

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P.(IB)-4108/(MB)/2018
MA 2420/2019, MA 472/2019, MA 479/2019

CORAM: SHRI V. P. SINGH
MEMBER (J)
SHRI RAJESH SHARMA
MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON 23.9.2019

NAME OF THE PARTIES: The Cosmos Co-op Bank Ltd
V/s
Micro Dynamics Pvt Ltd

Section 7 of the Insolvency and Bankruptcy Code, 2016.

ORDER

137. **MA 2420/2019, MA 472/2019, MA 479/2019 In C.P.(IB)-
4108/MB/2018**

Heard the argument of the Ld. Counsel for the Parties.

This Company Petition is admitted and Ms. Anagha Anasinga Raju,
having Registration No.IBBI/IPA-002/IP-N00247/2017-18/10732 is at
this moment appointed as Interim Resolution Professional. Detailed
judgement later on.

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
V. P. SINGH
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP 4108(IB)/MB/2018

Under Section 7 of the I&B Code, 2016

In the matter of

The Cosmos Co-Operative Bank Limited

...Financial Creditor/ Applicant

v/s

Micro Dynamics Private Limited

...Corporate Debtor

Order Dated 23rd September 2019

Coram: Hon'ble Member (Judicial) Mr V.P. Singh
Hon'ble Member (Technical) Mr Rajesh Sharma

For the Petitioner: Adv. Fatima Barodwalla

For the Respondent: Adv. U.A Patel.

Per V.P. Singh, Member (Judicial)

ORDER

1. This is an application being CP 4108/2018 filed by **The Cosmos Co-Operative Bank Limited**, Financial Creditor or Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Micro Dynamics Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. Mr. Vishwas Pandharinath files this application, General Manager of the Applicant Bank, who is duly authorised to do the same vide authorisation dated 16.07.2018.
3. The Applicant had sanctioned certain credit facilities to the Corporate Debtor aggregating to ₹1,660 lakh vide various sanction letters, *inter-alia* dated 31.12.2010 and loan agreements, *inter-alia*, dated 12.01.2011 and 13.12.2012. The account of the Corporate Debtor was declared Non-Performing Asset (NPA) on 30.03.2014, and the same is mentioned as the date of default. The applicant

submits that as on 30.09.2018, the total outstanding amount in default is ₹1627.35 lakh.

4. The Applicant has filed, inter-alia, Cash Credit account statement for the credit facilities sanctioned to the Corporate Debtor that reflect the disbursement of the loan amount as well the outstanding amount as on 31.07.2018 of ₹7,05,93,891.63.
5. The various credit facilities were secured vide Promissory Notes dated 12.01.2011 for ₹ two crores, 13.12.2012 for ₹12.65 crores; Letter of Continuing Security dated 12.01.2011 for ₹ two crores, 13.12.2012 for ₹12.65 crores; Letter of Lien and Set-Off dated 12.01.2011, 13.12.2012;
6. It is pertinent to note that as per the agreement dated 12.01.2011 the Corporate Debtor has mortgaged its immovable property and hypothecated its stocks, book debts and machinery in favour of the Applicant to secure the credit facility. The Credit Facility was also secured by way of Personal guarantee vide Deed of Guarantee dated 12.01.2011 for ₹2,00,00,000/-. Further, as per the agreement dated 13.12.2012 the Corporate Debtor has mortgaged its immovable property and hypothecated its stocks, book debts and machinery in favour of the Applicant to secure the credit facility. The Credit Facility was also secured by way of Personal guarantee vide Deed of Guarantee dated 12.01.2011 for ₹2,00,00,000/-, 13.12.2012 for ₹12.65crore.
7. The Applicant has filed the Independent Auditor's Report of the Corporate Debtor for the year 2016-17 wherein the Corporate Debtor has admitted the outstanding loan from the Corporate Debtor to the tune of more than ₹2,39,38,548/- and the security is given, both in the year 2015-16 and 2016-17.
8. The Applicant has filed extracts of Commercial Credit Information Report (CIBIL) dated 06.06.2018 reflecting the classification of the Corporate Debtor's account as sub-standard and an outstanding amount of ₹10,98,82,234. The Applicant has also submitted the copy of the bank statement along with the certificate under the Banker's Book of Evidence Act, 1891 dated 19.10.2018, certifying the account statements of the Corporate Debtor produced on record.

9. The corporate Debtor has filed its affidavit in reply on 14.12.2018 objecting that the account of the Corporate Debtor is standard and that there is no default by the Corporate Debtor. It is noted that the classification of the account of the Corporate Debtor as sub-standard is evidenced from the CIBIL report dated 06.06.2018 and in light of the said report, the contention of the Corporate Debtor is not untenable.
10. Further, the Corporate Debtor has also raised a contention that the claim of the applicant is time-barred. In this regard it is worth noting that this application under section 7 of the I&B Code was filed on 28.10.2018. The claim of the Applicant is well within the prescribed period of limitation as is evident from the fact that the date of classification of the account of the Corporate Debtor as NPA is 30.03.2014 and the Corporate Debtor itself has admitted and acknowledged the loan in its Balance Sheet for the year ending 2015-16 and 2016-17. Above all, the Ld. Counsel for the Corporate Debtor himself admitted during the hearing of the case on 23.09.2019, on calculation conceded that the claim of the Applicant is well within limitation. Therefore, this contention of Corporate Debtor is also untenable.
11. On perusal of the documents submitted by the financial creditor, it is clear that debt amounting to ₹1627.35 lakh is due and payable by the Corporate Debtor as on 30.09.2018. The debt granted vide various sanction letters and loan agreements is in default, and the same is established by bank statements of the Corporate Debtor and the CIBIL report dated 06.06.2018. The Corporate Debtor has not disputed the existence of debt however has merely raised certain disputes that have been dealt earlier in this judgment and rejected as not maintainable for the reasons mentioned. The outstanding amount that is in default is more than ₹1,00,000/-.
12. The application filed by the financial creditor is on proper form 1 as prescribed under the Adjudicating Authority Rules, and application is complete.
13. The Applicant has proposed the name of Ms Anagha Anasingaraju, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-002/IP-N00247/2017-18/10732] as **Interim**

Resolution Professional, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that no disciplinary proceedings are pending against him.

14. The Application under sub-section (2) of Section 7 of I&B Code, 2016 filed by the financial creditor for initiation of CIRP in prescribed Form No1, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the petition filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This petition filed under Section 7 of I&B Code, 2016, filed by **The Cosmos Co-Operative Bank Limited**, against **Micro Dynamics Private Limited**, for initiating corporate insolvency resolution process is at this moment **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 activity 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench at this moment appoints Ms Anagha Anasingaraju, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-002/IP-N00247/2017-18/10732] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
15. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
RAJESH SHARMA
Member (Technical)
23rd September 2019

Sd/-
V.P. SINGH
Member (Judicial)