

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(IB) No. 354(PB)/2022

In the matter of

An application 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.

And

In the matter of:

Bank of Baroda (CIN: U99999MH1911PLC007676)
Corporate Office : Bandra Kurla Complex, Bandra(East)
Mumbai-400051
Branch Office : Plot No. 9, Zone-II, (Habibganj Branch)
Bhopal, Madhya Pradesh-462011

...Financial Creditor

Versus

Shri Nath Resedenci Pvt. Ltd.
(CIN: U70102UP2009PTC038317)
Registered Office at :
632, Raja Niwas, Kalu Lunwa Chauraha,
Banda (U P-210001)

.....Corporate Debtor

Order pronounced on: 05.01.2023

Coram:

Chief Justice (Retd.) Ramalingam Sudhakar : Hon'ble President
Shri Avinash K. Srivastava : Hon'ble Member (Technical)

Appearances :

For the Financial Creditor : Mr. Vinod Chaurasia, Advocate
For the Corporate Debtor : Mr. Rakesh Kumar, Advocate
Mr. Dhruv Gupta, Advocate

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ORDER

Per: Avinash Kumar Srivastava, Member (Technical)

1. This is a Company Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by **Bank of Baroda**, constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, represented by Mr. Bahvesh D Modi, Chief Manager, seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against **Shri Nath Resedenci Pvt. Ltd** [CIN: U70102UP2009PTC038317] ("Corporate Debtor.
2. The Corporate Debtor was incorporated on 25.09.2009, having CIN: U70102UP2009PTC038317, under the Companies Act, 1956. It's registered office is 632, Raja Niwas, Kalu Lunwa Chauraha, Banda (U P-210001) but as the corporate debtor is guarantor of NIIL Infrastructure Pvt. Ltd, who is the principal borrower and against whom CIRP is undergoing before this Bench vide CP (IB) 560 (PB)/2017, therefore, this Bench has jurisdiction to deal with the petition in terms of Sec 60(2) of IBC, 2016.
3. The present petition was filed on 09th May, 2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.54,49,27,812 (Rupees Fifty Five Crores Forty Nine Lakhs Twenty Seven Thousand Eight Hundred and Twelve Only) as on 22nd September , 2021.

Submission of learned Counsel appearing for the Financial Creditor

4. A Credit facility in form of term loan of Rs.40 Crores (Rupees Forty



Crores) was disbursed on 01st August, 2014 to the principal borrower which was secured by the corporate guarantee extended by the corporate debtor. The account became a non-performing asset (“NPA”) on 31st October, 2016 and the last payment received by the financial creditor was on 31.03.2017.

5. It is submitted that the Corporate Debtor is the Corporate Guarantor of NIIL Infrastructure Pvt. Ltd (“Principal Borrower”) by the corporate guarantee agreement which was executed on 01.08.2014 and further it is stated that the letter of acknowledgment of debt by the corporate debtor and the corporate guarantor dated 12th July, 2017 is also annexed as A-15 marked at Pg 156 of the paper book.
6. It is further averred that the notice under Section 13(2) of the SARFAESI Act dated 26th March , 2018 was issued to the Corporate Debtor and the Financial Creditor also issued recall notice on 1st October, 2019 invoking guarantee to the Corporate Debtor.
7. It is submitted that a Section 7 petition was filed against the principal Borrower i.e NIIL Infrastructure Pvt. Ltd which was admitted by this Adjudicating Authority vide order dated 28th March, 2018 registered as CP (IB) NO. 560(PB)/2017. This Adjudicating vide order dated 31 August 2018 admitted the principal borrower into CIRP and appointed Mr. Arvind Singh as the Interim Resolution Professional.
8. It is further stated that the Resolution Plan for the principal borrower was approved by this Adjudicating Authority vide order dated 04th November, 2020 which was modified on 26th November, 2020 but due to failure of the implementation of the Resolution Plan , erstwhile RP of the principal borrower has filed an application i.e. IA No. 4700 of 2021



seeking appropriate directions against the Resolution Applicants and to reinstate the CIRP of the principal Borrower which is still pending adjudication before this Adjudicating Authority.

9. Hence, it is contended that after receipt of sums paid by or received on behalf of the Principal Borrower as applicable to the loan account, there is a due of Rs.54,49,27,812 (Rupees Fifty Four Crores Forty Nine Lakhs Twenty Seven Thousand Eight Hundred and Twelve Only) as calculated up to 22.09.2021.
10. It is submitted that for the purpose of proving the existence of debt and consequent default as per the agreement/understanding, the following documents have been annexed with the petition:-
 - a. Copy of Bank's Certificate dated 27.04.2022 annexed as Pg. 46 and 47
 - b. Copy of statement of loan account Annexed as Annexure A 7.
 - c. Copy of Corporate guarantee Agreement dated 01.08.2014 annexed as Annexure A -13.
 - c. Copy of Certificate of Charge dated 01.08.2014 annexed as Annexure A -14.
 - d. Copy of letter of Acknowledgment of Debt by the corporate debtor dated 12.07.2017 annexed as Annexure A -15.
 - e. The copy of record of default by NeSL dated 22.11.2022.
11. The Financial Creditor has proposed the name of Mr. Sajjan Kumar Dokania, registration number IBBI/IPA-003/IP-N000150/2017-



18/11729, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

12. Court Notice was issued on the Corporate Debtor on 18.05.2022. The Corporate Debtor entered appearance on 29.08.2022.

Submission of learned Counsel appearing for the Corporate debtor

13. On being served with the notice of the court, the Corporate Debtor has filed its reply affidavit.
14. It is stated that the Corporate Debtor disputes and denies each and every allegation made in the application. It is submitted that the application is barred by limitation as contained in the Limitation Act, 1962 as the account was declared NPA on 31.10.2016 and the first date of default is mentioned as 26.03.2018 i.e when the SARFAESI notice was given, thus the application is barred by limitation.
15. It is further submitted that as the CIRP against the Principal borrower has already been initiated vide order dated 28.03.2019 in CP(IB) 560(PB)/2017, thus the financial debt does not stand due and payable as on date and there exists no default against the transactions.
16. It is further stated that the corporate debtor is solvent company and has running project, thus initiation of CIRP will completely destroy the existence of the corporate debtor.



Analysis and Findings

17. Heard the learned Counsels appearing for the Financial Creditor and the Corporate Debtor and perused the record.
18. The defences raised by the Corporate Debtor are:
 - a. That the application is barred by limitation;
 - b. The financial debt does not stand due and payable as CIRP has already been initiated against the principal borrower.
 - c. The corporate debtor is a solvent company.
19. The first aspect to be considered is one of limitation. Admittedly, the account was declared NPA on 31.10.2016 and debt was last acknowledged by the corporate debtor on 12.07.2017. But it is observed that, the learned Counsel for the applicant, in order to extend the limitation has relied upon the loan recall notice dated 01.10.2019 which is annexed at Pg No. 161-165 marked as Annexure A-17 of the petition, sent by the applicant demanding all the debts from the guarantors and the present application has been filed on 08.05.2022 which comes well within the ambit of limitation period. Hence, the plea is rejected.
20. The second defense that is raised by the Corporate Debtor is that the financial debt does not stand due and payable as CIRP has already been initiated against the principal borrower. On this aspect the Judgment of Hon'ble Supreme Court in the matter of **Lalit Kumar Jain v. Union of India (2021)9 SCC 321** at Para 125 held as follows: -
 125. *In view of the above discussion, it is held that approval of a resolution*



plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this Court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surely/guarantor of his or her liability, which arises out of an independent contract.

21. In light of the above judgment, it is clear that simultaneous proceedings can be initiated possible against the Corporate Debtor and the Guarantor who has stood surety through a valid deed of guarantee. In the present case, the corporate debtor i.e Shri Nath Resedenci Pvt. Ltd. is a guarantor for the Loan Facility advanced by the Financial Creditor to the Corporate Debtor through the deed of guarantee dated 01.08.2014. Hence, the application can be moved against guarantor under the IBC while CIRP proceedings are going on against the Corporate Debtor. Hence, the said plea is rejected.

22. The counsel for the corporate debtor has also taken the third plea of commercial solvency of the Corporate Debtor which, in our view are not of relevant consideration as an application filed U/s 7 of IBC, 2016 can be admitted once there is a debt which is due and payable and there occurred a default in repayment thereof and these conditions are satisfied in the present case as upon default committed by the principal borrower, the liability of the company (corporate person), being the guarantor, instantly triggers the right of the financial creditor to proceed against the corporate guarantor (being a corporate debtor).



23. Therefore, we find no substance in the argument advanced before us by the Learned Counsel corporate debtor. Further, the name of IRP has been proposed by the Financial Creditor whose consent has been placed on record stating that no disciplinary proceedings are pending against him. The application filed under section 7 of the Code, is otherwise complete and meets all other procedural requirements of the Code and Regulations made there under.

24. In light of the above facts and circumstances, it is hereby ordered as follows:

- i. The Application bearing (IB)-354(PB)/2022 filed by the applicant under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating CIRP against the Corporate debtor i.e Shri Nath Resedenci Pvt. Ltd., is hereby admitted.
- ii. As a consequence of the Application being admitted in terms of Section 7 of the Code, the moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii. Mr. Sajjan Kumar Dokania, Registration number IBBI/IPA-003/IP-N00150/2017-2018/11729; Address: 25, Globus Fab city, Kolar Road, Chuna Bhatti, Near Suyash Hospital, Bhopal, Madhya Pradesh, 462016; Email id sajjan_suman@ hotmail.com is appointed as the Interim Resolution Professional ("IRP").
- iv. In pursuance of Section 13(2) of the Code, we direct the IRP to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution



Process for Corporate Persons) Regulations, 2016.

- v. During the CIRP period, the management of the CD shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no further opportunity given in this regard.
- vi. The IRP is expected to take full charge of the CD's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- vii. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the CD.
- viii. The FC shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors ("CoC").
- ix. The Registry is hereby directed to communicate a copy of the order to the FC, the CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today, and upload the same on website immediately after pronouncement of the order. The Registrar of Companies shall update his website by updating the status of the CD and specific mention regarding admission of this petition must be notified.

AKS

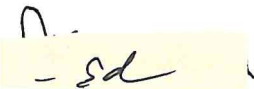


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25. The registry is further directed to send the copy of the order to the IBBI also for their record.
26. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


RAMALINGAM SUDHAKAR
PRESIDENT


AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)