



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
COURT-IV**

**C.P. NO. (IB) 285 OF 2024**

**Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016**

**IN THE MATTER OF:**

Indian Bank

Versus

M/s Shyam Indofab Private Limited

**CORAM:**

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,  
HON'BLE MEMBER (JUDICIAL).**

**DR. SANJEEV RANJAN,  
HON'BLE MEMBER (TECHNICAL)**

No. 1640  
Date of Presentation of application for Copy 15/10/24  
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Date of Preparation of Copy 21/10/24  
Date of Delivery of Copy 22/10/24  
21.10.24  
JR/DR/AR/Court Officer  
National Company Law Tribunal  
New Delhi

**Order Delivered on: 27.08.2024**

**PRESENT:**

**For the Applicant : Adv. Rajesh Kr. Gautam**

**For the Respondent : Adv. Arun Saxena,  
Adv. Vikas Ashwani**





## ORDER

**PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)**

1. The Instant Application is filed on behalf of the Indian Bank (hereinafter referred to as "Applicant/Financial Creditor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process ('CIRP') against M/s Shyam Indofab Private Limited ("Respondent/ Corporate Debtor") having CIN U17299DL2012PTC251684 on the ground that the Corporate Debtor had committed a default in payment for an amount aggregating to Rs. 34,76,29,553/- (Thirty Four Crore Seventy Six Lakh Twenty Nine Thousand Five Hundred Fifty Three only)
2. The Corporate Debtor i.e. M/s Shyam Indofab Private Limited having CIN: U17299DL2012PTC251684 is incorporated dated 19/01/2012 under the provisions of the Companies Act, 1956 having its registered office situated at 1212A, Chiranjiv Tower 43, Nehru Place, South Delhi, New Delhi, Delhi, India, 110019. Since the registered office of the Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. Briefly stated facts of the case as mentioned in the Company Application, which are relevant to the issue in question, are as follows:-







- a) The Applicant submitted that the Corporate Debtor is in the business of manufacturing of knitted fabric, dyeing, processing and printing and has been enjoying financial facilities under 7 members Consortium of Bank including the Indian Bank.
- b) The Corporate debtor approached the Applicant Bank for grant of financial facilities for setting up Textile unit in Amravati. The applicant bank, accordingly, approved sanctioned Term Loan of Rs. 15.00 Crores vide sanction letter dated 11.03.2013. The Applicant has accordingly annexed the following documents to support its Contentions:
- i. Copies of Sanction letter dated 11.03.2013 for term loan of Rs. 15.00 Crores,
  - ii. Inter-se Agreement dated 11.10.2013,
  - iii. Letter of Declaration undertaking and authority dated 11.10.2013,
  - iv. Omnibus Indemnity for imports dated 11.10.2013,
  - v. Consortium meeting dated 11.10.2013,
  - vi. Declaration to be obtained from the Borrower dated 11.10.2013,
  - vii. Common Guarantee Deed dated 11.10.2013,
  - viii. Letter of Authority dated 11.10.2013,
  - ix. Joint deed of hypothecation dated 11.10.2013,
  - x. Agreement for Guarantee dated 11.10.2013,
  - xi. Agreement for Term loan facility, dated 11.10.2013,





- xii. Certificate of Creation of Charge ROC dated 11.10.2013,
- xiii. Legal Audit Report dated 10.03.2014,
- xiv. Letter for disbursement of fund dated 28.03.2014, Demand Promissory Note dated 28.03.2014.

c) The corporate Debtor further requested the Applicant Bank for grant of financial facilities to the extent of Rupees 10 Crore. The Applicant bank, in consideration of the request of the Corporate Debtor sanctioned Non-Fund Based Loan of Rs. 9.00 Crore and Working Capital of Rs. 1.00 Crore vide sanction letter dated 16.09.2019 in favour of the Corporate Debtor. The Applicant has accordingly annexed the following documents to support its Contentions:

- i. Copies of Said Documents including Sanction letter dated 16.09.2019 of Rs. 10 crore,
- ii. Agreement for Open Cash Credit dated 17.09.2019,
- iii. Agreement to Guarantee dated 17.09.2019,
- iv. Board resolution dated 14.09.2019,
- v. Agreement for hypothecation of Goods Received under advance payment Guarantees dated 17.09.2019,
- vi. Agreement for hypothecation of Moveable dated 17.09.2019, Demand Promissory Note dated 17.09.2019,
- vii. Inter-se Agreement between Bank of India and Bank of India Consortium dated 15.11.2019







d) The Corporate Debtor further approached the Applicant Bank and requested for a grant of Medium-Term Loan of Rs. 2.00 Crore for purchasing Machinery and also applied for enhancement of OCC limit from Rs. 1.00 Crore to Rs. 9.00 Cr. The Applicant Bank sanctioned the said proposal of the Corporate Debtor on 12.02.2020. The Applicant has accordingly annexed the following documents to support its Contentions:

- i. Copy Sanction letter dated 12.02.2020 for Medium Term Loan Agreement,
- ii. Agreement for hypothecation of Moveable dated 13.03.2020,
- iii. Demand Promissory Note dated 13.03.2020,
- iv. Agreement of Open Cash Credit dated 13.03.2020

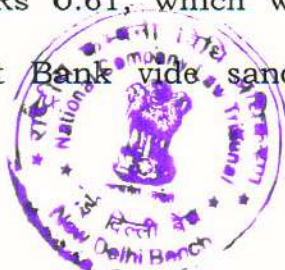
e) The Corporate Debtor approached the applicant bank and requested for a grant of Term Loan Facility under ECLGS [Emergency Credit Line Guarantee Scheme] for an amount of Rs. 1.8 Crore. The Applicant Bank sanctioned the said proposal of the Corporate Debtor on 16.04.2020. The Applicant has accordingly annexed the following documents to support its Contentions:

- i. Copies of Said Documents including sanction letter dated 16.04.2020 of Medium-Term Loan-II of Rs. 1.80 Crore,
- ii. Term Loan Agreement dated 20.05.2020,
- iii. Agreement for hypothecation of Moveable dated 20.05.2020,
- iv. Agreement for open cash credit dated 20.05.2020,





- v. Inter-se Agreement between Bank of India and Bank of India Consortium and undertaking by the Corporate Debtor dated 08.10.2020,
  - vi. Working Capital Consortium Agreement dated 08.10.2020,
  - vii. Joint deed of Hypothecation dated 08.10.2020,
  - viii. Deed of Guarantee 08.10.2020, Letter of Authority dated 08.10.2020.
- f) The Corporate Debtor, once again, requested the Applicant Bank for a grant of Term Loan Facility under WCTL under IND-GECLS-2.0 Scheme from another branch of Indian Bank, Panchkula Sector 11 for an amount of Rs. 1.64 Crore which was also sanctioned by the Applicant Bank vide sanction letter dated 23.12.2020. The Applicant has accordingly annexed the following documents to support its Contentions:
- i. Copy of Sanction letter of Rs. 1.64 Cr under IND-GECLS-2.0 Scheme dated 23.12.2020,
  - ii. Term Loan Agreement dated 23.12.2020,
  - iii. Agreement of Guarantee dated 23.12.2020,
  - iv. Agreement of Hypothecation of Moveable's dated 23.12.2020,
  - v. Demand Promissory Note dated 23.12.2020
- g) Additionally, the Corporate Debtor requested the Applicant Bank for a grant of Fresh Term Loan Facility (WCTL) of Rs 1.20 Crores and Fresh Sanction of FITL of Rs 0.61, which was approved and sanctioned by the Applicant Bank vide sanction letter dated







03.06.2021. The Applicant has accordingly annexed the following documents to support it Contentions:

- i. Copy of Sanction letter of Rs. 1.20 Crore and fresh sanction of FITL of Rs. 0.61 Crore dated 03.06.2021,
- ii. Inter-se Agreement dated 04.06.2021,
- iii. Borrower Confirmation to Inter Se Agreement dated 04.06.2021,
- iv. Deed of Hypothecation dated 04.06.2021
- v. Restructuring Agreement dated 04.06.2021,
- vi. Memorandum of Entry dated 04.06.2021,
- vii. Declaration Cum undertaking dated 04.06.2021,
- viii. Agreement for Pledge of Share dated 04.06.2021,
- ix. Personal Guarantee dated 04.06.2021,
- x. Undertaking dated 04.06.2021, Revival Letter dated 04.06.2021,
- xi. Letter of Authority to Bank dated 04.06.2021.

h) The Corporate Debtor in consideration and in pursuance to sanction of Term Loan Facility under GECLS (Guarantee Emergency Credit Line Scheme) approached the Applicant Bank for an amount of Rs 3.15 Crore, which was approved and sanctioned by the Applicant Bank vide sanction letter dated 25.01.2022. The Applicant has accordingly annexed the following documents to support it Contentions:





- i. Copies of Sanction letter dated 25.01.2022 of Rs. 3.15 Cr,
  - ii. Supplemental Loan cum Hypothecation Agreement dated 25.03.2022,
  - iii. Inter-se Agreement Between BOI and BOI Consortium dated 25.03.2022,
  - iv. Agreement dated 25.03.2022,
  - v. Term Loan Agreement dated 29.03.2022,
  - vi. Agreement of Guarantee dated 25.03.2022,
  - vii. Hypothecation agreement of second charge on Machinery/ Movables dated 29.03.2022,
  - viii. Demand Promissory note of Rs.3.15 Crore dated 29.03.2022, Letter of Authority dated 21.03.2022,
  - ix. Undertakings dated 21.03.2022.
- i) The Applicant Submitted that during the course of the business, the corporate Debtor has availed the following facilities sanctioned by the Indian Bank:

Sr. No	Facility	Sanctioned Amount
01	Cash Credit (A/c -6806092552)	9,00,00,000
02	Covid Emergency Loan(A/c No 6882796332)	1,80,00,000
03	MSME FITL Loan (A/c No. 7053095253)	61,00,000
04	IND GECLS 2.0 Loan (A/c No. 7185450301)	3,15,00,000
05	Term Loan (A/C No. 50179882407)	15,00,00,000
06	IND GECLS Loan (A/C No. 58004760547)	1,64,00,000
07	Non Fund Based Limit (LC)	9,00,00,000

The Applicant further submitted that the repayment of the aforementioned loan sanctioned by the Applicant Bank to the







Corporate Debtor is secured by Mortgage/ Hypothecation/ Pledge of the following:

- i. First pari-passu charge on the Present and Future Fixed Assets of the company.
- ii. First pari-passu charge Land and Building situated at plot no. T1, Additional Amravati Industrial Area (Textile Zone) measuring 60030 sq. mtrs.
- iii. First pari-passu charge Land and Building situated at plot no. T 1, Additional Amravati industrial area (Textile Zone) measuring 40000 sq. mtrs
- iv. Hypothecation of P&M/Other Fixed Assets of the company.
- v. First pari-passu charge on Government Receivables (other than GST Credit) of the company.
- vi. First pari-passu charge on Current Assets of the company (against Stock and Book Debts)
- vii. Pledge of TDR@ margin of 10% for LC limit of Rs. 9,00,00,000-(10% margin is appropriated in OCC for availed/devolved LCs amounting to Rs 7,62,58,736/-)
- viii. Pledge of 20% shares of company held in the name of Sandeep Gupta.
- ix. Second pari-passu charge on the Current Assets and Fixed Assets of the company.
- x. Second charge over Current and Fixed Assets created for the WCTL/GECLS Loan





**Submissions of the Ld. Counsel appearing for the Respondent/Corporate Debtor are:**

- a) The Respondent filed its short reply affidavit by Mr. Sandeep Gupta, who is Authorised Signatory of the Corporate Debtor. The Respondent acknowledged the debt and due and submitted that the corporate debtor decided not to file the reply to the Present application as there is no dispute to the amount of debt claimed by the financial creditor.
- b) The Respondent submitted It is submitted that even though the amount of debt is admitted by the Corporate Debtor, it does not have the capacity to make the said payment as it is going through a financial crunch and has no objection if the present petition is admitted.

**ANALYSIS AND FINDINGS**

5. We have heard the Ld. Counsel on behalf of the Applicant/Financial creditor and further perused the averments made in the Application, Affidavit filed by the Corporate Debtor
6. Further, it is relevant to refer the definition of Financial Creditor as provided in Clause 5(7) of the Code, 2016. The definition of Financial Creditor is reproduced herein in verbatim: -  
  
*5. Definitions: - (7) "financial creditor" means any person to whom a financial debt is owed and include a person to whom such debt has been legally assigned or transferred to;*
7. Adverting to the facts of the present case, it is undisputed the Corporate Debtor approached the Financial Creditor seeking financial assistance to







the tune of Rs. 34.76 crores, for its business activities. Additionally, The Applicant has filed Copy of record of default issued by the Information Utility in respect of the default of the debt committed by the corporate debtor. Moreover, in its short affidavit filed by the Corporate Debtor, it has admitted the debt and has submitted that it has no objection if the present application is admitted.

8. The next issue for consideration is whether the present application is filed within the limitation period. Owing to the non-adherence of the financial discipline by the Corporate Debtor, the account was declared as NPA on 04.06.2021. Subsequently, the Financial Creditor, vide Notice dated 03.02.2023 under section 13(2) of the SARFAESI Act, 2002, directed the Corporate Debtor to make payment of the over-due amount. Further it is submitted by the Applicant that the Corporate Debtor had issued Revival Letters dated 21.06.2021 to the Financial Creditor.
9. The **Hon'ble Supreme Court in Laxmi Pat Surana vs. Union Bank of India & Anr. Appeal No. 2734 of 2020** has held that if there is an acknowledgement of debt in writing within a limitation period, a fresh limitation period as per section 18 of Limitation Act commences from the date of the acknowledgement of debt. Therefore, by no stretch of imagination, the application is barred by the law of limitation as subsequently, there have been agreements and loan sanctioned by the Financial Creditor to the Corporate Debtor as late as 29.03.2022 and the Present Application under Section 7 of the Code has been filed on 13.04.2024. Therefore, the present application is under limitation.





With regard to the existence of debt and default, on a perusal of Form – I and the documents annexed with the application, we are satisfied that the applicant clearly comes within the definition of Financial Creditor and the loan was disbursed to Corporate Debtor and there exists a debt and its default.

11. Thus, it is clear that when a default takes place i.e., the debt becomes due and is not paid, the Insolvency Resolution Process shall begin against the corporate debtor. Therefore, on the basis of discussion in the aforesaid paragraphs, we are satisfied that the present application is complete in all respects. The Applicant Bank/financial creditor is entitled to move the application against the corporate debtor in view of outstanding financial debt in default above the pecuniary threshold limit as provided under Section 4 of the Code, 2016. As a sequel to the above discussion and in terms of Section 7(5)(a) of the Code, the present company application (C.P. No. (IB)- 285/(ND)/2024) stands admitted and the CIRP is hereby initiated against M/s Shyam Indofab Private Limited.
12. The applicant in Part -III of the application has proposed the name of IRP, accordingly, this bench appoint Mr. Jagdish Kumar, as the Insolvency Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-001/IP-P00671/2017-2018/11143 and email id- [jkparulkar.ip@gmail.com](mailto:jkparulkar.ip@gmail.com). Accordingly, Mr. Jagdish Kumar is appointed as an Interim Resolution Professional (IRP) for corporate debtor. The consent of the proposed interim resolution profession in Form-2 is taken on record. The IRP so appointed shall file a valid AFA and







disclosure about non-initiation of any disciplinary proceedings against her, within three (3) days of pronouncement of this order.

13. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.”

(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota,





concessions, clearances or a similar grant or right during the moratorium period.”

14. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
15. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
16. We direct the Applicant/Financial Creditor to deposit a sum of Rs. 2,00,000/- (Two Lakh Rupees Only) with the Interim Resolution Professional namely Mr. Jagdish Kumar to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor.







The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.

17. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by 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.
18. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person 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 committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders.
19. 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 his 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.
20. In terms of section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of





Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

21. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./285/2024 stands admitted.**

Sd/-  
(DR. SANJEEV RANJAN)  
MEMBER (T)

Sd/-  
(MANNI SANKARIAH SHANMUGA SUNDARAM)  
MEMBER (J)



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