IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-V

IB-687/PB/2020

(*Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule* 4 *of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

IN THE MATTER OF:
Indian Bank
(Erstwhile Allahabad Bank)

..... Financial Creditor

Versus

Mahamaya Exports Private Limited
Through its Director

..... Corporate Debtor

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

MS. REENA SINHA PURI,
HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 16.10.2026

PRESENT:

For the Applicant	**:**	Mr. Anant Gautam, Mr. Aman Gahlot, Ms. Isha Gaur, Ms. Himanshi Chugh, Advs.
For the Respondent	**:**	Mr. J. Rajesh, Md. Arsalan Ahmed, Mr. Yashwardhan Aggarwal, Mr. Ali Abbas Masoodi, Advs.

ORDER

1. The C.P. (IB) No. 687/PB/ 2020 has been filed under Section 7 of the IBC[1] read with Rule 4 of the IBC Rules 2016[2], by Indian Bank, erstwhile Allahabad Bank (Applicant/Financial Creditor), seeking to initiate CIRP[3] against M/s Mahamaya Exports Private Limited (Corporate Debtor / Mahamaya) for default in repayment of financial debt. Mahamaya executed corporate guarantees to secure facilities granted to M/s ABW Infrastructure Limited. The petition is dated 24.02.2020 and was filed on 26.02.2020.

2. The original petition claimed Rs 31,37,63,847 as on 11.02.2020. In its rejoinder the Bank explained that expired and uninvoked bank guarantees were reversed and restricted the surviving computation, as on 11.02.2022, to Rs 14,71,85,239 in Term Loan I, Rs 7,28,12,608 in Term Loan II and Rs 20,00,000 towards legal expenses, aggregating to Rs 22,19,97,847. The principal outstanding asserted on the two term-loan accounts is therefore Rs 21,99,97,847, apart from the disputed legal expenses. By order dated 02.06.2022, IA No 1797 of 2021 was allowed and the Financial Creditor filed the amended petition on 05.07.2022. The amendment placed reliance on the principal borrower's letter dated 27.02.2017 and, in the alternative, claimed exclusion of time spent pursuing measures under the SARFAESI Act. We have considered the amended petition.

[1] Insolvency and Bankruptcy Code, 2016
[2] Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
[3] Corporate Insolvency Resolution Process

3. The details of facilities and guarantees relevant here are captured in the table below:

Date	Facility/ Security	Amount (Rs)
23.06.2010	Overdraft limit	13.00 crore
05.07.2010	Term Loan I	12.50 crore
13.04.2011	Bank-guarantee limit and Mahamaya guarantee with mortgage of Medawas and Kadarpur Sohna land	09.18 crore
31.10.2011	Term Loan II and Mahamaya guarantee for the bank-guarantee limit and the fresh term loan; mortgage extended	15.00 crore
30.04.2012	Further corporate guarantee securing the aggregate facilities	48.35 crore
31.03.2014 04.04.2014	FITL and further guarantee and mortgage extension	00.90 lakh

4. The principal borrower was classified as a NPA on 29.09.2016. The Bank issued a demand notice dated 3.10.2016 under Section 13(2) of the SARFAESI Act to the borrower and guarantors for Rs 29,09,02,721 and later took measures against the secured assets. Those steps constitute a clear demand upon the corporate guarantor.

5. On 27.02.2017, M/s ABW Infrastructure Limited requested release of the Kapashera property after payment of Rs 15,49,53,397 and stated that the overdraft account stood liquidated. The same letter acknowledged subsisting liability in the remaining funded and non-funded accounts. The Bank relies upon that acknowledgment and upon clause 3 of the corporate guarantees,

under which an acknowledgment or part-payment by the principal borrower is treated as made on behalf of the guarantor.

6. With M/s ABW Infrastructure Limited admitted to CIRP by order dated 12.09.2019, Indian Bank lodged its claim. While the pendency of that process and the possibility of distributions are relevant, they do not extinguish the separate and co-extensive liability of the guarantor.

Submissions of the Corporate Debtor

7. The Corporate Debtor disputes maintainability. It says that no money was disbursed to Mahamaya for the time value of money; the Bank is already participating in the borrower's CIRP; and the petition is a recovery device following unsuccessful auctions.

8. The Corporate Debtor disputes limitation from the NPA date, contends that the principal borrower's letter cannot bind the guarantor, and says Section 14 of the Limitation Act is unavailable because the SARFAESI and DRT proceedings were pursued before competent fora.

9. It further alleges that Mahamaya never guaranteed Term Loan I, that the bank-guarantee limit expired without invocation, that the Directorate of Town and Country Planning released the underlying bank guarantee on 02.02.2018, and that the Bank later reversed the bank-guarantee entries.

10. The Corporate Debtor relies on the release of the Kapashera property without its consent and invokes Sections 139 and 141 of the Contract Act. It also refers to civil litigation alleging fraud or forged board records, disputes about management and shareholding, Section 185 of the Companies Act, the Bank's

authorisation and the certification of accounts. Its prayers are for dismissal with exemplary costs and serious action under Sections 65, 72 and 75 of the IBC.

Analysis and Finding

11. We have heard the Ld. Counsel on behalf of the Applicant/Financial creditor and further perused the averments made in the Application, Reply filed by the Corporate Debtor.

12. Section 5(8)(i) expressly includes the amount of any liability in respect of a guarantee for a transaction falling within Section 5(8)(a) to (h). The term loans were disbursed to ABW Infrastructure Limited against consideration for the time value of money. Mahamaya's guarantees therefore create a financial debt; direct disbursement to the guarantor is not required.

13. In *Laxmi Pat Surana v Union Bank of India, (2021) 8 SCC 481*, the Hon'ble Supreme Court confirmed that a financial creditor may proceed under Section 7 against a corporate person that guaranteed the debt of a principal borrower and that the guarantor's liability is co-extensive, subject to the contract. The objection founded on *Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited v Axis Bank Limited, (2020) 8 SCC 401*, is misplaced because that decision addressed third-party security without a contract of guarantee. This record contains contracts of guarantee.

14. The guarantees dated 13.04.2011, 31.10.2011, 30.04.2012 and 04.04.2014 are relied upon throughout the record. The Intervention applicants themselves identify these four guarantees as the foundation of the petition. The 30.04.2012 guarantee records aggregate facilities of Rs 48.35 crore and answers the

objection that Term Loan I was never brought within any guarantee. Even if the later FITL guarantee were left aside, the earlier guarantees and the surviving term-loan default remain far above the statutory threshold.

15. The NPA classification, the demand dated 03.10.2016, the borrower's acknowledgment dated 27.02.2017, the loan and guarantee documents, and the account statements establish non-payment after the debt became due. The later reversal of expired or uninvoked bank-guarantee entries narrows the quantum; it does not extinguish the default in Term Loan I and Term Loan II.

16. At the admission stage, the Authority determines whether a financial debt above the threshold is due and unpaid. It need not decide every rupee of interest or legal expense. The Bank's revised computation shows Rs 21,99,97,847 in the two term-loan accounts alone. Any distribution received in ABW Infrastructure Limited's CIRP must be given due credit. That accounting safeguard prevents double recovery; it is not a defense to admission.

17. The petition is within limitation without invoking Section 14 of the Limitation Act. The default and demand arose in September and October of 2016. Before three years expired, the principal borrower issued the letter dated 27.02.2017 acknowledging continuing liability in the remaining facilities. The petition was filed on 26.02.2020, within three years of that acknowledgment.

18. Section 18 of the Limitation Act applies to proceedings under the IBC. Clause 3 of the guarantee additionally treats the principal borrower's acknowledgment or part-payment as made on behalf of the guarantor. The letter dated 27.02.2017 was not a blanket discharge; it recorded liquidation of the overdraft account

while recognising other funded and non-funded liabilities. The surviving claim is on the term-loan accounts, not the liquidated overdraft account.

19. Because the acknowledgment is sufficient, we do not think it necessary to decide the Bank's alternative request to exclude 1,027 days said to have been spent in SARFAESI proceedings.

20. A creditor may invoke the liability of a principal borrower and a corporate guarantor. The IBC does not compel the creditor to exhaust the borrower first. The creditor cannot recover more than its debt and must adjust all realisations, but the admission of a claim in the borrower's CIRP does not make the guarantee disappear.

21. The bank-guarantee limit and its later reversal do not require dismissal because the Bank has removed those entries from the revised amount. The question over the Directorate of Town and Country Planning's release dated 02.02.2018 is therefore not determinative of the surviving term-loan default.

22. The Kapashera property was released after payment was made to liquidate the overdraft account. The record does not establish that this property secured the surviving term-loan liability or that its release impaired a security available for those loans. The guarantees also contain waivers relied upon by the Bank. Therefore, Sections 139 and 141 of the Contract Act do not extinguish the admitted guarantee exposure supporting the present default.

23. The pending civil suit and the company-law disputes concern allegations of fraud, corporate control and shareholding. No final decree or operative injunction placed before us cancels the four guarantees or restrains

adjudication of this petition. The order dated 07.08.2018 made an auction subject to the civil suit's outcome; it did not declare the guarantees void.

24. Section 185 objection does not displace the 2011 and 2012 guarantees, which independently cover facilities far above the admission threshold. No final adjudication invalidating those instruments has been produced. Questions concerning the 2014 FITL guarantee therefore do not defeat the petition founded on the earlier guarantees and surviving term-loan accounts.

25. The petition includes sanction and facility documents, guarantees, mortgage records, the statutory demand, account statements and the acknowledgment. The power of attorney authorises the Bank officer to institute insolvency proceedings and related actions. Objections to form, account certification, interest calculation and the age of the authority do not rebut the underlying documentary proof.

26. The use of SARFAESI remedies, participation in the borrower's CIRP and invocation of a corporate guarantee are consistent remedies directed towards an unpaid bank debt. Unsuccessful enforcement or an asset value said to exceed the debt does not prove that the insolvency application was initiated fraudulently or for a purpose other than resolution. No false statement or prohibited disclosure satisfying Sections 72 or 75 is established. Therefore, prayers for exemplary costs and action under Sections 65, 72 and 75 are rejected.

27. This Adjudicating Authority, vide order dated 09.10.2026, dismissed Intervention Petition Nos. 40/2026 and 52/2026 filed by the shareholders of the

Corporate Debtor, holding that they lacked locus standi to maintain intervention petitions at the stage of admission of an application under Section 7 of the Code.

28. We find the application complete in all respects. A financial debt is due from the Corporate Debtor under the corporate guarantees; default above the applicable threshold is shown; and the petition is within limitation. Once those conditions are satisfied, the petition must be admitted. Reference is made to the judgment in *Innoventive Industries Limited v ICICI Bank, (2018) 1 SCC 407;* and *M Suresh Kumar Reddy v Canara Bank, (2023) 8 SCC 387*. Thus, C.P. (IB) No. 687/PB/ 2020 stands admitted and the CIRP is hereby initiated against M/s Mahamaya Exports Private Limited.

29. The Applicant, in Part-III of the application, has proposed the name of Mr. Yogesh Kumar Gupta as the Interim Resolution Professional (IRP), bearing Registration No. IBBI/IPA-003/IP-N00078/2017-18/10701. Accordingly, this this Adjudicating Authority appoints Mr. Yogesh Kumar Gupta, having Registration No. IBBI/IPA-003/IP-N00078/2017-18/10701 and email address ykgupta64@yahoo.co.in, as the Interim Resolution Professional (IRP) for the Corporate Debtor, subject to the condition that he shall file a valid AFA along with an updated declaration confirming that no disciplinary proceedings are pending against him, within a period of three (03) days from the date of pronouncement of this order.

30. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

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;

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 Securitization 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.

e. The IBC also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

31. The provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the

surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

32. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

33. We direct the Applicant/Financial Creditor to deposit a sum of Rs 2,00,000 (Rupees Two lakhs) with the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.

34. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.

35. All the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in

managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders.

36. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

37. In terms of section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

38. Accordingly, the Petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, bearing **C.P. (IB) No. 687/PB/2020 stands admitted**.

Sd/-
REENA SINHA PURI
MEMBER (TECHNICAL)

Sd/-
MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)