

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP No. 3062/IBC/NCLT/MB/MAH/2018

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

Abhyudaya Co-operative Bank Limited
..... Financial Creditor

V.

Shambhu Mahadev Sugar & Allied Industries Limited.
..... Corporate Debtor

Pronounced on: 04.01.2019

Coram :
Hon'ble M.K. Shrawat, Member (J)

For the Petitioner :
PRS Legal.

For the Respondent :
None Present.

Per: M.K. Shrawat, Member (J)

ORDER

1. The Petitioner 'Abhyudaya Co-operative Bank Limited' (hereinafter as **Financial Creditor**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" on 27.07.2018 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'Shambhu Mahadev Sugar & Allied Industries Limited' (hereinafter as 'Corporate Debtor'). The registered address of the Corporate Debtor is stated to be A/P, Havargaon, Taluka Kallam, Osmanabad, Maharashtra-413507.
2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be ₹15,00,00,000/-, and the amount claimed to be in default is ₹15,63,18,392/- (₹15,00,06,393/- being the principal amount and ₹63,11,999/- being the interest amount @ 12.5%) as on 28.02.2018.



Brief History of the case:

3. The Corporate Debtor herein, approached the Financial Creditor for availing Short Term Corporate Loan for meeting its day to day working capital requirement and entered into agreement for Short Term Corporate Loan dated 10.07.2017 for ₹15,00,00,000/- (Fifteen Crores Only).
4. The agreement for Hypothecation of Plant & Machinery dated 10.07.2017 has been entered into by both the parties. Estimated Value of Plant & Machinery is ₹22,17,00,000/-. Moreover, a mortgage deed dated 07.07.2017 has been entered into in respect of Land & Structure at Gat No. 103 adm1 Hector-96 R along with the Distillery Plant therein situated in village Havargaon, Tahsil-Kalamb, Distt. Osmanabad. The Estimated value of the Land & Structure is ₹7,60,00,000/-. Therefore, the said sum is secured by a hypothecation agreement and a mortgage agreement totalling to ₹29,77,00,000/-.
5. The Financial Creditor has filed Arbitration Dispute No. ARB/ACB/PN/29/2018 before Hon'ble Arbitrator, Pune for recovery of sum of ₹16,01,29,861/- as on 30.04.2018. The said dispute application is pending before the Hon'ble Arbitrator for service of summons.
6. The loan was duly disbursed after considering the application for availing the loan facility and the consent letter of guarantor for repayment of the aforesaid loan facility.
7. The Corporate Debtor has defaulted in making repayment of the STCL Loan and has failed to adhere to the terms of the Loan, Hypothecation & Mortgage Agreements.

Submissions by the Financial Creditor

8. The Financial Creditor states that the Loan has been duly sanctioned in one instalment vide sanction letter dated 03.07.2017. The Loan Account of the Corporate Debtor has been declared as Non-Performing Asset as on 28.02.2018. The due date for the repayment of loan was 15.07.2018 as per the Loan Agreement.
9. Subsequently, the Financial Creditor recalled the dues vide letter dated 10.05.2018. However, nothing fructified. The Corporate Debtor failed to comply with the demand to pay and the Financial Creditor invoked Arbitration Proceedings under section 84 of the Multi State Co-operative Societies Act, 2002 for recovery of the aforesaid Loan amount being ₹16,01,29,861/- as on 30.04.2018. The above said arbitration dispute is pending.
10. The Corporate Debtor has issued a Demand Promissory Note dated 10.07.2017 for the amount of ₹15,00,00,000/-. The Undertaking given by the Corporate Debtor to the Financial Creditor for the aforesaid loan has also been placed on record.
11. The Financial creditor submits that its statement of accounts annexed in the petition is am ample proof that the loan amount has been duly disbursed. The Bank statement



is corroborating to the computation of claim of the Financial Creditor. However, the Corporate Debtor has neither repaid the loan amount till date nor it has replied to the correspondences sent by the Financial Creditor calling for the repayment of loan.

No Submissions by the Corporate Debtor :

12. The Corporate Debtor has never appeared before this Bench. On the date of final hearing dated 15.11.2018, again none was present from the side of the Corporate Debtor. Moreover, no reply has been received on record till date. The Corporate Debtor has nowhere denied his liability to pay the amount claimed.

Findings :

13. On perusal of the documents placed on record, I am of the conscientious view that the debt was repayable as per the Loan Agreement. The loan Account of the Corporate Debtor was declared as NPA on 28.02.2018. The Financial creditor issued a 'Recall Notice' to the Corporate Debtor for repayment of debt. However, the Corporate Debtor failed to pay the said sum.
14. Further, by not filing any reply to this petition or recall notice or the Demand Notice, the Corporate Debtor clarifies that there does not exist any valid defence to the amount claimed. Therefore, not even an iota of doubt is left to believe that the Corporate Debtor had committed breach in payment of the Loan amount. On going through the facts and submissions of the petitioner and upon considering the same, it is concluded that the Financial Creditor has established that the loan was duly sanctioned and duly disbursed to the Corporate Debtor but there has been default in payment of Debt on the part of the Corporate Debtor. It can be very safely presumed that the Corporate Debtor has nothing much to say in its defence.
15. Considering the above facts, I come to conclusion the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that admittedly there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor.
16. As a consequence, keeping the admitted facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, I am of the conscientious view that this Petition deserves 'Admission'.
17. Further, the Financial Creditor has proposed the name of Interim Resolution Professional in this petition and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.



18. Hence, after perusal of the provisions of the Code and facts and circumstances of this case along with the submissions of the petitioner, it is hereby held that this Petition/Application is **Admitted**.
19. The IRP proposed by the Financial Creditor, CA Amit Chandrashekhar Poddar, having its registered office at "AKSHAT", 7, Vijay Nagar, Katol Road, Nagpur-440013, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
20. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
21. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
22. That the Interim Resolution Professional shall perform the duties as assigned under **Section 18 and Section 15** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
23. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
24. Ordered Accordingly.

Dated : 04.01.2019

js

SD/-
M. K. SHRAWAT
MEMBER (JUDICIAL)

Certified True Copy
Copy Issued "free of cost"
On 9/1/2019



Assistant Registrar
National Company Law Tribunal Mumbai Bench

