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[2020] 116 taxmann.com 145 (NCLT - Ahd.)[13-01-2020]

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**IBC : Pendency of SARFAESI proceeding or other dispute would not prevent a financial creditor to trigger CIRP; existence of debt and default towards cash credit facilities availed by corporate debtor from financial creditor bank being established, CIRP to be admitted**

**IBC : Where corporate debtor made last payment on 26-2-2016, CIRP application filed under section 7 on 30-11-2018 was within limitation**

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[2020] 116 taxmann.com 145 (NCLT - Ahd.)

**NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD BENCH**

**Bank of Baroda**

**v.**

**Riddhi Siddhi Cotton Ginning and Pessing (P.) Ltd.**

HARIHAR PRAKASH CHATURVEDI, JUDICIAL MEMBER  
AND PRASANTA KUMAR MOHANTY, TECHNICAL MEMBER  
C.P. (I.B.) NO. 597/7/NCLT/AHM/2018  
JANUARY 13, 2020

**Section 238, read with 7 of the Insolvency and Bankruptcy Code, 2016 - Overriding effect of Code - Corporate debtor defaulted in making repayment of cash credit facilities availed from applicant-financial creditor bank and it was classified as NPA - Applicant issued notices under section 13(2) and 13(4) of SARFAESI Act to corporate debtor - Applicant also filed application before DRT and same was pending - Thereafter, applicant filed application under section 7 to initiate CIRP proceedings against corporate debtor - Whether pendency of SARFAESI proceeding or other dispute prevents financial creditor to trigger CIRP - Held, no - Whether since there was existence of debt and default occurred in making repayment, CIRP application was to be admitted - Held, yes [Paras 16 and 19]**

**Section 238A of the Insolvency and Bankruptcy Code, 2016 - Limitation period - Whether where corporate debtor made last payment to financial creditor on 26-2-2016, CIRP application under section 7 filed on 30-11-2018 was within limitation - Held, yes [Para 19]**

**Raju Kothari, Adv. and Anip Gandhi for the Applicant. Ms. Archana Raval, Adv. and Pratik Thakkar for the Respondent.**

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## **ORDER**

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**Prasanta Kumar Mohanty, Technical Member.** - The present I.B. Petition is filed by the Financial-Creditor Bank of Baroda (erstwhile Dena 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, Riddhi Siddhi Cotton Ginning and Pessing Private Limited for the default committed by the Corporate Debtor in making repayment of the CC facility availed from the Bank. The Applicant (FC), Bank of Baroda (erstwhile Dena 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 Nanrani Niraj Kumar P., Assistant General Manager, Dena Bank, Jagnath Plot Branch, Rajkot.

2. The Respondent Corporate Debtor (CD) Company, namely Riddhi Siddhi Cotton Ginning and Pressing Private Limited was incorporated on 22/03/2006 with CIN: U17110GJ2006PTC047981.

3. The nominal share capital of the Respondent (CD) Company is Rs. 4,25,00,000/- (Rupees Four Crores Twenty Five Lakhs Only) divided into 42,50,000 (Forty Two Lakhs Fifty Thousand Only) equity shares of Rs. 10/- (Ten) each and the paid-up capital of the company is Rs. 4,25,00,000/- (Rupees Four Crores Twenty Five Lakhs Only) divided into 42,50,000 (Forty Two Lakhs Fifty Thousand Only) equity shares of Rs. 10/- (Ten) each. The Registered Office of the Corporate Debtor Company is situated at: Survey No. 251/P-2, Rajkot Jamnagar Highway, At Mota Rampar, Taluka Paddhari, Rajkot-360 110, Gujarat.

4. The Respondent (CD) Company is a Principal Borrower and is engaged in the business of cotton ginning and pressing.

5. It is submitted that the Respondent Company applied for Cash Credit Limit and the Financial Creditor sanctioned Cash Credit Limit of Rs. 1500.00 Lakhs on 17/09/2013 and further the Financial Creditor enhanced the Cash Credit Limit from Rs. 1500.00 Lakhs to Rs. 2000.00 Lakhs on 15/01/2015 at the request of the Corporate Debtor with certain terms and conditions including collateral securities of properties. The Corporate Debtor availed the Cash Credits Limit executing various documents and some documents executed by the mortgagors/guarantors in favour of the Bank binding themselves as liable to pay the Cash Credits facilities availed by the Corporate Debtor. Thus, total aggregate limit of Rs. 20.00 Crores were sanctioned by the Applicant Bank *vide* sanction letter dated 17/09/2013 and 15/01/2015 with certain terms and conditions including hypothecation of stocks such as raw materials, semi-finished goods, finished goods which was duly accepted/acknowledged by the Corporate Debtor (page Nos. 40 to 56 of paper book). Mortgage of the property has been created on 22/10/2013 and 03/02/2015.

6. The Corporate Debtor has defaulted payment and the date of default is 30/09/2015 as stated by the Petitioner Bank (page No. 5 of paper book).

7. 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 Nos. 185 to 230 of paper book). The Petitioner Bank has claimed their dues of Rs. 27,56,18,408.00Ps (Rupees: Twenty Seven Crores Fifty Six Lakhs Eighteen Thousand Four Hundred Eight Only) as on 25-10-2018 as computed in the Page No. of the paper book which is given below:

<i>Particulars</i>	<i>Outstanding (Principal + Interest + Penal Interest as on 25/10/2018)</i>
CCH	Rs. 27,56,18,408.00/-
Total	Rs. 27,56,18,408.00/-

8. The Financial Creditor also filed an IA 445 of 2019 for substituting the name of Dena Bank with Bank of Baroda on account of the amalgamation of the Dena Bank with the Bank of Baroda *vide* the notification of the Government of India dated 02/01/2019. Thus, the IA filed has been admitted and the name of the Dena Bank is substituted with the Bank of Baroda.

9. 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 occurred is 30-9-2015.

10. The present application has been filed by the Financial Creditor under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy before this Adjudicating Authority to initiate the Corporate Insolvency Resolution Process.

11. The Financial Creditor, to substantiate its claim, has enclosed following documents: —

- i.* Copy of Sanction details dated 17/09/2013. (Page Nos. 16 to 26 of paper book)
- ii.* Copy of Sanction Letter dated 15/01/2015. (Page Nos.27 to 34 of paper book)
- iii.* Copy of Deed of Hypothecation dated 25/09/2013. (Page Nos. 40 to 52 of paper book)
- iv.* Copy of Deed of Hypothecation dated 07/02/2015. (Page Nos. 53 to 56 of paper book)

- v. Copy of Letter of Guarantee dated 25/09/2013 signed by Shri Lavjibhai Popatbhai Kakadiya, Smt. Gauriben L. Kakadiya and Shri Vijaybhai L. Kakadiya. (Page Nos. 57 to 67 of paper book)
- vi. Copy of Letter of Guarantee dated 07/02/2015 signed by Shri Lavjibhai Popatbhai Kakadiya, Smt. Gauriben L. Kakadiya, Shri Vijaybhai L. Kakadiya and Shri Dhaval L. Kakadiya (Page Nos. 68 to 78 of paper book)
- vii. Copy of Instrument relating to Deposit of Title Deeds executed on 23/10/2013 bearing Registration No. 1145. (Page Nos. 79 to 90 of paper book)
- viii. Copy of Instrument relating to Deposit of Title Deeds executed on 03/02/2015 bearing Registration No. 155. (Page Nos. 91 to 104 of paper book)
- ix. Copy of Letter of General Lien and Set off from the Borrower dated 25/09/2013. (Page No. 162 of paper book)
- x. Copy of Letter of continuity dated 25/09/2013. (Page No. 163 of paper book)
- xi. Copy of Letter of Lien and Set off from Guarantor dated 25/09/2013. (Page No. 164 of paper book)
- xii. Copy of Letter of continuity dated 07/02/2015. (Page No. 171 of paper book)
- xiii. Copy of Letter of General Lien and Set off from the Borrower dated 07/02/2015. (Page No. 178 of paper book)
- xiv. Copy of Letter of General Lien and Set off from the Guarantor dated 07/02/2015. (Page No. 179 of paper book)
- xv. Copy of CRIF Report. (Page Nos. 180 to 184 of paper book)
- xvi. Copy of Statement of Account under the Banker's Books Evidence. (Page Nos. 185 to 230 of paper book)

**12.** In the present matter, this Tribunal, *vide* its order dated 04/12/2018 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, on Paper Publication the Counsel of the, Corporate Debtor appeared before this Tribunal on 20/03/2019 and sought time to file objections and Prayer was granted to file objection within two weeks.

**13.** The Learned Lawyer of the Applicant Bank (FC) clarified their positions and put forth their arguments relying on the documents submitted by them, which were executed by the Corporate Debtor and the Mortgagors/Guarantors.

The Learned Lawyer has also stated that the Principal Borrower and the Guarantors have failed to honour the terms and conditions of the credit facilities granted by the Applicant Bank and hence, the applicant Bank had classified the account as "Non Performing Asset" (NPA) on 31/12/2015.

**13.1** It is submitted that the pursuant to the said default, the Applicant Bank issued a Notice under section 13(2) of the SARFAESI Act on 11/03/2016 demanding the outstanding amount of Rs. 19,69,51,987.64Ps. The Applicant Bank further issued Notice under section 13(4) of the SARFAESI Act on 13/06/2016.

**13.2** It is submitted that the Applicant Bank filed O.A. No. 241 of 2016 before the Hon'ble Debts Recovery Tribunal, Ahmedabad and the said Application is pending before the Hon'ble Debts Recovery Tribunal of Ahmedabad.

**14.** The matter was taken up and heard both sides by this Bench on 4-12-2018, 18-1-2019, 25-2-2019, 20-3-2019, 2-5-2019, 29-7-2019, 19-8-2019, 13-9-2019 and 30-9-2019. The counsels of the Petitioner and the Respondent were present and put forth their submissions before the Bench.

**15.** It is submitted that the Petition is not barred by Law of Limitation as the last Payment come into the account was on 26/02/2016, when the Petition is filed on 30/11/2018.

**16.** It is a settled legal position that the pendency of 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 IB. Code is "Remedy in Rem" in respect of the CD.

**17.** 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 IB. Petition.

*Observations*

**18.** It is also found, that the Petitioner Bank has submitted the documents duly executed by the Corporate Debtors 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.

The Cash Credit was sanctioned and released by the Petitioner Bank and the same was availed by the CD, Riddhi Siddhi Cotton Ginning & Pessing Private Limited. The Charges have been registered by the CD with the ROC in favour of the Petitioner Bank on 07/02/2015 for Rs. 20.00 Crores *vide* charge ID 10456547 which is yet to be satisfied.

**18.1** The CD has defaulted in making repayment of loan/credit facilities to the Petitioner Bank and the date of default is 30/09/2015.

**18.2** The Petitioner Bank has filed the petition within the period of limitation, as the last payment into the Account has come on 26/02/2016.

**18.3** SARFAESI proceeding initiated on 11/03/2016, DRT proceedings started on 17/03/2016 *vide* O.A. No. 241 of 2016 filed before DRT-II, Ahmedabad.

**18.4** The present LB. Petition is filed by the duly authorised official of the Applicant Bank in a prescribed format under section 7 of the LB. 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).

**ORDER**

**19.** Considering the material, papers filed by the Petitioner Bank, arguments of both parties and the facts mentioned in the Para Nos. 18, 18.1, 18.2, 18.3, 18.4 & 18.5 this Adjudicating Authority is satisfied that,

- (a) The Corporate Debtor availed credit facilities from the Financial Creditor.
- (b) Existence of debt is above Rs. One Lakh;
- (c) Debt is due;
- (d) Default has occurred on 30/09/2015;
- (e) Petition has been filed within the limitation period as the last payment into the account has come on 26/02/2016, when the petition has been filed on 30/11/2018.
- (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 Observations/Directions. The date of admission of this petition is 13/01/2020.

**20.** This Adjudicating Authority hereby appoints, as proposed by the Financial Creditor Mr. Atul Mittal, having Insolvency Professional Registration No. IBBI/IPA-001/IP-P000439/2017-18/10762, Email ID: a.mittalmc@gmail.com, Address: 174, Balco Apartments, Plot No. 58. IP Extension, Delhi-110092, 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 and to act further as per the order/directions issued by this Adjudicating Authority and to follow the provisions under sections 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code, 2016.

**21.** As per the provisions of sections 13 and 14 of the IB 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 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.
- 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 period.
- 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.

**22.** The IRP is hereby advised to adhere the time limit as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP" in short) and perform the duties as specified under sections 17, 18, 20 and 21 of I.B Code. The Interim Resolution Professional shall perform all his functions contemplated, *inter alia*, in sections 15, 17, 18, 19, 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.

**23.** It is also observed that the Petitioner Bank has now claimed total dues of Rs. 27,56,18,408.00Ps which includes Outstanding + Undebited Interest as on 25/10/2018, whereas the Financial Creditor had claimed total dues of Rs. 19,69,51,987.64Ps as on 11/03/2016 under SARFAESI. 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) 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 interest at the rate of Petitioner Bank's One Year MCLR or One Year MCLR + 1% without any penal/overdue interest.

**24.** 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.

**25.** Thus the present IB petition filed under section 7 of the IBC stands admitted on 13/01/2020 with the above observations and directions.