IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB)3212/MB/C-IV/2019
Under section 9 of the I&B Code, 2016
In the matter of

UCO Bank
…Financial Creditor
v/s.
M/s Narendra Solvex Private Limited
…Corporate Debtor

Order Delivered on: 16.09.2021

Coram:

Shri Rajesh Sharma
Hon'ble Member (Technical)

Smt. Suchitra Kanuparthi
Hon'ble Member (Judicial)

For the Petitioner: Mr. Zaid Mansuri a/w Ms. Almira Lasrado, Advocate

For the Respondent: None

ORDER

***Per*: Suchitra Kanuparthi, Member (Judicial)**

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 **(IBC)** by **UCO Bank** ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **M/s Narendra Solvex Private Limited** ("the

Corporate Debtor/Corporate Guarantor"). The Financial Creditor claiming a sum of Rs.47,44,31,660.68 (Rupees Fourty Seven, Fourty Four Lakhs, Thirty-One Thousand, Six Hundred Sixty and Sixty-Eight Paisa Only) which is said to amount in default as on 30.09.2014which is said to be the date of default.

BRIEF FACTS:

2. The Petitioner has granted various credit facilities to the Corporate Debtor which are provided as under:

S.No.	**Date of Sanction**	**Amount (Rs)**
1.	22nd June 2005	24,50,00,000/-
2.	4th October 2006	29,50,00,000/-
3.	7th March, 2008	36,50,00,000/-
4.	23rd December, 2013	28,90,00,000-/

3. The Petitioner has provided details of security such as hypothecated assets and fixed assets along with the Petitioner created in favour of the Financial Creditor as follows :-

   i. Second Charge of those pieces and parcels of land in the names of M/s Deegee Orchads Private Limited, being land comprising in Survey No. 29/1A, 29/1B, 17 & 18, at Wardha together with all structures, building sheds godowns and plant and machinery, constructed and erected and to be constructed and erected thereon. Realisable Value of rs. 2.82 Crores vide valuation report by Mr. Ashish Dudhe and Rs. 4.40 Crores as per valuation report by Maharashtra Valuers and Consultant.

   ii. Second Charge of those pieces and parcels of land hypothecation of Wind Mill Power Project Plant and Machineries including land and constructions thereon in the name of M/s Deegee Orchads Private Limited, situated at Vankusawade Village Nivkane and Mandure, Taluka Patan, District Satara, Realisable Value of Rs. 0.51 Crores vide valuation report as per valuation report by Maharashtra Valuers and Consultant.

   iii. Second Charge on Land at survey No. 223/1and 237/1 at Gunjkheda (Pulgaon) Tehsil Deoli, District-Wardha admeasuring 1H 51R standing in the name of Smt. Pushpadevi Bhoot.

iv. Primary Charge on all those pieces and parcels of land in the name of M/s Narendra Solvex Private Limited, situated and being lying at Mouza: Dhaba , Pargane, Nandgaon, Khandeshwar, District Amravati being land comprising in Survey No. 45, 45/1, 45/1A, 45/1B & 45/1C admeasuring 4.25 hectares together with all structures, buildings, sheds, godowns and plant and machinery, constructed and erected and to be constructed and erected thereon.

HYPOTHECATED ASSETS

i. Hypothecation of Plant and Machinery at exit Unit of the Company situated at Dhaba, District Amravati along with other equipment and erections.
ii. Hypothecation of all current Assets, including stock of raw materials like soyabean seeds, stocks and spares, work in process, refined soya oil, of company situated at Dhaba District Amravati.

4. The Petitioner has also filed recovery proceedings before Debts Recovery Tribunal vide O.A. 196 of 2015, the Recovery Certificate was passed in favour of the Petitioner Bank on 12th February 2019.

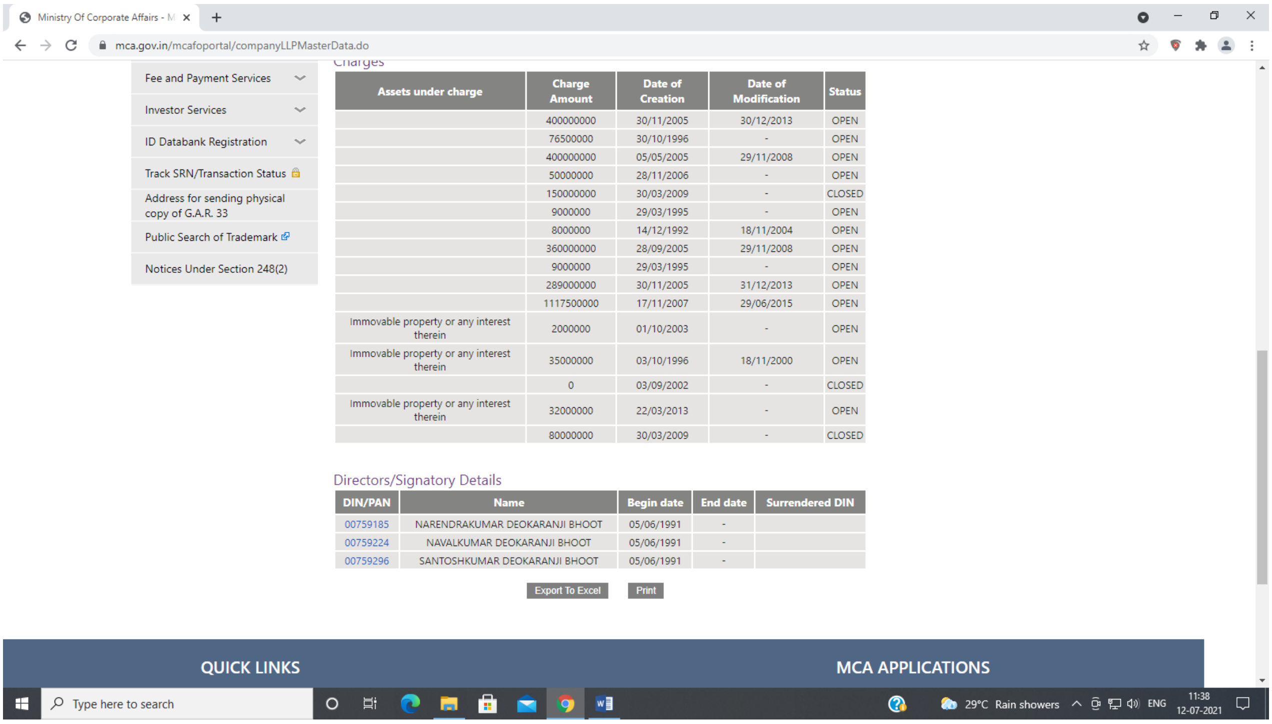
5. The Petitioner has included the details of amendment and financial contract executed between the parties from the year 2005 till the year 2015. The Petitioner has initiated proceedings under the SARFAESI Act, 2002 against the Corporate Debtor and issued notice under Section 13(2) on 27th January 2015. The Petitioner

also issued recall notice on 27th August, 2018, thereby recalling the outstanding dues from the Corporate Debtor.

6. The total amount of default as claimed by the Petitioner as on date of default i.e. 30thSeptember 2014 is amounting to Rs.47,44,31,630.68. The account was declared NPA on 30th December 2014.

7. Initially the Reply was filed by the shareholder of the Corporate Debtor collectively holding 21.72% shares in the Corporate Debtor, but however the promoter submitted that it is filed at the behest of the promoter of the Corporate Debtor, who has revoked the authority to file the reply. Further this Bench records the brief facts of the reply. Evidently there is reply filed by the promoters of the Corporate Debtor in view of the fact that the Directors namely Shri Naval Kumar Bhoot, Shri Santosh Kumar Bhoot and Shri Narendra Kumar Bhoot, out of these three directors, two directors have been disqualified u/s 164(2) r/w Section 167(1)of the Companies Act, 2013 namely Mr. Narendra Kumar Bhoot and Santosh Kumar Bhoot. The reply filed by the shareholders of the so-called Corporate Debtor is not taken into consideration as they have no locus to appear in the matter and defend insolvency petition u/s 7 of the Code.

8. The Counsel appearing for the Corporate Debtor has taken several adjournments on the ground that the senior Mr. S.K. Jain, is unwell and sought time to argue the matter. The Counsel also misrepresented that he had been authorised by the Corporate Debtor but however, the reply filed on record shows that he is representing 21.72% of shareholding of the Corporate Debtor. Therefore, at the threshold the reply is not taken into consideration. Upon verification of the MCA Data that the so called three Directors have not disqualified and shown active on the MCA website. The present status of the companies Director is as follows:



Assets under charge	Charge Amount	Date of Creation	Date of Modification	Status
	400000000	30/11/2005	30/12/2013	OPEN
	76500000	30/10/1996	-	OPEN
	400000000	05/05/2005	29/11/2008	OPEN
	50000000	28/11/2006	-	OPEN
	150000000	30/03/2009	-	CLOSED
	9000000	29/03/1995	-	OPEN
	8000000	14/12/1992	18/11/2004	OPEN
	360000000	28/09/2005	29/11/2008	OPEN
	9000000	29/03/1995	-	OPEN
	289000000	30/11/2005	31/12/2013	OPEN
	1117500000	17/11/2007	29/06/2015	OPEN
Immovable property or any interest therein	2000000	01/10/2003	-	OPEN
Immovable property or any interest therein	35000000	03/10/1996	18/11/2000	OPEN
	0	03/09/2002	-	CLOSED
Immovable property or any interest therein	32000000	22/03/2013	-	OPEN
	80000000	30/03/2009	-	CLOSED

Directors/Signatory Details

DIN/PAN	Name	Begin date	End date	Surrendered DIN
00759185	NARENDRAKUMAR DEOKARANJI BHOOT	05/06/1991	-	
00759224	NAVALKUMAR DEOKARANJI BHOOT	05/06/1991	-	
00759296	SANTOSHKUMAR DEOKARANJI BHOOT	05/06/1991	-	

FINDINGS

9. Admittedly the sanction of the said loan of the financial facilities to the Corporate Debtor was granted on 22nd June 2005 followed by sanction letters in the year 2006, 2007 and 2013. The date of default as recorded in the Petition is 30th September 2014. The account was declared as NPA on 30th December 2014. The Petitioner have claimed an amount of Rs. 47,44,31,630.68 as on 30th December 2014. The Petitioner has also given the list of hypothecations of assets and mortgage and have mention that they have obtained a Recovery Certificate/Decree dated 12th February, 2019 in O.A. 196 of 2015 from Debts Recovery Tribunal, Nagpur against the Corporate Debtor. The Petitioner have evidently issued a SARFAESI Notice u/s 13 (2) on 27th August 2018. There is no evidential proof filed for seeking an extension of limitation by way of acknowledgement by the corporate debtor file. The date of Decree/Recovery Certificate is to be reckoned as a fresh period of limitation for filing petition u/s 7 of the IB Code.

10. There was no representation on behalf of the Corporate Debtor. However, the shareholders have filed the reply falsely stating that the reply has been filed on behalf of the Corporate Debtor. However, the contents of the reply further demonstrate that the reply is filed by the shareholders of the Corporate Debtor holding 21.72%

percent of shares in the Corporate Debtor. This reply filed by the shareholders of the corporate debtor is rejected in *limine*.

11. The Ld. Counsel My. Yahya Batatawala has sought for several adjournments on the ground that his senior Mr. S.K. Jain, is unwell and unable to represent the corporate debtor. This bench takes serious note on the fact that there has been a false representation and oral submissions that they are representing the Corporate Debtor. However, they have conceded that they represent only the shareholders of the Corporate Debtor who have no authority to represent the Corporate Debtor and to file reply before the Hon'ble Tribunal.

12. In view of the judgement of Hon'ble Supreme Court in Dena Bank(now Bank of Baroda) v. C Shivkumar Reddy and Anr on 4.08.2021, held at para 143 that a Judgement/decree in favour of the Financial Creditor or any Recovery certificate by the Debt Recovery Tribunal, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under sec.7 of IBC for initiation of CIRP, within three years from the date of the judgement and/decree or within three years from the date of issuance of certificate of recovery, if the dues of the Corporate Debtor to the Financial Creditor, under the judgement and/or decree and/or in

terms of certificate of recovery, or any part thereof remained unpaid.

13. The petitioner has obtained the have obtained a Recovery Certificate/Decree dated 12th February, 2019 in O.A. 196 of 2015 from Debts Recovery Tribunal, Nagpur against the Corporate Debtor. Hence a new period of limitation starts from 12.02.2019 to 11.02.2022. In view of the judgement of Hon'ble Supreme and ratio laid down therein, the debt of Financial Creditor is crystallised in a Recovery Certificate against the Corporate Debtor and there is a default of non-payment of outstanding dues. The petition is admitted.

14. This Bench having been satisfied with the Application filed by the Financial Creditor which is in compliance of provisions of section 7 of the Insolvency and Bankruptcy Code admits this Application declaring Moratorium with the directions 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 16.09.2021 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. Mr. Jagdish Kumar, Registration No. IBBI/IPA-001/IP-P00671/2017-2018/11143, having address at B56, Wallfort City, Bhatagaon, Ring Road No. 1, Raipur, Chhattisgarh, 492 001. Email: jkparkulkar@yahoo.co.in, as interim resolution professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

15. The Registry is hereby directed to communicate this order to both the parties as well as IRP immediately.

Sd/- Sd/-

RAJESH SHARMA **SUCHITRA KANUPARTHI**
Member (Technical) **Member (Judicial)**

16.09.2021

/Rohit/