

NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH
CHENNAI

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ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 04/09/2017 AT 10.30 AM

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL
SHRI S. VIJAYARAGHAVAN, MEMBER-TECHNICAL

APPLICATION NUMBER :
PETITION NUMBER : CP/551/ (IB)/2017
NAME OF THE PETITIONER(S) : CENTRAL BANK OF INDIA & STATE BANK OF INDIA
NAME OF THE RESPONDENT(S) : ASHOK MAGNETICS
UNDER SECTION : 9 RULE 6

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
		REPRESENTATION BY WHOM	

Jayson B. Datta

M.S. SHANMUGARAJAN
Counsel for Corporate Debtor

RAJESH BONDRA ADVOCATE. Same.
Corp Debtor.

M. L. CRANESH.

Attorney
Counsel for Plaintiff/ Financial creditor.
for M. L. CRANESH

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

CP/551 (IB)/CB/2017

Under Section 7 of the Insolvency And Bankruptcy Code
2016 R/W Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016

In the matter of

**The Central Bank of India and
The State Bank of India**

Vs

M/s. Ashok Magnetics

Order delivered on 4th September, 2017

CORAM :

**CH MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

*For Financial Creditor(s) : Counsel Mr. M. L. Ganesh
For Corporate Debtor(s) : Sr. Counsel Mr. Ram, for Jaysh B. Dolia
and M. S. Shanmugasundaram*

ORDER

Per: CH MOHD SHARIEF TARIQ, MEMBER (J)

1. Under adjudication is an Application that has been filed by Central Bank of India and State Bank of India (hereinafter referred to as Financial Creditors) under Section 7 of the Insolvency and Bankruptcy

Code 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/s. Ashok Magnetics Ltd. (hereinafter referred to as Corporate Debtor). The prayer made in the Application is to admit the Application, initiate the Corporate Insolvency Resolution Process, declare Moratorium and appoint an Interim Resolution Professional (IRP) under the relevant provisions of the I&B Code, 2016. The Corporate Debtor caused appearance through Counsel and filed counter.

2. We have heard the Ld. Counsel for Financial Creditors and Ld. Sr. Counsel for the Corporate Debtor. The relevant factual detail is as follows:-

In the Application at page 5 under part IV, Column 2, an amount of Rs.12,96,57,829.19p as on 30.11.2016 is due and payable to Central Bank of India and Rs.27,47,85,655.86p as on 19.10.2015 is due and payable to State Bank of India by the Corporate Debtor. The detail of the outstanding debt

pertaining to 1st Applicant is provided at page 16 of the Application which is reproduced as below:-

Name of the Credit Facility	Amount
Cash Credit Facility A/c No.1023837398	Rs.5 Crores (Last Renewal)
Balance outstanding amount as on NPA	Rs.5,98,81,058.19
Interest calculated from NPA 26.08.2015 to 31.11.2016 after crediting the part payment made after NPA	Rs.1,05,44,613.00
Penal Interest without compounding	Rs.15,12,396.00
Total	Rs.7,19,38,067.19p

Name of the Credit Facility	Amount

ILC A/c. 3427682782	Rs.5 Crores (Last Renewal)
Balance outstanding	Rs.4,31,01,528
amount as on NPA Fixed Deposit Credited	Rs. 6,24,791 Rs. 35,20,000
Devolvement of LC subsequent to NPA	
Interest calculated from NPA to 31.11.2016 after crediting the part payment made after NPA	Rs.1,05,47,991/-
Penal Interest without compounding	Rs.11,75,034/-
Total	Rs.5,77,19,762/-

Which tallies with the statement of account placed at pages 138 and 139 of the typed set to the Application. Further, the figures provided at page 16 also tallies with the statement of account placed at pages 142 and 143 of the typed set to the Application. The detail with regard to the outstanding debt payable by the

Corporate Debtor to State Bank of India is placed at pages 17 to 25 of the typed set to the Application which tallies with the statement of account placed at pages 563 and 565 of the typed set to the Application.

3. The Central Bank of India/1st Applicant has sent notice under Section 13(2) of the SARFAESI Act, 2002 on 17.12.2015 to the Corporate Debtor, the copy of which is placed at page 87 of the typed set to the Application. The demand notice under Section 7 of the I&B Code, 2016 was sent to the Corporate Debtor on 12.06.2017 to which the Corporate Debtor has given their reply on 19.06.2017 stating therein that the loan is collaterally secured by immovable properties, and therefore, the provisions of the I&B Code, 2016 cannot be invoked. The copy of the notice given by Central Bank of India under Section 7 and reply given to the same are placed at pages 148 and 150 respectively of the typed set to the Application.

4. The State Bank of India/2nd Applicant has also issued notice to the Corporate Debtor on 11.03.2015

classifying the account as Non-Performing Assets (NPA), the copy of which is placed at page 534 of the typed ^{set with} ~~to~~ the Application. Again on 22.08.2016, the State Bank of India has issued notice under Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor, which is placed at page 538 of the typed set to the Application. The Financial Creditors have also proposed the name of the IRP by seeking the written consent which is mentioned in the Application at Column (1), part III, and the written consent of the IRP in Form-2 was obtained and placed in the typed set to the Application.

5. The Ld. Senior Counsel for the Corporate Debtor has raised objections which are summarised as follows:-

The first objection that has been raised by the Ld. Sr. Counsel for the Corporate Debtor is that the Form-2, i.e., the written communication of the IRP has not been provided to the Counsel for the Corporate Debtor. But, it is on record that on the previous date of hearing

i.e., 28.08.2017, the copy of Form-2 has been provided to the Counsel representing the Corporate Debtor which has been admitted by the Counsel for the Corporate Debtor during the arguments. Therefore, the first objection raised by the Corporate Debtor stands rejected.

The second objection that has been raised by the Corporate Debtor is that the service on the Corporate Debtor has not been effected as provided under Rule 4 (3) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, because the notice has been sent at the Administrative Office of the Corporate Debtor instead of Registered Office. In this regard, the Ld. Sr. Counsel in support of his argument has referred to the ruling of Hon'ble NCLAT given in **M/s. Bhash Software Labs Pvt. Ltd. Vs. M/s. Mobme Wireless Solutions Ltd.** However, the Counsel for the Financial Creditors submitted that the Corporate Debtor has provided the address to the Financial Creditors for the purpose of correspondence, on which the copy of the Application along with document was

sent and the same has been served on the Corporate Debtor. The address finds placed on record which is as follows:-

“The Company secretary,
AML Steel Ltd.,
AML Towers,
9, Gopalapuram, 6th Street,
Chennai- 600 086.”

6. Subsequently, a copy of the Application along with documents was also sent to the Corporate Debtor's Registered Office on 01.09.2017 by way of Speed Post. The original postal receipts is filed along with an Affidavit by the 1st Applicant/Financial Creditor (Central Bank of India) on 04.09.2017. The service on the Corporate Debtor in law is complete. Therefore, the Financial Creditors have made compliance with the Rule 4 (3) of the Rules mentioned above by effecting service on the address given by the Corporate Debtor for the purpose of correspondence and also at the Registered Office. Based on this information, the Counsel for Corporate Debtor has caused appearance before this Bench on 22.08.2017. The notice of service along which acknowledgement

and Affidavit filed is also placed on record. Therefore, the second objection raised by the Corporate Debtor stands rejected.

The third objection that has been raised by the Corporate Debtor is with regard to discrepancies in account statement. In this connection, the Counsel for the Financial Creditors led us to the documents placed on file to show that there are no discrepancies in the amount claimed by the Financial Creditors and the record reflects the correct figures given in the Application and "Factual Sheets" along with the statement of account. Therefore, this objection also stands rejected.

The Ld. Sr. Counsel for the Corporate Debtor has referred to the ruling given by the Hon'ble NCLAT in **M/s. Starlog Enterprises Limited Vs. ICICI Bank Limited** pertaining to the issue of mis-match of the accounts. But, there is no mis-match of the account in the present matter. Therefore, the ruling referred to by

the Corporate Debtor is not applicable to the facts and circumstances involved in the present case.

Ld. Sr. Counsel for the Corporate Debtor also raised objection that the accounts statement pertaining to the year 2014-2015 is not made available, and the material fact is suppressed, to which this Bench raised a query to the Ld. Sr. Counsel representing the Corporate Debtor that during the year 2014-2015^{whether} any payment has been made by the Corporate Debtor. But, the Ld. Sr. Counsel for the Corporate Debtor fairly admitted that during the said period, no payment has been made by the Corporate Debtor to the Financial Creditors. Therefore, this plea is devoid of merits, and hence, stands rejected, as no material fact is suppressed by the Applicants/Financial Creditors. &U

7. We have perused the Application along with the record placed on file and have ascertained the existence of default as is evidenced by the record. The default has been committed by the Corporate Debtor in making payment of the outstanding debt to the

Financial Creditors/Applicants. The default committed by the Corporate Debtor is not denied.

8. Thus, the Financial Creditor has fulfilled all the requirements of law and has also proposed the name of IRP after obtaining the written consent in Form-2. We are satisfied that Corporate Debtor has committed default in making payment of the outstanding debt to the Financial Creditors. Therefore, CP/551/(IB)/CB/2017 is admitted and we order the commencement of the Corporate Insolvency Resolution Process which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

9. We appoint Mr. Venkataramanarao Nagarajan, as IRP as proposed by the Financial Creditors. There is no disciplinary proceedings pending against the IRP as evidenced from Form-2 and his name is reflected in IBBI website. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public

announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

10. We declare the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process, for the purposes referred to in Section 14 of the I&B Code, 2016. We order to prohibit all of the following, namely:

- (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 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.

11. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

12. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The directors of the Corporate Debtor, its promoters or any person associated with the Management of the Corporate Debtor is expected to extend all assistance and cooperation to the IRP as stipulated under Section 19

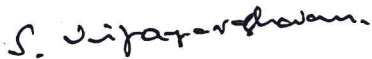
and for discharging his functions under Section 20 of the I&B Code, 2016.

13. The Financial Creditors and the Registry are directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.


14. The Registry is directed to communicate this Order to the Financial Creditors and the Corporate Debtor.

The address details of the IRP are as follows: -

Mr. Venkataramanarao Nagarajan,
Regn No: (IBBI/IPA-002/IP-N00055/2016-17/10107)
New No. 29, Kavara Street,
West Mambalam,
Chennai – 600 033
Tamilnadu
Email: csnagarajan@gmail.com
Mobile No: 9940111058.



S. VIJAYARAGHAVAN
MEMBER (Technical)
PAM


CH. MOHD SHARIEF TARIQ
MEMBER (Judicial)