

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – III

R.C.P. (IB)-3(MB)/2024

(Old Case No. C.P.(IB)-1244(MB)/C-III/2022)

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016.)

In the matter of

**Buldana Urban Cooperative Credit Society Ltd.,
Buldana**

Having Registered Office at: Agadiya Hospital,
Chandani Chowk, Sangali.

.....Financial Creditor/Applicant

Vs

Yaswant Sugar and Power Private Limited

Having Registered Office at: Plot No. 350, Vasant
Market Yard Sangali, Mh- 416416.

.....Corporate Debtor/Respondent

Order Pronounced on: 06.03.2024

CORAM:

**SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)**

Appearances:

For the Financial Creditor: Adv. Ninad Deshpande a/w Adv Rudresh Kawade

For the Corporate Debtor: Adv. Monarch Gandhi

ORDER

Per: - Charanjeet Singh Gulati (Technical Member).

1. The Present **R.C.P.(IB)-3(MB)/2024 (Old Case No. C.P.(IB)-1244(MB)/C-III/2022)** has been filed under section 7 of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) by **Buldana Urban Cooperative Credit Society Ltd., Buldana (“Financial Creditor/Petitioner”)** for initiating Corporate Insolvency Resolution Process (“CIRP”) against **Yashwant Sugar and Power Private Limited (“Corporate Debtor/Respondent”)** for default in repaying an amount of ₹58,14,69,921 as on 15.09.2022

Background Facts

2. On the request of the Corporate Debtor, the Financial Creditor sanctioned a loan of Rs. 38,00,00,000/- (Rupees Thirty-Eight Crore only) to the Corporate Debtor on the terms and condition mentioned in the Loan Agreement dated 05.02.2015 executed between them.
3. In terms of the Loan Agreement, the Financial Creditor sanctioned a loan of Rs. 38,00,00,000/- with a rate of interest @ 15% for a tenure of 5 Years and credited the same to the Loan Account of the Corporate Debtor.
4. The Corporate Debtor in order to secure repayment of the said loan, have created security interest and mortgaged assets as mentioned in the Mortgage Deeds.
5. The Corporate Debtor failed to pay the loan instalments regularly and punctually as mandated in the loan agreement. The Corporate Debtor had defaulted in repayment of the instalments due from 31.05.2019 and accordingly the loan account has been categorized as NPA on 01.11.2020.

6. The Financial Creditor has sent repeated reminders to the Corporate Debtor for the repayment of the loan. However, the Corporate Debtor has failed to pay the unpaid financial debt.
7. In view of the above background the Financial Creditor has filed the present petition stating that the Corporate Debtor owes to the Petitioner a total outstanding amount of ₹58,14,69,921. As per Part IV of the petition, **date of default is 31.05.2019.**

Observations and Findings

8. Heard the Ld. Counsel for the Parties and perused the records.
9. The Present Petition was disposed of as infructuous vide order dated 09.01.2023 on the ground that the Corporate Debtor was already undergoing into CIRP before Court No. V in another Company Petition Bearing No. C.P./680/2021 vide admission order dated 16.12.2022.
10. However, on the request of the Bank of India, the said CIRP was withdrawn vide order dated 11.04.2023 in I.A. 537/2023.
11. Therefore, the Petitioner filed an Application (RA/16/2023) to restore the present Petition and same was allowed by this Tribunal vide order dated 21.07.2023.
12. Thereafter, the Corporate Debtor has made proposals for OTS during the pendency of present petition and same is evident from the order dated 31.10.2023 and 11.12.2023.
13. The Corporate Debtor has made partial payments pursuant to the OTS proposal as follows:
 - a. Rs. 5 Crore on 18.08.2023
 - b. Rs. 1 Crore on 06.10.2023
 - c. Rs. 1 Cr on 20.10.2023

14. Further, on 31.10.2023, the cheques amounting to Rs. 48 Crore was handed over to the Counsel for the Financial Creditor, who wished to place it before the board for withdrawal of the Petition.
15. On 11.12.2023, Ld. Counsel for the Petitioner submitted that the Board of the Financial Creditor has rejected the offer made by the Corporate Debtor and handed over the cheques back to the Corporate Debtor. Further, Ld. Counsel for the Corporate Debtor sought time to file reply and same was allowed with the directions that the reply be filed within two weeks failing which right to file reply shall stand forfeited.
16. On 08.01.2024, the right to file reply was closed and matter was listed for final hearing on 02.02.2024. On 02.02.2024, the matter was heard and reserved for orders with directions to file written submission within a week. Though the written submission has been filed by the Financial Creditor, no written submission has been filed by the Respondent. In the oral arguments the Counsel for the Corporate Debtor opposed the admission of the petition.
17. The Petitioner has annexed copies of the following documents with the Petition:
 - i) Loan Sanction Letter
 - ii) Loan Agreement
 - iii) Mortgage Deed
 - iv) Certificate of Registration of Charge issued by the Registrar of Companies
 - v) Record of Default (RoD Certificate) dated 21.10.2022 issued by NeSL with Date of Default as 31.05.2019 and status showing Deemed to be Authenticated.
18. The Corporate Debtor has made partial payments from time to time after classification of account as NPA. Further, the Corporate Debtor has made proposals for OTS during the pendency of present petition and also

tendered postdated cheques towards repayment before this Hon'ble Tribunal. This amounts to acknowledgement of debt and consequent extension of limitation period.

19. Therefore, the Corporate Debtor on various occasions have acknowledged the debt and has failed to repay the dues owed to the Petitioner. This shows the existence of debt and default on the part of the Corporate Debtor.
20. We rely on the judgement of the Hon'ble Supreme Court in the ***Innoventive Industries Limited vs. ICICI Bank and Another (2018)1 SCC 407***, it was 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 applicant to rectify the defect within 7 days receipt of a notice from the adjudicating authority.

*30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a 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 that the adjudicating authority may reject an application and not otherwise.”*

(Emphasis Provided)

21. In view of the aforementioned judgement it is clear that the Adjudicating Authority only has to determine whether the “debt” was due and remained unpaid. If the adjudicating authority is of the opinion that a “default” has occurred, it has to admit the application. In the present case, sufficient evidence has been adduced by the Petitioner to prove the debt and default.

22. In view of the undisputed documents annexed to the petition including Record of Default, the Financial Creditor has proved existence of debt and default. Further the debt is in excess of Rs. 1 Crore and thus above the threshold limit mandated in Section 4(1) of the Code. Further, as per the order of Hon'ble Supreme Court of India in SUO MOTU WRIT PETITION (C) NO. 3 OF 2020, the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation. Therefore, the Petition filed is within limitation as date of default is 31.05.2019 and the petition is filed on 15.11.2022. Therefore, we hereby admit this company petition and also looking at the consent given by the Insolvency Professional, we hereby appoint **Mr. Ritesh R. Mahajan** as an IRP, with a direction to the Financial Creditor to pay remuneration to the IRP and his expenses until the constitution of CoC.
23. Accordingly, this Company Petition is **admitted** with the following directions:
- a. **The above R.C.P.(IB)-3(MB)/2024 (Old Case No. C.P.(IB)-1244(MB)/C-III/2022) is allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Yashwant Sugar and Power Private Limited.**
 - b. This Bench appoints **Mr. Ritesh R. Mahajan**, having Registration No: **IBBI/IPA-002/IP-N00048/2017-2018/10132**, email: riteshmahajancs@gmail.com; Address: **B-203, Devgiri, Ganeshmala, Sinhgad Road, Pune- 411030** as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
 - c. The Financial Creditor shall deposit an amount of Rs. 5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
 - d. That this Bench hereby directs operation of moratorium under section 14 of Insolvency and Bankruptcy Code, 2016 and prohibits the following:

- a. the institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 corporate debtor 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 corporate debtor 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 Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
 - f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
 - h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
 - i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

24. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.
25. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately. The Registry is further directed to send a copy of this order to the Insolvency and bankruptcy Board of India for their record.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)

Arpan, LRA