

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH – I, CHENNAI**

**IBA/635/2019** filed under Section 7  
of the Insolvency and Bankruptcy Code,  
2016 r/w Rule 4 of the Insolvency and  
Bankruptcy (Application to Adjudicating  
Authority) Rules, 2016

In the matter of ***M/s. Nazar International Private Limited***

**M/s. United Bank of India**

.. *Financial Creditor*

**-Vs-**

**M/s. Nazar International Private Limited**

.. *Corporate Debtor*

*Order Pronounced on 13<sup>th</sup> December 2019*

CORAM:

**R. VARADHARAJAN, MEMBER (JUDICIAL)  
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Financial Creditor : F.B. Benjamin George, Advocate*

*For Corporate Debtor : B. Deepak Narayanan, Advocate*

**ORDER**

***Per: ANIL KUMAR B, MEMBER (TECHNICAL)***

1. This Application has been filed invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code-2016") in the format as prescribed under Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority)



Rules, 2016 (hereinafter referred to as "AAA Rules") by the Applicant in the capacity of Financial Creditor viz. United Bank of India against the Respondent M/s. Nazar International Private Limited, (hereinafter referred to as "Corporate Debtor").

2. Part I of the application, sets out the details of the Financial Creditor from which, it is evident that the Financial Creditor is a Bank with identification number AAACU5624P and having registered office at Arul Manai Building, No.27, White Road, Chennai 600 014.

3. As per Part II of the application, the Corporate Debtor is a Private Limited Company with Corporate Identification Number U52324TN2001PTC046708 and having registered office at No.7A, E.K. Guru Street, Periamet, Chennai 600 003. As per Part III of the application, the Financial Creditor has nominated Interim Resolution Professional with the following particulars:

Mr. Ramachandran Subramanian  
No.29, Raju Naicken Street,  
West Mambalam,  
Chennai 600 033  
Regn. No. IBBI/IPA-001/IP-P01440/2018-19/12136

4. Part IV of the application signifies the amount of debt to the tune of ₹10,00,00,000/- as on 16.03.2012 and the claim



made in default is ₹20,71,55,415/- as on 31.03.2019 as explained in Annexure-19 of the application.

5. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default as explained in detail with respect to the following.

a) Exclusive charge on Company's all movable and immovable, fixed assets both present and future by way of Hypothecation Charge on all movable fixed assets (Plant and Machinery) and mortgage charge on all immovable assets.

b) Particulars in detail of the immovable property such as survey numbers, extent, building numbers, description boundaries, extent of area approximate market value, details of 5 such properties have been furnished.

Apart from the property details, it is also seen from the particulars mentioned in Part V that copies of the following documents are produced:

- (i) Final Order in OA. No.472 of 2014 on the file of DRT-II dated 19.09.2018 (Annexure 1-1)
- (ii) DRC No.24 of 2019 in OA.472 of 2014 on the file of DRT-II dated 24.01.2019 (Annexure 1-2)

The other documents *inter alia* include the following:

- (a) Final Order in OA No.472 of 2016 dt. 18.09.2018



- (b) DRC No. 24 of 2019 in OA No. 472 of 2016 dt. 24.01.2019
- (c) Credit Sanction Advice dt. 11.07.2005
- (d) Credit Sanction Advice dt. 31.08.2005
- (e) Credit Sanction Advice dt. 03.03.2007
- (f) Credit Sanction Advice dt. 04.08.2008
- (g) Credit Sanction Advice dt. 09.03.2010
- (h) Credit Sanction Advice dt. 16.03.2012
- (i) Promissory Note dated 16.03.2012
- (j) Letter of Continuity dated 16.03.2012
- (k) Letter of Continuity dated 16.03.2012
- (l) Hypothecation Agreement dated 16.03.2012
- (m) Letter of Guarantee dated 16.03.2012
- (n) Letter of Guarantee dated 16.03.2012
- (o) Mortgage deed with letter evidencing deposit of Title deed dated 25.08.2005.
- (p) Letter evidencing extension of Equitable Mortgage dated 16.03.2012.
- (q) Registered Memorandum of Deposit of Title Deeds with letter evidencing deposit of title deed dated 23.01.2006

List of other documents to prove the existence of Financial Debt, the amount and date of default:

- (i) Demand Notice under Section 13(2) of SARFAESI Act, 2002 dated 04.07.2013
- (ii) Possession Notice under Section 13(4) of SARFAESI Act, 2002 dated 12.12.2013
- (iii) Power of Attorney



(iv) In addition, written confirmation by proposed Interim Resolution Professional dated 08.04.2019 has also been produced.

6. In the counter statement filed by the Respondent/Corporate Debtor, it has been stated that:

i) the Application filed by the Petitioner consists of numerous inaccuracies and inconsistencies and the Petitioner has failed to elaborate the true facts pertaining to the above dispute.

ii) It is submitted that the Respondent/Corporate Debtor had requested the Petitioner to convert the loan amounts on the account of Letter of Credit devolving as a Working Capital Term Loans. But, however, the Petitioner failed to convert the same as Working Capital Term Loan despite several requests.

iii) The Respondent has alleged that the present application is barred by limitation as the claim pertains to loan sanctioned in the year 2005 and the mortgage extended in favour of the Petitioner as security was given in the year 2005 and therefore, the present application is filed after the period of limitation only to harass this Respondent/Corporate Debtor. It was further submitted that the Petitioner had already initiated proceedings against the Respondent/Corporate Debtor under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter



the "SARFAESI Act") and the Recovery of Debts and Bankruptcy Act, 1993.

iv) Quoting the Supreme Court decision it has been submitted that IBC is not intended to be substitute to a recovery forum as held in "*Mobilox Innovations Private Limited vs. Kirusa Software Private Limited (2018) 1 SCC 353*", and accordingly the present Application filed by the Petitioner is unsustainable under the provisions of IBC and liable to be dismissed as abuse of process of law.

v) The Respondent has further stated that the statement of accounts do not reflect the actual claim amount whereby the Petitioner has failed to properly calculate the interest capitalized and has further failed to take into account the payments made by the Respondent to the Petitioner.


vi) The Corporate Debtor has alleged that they had approached the Financial Creditor with a One Time Settlement Scheme and the matter was willfully suppressed by the Petitioner.

vii) The Corporate Debtor claimed to have shown bona fide to the Petitioner and he was making regular repayments of the loan and only due to slump in the business he had been undergoing the present problem with the Petitioner. The Respondent has shown every intention to settle the dispute amicably with the Petitioner and the Petitioner was also agreeing to settle the same but filed the present Petition.



7. Heard both the parties and perused the documents placed on file. It has been observed that the Corporate Debtor/Respondent Company has not produced any documentary proof with respect to the averments made in the One Time Settlement proposal or failure on the side of Financial Creditor to consider their proposal. While on this, existence of the debt is proved as mentioned in the order passed by the Debts Recovery Tribunal and other documents produced before this Adjudicating Authority, otherwise there is a mere allegation of dispute. The Respondent/Corporate Debtor could not produce any proof before this Tribunal so as to disprove its debt and default.

8. As to the point of Limitation raised by the Corporate Debtor, it has been alleged that the present application is barred by limitation as the claim pertains to loan sanctioned in the year 2005 and the mortgage extended in favour of the Petitioner as security was given in the year 2005 and therefore, the present application is filed after the period of limitation only to harass this Respondent/Corporate Debtor. In relation to the same, the following facts emerge from the records;



Date of NPA	29.06.2013
Sec 13(2) SARFAESI Notice	04.07.2013
Sec 13(4) Possession Notice	12.12.2013
Final Order of OA. 472/2016 DRT Chennai – II	19.09.2018
DRC Certificate	24.01.2019
Filing of present IBA/645/2019	15.04.2019

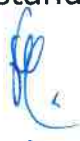
Eventhough the 'right to sue' accrues for the Financial Creditor on the date of NPA, i.e. 29.06.2013, the Hon'ble NCLAT in **Sesh Nath Singh, -Vs- Baidyabati Sheoraphuli Cooperative Bank Ltd**, in *Company Appeal(At) (Insolvency) No.672 Of 2019, dated 22.11.2019*, has held that in computing the period of limitation, the time during which the Financial Creditor has been prosecuting with due diligence another civil proceedings against the corporate debtor for the same relief shall be excluded as per Section 14(2) of the Limitation Act, 1963. Even otherwise, the Financial Creditor has obtained a Debt Recovery Certificate against the Corporate Debtor and in view of the Judgment of the Hon'ble Supreme Court in the matter of **Vashdeo R Bhojwani -Vs- Abhyudaya Co-Operative Bank Ltd & Anr. Civil Appeal No. 11020 of 2018**, it is clear that the period of limitation would begin ticking from the date of issuance of the Recovery Certificate, as in this case, since the Recovery Certificate was issued by on 24.01.2019 and based on the recovery certificate issued the Financial Creditor has filed the present petition before this Authority on 15.04.2019. In view of



the same, the present petition falls well within the period of limitation.

9. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Application as filed by the Applicant – Financial Creditor is required to be admitted under Section 7 (5) of the I&B Code, 2016.

10. The Financial Creditor has proposed the name of **Mr. Ramachandran Subramanian** having Registration Number [IBBI/IPA-001/IP-P01440/2018-19/12136] as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR



Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

11. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- (a) 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;
- (b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (c) 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;
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor."



12. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) The provisions of sub – section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”

13. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub – section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”



14. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the Respondent above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order forthwith by the Registry.

-SD-

**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

-SD-

**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)

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