

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

I.A. No. 2556 of 2022

In

C.P. No. (IB) 4455/ MB/2019

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

In the matter of

Bank of Maharashtra

Having its Registered Office at: Central Office, Lokmangal 1501, Shivaji Nagar, Pune- 411 005.

..... **Financial Creditor**

Vs.

Nanai Dairy Pvt. Ltd.

Having its Registered Office at: G-1, Avishkar Empress, K.W. Chitale Path, Behind Portuguese Church, Dadar (West), Mumbai- 400 028.

..... **Corporate Debtor**

Order delivered on:- 24.01.2023

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Shri Shyam Babu Gautam

Appearances:

For the Financial Creditor : Mr. Rahat Kalpatri

For the Corporate Debtor : None

ORDER

Per: Justice P.N. Deshmukh, Member Judicial

1. This Company Petition is filed by **Bank of Maharashtra** (hereinafter called “Financial Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Nanai Dairy Pvt. Ltd.** (hereinafter called “Corporate Debtor”) alleging that the Corporate Debtor committed default in making payment to the Financial Creditor. This Petition has been filed by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “IBC”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present Petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of an **aggregate amount of Rs. 13,25,18,166/-** (Rupees Thirteen Crores Twenty-Five Lakhs Eighteen Thousand One Hundred and Sixty-Six Only) as on 20th November 2019 including the **Principal amount of Rs. 8,63,44,766/-** (Rupees Eight Crores Sixty-Three Lakhs Forty-Four Thousand Seven Hundred and Sixty-Six Only) along with **interest** forming part of the Financial Debt.
3. The Corporate Debtor is engaged in the business of production and sale of Milk and milk products. For the purpose of financial assistance, the Corporate Debtor approached the Financial Creditor for availing several loan facilities which was

sanctioned by the Financial Creditor according to the following table:

Sr. No.	Amount Sanctioned	Interest rate	Date
1.	Rs. 5,00,00,000/-	Term Loan Facility @12.25%	18 th February 2010
2.	Rs. 3,50,00,000/-	Term Loan Facility @13.52%	12 th March 2011
3.	Rs. 1,00,00,000/-	Cash Credit facility	9 th April 2012

All these credit facilities were secured by hypothecation of stock and book debts including plant and machinery, equipment, furniture and livestock, vehicles etc. and mortgage of immovable property situated in Maharashtra and the appropriate documents were executed in favour of the Financial Creditor.

4. The funds were subsequently disbursed and due to continuous defaults made by the Corporate Debtor in the repayment of the loans, the account of the Corporate Debtor was declared as a Non-Performing Asset (NPA) on **31st May 2013**. On not receiving any payment towards the said loans, the Financial Creditor issued **Notice dated 12th August 2013** under Section 13(2) of the SARFAESI Act, 2002 recalling the entire outstanding Principal amount along with interest @13.25% p.a. but the Corporate Debtor neglected to reply to the Notice and failed to make the payment. Meanwhile, the Corporate Debtor

proposed to settle the dues with the Financial Creditor vide Letter dated **22nd March 2014**. After proceedings were initiated under the said Act in the Debt Recovery Tribunal (DRT) on **18th September 2014**, immovable property situated at Mumbai was sold under e-auction held on **26th April 2017** and the amount realised subsequently was appropriated towards the outstanding dues. The Application filed by the Financial Creditor before the DRT is pending for adjudication.

5. As the Corporate Debtor had consistently failed to repay the outstanding dues, the Financial Creditor filed the instant Petition on **20th November 2019**. The Corporate Debtor also extended a One Time Settlement (OTS) proposal to the Financial Creditor on **6th February 2021**, however, no such settlement has materialized and no amounts were repaid by the Corporate Debtor. The Corporate Debtor has neither appeared before this Tribunal nor has filed any Reply to this Petition. Further, the Financial Creditor has also filed an Application being I.A. No. 2556 of 2022 praying for condonation of delay of **965 days** in filing the present Petition for the period between **31st March 2017** to **20th November 2019**.

FINDINGS

6. We have heard the submissions of the Counsel appearing for the Financial Creditor. On perusal of the Petition and the documents annexed, it is evident that the Financial debt was disbursed and the Corporate Debtor committed defaults in

repayment of the said debt. The admission of the Corporate Debtor in respect of the said debt is noted in the Letter dated 22nd March 2014 written to the Financial Creditor proposing settlement of the outstanding dues and their inability to repay the outstanding amount due to financial setbacks. We also note that the Corporate Debtor has failed to appear before this Tribunal on every single occasion this matter was listed. However, it is seen that this Petition was filed on 20th November 2019 which is beyond three years from the date of declaration of NPA recorded as 31st May 2013. Even if the said Letter dated 22nd March 2014 is taken to institute a new period of limitation, the Petition falls beyond three years from such date also.

7. However, the Financial Creditor has filed an Application being **I.A. No. 2556 of 2022** praying for condonation of delay in filing the present Petition. It is now an established principle that the provisions of the Limitation Act, 1963 shall be applicable to Petitions filed under the Code and such delay may be condoned if “**sufficient cause**” for the delay is shown by the Financial Creditor. The meaning of “sufficient cause” has been explained in *Sabarmati Gas Limited vs. Shah Alloys Limited, Civil Appeal No. 1669 of 2020* as following:

“As relates Section 5 of the Limitation Act showing ‘sufficient cause’ is the only criterion for condoning delay. ‘Sufficient Cause’ is the cause for which a party could not be blamed.”

Further in *Sesh Nath Singh vs. Baidyabati Sheoraphuli Coop. Bank Ltd. (2021) 7 SCC 313*, the Hon'ble Supreme Court observed the following:

“The condition precedent for condonation of the delay in filing an application or appeal, is the existence of sufficient cause. Whether the explanation furnished for the delay would constitute “sufficient cause” or not would be dependent upon the facts of each case. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished by the appellant applicant for the delay in taking steps. Acceptance of explanation furnished should be the rule and refusal an exception, when no negligence or inaction or want of bona fides can be imputed to the defaulting party.”

(emphasis provided)

8. In the instant case, it is seen that the Financial Creditor has been diligently prosecuting their claim against the Corporate Debtor and has taken all possible recourses available to pursue their case against the Corporate Debtor. Apart from continuously pursuing litigations against the Corporate Debtor in the DRT, much time has also been invested on considering the offers for settlement proposed by the Corporate Debtor, which ultimately did not fructify. In fact, it is the Corporate Debtor which has been nonchalant and disinterested in defending their position. Hence, we observe that there has been no negligence on the part of the Financial Creditor and that the said delay ought to be

condoned. The Application being **I.A. No. 2556 of 2022** is thus allowed and disposed of.

9. The Financial Creditor has successfully demonstrated and proved the debt and default in this case. It is noted that the Corporate Debtor admits the said outstanding debt. Therefore, this Bench is of the view that that this Petition satisfies all the necessary requirements for **admission** under Section 7 of the Code.

10. For the foregoing reasons, the instant Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

a. **The above Company Petition No. (IB) -4455 (MB)/2019 is hereby allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Nanai Dairy Pvt. Ltd.**

b. This Bench hereby appoints **Mr. Prakash Dattareya Naringrekar**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00270/2017-18/10783 as the Interim Resolution Professional having address at 503-A, Blue Diamond CHS Ltd, Chincholi Bunder/Link Road Junction, Malad West, Mumbai-400 064 and email id as prakash03041956@gmail.com having contact number as +91- 9821884172 to carry out the

functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of Rs.2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. 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 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.
- e. 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.

- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to the IRP immediately.

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

JUSTICE P. N. DESHMUKH
(MEMBER JUDICIAL)

Anusha
24.01.2023