

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD**

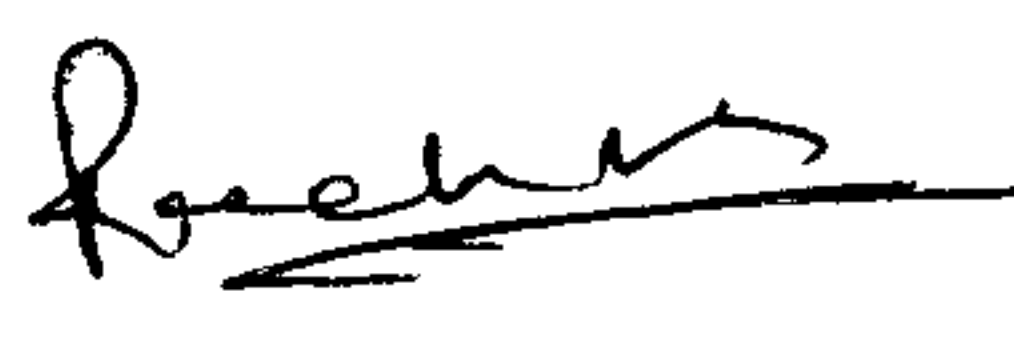
C.P. (I.B) No.279/7/NCLT/AHM/2018

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 13.01.2020**

Name of the Company: Andhra Bank
V/s.
Krishna Knitwear Technology Ltd.

Section: Section 7 of the Insolvency and Bankruptcy Code

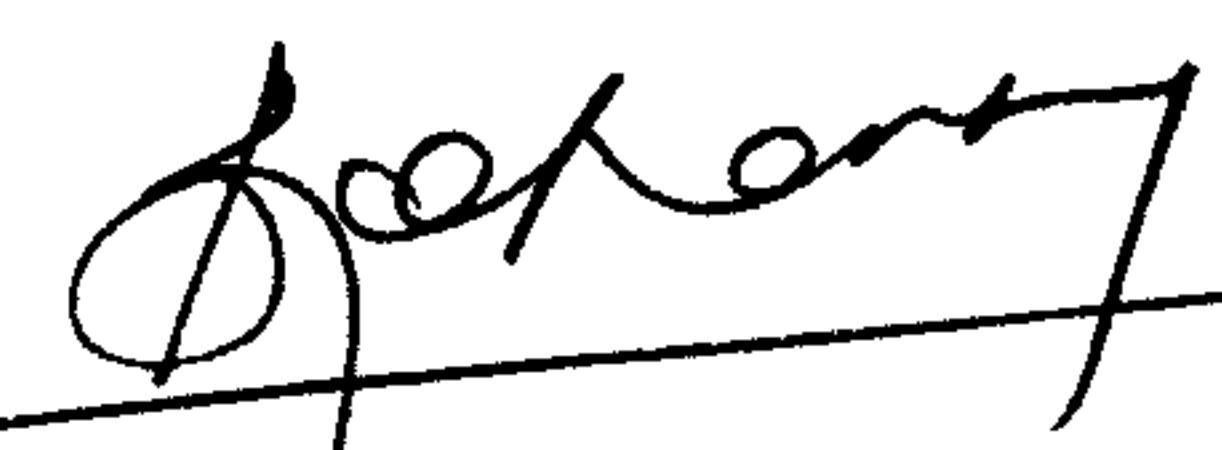
<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Natasha Dhruvan Sherb		R	
2.				


ORDER

The Respondent is represented through respective Counsel(s).

The case is fixed for pronouncement of order.

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


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 13th day of January, 2020.

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B.) No.279/7/NCLT/AHM/2018

In the matter of:

ANDHRA BANK,
A Bank, constituted under the
Banking Companies (Acquisition
and Transfer of Undertakings) Act,
1980 and having its Head Office at
5-9-11, Dr.Pattabhai Bhavan,
Secretariat Road, Hyderabad – 500
004 and one of its Branch Office
amongst other places at 8th Floor,
Maker Tower F-Wing, Cuffe Parade,
Mumbai – 400 005.

..... Petitioner

Versus

KRISHNA KNITWEAR
TECHNOLOGY LIMITED
A Company incorporated under the
provisions of Companies Act, 1956
having its Registered Office at
Krishna Nagar, Samarvani, Silvassa
(U.T.)

.....Respondent

Order delivered on 13th January, 2020

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
And
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

Appearance:

Shri Navin Pahwa, Sr. Advocate, Shri Sunil Bhavsar, Advocate on
behalf of Mr.A.K.Mishra for MDP & Partners for the
Applicant/Financial Creditor

Ms.Natasha Dhruvan Shah, Advocate for the Respondent/Corporate
Debtor


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[Per: Mr. Prasanta Kumar Mohanty, Member(T)]

1. The present I.B. Petition is filed by the Financial Creditor Andhra Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a “Code”), seeking initiation of Corporate Insolvency Resolution Process (“CIRP” in Short) against the Corporate Debtor namely, Krishna Knitwear Technology Limited for the default committed by the Corporate Debtor in making repayment of the OCC/FITL facility availed from the Bank. The Applicant (FC), Andhra Bank is a Bank, incorporated under the provisions of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1980. The application has been filed by the duly authorised officer, Shri Punjaala Siva Kumar, Andhra Bank, Cuffe Parade, Mumbai.
2. The Respondent Corporate Debtor (CD) Company, namely Krishna Knitwear Technology Limited was incorporated on 23.08.1982 with CIN: U17119DN1982PLC000092.
3. The nominal share capital of the Respondent (CD) Company is Rs.500 Crores and the paid-up capital of the company is Rs.345,11,26,000.00. The Registered Office of the Corporate Debtor Company is situated at: Krishna Nagar, Samarvani, Silvasa (U.T.) It is gathered from the

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records that the company has its spinning unit engaged in manufacturing of cotton yarn from raw cotton.

4. It is submitted by the Petitioner that the Respondent Company availed financial assistance from various banks and financial institutions since 2001 by way of Term Loan, Cash Credit and Working Capital Demand Loan. It is submitted that the loans were secured by hypothecation of movables and mortgage of immovable properties besides the personal guarantees of the Promoters and Directors and mortgage of their properties.

5. It is further submitted that the Working Capital Consortium was formed, led by the Applicant Bank. Pursuant to the sanction of the credit facilities, the Respondent executed various loan and security documents. It is submitted that the credit facilities were disbursed to the Respondent company from time to time and was also utilized by the Respondent company. However, there was a stress in the account, for which the Respondent company approached the CDR Cell for restructuring of the Working Capital and Term Loan facility. Accordingly, the CDR, after considering the request of the Respondent company, was approved and the restructuring package for Working Capital Limit communicated vide sanction letter dated 29.12.2012,

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wherein the OCC Limit were restructured and the interest due and future interest were converted into **Funded Interest Term Loan (FITL)**. Pursuant to the above, various loan and security documents were executed by the Respondent company. It is submitted that subsequently, the CDR package was modified at the request of the Respondent against the execution of Supplementary Consortium Agreement and other security documents.

6. It is submitted that inspite of sanction of restructured facilities by the Applicant and other consortium lenders, there was no substantial improvement in the operation of the Respondent company and service of debt. Accordingly, the account of the **Respondent company became irregular and was declared as NPA on 29.06.2012.**
7. Subsequently, the Applicant recalled the loan and invoked the guarantees and issued Demand Notice under Section 13(2) of the SARFAESI Act on 31.01.2015. However, the Respondent company failed to pay the dues of the Applicant along with other consortium lenders and hence, the Applicant and other consortium lenders filed a Recovery Application before the DRT, Ahmedabad vide Original Application No.150 of 2016 on March' 2016, which is pending for adjudication.



8. Various loans/credit facilities granted by the applicant Bank are narrated as under:

- a) OCC Limit for Rs.104.00 Crores.
- b) OCC Adhoc for Rs.5.00 Crores.
- c) FITL for Rs.14.30 Crores.

Thus, total aggregate limit of **Rs.123.30 Crores (OCC/FITL)** were sanctioned by the Applicant Bank vide sanction letter dated 29.12.2012 & 30.06.2014 with terms and conditions including **hypothecation of plant and machineries, mortgage of immovable properties, personal guarantee** of (i) Shri Pravin Kumar Tayal, (ii) Shri Navin Kumar Tayal & (iii) Shri Sanjay Kumar Tayal and Corporate Guarantee of (i) Madhu Crimpers Pvt. Ltd., (ii) Kanishka Infrastructure Pvt. Ltd., & (iii) KSL & Industries Ltd. Particulars of securities held by the Applicant Bank with respect to facilities granted to the Corporate Debtor are mentioned in detail at Part V of the application at page no. 8 to 12 of the paper book.

9. The particulars of various securities held by the Applicant Bank with respect to the facilities provided by it to the Corporate Debtor is as under:

For Working Capital -

Primary Security – First pari-passu charge with other lenders of Working Capital by way of hypothecation of raw materials, stock-in-process, finished goods, goods and spares and book debts along with other current assets.

Collateral Security – Second pari-passu charge over the entire fixed assets of the company with other Lender Banks. Gross Block of Fixed Assets is Rs.1488.28 crores and Net Block of Fixed Assets is Rs.193.07 crores. (Including Capital Work-in-Progress) as per ABS 31.03.2017.

For FITL -

Primary Security – First pari-passu charge on fixed assets of the Company with other Lender Banks and institutions.

Collateral Security – Second pari-passu charge on current assets of the Company with other Lender Banks and institutions.

10. The Corporate Debtor has defaulted payment and the **date of default is 29.06.2012** as stated by the Petitioner Bank (page no. 7 of paper book). CIBIL Report annexed as Exhibit-H (page no. 935 to 942 of the paper book) has been filed by the Bank which confirms that the Account is **in default**.

11. The **audited balance sheet for the year 2016-17** of the Corporate debtor has been filed and the Petitioner Bank has also submitted a Certificate to this effect under Banker's Book of Evidence Act, 1891. (Page no. 943 of paper book). The Petitioner Bank has claimed their dues of **Rs.245,32,00,000/- (Rupees: Two Hundred Forty Five Crores Thirty Two Lakhs Only)** as on 14.05.2018 along

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with further interest @14.30% p.a. i.e. Base Rate + 4.78% plus 2% interest with monthly rest till realization, as particularly set out in Exhibit D annexed at page no.29 to 54 of the paper book which is given below:

Nature of facilities	Amount O/s. as on 15.05.2018	Differential ROI from 01.12.2015 to 14.05.2018	Penal Interest	Total
OCC	1638762764.54	330910723.71	200427176.04	2170100664.29
Adhoc OCC	83575430.00	0	0	83575430.00
FITL	199488427.55	0	0	199488427.55
Total	1921826622.09	330910723.71	200427176.04	2453164521.84

12. 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 and its calculation in tabular form as on 14.05.2018 along **with CIBIL report** and Valuation reports.

13. 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.**

14. The Financial Creditor, to substantiate its claim, has enclosed following documents: -

- i. Copy of Sanction letter dated 29.12.2012 for sanctioning restructured OCC Limit and FITL (Page no.316 to 324 of paper book);
- ii. Copy of Sanction letter dated 30.06.2014 for sanctioning Adhoc OCC Limit(Page no.325 of paper book);
- iii. Copy of Amendatory and restated Security Trustee Agreement dated 27.12.2012(Page no.326 to 338 of paper book);
- iv. Copy of Master Restructuring Agreement dated 29.12.2012(Page no.339 to 422 of paper book);
- v. Copy of Trusts and Retention Agreement dated 29.12.2012(Page no.423 to 505 of paper book);
- vi. Copy of 6th Supplemental Working Capital Consortium Agreement dated 20.04.2013(Page no.506 to 539 of paper book);
- vii. Copy of Term Loan Consortium Agreement dated 20.04.2013(Page no.540 to 620 of paper book);
- viii. Copy of 1st Supplemental Term Loan Consortium Agreement dated 20.04.2013(Page no.621 to 684 of paper book);
- ix. Copy of 6th Supplemental Joint Deed of Hypothecation dated 20.04.2013(Page no.685 to 706 of paper book);
- x. Copy of Joint Deed of Hypothecation dated 20.04.2013(Page no.707 to 736 of paper book);

- xi. Copy of 1st Supplemental Joint Deed of Hypothecation dated 20.04.2013(Page no.737 to 748 of paper book);
- xii. Copy of Deed of Guarantee executed dated 20.04.2013 for working capital facilities (Page no.749 to 766 of paper book);
- xiii. Copy of Deed of Guarantee executed dated 20.04.2013 for FITL(WC) facilities (Page no.767 to 784 of paper book);
- xiv. Copy of Deed of Guarantee dated 20.04.2013 for term loan consortium facility (Page no.785 to 804 of paper book);
- xv. Copy of Omnibus Counter Guarantee dated 20.04.2013(Page no.805 to 818 of paper book);
- xvi. Copy of undertaking for creation of 2nd charge on fixed assets dated 20.04.2013(Page no.819 to 823 of paper book);
- xvii. Copy of agreement of pledge of shares executed by Upasana Silk Mills Pvt Ltd. dated 20.04.2013(Page no.826 to 865 of paper book);
- xviii. Copy of Composite Agreement for Adhoc OCC Limited dated 01.07.2014(Page no.866 to 885 of paper book);
- xix. Copy of Memorandum of Mortgage dated 29.03.2011 by M Kanishka Infrastructure Pvt. Ltd. (Page no.886 to 887 of paper book);

- xx. Copy of Memorandum of Mortgage dated 29.03.2011 by Madhu Crimpers Pvt Ltd. (Page no.888 to 889 of paper book);
- xxi. Copy of Memorandum of Mortgage dated 29.03.2011 by KSL and Industries Ltd., (Page no.890 to 891 of paper book);
- xxii. Copy of Memorandum of Entry dated 10.09.2014 between the Respondent company and M/s.IL & FS Trust Company Limited(Page no.892 to 903 of paper book);
- xxiii. Copy of second Amendatory Agreement dated:13.03.2014(Page no.904 to 920 of paper book);
- xxiv. Copy of certificate under Banker's Book Evidence Act, 1891 and IT Certificate (Page no.943 of paper book);
- xxv. Copy of the Audited Balance Sheet for the year 2016-2017 (Page no.944-961 of paper book);
- xxvi. Copies of Valuation Reports as Exhibit E-1, 2, 3, 4, 5, 6, 7 & 8 of the properties owned by the Corporate Debtor, Guarantors and Corporate Guarantors (Page no.55 to 313 of paper book)
- xxvii. Copy of CIBIL Report dated 15.05.2018 (Page no.935 to 942 of paper book)

15. In the present matter, this Tribunal, vide its order dated 09.07.2018 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, the Respondent, Corporate Debtor appeared before this Tribunal on 31.08.2018 and sought time to file objections within two weeks.

16. In response to the present I.B. Petition filed by the Petitioner Bank, the Respondent has filed its objections on 29.10.2018, denying each and every averment, submission and the statement made by the Applicant.

16.1 It is pleaded by the Respondent that the application filed by the Applicant is not maintainable being barred by limitation. It is submitted that the Applicant has already proceeded for the recovery of its purported dues under Section 19 of RDDBFI Act, 1993, which is pending for adjudication. It is further submitted that the Respondent has filed a counter claim for Rs.1687.33 Cr. against the O.A. No.150 of 2012 filed by the Applicant before the DRT, Ahmedabad.

16.2 It is pleaded that the account of the Respondent was not NPA as on 29.06.2012 and the Applicant has classified the account as NPA without following the guidelines of RBI. It is submitted that in case

the account of the Respondent would have become NPA, the Applicant **would have not considered the restructuring of credit facilities in December' 2012.** The Respondent has annexed the copy of CDR EG sanctioned on 24.12.2012 as Annexure R-3.



16.3 It is submitted that the Applicant has claimed to have sanctioned credit facilities since the year 2001, however has enclosed calculation sheets with effect from 01.01.2012. It is pleaded that the Applicant ought to have produced the statement of account since inception of the loan transactions. Hence, the Application is not maintainable since it does not crystallise the amount due and payable by the Respondent. It is submitted that Applicant raised claim towards alleged credit facilities such as OCC, OCC Adhoc and FITL, however no separate statements of accounts in respect of the purported credit facilities have been enclosed. Hence, in the absence of any statement of account, the claim of the Applicant is not tenable.

16.4 It is pleaded that the as per the terms of CDR EG sanctioned on 24.12.2012, the repayment was extended upto FY 2019, therefore, the action of the Applicant in filing the present Petition is premature and bad. It is also submitted that in terms of the

said sanction, the effective ROI was 11% p.a., however on going through the calculation sheets, it has been observed that the Applicant has calculated the outstanding balance with ROI of 16.50% p.a. for different periods.

16.5 It is pleaded that no reliance can be made upon certain documents produced by the Applicant along with the present application in the absence of any Board resolution executed by the directors of the Respondent company. It is submitted that Applicant has reportedly allowed adhoc OCC of Rs.5.00 crores and FITL of Rs.14.30 crores with present outstanding of Rs.8.36 crores and Rs.19.95 crores respectively, however upon perusal of the notice issued under Section 13(2) of the SARFAESI Act, it can be gathered that no outstanding balance against Adhoc OCC and FITL has been claimed. Hence, the documents relied upon by the Applicant itself clearing establishes that there was no outstanding liability under Adhoc OCC and FITL.

16.6 It is submitted that the Applicant has relied on certain calculation sheets developed manually containing ROI ranging from 14.30% p.a. to 16.50% p.a. and the Applicant has not relied upon any such sanction which permits the Applicant to

charge the said ROI and is accordingly put to strict proof thereof. It is submitted that the Applicant has charged penal interest and also compounded the same, which is against the guidelines of RBI and judgement of Apex Court in the matter of Central Bank of India v/s. Ravindra & Ors.

16.7 It is submitted that in the calculation shown as per Exhibit D, the Applicant has not shown the amount of Rs.68,38,37,594.47Ps deposited by the Respondent. It is further submitted that the Applicant has allegedly treated the account of the Respondent as NPA w.e.f. 29.06.2012, **however, the Respondent has deposited a sum of Rs.53,86,04,308.47Ps and hence the account was not NPA on 29.06.2012.** The Respondent further relied on the statement of account filed as Annexure R-8 of the reply and stated that the amount due and payable a on 31.12.2014 is Rs.109,46,33,485.54 Ps whereas as per Exhihit D in the instant application, the amount shown as due and payable is Rs.149,79,67,591.63 Ps on the same date. Hence, it is submitted that that the amount claimed in the instant application is false and frivolous.

16.8 It is submitted that several resolution plans were submitted to the Applicant as well as in the Joint

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Lenders Meetings along with proposals from prospective buyers/entrepreneurs, who were interested to acquire the secured assets, but the Applicant did not consent any of the proposals on time, as a result, no amicable resolution could be reached.

16.9 It is submitted that the Applicant has relied upon pledge of certain shares of **M/s.Upasana Silk Mills Pvt. Ltd.**, which were pledged in terms of sanction of CDR EG and upon consideration and continuance of restructuring facility under CDR mechanism. However, it is submitted that the Applicant has treated the restructuring of the credit facilities of Respondent as failed and hence, the Applicant is estopped to enforce the shares purportedly pledged by M/s.Upasana Silk Mills Pvt. Ltd. and ought to have returned the said shares to the pledger consequent upon its decision to take exit from CDR.

16.10 It is submitted that the Applicant has relied upon Corporate Guarantee and exclusive security of certain immovable properties of Corporate Guarantors, however the Applicant has not referred to any sanction wherein the condition of the Corporate Guarantee and mortgage by the said Corporate Guarantors have been stipulated. Hence

in the absence of any such sanction, the Respondent deny any such securities provided by the said Corporate Guarantors.

17. The matter was listed before this Adjudicating Authority for the first time on 09.07.2018. This Adjudicating Authority directed the Respondent to file its objections, if any within two weeks with a copy to the other side. Objections were filed by Respondent on 29.10.2018. Petitioner filed statement of accounts on 06.09.2019. Thereafter, the matter was adjourned on 30.04.2019, 22.07.2019, 21.08.2019, 03.09.2019 & 18.09.2019. On 04.10.2019, the matter was finally heard and both the Counsels were granted liberty to submit their written submissions within one week. The counsels of the Petitioner and the Respondent were present and put forth their submissions before the Bench.

18. On 22.07.2019, the Applicant Financial Creditor filed rebuttal documents, in compliance of the orders dated:27.11.2018 of this Adjudicating Authority in support of their claims.

19. Further, the following are the pending matters in relation to this Corporate Debtor –



- i. IA 237 of 2019 in CP(IB) 279 of 2018 filed by the Krishna Knitwear Technology Ltd., V/s. Andhra Bank – The instant Interlocutory Application is filed by the Applicant (Respondent herein) under Section 65(1) read with Section 60(5) read with Section 424 of Companies Act, 2013 read with Rule 11 of NCLT Rules, 2016 against the Respondent (Applicant Bank herein) with regard to the maintainability of the Petition filed under Section 7 of IBC, 2016 for initiating CIRP against the Respondent with the following reliefs –

“a) That the application of the Respondent being CP(IB) No.279/7/NCLT/AHM/2018 which has been filed with malicious intent be dismissed with cost upon the Respondent.

b) That this Hon’ble Tribunal may be pleased to direct the Respondent to produce the statement of account since inception.

b) Pending adjudication of the present application, further proceedings in the CP(IB) No.279/7/NCLT/AHM/2018 may kindly be deferred.”

The Respondent (Applicant Bank herein) filed its reply against the said IA on 22.07.2019, submitting interalia that the Corporate Debtor availed various



financial assistance from the Respondent (Applicant Bank herein) and consortium member banks and failed to service the debt in time. Further, inspite of the fact that the Applicant bank herein and other lenders sanctioned the restructuring package, there was no substantial improvement in the operation of the company. Subsequently, the OTS proposals submitted by the Corporate Debtor were not acceptable to the Consortium Lenders and hence the Applicant Bank herein and other lenders decided to initiate action under IBC, 2016 by filing the application under Section 7 of the IBC, 2016. It is submitted that the Applicant bank herein is entitled under the law to initiate action under the SARFAESI Act against the secured assets and thus took the symbolic possession of the properties. It is submitted that once the application is admitted and CIRP process is initiated, all the actions under the SARFAESI Act and DRT Act shall stand abated. It is submitted that the Corporate Debtor had already admitted its loan, liability, security interest and default through various correspondence/OTS proposals and by filing counterclaim before DRT, Ahmedabad, the Applicant Bank herein wanted to initiate proceedings under the IBC, 2016, so as to enable the CIRP process to be activated which is in the interest of the Applicant and

the Corporate Debtor. Hence, the application filed under Section 7 of the IBC, 2016 needs to be admitted.

- ii. IA 571 of 2019 in CP(IB) 279 of 2018 filed by the Krishna Knitwear Technology Ltd., V/s. Andhra Bank – The instant Interlocutory Application is filed by the Applicant (Respondent herein) under Section 60(5) of IBC, 2016 against the Respondent (Applicant Bank herein) seeking directions to dispose of the petition filed by the Applicant Bank herein with the following reliefs –

“a) That the Application U/ s. 7 of the IBC, 2016 of the Respondent be rejected with exemplary cost upon the Respondent.

b) that any other relief may be granted as deemed fit and proper.

c) To defer the hearing of CP(IB) No.279/7/NCLT /AHM/2018 until final adjudication of the present application.

d) Issue notice to the Respondent Bank under Section 65 of Insolvency and Bankruptcy Code, 2016.

e) May be pleased to impose a penalty of Rs.1 Crore upon the Respondent Bank on account of initiating and pursuing a malicious proceeding against the

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Corporate Debtor under Insolvency and Bankruptcy Code."

20. It is also observed that the Office of **the Deputy Commissioner of Income Tax, Central Circle-5(3), Mumbai has submitted a letter dtd:16.09.2019,** claiming an outstanding demand of Rs.376.57 Crores against the Corporate Debtor for the assessment year from 2008-09 to 2016-17.

21. 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 I.B. Petition.

OBSERVATIONS

22. It is 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.

23. The Term loans/OCC/FITL were sanctioned and released by the Petitioner Bank along with other consortium lenders and the same were availed by CD,



Krishna Knitwear Technology Ltd. **The charges have been** registered by the CD with the ROC in favour of the Petitioner Bank on **01.07.2014 & 20.04.2013** for Rs.109.00 Crores and Rs.734.59 Crores respectively vide charge ID No.10284656 and 80011094.

24. The CD has defaulted in making repayment of loan/credit facilities to the Petitioner Bank and **the date of default is** 29.06.2012. The statement of accounts as on 21st May 2018 along with the Banker's Book Evidence Certificate annexed with a fresh affidavit filed by the Applicant Bank on 06.09.2019, which confirms the amount in default is Rs.193,52,41,386.02Ps as on 21.05.2018. Further, the audited balance sheet for the year 2016-17 and the **CIBIL Reports** submitted by the Applicant Bank **confirm the existence of liability to the Financial Creditor and default** committed by the Corporate Debtor.

25. The Petitioner Bank has filed the petition **within the period of limitation**, as the last payment into the account has come on 25.09.2017 and the application has been filed on 21.05.2018.

The date of mortgage of the property is 10.09.2014, SARFAESI proceeding initiated on 31.01.2015, DRT proceedings started in March' 2016 and the account of



the Corporate Debtor was classified as NPA on 29.06.2012.

26. 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 I.B. Code is "Remedy in Rem" in respect of the CD.

27. **Audited Balance Sheet for the year 2016-2017** of the Corporate Debtor, at page no.949 of the paper book confirms the following long/short term borrowings from the Consortium Banks including the Applicant Bank, Andhra Bank –

Long Term Borrowings		
Sr. No.	Particulars	As on 31.03.2017 (Rs. In Lacs)
1	Secured	
a)	Term Loan	
	From Banks	7025.27
b)	FITL (Working Capital)	
	From Banks	7525.22
Short Term Borrowings		
	Secured Working Capital Loan From Banks	62173.33
	Total Dues to Banks	76723.82

28. The present I.B. Petition is filed by the duly authorised official of the Applicant Bank in a prescribed format under **Section 7** of the I.B. Code annexing copies of loan documents **confirming the existence of debt due and**

default and proposed a name of Resolution Professional to act as an Interim Resolution Professional (IRP).

29. **IA 237 of 2019** is filed by the Applicant (Respondent herein) under Section 65(1) read with Section 60(5) read with Section 424 of Companies Act, 2013 read with Rule 11 of NCLT Rules, 2016 against the Respondent (Applicant Bank herein) with regard to the **maintainability of the Petition filed under Section 7** of IBC, 2016 for initiating CIRP against the Respondent. Having heard the arguments and documents/papers submitted, **we do not find any reason to grant any reliefs sought in this IA. Hence, the said IA 237 of 2019 is disposed of, as mentioned above.**

30. **IA 571 of 2019** is filed by the Applicant (Respondent herein) under Section 60(5) of IBC, 2016 against the Respondent (Applicant Bank herein) seeking directions to reject the petition filed by the Applicant Bank under Section 7 of IBC, 2016.

Documents have been submitted by the Financial Creditor before this Adjudicating Authority in support of their claim to initiate CIRP. Hence, the reliefs sought by the Corporate Debtor to reject the application for admission in this IA is not granted.

ORDER

31. Considering the material papers filed by the Petitioner Bank and the facts mentioned in the **Para No.22, 23, 24, 25, 26, 27, 28, 29 & 30, this Adjudicating Authority is satisfied that,**

- a) The Corporate Debtor **availed the loan** /credit facilities from the Financial Creditor Bank(Andhra Bank).
- b) Existence of debt is **above Rs. One Lac;**
- c) Debt is due;
- d) Default has occurred on 29.06.2012;
- e) Petition had been filed **within the limitation period,** as the existence of debt due is found in **Balance Sheet of the Corporate Debtor as on 31.03.2017** and the **last payment into the account has come on 25.09.2017,** whereas this petition under Section 7 has been filed on **21.05.2018;**
- 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 Directions/observations. **The date of admission of this petition is 13.01.2020.**

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32. As per the provisions of Section 13 and 14 of the I.B. 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 judgement, 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.*



33. This Adjudicating Authority hereby appoints, as proposed, **Mr.Brijendra Kumar Mishra, having Insolvency Professional Registration No.IBBI/IPA-002/IP-N00109/2017-18/10257, Email ID: mishrabk1959@gmail.com, Mob. no.9920109000, Address: Flat No.202, 2nd Floor, BhojBhavan, Plot No.18-D, Sion-Trombay Road, Chembur, Mumbai – 400071, 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/direction issued by this Adjudicating-Authority and to follow the provisions Under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code.

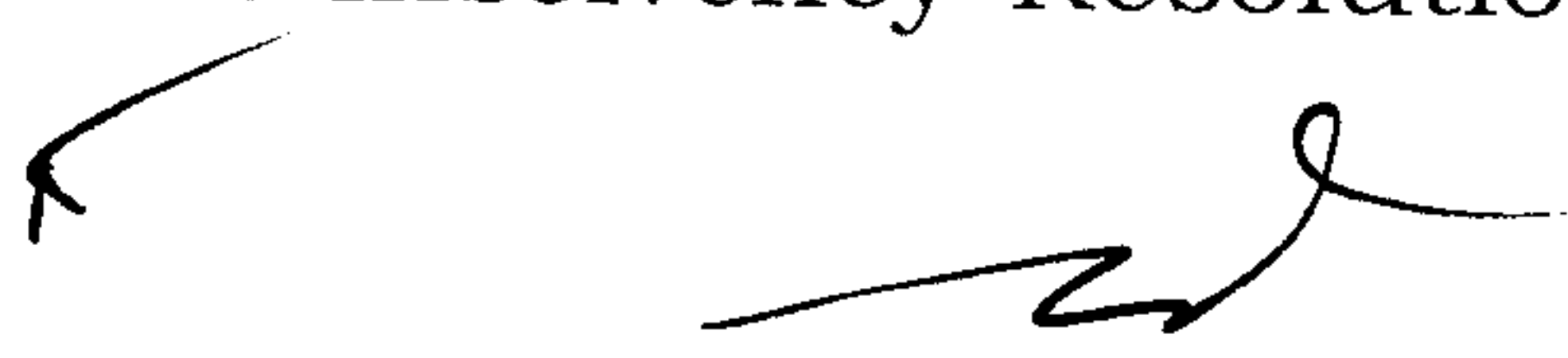
34. The **IRP is hereby advised to adhere the time limit** as stipulated for completion of the Corporate Insolvency Resolution Process (“CIRP” in short) and perform the duties as specified Under Section 17, 18, 20 and 21 of I.B Code. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, in Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly

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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.

- 35.** It is also observed that the Petitioner Bank has claimed total dues of Rs.245,32,00,000/- as on 14.05.2018 along with further interest @14.30% per annum i.e. Base Rate + 4.75% plus 2 % interest with monthly rest till realization, more particularly set out in Exhibit D at page no.29 to 54 of the paper book. One of the prime objective of the Insolvency and Bankruptcy Code, 2016 is to quickly find out a viable Insolvency Resolution Plan 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 Resolution Applicant /Resolution Professional/ 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 at the rate of Petitioner Bank's One Year MCLR or One Year MCLR + 1% without any penal /overdue interest.

36. 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.


37. The Registry is also directed to **communicate** to the Income-Tax Dept. **about the admission of the application for initiation of CIRP**, so that they can submit their claim to the IRP, if otherwise, they are eligible as per Insolvency and Bankruptcy Code, 2016.


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- 38.** The commencement of Corporate Insolvency Resolution Process shall be effective from the date of this order.

Thus the present I.B petition filed under Section 7 of the IBC **stands admitted on 13.01.2020 with the above Observation and Directions.**


(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (Technical)


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (Judicial)