IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 372/JPR/2023
CP No. (IB)- 707/PB/2018

IN THE MATTER OF:

M/s INDUS CONTAINERS PVT. LTD.

...FINANCIAL CREDITOR

VERSUS

M/s JADOUN INTERNATIONAL PVT. LTD.

... CORPORATE DEBTOR

IA (IBC) No. 372/JPR/2023

MEMO OF PARTIES

1. **MR. NAVRATAN NYATI**
   R/o- 109, Nyati Sadan, Near Water Tank, Shivaji Nagar, Madanganj, Kishangarh, Ajmer- 302801

2. **MRS. KIRAN NYATI**
   R/o- 109, Nyati Sadan, Near Water Tank, Shivaji Nagar, Madanganj, Kishangarh, Ajmer- 302801

3. **MRS. MANJU NYATI**
   R/o- 347, Ward No. 26, Ganesh Road, Kishangarh, Ajmer- 305801

...APPLICANTS

VERSUS

1. **M/S JADOUN INTERNATIONAL PVT. LTD.**
   Revati Raman, 511, Alankar Plazza, Central Spine, Vidhyadhar Nagar, Jaipur- 302023

Sd/-

Sd/-

2. **INDUSIND BANK**
One Indiabulls Centre, Tower 1, 841 Senapati Bapat Magar, Elphinstone Road (w), Mumbai-400013

3. **MR. SAURABH SINGH**
R/0 457, Ganesh Marg, Nevaru Road, Jhotwara, Jaipur- 302012

...RESPONDENTS

FOR APPLICANT(S)	:	Naman Maheshwari, Adv.
FOR RESPONDENT	:	Aakash Sharma, Adv.

Order Pronounced On: 07.06.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The instant Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') by *Mr. Navratan Nyati, Mrs. Kiran Nyati, and Mrs. Manju Nyati* ('Applicants'/ 'Guarantors') against *M/s Jadoun International Private Limited* ('Respondent No. 1'/ 'Corporate Debtor'), *Indusind Bank* ('Respondent No. 2'/ 'Bank') and *Mr. Saurabh Singh* ('Respondent No. 3') for setting aside of the demand notice dated 15.05.2019 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') and the Order of the District Collector, Ajmer dated 16.07.2020 wherein the bank was provided police support to take possession of the properties of the Guarantors. The relief clause as provided in the Application is reproduced hereunder:

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"It is, humbly prayed before this Hon'ble NCLT, Jaipur Bench to set aside both the impugned order dated 16.07.2020 passed by Ld. District Collector, Shri Prakash Rajpurohit, Ajmer and the notice dated 15.05.2019 which was issued by the Respondent No. 2, u/s 14 & 13(2) of the SARFAESI Act, 2002 respectively, since the same were passed during the moratorium period and as such, were illegal and bad in law."

2. The Applicants have filed the instant Application *vide* Diary No. 1641/2023 dated 04.07.2023 seeking the aforementioned prayer on the following grounds:

2.1. The Applicants are the personal guarantors of the Corporate Debtor and *M/s Radharani Exports Private Limited* for the cash credit facility amounting to Rs. 4,50,00,000/- (Rupees Four Crores Fifty Lakh Only) availed from Respondent No. 2. Out of the aforementioned amount, Corporate Debtor availed a loan of Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakh Only) on 31.07.2014 and an extension of Rs. 1,00,00,000 (Rupees One Crore Only) was taken on 24.08.2015. Besides Corporate Debtor, *M/s Radharani Exports Private Limited* took a loan of Rs. 1,00,00,000/- (Rupees One Crore Only) from Respondent No. 2. For securing the aforementioned loans, a common mortgage was created against the personal properties of the Applicants. The details of the properties mortgaged by the Applicants are as follows:-

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I. *Residential House 109, Shivaji Nagar, Madanganj, Kishangarh, Ajmer. Area 233.33. sq. yds*

II. *Plot C-3, Jaideep Vihar C, Khoda Ganesh Road, Madanganj, Kishangarh, Ajmer. Area 152.77 sq yds.*

III. *Plot A-1, Jaideep Vihar A, Khoda Ganesh Road, Madanganj, Kishangarh, Ajmer. Area 166.66 sq yds.*

IV. *Plot C-2, Jaideep Vihar C, Khoda Ganesh Road, Madanganj, Kishangarh, Ajmer. Area 195.55 sq yds.*

2.2. The Applicant No. 1 and 2, namely, *Mr. Navratan Nyati* and *Mrs. Kiran Nyati*, respectively, were directors of the Corporate Debtors and *M/s Radharani Exports Pvt. Ltd.* at the time of extension of the loan facility by Respondent No. 2. Subsequently, Applicant No. 1 and 2 resigned from the directorship of both the companies on 18.09.2015. Further, Applicant No. 1 and 2 entered into settlement agreements dated 07.12.2016 and 21.05.2019 with *Mr. Saurabh Singh* ('Respondent No. 3'), director of the aforementioned Companies. As per the settlement agreement, Applicant No. 1 and 2 were absolved from their personal liabilities towards the loans given by Respondent No. 2.

2.3. Despite the settlement agreement with Respondent No. 3, the Applicants were not released from their obligation of guarantee towards the loan given by Respondent No. 2 to the Corporate Debtor.

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In the meantime, this Adjudicating Authority *vide* its Order dated 25.01.2019 commenced the Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and imposed a moratorium in terms of Section 14 of the Code.

2.4. During the moratorium, Respondent No. 2 issued a demand notice dated 15.05.2019 under Section 13(2) of the SARFAESI Act, 2002 against the Applicants for recovery of the outstanding loan amount of the Corporate Debtor. Further, Respondent No. 2 did not consider the Applicant's objection to the demand notice and never intimated the reasons for rejecting the objections as mandated under Section 13(3A) of the SARFAESI Act, 2002. Moreover, Respondent No. 2 approached the District Collector, Ajmer in non-compliance of Section 13(4) of the SARFAESI Act to take possession of the personal properties of the Applicants. Respondent No. 2 concealed the fact relating to initiation of the CIRP of the Corporate Debtor and wrongfully obtained the order dated 16.07.2020 under Section 14 of SARFAESI Act from the District Collector, Ajmer wherein police support is provided to Respondent No. 2 to take possession of the personal properties of the Applicants. Respondent No. 2 specifically stated before the District Collector, Ajmer that there are no pending proceedings against the Corporate Debtor. Since the Applicants were not given any hearing at the time of passing of the Order dated

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16.07.2020, they filed a Recall Application against the said order. The decision of the Recall Application was never informed to the Applicants and it is presumed that the said application is still pending.

2.5. The demand notice dated 15.05.2019 and the Order dated 16.07.2020 are in violation of Section 14 of the Code. It was also pointed out that the moratorium under Section 14 of the Code has ended as this Adjudicating Authority *vide* Order dated 16.07.2021 had approved the Resolution Plan of the Corporate Debtor.

2.6. It was pointed out that the CIRP of *M/s Radharani Exports Pvt. Ltd.* was initiated by this Adjudicating Authority *vide* Order dated 12.04.2023 in Company Petition bearing *CP No. (IB) 328/9/JPR/2019*. Thus, even today, moratorium is still in place as far as the mortgaged properties are concerned. However, in complete violation of the settled principles of law, Respondent No. 2 tried to usurped the personal properties of the Applicants with police support on 17.06.2023 in pursuance of the order of the District Collector, Ajmer dated 16.07.2020.

3. Respondent No. 2 filed its Reply *vide* Diary No. 435/2024 dated 21.02.2024 and raised the following contentions:-

3.1. In 2014, the Corporate Debtor along with *Mr. Saurabh R Singh, Mr. Saurabh A Singh and* the Applicants approached the Respondent No.

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2/ Bank for obtaining credit finance facilities in the form of cash credit and WCDL. The said facility was modified from time to time and was lastly renewed for a total sum of Rs. 3,50,00,000/- (Rupees Three Crores and Fifty Lakhs Only). Thereafter, *M/s Radha Rani Exports Private Limited* along with *Mr. Saurabh R Singh* and the Applicants approached Respondent No. 2 for cash credit facility. The cash credit facility extended in favour of *M/s Radha Rani Exports Private Limited* was last renewed for a total sum of Rs. 1,00,00,000 (Rupees One Crore Only). The aforementioned loans were secured against the personal properties of the Applicants and Respondent No. 3. Further, the Guarantors have executed supplemental letter of guarantees dated 26.08.2015 for the said loans.

3.2. On account of default in repayment of loan by the Corporate Debtor, the bank rightly issued a demand notice dated 15.05.2019 under Section 13(2) of the SARFAESI Act. In the demand notice dated 15.05.2019 it was specifically mentioned that the Corporate Debtor is undergoing CIRP and therefore, the guarantors have been called upon to repay the outstanding loan amount. Further, the Applicants have filed a securitization Application before the Debt Recovery Tribunal ('DRT') titled as *'Navratan Nyati & Ors v/s Induslnd Bank Limited'* bearing case no. 491/2023 challenging the actions of

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Respondent No. 2. The securitization Application is pending adjudication before the learned DRT.

3.3. It was submitted that Section 14 of the Code does not bar a creditor from proceeding against personal guarantors of the Corporate Debtor. In support of its contentions, Respondent No. 2 relied upon the following Judgments of the Hon'ble Supreme Court:-

I. State Bank of India v/s Ramakrishnan & Anr.

II. Lalit Kumar Jain v/s Union of India & Ors.

III. Kiran Gupta v/s State Bank of India & Anr.

4. The Applicants filed their Written Submissions *vide* Diary No. 1073/2024 dated 29.04.2024 wherein it reiterated the contentions raised in the Application and placed reliance upon the Apex Court's Judgment in the case of *Indian Overseas Bank v/s RCM Infrastructure Ltd. & Anr. (2022) 8 SCC 516.*

5. Respondent No. 2 filed its Written Submissions *vide* Diary No. 1358/2024 dated 29.05.2024 wherein it reiterated the submissions made in the Reply and prayed for dismissal of the instant Application.

6. We have heard the Ld. Counsels for the parties and perused the averments made in the Application, Reply and Written Submissions along with the documents enclosed therein.

7. The moot point of law which arises for consideration in the instant Application is whether the Moratorium declared under Section 14 of the

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Code bars initiation of proceedings against the guarantors of the Corporate Debtor as well or not.

8. The aforesaid issue is no more *res integra* and has already been settled by the Hon'ble Apex Court. It is apposite to refer to the case of *State Bank of India v/s Ramakrishnan and Another (2018) 17 SCC 394* wherein the Hon'ble Apex Court made the following observation:

> *"20. Section 14 refers to four matters that may be prohibited once the moratorium comes into effect. In each of the matters referred to, be it institution or continuation of proceedings, the transferring, encumbering or alienating of assets, action to recover security interest, or recovery of property by an owner which is in possession of the corporate debtor, what is conspicuous by its absence is any mention of the personal guarantor. Indeed, the corporate debtor and the corporate debtor alone is referred to in the said section. A plain reading of the said section, therefore, leads to the conclusion that the moratorium referred to in Section 14 can have no manner of application to personal guarantors of a corporate debtor.*
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> ....
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> *26. We are also of the opinion that Section 96 and 101, when contrasted with Section 14, would show that Section 14 cannot possibly apply to a personal guarantor. When an application is filed under Part III, an interim-moratorium or a moratorium is applicable in respect of any debt due. First and foremost, this is a separate moratorium, applicable separately in the case of personal guarantors against whom insolvency resolution process may be initiated under Part III. Secondly, the protection of the moratorium under these sections is far greater than that of Section 14 in that pending legal proceedings in respect of the debt and not the debtor are stayed. The difference in language between Sections 14 and 101 is for a reason.*
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> *30. We now come to the argument that amendment of 2018, which makes it clear that Section 14(3), is now substituted to read that the provisions of sub-section (1) of Section 14 shall not apply to a surety*

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in a contract of guarantee for corporate debtor. The amended section reads as follows:

"14. Moratorium—(1)-(2)

(3) The provisions of sub-section (1) shall not apply to-

(a) such transaction as may be notified by the Central Government in consultation with any financial sector regulator;

(b) a surety in a contract of guarantee to a corporate debtor."

....

33. The Report of the said Committee makes it clear that the object of the amendment was to clarify and set at rest what the Committee thought was an overbroad interpretation of Section 14. That such clarificatory amendment is retrospective in nature..."

9. The Judgment of the Hon'ble Apex Court clarifies that the moratorium under Section 14 of the code does not bars initiation of proceedings against the guarantors or sureties of the Corporate Debtor. Further, the amendment in sub-section (3) of Section 14 dated 13.03.2020 which came into effect from 28.12.2019, in clear terms provides that the provisions of sub-section (1) of Section 14 of the Code shall not apply to a surety in a contract of guarantee to a corporate debtor.

10. In the instant case, the Applicants have challenged the demand notice of Respondent no. 2 under Section 13(2) and consequent directions of District Collector, Ajmer dated 16.07.2020 wherein Respondent No. 2 is provided police support to take possession of the personal properties of the Applicants. Admittedly, the properties in question are personal properties of the Applicants and does not belong to the Corporate Debtor. Further, it

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has not been contended that the said properties are in possession of the Corporate Debtor.

11. It is pertinent to mention here that in the demand notice dated 15.05.2019, the fact pertaining to initiation of CIRP of the Corporate Debtor has been specifically mentioned. The relevant extract of the demand notice is reproduced hereunder:-

> *"In the meantime M/s Indus Containers Lines Pvt. Ltd. initiated insolvency proceedings under Section 7 of IBC 2016 in NCLT, Jaipur against the company and subsequently IRP was appointed vide order dated 25.01.2019. Since You No. 1 are presently under moratorium under Section 14 of IBC 2016, therefore You No. 2 to 76 as guarantors to No. 1 are thereby being put under the notice"*

12. Further, no relief was claimed against the Corporate Debtor in the Application under Section 14 of the SARFAESI Act, 2002 filed before the District Collector, Ajmer.

13. In view of the Judicial Pronouncements and the facts mentioned above we are of the opinion that the instant Application is devoid of any merit as the protection of moratorium under Section 14 of the Code does not extend to the sureties in a contract of guarantee to a corporate debtor. Thus, the demand notice dated 15.05.2019 and the Order dated 16.07.2020 are not in violation of Section 14 of the Code.

14. It is clarified that the Order in the instant matter shall not prejudice any matter or proceedings between the parties, if any, before any other Court, Tribunal or any judicial or other authority. Further, this Order shall not act

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as a bar to the Applicants in pursuing any other remedies available to it under any other law.

In view of the aforementioned observations the I.A. bearing No. 372/JPR/2023 stands dismissed as rejected.

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DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

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RAJEEV MEHROTRA,
TECHNICAL MEMBER