

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU**

C.P. (IB) No.275/BB/2019
U/s 7 of IBC, 2016
R/w Rule 4 of I&B (AAA) Rules, 2016

IN THE MATTER OF:

Sharada MurtyAnanthapalli

Assistant General Manager

Corporation Bank,

Malleshwaram Branch

South-end Road, Mill Corner,

Sheshadripuram, PO, Malleshwaram,

Bangaluru – 560 020.

- Petitioner/Financial Creditor

Versus

Mindlogicx Infratec Limited

Unit-1, Techllano 10/1-B,

Graphite India Road,

Hoodi Village, KR Puram Hobli,

Bangalore – 560 048.

- Respondent/Corporate Debtor

Order Pronounced on: 7th December, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (through Video Conference):

For the Petitioner : Mr. V.B. Ravishankar

For the Respondent : Mr. Sanjay H. Sethia

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. The instant Petition has been filed by Ms. Sharada Murty Ananthapalli, Asst. General Manager of M/s. Corporation Bank, Malleshwaram Branch, Bangalore (hereinafter referred to as 'Petitioner/Financial Creditor') under Section 7 of the I&B Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application



to Adjudicating Authority) Rules, 2016 against M/s. Mindlogicx Infratec Limited (hereinafter referred to as 'Respondent/Corporate Debtor') by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of Corporate Debtor for committing a default in payment of Rs.15,22,11,780/- (Rupees Fifteen Crore Twenty Two Lakh Eleven Thousand Seven Hundred and Eighty only) which includes Rs.12,83,56,728/- towards the Term Loan and Rs.2,38,55,052/- towards Over Draft facility.

2. Brief facts of the case, as mentioned in the instant Petition, are as follows:

- (1) M/s. Corporation Bank is a Public Sector Bank having its Head Office at Mangala Devi Temple Road, Mangalore, Karnataka and having Branches inter alia one at Sound-end Road, Mill Corner, Sheshadripuram PO, Malleshwaram, Bangalore-560020.
- (2) M/s. Mindlogicx Infratec Limited is a Limited Company incorporated on 28.07.2010 under the Companies Act, 1956 bearing CIN: U72200KA2010 PLC054598 and having its office at Unit-1, Techllano 10/1-B, Graphite India Road, Hoodi Village, KR PuramHobli, Bangalore-560048.
- (3) The Financial Creditor entered an agreement with Corporate Debtor and provided a term loan of Rs.9,28,66,590/- and Overdraft facility of Rs.1,00,00,000/- on 30.05.2013. The Corporate Debtor after availing the said term loan and over draft failed to pay the amount as per the terms of loan agreement. In accordance with the prudential accounting and income recognition norms prescribed by the Reserve Bank of India, for the banks, the Financial Creditor classified the loan accounts in the name of the Corporate Debtor as non-performing asset (NPA) as on 29.05.2014 and discontinued charging interest to the loan accounts w.e.f. 01.05.2014.
- (4) The Financial Creditor sent request letters and notices to the Corporate Debtor for payment towards term loan and over draft. However, the Corporate Debtor did not repay the term loan and overdraft (inclusive of interest and charges) amounting to Rs.15,22,11,780/-. The Corporate Debtor has defaulted in making repayment to the Financial Creditor and has not made any payment till the date of Petition. Accordingly, the amount

of debt has to be repaid by the Corporate Debtor to the Financial Creditor. Therefore, it is prayed to admit the application and appoint IRP etc.

3. The Respondent filed its statement of objections dated 22.11.2019 by inter alia contending as under:

- (1) The Respondents deny all the allegations made in the petition as false, frivolous and exaggerated and the alleged amount of Rs. 15,22,11,780/- due from Respondent is totally false and is not payable by the Respondent .
- (2) It is stated that the Respondent Company is a Research and Development focused, Technology Company specialised in providing end to end examination automation solution using latest technology with many large Universities and School Education Boards having adopted their technology to curb examination related malpractices. It has unparalleled credentials and has so far serviced about 4 million students across the country.
- (3) It is stated that the Respondent Company was awarded with software and Services Contract dated 07.01.2013 by the Gujarat Technical University Ahmadabad for E-assessment service of Answer sheet and hence it approached the Petitioner, which sanctioned credit facilities by way of term loan and working capital and the term loan repayment commencing from August 2013, repayable in 48 months in 15 quarterly instalments of Rs. 67,00,000/- each and the last instalment being Rs. 62,00,000/- (Rupees Sixty Two Lakhs only). The billing for the services rendered by the Respondent Company under the said contract would happen only twice a year, whenever the examinations conducted by the Gujarat Technical University, Ahmedabad. In view of the same Respondent Company vide its letter dated 24.05.2014 approached the Petitioner and requested for rescheduling the term loan from quarterly instalment to half yearly instalments i.e., whenever the payments are received by the Respondent from the University.



- (4) It is stated that the Petitioner rescheduled the term loan on 28.05.2014. A Supplementary Deed of Hypothecation was entered into. However, the Petitioner sent an email on 11.08.2014 requiring the Respondent Company to deposit a sum of Rs. 1,14,00,000/- for regularisation of the account and held that the Respondent Company loan account has slipped into a Non-performing Asset (NPA) with effect from 29.05.2014. The said email was issued by the Petitioner unilaterally completely ignored the revised restructuring of the term loan. The Respondent Company vide email dated 14.08.2014 pointed out the terms of revised/restructured loan. But the Petitioner arbitrarily issued a letter dated 18.08.2014 cancelling the restructuring order.
- (5) The Petitioner informed the Respondent that to regularise the account the Respondent Company is required to pay a sum of Rs. 2,70,00,000/- (Rupees Two Crores Seventy Lakhs only) on or before 28.08.2014, which was inconsistent and arbitrary as against the demand of Rs. 1,14,00,000/- vide email dated 11.08.2014. So the Respondent filed a W.P No. 42451/2014 before the Hon'ble High court of Karnataka, Bengaluru on 03.09.2014 seeking to quash the unlawful and unilateral declaration of NPA vide letter dated 18.08.2014. The Hon'ble High Court granted an interim order dated 30.01.2015 against the Petitioner restraining attachments etc. for a period of three months from 30.01.2015 subject to the Plaintiff depositing a sum of Rs. 1,60,00,000/- within a period of four weeks. The same was complied by the Respondent.
- (6) The Petitioner vide letter dated 22.04.2015 informed the Respondent Company that it has failed to clear the dues of the secured creditor Bank, and the immovable assets at Chennai have been taken possession under SARFAESI and will be sold by inviting tenders cum public auction on 30.05.2015 through online. This action of the Petitioner led to friction. Further, on 06.10.2014, one Mr. Kaushik Devasenapathy with a bunch of local goondas trespassed into the house of the Respondent's residence.



- (7) The Petitioner on 10.02.2016 also filed the original application bearing O.A No. 295/2016 before the Debts Recovery Tribunal, Bengaluru seeking to declare that the Respondents are in due to the Petitioner, a sum of Rs. 11, 63, 55,393/- and to direct the order of sale of the mortgaged immovable property of the Guarantors etc. IAs were filed also seeking to attach the receivables from nine major clients to the tune of Rs. 10.84 crores.
- (8) The DRT Bengaluru confirmed the ex-parte order dated 11.02.2016 infavour of Petitioner observing that the order of attachment shall continue till the Hon'ble High Court disposes Writ Petition and Writ Appeal. The appeal filed by the Respondent before the Debt Recovery Appellate Tribunal, Chennai is pending. On 26.04.2016 the Respondent Company filed W.P No. 25380 and 25381/2016 before the Hon'ble High Court of Karnataka challenging the impugned order dated 13.04.2016. The Hon'ble High Court of Karnataka by order dated 29.04.2016 stayed the impugned order of DRT with the condition that Respondent Company deposits Rs. 3 Crores within 3 weeks of the order. The Respondent complied with the said order as well. Further, a Contempt Petition C.C. C (Civil) NO. 1078/2016 was filed before the Hon'ble High Court by the Respondent which is pending. These actions of the Bank spoiled the reputation of the Respondent which inflicted huge loss to it.
- (9) It is submitted that the Respondent Company always wanted to pay off the loan and after several rounds of discussions, both the parties arrived at Rs.9,93,00,000/- including interest as on 31.0.2018 as full and final payment. The Respondent Company submitted a revised letter dated 29.05.2018, as requested along with 5 self named security cheques to the Petitioner Bank. However, the Petitioner went back on its words and demanded a sum of Rs. 13,01,10,123/- as against Rs. 9, 93, 00,000.
- (10) The W.P No. 42451/2014 came up and the Hon'ble High Court quashed the letter dated 18.08.2014 of Petitioner Bank disallowing the restructure and classifying the account of Respondent as NPA and gave liberty to the Respondent to submit a fresh representation. The Respondent vide



letter dated 08.05.2019 requested the Petitioner Bank to consider its request as per the orders of the Hon'ble High Court of Karnataka, however, the Bank wilfully refused to consider the representation. The Respondent Company filed a petition before the Hon'ble High Court for Contempt committed by the Petitioner. Suppressing the above mentioned facts the Petitioner Bank has filed the present petition which is not maintainable in the eyes of law. The Petitioner Bank on 10.06.2019 filed a petition before this Tribunal in CP (IB) No. 275/2019 alleging a total default of Rs. 15,22,11,780/- based on the letter dated 11.08.2014 classifying the account of Respondent Company as NPA, even though the same stands quashed by the Hon'ble High Court vide order dated 15.04.2019.

(11) It is stated that the Respondent Company has paid more than over Rs. 7,13,67,854/- approximately over a period time, and fulfilled the orders of the Hon'ble High Court. There is no cause of action for the bank to invoke insolvency proceedings against the company when the account is not declared as a Non-Performing asset, which is already quashed. Applicant has failed to even issue the statutory notice as mandated by IBC code and the present application in the inception itself is infirm. The present petition deserves to be dismissed by imposing heavy costs.

4. Shri V. B. Ravishankar, learned Counsel for the Petitioner, has filed a Memo dated 26.08.2020 which inter alia states that the Respondent had approached the Petitioner for settlement under one time settlement and the same came to be accepted by the Petitioner vide letter dated 21.03.2020. In terms of the same the entire loan account was to be settled in instalments commencing from 20.03.2020 and the payment ought to have been completed on or before 05.09.2020. In the meanwhile, the Respondent has addressed another letter dated 07.07.2020 seeking for extension of the same to 31.01.2021. It is stated that the said letter is pending consideration. No attempt has been made by the Respondent to clear the liabilities as mentioned in the letter dated 07.07.2020. Thus it is prayed to allow the said Petition.



5. Shri Sanjay H. Sethia, learned Counsel for the Respondent, filed a Memo dated 25.08.2020 by inter alia submitting that the Respondent addressed a letter to Petitioner Bank on 07.07.2020 seeking deferment. The Respondent apart from the sums paid till now, has also paid Rs. 2 Crore pursuant to submission of OTS proposal and as on today Rs. 6.5 Crore (Rupees Six Crores and Fifty Lakhs Only) is agreed to be paid on deferred basis only due to the unprecedented situation beyond the control of the Respondent wherein the entire business is come to a standstill and no examinations are scheduled since Covid-19 crisis hit India and that the Respondent is ready to honour payments as per the letter dated 07.07.2020.
6. The aforesaid letter dated 07.07.2020 addressed by the Respondent to the Petitioner requesting for continuation of the sanctioned OTS amount as mentioned in letter dated 21.03.2020 and rescheduling the repayment schedule reads as under:

Sl. No.	As per sanction letter dt. 21.03.20		New repayment schedule now proposed	
	Date of payment	Amt. (in Rs. Lakhs)	Date of payment	Amt. (in Rs. Lakhs)
1.	20.03.2020	100.00	31.01.2021	100.00
2.	20.05.2020	100.00	28.02.2021	100.00
3.	20.07.2020	100.00	31.03.2021	100.00
4.	20.08.2020	150.00	30.04.2021	100.00
5.	05.09.2020	200.00	31.05.2021	100.00
6.	--	--	30.06.2021	100.00
7.	--	--	31.07.2021	50.00
	Total	650.00		650.00

7. Heard Mr. V.B. Ravishankar, learned Counsel for the Petitioner and Mr. Sanjay H. Sethia, learned Counsel for the Respondent through Video Conference. We have carefully perused the pleadings of the Parties and extant provisions of Companies Act, 2013 and the Rules made thereunder.
8. It is clear from the above submissions and the long history of efforts of the Petitioner to repay it's the debt, the matters being taken to Court, several attempts at OTS which the Petitioner has repeatedly gone back upon, and the

present position wherein an offer of settlement made by the Respondent is pending before the Petitioner Bank, that the Respondent is keen to settle the debt but is constrained because of the temporary lull in business due to Covid pandemic and the lockdown and is therefore only seeking deferment in loan repayment instalments, that the as on date the Petition is not ripe for consideration and is premature.

9. We may observe at the very outset that the provisions of Code cannot be invoked for recovery of outstanding amount but it can be invoked to initiate CIRP for justified reasons as per the Code. The Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*¹, has inter alia, held that I&B Code, 2016 is not intended to be substitute to a recovery forum. The Code cannot be used prematurely or for extraneous considerations or reasons as a substitute for debt enforcement procedures. It is also not the purpose of the Code to put viable and profit making entities into insolvency for the recovery of debt. It is seen that the Respondent has been paying part of the debt of and on the directions of the Hon'ble High Court and the DRT, and on the basis of agreed terms, and a substantial part of the debt has been paid. Thus this Petition is only filed to use this Tribunal as a recovery forum in its continuing recovery actions against the Respondent Corporate Debtor, and in any case is premature as an accepted OTS proposal is pending final approval of the Petitioner Bank.
10. We also take notice of the fact that due to the Covid-19 pandemic, the Central and State governments have ordered lockdowns for different periods which led to large scale hindrance to movement of men and material. This has impacted businesses all over India, and has necessitated several pronouncements for facilitating business. Statutory changes such as increase of thresh hold limit for filing a petition under the IBC for initiating CIRP, suspension of CIRP, deferment of loan repayments and restructuring of debt etc. have been made to prevent businesses from going into liquidation. Under the circumstances narrated in the objections filed by the Respondent, it is clear that its business has been hampered in the current economic scenario, as all the Educational

¹(2018) 1 SCC 353



Institutions and Universities have postponed examinations and no tentative dates are fixed for any examination. This has led to non-receipt of revenue from business on account of closure of educational institutions, which in turn leads to its difficulty in timely repayment of loans. We cannot ignore this aspect which has been acknowledged in several decisions of all Courts, including the Hon'ble Supreme Court and the Hon'ble NCLAT. This is more so in a case where the Respondent is inclined to repay its debt and only seeks more time to do so.

11. After the quashing of the NPA order in W.P No. 42451/2014 by the Hon'ble High Court of Karnataka, the Respondent submitted a fresh representation on 08.05.2019 and has already paid a substantial part of the debt over a period time. Shri V. B. Ravishankar, learned Counsel for the Petitioner, has filed a Memo in this Tribunal, dated 26.08.2020 stating that the Respondent had approached the Petitioner for settlement under one time settlement and the same came to be accepted by the Petitioner vide letter dated 21.03.2020. In terms of the same the entire loan account was to be settled in instalments commencing from 20.03.2020 and till 05.09.2020. But the Respondent is seeking extension of the same to 31.01.2021, which is pending consideration. If the terms are accepted, and the Respondent complies with the terms of OTS, the Applicant shall not precipitate the matter. Shri Sanjay H. Sethia, learned Counsel for the Respondent, has filed a Memo dated 25.08.2020 by inter alia submitting that the Respondent is awaiting reply from the Petitioner. Apart from the sums mentioned earlier as paid, it has also paid Rs. 2 Crore pursuant to submission of OTS proposal and as on today Rs. 6.5 Crore (Rupees Six Crores and Fifty Lakhs Only) is agreed to be paid on deferred basis only. The Respondent is ready to honour payments as per the letter dated 07.07.2020.
12. Since the Respondent has offered new terms of payment, the matter is pending before the Petitioner, and since the proposal for deferment is for genuine reasons namely effect of Covid-19 pandemic on its business, as on all businesses, we are of the view that this Petition is premature in the present circumstances. The Ld. Counsel for the Petitioner has also submitted that if the terms are accepted and the Respondent complies with the terms of OTS, the



Applicant shall not precipitate the matter. Its order treating the Respondent as an NPA already stands quashed by the Hon'ble High Court. No case has also been made out by the Petitioner that the Respondent has become insolvent, is unable to run its business or is unable to repay its debts. In fact it has paid a substantial part of the debt and interest, which shows its intent as well as capability to pay. It is not the objective of the Code to push viable Companies into CIRP or into liquidation. Matters under the IBC also cannot be kept pending endlessly or assume the role of recovery enforcement. In these facts and circumstances, we are not satisfied that a case is made out for admitting the Petition and pushing the Respondent into CIRP.

13. Though we do not find the Petition to be fit for admission, we are conscious of the fact that the Petitioner is a responsible Bank and the custodian of public money and has to effectively discharge its onerous banking functions. Hence, in the facts and circumstances of the case, at this point in time it would be premature to either dismiss or admit the Petition. We therefore consider it just to dispose of the Petition granting liberty to the Petitioner to file a fresh Petition if the debt owed is not repaid by the Respondent, as per the settlement talks that are admittedly in progress and pending before the Petitioner Bank, within a reasonable time, provided a case is otherwise made out as per the provisions and objectives of the Code.
14. In view of the foregoing, C.P. (IB) No.275/BB/2019 is disposed of as above. No order as to costs.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL
Krishna

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL