

National Company Law Tribunal

Allahabad Bench

C P NO(IB). 310/ALD/2018

ATTENDENCE - CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 18.10.2018

NAME OF THE COMPANY: Bank of India Vs. M/s. Kothari Food & Fragrances Pvt. Ltd.

SECTION OF I & B CODE: 7 IBC

<u>Sl. NO.</u>	<u>Name</u>	<u>Designation</u>	<u>Representation</u>	<u>Signature</u>
<u>1.</u>				
<u>2.</u>				

CP NO. (IB) 310/ALD/2018

Order pronounced in open court.

Petition is admitted.

IRP appointed.

Moratorium declared.

Vide separate order.

Dated: 18.10.2018

-Sd-

**SAROJ RAJWARE,
MEMBER (T)**

-Sd-

**(BIKKI RAVEENDRA BABU
MEMBER (J))**

Typed by:
Kavya Prakash Srivastava
(Stenographer)

IN THE NATIONAL COMPANY LAW TRIBUNAL AT ALLAHABAD BENCH

COMPANY PETITION (IB) NO. 310 OF 2018

(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

Bank of India,

a Body Corporate, constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act V of 1970, having its Head Office at Star House, C-5, G Block, Bandra Kurla Complex, Bandra (East), Mumbai and one of its Branch Office, amongst other places known as Mid Corporate Branch situated at Birhana Road, Kanpur-208001.

.....**Applicant**

Versus

M/s. Kothari Food & Fragrances Pvt. Ltd., a Company incorporated under the Companies Act, 1956 having its registered office at 201, City Centre, 63/2, The Mall, Kanpur - 208004.

.....**Corporate Debtor/ Respondent**

JUDGMENT/ORDER DELIVERED ON 18.10.2018

CORAM : SHRI BIKKI RAVEENDRA BABU, MEMBER (J)
MS. SAROJ RAJWARE, MEMBER (T)

For the Applicant/Petitioner: Sh. Prabodh Kumar Bajpai, Advocate

PER SE : MS. SAROJ RAJWARE, MEMBER (T)

ORDER/JUDGMENT

1. The present application has been filed by the Financial Creditor/Applicant, i.e. Bank of India. U/s 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy Rules, 2016, seeking for initiation of Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor Company i.e. M/s. Kothari Food & Fragrances Pvt. Ltd, The brief facts of the case are stated as under:

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- I. The Applicant is Bank of India, a Body Corporate, constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act V of 1970, having its Head Office at Star House, C-5, G Block, Bandra Kurla Complex, Bandra (East), Mumbai and one of its Branch Office, amongst other places known as Kasturba Marg Branch situated at Birhana Road, Kanpur-208001.
- II. Mr. S.S. Kushwaha, Chief Manager, Bank of India, Kasturba Marg Branch, Birhana Road, Kanpur is authorized to submit Application on its behalf vide power of Attorney dated 3rd Nov, 2011.
- III. The Applicant/ Financial Creditor has given all details of the Financial debt as per the Code. In the part IV of the application, which is on the proforma prescribed under the Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code, the Amount Claimed to be in default and the date on which the default occurred is stated in the Application and in the Statement of Account as on 14.06.2016, a sum of Rs. 1,54,23,61,766.02 became due besides interest w.e.f. 01.12.2015. The Interest w.e.f. 01.12.2015 to 05.02.2017 comes to Rs. 38,07,86,910.98. It is further stated that the Bank filed O.A. No. 108 of 2017 before Debts Recovery Tribunal, Allahabad for a recovery of Rs. 192,31,49,367.00. Vide judgment and order dated 07.06.2017 the said O.A. was allowed. Now a sum of Rs. 253,19,98,266.70 inclusive of interest upto 14.08.2018 has become due (o/s as on 14.08.2018 Rs. 154,24,33,261.02 + interest uncharged upto 14.08.2018 Rs. 98,95,65,005.68) and which is claimed herewith with interest.
- IV. Statement of the Accounts from 28.04.2014 to 13.08.2018 is annexed as Annexure 33 to the present Application. The corporate Debtor was declared as NPA as on 31.12.2015. Certificate under Section 2A(A) of the Banker's Book of Evidence Act 1891 is also attached with the present petition.

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2. Despite the service of notice made by the Financial Creditor to the Corporate Debtor, neither any reply was filed by the corporate debtor nor anyone appeared for the Corporate Debtor. Service of notice was considered sufficient and case proceeded exparte.

3. Having heard counsel for the financial creditor and in the aforesaid background, an application on behalf of financial creditor/ Applicant is complete. Financial Creditor has suggested the name Mr. Shravan Kumar Vishnoi, Registration No. IBBI/IPA-002/IP-N00040/2016-2017/10079, email id shravan.vishnoi@yahoo.com for appointment as Interim Resolution Professional(IRP) He has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. Given above fact Mr. Shravan Kumar Vishnoi deserves to be appointed as Interim Resolution Professional(IRP).

There is default in the payment of the financial debt which is evident from the order of Hon'ble DRT and from statements of the Accounts of the Company maintained by the bank. Therefore, as per section 7(5)(a) of the code, the present application filed U/S 7 of the I B Code deserves to be admitted.

ORDER

1. Application on behalf of financial creditor/ Applicant filed U/S 7 of the I& B Code 2016 for initiation of corporate Insolvency process is admitted. A moratorium under the provision of section 13 & 14 of the Code is declared prohibiting the following:

(i) *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;*

(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*

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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 possession of the corporate debtor.

2. It is further directed that:

(i) 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

(ii) The provision of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator

3. Mr. Shravan Kumar Vishnoi, Registration Number IBBI/IPA-002/IP-N00040/2016-2017/10079 is appointed as Interim Resolution Professional(IRP).

4. The IRP shall comply with the Provision of Section 13(2), 15,17 &18 of the Code. Further, the Directors, Promoters or any person associated with the Management of the Corporate Debtor are directed to co-operate to the IRP as prescribed under Section 19 and for discharging his function under a provision of section 20 of the Code.

5. The Registry is further directed to communicate this order to Financial Creditor and Corporate Debtor and IRP through email and speed post.

6. List on DT 28.11.2018 for the filing of the progress report.

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(Ms. Saroj Rajware)

Member (Technical)

Dated : 18.10.2018

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(Shri Bikki Raveendra Babu)

Member(Judicial)