



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI**

**IB-607/(PB)/2020**

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**Bank Of Baroda**

Having its Head office at  
Baroda Bhawan, RC Dutta Road  
Alkapuri Baroda -110033

...Applicant/ Financial Creditor

**Versus**

**M/s MB Malls Pvt. Ltd.**

Having CIN no, U74899DL1980PTC010175  
Registered office at:  
G-54, Ground Floor, Vardhman Fortune Mall,  
G T Karnal Road, Near Gujranwala Town.  
Delhi North Delhi-110033

...Respondent/ Corporate Debtor

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**Coram:**

**SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)**  
**SHRI. RAHUL BHATNAGAR, Hon'ble Member (Technical)**

Counsel for Applicant: Mr. Tanveer Ilahi, Advocate

Counsel for Respondent: Mr. Mateen Ahmad, Advocate

**ORDER**

**Per: Rahul Bhatnagar, Member (Technical)**

**Date: 03.08.2022**

1. This is an application filed by the applicant Bank of Baroda on 14.02.2020, through Authorised Representative of Financial Creditor, Y.P Chawla, Chief Manager, Bank of Baroda, duly authorised vide Board Resolution dated 14.07.2017, to initiate Corporate Insolvency Resolution Process (hereinafter referred to as CIRP) against M/s MB Malls Pvt. Ltd under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as the Code) for the alleged default on the part of the Respondent for an amount of Rs. 43,41,25,983.25 (Rupees Forty-Three Crores Forty-One Lakhs Twenty-Five Thousand Nine Hundred

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Eighty-Three and Twenty-Five Paise) as on 31.01.2020 to be paid to the Applicant. The date of NPA as per the applicant is 29.10.2012. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- That the corporate debtor is a company incorporated under the Companies Act, 1956. The current CIN no of corporate debtor is U74899DL1980PTC010175 and it is having its registered office at G-54, Ground Floor, Vardhman Fortune Mall, G T Karnal Road, Near Gujranwala Town, Delhi North Delhi-110033
- That, on 22.11.2007, Credit facility/Term Loan of Rs. 22.50 Crores was sanctioned by Financial Creditor to Corporate Debtor for the purpose of construction of commercial mall at 13/6, Mathura Road, NH-2, Faridabad.
- Loaning and Security Documents executed by Corporate Debtor and Guarantors on 14.12.2007, in accordance with the terms and conditions of the Letter of Sanction dated 22.11.2007
- That, on 14.05.2008, Inter Se Agreement executed between Bank of Baroda/Financial Creditor and Oriental Bank of



Commerce with respect to the Pari Passu Charge held in the securities created by the Corporate Debtor for the credit facilities availed from the said banks.

- That on. 26.12.2011, Additional Term Loan of Rs. 3.55 Crores was granted by the Corporate Debtor to Financial Creditor and loaning and security documents executed in respect thereof.
- That, the account of Corporate Debtor was declared NPA on 29.10.2012.
- That, further, the account of Corporate Debtor was restructured vide Letter of Sanction dated 17.10.2013 whereby the overdue interest in existing term loans was converted into a funded interest term loan of Rs. 4.80 Crores and the existing Term Loan-I was restructured at Rs. 17.58 Crores and Term Loan-II was restructured at Rs. 2.77 Crores.
- That, on 20.12.2014, Debt acknowledgment letter was executed by Corporate Debtor in favor of Financial Creditor.
- That, on account of failure of restructuring the account was declared as an NPA w.e.f. 29.10.2012 and Notice under Section 13 (2) was issued to Corporate Debtor for

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enforcement of security interest under the provisions of SARFAESI on 08.10.2015.

- That, Original Application for recovery of outstanding amount was filed on 06.04.2016 before the Debts Recovery Tribunal-II on 06.04.2016 and the same is currently pending adjudication as OA No. 227/2016.
- That, debt of the corporate debtor due towards the financial creditor continues to be acknowledged in its balance sheets for the financial year ending 31.03.2017, 31.03.2018 and 31.03.2019 respectively.
- That, another financial creditor i.e. Oriental Bank of Commerce filed an application under Section 7 of Insolvency and Bankruptcy Code, 2016 on 26.12.2018 which was registered as CP (IB) No. 411(PB)/2019.
- That, the said application under Section 7 was admitted by this Hon'ble Tribunal vide Order dated 04.06.2019 however, prior to constitution of CoC, the Corporate Debtor deposited a sum of Rs. 2.30 Crores along with proposal for one time settlement with the Financial Creditor on 29.06.2019
- That, the Order dated 04.06.2019 for initiation of CIRP was recalled by this Hon'ble Tribunal in view of settlement arrived

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at between the Corporate Debtor and erstwhile Oriental Bank of Commerce. The same was done prior to constitution of CoC.

- The Order dated 04.06.2019 for initiation of CIRP was recalled by this Hon'ble Tribunal in view of settlement arrived at between the Corporate Debtor and erstwhile Oriental Bank of Commerce. The same was done prior to constitution of CoC.
- That the OTS proposal dated 29.06.2019 was accepted and sanctioned by the Financial Creditor vide Letter of Sanction dated 24.07.2019, however, the OTS sanction dated 23.07.2019 was recalled on account of the failure of the Corporate Debtor to accept the terms and conditions thereof.
- That, the corporate debtor has committed default in the discharge of its financial debts and to the financial creditor and is liable to be subjected to the Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016.
- That, the financial creditor has nominated Sh. Vikram Bajaj to be the Interim Resolution Professional for adjudicating the

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CIR Process. Written Consent of Sh. Vikram Bajaj has also been placed on record.

- The present application under Section 7 of the Insolvency and Bankruptcy Code, 2016 was filed by the Financial Creditor vide Diary No. 0710102020482020
- That based on the facts stated above, the applicant prayed to initiate CIRP against the Corporate Debtor.

2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions were made:

- That, the present petition is hopelessly barred by law of limitation
- That as per the petition filed by the financial creditor the date of default is 29.10.2012. As per section 137 of Limitation Act, 1963, limitation for approaching this Hon'ble Tribunal is 3 years from the date of default and the present application is filed way long after the date of default. Further, the financial creditor has not provided any justification for the delay in filing the said application before this Hon'ble Tribunal.

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- That, the financial creditor is abusing the IBC as recovery tool as the object of the code is resolution of the Corporate Debtor and cannot be used for recovery of debts.
- That, the Financial Creditor has approached this Hon'ble Tribunal despite invoking the jurisdiction of the Hon'ble Debt Recovery Tribunal, New Delhi vide OA 227/2016 under section 19 of Recovery of Debt and Bankruptcy Act, 1993.
- That, another application under section 7 of Insolvency and Bankruptcy Code, 2016 has been filed by Oriental Bank for Commerce which was duly settled by the Corporate Debtor which shows that the Corporate Debtor is financially sound and initiating the Corporate Insolvency Resolution Process against the Corporate Debtor will adversely impact the Corporate Debtor.
- That, the IRP proposed in the application has no experience in the business of the Corporate Debtor and since he is handling 8 matters simultaneously, he

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would not be able to handle the CIRP of the Corporate Debtor.

- Keeping in view of the submissions made above, the present application is liable to be dismissed with cost.

3. We have gone through Written Submissions, documents on record filed by both the parties and arguments advanced by counsels of both the parties.

4. Mere plain reading of the provision under section 7 of IBC and decision (supra) shows that in order to initiate CIRP under Section 7 the applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. That while dealing with an application under section 7 the Adjudicating Authority is required to consider the question whether the 'debt' and 'default' is proved or not.

5. That, the Corporate Debtor, in his reply, has not disputed the fact that there was an agreement between the applicant and the Corporate Debtor and has reiterated the same in the reply filed by the Corporate Debtor in para 4 of the Reply. The Corporate Debtor has raised one substantive

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objection which needs to be adjudicated by this Tribunal which is whether the present application is barred by limitation or not.

6. The applicant, has placed on record the balance sheet of financial year ending 31.03.2017, 31.03.2018 and 31.03.2019 which reflects the entries of the loans made to the Corporate Debtor by the applicant. Further, it is well settled principle that the entries made in the Balance sheet amounts to acknowledgement of debt as per section 18 of Limitation Act, 1963. We are supported by the judgement of Hon'ble Supreme Court in Dena Bank (Now Bank of Baroda) Vs. C. Shivakumar Reddy & Anr. 2021 SCC Online SC 543 the Hon'ble Supreme Court has made the following observation in para 118 which reproduced as under: -

**“It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act.** In *Asset Reconstruction Company (India) Limited v. Bishal Jaiswall* (supra) authored by Nariman, J. this Court quoted with approval the judgments, *inter alia*, of *Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff*, [“Bengal Silk Mills”] and in *Re Pandem Tea Co. Ltd.*, the judgment of the Delhi High Court in *South Asia Industries (P) Ltd. v. General Krishna Shamsheer Jung Bahadur Rana* and the judgment of Karnataka High Court in *Hegde*



*Golay Ltd. v. State Bank of India and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt.”*

It is evident from the entry in the balance sheet itself that the Corporate Debtor has acknowledged debt. Since the Corporate Debtor has acknowledge the debt in the balance sheet is as on 31.03.2019, the limitation commences from 31.03.2019 and the present application has been filed on 14.02.2020, so the present petition is well within the limitation period.

7. In the light of the aforesaid facts, we find that the Loan agreements executed between the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has defaulted on repayment which is duly admitted by Corporate Debtor.
8. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and **initiates** CIRP on the Corporate Debtor with immediate effect.

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9. Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Vikram Bajaj, for appointment as Interim Resolution Professional having registration number(1BB1/IPA-002/IPN00003/2016-17/10003) having email id bajaj.vikram@gmail.com.

10. Mr. Vikram Bajaj has agreed to accept the appointment as the Interim Resolution Professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 11.02.2020. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Vikram Bajaj as per the requirement of the IBBI Regulations. The applicant has also placed on record the Certificate of Registration of the Insolvency Professional dated 27.07.2017 and he has valid AFA valid till 14.11.2022. Accordingly, it is seen that the

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requirement of Section 7 (3) (b) of the Code has been satisfied.

11. It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the code* stands satisfied as default has occurred, the present application filed under Section 7 is complete, and as no disciplinary proceeding against the proposed IRP is pending.

12. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

13. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

14. Mr. Vikram Bajaj, having registration number 1BB1/IPA-002/IPN00003/2016-17/10003) having email id bajaj.vikram@gmail.com. is appointed as the Interim Resolution Professional.

15. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim



Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

16. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

*“(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 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 the possession of the corporate debtor.”*

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17. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

18. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. He shall file his report within 30 days before this bench.

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**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

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**MEMBER (JUDICIAL)**