DEBTS RECOVERY TRIBUNAL No.1, MUMBAI

ORDER
In
INTERLOCUTORY APPLICATION NO. 2276 OF 2026
In
SECURITISATION APPLICATION NO. 94 OF 2025
(Delivered on 01.09.2026)

Imran Ebrahim Khan ... Applicant/s

Versus

Edelweiss Asset Reconstruction Company Limited ... Respondent

Advocate Puneet Gogad for the Applicant.

Advocate Aayush Kothari a/w Advocate Uma Fadia for the Respondent.

ORDER

1. The applicants are requesting to stay the possession intended on 02.09.2026. It is contended by applicants that, this Tribunal as per order dated 27.05.2026 had directed that as the moratorium was in existence under section 95 of IBC, the secured creditor shall not proceed with the SARFAESI measures till the moratorium is lifted by the Hon'ble NCLT.

2. Applicants contend that till date, the moratorium is not lifted. Respondent had intervened in the petition before NCLT and both the Intervention Application by Respondent and the Section 95 of IBC petition are pending consideration of NCLT. Without the order of NCLT lifting the moratorium, the Respondent cannot be allowed to assume automatic withdrawal of the moratorium, even

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if the law on that point is changed subsequent to the order of this Tribunal on 27.05.2025.

3. According to the applicant, DRT cannot enter into a finding on existence or non-existence of moratorium. It was for the respondent to get a further direction from the Tribunal, in case of change of law subsequent to the order of the Tribunal on 27.05.2025. Here in this case, the respondent had suo motto proceeded assuming that, moratorium is not in existence due to change of law after the orders of Tribunal on 27.05.2025.

4. Applicant further urges that, the Advocate commissioner and the authorized officer has obtained an order dated 30.07.2026 from Ld. Magistrate for extension of the writ of commission, by suppressing the material facts and without disclosing the pendency of the petition u/s 95 of IBC before NCLT. Further the reply filed by Applicant No. 1 to notice u/s 13(2) of SARFAESI Act is responded by the Respondent on 05.12.2022, but the reply sent by rest of the applicants are not responded to by R1. So the intended possession on 02.09.2026, cannot be allowed to be effected and has to be stayed.

5. The Respondent contends that, the reply sent to Applicant No. 1 was addressed to all applicants. Section 96(4) of IBC which was introduced and which has come into effect from 26.05.2026, is applicable to all applications filed and it has retroactive effect. The newly incorporated possession as Section

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96(4) of IBC reads that the provisions of this section shall not apply when an application is filed for initiating an insolvency resolution process in respect of a personal guarantor to a corporate debtor. So the contention of the applicant cannot be entertained.

6. Heard both sides.

7. It is true that the Tribunal has no competency to decide as to the existence or non-existence of a moratorium. But in this case it is seen that, the order dated 27.05.2025 is passed, on the information being brought to the notice of the Tribunal that, Section 95 application is filed before NCLT. So as per the rules in existence at that time, this Tribunal had deferred the possession on the ground of moratorium. Perusal of the intervening petition filed by Respondent before NCLT shows that moratorium herein is seen to have been effected on the application by the personal guarantor of a corporate debtor.

8. The introduction of Section 96(4) of IBC has retroactive application from 26.05.2026 onwards in obedience to the dictum laid down by the Hon'ble High Court of Bombay in Tata Capital Financial Services Ltd. Vs. Neel Motors LLP Comp. Arbitration Petition No. 620 of 2021. The dictum directs that, the moratorium in so far as it operated until 26 May, 2026 will cease to effect from that date. The petition would have to be considered as not being barred by the moratorium under IBC.



9. The same principle is laid down in the dictum of Hon'ble High Court of Delhi in IDBI Trusteeship Services Ltd. Vs Manish Jain & Ors in CS(COMM) No. 800 of 2025, which states the view taken by Hon'ble Bombay High Court in Tata Capital Financial case is well aligned. It is further directed in the judgement of Hon'ble HC Delhi that, Section 96(4) of IBC shall apply to the pending application, and the interim moratorium enjoyed hitherto would be deemed to have been vacated.

10. In obedience to the aforesaid dictum, the moratorium stated to have been in existence as per the order passed by this Tribunal on 27.05.2025, must be deemed to have been vacated from 26.05.2026, when the amendment to Section 96(4) of IBC came into effect. The question of the forum deciding on the existence of a moratorium does not arise. The order passed by this Tribunal on 27.05.2025 must be deemed to have been vacated from 26.05.2026. So the contention of applicant that moratorium is still pending in view of Section 96(4) amendment, and aforestated dictums cannot be accepted.

11. The applicant then contended that, Advocate commissioner had filed an application on 27.07.2026 counter signed by authorized officer, with averments to mislead, misguide and had played fraud on the Ld. Magistrate, by vague assertions. The commissioner had stated that, possession proceedings could not be effected due to certain intervening legal proceedings and practical constraints. On that ground itself, according to the

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applicant the order of Ld. Magistrate dated 30.07.2026 and the possession notice are to be quashed.

12. Considering the contention of the applicants, it is seen that, no suppression of fact by commissioner is effected in the application. The Ld. Magistrate need not be intimated about the existence of moratorium or its automatic vacation or inclusion of Section 96(4) of IBC. The function of Ld. Magistrate is only to aid in the enforcement of security by secured creditor. The Ld. Magistrate need not go into the question as to the whys and wherefores of the reasons for the existing moratorium or its vacation..

13. It is next contended by applicant that, Applicant No. 1 had replied to the demand notice dated 16.09.2022, on 14.11.2022 which was responded to by Respondent on 05.12.2022. But the Respondent failed to respond to the reply sent by the rest of the applicant.

14. Perusal of the response by Respondent shows that, it was addressed to all applicants. The rest of the applicants, other than Applicant No. 1, had replied to the notice u/s 13(2) only on 06.02.2023. The lack of response by Respondent to the said objection dated 06.02.2023 is not fatal to the case of respondent. The reply is dated 06.02.2023 by Respondent of the applicant, which is beyond sixty days of the demand notice. So the lack of response by Respondent to objection by rest of the applicants is not fatal to the case of Respondent.

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15. It is now seen that the outstanding dues as on this date is Rs.3,93,47,179.00/- (Rupees Three Crores Ninety-Three Lakhs Forty-Seven Thousand One Hundred and Seventy-Nine Only). No amount is seen paid by the applicant since 27.05.2025. So the possession on 02.09.2026 is deferred on the applicant remitting a sum of Rs.25,00,000/- (Rupees Twenty-Five Lakhs Only) with the Respondent at or before 10.30 am on 02.09.2026, and on filing undertaking to remit Rs.25,00,000/- (Rupees Twenty-Five Lakhs Only) each on 28.09.2026 and 23.10.2026 respectively along with regular EMIs, failing which the respondent would be at liberty to proceed with the SARFAESI measures initiated.

16. It is made clear that, this order is passed only for deferring intended possession on 02.09.2026 and shall not be a bar or stay on the action, if any, to be initiated by the respondent in future on further default, if any by the applicant.

17. Parties to suffer costs.

(Dictated to my Stenographer, transcribed by her corrected and signed by me and pronounced in open forum on 01.09.2026)

Date: 01.09.2026

Presiding Officer
Debts Recovery Tribunal,
Mumbai-I
(Sreekala Suresh)

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