



NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

1. C.P. (IB)/410(MB)2023

IN THE MATTER OF

Kiran Ratilal Sheth

U/s 94(1) of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 13.02.2026

CORAM:

SH. MOHAN PRASAD TIWARI
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner:

For the Respondent:

ORDER

C.P. (IB)/410(MB)2023: The above CP is listed for pronouncement of the order.

The same is pronounced in open court, vide a separate order.

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)
//Rahul//

Sd/-
MOHAN PRASAD TIWARI
Member (Judicial)



IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT V

Company Petition (IB) 410 of 2023

IN THE MATTER OF:

Kiran Ratilal Sheth

Flat No. 1601, Dignity Divine,
Plot No. 323 & 324, Road No. 33A,
Near Bansidhar School, Wadala (w),
Mumbai: 400 031

....Petitioner

Order pronounced on: 13.02.2026

Coram:

MOHAN PRASAD TIWARI, HON'BLE MEMBER (JUDICIAL)

CHARANJEET SINGH GULATI HON'BLE MEMBER (TECHNICAL)

Appearance:

For the Petitioner : Adv. Yahya Batatawala a/w Adv. Areeb Ansari (PH)

For the Respondent :

ORDER

1. This Company Petition has been filed by the Petitioner, Mr. Kiran Ratilal Sheth, as Personal Guarantor of, M/s. Max Flex & Imaging Systems Limited ("the Company"), under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016"), read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019 seeking initiation of the Insolvency Resolution Process.



2. The Petitioner submits that the Company had availed various credit facilities from a consortium of banks namely State Bank of India, Bank of India, Canara Bank, Bank of Maharashtra, Standard Chartered Bank, IDBI Bank Limited, Bank of Baroda, Union Bank of India, Dena Bank and Syndicate Bank. In respect of the said facilities, the Petitioner had executed Deed(s) of Guarantee dated 21.03.2014 in favour of the Financial Creditors, thereby undertaking joint and several liability.
3. The Petitioner submits that the total outstanding debt of the company is Rs. ₹458,32,04,622.68/- comprising of principal and interest. A detailed breakdown of these components is in Annexure E as under:

SCHEDULE 5
POSITION OF ACCOUNTS OF LENDERS AS ON 31ST MARCH, 2016

Sl. No.	Name of the Bank	Outstanding Principal (Fund Based + Non Fund Based) (Rs.)	Outstanding Interest (Rs.)	Total Dues (Rs.)
1.	State Bank of India	96,34,44,817.73	26,17,35,842.00	122,51,80,659.73
2.	Bank of India	38,54,36,664.46	9,08,02,909.00	47,62,39,573.86
3.	Canara Bank	34,36,46,072.99	5,06,17,367.55	39,42,63,440.54
4.	Bank of Maharashtra	28,20,59,308.34	8,14,84,827.00	36,35,44,135.34
5.	Standard Chartered Bank	210,830,469.17	28,620,850.66	23,94,51,319.83
6.	IDBI Bank Limited	12,86,00,100.00	1,97,04,383.24	14,83,04,483.24
7.	Bank of Baroda	44,96,00,555.32	4,34,55,668.25	49,30,56,223.57
8.	Union Bank of India	54,84,60,423.31	4,18,23,878.46	59,02,84,301.77
9.	Dena Bank	17,83,71,728.00	3,91,03,320.00	21,74,75,048.00
10.	Syndicate Bank	39,59,45,334.83	3,94,60,102.37	43,54,05,437.20
	TOTAL	3,886,395,474.15	696,809,148.53	458,32,04,622.68

4. It is submitted that due to default committed by the Company, the Petitioner, being the Personal Guarantor, has become liable to pay an aggregate outstanding amount of ₹458,32,04,622.68/- (Rupees Four Hundred Fifty-Eight Crore Thirty-Two Lakhs Four



Thousand Six Hundred Twenty-Two and Sixty-Eight Paise only) and has failed to discharge the same, resulting in default.

5. As per the Form A submitted by the Petitioner, default occurred when the account of the company turned Non-Performing Asset. Bank wise NPA details are as under:

Name of Lender	Date of NPA
State Bank of India	28.11.2014
Bank of India	31.03.2015
Canara Bank	30.11.2014
Bank of Maharashtra	29.11.2014
Standard Chartered Bank	19.01.2015
IDBI Bank Limited	31.12.2015
Bank of Baroda	30.09.2015
Union Bank of India	31.12.2014
Dena Bank	08.01.2015
Syndicate Bank	29.10.2015

6. Subsequently, due to failure in meeting the repayment obligations, the Financial Creditor issued Notice under Section 13(2) of SARFAESI Act, 2002 to the company (Noticee No. 1 and all the Noticee(s) No 2 to 13 being mortgagor/guarantors on 18.07.2016 to clear the entire outstanding dues of the Company.
7. The Petitioner further submits that an Additional Affidavit dated 15.07.2023 was filed placing on record proof of service of Notice of Hearing dated 08.07.2023 along with the Order dated 01.06.2023 upon all the creditors by speed post on 10.07.2023.
8. It is further submitted that on 13.10.2025, time was sought to place on record the consent of the proposed Resolution Professional along with an undertaking regarding payment of



fees. Thereafter, an Additional Affidavit dated 29.10.2025 was filed in respect of consent of Insolvency Professionals and undertaking to pay the fees of the Resolution Professional appointed by this Tribunal.

9. Learned Counsel for the Petitioner submits that consent of Mr. Loveneet Handa, Insolvency Professional, was obtained on 10.12.2025. The written consent along with a valid Authorisation for Assignment (AFA) has been filed by way of Additional Affidavit dated 18.12.2025.

10. However, we note that the Petitioner has failed to comply with Rule 6(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019, which reads as under:

*“(2) The guarantor shall serve **forthwith** a copy of the application referred to in sub-rule (1) to every financial creditor and the corporate debtor for whom the guarantor is a personal guarantor.”*

11. A plain reading of the above Rule makes it abundantly clear that service of the petition upon both the Financial Creditors and the Company is mandatory and is required to be effected forthwith, i.e., without delay, upon filing of the petition. While the Petitioner has placed on record proof of service upon the Financial Creditors by way of an Additional Affidavit dated 15.07.2023, no documentary proof evidencing service of the application upon M/s. Max Flex & Imaging Systems Limited, the Company, has been filed. In the absence of compliance with the mandatory requirement of service “forthwith” upon the Company, the present Petition suffers from a deficiency.



12. Also, the supplementary guarantee deed dated 21.03.2014 establishes joint and several liability of the Petitioner. While the Petitioner has stated the date of default as the date of NPA classification in Form A, however in the case of a personal guarantor, default occurs upon invocation of the guarantee.
13. The demand notice dated 18.07.2016 issued by SBICAP Trustee Company Limited under Section 13(2) of the SARFAESI Act, 2002 acting as Security Trustee for the entire consortium, invoking the guarantee. The notice specifically acknowledged the Petitioner's personal guarantee, quantified the total outstanding amount of ₹458,32,04,622.68, and called upon payment within 60 days. The paragraph from the Demand Notice is reproduced as under:

*In view of the defaults committed by the Noticee No. 1, you Noticee(s) No. 2,3,4,5,6,7,8,9,10,11,12 and 13 as Mortgagors are also called upon to pay to the Lenders Rs. 458,32,04,622.68 (Rupees Four Hundred Fifty-Eight Crore Thirty-Two Lakhs Four Thousand Six Hundred Twenty-Two and Sixty-Eight Paise only) the outstanding amount as mentioned in Schedule 5. **Further, the Guarantor(s) are also liable to discharge the outstanding liability due to the Lenders.***

14. Accordingly, the guarantee was invoked on 18.07.2016, and that the default occurred upon the expiry of the statutory period of 60 days thereafter. However, the present Petition under Section 94(1) was filed on 13.05.2023.
15. Section 238A of the Insolvency and Bankruptcy Code, 2016 makes the provisions of the Limitation Act, 1963 applicable to proceedings before the Adjudicating Authority. In the absence of a specific provision in the IBC prescribing the limitation period



for an application under Section 94, Article 137 of the Limitation Act, 1963 applies, which provides for a limitation period of three years from the date when the right to apply accrues. In the present case, the right to apply accrued when the default occurred, that is, upon expiry of 60 days from the date of invocation of guarantee on 18.07.2016, The three-year limitation period therefore expired on or about 16.09.2019.

16. Reliance is placed on ***Hon'ble NCLAT in Suyog Jain v. Arvind Kumar (Resolution Professional) & Ors., Company Appeal (AT) (Insolvency) No. 567 of 2019***, wherein it was held that the limitation period of three years, as envisaged in Article 137 of the Limitation Act, has to apply to the said application under Section 94 as well.
17. In view of Section 238A of the IBC, 2016, read with the Section 137 of the Limitation Act, 1963, the present petition is clearly barred by limitation.
18. Accordingly, the Petition being deficient in terms of Rule 6(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019, and being beyond limitation is **not maintainable** and is **dismissed** as such.

Sd/-

Charanjeet Singh Gulati

Hon'ble Member (T)

/Smeet, LRA/

Sd/-

Mohan Prasad Tiwari

Hon'ble Member (J)