoints, as proposed, **Mr.Ajit Kumar**, having **Insolvency Professional Registration No. IBBI/IPA-003/IP-N00062/2017-18/10548**, **Email ID: cmaajitjha@gmail.com**, **Address: 1A, Sanskriti Apartment, GH-22, Sector 56, Gurgaon 122011, India** as an **Interim Resolution Professional**. The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor soon after receipt of an authenticated copy of this order. The IRP is also to **act further as per the order/directions issued** by this Adjudicating Authority and to follow the provisions **Under Section 13 and 14** and other relevant provisions of the Insolvency and Bankruptcy Code 2016.



26. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this **Adjudicating Authority declares moratorium with effect from today** for prohibiting all of the following, namely: -

- I. (a) *The institution of suits or continuation of pending suits 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.*
- (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.*
- II. *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium;*
- III. *The provisions of sub-section (1) shall not apply to*
 - (a) *such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- IV. *The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.*



27. The **IRP is hereby advised to adhere the timeline** as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP" in short) and perform the duties as specified Under Section **17, 18, 20 and 21 of I.B Code**. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, in Section 15, 17, 18, 20 & 21 of the Code and transact proceedings with utmost **dedication, honesty and strictly** in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnels connected with the Corporate Debtor, its promoters or any other persons associated with the management of the Corporate Debtor are under legal obligation **under Section 19 of the Code to extend every assistance and cooperation** to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution Professional would be at **liberty to make appropriate application to this Tribunal** with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the **property of the 'Corporate Debtor'** as a part of its obligation **imposed by Section 20 of the Code** and



perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

28. It is also observed that the Petitioner Bank has claimed total Rs.231,29,11,859.67 i.e. Principal amount is Rs.131,01,01,229.72 and undebited/unapplied interest amount is Rs.100,28,10,629.95. One of the **prime objectives** of the Insolvency and Bankruptcy Code, 2016 is to **find out a viable Insolvency Resolution Plan in time** for the Corporate Debtor and in order to have a Resolution Plan **Viable, feasible and implementation successful**, in the era of Minimum Cost of funds based Lending Rate ("MCLR" in short)/Repo Linked Interest Rate/Interest Rate Falling Regime and Competitive market condition, the Committee of Creditor(s) (COC) **may explore**, while finalizing the Resolution Plan for the Corporate Debtor, the **possibility of loading maximum interest** at the Applicant Bank's Base Rate (BR) +1% from the date of default to the date of implementation of MCLR and further from the date of implementation of MCLR till the date of approval of the Resolution Plan at the interest rate of Petitioner Bank's One Year MCLR or One Year MCLR +1% without any penal /overdue interest.

29. The **Registry is hereby directed** to communicate the authenticated copy of this order to the Financial Creditor,

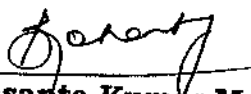



Corporate Debtor Company, the I.R.P and also to the Registrar of Companies, Gujarat immediately through speed post / registered post.

The Registry is also directed to communicate the Income Tax Department about the commencement of CIRP and appointment of IRP so that they can lodge their claim, if otherwise they are entitled under the IBC 2016.

30. Thus the present I.B petition filed Under Section 7 of the IBC stands admitted on 05/02/2020 with the above Observations and Directions.




(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (Technical)


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (Judicial)

Certified to be True Copy of the Original


Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad

