

**BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

C.P. (I.B) No.480/NCLT/AHM/2019

**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 23.09.2020**

Name of the Company: Jain Sons Finlease Ltd
V/s
Sort India Envrio Solutions Ltd

Section : 7 of the Insolvency and Bankruptcy Code, 2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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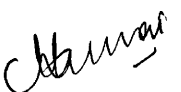
ORDER

(through video conferencing)

Advocate, Mr. Ashutosh Dave appeared on behalf of the Petitioner.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**


**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 23rd day of September, 2020

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

C.P. No.(IB) 480/7/NCLT/AHM/2019

In the matter of:

JAIN SONS FINLEASE LIMITED

Babukhan's Millenium Centre, 4th Floor

Block B,

Premises No. 403 and 404 (6-3-1099/1100)

Somajiguda

HYDERABAD 500 082

Telangana

:

Petitioner

[Financial Creditor]

Versus

M/s. Sort India Enviro Solutions Limited

"Shankarwadi"

Shastri Bridge

Nava Yard Road

Fategujn

VADODARA 390 002

Gujarat State

:

Respondents

[Corporate Debtor]

Order delivered on 23rd September, 2020

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

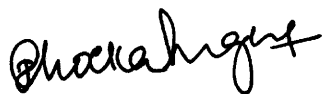
Advocate Mr. Ashutosh S. Dave for petitioner.

Advocate Mr. Abhishek Mehta for respondent.

ORDER

[Per se: Ms. Manorama Kumari, Member (J)]

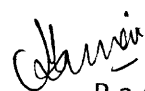
1. Mr. Chirag Desai, Company Secretary, being authorised signatory of Jain Sons Finlease Limited, filed this petition under section 7 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) 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/financial creditor is a company duly incorporated on 15th February, 1998 under the Indian Companies Act, 1956 and registered with the Reserve Bank of India as non-banking finance company having its Registered office at Somajiguda, Hyderabad, Telangana and corporate office at Mumbai, Maharashtra State is engaged in the business to lend or advance money either with or without security and to arrange or negotiate loans. Identification No. of the applicant company is U65910TG1998PLC088941.
3. The respondent/corporate debtor is an unlisted public limited company duly incorporated on 19th January, 2010, having identification No. U90000GJ2010PLC059257 and having its corporate office at Vadodara, Gujarat State. The respondent company is engaged in the business of waste management i.e. collecting, processing and selling of waste paper. Authorised share capital of the respondent company is 2,00,00,000/- and paid up share capital is Rs. 2,00,00,000/-.
4. The applicant has submitted that after executing Facility Agreement dated 26.12.2014 (page 111-177), the applicant had sanctioned working capital loan of Rs. 4,00,00,000/- (Rupees four crores only) to the respondent. That, the said term loan was required to be repaid within a period of 24 months along with interest @ 19.35% per annum on monthly basis. That, to secure the loan, financial debtor placed on record of the petition the deed of personal guarantee duly executed by Mr. Paresh T. Parekh and Mr. Manish G. Patel and a demand promissory note.
5. It is further submitted by the applicant that, after executing facility agreement dated 27th May, 2015, another working





capital term loan of Rs. 1,50,00,000/- (Rupees one crore and fifty lakhs only) was sanctioned to the respondent and the respondent had provided additional security by pledging 2,00,000 equity shares of the respondent company of Rs. 10/- each representing 10% of the fully paid shares of the company held by Mr. Paresh T. Parekh, in favour of the petitioner by transferring the right, title, interest and ownership through a duly executed power of attorney.

6. It is further submitted by the applicant that having received the payment of first term loan of Rs. 4.00 crores which was scheduled to end on 26th December 2016, petitioner had closed the loan account on 29th January, 2016 and had released the documents which was taken as security.
7. It is further submitted by the applicant that, the respondent, for the third time applied for credit facility of Rs. 2.00 crores against which a loan of Rs. 80.00 lacs carrying interest @ 18.5% were sanctioned. That apart, on the same day itself, the respondent had requested for another loan of Rs. 20.00 lacs. That, documents like facility agreement, demand promissory note, deed of personal guarantee etc. relating to the term loan of Rs. 80.00 lacs and Rs. 20.00 lacs were executed on 17th June, 2016.
8. The petitioner has further stated that despite repeated requests the respondent failed to make payment of the debt and the petitioner was compelled to issue notice through advocate dated 17th October, 2018 demanding payment of unpaid financial debt due from the respondent. It is further stated by the applicant that as per the statement of account maintained by the petitioner dated 20th May, 2019, the default occurred on 20th November, 2019 and total amount of **Rs. 2,24,74,685/- (Rupees two crores twenty-four lacs seventy-four thousand six hundred eighty-five only)** is due





and payable by the respondent as per the computation given at page No. 12 to the application.

9. The applicant has submitted copy of the following documents in support of its claim: -

Sl. No.	Particulars	Page Nos.
1	Affidavit in support of the petition	1-15
2	Form 1	16-24
3	Master data of petitioner	25-47
4	Board resolution dated 22.01.2019 authorising Mr. Chirag Desai, Company Secretary to sign the petition	48-49
5	Master Data and Memorandum of Association of respondent	5-67
6	Board resolution dated 18.12.2014 passed by respondent company to avail credit facility from petitioner	68-110
7	Facility agreement dated 26.12.2014	111-177
8	Deeds of personal guarantee, demand promissory note, drawdown request and bank statement	178-192
9	Application form dated 27.04.2015, term sheet dated 11.05.2015 and Board resolution dated 18.05.2015	193-201
10	Facility agreement dated 27.05.2015	202-262
11	Power of attorney dated 27.05.2015 executed by Mr. Paresh T. Parekh	263-273
12	Communication for closure of loan account of Rs. 4.00 crores	274-274B
13	Application form, facility agreement dated 17.06.2016	275-395
14	Legal notice sent by petitioner under section 138 of Negotiable Instruments Act, 1881	396-402
15	Complaint dated 28.07.2017 filed before the Metropolitan Magistrate, Mumbai	403-409
16	Notice sent by petitioner on various dates under the provisions of I & B Code	410-421
17	Copy of intimation received from Mr. Manish Shah to act as IRP	423-423

10. Respondent appeared and filed affidavit in reply accompanied by certain documents. Respondent has denied

Chirag Desai

Manish Shah

the averments made in the application filed by the applicant. The first and foremost objection raised by the respondent is that the amount arrived at by the petitioner is on the basis of incorrect calculations and figures and the demanded amount is highly disputed and/or debatable. Further, it is alleged by the respondent that the agreement is silent with regard to the repayment schedule. That, since there is no repayment schedule, the fact of the calculation of penal interest or for that matter of fact penal charges or interest calculation are without any basis and/or justification and are disputed between the parties.

Findings

11. Heard learned lawyers appearing for both the sides and perused the documents annexed to the application/reply.
12. On perusal of the records it is found that the first loan of Rs. 4.00 crores sanctioned by the petitioner on 27.12.2014 was fully repaid by the corporate debtor as per the repayment schedule and communication to that effect was also addressed to the corporate debtor on 29.01.2016. Subsequently, vide facility agreement dated 27.05.2015, second term loan of Rs. 1,50,00,000/- (Rupees one crore fifty lacs only) was sanctioned. Thereafter, vide facility agreement dated 17.06.2016 third term loan of Rs. 80,00,000/- (Rupees eighty lacs only) was sanctioned. Record shows that on the same day itself i.e. on 17.06.2016, fourth term loan of Rs. 20,00,000/- was sanctioned by the petitioner. As per the documents furnished by the petitioner, loan amount sanctioned/disbursed vis-à-vis total outstanding are as under: -

Sr. No.	Loan Amount Rs.	Date of sanction	Paid/ outstanding	Total outstanding Rs.
01	4,00,00,000/-	27.12.2014	Paid	--
02	1,50,00,000/-	27.05.2015	Outstanding	1,28,86,655/-
03	80,00,000/-	17.06.2016	Outstanding	74,81,659/-
04	20,00,000/-	17.06.2016	Outstanding	21,06,371/-

Shreea Singh

Chakraborty

13. On perusal of the records it is found that the respondent itself has admitted having taken a term loan of Rs. 4.00 crores and having repaid the entire loan as per the schedule agreed upon between the parties. The respondent has also admitted (para 6 of affidavit in reply) having taken additional loan of Rs. 2.50 crores subsequently. Thus, the respondent has admitted the debt. The only objection raised by the respondent is that in absence of repayment schedule, penal interest/charges or interest calculation are without any basis and/or justification are disputed between the parties. On perusal of records it is found that no document is produced by the respondent fortifying such claim. On the other hand, the petitioner has put on record (page 25-30 of rebuttal documents) the repayment schedule duly sealed/signed and acknowledged/accepted by the respondent. That, the application is filed on 9th July, 2019. On perusal of the records it is found that from time to time the corporate debtor has made payments towards the outstanding loan and thus acknowledged the debt. That, the application filed by the financial creditor is well within limitation. That, the documents filed along with the application is sufficient to prove that there exists financial debt.

14. In view of the above discussions, the Adjudicating Authority is of the considered view that there is a debt due to "financial creditor" and there is default on the part of the corporate debtor. In view of the judgement of the Hon'ble Supreme Court in "**Innoventive Industries Ltd. vs. ICICI Bank & Anr.(2018) 1 SCC 407**" the Hon'ble Supreme Court while explaining section 7 and 8 of the IB Code, observed and held as under: -

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a 'debt' becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3 (12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-





payment of even part thereof or an instalment amount.

For the meaning of "debt", we have to go to Section 3 (11) which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of claim, we have to go back to Section 3 (6) which defines claim to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5 (7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5 (8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7 (1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor. It need not be a debt owed to the applicant financial creditor. Under Section 7 (2), an application is to be made under Sub-Section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in part I, particulars of the corporate debtor in part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4 (3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or sped post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the

Shoacharya

Sharma

basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7 (5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt" which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is complete, in which case it may give notice to the applicant to rectify the defect within seven days of receipt of a notice from the adjudicating authority. Under Sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within seven days of admission or rejection of such application, as the case may be.

15. It is also held in *Mobilox Innovations (P) Ltd. vs. Kirusa Software (P) Ltd.* (2018) 1 SCC 353 as under: -

"38.....in the case of a corporate debtor who commits a default of financial debt, the adjudicating authority has merely to see the records of the information utility or other evidences produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due", i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority then the adjudicating authority may reject an application and not otherwise.....".

16. That, the application is found to be complete in all respect. Hence it does not warrant any rejection or dismissal.
17. That, the records available shows that the applicant had sanctioned term loans to the respondent company, to be repaid within the stipulated period as per the terms and conditions agreed between the parties. Records available

Shreea Singh

Chakraborty

shows that the respondent has not cared to reply the notice issued by the applicant.

18. 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.
19. 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'.
20. 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 Mr. Manish Shah. The Adjudicating Authority hereby appoint Mr. Manish Shah, A/502, Krishna Palace, Thakur Complex, Kandivali (East), Mumbai 400 001 (Mobile 9821071894) (Email ID mdshah0211@gmail.com) having registration No. IBBI/IPA-001/IP-P00094/2017-18/10194 to act as an interim resolution professional. Form 2 of the proposed interim resolution professional has been annexed and placed at page No. 423 of 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.
21. 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.

22. 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.

23. 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.

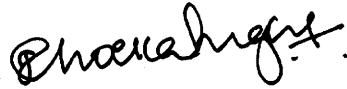
24. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion





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.

25. This Petition stands disposed of accordingly.
26. No order as to costs.
27. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Resolution Professional.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

Nair