

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.150
CP(IB) 407 of 2020

Order under Section 10 IBC

IN THE MATTER OF:
Maximaa Systems Ltd

.....Applicant

Order delivered on ..28/11/2022

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in open Court vide separate sheet.

SD/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

SD/-

DR. MADAN B GOSAVI
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

CP (IB) No. 407/10/NCLT/AHM/2020

[Application for initiation of Corporate Insolvency Resolution Process under Section 10 of the Insolvency & Bankruptcy Code, 2016]

In the matter of:

M/s Maximaa Systems Limited

A company incorporated under the Companies Act, 1956
Having registered address at;
B-1, Yashkamal, Tithal Road, Valsad,
Gujarat- 396001

..... Corporate Person

Order Reserved on: 02.11.2022

Order Pronounced on:-28.11.2022

**Coram: Dr. MADAN B. GOSAVI, MEMBER (J)
KAUSHALENDRA KUMAR SINGH, MEMBER (T)**

Appearance:

Mr. Jaimin Dave Ld. Advocate for the Corporate Person.

ORDER

1. The instant application is filed by M/S Maximaa Systems Limited- Corporate Person under Section 10 of the Insolvency and Bankruptcy Code, 2016 [‘IB Code’] to initiate the Corporate Insolvency Resolution Process [‘CIRP’] as the Corporate Person has committed the default in paying the debt of Rs. 18,71,58,813/- of sole financial creditor –Bank of India and Rs. 2,93,56,555/- of Operational Creditors.

2. The averments made by the Corporate Person are summarised as under;

(i) The Special Resolution was passed on 05.10.2020 by the Board of directors of the Corporate Person to initiate the CIRP in view of the critical financial condition of the Corporate Person and Mr. Mayur Balubhai Shah, Director of the Corporate Person appointed as an authorized person to initiate the CIRP proceedings of Corporate Person.

(ii) The Corporate Person committed a default in paying an amount of Rs. 18,71,58,813/- to the sole financial creditor- Bank of India, Rs. 2,89,69,787/- and Rs. 3,86,768/- to Operational Creditors- M/s Kirti Steel and, M/s Hitesh Enterprise respectively. M/s Hitesh Enterprise has filed an application bearing No. 403 of 2019 against the Corporate Person under section 9 of the IB Code.

(iii) The Corporate Person obtained a loan from the Bank of India, and on 30.01.2014 a loan amount of Rs. 19.91 crores was sanctioned by the Bank and the Bank has created the charge over the assets of the Corporate Person as well as guarantors of the Corporate Person to secure the aforesaid debt. A copy of the charge certificate is annexed with the application as Annexure- F.

(iv) Due to non-payment of the agreed amount by the Corporate Person, Bank of India issued a notice dated 31.07.2015 under section 13 (2) of the SARFAESI Act, 2002 wherein an amount of Rs. 20,33,55,877/- demanded by the Bank. The Bank further issued notice dated 01.08.2015 to the Corporate Person to initiate the process for the identification as a "Willful Defaulter(s)". The Corporate Person vide its letter dated 02.08.2015 requested the Bank not to proceed with the

said notice issued under section 13 (2) of the SARFAESI Act, 2002 and enforcement of security interest created by the Bank over the assets of the Corporate Person.

(v) Bank of India once again issued a notice under section 13(2) of the SARFAESI Act, 2002 on 20.01.2018 to the Corporate Person wherein the Bank claimed an amount of Rs. 27,12,42,334/- Thereafter, the Bank issued the possession notice dated 10.04.2018 and 19.04.2018 under section 13 (4) of the SARFAESI Act, 2002 for taking the possession of assets which are as under;

- (a) Industrial property situated at plot no. 804 to 808 out of survey No. 52 & 53, GIDC, Gundlav Industrial Estate, District- Valsad, Gujarat owned by Maximaa Sytems Ltd.*
- (b) Factory land & building at survey No. 337/P-2 Dharampur Khergam Road, Village-Bamti, District-Valsad, Gujarat owned by Maxima Systems Ltd.*
- (c) Office Land & building situated at house No. 3066, Anchor road, Suraj Estate village Bhagwada, Valsad owned by Mr. Manoj B. Shah, Mr. Mayur B. Shah and Mr. Mahesh B. Shah.*
- (d) Office premises situated at 1st floor of B-Apartment, Yash Kamal Tithal Road, Valsad RS No. 28K, Sr. No. 3997 and Rs. No. 27/1/1/A/1 Hissa No. 1/A & No. 4099 owned by Mr. Manoj B Shah, Mr. Mayur B Shah and Mr. Mahesh B Shah.*
- (e) Office premises situated at shop No. 41, 2nd Floor, Shree Naman Plaza, S.V Road, Kandivali (W) Mumbai-400067. Constructed on Plot of land bearing survey No. 119,121,122, Hissa No. 1,2,3, CTS No. 403, 404, 405, 409 & 410 of Village Malad, Tal: Borivali owned by Mr. Manoj B Shah, Mr. Mayur B Shah and Mr. Mahesh B Shah.*

(vi) Bank of India vide notice dated 04.05.2018 and 05.05.2018 issued a notice under Section 12 (12) of the

SARFAESI Act, 2002 read with rule 3 of Security Interest (Enforcement) Rules, 2002 for taking possession of the aforesaid properties. Thereafter, the District Magistrate, Valsad vide order dated 05.11.2018 directed the Executive Magistrate and Tehsildar to assist in taking physical possession of the Mortgaged Properties (mentioned at points a to d of para V of this order only).

(vii) The Bank of India once again issued the notice dated 03.08.2019 to the Corporate Person for initiation of the proceedings for indentification as “Willful Defaulter(s). The Corporate Person moved a securitization application bearing No. 240 of 2019 before the DRT-II, Ahmedabad for the direction to restrain the Bank of India from taking physical possession of the mortgaged assets.

3. This Adjudicating Authority vide order dated 07.01.2021 directed to the Corporate Person for effecting the paper Publication in English as well in Vernacular Language widely circulated newspaper in the area. The Corporate Person has complied with the aforesaid direction and published in Gujarati Newspaper in ‘Gujarat Samachar’ Surat Edition and in English Newspaper “The Indian Express” Ahmedabad Edition. The Corporate Person filed an affidavit with respect to paper publication on 19.02.2021. This Adjudicating Authority further vide order dated 22.02.2021 directed the Corporate Person as well as the Registry to serve the notice to the creditors of the Corporate Person as per the list annexed with the application. The same has been complied with by the registry as well as the Corporate Person. Ms. Prajakta Menezes appeared on 06.07.2021 for the Bank of India (Financial Creditor). However, nothing on record to show that the Bank has filed its submission (written or oral) to oppose the present application.

4. Heard the Ld. Counsel of the Corporate Person and gone through the record. It is noted that the Bank of India vide sanctioned letter dated 03.01.2014 sanctioned an amount of Rs 19.91 crores to the Corporate Person. Due to non-payment of a loan amount as per agreed terms and conditions, the Bank classified the account of the Corporate Person as Non-Performing Assets on 30.06.2015. Thereafter, the Bank on 31.07.2015 issued the notice under section 13 (2) of the SARFAESI Act, 2002 demanding an amount of Rs. 20,33,55,877/-. The Bank also issued the notice dated 01.08.2015 to the Corporate Person for initiating the process of the identification of the Corporate Person as a “Willful Defaulter.

5. The Bank once again issued the notice dated 20.01.2018 demanding an amount of Rs. 27,12,42,334/- (at page 152 of the application) under section 13 (2) of the SARFAESI Act, 2002 to the Corporate Person and issued the notice dated 03.08.2019 to the Corporate Person for initiating the process to identify the Corporate Person as “Willful Defaulter (s)”. The Magistrate, Valsad vide order dated 05.01.2018 directed the Executive Magistrate and Tehsildar for assisting in taking physical possession of the Mortgaged properties (pages 163 to 164 of the Application).

6. The main dispute in this application is whether the default amount comes under the period of limitation or not. The account of the Corporate Person was classified as Non-performing Assets on 30.06.2015, the Balance sheet as at 31.03.2018 shows that an amount of Rs. 7,72,10,151/- as borrowing liability and as per the balance sheet as at 31.03.2019 Rs. 8,18,75,151/- liabilities under the head of borrowing. As per the notes, the bifurcation of borrowing is as under;

- I. Term of Repayment: Repayable in 84 equated monthly instalments of Rs. 3,88,751/- from December 2011. Last instalment- November 2018-rate of Interest 15.70% p.a.
- II. Term of repayment: Repayable in 72 equated monthly instalments of Rs. 5,55,555/- from November 2014 last instalment- October 2020. Rate of Interest 15.70 p.a.
- III. Nature of Security: Term loan amounting to Rs. 47,94,000/- is secured by hypothecation over vehicles in the name of Directors.

7. The aforesaid outstanding liabilities are also showing in the latest balance sheet as at 31.03.2020 of the Corporate Person. Meaning thereby the Corporate Person continuously acknowledges the amount in its balance sheet from the date of default. The counsel of the applicant submits that there is a sole financial creditor in the Corporate Person i.e, Bank of India. Hence, the balance sheet annexed with the application is considered as an acknowledgement under section 18 of the Limitation Act, 1961 in view of the judgement of the Hon'ble Supreme Court in the Matter of **Assets Reconstruction (India) Limited versus Bishal Jaiswal and others**, MANU/ SC/ 0279/2021. The claim amount is well within the limits to initiate the CIRP. It is also noted that the default amount meets the threshold limit as given under section 4 of the IB Code.

8. The Corporate Person vide its Board resolution dated 05.10.2020 with special resolution resolved to file this application for initiation of CIRP. The Corporate Person has also proposed the name of the Interim Resolution Professional in this application, the consent letter of the IRP is annexed with the application. In view of the above, we are of the considered view that the present application is otherwise complete under section 10 (3) of the IB Code. Hence, we allow this present application with the following directions;

ORDER

- I. The Corporate Person M/s. Maximaa Systems Limited having CIN No.L27100GJ1990PLC014129 is admitted into the Corporate Insolvency Resolution Process under Section 10 of the Insolvency and Bankruptcy Code, 2016.
- II. We appoint the proposed resolution professional **Mr. Ajit Gyanchand Jain, having Registration No. IBBI/IPA-001/IP-P00368/2017-18/10625, e-mail id: ajit@vcanca.com as an IRP of the Corporate Person.**
- III. The Moratorium under Section 14 of the Code shall come to 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 or passes an order for liquidation of Corporate Person under Section 33, as the case may be.
- IV. The Adjudicating Authority hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Person including the execution of any judgment, decree or order in any Court of law and further prohibits Tribunals, Arbitration Panels or other Authority(s), transferring, encumbering, alienating or disposing of any of Corporate Person assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Person 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 Person.
- V. Further, litigation or application, if any, is pending before any competent Court of law under the provisions of the SARFAESI

Act and RDB Act, prior to the pronouncement of this order such proceedings are expected to be dealt with in accordance with law i.e., Section 14 read with Section 238 of the Insolvency & Bankruptcy Code, 2016.

- VI. The supply of essential goods or services to the Corporate Person, if continuing, shall not be terminated or suspended, or interrupted during the Moratorium, period. The Corporate Person to provide effective assistance to the IRP as and when he takes charge of assets and management of the Corporate Person.
- VII. The IRP so appointed shall make a Public announcement of the Corporate Insolvency Resolution Process (CIRP) immediately as specified under Section 13 of the Code and by calling for submissions of the claim under Section 15 of the Code.
- VIII. The IRP shall perform all the functions as contemplated under the Code. It is further made clear that all personnel connected with the Corporate Person, its Promoter, or any other person associated with the management of the Corporate Person are under legal obligation as per Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional. Where any personnel of the Corporate Person, its Promoter, or any other person required to assist or co-operate with the IRP, do not assist or co-operate, the IRP is at liberty to make the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- IX. The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Person Company' and manage the operations of the Corporate Person Company as a

going concern as a part of an obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

- X. We direct the Applicant/ Authorized Person to pay the IRP a sum of **Rs. 50,000/- (Rs. fifty thousand only)** as fees & expenses till the COC decides about his fees/expenses.
- XI. The Registry is directed to communicate this order to the Corporate Person, the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on the website immediately after the pronouncement of the order.
- XII. The commencement of the Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.
9. Accordingly, CP (IB) No. 407 of 2020 is allowed.

SD/-
(KAUSHALENDRA KUMAR SINGH)
MEMBER (TECHNICAL)

SD/-
(Dr. MADAN B. GOSAVI)
MEMBER (JUDICIAL)

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