

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No 166
CP(IB) 169 of 2019

Order under Section 7 IBC

IN THE MATTER OF:

Canara Bank
V/s
Nakoda Ltd

.....Applicant

.....Respondent

Order delivered on ..12/07/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Virendra Kumar Gupta, Hon'ble Member(T)

PRESENTS:

For the Applicant :
For the IRP/RP :
For the Respondent :

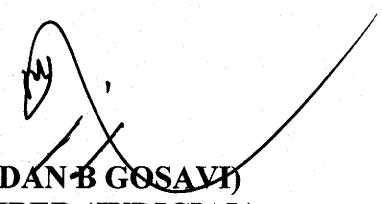
ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

SK


(MADAN B GOSAVI)
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1**

C.P.(IB) No. 169/NCLT/AHM/2019

[An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

Canara Bank

112, J.C. Road,
Bangalore-560002
And Branch Office at
Specialised Prime Corporate Branch
at Maker Chambers-III, 7th Floor,
Nariman Point, Mumbai-400021

Applicant
(Financial Creditor)

Versus

M/s. Nakoda Ltd.

Registered Office at
Block No.1 & 12 to 19,
Village-Karanj,
Tal. Mandvi,
Surat, Gujarat-394110

Respondent
(Corporate Debtor)

**Order Reserved on 06.07.2021
Order delivered on 12.07.2021**

**Coram: MADAN B. GOSAVI, MEMBER(J)
VIRENDRA KUMAR GUPTA, MEMBER (T)**



Appearance:

Learned Senior Counsel Mr. Navin Pahwa, appeared for the Financial Creditor.

Learned Counsel Mr. Jaimini Dave, appeared for the Corporate Debtor.

ORDER

[Per Bench]

1. The Applicant Canara Bank has filed this application under Section 7 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as **"the IB Code"**] read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as **"the Rules"**) to initiate corporate insolvency resolution process [hereinafter referred to as **"CIRP"**] against M/s. Nakoda Ltd. the corporate debtor for the default amount of Rs.375,27,17,744.84/- along with interest and penal Interest aggregating to Rs. 908,68,77,953.84/-and the date of default is 31.12.2019.
2. It is stated that from 1986 to 2013, the Financial Creditor granted and disbursed in favour of the Corporate Debtor aggregated loan of Rs.428.00 crores including cash credit and Term Loan Facilities. The term of loan and credit facilities were extended and enhanced from time to time. The account of the corporate debtor was classified as NPA on 31.05.2014. The last credit entry in the accounts of the corporate debtor was on 12.10.2015 for an amount of Rs. 5,55,988/-In this application, the issue of not payment of an outstanding amount of loan has involved to the tune of Rs. 375,27,17,744.84/-.
3. We have heard both the counsels and perused the records. This case was adjourned from time to time on the ground that the issue of whether entries made in balance sheets amount to an

acknowledgement of debt under section 18 of the Limitation Act, 1963 was pending before the Hon'ble Supreme Court.

4. The learned senior counsel for the Financial Creditor submitted that the corporate debtor has acknowledged its liability in its balance sheet and auditor's report as of 31.03.2015, 31.03.2016 and 31.03.2017.
5. Given the above facts, various pleas such as no valid power of attorney, the petition is barred by limitation taken by the Corporate Debtor. As far as concerned the plea regarding no valid power of attorney is not valid, On perusal as per clauses no. 10, 11 and 12 of the power of attorney mentioned that the applicant is authorized to initiate and prosecute insolvency proceedings by and on behalf of the bank. From the date of authorization to the applicant bank has never revoked the Power of Attorney. Hence, the question that the application is not authorized to file the present application does not arise. As far as concerned about the other plea regarding the petition is barred by limitation is also not valid, On perusal of balance sheet and auditor's report it is noted that the corporate debtor, has itself acknowledged its liabilities. The recent judgement passed by the Hon'ble Supreme Court in **"Asset Reconstructions Company India Limited Versus Bishal Jaiswal"** held that the entries made in the balance sheet of corporate debtor amount to an acknowledgement of debt under section 18 of Limitation Act, 1963 and, would extend the period of limitation.

It is also noted that the amount is due and payable and more than the threshold limit as prescribed under section 4 of the IB Code. The default has occurred. The question of limitation is also not

arisen as seen from the record it proves that the CD has already acknowledged the debt in its balance sheet and auditor's report. Hence, considering the facts and circumstances of the case, we hold that the application filed u/s 7 deserves to be admitted.

6. The name of IRP has also been proposed which is mandatory as per the Provision of IB Code, 2016, whose consent is on record. There exists no material to show that any disciplinary proceeding is pending against proposed IRP. Hence, we appoint the same to conduct the CIRP in a time-bound manner.
7. As a result, this petition is allowed and stands admitted. We pass the following order:

ORDER

- I. Corporate Debtor M/s Nakoda Limited is admitted in the Corporate Insolvency Resolution Process under Section 7 of Insolvency and Bankruptcy Code, 2016.
- II. We appoint **Mr. Vikash Praksh Gupta**, registration no. **IBBI/IPA-001/IP-P00501/2017-2018/10889** under section 13 (1) (c) of the IB Code as IRP.
- III. That the Moratorium under Section 14 of the Code shall come to effect from the date of the order till the completion of 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.

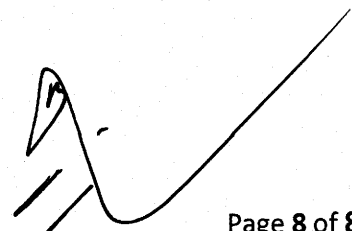
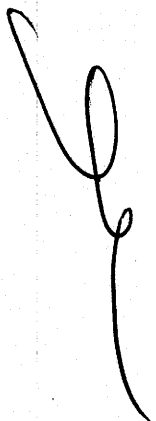
- IV. The Adjudicating Authority hereby prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Debtor including the execution of any judgment, decree or order in any Court of law and further prohibits a Tribunals, Arbitration Panels or other Authority(s), transferring, encumbering, alienating or disposing (of by the Corporate Debtor) any of Corporate Debtor assets or any legal right or beneficial interest therein; 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 SARFAESI Act, 2002 the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- V. Further, litigation or any application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, before the pronouncement of this order such proceedings are expected to be dealt with in accordance with law i.e Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.
- VI. That the supply of essential goods or services to Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium, period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of assets and management of the Corporate Debtor.
- VII. The IRP so appointed shall make the Public announcement of the Corporate Insolvency Resolution Process (CIRP) be made immediately as specified under Section 13 of the Code and by calling for submissions of the claim under Section 15 of the Code.

VIII. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 &21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with management of the Corporate Debtor are under legal obligation as per Section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter, or any other person required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

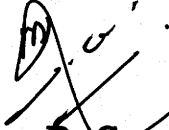
IX. The IRP shall be under a duty to protect and preserve the value of the property of the Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of the obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

- X. We direct the Financial Creditor / Applicant to pay the IRP a sum of Rs. 50,000/- (Rs. Fifty thousand only.) as fees & expenses till the COC decides about his fees/expenses.
- XI. The Registry is directed to communicate this order to the Petitioner-Financial Creditor, Corporate Debtor, and the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on the website immediately after pronouncement of the order.
- XII. The commencement of the Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.
- XIII. This CP(IB) no. 169 of 2019 stands allowed and disposed-off.





(Virendra Kumar Gupta)
Member (Technical)



(Madan B. Gosavi)
Member (Judicial)

R.S.