

In the National Company Law Tribunal
Mumbai Bench, Mumbai

CP/1362/I&BC/NCLT/MB/MAH/2017

Under Section 10 of the Insolvency &
Bankruptcy Code 2016

In the matter of

M/S. SBM Paper Mills Private Limited

...Petitioner/Corporate Debtor.

Coram: M. K. Shrawat, Member, (Judicial)
Bhaskara Pantula Mohan, Member (Judicial)

For the Petitioner:-

1. Mr. Animesh Bisht and
2. Mr. Prasshant Berri, i/b. Beri & Co., Advocate for Petitioner.

Per: M. K. Shrawat, Member, (Judicial)

Order dated : 17.10.2017

1. The Petitioner M/S. SBM Paper Mills Private Limited is the Corporate Debtor who had filed the Petition on 04.09.2017 under Section 10 of the Insolvency & Bankruptcy Code 2016 to declare itself as insolvent.
2. Background of the case :-
 - a) The Company was incorporated as M/s Seth Bankatlal Malu Industries Pvt. Ltd. on 14th July, 2000 and has changed its name to M/s. SBM Paper Mills Pvt. Ltd. with effect from 27th April, 2015 with the object to involve in Trading activities of papers.
 - b) The term loan and working capital facilities were granted by the Allahabad Bank from time to time which were restructured by sanction letters dated 24th September, 2014 and by other Financial/Operational Creditors to the erstwhile company namely M/s Seth Bankatlal Malu Industries Pvt Ltd., which is now M/s. SBM Paper Mills Pvt. Ltd. w.e.f. 27th April, 2014. Problems in repayment began from the year 2016.
3. The Corporate Debtor has filed this Application based on a default in payment to the bank and its Financial/Operational Creditor viz. M/S. Allahabad Bank, Opposite Skylark Hotel, Central Avenue, Gandhi Bagh, Nagpur - 440002, Maharashtra and Operational Creditor Jai Hanuman Industries, Lathia Rubber Mfg. Co. Pvt. Ltd. etc. The Computation of default amount to each of Bank's Debt alongwith the statement of accounts on 06.09.2016, as follows:-

Sr. No.	Facility	Outstanding (including principal and interest upto 31 st December, 2016)	Interest from 1 st January, 2016 until 26 th August, 2017	Total Overdue as at 26 th August, 2017
1	Cash Credit	17,57,33,150.03	3,70,45,639	21,27,78,789.03
2	Term Loan – I	17,5,818	4,06,582	21,42,400
3	Term Loan – II	3,20,59,271	67,53,476	3,88,12,747
4	WCTL	13,46,16,701	2,94,04,713	16,40,21,414
5	FITL	1,26,03,336	28,57,762	1,54,61,098
	Total			43,32,16,448.03

*As per the SARFAESI notice dated 6th September, 2016

3.1 That as per the above chart the present position of the total outstanding debt is stated to be ₹ 43,32,16,448.03/-.

4. **Mortgage of Immovable Properties –**

(a) Under the Deed of Mortgage dated 13th August, 2010 (“Mortgage Deed”), the Corporate Debtor created a mortgage over

(1) Agricultural land bearing Survey No. 145, admeasuring 3.39 hectares, P.H.No. 51, situated at Mouza Bhendala, Grampanchayat Patansaongi, Tahsil Saoner & District Nagpur, standing in the name of M/s. Seth Bankatlal Malu Industries Pvt. Ltd.

(2) Non-agricultural land bearing Survey No. 115, admeasuring 3.92 hectares, P.H.No. 51, situated at Mouza Patansaongi, Grampanchayat Patansaongi, Tahsil Saoner & District Nagpur, standing in the name of M/s. Seth Bankatlal Malu Industries Pvt. Ltd.

(3) Residential Flat No. 8, 2nd Floor, ‘B’ wing, Din Dayal Co-operative Housing Society Ltd., Near Gurukul Chowk, Panchpakhadi Village, Thane (W), Dist. Thane, admeasuring 550 sq.fts.

(b) Under the Supplemental Letter of Mortgage by Deposit of Title Deeds dated 25th September, 2014 (“Supplemental Mortgage Letter”) to extend the security created under the Mortgage Deed over the enhanced limit under the Bank’s Debt. The immovable properties such as:

(1) Properties situated at mauza Dhargaon, Tahsil Kamptee, Dist Nagpur, Maharashtra with the existing buildings and structures, immovable plant and machinery, fixtures and fittings. And Plot No. 16, admeasuring about 464.52 sq.mts. being undivided portion in the sanctioned, standing in the name of Mr. Ramesh Satyanarayan Malu.

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(c) *Equitable mortgage of commercial plot admeasuring 5000.09 sq.ft. located at plot no. 16, Khata No. 109/1&2, 110/1-A.2-A & 3, P.H.No. 20 situated at Dhargaon off outer ring road, near kapsi, Nagpur standing in the name of Mr. Ramesh Satyanarayan Malu.*

4.1 **Hypothecation of movable assets** (a) *Under the deed of hypothecation dated 24th September, 2014, the Corporate Debtor hypothecated all the tangible movable machinery and plant together with spares, tools and accessories and other movables both present and future to secure the term loan/deferred payment guarantee letter of Rs. 19.36 crores.*

4.2 **Pledge of shares of the Corporate Debtor** (a) *Pledge over 30% of promoters equity shares of the Corporate Debtor held by Mr. Satyanarayan Bankatlal Malu pursuant to a letter for pledge of shares dated 24th September, 2014 in favour of the Bank to secure the Bank's Debt.*

4.3 **Assignment of Insurance Policy** (a) *Assignment of policy number 971393447 held in the name of Mr. Satyanarayan Bankatlal Malu with LIC of India to the Bank for a consideration of Rs. 10,00,000/- under the assignment documents.*

(b) *Assignment of policy number 04885414 held in the name of Mr. Satyanarayan Bankatlal Malu with ICICI Prudential Life Insurance Company limited to the Bank for a consideration of Rs. 15,02,00,000/- under the assignment documents.*

4.4 **Personal Guarantee** *Personal guarantee by Mr. Satyanarayan Bankatlal Malu and Mr. Ramesh Satyanarayan Malu upto a maximum liability of Rs. 34,28,00,000/- under the deed of guarantee dated 26th March, 2013 to secure the Bank facilities granted to M/s. Seth Bankatlal Malu industries Private Limited.*

5. After the Legal notice was issued on 06.09.2016 to initiate proceedings under SARFAESI Act, 2002. The admitted position is that the Bank has initiated Recovery Proceedings by initiating Notice dated 06.09.2016 under SARFAESI Act, 2002, however not finalised as pleaded before us.

6. As far as the nature of the Loan and Debt amount is concerned, the same has not been denied by the Applicant. List of other operational creditors alongwith Financial Creditor are annexed with this Petition.

7. The financial position of the Corporate Debtor has also been examined from the Balance Sheet drawn as on 26th August 2017 and noticed that the Recovery is possible from the Current Assets of Rs. 1,37,77,619.96/- and Tangible assets of Rs. 12,37,52,213.26/- as per Books.

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8. The evidences on record have thus established that there was a "Debt" and admittedly there was a "Default" in payment of the outstanding Debt hence the requisite condition of Section 10 has been complied with.

9. The Bench is of the conscientious opinion that by commencement of Insolvency Resolution Process the restructuring of the finances of the Debtor Company is possible. Moreover, once the Insolvency Professional shall take control of the finances then duty bound to ascertain that the interest of the Creditor should be safeguarded.

9.1 That the Petitioner has placed on record a resolution dated 28th August, 2017 of Board authorising the Managing Director to file application under section 10 of Insolvency and Bankruptcy Code.

10. In Form No.6, moved u/s 10 of the Code, the Applicant/Corporate Debtor has proposed the name of the Insolvency Resolution Professional (IRP): Mr. Amit Chandrashekhar Poddar, Reg. No. IBBI/IPA-001/IP-P00449/2017-18/10792, Add: "Akshat", 7, Vijay Nagar, Katol Road, Nagpur - 440013. email: amitpoddar.ca@gmail.com

11. In Form No. 2 dated 31st August, 2017, the Insolvency Resolution Professional has conveyed his willingness to accept his appointment in the above case. He has also given the necessary certificates/affirmation from his side to this Tribunal in this regard.

12. Accordingly, this Tribunal "Admits" the Petition and appoints Mr. Amit Poddar, as Interim Resolution Professional to initiate the Insolvency Resolution Process on the above Applicant forthwith, with the following directions:-

a) Since this is a case of "Corporate Debtor" therefore the Insolvency Resolution Process shall commence as prescribed under section 10 of the I&BP Code, 2016. The occurrence of default is established and the amount in question remained unpaid by the "Corporate Debtor" till date.

b) Having considered the totality of the circumstances and the Application for initiation of Insolvency Resolution Process under the I&BP Code, 2016 and having considered the default of the Corporate Debtor in making the payment as discussed supra, it is hereby pronounced that "Moratorium" as prescribed under Section 14 of the Code 2016 shall come into operation and as a consequence prohibits all of the following viz.:-

(I) (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;

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- (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(SARFAESI Act);
- (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 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) 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 the date of this order till 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 acted upon immediately as specified under section 13 of the Code.

13. Accordingly, this CP 1362/I & BP/NCLT/MAH/2017 stood admitted.

14. The Insolvency Resolution Process is commenced from the date of this order.

Sd/-

Bhaskara Pantula Mohan
Member (Judicial)

Sd/-

M. K. Shrawat
Member (Judicial)

17th October, 2017