IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

CP NO.(IB)262/ALD/2019

<u>In the matter of</u>
An application under Section 7 of Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy. (Application to Adjudicating Authority Rules, 2016)

And

<u>In the matter of:</u>
BANK OF INDIA
Having Head Office at :
Star House, C-5, “G” Block, Bandra Kurla Complex,
Bandra (East), Mumbai - 400051

.... Applicant

Versus

M/S GANGOTRI ENTERPRISES LTD.
Having Registered Office at :
B-158, Sector-A, Mahanagar,
Lucknow - 226006

…… Respondent

ORDER RESERVED ON 01.12.2021
ORDER PRONOUNCED ON 06.12.2021

CORAM : **SH. RAJASEKHAR V.K., MEMBER (JUDICIAL)**
SH. VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

<u>Appearances (via Video Conference):</u>

For Financial Creditor : *Sh. Prabodh Kumar Bajpai, Adv.*
For Corporate Debtor : *Sh. Rahul Agarwal, Adv.*

<u>O R D E R</u>

<u>Per : *Sh. Virendra Kumar Gupta, Member (Technical)*</u>

1. This application has been filed under 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **BANK OF INDIA** having its

—Sd—

registered office at Star House, C-5, “G” Block, Bandra Kurla Complex, Bandra (East), Mumbai - 400051 and Branch Office as Lucknow Main Branch at Mohini Mansion, 1 Nawal Kishore Road, Hazratganj, Lucknow, U.P. 226001through its authorized representative Mr. Samir Kumar Chattopadhyay, duly authorized power of attorney holder of the applicant and also the Assistant General Manager of Bank of India through the extract of the minutes of the meeting of the Board of Directors of Bank of India held on 27.06.2019 (*hereinafter referred to as the Financial Creditor*) seeking initiation of Corporate Insolvency Resolution Process in respect of the **M/S GANGOTRI ENTERPRISES LTD.**, CIN U01403UP1991PLC013717, having its Registered office at B-158, Sector-A, Mahanagar, Lucknow - 226006 (*hereinafter referred as the Corporate Debtor*).

FACTS OF THE CASE

2. The relevant facts are that the Financial Creditor as part of consortium sanctioned credit facilities to the Corporate Debtor starting from the year 2007. The credit facilities comprised of cash credit and Bank guarantee. The said facilities were modified/ revised from time to time and necessary documents/ agreements were executed by and between the parties to give effect to such arrangements. One revival letter was signed as regard to working capital consortium agreement dated 21.03.2007, copy of which is placed at page no.128 of the application. Thereafter, another revival letter was signed as regard to the working capital consortium agreement dated 17.01.2008, copy of which is placed at page no.141 of the application. Another revival letter has been signed on 26.05.2009, copy of the same is placed at pages 216 to 219 of the paper book and similarly the revival letter dated 20.10.2010. Further, again a letter dated 12.03.2012 acknowledging the debt and validity of documents have been signed on behalf of the Corporate Debtor and guarantors, copy of the same is placed from pages 363 to 370 of the paper book. Revival letter dated 12.03.2012 is placed at page no.429 to 434 of the paper book.

3. The revival letter dated 12.03.2012 was signed by the Corporate Debtor, whereby outstanding loans were acknowledged and in the said letter it was also mentioned that this revival letter amounted to acknowledgment for the purposes

—Sd—

of Section 18 of the Limitation Act. The guarantors also signed the revival letter in relation to guarantees given by them in respect of the amount borrowed by the Corporate Debtor. Various terms and conditions were put by the Bank as regard to the facilities already existing. Thereafter, on 09.12.2013 at the request of the Corporate Debtor, working capital fund based and non-fund based limits were restructured under CDR mechanism. Subsequent to that, LOA was executed and approved by and between the parties on 26.09.2013 (*refer to at page no.446 volume IV*).

4. The Board of Directors of Corporate Debtor in its meeting held on 13.12.2013 also took note of the fact of restructuring of financial assistance already extended as well as additional financial assistance being provided to the Corporate Debtor. The Resolution was passed as regard to providing of various securities and authorizing the company to execute relevant documents for creating securities by way of hypothecation pledge and mortgage in favour of the Banks ***to secure the due repayment of the outstanding, the various credit facilities as per the CDR package in the said Board meeting.*** In the said Board meeting Resolutions were also passed for execution of documents and agreements including execution of letter of acknowledgement of debt and balance confirmation certificate in favour of the said Banks. In the said meeting the Resolution was also passed whereby guarantors were requested to execute letters of guarantee and letters of acknowledgement in their respective personal capacity as guarantors to secure various credit facilities availed/ to be availed by the company under CDR package from the said Bank and acknowledging their liabilities as guarantor to the said facilities under CDR package.

5. Another revival letter i.e. acknowledgement letter was signed on behalf of the Corporate Debtor and the Directors in terms of the conditions of CDR package and master restructuring arrangement. Subsequently, vide letter dated 15.01.2014, the various facilities availed by the borrower/ Corporate Debtor from time to time and outstanding amount therein was notified, which was duly acknowledged on behalf of the Corporate Debtor on 15.01.2014. It is also to be noted that in such acknowledgement, dates and place are manually written. In this regard, similarly guarantors have also acknowledged their individual

—Sd—

guarantee as well as corporate guarantee whereby dates are manually filled (*refer to at page no.670 to 672*). Thereafter, the consortium agreement for term loan facilities was executed by and between the parties on 15.01.2014.

6. The agreement for pledge of shares has also been executed by the promoters and or the Corporate Debtor to secure the credit facilities on 15.01.2014. The Corporate Debtor has also executed an undertaking cum declaration on 15.01.2014, whereby in addition to provision of its contribution or additional funds, not to divert funds for other purposes and undertaking has also been made to provide promptly information along with comments/ explanations about all material and adverse changes in the project/ business, ownership, management, liquidity, financial position etc. (*refer to clause 13 at page no.884*), *and in clause 31 at page no.886 volume IV*, it is stated that withholding of important information providing misleading information by the company/ sponsors i.e. detrimental to the interest of the institutions would constitute an event of default. A multi-purpose document dated 15.01.2014 has also been executed between the parties whereby several obligations have been undertaken by the Corporate Debtor and various rights of lenders have been recognized. Several other undertaking/ indemnity have been executed on 15.01.2014. Subsequently, acknowledgment of debt and securities in regard to credit facilities enjoyed by the borrower, Corporate Debtor has been signed on 11.04.2016. In the said letter five constituents of the Corporate Debtor have also confirmed that this should be treated as acknowledgment of debt. At page no.1001, date of letter of the Bank as well as date of acknowledgment has been entered manually at three places. As regard to the guarantors' acknowledgement number, date of signature has been mentioned and such documents also include the signature of Mr. Ramanand, who is claimed to have expired in the year 2015 only.

7. It is also noted that the certified true copy of the Board Resolution dated 11.04.2016 as regard to the meeting held on the same date has also been furnished. The said Resolution is in regard to authorization of Mr. Ajeet Pandey to give acknowledgment of debt/ securities on behalf of the company. Notably this authorization remains effective unless it is superseded by some Resolution in future as this Resolution has superseded all other Resolutions passed earlier

—Sd—

by the Board of Director in this regard. The certified copy of the said Resolution has been given under the signature of Mr. Vinay Shanker Tiwari who is the Managing Director of the Corporate Debtor. Further, such revival letter also includes the averment as regard to the acknowledgment of liabilities in terms of provisions of Section 18 of the Limitation Act, 1963. Further, Mr. Ajeet Pandey has also signed the acknowledgment of his liability as a personal guarantor. Again on 13.04.2018 acknowledgment of debt and securities as regard to credit facilities was sought by the Bank which has been acknowledged on behalf of the Corporate Debtor on 13.04.2018. In the said letter the Bank also required to provide the Board Resolution by giving authority for acknowledgment of debt/ securities of consortium loan on behalf of the company. As noted earlier that this acknowledgment of indebtedness has been given by the company on 13.04.2018. A copy of the Board Resolution at page no.1064 passed in the meeting held on 25.04.2018 has been submitted, in which authority to sign and execute the documents mentioned in the revival letter dated 13.04.2018 given by the Bank, has been vested with Mr. Ajeet Pandey.

8. In the background of these facts, the question which arises for our consideration, is whether the present application is hit by limitation or not.

<u>ARGUMENTS ON BEHALF OF FINANCIAL CREDITOR</u>

9. Ld. Counsel appearing on behalf of the Financial Creditor narrated the basic facts. As regard to the date of default he submitted that on failure of CDR scheme, the account of the Corporate Debtor was classified as NPA on 30.06.2015 with retrospective effect from 30.09.2013. As regard to the limitation aspect, the counsel for the Financial Creditor submitted that there were letter of acknowledgments given by and on behalf of the Corporate Debtor from time to time, which were within the prescribed period of three years and the last being executed on 13.04.2018. Hence, limitation period got extended there from. Accordingly, it was contended that the application filed U/s 7 of the Code was well within the limitation.

<u>ARGUMENTS ON BEHALF OF CORPORATE DEBTOR</u>

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10. Ld. Counsel for the Corporate Debtor strongly relied upon the fact that the Corporate Debtor through coercion and intimidation signed two undated letters towards alleged acknowledgment of debt at the time of processing of the loan which are being used as the period for extension of period of limitation in present proceedings as well as before Debt Recovery Tribunal. Thereafter, he drew our attention to the letter of acknowledgment dated 11.04.2016 and submitted that this letter was a typed letter, wherein column of date was left blank and the applicant Bank forced the Corporate Debtor to sign it and assurance was also given that date will be filled by the Corporate Debtorwhen they submits the same to the Bank. However, later the said letter was misused by the applicant by filling the date 11.04.2016. It was further claimed that in terms of Board Resolution, the said acknowledgment could have been signed by Mr. Ajeet Pandey, instead of that it had been signed by five persons. It is also claimed that a revival letter was issued by the Bank on same date i.e. 11.04.2016, which was signed by Mr. Vinay Shanker Tiwari and not by Mr. Ajeet Pandey. Based upon these submissions, it was contended that alleged acknowledgment dated 11.04.2016 is a fabricated document and does not bind the Corporate Debtor in any manner. As regard to the letter of acknowledgment signed on 13.04.2018 it was pleaded that it could be signed only by Mr. Ajeet Pandey in terms of Board Resolution dated 25.04.2018 and therefore a back dated document was prepared to bind the Corporate Debtor. Ld. Counsel further pleaded that the acknowledgment cannot be vague and ambiguous and refer to Section 18 of Limitation Act, 1963. He thereafter contended that the limitation period for the application filed U/s 7, in the background of these facts, commences from 30.09.2013 and the application being filed in July, 2019, is therefore, clearly beyond the limitation period of three years. Thus, the same is barred by law and liable to be dismissed as such.

11. As far as regard to the applicability of provisions of Limitation Act to the proceedings U/s 7 of the Code, Ld. Counsel placed reliance on several other documents. Thereafter, he also drew our attention to the supplementary affidavit filed by the Corporate Debtor to show that Mr. Ramanand had in fact expired on 11.06.2015 and support of this claim he drew our attention to the duplicate

—Sd—

death certificate dated 15.02.2020 obtained from the Municipal Authorities, Gorakhpur.

REJOINDER ON BEHALF OF FINANCIAL CREDITOR

12. In the rejoinder affidavit, Ld. Counsel for the Financial Creditor apart from relying on the pleas made earlier submitted that several OTS proposals were also submitted by the Corporate Debtor from time to time and on that basis the period of limitation also got extended and, therefore, the application filed was well within limitation. He further emphasized on the fact that only technical pleas were being taken to avoid the liability which was live and payable.

FINDINGS:

13. The facts relating to disbursement of loan, execution of various documents in relation thereto on behalf of the Corporate Debtor and guarantors are not in dispute subject to validity of acknowledgment/ revival letter signed on 11.04.2016, 13.04.2018/ 25.04.2018. The date of default has not been explicitly mentioned but the classification of the account of the Corporate Debtor as NPA with retrospective effect from 26.09.2013 is also an established fact. The revival letter signed on 15.01.2014 is not disputed by any party, hence, actual date of default which may be different from the date of declaration of the account of the Corporate Debtor as NPA does not remain significant because it is certainly after January, 2011, hence, the acknowledgment letter dated 15.01.2014 is well within the original period of expiry of validity of the documents. Further, in this regard, we find that the revival letter signed on 12.03.2012 also exists. On various dates, revival letters have been signed in which dates have been manually filled, hence, the ***modus operandi*** of execution of documents by and between the parties i.e. Financial Creditor and the Corporate Debtor remains the same. Thus, on this analogy, the earlier revival letters being not challenged as fabricated and date being filled subsequently, the contrary argument with regard to such documents being signed on 11.04.2016 and 13.04.2018/ 25.04.2018 does not stand.

14. Another argument which has been taken by and on behalf of the Corporate Debtor is that the acknowledgment given by and on behalf of the corporate

—Sd—

guarantor on 11.04.2016 is not valid for the reason that it has been signed by a person who had expired on 11.06.2015. We are afraid that this argument does not hold good for the reason that letter of acknowledgment signed by and on behalf of the Corporate Debtor does not bear the signatures of such deceased person. Further, the name of such person appear in the document signed by the guarantors which is undated and it includes the signatures of all other guarantors. This aspect raises an interesting question as to the validity of such document. In this regard the important fact which is to be noted that on this part of letter there is no date of signatures. Further, it is not in dispute that this letter has been signed by all guarantors and the validity of such signatures is not challenged at all. As noted from the chronological documentation in the earlier part of this order, it is evident that dates have been filled manually. Further, as per the terms and conditions of various agreements executed by and on behalf of the Corporate Debtor and the guarantors, it is an undisputed fact that they were bound to disclose the material information from time to time to the lenders and not to withhold any information. In this regard we have gone through the reply of the Corporate Debtor very carefully and find that the minutes of the meetings of joint lenders starting from 07.06.2010 till 15.10.2018 have been submitted. In such meetings the representatives of the company i.e. Mr. Vinay Shanker Tiwari or Mr. Ajeet Pandey or some other senior persons of the Corporate Debtor have participated. From the perusal of these minutes of meetings, it is noted that in none of the meetings held after the expiry of such person, the said information has been provided to the lenders. Hence, there is a default on the part of the Corporate Debtor and violation of the terms and conditions agreed by the Corporate Debtor to provide material information like this from time to time whenever an event of that nature or other significant event happens. From the minutes of such meetings, it is also observed that there have been allegations of siphoning off funds and requirement of conduct of forensic audit to ascertain that. It is also noted that the lenders have asked the corporate debtor to file the audited balance sheet with the ROC and a compliance has been assured by the Corporate Debtor. In none of the such meetings notably no allegations of fabrication of document or otherwise validity of such documents have been made. Hence, in our considered opinion, allegation as regard to the

—Sd—

validity of the letter dated 11.04.2016 is only an afterthought and does not have any legal validity, both in law or in fact, having regard to such conduct of the Corporate Debtor.

15. As regard to the validity of acknowledgment letter dated 13.04.2018/ 25.04.2018 at page no.274 of their reply affidavit agenda no.9 specifically dealt with the status of revival letter/ renewal document. The minutes under this head are reproduced as under:-

> ***"One set of revival document is signed by Shri Ajeet Pandey, Director of the Company, on behalf of the company as authorized by Board Resolution.***
>
> ***Other set of revival letter would be signed by both the Company and all guarantors in the account. Company agreed to provide the same at the earliest."***

16. The letter of acknowledgment/ revival signed on 13.04.2018 comprises of five signatories and one of them is Mr. Ajeet Pandey, hence, practically no significance can be attached to the argument. In any case, signature by more than one person which includes Managing Director does not invalidate such document. Further, in our view, it is not a fabrication by the Bank, rather it is a ploy by the Corporate Debtor to avoid its liability that after signing such documents on 13.04.2018 in a different manner, the resolution which was required to be passed as per the Banking practices/ norms has been passed in a different manner on 25.04.2018

17. From the perusal of the above documents the allegations of fabrication or coercion or intimidation stand nullified. The minutes of this meeting have been signed by Mr. Ajeet Pandey in the capacity of Managing Director and Atul Tripathi as Director Production. These documents are submitted by the Corporate Debtor itself, hence, validity of these documents can also not be challenged.

18. Thus, all the legal pleas taken on behalf of the Corporate Debtor during the course of hearing are devoid of merits, hence, rejected.

19. Further, there is an aspect of submission of various OTS proposals from time to time by the Corporate Debtor. As far as the validity of OTS proposal as acknowledgment of debt within the meaning of Section 18 of Limitation Act,

—Sd—

1963 is concerned, this issue is no more ***res integra*** as such OTS proposals have been held to be in the nature of acknowledgment of debt as held by the Hon'ble Supreme Court in the case of ***Dena Bank (now Bank of Baroda) v/s C. Shivakumar Reddy and Anr. in Civil Appeal No.1650 of 2020 dated 04.08.2021.*** In the reply filed by the Corporate Debtor at page no.283, we find the letter dated 03.05.2019 which refers earlier three proposals which is as under :-

Ref 1 : GEL/OTS/BOI/01 dated 17.05.2018
Ref 2 : GEL/OTS/BOI/03 dated 12.09.2018
Ref 3 : GEL/OTS/BOI/04 dated 15.10.2018

20. The said letter gives reasons and revised proposal, it also refers to the meeting of the consortium held on 15.10.2018 and applicant/ financial creditor mailed dated 27.11.2018 (*refer to at page no.288*). We have also perused the minutes of consortium meeting held on 17.09.2018 at page no.278 at serial no.5 fin which the following observations have been made :-

> ***"Forum advised that company's OTS request is not acceptable and requested to company representative to provide improved compromise offer at the outstanding level of fund based facilities under consortium. Company representative requested to forum for providing some time for revised compromise offer. Hence they provided time of 10 days and next consortium meeting will be held on 28th September 2018."***

21. Thus, in the background of our facts, above factual position, there is a clear cut case of extension of limitation, and therefore, the application filed in July, 2019 is held to be within limitation.

22. Further, from the minutes it emerges that the balance sheets have been filed by the Corporate Debtor for various years including Financial Years 2015-16 & 2016-17. Though the same have not been placed on record, but it is nobody's case that the amount outstanding and payable to the applicant/ financial creditor does not appear therein, hence, for this reason also the limitation gets extended as such presentation also amounts to acknowledgment of debt.

23. As regard to the validity of blank documents being signed by the borrowers at the time of disbursal of money and subsequent filling of the dates by the lenders

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to protect interest and to have effective legal course of action, the Hon'ble Bombay High Court following the decisions as held in ***Central Bank of India v/s The Sion Bakers and Confectioners*.*2008(110) Bomb LR 1363*** .Further, we are of the view that the taking of document in such manner is a banking practice so that a hostile/ errant borrower subsequently cannot escape from the legal recourse and action against itself. Thus, from this perspective the practice of taking signatures on blank documents is like obtaining of postdated blank cheques. Therefore, considering this aspect also, we find no merit in the contention of the Corporate Debtor that document signed in such manner are not valid.

24. The Corporate Debtor has also tried to say that such revival letter does not meet the requirements of Section 18 of Limitation Act, 1963, we are again of the view that Explanation (a) to Section 18 of Limitation Act, 1963 is widely worded and there are umpteen number of judicial decisions wherein correspondence or documents of this nature have been found to be valid acknowledgment of outstanding liability. Hence, such plea is also rejected.

25. Before parting, we may observe that this application has been filed in the year 2019 and the counsel on record for the Financial Creditor has relied on OTS proposals submitted by the Corporate Debtor from time to time to make a plea regarding extension of limitation period. However, in the application filed by the Financial Creditor, no such documents have been enclosed which should have been done to avoid dismissal of this application on the ground of limitation. We got these documents in the reply of the Corporate Debtor which substantiated such plea of the Financial Creditor and one can imagine if that would not have been so there could have been possibility of dismissal of this application. Therefore, we expect the Financial Creditor to be more vigilant and pro-active to make their case as strong as possible by bringing necessary evidence on record so that public money could be saved.

26. The name of the IRP in Part-III Form-A has been proposed by the Financial Creditor whose consent is on record. No material has been brought on record to show that any disciplinary proceeding is pending against such proposed IRP.

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Hence we appoint Mrs. Babita Jain being Registration No. IBBI/IPA-002/IPN00321/2017-18/10926 as IRP.

27. The application filed the U/s 7 of the Code, is otherwise complete and meet all other procedural requirements of the code and regulations made thereunder. Accordingly, we admit the same and passed the following orders.

i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor M/s Gangotri Enterprises Ltd. is hereby **admitted**.

ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following :-

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

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any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.

vi) 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.

vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

viii) 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 the 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.

ix) Mrs. Babita Jain, having Registration No. IBBI/IPA-002/IPN00321/2017-18/10926, be appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.

x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.

xi) The Financial Creditor/Applicant is directed to deposit Rs.5,00,000/- (Rupees Five lakh only) with the IRP appointed hereinabove within

—Sd—

three days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

xii) Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

xiii) List the matter on 2^{nd} February, 2022 for the filing of the progress report.

xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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Virendra Kumar Gupta
Member (Technical)

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Rajasekhar V.K.
Member (Judicial)