

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT-I**

**RCP (IB) 7/MB/2023 Connected  
to CP (IB)/1049 (MB)/2019**

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

*In the matter of*

**Bank of Baroda**

[PAN:AAACB1534F]

...Financial Creditor/Applicant

Versus

**M/S Sanghvi Land Developers  
Pvt. Ltd.**

[CIN:U45202MH2001PTC132180]

...Corporate Debtor/Respondent

**Order Pronounced on 29.01.2024**

*Coram:*

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)  
Hon'ble Member (Technical) : Sh. Prabhat Kumar

*Appearances:*

For the Operational Creditor : Mr. Durgaprasad Halwai,  
Advocate

For the Corporate Debtor : Mr. Manmohan Rao a/w  
Adv. Sarika Gowde,  
Advocate.

**ORDER**

*Per:* Justice V. G. Bisht (Retd.)

This Company Petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Bank of Baroda ("the Financial Creditor/Applicant")**, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **M/S Sanghvi Land Developers Pvt. Ltd. ("the Corporate Debtor/Respondent")**.

**Brief Facts:**

1. The Applicant is a body corporate constituted by and under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 with its head office at Baroda House, Mandvi, Baroda – 390006, Gujarat and acting through its Zonal Stressed Asset Recovery Branch Meher Chambers, Ground Floor, Dr. Sunderlal Behl Marg, Opp Petrol Pump, Ballard Estate, Mumbai – 400001.
2. The Respondent was incorporated on 31.05.2001 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U45202MH2001PTC132180. Its registered office is at 98/2, K.R. Mhatre Marg, Station Road, Reay Road (West), Mumbai - 400086. Therefore, this Bench has jurisdiction to entertain and decide the Petition.
3. The Authorised share capital of the Corporate Debtor is Rs. 50,00,000/- (Rupees Fifty Lakh Only) and Paid up capital is Rs. 50,00,000/- (Rupees Fifty Lakh Only).
4. This is a Restored Company Petition connected to **CP (IB)/1049 (MB)/2019**

5. The present Application was filed before this Adjudicating Authority on the ground that Total amount of debt granted by Bank of Baroda vide sanction letter dated 23 July 2011 is Rs 8,50,00,000/- (Rs. Eight Crores Fifty Lakhs only) to M/s Brainer Impex Limited upon various terms and conditions has remained unpaid till date.
6. The Corporate Debtor is a Guarantor and executed Deed of Guarantee dated 04.08.2011 and mortgaged its immovable properties being unit nos. 601 and 602 on 6th floor, admeasuring about 3450 sq. ft. carpet area in Sanghvi Square at Opp. Bank of Baroda, M.G. Road, Ghatkopar (West), Mumbai 400 086 for securing the due repayment of the said loan.
7. M/s Brainer Impex Ltd. defaulted in repayment of various instalments as agreed.
8. Original Application bearing number 974 of 2016 was filed before Debts Recovery Tribunal, Mumbai (DRT) for recovery of an amount of Rs. 18,49,644/- (Rupees Eighteen Lakhs Forty-Nine Thousand Six Hundred Forty-Four only) along with interest on Rs. 16,13,006/- @13.10% p.a. under Cash Credit Facility and Rs. 9,23,33,970/- (Nine Crores Twenty- Three Lakhs Thirty-Three Thousand Nine Hundred Seventy only) along with interest @ 16.65% p.a. under Devolved Export Bills Account (Foreign Bills Purchase / FBD Facility.)
9. Original Application No. 974 of 2016 is allowed by an order dated 17.05.2018 passed by DRT.
10. Thereafter, DRT was pleased to issue Recovery Certificate dated 01.11.2018.
11. It is submitted that the petition is not barred by law of limitation as Recovery Certificate is issued on 01.11.2018 which is valid for enforcement/execution on the date of the present Petition.

12. Amount claimed to be in default by the Applicant is Rs.15,18,42,904/- (Rupees Fifteen Crores Eighteen Lakhs Forty Two Thousand Nine Hundred and Four) as on 28.02.2019 along with interest on Rs.16,13,006/- (Rupees Sixteen Lacs Thirteen Thousand Six only) @ 13.10% p.a. with monthly rests till full and final payment and/or realisation along with interest on Rs. 9,23,33,970/- (Rupees Nine Crores Twenty Three Lacs Thirty Three Thousand Nine Hundred Seventy only) @ 16.65% p.a. with monthly rests till full and final payment and/or realisation.
13. In this matter default is continuous. The Corporate Debtor initially defaulted on 05.04.2016 then on 17.05.2018 and then on 01.12.2018.
14. Interlocutory Application no. 1766/2022 was filed by the Corporate Debtor for setting aside the ex parte order dt. 27.11.2019, passed against the Corporate Debtor due to non-filing of Affidavit in Reply. Ld. Counsel for the Corporate Debtor has brought to attention of this Tribunal that the Affidavit in Reply of the Corporate Debtor had been filed much prior to the passing of the ex parte Order i.e. on 20.08.2019 and the Corporate Debtor was set ex parte without considering the reply already available on record. After hearing the Ld. Counsel for the Corporate Debtor and on perusing the written statement, this Bench was satisfied that the ex parte Order was passed against the Corporate Debtor due to oversight and the same needed to be corrected. Accordingly, the ex parte Order dt. 27.11.2019, passed against the Corporate Debtor was set aside vide order dt. 02.06.2023 and the written statement was taken on record.
15. Further, Restoration Application no. 26/2023 was filed by Bank of Baroda under Rule 11 of the NCLT Rules, 2016 for restoration of CP (IB) 1049 (MB) 2019. The said Company Petition was dismissed on 11.07.2023 for non-prosecution. Ld. Counsel

appearing for the Applicant stated that due to oversight and inadvertence, the Advocate's diary missed to mention the application and therefore matter could not be attended. The Counsel appearing for the Applicant undertook not to repeat said mistake in future. Hence, in the interest of justice, Restoration Application No. 26/2023 was allowed and C.P. (IB)/1049(MB)2019 was restored back vide order dated 29.08.2023.

**Submissions of the Respondent-**

16. The respondent has contended that the present application ought to be dismissed on the ground of limitation, as the Applicant has filed the present application beyond the limitation period prescribed under Section 137 of the Limitation Act, 1963. The respondent has further stated that the Applicant has deliberately not disclosed the date on which the cause of action arose and merely on the recovery certificate issued by the DRT in the proceedings filed before it against the Respondent, the Lender, has filed the present application to initiate Corporate Insolvency Resolution Process against the Respondent.
17. The Respondent further submits that the Applicant has suppressed material facts from this Tribunal. That, vide compromise /OTS proposal conveyed to the Respondent by a communication dated 29.08.2016, the parties hereto agreed to settle the claim of the Applicant on the agreed terms therein. Pursuant to the acceptance of the sanction letter, the Respondent made certain payments towards the payment of the said claim amount. The Respondent has prayed to this Tribunal to direct the Applicant to produce the said sanction letter, however, the same was not placed on record.
18. The Respondent further submits that it is a sound company with Rs. 50,00,000/- (Rupees Fifty Lakhs Only) as the authorized

share capital and that it has been diligently paying off its dues and liabilities. The Applicant is intentionally initiating Corporate Insolvency Resolution Process even after recovery of the properties of the Applicant mortgaged against the said loans through a separate proceeding filed in that behalf.

19. With respect to the transaction pertaining to the credit facility of Rs. 8,50,00,000/- availed by the Principal Borrower, the Respondent is merely a signatory to the Mortgage Deed dated 04.08.2011 whereby the properties specified by the Applicant in the Application had been mortgaged for due payment of the said loan amount, in case of default. The right so created under the mortgage deed has already been exercised by the Applicant by approaching us.
20. The Respondent further submits that the present Application is barred by limitation and the Applicant has filed the present Application relying upon the recovery certificate issued by the DRT on 01.11.2018. However, the said Certificate entitles the Applicant to proceed to recover the adjudicated amount through the modes of recovery under the RDDBFI Act, 1993 and not under the IBC, 2016. Therefore, the said Certificate cannot be used by the Applicant to file the present Application and the date of issuance of the said Certificate as a date on which the cause of action arose. Apart from the above, the Applicant has failed to produce the Deed of Guarantee dated 4th August, 2011 stated in para 2 of the Particulars of Financial Debt on the basis of which the present Application has been filed against the Respondent as a Guarantor to the credit facility availed by the Principal Borrower. Furthermore, the Applicant has also failed to file evidence of default or any proof thereof so as to show that the Respondent is liable to pay the said amount so claimed against the Respondent.

21. The learned counsel for the Respondent has contended the Application filed by the Applicant be rejected on the following grounds:

**i. Suppression of Facts-**

The Respondent has submitted that DRT order dated 17/5/2018 is based on suppression of facts. The Respondent has relied upon the decision given in the case of *(1994) 1 SCC 1 S.P. Chengalvaraya Naidu (Dead) by Lrs. Versus Jagannath (Dead) By Lrs. & Ors. (Annexure 2)*. Further Original Application Page No.120 and 121 has to be read together wherein undertaking was only given for mortgage of Unit No. 601 and 602 and not for guarantee which could not have been executed. Further the said guarantee is of 4/8 / 2011 which is clearly time barred. In fact, Board Resolution submitted only talks about giving collateral. M / s Sanghvi Land Developers Pvt. Ltd. cannot be considered as guarantor and the alleged guarantee is without authority and unenforceable. Bank has obtained order by misleading DRT-II, Mumbai. The Respondent has further submitted that the Applicant in SARFAESI proceedings has recovered by sale of property which is suppressed in this application. That the alleged bank guarantee is only for Rs.8.5 Crores in which case the alleged claim against the alleged guarantor in any circumstance cannot exceed Rs.8.5 Crores however in the present application an amount of Rs.15,18,42,904/- is allegedly claimed. On this count alone the Application deserves to be dismissed.

**ii. Time Barred/ Limitation-**

a. The Present Petition has been filed on 12/3 / 2019 in view of the same the Petition is time barred and same should be dismissed. The following are the relevant dates:

| Sr. No. | Date                                   | Particulars   |
|---------|--|---|
| 1.      | 05.04.2016<br>17.05.2018<br>01.12.2018 | Date of Default (as per Bank's own case) at page No.8 para 2                                    |
| 2.      | 28.10.2014                             | Date of NPA Application page no.148 of Original   |
| 3.      | 05.04.2016                             | Original Application filed in DRT by the Financial Creditor (as per statement of account)       |
| 4.      | 12.03.2019                             | Company Petition filed by the Financial Creditor u/s. 7 of Insolvency and Bankruptcy Code, 2016 |

b. The Respondent has relied upon the following case laws:

- *B.K. Educational services Pvt. Ltd. V/s. Parag Gupta & associates*
- *Jignesh shah V/s. Union of India*
- *Gaurav Hargovindbhai Dave V/s. Asset Reconstruction Company (India) LTd. and Anr.*
- *Vashdeo R Bhojwani Vs Abhyudaya Co-operative Bank Ltd & Anr.*
- *Sagar Sharma vs Phoenix ARC Pvt Ltd & Anr.*
- *Bimalkumar Manubhai Savalia vs Bank of India & Anr.*
- *Reliance Asset Reconstruction Com. Ltd. V / s Hotel Poonja International Pvt. Ltd.*
- *Radha Exports (1) Pvt. Ltd. V/s. K. P. Jayaram & Anr.*
- *Sampuran Singh & Ors. V/s. Smt. Niranjana Kaur & Ors.*

c. The Hon'ble Supreme Court in the above judgments has reiterated that for the purpose of Insolvency & Bankruptcy Code the Limitation Act is applicable and that article 137 being a

residuary article the "date of default" is to be considered as the trigger for initiating the Insolvency proceedings. In the present case the date of default as per bank's own case is 05.04.2016 however, the said date is erroneous as on 05.04.2016 the bank had filed the Original Application and it cannot be the case of the bank that account is declared NPA first and default happened subsequently. Hence, present application which is filed on 12.03.2019 is time barred.

d. The acknowledgment placed on record by the Debtor is of 07.11.2015, which is contrary to the fact that the Applicant had declared the Respondent's account as NPA on 28.10.2014 and O.A. is filed on 05.04.2016. The NCLT proceeding has been filed on 12.03.2019.

iii. **Corporate Guarantee-** Corporate Guarantee is illegal because resolution dated 08.07.2011 only authorizes Harshad Sanghavi to give only collateral security which also has to be read with the undertaking. Moreover, the alleged guarantee is time barred.

iv. **Power of Attorney-** The Respondent submitted that the Power of Attorney is not valid for following reasons:

a. Proceeding initiated by Mr. Umesh Sonkar is itself not maintainable as he does not have any power in view of "Delegata Potesta Non Potest Delegare". It is to be submitted that Rakesh Bhatia has been given power by Power of Attorney dated 25.08.2014 and appointed as constituted attorney. In view of the same Mr. Rakesh Bhatia cannot appoint and/ or delegate power to Mr. Umesh Sonkar by Power of Attorney dated 29.07.2015. The Respondent has relied on the decision given in the case of *Harpreet Singh & Anr. Vs. State of Punjab & Ors.* The Power of Attorney dated 29.07.2015 is not registered and is not admissible in evidence,

hence Mr. Umesh Sonkar has no authority to file this application. The same Power of Attorney has not been accepted by Mr. Umesh Sonkar.

**Findings-**

22. The Corporate Debtor has contested this petition on the ground of limitation; on the ground that the Board of Directors have authorized to create mortgage over the corporate debtor's property and not to stand surety for the debt; and the petition has been filed by the person who has been authorized to do so by the delegate.
23. We find that the Petitioner has filed an OA no. 974 of 2016 before DRT on 05.04.2016 and the last date of acknowledgement is 7.11.2015. The proceedings under OA culminated into issuance of decree by DRT on 01.11.2018 whereby the Corporate Debtor was also made an obligor for payment of the decreed amount of Rs.9,41,83,614/- along with interest. Accordingly, the present application having been filed on 12.03.2019 is within limitation.
24. As regards the authorization in the favour of signatory of the petition, given by Mr. Rakesh Bhatia, the duly constituted attorney of the Financial creditor, we find that Mr. Rakesh Bhatia had the power to authorize another Bank officer to make, sign, verify and present all necessary plaints, interlocutory proceedings, applications, petitions, summons, writ petitions, written statements, affidavits, and other documents as may be necessary or required and also any documents to lead to a distraint or to execution. Accordingly, we do not find any force in the argument that the petition has been filed by a person who is not duly authorized.
25. We further find that the Corporate Debtor has executed a guarantee deed dated 04.08.2011 apart from Mortgage Deed and

this fact is also not disputed by the Corporate Debtor. The Corporate Debtor has disputed only the scope of Board Resolution contending that the said Board resolution authorized the execution of Mortgage deed only and not for binding the Corporate Debtor as Guarantor.

26. We further find from the sanction letter dated 23.07.2011 that the sanction terms have stipulated the corporate guarantee to secure all the credit facility. Further, this fact is also stated in the first schedule of composite hypothecation agreement dated 04.08.2011. Further, clause 13 of the Corporate Guarantee dated 04.08.2011 states that *“this guarantee shall not be wholly or partially satisfied or exhausted by any payments made to or settled with BOB by the Borrower and shall be valid and binding on the Guarantors and operative until repayment in full of all moneys due to BOB under the Loan Agreements”*. Clause 19 thereof states that, *“the liability of the Guarantors hereunder shall not exceed the sum of Rs. 850.00 Lacs, plus all interest, liquidated damages, commitment charges, premia on repayments or on redemption, cost, expenses and other moneys payable by the Borrower to BOB under the Loan Agreements”*.
27. It is noteworthy that these documents have been supplied by the Corporate Debtor as part of OA Application placed on our record. Combined reading of Clause 13 and 19 indicates that the Liability of Corporate Debtor was limited to the extent of 850.00 Lacs de hors the value of the mortgaged property. Accordingly, we do not have nay hesitation to say that the Corporate Debtor is in default in payment of its obligation to the extent of 850.00 Lacs under the decree. In terms of section 5(8)(i) of the Code the amount of liability in respect of guarantee of indemnity is included in the definition of Financial debt. There is no dispute that the loan was disbursed to the principal borrower and that it carried interest.

28. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stand established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
29. The Financial Creditor has proposed the name of **Akansha Ashish Rathi**, Registration No. **IBBI/IPA-002/IP-N00332/2017-18/10938**, as the Interim Resolution Professional of the Corporate Debtor. She has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
30. It is, accordingly, hereby ordered as follows: -
31. The petition bearing **RCP (IB) 7/MB/2023 connected to CP (IB)/1049 (MB)/2019** filed by **Bank of Baroda**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **M/S Sanghvi Land Developers Pvt. Ltd.**[CIN: U45202MH2001PTC132180], the Corporate Debtor, is **admitted**.
32. There shall be a moratorium under section 14 of the IBC, in regard to the following:
- i. 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;

- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
  - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
33. Notwithstanding the above, during the period of moratorium: -
  - i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
  - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
34. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
35. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
36. **Akansha Ashish Rathi**, Registration No. **IBBI/IPA-002/IP-N00332/2017-18/10938**, having registered address at 19/503,

NRI Complex, Sector 54, 56, 58, Nerul, Navi Mumbai – 400076, Maharashtra, **Email ID: akansha@akansharathi.com, mobile no. +91-9167735969** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

37. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
38. The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
39. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
40. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of

this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-  
**Prabhat Kumar**  
Member (Technical)  
/MK/

Sd/-  
**Justice V. G. Bisht (Retd.)**  
Member (Judicial)