

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

**C.P. NO. 1399/I&BP/2017**

Under Section 7 of the I&B Code, 2016

In the matter of  
**Bank of Baroda.**

.... Financial Creditor

v/s.

**Mandhana Industries Ltd.**

.... Corporate Debtor

Order delivered on: 29.9.2017

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)  
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioner: 1. Saloni Kapadia, Advocate  
2. Abhijeet Das, Advocate  
3. Anush Mathkar, Advocate  
4. Naveena Varghese, Advocate  
i/b Cyril Amarchand Mangaldas for the Applicant

For the Respondent: 1. Raunak Sandani, Advocate  
2. Hema Daulat, Advocate  
3. Komal Khurlodani Advocate  
4. Kunal Mehta, Advocate  
For Respondents

*Per B. S. V. Prakash Kumar, Member (Judicial)*

**ORDER**

**Oral Order dictated on 29.9.2017.**

It is a Company Petition filed by Bank of Baroda (Financial Creditor) u/s.7 of Insolvency & Bankruptcy Code, 2016, against the Corporate Debtor stating that

this Corporate Debtor availed loan facilities and thereafter having failed to repay the debt as per terms and agreements between them, the petitioner Bank has filed this case for initiation of Insolvency Resolution Process against this Corporate Debtor, hence this petition.

***Facts of the case:***

2. The Petitioner Bank, on Term Loan Facility under Common Loan Agreement dated 8<sup>th</sup> September, 2008 entered between the parties, sanctioned loan of ₹80 crores, thereafter on 13.8.2010, provided another Term Loan Facility under common Loan Agreement for sanctioning ₹5crore, subsequent to this, it has again sanctioned another Working Capital Term Loan facility on 20.10.2014, by this sanction and Supplemental Working Capital Consortium Agreement dated 24.3.2015, provided ₹216crores loan facility comprising of Cash Credit Facility up to the limit of ₹187 crores and a Letter of Credit Facility up to the limit of ₹29crores.

3. The total loan sanctioned and disbursed to the Corporate Debtor under all these facilities has become ₹308crores, in respect to all these facilities and disbursements, the petitioner has given details in the Form filed enclosing documents with this petition. The corporate debtor having failed to service loan facilities as agreed between the Bank and the Corporate debtor, the facilities have become NPAs, by which, the Corporate Debtor has committed default of repaying ₹14,68,30,492 under Facility-1 as on 1.10.2016, ₹2,49,364/- under as on 1.9.2016, and ₹241,40,76,699 under Facility-3 as on 30.9.2016 – the total default amount has become ₹258,58,56,554 as on 31.8.2017.

***Observations:***

4. To prove that debt is within the time, the Bank filed Annual Returns of Corporate Debtor for the financial year 2016-17, 2015-16 and 2014-15 of the corporate debtor and statement of accounts in respect to these three accounts (Exhibit-16) reflecting existence of debt and occurrence of default against all these loan facilities availed by the corporate debtor. Besides this, the Bank has filed a Report of TransUnion CIBIL dated 29.4.2017 reflecting this debt has been classified

as non-performing asset in respect to Facilities 1 & 2, as to Facility-3, report is not available. The Petitioner has also filed Report of Central Repository of Information (CRI) dated 16.8.2017 as Exhibit-15 to show that this debt has been classified as NPA. The Bank has filed revival letter dated 7.9.2017 addressed by the Corporate Debtor to the Applicant acknowledging the debt liability as mentioned above.

5. The Bank has filed consent letter of Interim Resolution Professional namely Ms. Charu Sandeep Desai disclosing that she is not a related party to Mandana Industries Ltd. and she is not an employee or Proprietor or partner of Company Secretary or Cost Accountants of the Corporate Debtor herein or its sister concerns, therefore we have not seen this Interim Resolution Professional having any interest in the Corporate Debtor company conflicting to act as Insolvency Resolution Professional on initiating Corporate Insolvency Resolution Process over this Company.

6. As to arguments of the Corporate Debtor side, the counsel says that since for Power of Attorney given to file this case being dated 22.12.2014, and the same being given prior to the advent of I & B Code, as per the Judgement passed by Honourable NCLAT dated 20.9.2017 in Palogix Infrastructure Pvt. Ltd. v/s. ICICI Bank Ltd. such authority cannot be construed as an authorization to file this Petition. Per Contra, Petitioner counsel filed certified copy of Resolution dated 14.7.2017 reaffirming the Authority already given with an additional power to proceed under I & B Code as well, therefore we have not found substance in the objection raised by the corporate debtor in respect to authority for filing this case. Moreover, the Power of Attorney holder is in the rank of Chief Manager of Bank of Baroda, so it can't be said that Attorney-holder position is not sufficient enough to file this Company Petition, hence the objection raised by the Corporate Debtor is hereby rejected.

**Order:**

7. Since the details and document given by the Petitioner are ample enough to prove the existence of debt and occurrence of default, this Company Petition is hereby admitted with reliefs as mentioned below:

- i) 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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 29.09.2017 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 Ms. Charu Sandeep Desai, having address at Ernst & Young LLP, C/o Archana Mhatre, 17<sup>th</sup> floor, The Ruby, 29 Senapati Bapat Marg, Dadar (W), Mumbai – 400028, Email ID : [charudesai@gmail.com](mailto:charudesai@gmail.com) having Registration No. IBBI/IPA-001/IP-P00434/2-17-18/19757 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

7. Accordingly, this Petition is admitted.
8. The Registry is hereby directed to communicate this order to the Financial Creditor and the Corporate Debtor.

Sd/-

**V. NALLASENAPATHY**  
Member (Technical)

Sd/-

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