



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

(IB) No. 355(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

**M/s LORD VRINDAVANBIHARI TRADING PRIVATE
LIMITED**

(CIN: U16007UP2004PTC028385)

Registered Office at :

First Floor 30/13 Tulsi Ram Market

Tiwari Gali Rawat Para

Agra, Uttar Pradesh 282003

Email: anjujain.cs@gmail.com

.....Corporate Debtor

Order pronounced on: 30.01.2023

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



ORDER

PER SH. AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

1. This is an 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 **M/s Lord Vrindavanbihari Trading Private Limited** [CIN: U16007UP2004PTC028385] (“Corporate Debtor).
2. The Corporate Debtor was incorporated on 15.07.1999 having CIN: U16007UP2004PTC028385, under the Companies Act, 1956. Its registered office is at First Floor 30/13 Tulsi Ram Market Tiwari Gali Rawat Para Agra, Uttar Pradesh 282003. 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 **03rd 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 four Crores forty nine lakh 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 dated **12th July, 2017** is also annexed as **A-15** marked at Pg 168- 170 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 legal recall notice on **1st October, 2019** invoking guarantee towards the borrowal facility/accounts and calling upon the Corporate Debtor, along with others to arrange to repay the entire outstanding amounts in the Credit facility, amounting to **Rs. 42,53,84,673 (Rupees forty two crores fifty three lakh eighty four thousand six hundred seventy three only/-)** exclusive of interest and charges thereupon from **17.09.2019** onwards at the rate @ 16.25% p.a. with monthly rests, with upto charges, within 7 days of receipt of this Notice hereof, failing which the Bank of Baroda shall be compelled to initiate appropriate recovery/legal actions.
- 7.** It is submitted that a Section 7 petition was filed against the principal



Borrower i.e. M/s 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** and Mr. Arvind Singh was appointed 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 lakh 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. 47 and 48
 - 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.
 - d.** Copy of Certificate of Charge dated 01.08.2014 annexed as Annexure A -14.



- e. Copy of letter of Acknowledgment of Debt by the corporate debtor dated 12.07.2017 annexed as Annexure A -15.
 - f. 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 annexed as **Annexure-20(colly) page num 223-226** of the paper book.
12. Notice was issued on the Corporate Debtor on 29.08.2022. The Corporate Debtor entered appearance on 06.09.2022.

SUBMISSION OF LEARNED COUNSEL APPEARING FOR THE CORPORATE DEBTOR

13. On being served with the notice of the court on **29.08.2022**, the matter was listed for further consideration on **06.09.2022**.
14. On 06.09.2022, counsel for the Respondent sought time to seek instruction from the Corporate Debtor as to whether there is a possibility of resolving the issue. Order dated **06.09.2022** is extracted below:

“At the request of the Counsels for respondents,



who seek time to get instruction from the Corporate Debtor as to whether there is a possibility of resolving the issue, we are inclined to adjourn the matter to 11.10.2022.”

- 15.** On 15.11.2022, Ld. Counsel for Respondent appeared and sought time to make his submission on the same. Order dated 15.11.2022 is extracted below as:

“Ld. Counsel Mr. Chaurasia for the applicant appeared and states that an affidavit dated 09.11.2022 has been filed. Ld. Counsel for the Respondent also appeared and seeks time to make his submission on the same. At the request, list the matter for a physical hearing on 29.11.2022.”

On 29.11.2022, matter was adjourned for a physical hearing on **06.12.2022.**

- 16.** On 06.12.2022, respondent Counsel Mr. Dhruv Gupta appeared and argued the matter.

ANALYSIS AND FINDINGS

- 17.** Heard the learned Counsels appearing for the Financial Creditor and the Corporate Debtor and perused the record.
- 18.** We have heard the oral arguments submitted by Ld. Counsel for the Respondent, however, written submissions/reply has not been filed by respondent either in hard copy or on DMS.



19. 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.

20. The first aspect to be considered is one of limitation. Admittedly, the account was declared NPA on **31.10.2016** and liability under the letter of guarantee was acknowledged by the corporate debtor on **12.07.2017**. Further, on perusal of the documents, we found that applicant invoked its guarantee via Notice to Guarantor dated **26.03.2018** under subsection (2) of Section 13 of the SARFAESI Act, 2002. The Notice has been annexed on Page number 154 and 155 of the application. Relevant para from the notice dated **26.03.2018** is extracted below:

“We have to inform you that the borrower has committed defaults in payment of his liabilities and consequently his account has been classified as non-performing asset. A copy of the notice dated 26.03.2018 Under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 sent by us to the borrower is enclosed. Since the borrower has committed defaults. in terms of the guarantee you have become liable to pay to us the outstanding amount of loan/credit facilities aggregating balance O/s as on 28.02.2018 Rs 35,59,95,761/- + interest + other charges, and we hereby invoke the guarantee and call upon you to pay the said amount within 60 days from the date of this notice. Please note that interest will continue to accrue at the rates specified in para 1 of the notice dated 26.03.2018 served on the borrower (copy enclosed)”

But it is observed that, the learned Counsel for the applicant,



in order to extend the limitation has relied upon the legal recall notice dated 01.10.2019 which is annexed at Pg. No. 156-160 marked as Annexure A-17 of the petition, sent by the applicant demanding all the debts from the guarantors.

- 21.** As far as the question of limitation is concerned, for the first time cause of action arises on **31.10.2016** when the account of the Corporate debtor was declared NPA. Then in accordance to Section 18 of the Limitation Act, 1963, fresh period of limitation starts from **12.07.2017** when the Corporate Debtor acknowledges its liability under the letter of guarantee vide acknowledgement letter till **12.07.2020**. Again vide notice dated **26.03.2018** under SARFEASI Act, Applicant invoked its guaranatee and asked the guarantor to make the required payment. BE THAT AS IT MAY, if we take the limitation period to start running from **12.07.2017** till **12.07.2020** then it comes under the time period which has been waived by Hon'ble Supreme Court during COVID PENDEMIC. **In the SUO MOTO WRIT PETITION (C) No. 3 of 2020, IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION**, wherein the Hon'ble Apex Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/applications/ suits/ appeals/ all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the COVID-19 pandemic. The Relevant portion of the Hon'ble Supreme Court order is extracted below:

"In cases where the limitation would have expired during



the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply”

- 22.** Although the Applicant has relied upon the Legal Recall Notice dated 01.10.2019 for extension of period of limitation but in our considered opinion, fresh period of limitation started from 12.07.2017 when the corporate debtor acknowledged its liability under the letter of guarantee and then the guarantee has been invoked way back in 2018 via SARFAESI Notice. The applicant ought to have taken the plea of waiver of limitation during COVID PENDEMIC, however it was pleaded in the course of proceedings. In the interest of justice, this Adjudicating Authority consider it appropriate to allow the waiver of limitation as granted by Hon’ble Supreme Court which is binding on this Adjudicating Authority. The present Application has been filed by the Applicant on 08.05.2022. The limitation period for the application was to be expired on 01.06.2022, hence the application is very well within the limitation and we do not find any difficulty in holding thus.
- 23.** Now, let us consider the second defense raised by the Corporate Debtor. The Corporate Debtor has contended that the financial debt does not stand due and payable as CIRP has already been initiated against the principal borrower. On this point we would consider 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 which as extracted below:



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.

24. In light of the above judgment, it is clear that simultaneous proceedings are 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. M/s IBD Universal Private Limited have stood as guarantor of the Loan Facility advanced by the Financial Creditor to the Corporate Debtor through the deed of guarantee dated 01.08.2014 and hence the application can be moved against guarantor under the IBC while CIRP proceedings are going on against the Corporate Debtor.

25. The counsel for the Corporate Debtor has also taken the 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).



26. On perusal of the documents, record of Information utility and on the basis of arguments advanced, we find that there is default of debt on the part of the CD and the application for initiating CIRP against the CD is within the period of limitation. 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.

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

- i.** The Application bearing (IB)-355(PB)/2022 filed by the applicant under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating CIRP against the Corporate debtor i.e. M/s Lord Vrindavanbihari Trading Private Limited, 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



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status of the CD and specific mention regarding admission of this petition must be notified.

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

Sd/-

(RAMALINGAM SUDHAKAR)
PRESIDENT

Sd/-

(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)