

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

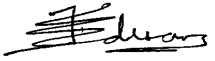
**C.P. (I.B) No.420/NCLT/AHM/2018**

**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 17.02.2020**

Name of the Company: Bank of India  
V/s.  
Eskay K 'N' IT (India) Ltd.

Section : Section 7 of the Insolvency and Bankruptcy Code

<b>S.NO.</b>	<b>NAME (CAPITAL LETTERS)</b>	<b>DESIGNATION</b>	<b>REPRESENTATION</b>	<b>SIGNATURE</b>
1.	KULDEEP K ADESAARI FOR KETAN M PARIKH	ADVOCATE	FINANCIAL CREDITOR	
2.				

**ORDER**

The Petitioner is represented through learned counsel.

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

  
**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

Dated this the 17th day of February, 2020

  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

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

**C.P. No.(IB) 420/7/NCLT/AHM/2018**

**In the matter of:**

**Bank of India**

Having head office at  
Star House, Plot No. C/5,  
G Block, Bandra Kurla Complex  
Bandra (East)  
MUMBAI 400 051

Through

Asset Recovery Management Branch  
Having its office at Bank of India Building  
28, S.V. Road  
Andheri (E)  
MUMBAI 400 058

:

**Versus**

**Petitioner**  
[Financial Creditor]

**M/s. Eskay K 'N' IT (India) Limited**

58-B, Dhanu Udyog Industrial Area  
Piperia  
Silvassa (UT) 396 230

:

**Respondent**  
[Corporate Debtor]

**Order delivered on 17<sup>th</sup> February, 2020**

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

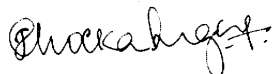
**Appearance:**

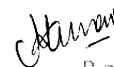
Advocate Mr. Harmish K. Shah present for financial creditor/petitioner  
Advocate Mr. Ketan M. Parikh for respondent.

**ORDER**

**[Per: Ms. Manorama Kumari, Member (Judicial)]**

1. Mr. Ajay Kumar Tanwani, being authorised signatory, 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 Bank, incorporated on 07.09.1906, having its head office at Bandra Kurla Complex, Bandra (E), Mumbai 400 051, having PAN No. AAACB0472C, 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. Eskay K 'N' IT (India) Limited is a company incorporated under the Companies Act, 1956 on 24<sup>th</sup> April, 1987, having identification No. L18109DN1987PLC000034 and having its registered office at Silvassa (U.T.). That Authorised share capital of the respondent company is Rs. 165,00,00,000.00 and paid up share capital is Rs. 28,08,32,000.00.
4. That, the applicant/financial creditor has submitted that the respondent has defaulted in payment towards principal and interest against the term loans, working capital fund based limit etc., sanctioned/ disbursed to the respondent as per the details annexed to the application at page **No. 4-5**.
5. The applicant has submitted copy of the following documents in support of their claim: -

Sl. No.	Particulars	Page Nos.
1	Application by financial creditor for initiation of corporate insolvency against respondent company under Section 7 of IBC	1-14
2	Detailed working for computation of disbursed amount and date of disbursement	15
3	Working for computation of amount of default, dates of defaults and days of defaults	16
4	Affidavit verifying the application	17-18
5	Power of attorney in favour of Mr. Ajay Kumar Tanwani, Chief Manager	19-38
6	Sanction letter dated 05.11.2008	46-55
7	Inter-se consortium agreement dated 12 <sup>th</sup> February, 2009	56-72
8	Board resolution dated 11.02.2009 of corporate debtor	73-77
9	Working capital consortium agreement dated 12.02.2009	78-127
10	Joint deed of hypothecation dated 12.02.2009	128-151
11	Joint and several deed of continuing guarantee dated 12.02.2009 executed by Mr. Navin Tayal, Mr. Sanjay Tayal, Mr. Pravin Tayal in favour of the financial creditor	152-166
12	Joint deed of mortgage dated 14.09.2009 registered with Registrar, Pardi, dist. Valsad	167-192
13	Sanction letter dated 18.11.2010	193-201
14	Inter-se consortium agreement dated 21.01.2012	202-215
15	Working capital consortium agreement dated 21.1.2012	216-248
16	Joint deed of hypothecation dated 21.1.2012	249-269

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17	Joint and several deed of continuing guarantee dated 21.1.2012 executed by Mr. Navin Tayal, Mr. Sanjay Tayal, Mr. Pravin Tayal and Mr. Ram Pratap Tayal in favour of financial creditor	270-283
18	CDR approval letter dated 24.12.2012	284-297
19	Master restructuring agreement dated 31.12.2012	298-360
20	Trust retention account agreement dated 31.12.2012	361-445
21	Sanction letter dated 28.2.2013	446-455
22	Working capital consortium agreement dated 28.06.2013	456-511
23	Joint deed of hypothecation dated 29.07.2013	512-533
24	Inter-se agreement dated 28.06.2013	534-566
25	Joint and several deed of continuing guarantee dated 28.06.2013 executed by Mr. Navin Tayal, Mr. Sanjay Tayal, Mr. Pravin Tayal and Mr. Ram Pratap Tayal in favour of financial creditor	567-588
26	Recall/demand notice dated 25 <sup>th</sup> March, 2015 under SARFAESI addressed to corporate debtor	589-597
27	Reply by corporate debtor dated 20.05.2015 to the recall/demand notice issued on 25.03.2015	598-604
28	Reply by the financial creditor dated 06.06.2015 to the objections raised by the corporate debtor dated 20.05.2015	605-608
29	Notice demanding possession of Secured Assets of the SARFAESI Act	609-611
30	Certified copy of statement of accounts of the corporate debtor as per the bankers books Evidence Act along with IT certificate and certificate of interest	612-724
31	Copy of audited balance sheet of the corporate debtor for the year 2016-17	725-749
32	Copies of certificate issued by Registrar for the charge registered with Registrar of Companies	750-757
33	Copy of report available with CIBIL	758-767
34	Speed post AD receipt of dispatch of application and documents copy to corporate debtor	768

6. That, the petitioner being financial creditor has to recover an amount of **Rs. 160,17,48,441.41 (Rupees one hundred sixty crores seventeen lacs forty-eight thousand four hundred forty-one and paise forty-one only)** as on **31.07.2018**. That, the above amount include principal amount of loans sanctioned under different schemes, accrued interest and penal interest as applicable as per the calculation in tabular form annexed to the application at **page No. 4-5**.
7. That, the respondent filed affidavit in reply inter alia raising various objections. The first and foremost objection raised by the respondent is that the present application filed in August, 2018 is time barred (**page 3**). It is alleged that the applicant has suppressed material facts (**page 4**) with regard to the action already taken under the provisions of RDDB Act, 1993. That, the counter claim application filed under the relevant provisions of RDDB Act which has the same effect as of the claim application filed by the applicant and having filed the said application (O.A.) before DRT for recovery of its dues, the present action of the

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applicant bank u/s 7 of the IBC 2016 is redundant. That, since the alleged default in the instant case is not crystalized (**page 5**) as on date and as such the instant petition is legally untenable. That, the applicant has not relied upon any recall notice (**page 6**) in the entire application to establish that the account of perpetual nature was ever recalled. It is further alleged that the entire set of papers enclosed with the application does not disclose the account of the respondent was classified as NPA as on 28.04.2014 and/or 2014 (**page 7**). That, **no amount is due and payable** to the applicant for which the instant petition has been filed. That, General Manager of the applicant bank has no authority to delegate power to Chief Manager.

### **Findings**

8. Heard both sides at length as also perused the documents annexed with application/reply.
  
9. On perusal of the records prima facie it appears that the objections/allegations raised by the respondent are illusory and not supported by any valid document, whereas, the applicant bank has filed volumes of papers documenting sanction, disbursement, working capital consortium agreement, joint and several deed of continuing guarantee filed by the applicant, CDR approval, master restructuring agreement, inter-se agreement, recall/demand notice, reply of corporate debtor to the demand notice etc. to substantiate its claim.
  
10. On perusal of the records it is found that the applicant has placed on record (**page No. 46**) offer letter dated 05.11.2008, wherein it is categorically stated that the credit facilities offered to the corporate debtor are subject to the broad terms and conditions mentioned in Annexure – I & II of the said letter. It is further stated in the said letter that “notwithstanding anything to the contrary stated or suggested therein, the outstanding indebtedness, whether actual or contingent, under these facilities is subject to liquidation by you (respondent) on first demand by us (applicant)”.

*Shreeabhi*

*Attorney*

11. On perusal of the records it is found that the first and foremost objection raised by the respondent is that the application is barred by limitation. On perusal of the records it is found that the applicant bank has placed on record letter dated 28.02.2013 (**page No. 446**) addressed to the respondent company approving "sanction of bank's stand on final restructuring package under CDR mechanism". That, the said letter is stamped and signed by the respondent company as a token of acceptance of the terms and conditions laid down in the sanction letter/s. Further, the records reveal that from time to time the respondent has executed/entered into various documents acknowledging the debt. On perusal of the record it is also found that the respondent company has acknowledged the financial debt in the balance sheet as on 31.03.2017, statement of profit and loss for the year ended 31.03.2017, cash flow statement for the period ended 31.03.2017 and notes forming integral part of the balance sheet as on 31<sup>st</sup> March, 2017 (page 733-738). This itself shows that the respondent company has acknowledged the debt in the year 2017. Since the application is filed on 21.08.2018, it is well within time.
12. Another objection raised by the respondent is that the power of attorney holder is not competent to file an application on behalf of financial creditor.
13. In this context, it is desirable to refer to the decision of the *Hon'ble National Company Law Appellate Tribunal in Company Appeal (AT) (Insol.) No. 30 of 2017* in the matter between **Palogix Infrastructure Private Limited Vs. ICICI Bank Limited**. The findings in Para 36 are relevant for the purpose of taking a decision in this matter. Para No. 36 reads as follows;

*"36. In so far as, the present case is concerned, the 'Financial Creditor' Bank has pleaded that by Board's Resolutions dated 30<sup>th</sup> May, 2002 and 30<sup>th</sup> October, 2009, the Bank authorised its officers to do needful in the legal proceedings by and against the Bank. If general authorisation is made by any 'Financial Creditor' or 'Operational Creditor' or 'Corporate Applicant' in favour of its officers to do needful in legal proceedings by and against the 'Financial Creditor'/'Operational Creditor'/'Corporate*

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*Applicant', mere use of word 'Power of Attorney' while delegating such power will not take away the authority of such officer and for all purposes it is to be treated as an 'authorization' by the 'Financial Creditor'/'Operational Creditor'/'Corporate Applicant' in favour of its officer, which can be delegated even by designation. In such case, officer delegated with power can claim to be the 'Authorised Representative' for the purpose of filing any application under section 7 or Section 9 or Section 10 of 'I&B Code'."*

14. A bare reading of **Para No. 36** goes to show that a general authorisation made by 'Financial Creditor' or 'Operational Creditor' or 'Corporate Applicant' in favour of its officers to do needful in legal proceedings by and against the 'Financial Creditor'/'Operational Creditor'/'Corporate Applicant', is sufficient. It is further stated in Para 36 that mere use of word 'Power of Attorney' by delegating such power will not take away the authority of such officer and for all purposes it is to be treated as an 'authorization' by the 'Financial Creditor'/'Operational Creditor'/'Corporate Applicant' in favour of its officer, which can be delegated even by designation. It is further stated in Para 36 of the Judgment that, in case such officer delegated with power can claim to be the 'Authorised Representative' for the purpose of filing any application under section 7 or Section 9 or Section 10 of 'I&B Code.
15. In that Judgment in **Para No. 38**, it is further held that if an officer of a Bank such as **Senior Manager** who has been authorised to grant loan, for recovery of loan can also initiate 'Corporate Insolvency Resolution Process'.
16. The Hon'ble Supreme Court, in the Judgment delivered in the matter between **M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr., in Civil Appeal Nos. 8337-8338 of 2017, in Para No. 30** has clearly held as follows;

*"30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence 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"*

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*Chatterjee*

*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 that the adjudicating authority may reject an application and not otherwise."*

17. The second objection raised by the respondent is that petitioner has failed to establish the default on the part of the respondent. It is a matter of record that the petition reveals that the corporate debtor had availed term loan, fund/non fund based limits, working capital limits etc. from the petitioner bank and the respondent has acknowledged the debt from time to time.
18. The debt recovery proceedings are initiated by the Financial Creditor to recover the amount. Simply because the Financial Creditor initiated proceedings before the NCLT, it does not lie in the mouth of the corporate debtor to say that no default occurred. Corporate Debtor did not disclose any bona fide defence based on substantial grounds for the claim made by the Financial Creditor before this Authority. The above said evidence is sufficient to substantiate the plea of the Applicant that a default has been committed by the Corporate Debtor in payment of amount due and payable to the Applicant.
19. It is also a matter of record that the Applicant had granted several facilities including Cash Credit Facility to the Corporate Debtor and the Corporate Debtor fully availed those facilities. Those facilities carry interest applicable from time to time as per the terms and conditions mentioned in the Sanction Letters. Therefore, the amount due to the Financial Creditor from the Corporate Debtor is a financial debt. In view of the Judgment of the **Hon'ble Supreme Court, in case of M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr., in Company Appeal (AT)(Insolvency) No. 1 & 2 of 2017**, this Adjudicating Authority has to satisfy whether a default has occurred; whether the Application is complete; and whether any disciplinary proceeding is pending against the proposed Insolvency Resolution Professional.
20. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the Corporate Debtor


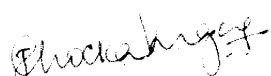
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committed default in paying the financial debt to the Applicant. On perusal of record and as also discussed above, it is held that there is existence of default and that the application under Section 7(2) of the Code is also complete in all respect.

21. In the instant case, the documents produced by the Financial Creditor clearly establish the 'debt'. Section 13 (2) Notice issued by the Financial Creditor clearly indicates that entire debt was recalled. There is a default on the part of the Corporate Debtor in payment of the 'financial debt'.
22. 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 has proposed the name of the Interim Resolution Professional namely Mr. Vikas Prakash Gupta. Therefore, this Adjudicating Authority hereby appoint Mr. Vikas Prakash Gupta, Chartered Accountants, 3<sup>rd</sup> Floor, Plot No. 16, B. Padmanabh Apartments, Tilak Nagar, Nagpur, Maharashtra 440 010 having IBBI registration No. IBBI/IPA-001/IP-P00501/2017-18/10889. Form 2 along with the certificate of registration of the proposed interim resolution professional has been furnished by the applicant separately where declaration is made that no disciplinary proceedings are pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.
23. In view of the above, the petitioner/financial creditor having fulfilled all the requirements of Section 7 of the Code, the instant petition deserves to be admitted.
24. 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.
25. 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.
26. 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.
27. This Petition stands disposed of accordingly with no order as to costs.
28. Communicate a copy of this order to the Applicant/Financial Creditor, Respondent/Corporate Debtor and to the Interim Resolution Professional.

  
**Chockalingam Thirunavukkarasu**  
**Adjudicating Authority**  
**Member (Technical)**

  
**Ms. Manorama Kumari**  
**Adjudicating Authority**  
**Member (Judicial)**