



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA 1607/2022 IN

CP (IB) No. 824/MB-IV/2021

Under **Section 7** of the I&B Code, 2016

In the matter of:

Mr. Bhupendra Jivrajbhai Surani

Through Alan CW Tang (Trustee in
Bankruptcy)

...Financial Creditor/Applicant

V/s

**Sanika Assets Managment And
Investments Private Limited,**

[CIN: U65990MH1990PTC056225]

...Corporate Debtor/Respondent

Order Dated: 14.06.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Intervenor/ Appliacnt(s) : Ms. Mansha Khemka a/w Miss
Twinkle Khemka and Ms.
Bhagyashree Upadhyay i/b
Khemka & Associates, Advocates.

For the Respondent(s) : None present.



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Per: Kishore Vemulapalli, Member Judicial

1. This is an Application being C.P. (IB) No. 824/MB/C-IV/2021 filed on 27/07/2021 by Mr. Alan C.W. Tang under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the case of, Sanika Assets Management & Investments Private Limited, Corporate Debtor. The Applicant Mr. Alan C.W. Tang is Trustee in Bankruptcy property of the Mr. Bhupendra Jivrajbhai Surani, appointed by official receiver's office, Hong Kong in Bankruptcy proceeding No. 12522 of 2009 vide a letter dated 10.03.2010 undergoing in the case of Mr. Bhupendra Jivrajbhai Surani.
2. The Financial Creditor has claimed the sums of Rs. 13.94 Crores, Rs. 18.39 Crores and Rs. 5.00Lacs, aggregating to Rs. 32,38,00,000/-, lent to and/or invested in the Corporate Debtor company in March 2007 for setting up of certain Hospitality project in Goa. On 13.01.2010, the Financial Creditor was adjudged a bankrupt by the High Court of Hong Kong in Bankruptcy Petition No. 12522/2009 titled as Citibank NA Vs. Surani, Bhupendra Jivrajbhai and Mr. Alag CW Tang was appointed as a Joint and Several Trustee by Official Receiver's Office, Hong Kong in Bankruptcy proceeding No. 12522 of 2009.
 - 2.1 The Bankrupt/Financial Creditor submitted to the Trustee his "Statement of Affairs"(SOA) in Form-28(B), duly signed and notarized at Mumbai, on 07.09.2011 admitting personal liabilities worth US\$ 102 Million (Rs. 4,69,39,57,200as on 13.01.2010) and stating expressly therein that an amount of USD 6.998 Million (Rs.



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31,89,15,655.20 as on 13.01.2010) is receivable from the Corporate Debtor.

- 2.2 In the SOA, this debt due from the Corporate Debtor was shown to have been pledged (amongst other assets of Bankrupt Surani) to a "secured creditor" Jayesh Patel. Almost all of the unencumbered realizable assets of the Financial Creditor/Bankrupt were siphoned off by him in India prior to his bankruptcy under a well-planned conspiracy to prevent the Trustee-in-Bankruptcy from claiming these assets/ investments of the Bankrupt in India. This "Statement of Secured Creditors" has put cloud on the sanctity and veracity of the "SOA".
- 2.3 Hence, the Trustees obtained certified copy of suit No. 1354/2010 filed by alleged secured creditor Mr. Jayesh Patel against the Bankrupt at Bombay High Court. On suspicion that the alleged "Agreement to Loan Arrangement" and the "Letter of Guarantee and Surety" both dated 29.3.2007 are forged and fabricated on a backdate, Trustee found out on 19.02.2016 that the date of appointment of Mr. R.N. Kurup as a notary by the Government of India was 27.11.2008, as confirmed through RTI by the Ministry of Law and Justice. Hence, he could not have signed the Loan and Guarantee papers on 29.3.2007 as a notary. Thus, the submission of the Financial Creditor/ Bankrupt in his SOA that Mr. Jayesh Patel is a secured creditor is false and misleading in this regard and the Corporate Debtor remains a debtor to Financial Creditor/Bankrupt Surani.



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- 2.4 That after receiving the Statement of Affairs (SOA) of the Financial Creditor, the Trustee scrutinized various bank statements of the Financial Creditor obtained on 10.01.2018 and came across three (3) remittances (Rs. 13.94 Crores+ 18.39 Crores+ 5.00 Lakhs) made by the Financial Creditor from his NRO account No. 550010048342 held with ING Vysya Bank, Opera House Branch, Mumbai to the Corporate Debtor's bank accounts on 29.03.2007 and 30.03.2007. The remittances of Rs. 13.94 Crores and Rs. 18.39 Crores were duly received on 03.04.2007 in the Corporate Debtor's current account No. 550011024229 held with ING Vysya Bank, Opera House Branch, Mumbai; whereas Rs. 5.00 Lakhs was remitted to some other bank account of the Corporate Debtor.
- 2.5 Thereafter, the Trustee in Bankruptcy of the property of the Financial Creditor (Bankrupt) served a "Legal Demand Notice" on 20.04.2018 by Speed Post as well as through email to the Corporate Debtor (through Trustee's Ld. Counsel Shri Anil K. Chaturvedi) asking for the return of the said loan/investment amount, which demand was neither replied to nor any amount was paid by the Corporate Debtor since then.
- 2.6 That another Legal Demand Notice dated 05.12.2019 for the return of the said loan amount invested by the Financial Creditor was also served to the Corporate Debtor direct by Vinod Kr. Kaushik (Advocate), which demand was also neither replied to nor was any amount paid by the Corporate Debtor thereafter.
- 2.7 On 17.05.2019, the trustee authorised Mr. Vinod Kumar Kaushik, Advocate to handle and initiate legal proceedings in this matter. On



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05.12.20019, another legal notice was sent asking the Corporate Debtor as well as its directors to pay the amount alongwith interest within 21 days. However, no amount was paid, hence, the present application has been filed.

3. Mr. Bhupendra Jivrajbhai Surani, the Bankrupt, has filed an Interlocutory Application No. 1607/2022 seeking dismissal of the Petition on the ground that the present petition is barred under the Limitation Act, 1963 as a right to sue occurred when the Bankruptcy trustee representing the petitioner was provided Statement Of Affairs dated 13.01.2010 by him and the present petition has been filed on 27.07.2021. Further, the Bankruptcy trustee, having already availed the legal remedy available to him at the relevant time by previously filing the insolvency notice No. 12 of 2015 (Mr. Alan C. W. Tang vs. Bhupendra Surani & Ors.) concerning the same subject matter and reliefs, which was rejected by Hon'ble Bombay High Court vide order dated 26.10.2016, cannot claim under the code in the absence of no new cause of action arising thereafter, as the present petition is barred by *Res judicata*. Further, the present petition is also liable to be dismissed for suppression of facts as the Bankruptcy trustee has suppressed the facts relating to his discharge from bankruptcy w.e.f. 13.07.2017; the relevant provisions of the Hong Kong Bankruptcy Ordinance providing that when a bankruptcy order is discharged, the bankrupt is released from all probable debts, including any debts or liabilities that were proved in the bankruptcy Proceedings; and dismissal of appeal filed before the Hon'ble Bombay high court.
4. The authorised representative of the Bankruptcy trustee filed an Affidavit dated 29.04.2022 stating that the amount of Rs. 32.38 crores was



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transferred as an investment in the Corporate Debtor for setting up of a hospitality project in Goa which could not take off because of the dispute between the shareholders of Uniworth Resorts Limited as substantiated from the article dated 29.10.2010 published by Times of India, Mumbai. It is also stated therein that the Corporate Debtor is one of 108 companies floated by Mr. Bhupen Jivrajbhai Surani, wherein his close relatives were directors of majority shareholders/investors.

- 4.1 The said authorized representative filed counter affidavit of reply dated 24.09.2022 stating that the amount claimed in the petition became a part of bankruptcy estate; that the statutory discharge vide order dated 13.07.2017 does not mean that the functions of the trustee appointed in his bankruptcy estate is over and he is not liable to make payment of his pre- bankruptcy debts to the creditors. It is further stated that under no law, either of Hong Kong or India, the applicant is entitled to take back possession of any other property or assets in his bankruptcy estate which have been vested in the trustee till of his debts are fully repaid.
- 4.2 The said authorised representative has filed a written submission dated 29.03.2023 stating that as a property continues to be vested in the Bankruptcy Trustee in terms of Section 58 of the Hong Kong bankruptcy ordinance and the debts against the bankrupt have not yet bene discharged. The discharge as claimed by the bankrupt in his IA 1607/2022 came due to passage of time u/s 30A of the Ordinance. It is further stated that in the statutory discharge, the bankrupt is not re-vested with any property, under sec 74 of the



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Hong Kong Bankruptcy Ordinance, he will only be entitled to the surplus of money (if any) after the full discharge of all of his debts.

5. Mr. Bhupen Jivrajbhai Surani has filed a written note dated 06.04.2023 stating that he is the actual Financial creditor and is not a stranger to the proceedings of the third party. It is stated that Sec. 61 of the Hong Kong Bankruptcy Ordinance provides for prior permission of the Creditors committee for initiating any legal proceeding by the trustee.
6. We have carefully gone through the pleadings available on records and considered the arguments of the parties.

6.1 The Corporate Debtor has not filed any reply. However, the authorized representative of Bankruptcy Trustee has placed on record the financial statements for the Financial year ending on 31.03.2006 and 31.03.2007. On perusal of these financial statements, it is seen that Mr. Jivrajbhai Surani's son Mr. Rajesh Surani is the Director of the Corporate Debtor during the period. Further, the Financial statement for the year ending 31.03.2007 reflects a loan liability of Rs. 26,40,50,000/- & increase in share application money by a sum of Rs. 2,00,000/-. The Bankruptcy Trustee in his application, has claimed the amounts stated to be in default in the petition, as investments made by the Bankrupt. The Bankruptcy Trustee through its authorised representative has claimed on the Affidavit dated 29.04.2022 that the amount of Rs. 32.38 crores was transferred as an investment in the corporate debtor for setting up of a hospitality project in Goa. No documentary evidence has been placed on record that the said investment was in the nature of financial debt u/s 5(8) of the Code,



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which defines a financial debt to be a debt alongwith interest. The debt is defined u/s 3(11) of the Code to mean a liability or an obligation in respect of a claim which is due from any person. Further, a claim is defined u/s 3(6) of the Code as a right to payment or a right to remedy for breach of contract under any law if such breach gives rise to a right to payment. This Bench finds that no evidence has been brought on record to substantiate that the amount stated to have been made as an investment were liable to the repaid back by the Corporate Debtor to the investor, and even if the Corporate debtor was liable to do so, when such obligation can be said to have become due. In the absence of these facts, this Bench is unable to hold that an amount claimed as investment takes the corrector of financial debt. Even if this bench proceeds on the assumption that the amount is stated as n unsecured loan in the financial statement of the corporate debtor for the year ended on 31.03.2007 is due to the Bankrupt (Though no name is stated in the Financial statement), in the absence of date when such loan can be said to have fallen due for payment, this Bench cannot hold that any default has arisen in payment of the amount stated as unsecured loan in the financial statement for the year ended 31.03.2007.

- 6.2 Since this Bench is of the considered view that no default has been proved to have taken place, the question of limitation is premature in its absence.
- 6.1. In the case of *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. (2019) ibclaw.in 03 SC, the Hon'ble Supreme Court* held that “12. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from



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its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests.”.

The Bankruptcy trustee appears to have failed to appreciate the intent and object of the Code. Accordingly, this Bench feels that the present petition is an attempt towards recovery of the amount claimed to be due from the corporate debtor.

- 6.2. In view of the above, we find that the present petition is not maintainable and deserves to be dismissed under Section 7 of the Code for initiation of CIRP against the Corporate Debtor.

ORDER

This **IA 1607/2022** is therefore **Allowed** and the Application being **C.P. (IB) No. 824/NCLT/MB/C-IV/2021** filed under Section 7 of I&B Code, 2016, by Mr. Alan C.W. Tang under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the case of Sanika Assets Management & Investments Private Limited, the Corporate Debtor, is **Dismissed**.



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We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

Prabhat Kumar
Member (Technical)
/LRA-Akshata/

Sd/-

Kishore Vemulapalli
Member (Judicial)