

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/323/2019 filed under Section 7 of
the Insolvency and Bankruptcy Code,
2016 r/w Rule 4 of the Insolvency and
Bankruptcy (Application to Adjudicating
Authority) Rules, 2016

In the matter of *M/s. Nag (India) Private Limited*

Union Bank of India

... Financial Creditor

-vs-

M/s. Nag (India) Private Limited

... Corporate Debtor

Coram:

**R. VARADHARAJAN,
Hon'ble Member (Judicial)**

**ANIL KUMAR B,
Hon'ble Member (Technical)**

For Financial Creditor : Varun Srinivasan, Counsel
For Corporate Debtor : Aashish Jain Lunia, Counsel

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

Order pronounced on 6th of January, 2020

1. This Application has been filed by **Union Bank of India** (hereinafter referred to as 'Financial Creditor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **M/s. Nag (India) Private Limited** (hereinafter referred to as 'Corporate Debtor').

The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. Heard Learned Counsel for the Financial Creditor and Corporate Debtor and perused the documents filed by the parties.



3. The Financial Creditor has claimed the total amount of Rs.5.98 Crores as outstanding against the Corporate Debtor. Clause 2 of Part-IV of the Application discloses the details of the loan amounts due to the Financial Creditor by the Corporate Debtor.

4. The case of the Financial Creditor is that M/s. Nag Leather Pvt. Ltd. approached the Financial Creditor and requested for various credit facilities to enable them to do business of leather processing and shoes including exports. During subsequent years, the limits of the Company were enhanced periodically to enable the company to meet their business requirements. Subsequently, their sister concern namely M/s. Nag Yang Shoes Pvt. Ltd. also approached the Financial Creditor during 2003 and requested for various credit facilities for above mentioned business. Both the borrowers i.e. M/s. Nag Leathers Pvt. Ltd. and M/s. Nag Yang Shoes Pvt. Ltd. have same and common directors and collateral securities are common to facilities availed by both the

companies.

5. For the above said loans, the Corporate Debtor on 30.01.2014 has executed an unconditional, absolute and irrevocable Corporate Guarantee Agreement to repay the various loans availed by the Borrowers with all interest and undertaken to indemnify all losses to be incurred by the Financial Creditor. Copy of Guarantee Agreement is placed at pages 24 to 27 of the typed set filed with the Application. Besides above, Supplemental Memorandum of Deposit of Title Deeds was executed by the Corporate Debtor in favour of the Financial Creditor mortgaging the property morefully described therein belonging to the Corporate Debtor, on 27.08.2015, copy of Memorandum of Deposit of Title Deeds is placed at pages 29 to 31 of the typed set filed with the Application.

6. Since the principal borrowers failed to repay the loans as undertaken by them, the Financial Creditor classified the loan account as Non-Performing Asset (NPA)



on 30.09.2016 and initiated action under SARFAESI Act, 2002 by issuing Demand Notice dated 30.11.2016, under Section 13(2) of the SARFAESI Act, 2002, demanding the outstanding amount due to it. Copy of Demand Notice is placed at pages 41 to 43 of the typed set filed with the Application.

7. A perusal of the proceedings shows that notice was issued to the Corporate Debtor and after receipt of the same, the Corporate Debtor has entered appearance through its Counsel on 03.04.2019 and this Authority directed the Corporate Debtor to file Reply. Instead of filing the Reply, the Counsel for the Corporate Debtor has prayed for time to settle the matter with the Financial Creditor by making upfront payment of Rs.2 Crores. Thereafter, the case was adjourned from time to time at the request of the Counsel for the Corporate Debtor for reporting settlement. However, the Corporate Debtor neither paid any upfront money for settlement nor filed the Reply, and therefore, the case was taken up for

arguments and on 30.12.2019 this Authority heard both the sides and reserved for orders.

8. Further, a perusal of records shows that the CIR Process initiated against the principal borrowers namely M/s. Nag Leathers Pvt. Ltd. and M/s. Nag Yang Shoes Pvt. Ltd. by the Operational Creditors under Section 9 of the I&B Code, 2016 were admitted by this Authority on 10.07.2017 and 05.10.2017 respectively, and subsequently, Liquidation orders were also passed on 09.04.2018 and 06.04.2018 respectively by this Authority.

9. We have carefully considered the rival submissions as well as the pleadings and the documents as filed by the Counsel for parties before this Tribunal. During the course of arguments, the Counsel for the Financial Creditor has submitted that the creditor can proceed against the Guarantor even without proceeding against borrower.



10. In this connection, as held by **Hon'ble NCLAT, in *Company Appeal (AT) (Insolvency) No. 92 of 2017*** that without initiating any CIR Process against the principal borrower, it is always open to the Financial Creditor to initiate CIR Process under Section 7 against the Corporate Guarantors, as the creditor is also the Financial Creditor qua Corporate Guarantor and this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP). Further, it is also brought to the notice of this Authority that the amounts which are being claimed is in relation to the balance owing from Principal Debtor and which had been defaulted and remains unpaid even after adjustments of the amounts received as proceeds from the Liquidation Estate of the said two companies mentioned above and after giving due credit of the same. Hence, there is no duplicity of claim as well taking into consideration the decision of Hon'ble NCLAT in the case of **Vishnu Kumar Agarwal Vs. M/s. Piramal Enterprises Ltd.** in *Company Appeal (AT)*



(Insolvency) No. 346 of 2018, wherein it is held that there is no bar in the 'I&B Code' for filing simultaneously two Applications under Section 7 against the 'Principal Borrower' as well as the 'Corporate Guarantor(s)' or against both the 'Guarantors'.

11. Thus taking into consideration the facts and circumstances of the case as well as the position of law, we are of the view that the Application, as filed by the Financial Creditor is required to be admitted under Section 7 (5) of the I&B Code, 2016.

12. The Financial Creditor has proposed the name of **Mr. Mahalingam Suresh Kumar**, having Registration Number IBBI/IPA-001/IP - P00110/ 2017 – 2018/10217, as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP, who is appointed as the

IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 15,17,18 of the I&B Code, 2016 and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

13. As a consequence of the Application being admitted in terms of Section 7 of the I&B Code, 2016, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

(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.”

14. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not



Order shall also be forwarded to IBBI for its records.
Further, the IRP above named be also furnished with
copy of this order forthwith by the Registry.

-SD-

(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)