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

C.P. (I.B) No. 631/7/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 21.08.2019**

Name of the Company: Bank of Baroda
V/s.
Mahi Corporation Pvt. Ltd.

Section of the Companies Act: 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>
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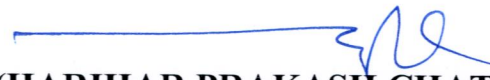
ORDER

None for the parties.

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 21st day of August, 2019.

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

CP (IB) No.631/7/NCLT/AHM/2018

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

Bank of Baroda

(Erstwhile Dena Bank)

Having its registered office at
10-C, "G" Block, Bandrakurla Complex
Bandra (East)
Mumbai-400 051

Having Branch at First Floor
Toral Building, Subhas Road
Opp. Shastri Maidan
Rajkot-360 001

Which is known as
"Para Bazar Branch"

..... Petitioner
(Financial Creditor)

Versus

M/s.Mahi Corporation Pvt. Ltd.

(CIN: U51909GJ2013PTC076785)

Having its Registered Office at
Flat No.163, Oscar City Tower
Sadhu Vasvani Road
Rajkot-360 005

..... Respondent
(Corporate Debtor)

Order delivered on 21st August, 2019.

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)

And

Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)

Appearance:

Mr. S.S. Panesar, Advocate, for the Petitioner-Financial
Creditor.

None present for the Respondent-Corporate Debtor

ORDER

[Per: Mr. Harihar Prakash Chaturvedi, Member (J)]

1. The present Application is filed by the Petitioner-Financial Creditor, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as 'I & B Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ["Adjudication Rules" for short] to initiate Corporate Insolvency Resolution Process against M/s. Mahi Corporation Pvt. Ltd. [hereinafter referred as 'Respondent-Corporate Debtor].

2. This petition was originally filed by Dena Bank before this Tribunal on 14th November, 2018, for initiating Corporate Insolvency Resolution Process against the respondent – corporate debtor company. However, on 30th May, 2019, the counsel for the Petitioner-Financial Creditor filed a Purshis to this effect stating that

“ in pursuance of Notification dated 02.01.2019 issued by the Government of India, Ministry of Finance, New Delhi, the Petitioner, Dena Bank has been amalgamated with the Bank of Baroda with effect from 01.04.2019. It is therefore just and necessary to change the name of the Petitioner Bank to Bank of Baroda. Therefore it is requested to permit the Applicant to amend the cause title of the Petition and to change the name of the Petitioner from Dena Bank to Bank of Baroda in the present proceedings in the interest of justice and oblige”.

Hence, the Petitioner-Financial Creditor was allowed to carry out necessary/suitable amendment in the present IB Petition. Accordingly, the petitioner has amended the plaint and the same is taken on record.

3. The Respondent-Corporate Debtor Company, viz., Mahi Corporation Pvt. Ltd., was incorporated on 11.09.2013, under the provisions of the Companies Act, 2013, having its registered office at Flat No.163, Oscar City Tower, Sadhu Vasvani Road, Rajkot-360 005.
4. The Authorized Share Capital of the respondent-corporate debtor company is Rs.1,90,00,000/- (Rupees One Crore Ninety Lakhs only) and the Paid-up Share Capital of the Respondent Company is Rs.1,90,00,00,000/- (Rupees One Crore Ninety Lakhs only).
5. The Petitioner-Financial Creditor, by this application, has provided the requisite details as per the provisions of I & B Code in respect of loan/credit facilities disbursed to the corporate debtor company, in prescribed Proforma under Rule-4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, read with Section 7 of the Code, which is described as under;

Part-IV

Particulars of Financial Debt		
1.	Total amount of debts granted and date of disbursement	Rs.6,58,00,000/- (Rupees Six Crore Fifty Eight Lakhs only)

		Cash Credit facility of Rs.5,00,00,000/- Term Loan-1 of Rs. 85,00,000/- Term Loan-2 of Rs. 73,00,000/- Date of disbursement: 28.03.2014 onwards
2.	Amount claimed to be in default and the date on which the default occurred	Rs.7,55,17,057.24 (Rupees Seven Crores Fifty Five Lakhs Seventeen Thousand Fifty Seven and paise Twenty Four only) as on 31.10.2018 together with further interest at contractual rates till the date of realisation of all the outstanding dues. The date of default is 31.03.2017 being the date of NPA. (The working for computation of amounts of default in tabular form is attached hereto and marked as 'Annexure-D').

6. It is stated that at the request of the Respondent-Corporate Debtor, the erstwhile Dena Bank (now merged with Bank of Baroda) had sanctioned and disbursed aforesaid credit facilities recoverable with applicable interest by entering into loan agreements with the Respondent-Corporate Debtor.

7. In order to secure such credit facilities, the corporate debtor company, through its Director, has duly signed and executed various security documents in favour of the erstwhile Petitioner-Financial Creditor. The Petitioner-Financial Creditor has annexed with the application copy of the loan documents/security documents executed by the borrower/co-borrowers/guarantors. Following are the same;

- 1 Certified extract of resolution passed by Corporate Debtor on 25.03.2014
- 2 Demand Promissory Note dated 27.03.2014 for Rs.358 Lakhs
- 3 Letter of continuity dated 16.04.2014 for Rs.358 lakhs

- 4 Agreement of hypothecation dated 27.03.2014 for Rs.358 lakhs
- 5 General Undertaking dated 27.03.2014
- 6 Undertaking cum declaration dated 28.03.2014
- 7 Power of Attorney dated 28.03.2014
- 8 Consent Letter for disclosure
- 9 Extract of Resolution passed by the corporate debtor on 27.02.2015
- 10 Demand Promissory Note dated 02.03.2015 for Rs.658 Lakhs
- 11 Letter of Continuity dated 05.03.2015 for Rs.658 Lakhs
- 12 Agreement of Hypothecation dated 02.03.2015 for Rs.658 Lakhs
- 13 Letter of General Lien & Set Off dated 02.03.2015
- 14 General Undertaking dated 02.03.2015
- 15 Undertaking cum Declaration dated 02.03.2015
- 16 Power of Attorney for Book Debts dated 02.03.2015
- 17 Registered Instrument relating to deposit of Title Deeds dated 28.03.2014
- 18 Registered Memorandum of Entry for Extension of Mortgage dated 02.03.2015
- 19 Audited Balance Sheet submitted by the corporate debtor to the applicant for the year 2015-2016 along with letter dated 17.05.2016.

8. The Petitioner-Financial Creditor has also placed on record copies of Sanction Letters dated 21.03.2014 & 25.02.2015 as well as copy of Demand Notice dated 25.04.2017 issued to the Respondent-Corporate Debtor company. Further, the applicant has annexed a copy of memo of Original Application No.1310 of 2017 filed on 08.12.2017 before the Ld. Debts Recovery Tribunal-2, Ahmedabad, [by the erstwhile Dena Bank] against the Respondent-Corporate Debtor, for recovery of its dues.
9. It is further stated that at the time of availing the credit facilities, the respondent-corporate debtor, including the co-

borrowers/guarantors, assured the Petitioner-Financial Creditor that the credit facilities as availed by them would be repaid as per the terms and conditions of the repayment schedule of the Loan Agreement(s), accordingly it was payable in 60 monthly instalments. As per Sanction Letters dated 21.03.2014 and 25.02.2015, the first instalment was due in September 2014. However, the Petitioner-Financial Creditor alleged that the borrowers/guarantors were not regular in making repayment through instalments in respect of Term Loan(s). Therefore, the account of the Respondent-Corporate Debtor company has been declared as Non-Performing Asset (NPA) on 31.03.2017. It is also a matter of record that bank earlier has filed Recovery Proceedings before the Debts Recovery Tribunal, Ahmedabad (bearing Original Application No.1370 of 2017) and further initiated action under the SARFAESI Act against the Respondent-Corporate Debtor. As per the calculation sheet furnished by the bank, the Respondent-Corporate Debtor has made some payment towards its loan liability on 28.04.2017 (towards CC deposit) and on 23.05.2017 (towards Term Loans). It is further matter of record that the Respondent-Corporate Debtor itself through its letter dated 17th May 2019 had requested the Bank for renewal of cash facility, which can be treated as good as acknowledgment of debts from the Respondent-Corporate Debtor.

10. It is further stated that despite repeated requests, reminders and personal follow-up, the respondent-corporate debtor company/borrower/guarantors did not pay the remaining/outstanding instalments to the petitioner bank. Hence, the Petitioner-Financial Creditor has preferred the present application requesting this Adjudicating Authority to initiate Corporate Insolvency Resolution Process against the respondent-corporate debtor company, viz., M/s. Mahi Corporation Pvt. Ltd. as well as to appoint proposed Interim Resolution Professional and to declare moratorium in respect of the Respondent-Corporate Debtor.
11. After filing of the present petition, notices were issued to the Respondent-Corporate Debtor company by the Petitioner as well as by the Registry as per the existing practise of this Tribunal. On 18.02.2019, the respondent/corporate debtor appeared through its advocate, Ms. Jigisha Raval. She had sought time to file reply/objection, but thereafter the Respondent-Corporate Debtor failed in filing reply, despite sufficient opportunities were provided to it. Moreover, it is matter of record that during the course of hearing on 27.03.2019, 30.05.2019, 05.07.2019 and 07.08.2019 there was no representation from Respondent's side. Hence, nothing adverse is available on record to oppose the

admission of present IB Petition filed under Section 7 of the I & B Code.

12. While on the other hand, the Petitioner-Financial Creditor, in support of the present IB Petition, has duly annexed with a copy of Power of Attorney, which has been issued by the Authorized Signatories of the Petitioner Bank viz., Dena Bank, (now to be known as **Bank of Baroda**), by authorising Mr. Janardan Shankar Nijasure, the Assistant General Manager of the erstwhile Petitioner Bank, for filing the present IB petition on its behalf.
13. We have gone through the contents of the present IB Petition and perused the relevant documents annexed therewith. A perusal of the same goes to show that the present petition is filed in conformity with the provisions of Section 7 of the I & B Code and Rules Applicable. The relevant provisions (of Section 7) of the IB Code reads as under;

7. Initiation of Corporate Insolvency Resolution Process by Financial Creditor.

(1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation.—*For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.*

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.

14. A reading of the materials available on record, i.e. the loan documents undisputedly confirms such facts that Petitioner-Financial Creditor had sanctioned and disbursed various credit facilities to the Respondent-Corporate Debtor company, the same was availed by it. Further, sought for renewal of loan in 2015 and made some request in the year 2016, but it defaulted in making repayment of its outstanding financial debt. As the repayment of the Respondent-Corporate Debtor was irregular, the account of

the Respondent-Corporate Debtor has been classified as Non-Performing Asset (NPA) on 31.03.2017 by the bank.

15. Thus, it is evident that the debt is established and its default has been occurred. The outstanding loan amount still remains unpaid. Hence, this satisfies the requirement of Section 3(11) and (12) of the I & B Code so as to trigger the Corporate Insolvency Resolution Process in respect of the Corporate Debtor company. The relevant provisions of Section 3(11) and 3(12) of the Code reads as under;

3(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

3(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.

16. Thus, as per record, the default in making payment of loan amount has been occurred to the extent of **Rs.7,55,17,057.24 (Rupees Seven Crores Fifty Five Lakhs Seventeen Thousand Fifty Seven and Paise Twenty Four only)** as on 31.10.2018 along with interest at contractual rates applicable the date of realization. As the date of default is mentioned as 31.03.2017, the present IB Petition is found to be filed well within limitation and can be considered for its admission.

17. In addition to the above, the Petitioner-Financial Creditor has proposed the name of an IRP, **Mr.Vinod Tarachand**

Agrawal, having address at 204, Wall Street-I, Opp. Orient Club, Near Gujarat College, Ellisbridge, Ahmedabad-380 006, E-mail Address: ca.vinod@gmail.com, Registration No. IBBI/IPA-001/IP-P00641/2017-18/11090, in the present Insolvency Application, which satisfy the requirement of Section 7(3)(b) of the I & B Code. However, the Petitioner-Financial Creditor has further annexed a Written Communication (Annexure-C) received from the proposed Interim Resolution Professional by giving his consent in prescribed Form 2, wherein he mentioned his Registration No. IBBI/IPA-001/IP-P00641/2017-18/11090 and further declared that there is no disciplinary proceeding pending against the proposed IRP.

18. Having heard the submission of Mr. S.S. Panesar, Advocate, for the Petitioner-Financial Creditor and by considering the above stated facts of the present petition, the present IB Petition is found complete. Hence, this Adjudicating Authority hereby admits the Petition in respect of the Respondent-Corporate Debtor company with following consequential directions:

- (i) This Adjudicating Authority hereby appoint proposed IRP, by the applicant, **Mr. Vinod Tarachand Agrawal**, as “Interim Insolvency Resolution Professional”, having address at 204, Wall Street-I, Opp. Orient Club, Near Gujarat College, Ellisbridge, Ahmedabad-380 006, E-mail Address: ca.vinod@gmail.com and


having Registration No. IBBI/IPA-001/IP-P00641/2017-18/11090 under Section 13 (1) (c) of the Code.


- (ii) That the order of Moratorium under Section 14 of the Code shall come ^{in to} effect from **21.08.2019** till the completion of 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.
- (iii) ^{in this} That the Bench hereby prohibits the institution of suits or continuation of pending suit 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 SARFAESI Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- (iv) That the supply of essential goods or services to corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of the Corporate Debtor.

- (v) That the provisions of Section 14 sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (vi) The IRP so appointed shall make public announcement of Corporate Insolvency Resolution Process be made immediately as specified under Section 13 of the Code and by calling for submissions of claim under Section 15 of the Code.
- (vii) The Interim Resolution Professional shall perform all his functions strictly which are contemplated, *inter alia*, by Sections 17,18,20, 21 of the Code. It is further made clear that all the personnel connected with Corporate Debtor, its promoter or any other person associated with Management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the corporate debtor, its promoter or any other person required to assist or co-operate with IRP, does not assist or co-operate, IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order.
- (viii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor company' and manage the operations of the Corporate Debtor company as a going concern as a part of its obligation imposed by Section 20 of I & B Code, 2016.

(ix) The Financial Creditor is directed to communicate a copy of this order to the Interim Resolution Professional, the Respondent Corporate Debtor and the Registrar of Companies, Gujarat.

19. Registry is directed to communicate a copy of this order to the Applicant-Financial Creditor, Respondent-Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities.
20. The commencement of Corporate Insolvency Resolution Process shall be effective from the date of this order.



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


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

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

The above judgment may be read with the following observations;

In the era of Marginal Cost of funds based Lending Rate (MCLR) and in order to have the Resolution Plan viable and implementation successful, the Resolution Applicant / Committee of Creditor(s) may explore the possibility of loading interest maximum at the Bank's one year MCLR / one year MCLR + 1% from the date of default to the date of implementation of the resolution plan while finalising the Resolution Plan for the Corporate Debtor.


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