

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CP. No.1309/I&BC/2017

Under Section 7 of the I&B Code, 2016

In the matter of

The Federal Bank Limited  
Federal Towers, Bank Junction  
Aluva, Ernakulam District  
Kerala.

.... Petitioner/Financial Creditor

Vs.

Trio Fab (India) Pvt Ltd  
A-404, MIDC, TTC Industrial Area  
Mahape, Navi Mumbai - 400 710.

.... Respondent/Corporate Debtor

Order delivered on: 18.05.2018

**Coram:**

Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Mr. Vivek Sawant, Advocate, Mr. Unnikrishnan  
V. K., Senior Manager (Legal)

For the Respondent: Mr. T. N. Tripathi, Advocate, i/b T. N. Tripathi &  
Co., Mr. Francis John, M.D. of the Respondent Co.

*Per Ravikumar Duraisamy, Member (T)*

**ORDER**

1. The Federal Bank Ltd (hereinafter called 'the Bank') has sought the Corporate Insolvency Resolution Process of Trio Fab (India) Pvt. Ltd. (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default on 31.01.2017 in repayment of ₹7,20,32,297.23 (Rupees Seven Crores Twenty Lakhs Thirty Two Thousand Two Hundred Ninety Seven and paise Twenty Three Only), under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petition reveals that the Petitioner had granted the following amounts to the Corporate Debtor:

- (i) ₹4.00 crores towards Cash Credit on 15.07.1998 which was subsequently renewed/enhanced from time to time and finally on 25.8.2016.
- (ii) ₹2.00 crores towards Working Capital Term Loan on 28.03.2012.
- (iii) ₹0.50 Crores towards Car Loan on 23.10.2012.
- (iv) ₹3.40 Crores towards Bank Guarantee of which ₹2.00 crores is sublimit as Letter of Credit on 15.7.1998 which was subsequently renewed/enhanced from time to time and finally on 25.8.2016.

3. For the above mentioned facilities, various Agreements were executed between the Financial Creditor and the Corporate Debtor. The Petition and the Agreements reveals that the above mentioned credit facilities were secured by way of hypothecation charge over (a) entire current assets, including stocks of raw materials, stocks in process, finished goods, stocks in transit and debts (25% margin on stock and 50% margin on debtors) (b) whole of the goods, produce, merchandise and any other stocks from time to time during the security lying at the company's godowns or premises at A-404, MIDC, TTC, Industrial Area, Mahape, Navi Mumbai – 400 710 and (c) all the company's present and future book debts, outstanding moneys receivable, claims, contracts, engagements, securities, investments, deposits, rights and assets and also security by way of equitable mortgage charge over property being leasehold rights in respect of Survey No.A-404, MIDC, TTC, Industrial Area, Mahape, Navi Mumbai – 400 710, admeasuring 3200 sq.mtrs alongwith Building and Factory bounded.

4. The Financial Creditor has enclosed the sanctioned letter and renewal letters for the loan, Agreements, Security Delivery Letter,

Demand Promissory Notes, Guarantee Agreements etc. in respect of the loan. Further, balance confirmation letter dated 25.08.2016 issued by the Corporate Debtor is also enclosed by the Financial Creditor.

5. On 26.4.2017 the Petitioner issued notice to the Corporate Debtor, under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, stating due to default in payment of the debt, the account of the Corporate Debtor was classified as Non-Performing Asset as per Reserve Bank of India guidelines, demanding a sum of ₹6,87,68,618.23 plus applicable interest upto the date of payment.

6. The Petitioner has enclosed the report of Credit Information Bureau (India) Ltd. dated 10.8.2017 in support of the borrowing by the Corporate Debtor. The Financial Creditor has also recommended the name of the Interim Resolution professional and has also enclosed Form 2.

7. The Corporate Debtor replied vide its Affidavit/written submissions dated 12.9.2017 (54 pages), vehemently denying/disputing that there is no default by Corporate Debtor and the Petition filed by the Financial Creditor is absolutely misconceived, frivolous, lacking bonafide and motivated to pressurize and harass the Corporate Debtor Company. The Company is not in default as falsely contended by the Bank. The Corporate Debtor has majorly argued that the Financial Creditor has suppressed facts, no default occurred on 31.1.2017, securities claimed (assets are far exceeding the alleged claim), breaches in negotiations of foreign bill under Letter of Credit, forward Contract Loss of more than ₹57 lakhs, non-issuance of Foreign Guarantee.



8. We have perused all the material records. Though the Corporate Debtor has vehemently denied as no default in its account with Financial Creditor, various other grounds as stated supra, in our opinion they are all related to procedures/formalities between the Lender and the Borrower which is outside the purview of IBC/extraneous to IBC. As far as IBC is concerned, to admit a Petition under Section 7, debt and default should be in existence, the application should be in the Form and the manner prescribed as per IBC, the Financial Creditor should furnish record of default, name of the IRP, etc. Upon perusal of records, we are satisfied that the Financial Creditor has extended various loan facilities, to the Corporate Debtor and the amount of default as on 31.1.2017 and outstanding as on 31.7.2017 is ₹7,20,32,297.23.

9. The case was listed on various dates before the Adjudicating Authority, viz. 17.08.2017, 04.09.2017, 08.09.2017, 12.09.2017, 19.09.2017, 21.09.2017, 26.09.2017, 04.10.2017, 13.10.2017, 16.11.2017, 05.12.2017, 19.12.2017, 02.02.2018, 08.02.2018, 08.03.2018, 16.03.2018, 16.04.2018 and 26.04.2018. At the request of the Corporate Debtor, to settle the issue, the matter was listed on various dates and for filing written submissions, both the parties sought time. During the hearing held on 16.04.2018, it was recorded that the Corporate Debtor upon receipt of list of title deeds from the Bank, it will make payment within a week and upon making payment, the Financial Creditor was directed to release the documents to the Corporate Debtor including the housing loan availed by one of the Directors of the Corporate Debtor. During the hearing held on 26.04.2018, it was recorded that the Director of the Corporate Debtor and his financier given an Undertaking to bring Demand Draft for an

amount of ₹7,20,32,297.23 plus interest on 8.5.2018, accordingly, this Petition was posted for reporting settlement as per the undertaking given by the Deponents and the matter was posted for further hearing on 11.5.2018.

10. On perusal of the documents filed by the Financial Creditor, it is evident that the Corporate Debtor defaulted in repaying the loan availed and also recommended the name of the Insolvency Resolution Professional to act as Interim Resolution Professional. Having this Bench noticed that default has occurred and there being no disciplinary proceedings pending against the proposed resolution professional, the Application under sub-section (2) of section 7 is taken as complete, accordingly this Bench hereby admits this Application declaring Moratorium with the directions as mentioned below:

- I. a. That this Bench hereby prohibits 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 Securitisation 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.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

III. That the provisions of sub-section (1) of Section 14 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 18.05.2018 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 debtor under section 33, 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 the Code.

VI. That this Bench hereby appoints Mr. Anshuman Chaturvedi, A-404, Express Zone of Western Express Highway, Goregaon (East), Mumbai - 400 063, IBBI Registration No.IBBI/IPA-001/IP-P00158/2017-18/10327, as Interim Resolution Professional to carry out the functions as mentioned under Insolvency & Bankruptcy Code.

11. IRP is directed to strictly comply with all the provisions, circulars, directions, issued by IBBI in this regard, including fees to be charged.



12. Accordingly, this Petition is admitted.

13. The Registry is hereby directed to communicate a copy of this order to both parties.

Sd/-

**RAVIKUMAR DURAISAMY**  
Member (Technical)

Sd/-

**B. S.V. PRAKASHKUMAR**  
Member (Judicial)