IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
CP (IB) – 24 (PB)/2022

ORDER 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:

BANK OF BARODA

HEAD OFFICE: BARODA BHAVAN

RC DUTT ROAD, ALKAPURI

BARODA- 390007, GUJARAT ..... **FINANCIAL CREDITOR**

Versus

GREAT INDIAN NAUTANKI COMPANY PRIVATE LIMITED

REGISTERED OFFICE: BASEMENT RIGHT SIDE OFFICE PORTION,

E-311 DAYA TOWER, MAIN VASANT KUNJ ROAD, MAHIPALPUR

NEW DELHI-110037

CIN No.: U92190DL2007PTC168336 **.....CORPORATE DEBTOR**

ORDER PRONOUNCED ON: 21.10.2022

CORAM:
JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

Appearances:
For the Financial Creditor: Adv. Brijesh Kumar Tamber and
Adv Vihay Singh Bist
For the Corporate Debtor: Adv. Vinay Shukla

ORDER
PER : AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

1. This is an application, filed by **Bank of Baroda** (Financial Creditor/Applicant), represented by Sh Pumliensang Gangte, Chief Manager located at ZOSARB, Rajendra Place, New Delhi under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC,2016), r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (Adjudicating Authority Rules), for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Professional (IRP), against the Corporate Debtor (CD) viz., M/s Great Indian Nautanki Company Pvt. Ltd, for default in repayment of **Rs. 126,26,79,319.14** (Rupees One Hundred Twenty-Six Crore Twenty-Six Lacs Seventy-Nine Thousand Three Hundred Nineteen and Paise Fourteen Only).

2. The Corporate Debtor was Incorporated on **18/09/2007**, having CIN:U92190DL2007PTC168336, under the Companies Act, 1956, with the purpose of doing business in motion picture, radio, television and other entertainment activities. The registered office is at Basement Right Side Office Portion, E-311 Daya Tower, Main Vasant Kunj Road, Mahipalpur, New Delhi- 110037. Therefore, this Bench has jurisdiction to deal with this application. A copy of the master data of the Corporate Debtor as accessed from the MCA website is annexed at **Annexure A-2.**

3. The present application was filed on 09.12.2021 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make the re-payment of Rs.

126,26,79,319.14 (Rupees One Hundred Twenty-Six Crore Twenty-Six Lacs Seventy-Nine Thousand Three Hundred Nineteen and Paise Fourteen Only), as on 30.11.2021. A copy of the workings for computation of amount and days of default in a tabular form is annexed at **Part- IV of Application.**

4. **Facts of the Case**

   i. It is submitted that the Applicant had sanctioned to the Corporate Debtor 4 Term loans for total sum of **Rs 54,50,00000/-** (Rupees Fifty-four Crores and fifty lakhs Only) details of which are as follows:

S.No.	Details of Loan Disbursement	Amount of Loan
1	24.09.2009	Rs 15.00 Crores
2	27.01.2010	Rs 15.00 Crores
3	22.06.2010	Rs 17.00 Crores
4	24.12.2010	Rs 17.50 Crores

   ii. It is further submitted that the sanction letters of the Applicant have been placed on record. Further the Corporate Debtor had executed in favour of the Applicant, inter-alia the Demand Promissory note, Letter of installment with acceleration clause & provision for penal interest, Instrument of Hypothecation of movable machinery, general undertakings issued by the Corporate Debtor, Corporate guarantee executed by M/s Great Indian

Tamasha Company and M/s Wizcraft International Entertainment Co, Joint Personal Guarantee executed by Anumod Sharma and Viraf Sarkari and First pari passu charge on the plant and machinery and other fixed assets of the company.

iii. On request by the Corporate Debtor, the account of Corporate Debtor was restructured vide sanction letter dated 29.09.2012. Thereafter the Corporate Debtor was irregular in honoring its obligations towards servicing of monthly installments and interest. The account then slipped into NPA in Sept 2014.

iv. The total amount outstanding under all the 4 term loans is as under:

Term Loan 1 bearing Account no. 05860600003019

Particulars	**Amount as on 30.11.2021**
Principal	Rs. 7,59,89,850.00
Interest	Rs. 20,85,85,891.00
Penal Interest	Rs. 3,00,12,358.35
Reversal of Unapplied Interest	Rs. 82,81,126
Total	**Rs. 32,28,69,225.35**

Term Loan 2 bearing Account no. 05860600003138

Particulars	**Amount as on 30.11.2021**
Principal	Rs. 10,10,93,764.00
Interest	Rs. 14,90,47,157.00

Penal Interest	Rs. 2,34,38,708.00
Reversal of Unapplied Interest	Rs. 77,70,872.00
Total	**Rs. 28,13,50,501.00**

Term Loan 3 bearing Account no. 05860600003287

Particulars	**Amount as on 30.11.2021**
Principal	Rs. 11,54,00,000.00
Interest	Rs. 17,02,26,117.00
Penal Interest	Rs. 2,67,66,431.00
Reversal of Unapplied Interest	Rs. 95,85,409.00
Total	**Rs. 32,19,77,957.00**

Term Loan 4 bearing Account no. 05860600003498

Particulars	**Amount as on 30.11.2021**
Principal	Rs. 12,06,00,000.00
Interest	Rs. 17,78,73,350.00
Penal Interest	Rs. 2,79,71,886.79
Reversal of Unapplied Interest	Rs. 1,00,36,399.00
Total	**Rs. 33,64,81,635.79**

It is further seen that the total amount due under the above stated loan accounts is Rs **126,26,79,319.14** (Rupees One Hundred Twenty-Six Crore Twenty-Six Lacs Seventy-Nine

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Thousand Three Hundred Nineteen and Paise Fourteen Only) as on 30.11.2021.

5. **Submissions of the Ld. Counsel appearing for the Corporate Debtor are:**
   i. The Insolvency Petition is untenable in law as the same is barred by law of limitation and as per FORM 1 of the Petition, the bank has mentioned the date of default as 29.09.2012 which is also the date of classification of the account as Non-Performing Asset ('NPA')
   ii. The Petitioner Bank has approached this Adjudicating Authority in the month of December, 2021 for initiating CIRP against the respondent Company after almost 9 years and 3 months of account of the Respondent Company being declared as NPA.
   iii. The alleged letters of acknowledgment of debt dated 15.10.2012, 02.01.2013, 14.06.2013, 02.07.2013 as submitted in the Petition becomes illegal and non-binding on the Company as the Respondent has not authorized anybody including Mr. Anumod Sharma to sign any acknowledgment of debt on behalf of the Company and in absence of any authorization by the board of the Company.
   iv. Vide Board Resolution dated 28.09.2015 Mr. Anumod Sharma was given necessary authority to execute the letter of acknowledgment of debt on behalf of respondent company as Corporate Guarantor only and not in the capacity of the principal borrower.
   v. The Respondent company was declared as NPA by Petitioner Bank on 29.09.2012 and as per the law settled by the Hon'ble Supreme Court of India the date of

declaration of the loan account as NPA is considered as the date of default and the financial institution has to approach the Adjudicatory Authority to initiate the CIRP within 3 years of the date of default.

6. **Rejoinder of the financial creditor in reply to the Corporate Debtor are :**

i. It is submitted that the present application is within the limitation in view of the fact that the cause of action for filing the same (date of NPA in the present application) is 29.09.2012 and thereafter the period of limitation has been extended in accordance with the provisions of section 18 & 19 of the Limitation Act 1963.

ii. It is submitted that the date of NPA is 29.09.2012 and thereafter payments have been made in the loan account from time to time every year upto 31.01.2020 in loan account no. 0586060000319 and acknowledgment were executed by the Corporate Debtor on 15.10.2012, 02.01.2013, 14.06.2013, 02.07.2013 and 30.09.2015.

iii. It is further submitted that the debt and default is further recognized in the balance sheets for FY ending 31.03.2018 and 31.03.2020 respectively and the submission made qua the board resolution dated 28.09.2015 is misconceived in as much as the mention of the Corporate Debtor as Corporate Guarantor is a typographical mistake as admittedly even in the said board resolution itself the fact of the corporate debtor being a borrower is admitted and acknowledged and the Corporate Debtor cannot take advantage of its own mistake

7. **The Financial Creditor has placed the following documents on record:**

i. Statement of Account of (Term Loan-1) bearing Account no. 05860600003019 along with certificate under Section 2 of the Banker's Book Evidence Act, 1891 read with Section 65(B)(4) of the Indian Evidence Act at **Annexure A-79**

ii. Statement of Account of (Term Loan-2) bearing Account no. 05860600003138 along with certificate under Section 2 of the Banker's Book Evidence Act, 1891 read with Section 65(B)(4) of the Indian Evidence Act at **Annexure A-80**

iii. Statement of Account of (Term Loan-3) bearing Account no. 05860600003287 along with certificate under Section 2 of the Banker's Book Evidence Act, 1891 read with Section 65(B)(4) of the Indian Evidence Act at **Annexure A-81**

iv. Statement of Account of (Term Loan-4) bearing Account no. 05860600003498 along with certificate under Section 2 of the Banker's Book Evidence Act, 1891 read with Section 65(B)(4) of the Indian Evidence Act at **Annexure A-82**

v. Copy of the balance sheet for FY ending 31.03.2017, 31.03.2018, 31.03.2019 and 31.03.2020 at **Annexure A-86**

vi. Duly acknowledged copy of letter of sanction dated 24.12.2010 of Corporate Debtor at **Annexure A-57**

vii. Copy of debt acknowledgment at **Annexure A-76**

viii. Copy of Board Resolution dated 28.09.2015 at **Annexure- 77**

8. **Analysis and Findings**

i. We have heard the Ld. Counsel for the petitioner and respondents and perused the documents submitted by them. Considering the submissions made and documents placed on record, we find that default has occurred in repayment of the financial debt by the Corporate Debtor and the same has been duly acknowledged in the balance sheets of the corporate debtor for the year ending 31st March 2017 and subsequently in 2018, 2019 and 2020. Moreover, loan account bearing A/c no 05860600003019 of the corporate debtor continuously reflects payments being made by the corporate debtor during the period from 10.12.2018 to 03.03.2020 and the last payment being made of Rs 1,00,000 on 03.03.2020 to the bank to discharge their liability which shows that the present petition falls well within limitation.

ii. In terms of Regulation 2A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a certificate under Section 2 of the Bankers Book Evidence Act, 1891 dated 22.08.2022 has also been filed by the Financial Creditor stating the outstanding dues/claim amount as Rs. **126,26,79,319.14/-** (Rupees One Hundred Twenty-Six Crore Twenty-Six Lacs Seventy-Nine Thousand Three Hundred Nineteen and Paise Fourteen Only).

In view of the above, we are inclined to allow this Petition

iii. Further, we are supported by the judgment of the Hon'ble Supreme Court in the **Innoventive Industries Ltd. Vs. ICICI Bank and Anr. (2018) 1 SC 407**, *which clearly held that:*

> *"The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the application to rectify the defect within 7 days receipt of a notice from the adjudicating authority.*
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> *30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of financial debt, the adjudicating authority has merely to see the records of the information utility, or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so, long as the debt is "due" i.e., payable unless interdicted by*

some law, or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority it may reject an application and not otherwise"

iv. And the judgment of Hon'ble Supreme Court in the **Dena Bank which clearly held that: (Now Bank of Baroda) Vs Shivkumar Reddy and Another (2021) SCC Online SC 543**, which clearly held that:

113. As per Section 18 of Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing a fresh period of limitation from the date on which the acknowledgement is signed. Such acknowledgement need not be accompanied by a promise to pay expressly or even by implication. However, the acknowledgement must be made before the relevant period of limitation has expired.

118. It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. In Asset Reconstruction Company (India) Limited v. Bishal Jaiswall (supra) authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, ["Bengal Silk Mills"] and in Re Pandem Tea Co. Ltd. , the judgment of the Delhi High Court in South Asia Industries (P) Ltd. v. General Krishna Shamsher Jung Bahadur Rana and the judgment of Karnataka High Court in Hegde Golay Ltd. v. State Bank of India and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt.

v. Therefore, we are satisfied that the present petition is maintainable and is within the period of limitation. Also, that the financial debt is due and there is a default in payment of debt.

9. **Order**

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

i. The Application bearing **C.P. (IB) – 24 (PB)/2022** filed by the **BANK OF BARODA,** the Applicant/(FC), under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s GREAT INDIAN NAUTANKI COMPANY Pvt. Ltd.,** the Respondent/(CD), is hereby admitted.

ii. As a consequence of the Application being admitted in terms of Section 7 of the Code, 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. The Applicant/(FC) has proposed the name of **Sh. SANJAY GARG** as the IRP. His email id is rp.sanjaygarg@gmail.com. His registration number is **IBBI/IPA-001/IP-P-01865/2019-2020/12919.** He has filed his written communication **(Consent Form in Form 2, Page 822-827, Volume 6 of the Application)** as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the Certificate of Registration **(Page 828, Volume 6 of the Application)**. There is a declaration made by him that no disciplinary proceedings are pending against him in the Insolvency

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and Bankruptcy Board of India (IBBI) or Institute of Company Secretaries of India (ICSI). In addition, further necessary disclosures have been made by Sh. Sanjay Garg as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of the Section 7(3)(b) of the code. Hence we appoint **Sh. SANJAY GA~~G~~RG** as the IRP of the Corporate Debtor.

iv. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case may be 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 or the RP, as the case may be, 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 future opportunities 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 in this regard, 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 Corporate Debtor.

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. In terms of Section 7(5)(a) of the Code, 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. The Registrar of Companies shall update his website by updating the status of the CD and specific mention regarding admission of this petition must be notified.

x. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

10. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

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RAMALINGAM SUDHAKAR
(PRESIDENT)

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AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)