

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

IBA/976/2019

*(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. Dharani Sugars & Chemicals Limited***

Bank of India

Star House, C-5, G Block,
Bandra Kurla Complex,
Mumbai – 400 051
Represented by its Assistant General Manager
Mr. G. Unnikrishnan

... Financial Creditor

-Vs-

M/s. Dharani Sugars and Chemicals Limited

CIN: L15421TN1987PLC014454

Reg. Off:-

PGP House
57, Sterling Road,
Nungambakkam,
Chennai – 600 034

...Corporate Debtor

Order Pronounced on 29th July 2021

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)


ANIL KUMAR B, MEMBER (TECHNICAL)

For Financial Creditor : T. Ravichandran, Advocate

For Corporate Debtor : Avinash Wadhwa, Advocate

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

1. Under Adjudication is IBA/976/2019 that has been filed by
Bank of India (hereinafter referred to as '**Financial Creditor**')


under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Dharani Sugars and Chemicals Limited** (hereinafter referred to as '**Corporate Debtor**'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

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 nationalized Bank. As per Part II of the application, the Corporate Debtor is a Limited Company with Corporate Identification Number L15421TN1987PLC014454 incorporated on 04.06.1987 and registered office of the Corporate Debtor as per the Application is stated to be at PGP House, 57, Sterling Road, Nungambakkam, Chennai – 600 034. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. S. Rajendran, Registration Number: IBBI/IPA-002/IP-N00098/2017-18/10241 as the Interim Resolution Professional

3. Part IV of the application signifies the amount of debt to the tune of ₹57,25,00,000/- (Rupees Fifty Seven Crore Twenty Five

Lakh Only) and the date of default is mentioned as 31.10.2018.
Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default as described below:

- i. Copy of Letter of Approval – Restructuring proposal approved under CDR System.
- ii. Copy of Master Restructuring Agreement.
- iii. Copy of Letter of Approval – Restructuring proposal approved under CDR System.
- iv. Copy of Joint deed of Hypothecation.
- v. Copy of Guarantee Deed executed by Dr. Palani G Periasamy and Smt. Visalakshi Periasamy.
- vi. Copy of Agreement for Pledge of shares.
- vii. Copy of Undertaking-cum-declaration.
- viii. Copy of Letter of Authority in favour of Bank of India for creation / extension of joint mortgage by deposit of tile deeds.
- ix. Supplemental Memorandum of Deposit of Title Deeds registered as Doc.No.845/2015, SRO Thygadurgam.
- x. Copy of Memorandum of Deposit of Title Deeds.
- xi. Copy of Joint mortgage by Deposit of tile deeds in respect of immovable properties.
- xii. Copy of First amendment deed to the Joint Deed of Hypothecation dated 16.03.2015.
- xiii. Copy of First amendment agreement to MRA.
- xiv. Copy of First amendment agreement to the Guarantee Agreement dated 16.03.2015.
- xv. Copy of Supplemental Memorandum of Deposit of Title Deeds registered as Doc. No.1592/2016, SRO Thygadurgam.



- xvi. Copy of Revival Letter.
- xvii. Copy of Acknowledgement of Debt and Securities.
- xviii. Copy of Recall Notice.

4. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor is a Company incorporated under the Companies Act, 1956 and has three integrated sugar plants with a total crushing capacity of 10000 TPD and Co-generation Power plant of 35 MW and multi product distillery of 160 KLPD. It was submitted that the Corporate Debtor had availed various financial assistance from the Financial Creditor and from various other lenders by way of term loan, bank guarantee facilities, working capital facilities and other financial assistances for its business operations and for setting up a project at Unit – I , Dharani Sugar, Tirunelveli District, Unit – 2 Polur, Thiruvannamalai District, Unit – 3 at Kalayanallur Village, Villupuram District.

5. The Learned Counsel for the Financial Creditor submitted that the Financial Creditor had originally sanctioned a sum of Rs.60 Crore for expansion of Unit – 3 and the Corporate Debtor had from time to time created security interest in favour of the Financial Creditor herein and other lenders by way of hypothecation of all its moveable properties and mortgage of all its immovable properties



pertaining to its Unit - 1 at Tirunelveli District, Unit - 2 at Thiruvannamalai District and Unit - 3 at Villupuram District, as security.

6. The Learned Counsel for the Financial Creditor submitted that the operations of the Corporate Debtor had come under strain due to various reasons and the Corporate Debtor had requested the Financial Creditor and other lenders of the consortium for restructuring its existing facilities and accordingly, the Corporate Debtor was referred to Corporate Debt Restructuring (CDR). Pursuant thereto, the CDR Empowered Group, at its meeting held on 30.12.2014 approved a restructuring package in terms of which, the existing financial assistance was restructured. Accordingly, the Corporate Debtor had executed a Master Restructuring Agreement (MRA) on 30.01.2015 in terms of the existing financial assistance offered by the Financial Creditor. Further, the loans given by the other lenders in the consortium was also restricted as per the MRA dated 30.01.2015.

7. The Corporate Debtor in pursuance of the MRA dated 30.01.2015 has executed the following documents;

- a). Master Restructuring Agreement dated 30.01.2015.
- b). Joint Deed of Hypothecation dated 16.03.2015.



- c). Copy of Guarantee Deed executed by Dr. Palani G Periasamy and Smt. Visalakshi Periasamy dated 16.03.2015.
- d). Agreement for pledge of shares dated 16.03.2015.
- e). Undertaking cum Declaration dated 16.03.2015.
- f). Supplemental Memorandum of Deposit of Title Deeds dated 24.03.2015 registered a Doc. No. 845/2015, SRO Thyagadurgam.
- g). Memorandum of Deposit of Titles Deeds dated 26.03.2015.
- h). Joint mortgage by deposit of title deeds in respect of immovable properties.
- i). First amendment deed dated 19.03.2016 to the Joint Deed of Hypothecation dated 16.03.2015.
- j). First amendment agreement of MRA dated 19.03.2016.
- k). First amendment agreement dated 15.04.2016 to the Guarantee Agreement dated 16.03.2015.
- l). Supplemental Memorandum of Deposit of Title Deeds dated 20.06.2016 registered as Doc. No. 1592/2016, SRO Thyagadurgam.

8. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor did not adhere to the amortisation schedule as set out in the MRA and committed various events of defaults and as such the Corporate Debtor is liable to pay a sum of Rs.31,91,00,916.79/- as on 08.08.2019 to the Financial Creditor. Further, it was submitted that the accounts of the Corporate Debtor was classified as "Non Performing Asset" (NPA) on



31.10.2018 as per the prudential norm prescribed by Reserve Bank of India.

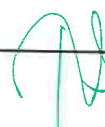
9. The Learned Counsel for the Financial Creditor further submitted that the Financial Creditor has issued a recall notice to the Corporate Debtor, calling upon them to pay the entire advance amount of Rs.28,24,84,906.31/- as on 13.05.2019 and the same has not elicited any positive response so far. Under such circumstances, the Learned Counsel for the Financial Creditor submitted that the inability of the Corporate Debtor to service its dues on time establishes the fact that the Corporate Debtor has become commercially insolvent rendering itself liable to be dealt with under the provisions of IBC, 2016 and hence sought for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

10. In relation to the Corporate Debtor, it is seen that the Reply has been filed and it was submitted by the Learned Counsel for the Corporate Debtor that they have been operating the sugar industry for the last three decades and the promoters of the Corporate Debtor have demonstrated commitment in running the business and have steered the company in various business cycles. It was submitted by the Learned Counsel for the Corporate Debtor that as



recently in the year of 2013, the Sugar Industry was partly de-regulated. The sugar imports and exports are largely controlled through tariff rates and duties and it was submitted that the entire sugar industry in the country is passing through a distressed period and the challenge is more formidable for the Tamil Nadu sugar industry due to vagaries of monsoon and Government policies and also the cane availability in the state has been declining due to inadequate rainfall. It was submitted that due to the aforesaid reasons, the sugar cane crushing levels have continuously come down for the Corporate Debtor during the last 5 years keeping in tune with the general decline faced by the Sugar Industry.

11. The Learned Counsel for the Corporate Debtor further submitted that only because of the aforementioned reasons, the Corporate Debtor was unable to service its debts to the Financial Creditor and also the Corporate Debtor submitted a plan on 14.08.2018 to the Consortium of bankers and also submitted a revised plan on 29.08.2018, however there was no positive response from the Consortium of bankers. Further, it was submitted that the Corporate Debtor gave a proposal for One Time Settlement, with lenders towards outstanding debt of the Corporate Debtor and the same is still pending before the consortium of banks. Thereafter, it was submitted that the



Corporate Debtor gave a revised OTS proposal dated 10.09.2019 offering to pay 40% of the outstanding debt as on the date of NPA to be paid within 3 months from the date of approval of the OTS by the lenders and while this being the fact, the Financial Creditor has filed the present Application under Section 7 of IBC, 2016 to initiate CIRP as against the Corporate Debtor.

12. We have heard the submission made by the Learned Counsel for the parties and perused the records, including the documents placed on file. From the averments made in the Application it is seen that the Corporate Debtor has committed default in repayment, which was restructured by way of Master Restructuring Agreement dated 30.01.2015. From the reply statement filed by the Corporate Debtor, it is also seen that the Corporate Debtor has admitted its default and has stated that the OTS proposal given by the Corporate Debtor was not accepted by the Financial Creditor and also to the consortium of bankers. The plea of the Corporate Debtor that the Company was badly affected due to the decline in the sugar cane industry, cannot be made a ground for delaying the initiation of CIRP or to keep in abeyance since, this Tribunal is required, in case of a 'financial debt' which is due and in the event of 'default' as defined under IBC, 2016 is perforce required to admit the Application and the parties including the Corporate



Debtor can have recourse during CIRP to submit a Plan for restructuring, if otherwise not disqualified.

13. We are also satisfied that there is a debt and default on the part of the Corporate Debtor and the Corporate Debtor is unable to repay its dues to the Consortium of Bankers and in the instant case to the Financial Creditor. It has also been consistently held by the Hon'ble Supreme Court both in **Innoventive Industries Ltd. – Vs- ICICI Bank and another (2018) 1 SCC 407** as well as **Mobilox Innovations Pvt. Ltd.. –Vs- Kirusa Software Pvt. Ltd. (2018) 1 SCC 353** after going through the Scheme of I&B Code, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor as compared to the one filed under Section 9 by an Operational Creditor, in relation to a Section 7 Application where there is an existence of a 'financial debt' and its default in excess of Rs.1,00,000/-, (now increased to Rs.1 Crore on and from 24.03.2020) this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP) and in relation to a Section 7 Application defence or set off or counter claim put forth by the Corporate Debtor cannot be considered as a dispute in relation to the Financial debt and default in relation to it. Thus, it is clear that there is a default on the part of the Corporate Debtor for a sum exceeding Rs.1 Lakh.



14. Also the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor cannot seek shelter also under Section 10A of IBC, 2016

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

16. The Financial Creditor has proposed the name of **Mr. Rajendran Shanmugam**, with Registration Number: *IBBI/IPA-002/IP-N00098/2017-18/10241* (email id:- *cs.srajendran.associates@gmail.com*) as the Interim Resolution Professional (IRP) who has also filed his Authorization for Assignment along with the additional typed set of Application. The proposed IRP who is appointed shall 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 CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

17. 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 respondent 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 respondent 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 respondent 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 respondent.



Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

18. 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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such

supply during the moratorium period or in such circumstances as may be specified.

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

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

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

19. 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.



20. 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 Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond