

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**COURT-I, MUMBAI BENCH**

**ITEM No.9**

**IA No. 876/2020 in C.P. (IB) No. 4302/MB/2018**

**IN THE MATTER OF:**

Bank of Baroda (Erstwhile Dena\*Bank)

.... Petitioner

V/s

Max Flex & Imaging Systems

.... Corporate Debtor

**Order under Section 33 and 7 of the Insolvency and Bankruptcy Code,**  
**2016**

**Order delivered on 08.09.2021**

**CORAM:**

**SH. BHASKARA PANTULA MOHAN**  
**HON'BLE. ACTG. PRESIDENT**

**SH. NARENDER KUMAR BHOLA**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant:

Adv. Jishnu Chowdhury, a/w Adv. Ankur Singhi, Adv. Akshaya Puthran and Sneh Trivedi i/b. S.K.Singhi and Co.LLP Advocates

For the Respondent:

None present.

**ORDER**

The matter is taken up on VC.

The Company Petition is allowed. Detail Judgment to follow.

SD/-

**(BHASKARA PANTULA MOHAN)**  
**ACTG. PRESIDENT**

SD/-

**(NARENDER KUMAR BHOLA)**  
**MEMBER (TECHNICAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT NO. I, MUMBAI BENCH

C.P. (IB) No. 4302/MB/2018

Under Section 7 of the I&B Code, 2016

In the matter of:

Bank of Baroda

...Financial Creditor / Petitioner

V/s

Max Flex & Imaging Systems Ltd

...Corporate Debtor / Respondent

Order Delivered on 08.09.2021

**Coram:**

Hon'ble Acting President: Shri Bhaskara Pantula Mohan

Hon'ble Member (Technical): Shri Narendra Kumar Bhola

**Appearances:**

For the Petitioner:

For the Respondent:

*Per: Shri Bhaskara Pantula Mohan, Hon'ble Acting President*

**ORDER**

1. This is a Petition being C.P. (IB) No. 4302/MB/2018 filed by Bank of Baroda, the Financial Creditor / Petitioner, under section 7 of Insolvency & Bankruptcy Code, 2016 (the Code) against Max Flex & Imaging Systems

SD/-

Ltd, Corporate Debtor, on 12.11.2018 for initiating Corporate Insolvency Resolution Process (CIRP).

2. It is stated that the present application had earlier been admitted by this Tribunal vide its order dated 05.09.2019 and order as:

*"Heard the Argument of Ld. Counsel for the Financial Creditor. The petition is admitted. Mr. Fanenfra H. Munot, having Reg. No. IBBI/IPA-001/IP-P00515/2017-18/10916 is appointed as IRP. Detailed judgement later on."*

3. It is stated that thereafter no final judgment was delivered on or after 05.09.2019. Further the Hon'ble Member (Judicial) had relinquished the charge from the post and that was the reason for non-delivery of detailed judgement.

4. It is further stated that the Hitesh R. Jobalia (Appellant) filed an Appeal before Hon'ble NCLAT being a Company Appeal (AT) (Insolvency) No. 1135 of 2019 which was allowed vide its order dated 25.10.2019 and order as,

*"In the circumstances, we allow the Appellant to mention the matter before the concerned Bench of 'National Company Law Tribunal', Mumbai Bench, Mumbai to pass a Reasoned order uninfluenced by the impugned order dated 5<sup>th</sup> September, 2019."*

5. Thereafter, the present application is taken up on board for further hearing. The Petition is filed by the Financial Creditor, claiming a total default of Rs.32,67,46,597.31 (Rupees Thirty-Two Crores Sixty-Seven Lakhs Forty-Six Thousand Five Hundred and Ninety-seven and Paise Thirty-One Only) including interest. The date of default was 08.01.2015(date of NPA).

6. It is submitted that on the request of the Corporate Debtor, the Petitioner had sanctioned the following credit facilities to the Corporate Debtor:

(i)	Cash Credit Hypothecation -	Rs. 5.00 crore
(ii)	Letter of Credit (Devolved L/C) -	Rs.15.00 crore
	Total -	Rs.20.00 crore

The abovesaid sanctioned amount was disbursed in multiple tranches from 2013 to 2014.

7. The Petitioner further submitted that the loan was secured by means of creating a mortgage. The following documents were executed between the Financial Creditor and the Corporate Debtor:

- a) First Supplemental Indenture of Mortgage dated 21.03.2014 by the Corporate Debtor, Mr. Hitesh Jobalia, Ms. Dipti Jobalia, Mr. Nimish N. Shah, Ms. Amita K. Sheth, Mr. Navin V. Shah, Mr. Rajesh C. Dadia, Ms. Kalpana R. Dadia, Mr. Kiran Sheth, Mr. Hemant R. Shah, Ms. Kajal D. Shah, Max. Signage Industries Pvt Ltd, Mr. Prashant Giridhar Menon as the mortgagors in favour of SBICAP Trustee Co Ltd, in its capacity as a Security Trustee acting for the benefit of State Bank of India, Standard Chartered Bank, Bank of Maharashtra, Union Bank of India, Canara Bank, Bank of India, Bank of Baroda, Syndicate Bank, and IDBI Bank for availing certain working capital facilities and creating a charge on the properties mentioned the petition at point A of Part V of the Form 1.
- b) The First Supplemental Indenture of Mortgage Deed dated 21.03.2014 for an amount of Rs.40,00,00,000/- was executed by Mr. Hitesh Jobalia, Ms. Dipti Jobalia, Mr. Nimish N. Shah, Ms. Nikita N. Shah, Mr. Navin V. Shah, Mr. Rajesh C. Dadia, Ms. Kalpana R. Dadia, Mr. Kiran Sheth, Ms. Amita Sheth, Mr. Prashant Giridhar Menon, Mr. Hemant R. Shah and Ms. Kajal D. Shah as the Guarantors

in favour of SBI Cap Trustee Co Ltd as the Security Trustee. The same is annexed to the Application as Exhibit E.

- c) The Corporate Debtor vide an agreement of Hypothecation (Goods, Book Debts and other Movable Assets to secure multiple Facilities) dated 26.02.2014 hypothecated and charged all the Corporate Debtor's goods and/ or book assets and/ or movable and other assets to the Bank by way of first charge. The details of the Corporate Debtors goods and/ or assets are mentioned in the Petition at point B of Part V of the Form 1.
- d) The Applicant also annexed the copy of the Working capital Consortium Agreement dated 18.03.2013 is annexed to the Application as Exhibit F and the amendment of the said agreement as contained in First Supplemental Working Capital Consortium Agreement dated 21.03.2014 is annexed to the Application as Exhibit G.
- e) The First Supplemental Deed of Guarantee (Corporate guarantee) dated 21.03.2014 for an amount of Rs. 400,00,00,000/- (Rupees Four Hundred Crores only) was executed by Max Signage Industries Pvt. Ltd. as the Guarantor in favour of SBICAP Trustee Company Ltd. as the Security Trustee at Mumbai on the 21.03.2014
- f) SBICAP Trustee Company Ltd. was acting as Security Trustee on behalf and for the benefit for the SBI led Consortium Banks being Bank of India, Bank of Maharashtra, Canara Bank, Bank of Baroda, Standard Chartered Bank, State Bank of India, Union Bank of India, Syndicate Bank, Bank of Baroda, and IDBI Bank Ltd. The copy of the First Supplemental Deed of Guarantee dated 21.03.2014 is annexed as **Exhibit "I"** to the Application.

- g) The First Supplemental Deed of Guarantee (Personal guarantee) dated 21.03.2014 for amount of Rs. 400,00,00,000/- (Rupees Four Hundred Crores only) was executed by Mr. Hitesh Jobalia, Ms. Dipti Jobalia, Mr. Nimesh N. Shah, Ms. Nikita N. Shah, Mr. Navin V. Sha, Mr. Rajesh C. Dadia, Ms. Kalpana R. Dadia, Mr. Kiran Seth, Ms. Amita Sheth, Mr. Prashant Giridhar Menon, Mr. Hemant R. Shah, and Ms. Kajal D. Shah as the Guarantors in favour of SBICAP Trustee Company Ltd. as the Security Trustee at Mumbai on the 31.03.2014. First Supplemental Deed of Guarantee dated 21.03.2014 is annexed as **Exhibit "J"** to the Application.
8. The Petitioner filed various Applications before the Tribunal and Court on the same default, the details are as follows,
- a) The Petitioner submitted that OA No.36 of 2016 has been filed on 12.02.2016 before DRT-I, Mumbai and the said matter is now at the stage of CAOD. The said OA has not yet been decreed.
- b) The Petitioner further submitted that the following Securitization Applications have been filed before various forums:
- (i) SA No.570 of 2017 has been filed on 28.08.2016 before the CMM Court.
- (ii) SA No.831 of 2017 has been filed on 20.12.2017 before the CMM Court
- (iii) SA No.402 of 2017 has been filed on 12.09.2017 before the DM Court at Pune.
9. The Account of the Corporate Debtor was declared as a Non-Performing Asset (NPA) on 08.01.2015. Copy of the NPA certificate dated 29.10.2018 issued by the Financial Creditor is annexed with the petition as Exhibit- 'B'.
10. The Petitioner further submitted that a notice dated 11.07.2016 was issued under Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor

calling upon them to repay the dues along with the interest and other charges. The Corporate Debtor in spite of giving 60 days clear notice, failed to repay the amount demanded.

11. The petitioner submitted that since in spite of giving several chances, the Corporate Debtor failed to repay the dues of the Financial Creditor, they have filed the present Application under the provisions of Section 7 of the Code read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
12. The Financial Creditor has also attached a Certificate dated 29.10.2018 as required under the Bankers Book Evidence Act, 1891 as Exhibit 'N' and a CRILC report showing the Asset Classification as "Doubtful 2" as Exhibit 'M'. The above said documents having reflected that the debt has been in existence in between the parties, Central Depository Information of Large Credits has classified the asset as a doubtful debt, we are of the view that petitioner has furnished documentary proof to believe that debt and default is in existence as on the date.
13. The Financial Creditor has also filed the Form 2, i.e., the written communication by the proposed Interim Resolution Professional, Mr. Fanendra Harakchand Munot (Registration No. IBBI/IPA-001/IP-P00515/2017-18/10916), a copy of which is annexed with the Petition. In Form 2 annexed to the Application, the proposed IRP has declared that no disciplinary proceedings are pending against him.
14. The Corporate Debtor has filed the affidavit of reply dated 27.06.2019 to the Application. Among the other things the Corporate Debtor submitted that-
  - a) The Corporate Debtor company is incorporated on 25.10.2002 registered under the provision of the companies act, 1956, and having the registered office situated at 102/Prima Plaza, J.V. Patel Compound, Balasahab Madurkar Marg, Elphineston (west)

Mumbai. The Company has been a trader and importer of various flex and photo paper and other materials. The presence of the Company at multiple locations across India during the relevant period, the goods were also supplied at various locations.

- b) It is pertinent to note that even as on 31.03.2021 there were certain supplementary documents were executed for enhancement of the limits of 360 crores to 400 crores and it included syndicate Bank, IDBI Bank and Bank of Baroda. The total claim amount of Rs. 326746597.31 is not true and correct and same is not admitted by the Corporate Debtor.
- c) As per the statement of the bank the account was declared as NPA as on 31.01.2015 and therefore the present application is barred by law of limitation. It is further alleged that the corporate debtor vide an agreement of Hypothecation (Goods, Book Debts and other movable assets to secure Multiple facilities) dated 26.02.2014 and therefore also the application is barred by law of limitation. The Company has certain stock of defective material lying, which was even verified by the EOW during its investigation. It is important note that EOW has investigated this stock/ inventory write off and debtors write off in detail and after verifying various debtors/ inventory, EOW has found that there was no wrong doing by the Company. The Corporate Debtor company has therefore not made any international default.
15. We have heard both the parties and perused the record.
16. On perusal of the documents submitted by the Petitioner, it is evident that the debt and default of the Corporate Debtor have been established. The Corporate debtor contended that the date of NPA is 31.01.2015 but actual date of NPA is 08.01.2015 therefore, the present Application filed after

Three years of the default therefore same is barred by limitation. However, there is default and acknowledgment of the default is there. Moreover, the Applicant issued a recall notice 11.07.2016 under Section 13(2) of the SARFAESI Act, 2002 but Corporate Debtor in spite of giving 60 days clear notice, failed to repay the amount demanded. The Applicant also filed an OA before DRT-I, Mumbai, SA before CMM Court for the same default. Further the Applicant has also attached a Certificate dated 29.10.2018 as required under the Bankers Book Evidence Act, 1891 and a CRILC report showing the Asset Classification as "Doubtful 2" which shows there is default by the Corporate Debtor.

17. The Hon'ble Supreme Court in the matter of *Dena Bank (now Bank of Baroda vs. C Shivakumar Reddy and Anr.* [Civil Appeal No. 1650 of 2020], has held that application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA. The Hon'ble Supreme Court has recorded the same at para 142 which reads as under:

"To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years."

18. The Hon'ble Supreme Court has also adverted to the Section 7, in case of *Innovative Industries Limited vs. ICICI Bank & Anr.* vide judgment dated 31<sup>st</sup> August, 2017 at para 28, which reads as under:

*“When it comes to financial Creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1) a default is in respect of a financial debt owed to any financial creditor of the Corporate Debtor – it need not be debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form I accompanied by documents and records required therein. Form I is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the Corporate Debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. it is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect*

*within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor\* within 7 days of admission or rejection of such application, as the case may be."*

19. In the light of provisions of Section 7 of Code, and law as declared by the Hon'ble NCLAT and Hon'ble Supreme Court as extracted above, the Adjudicating Authority/ Tribunal has to examine the instant case as to whether Application/Petition filed is complete with supported evidence; debt and default established; suggested a qualified Resolution Professional to appoint as Interim Resolution Professional etc.
20. On perusal of the instant Company Petition along with material documents filed and the objections raised by the Respondents as briefly stated supra, and the law as cited above, we are satisfied that the instant Company Petition is filed by Dena Bank (Financial Creditor), U/s 7 of IBC, 2016 strictly in accordance with law, with substantial evidence produced in support of debt and default as per details are as above in supra; The existing financial debt of more than rupees one lakh is due and payable against the corporate debtor and its default is also proved. Application is within limitation. The Financial Creditor suggested Mr. Fanendra Harakchand Munot (Registration No. IBBI/IPA-001/IP-P00515/2017-18/10916), to appoint him as Interim Resolution Professional, who has filed Written Communication dated 01.11.2018 and he is not undergoing nay disciplinary proceedings, expressing his willingness to act as such etc. Therefore, it is fit case to initiate CIRP as prayed for. Accordingly, the application 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**

21. Accordingly, this Petition is admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench 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 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 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 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.

SD/-

- IV. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- V. That this Bench appoints Mr Fanendra H. Munot a registered Insolvency Resolution Professional having Registration Number IBBI/IPA-001/IP-P00515/2017-18/10916 as Interim Resolution Professional to carry out the functions as mentioned under I&B Code.
22. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by email.
23. The Registry is also directed to send a copy of this order to the Registrar of Companies with whom the Corporate Debtor is registered for marking change of the status of Corporate Debtor on the Website of Ministry of Corporate Affairs.

SD/—

NARENDER KUMAR BHOLA  
Member (Technical)

SD/—

BHASKARA PANTULA MOHAN  
Acting President