

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.1380/MB-IV/2020

Under Section 7 of the I&B Code, 2016

In the matter of:

**The Maharashtra State Co-operative Bank
Limited**

...Financial Creditor/Applicant

V/s

**Shri Siddheshwar Sahakari Sakhar
Karkhana Limited**

...Corporate Debtor/Respondent

Order Dated: 17.02.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mrs. Suchitra Kanuparthi
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) :

Mr. Omkar Deosthale,
Advocate.

For the Respondent(s) :

Mr. Rupesh Bobade a/w
Mr. Shraddhanand Bhutada,
Advocates.

ORDER

Per: Rajesh Sharma, Member (Technical)

1. This is an application being C.P. (IB) No. 1380/NCLT/MB/C-IV/2020 filed by Maharashtra State Co-operative Bank Limited, the Financial Creditor/Applicant, under section 7 of Insolvency &

Bankruptcy Code, 2016 (I&B Code) against Shri Siddheshwar Sahakari Sakhar Karkhana Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Application is filed by Ms. Ume Salma Mansuri, authorised representative of Financial Creditor vide its Board Resolution dated 15.09.2020, claiming total default of Rs. 79,60,00,000/- (Rupees seventy-nine crore sixty lakh only) which includes:
 - a) Short Term Loan amount of Rs.39,60,00,000/- (Rupees thirty-nine crore sixty lakh only); and
 - b) Working Capital Loan amounting to Rs.40,00,00,000/- (Rupees forty crore only) along with interest payable @ 10.50% p.a.
3. The Date of Default as mentioned in the Petition is 30.06.2019.
4. The case of the Financial Creditor is as under:
 - a) The Corporate Debtor approached the Financial Creditor for the purpose of seeking loan. Accordingly, the Financial Creditor sanctioned the following facility to the Corporate Debtor:

Sr. No.	Particulars	Amount Sanctioned	Due Date for Repayment
1	Short Term Loan by way of Mortgage with interest @ 14% p.a.	Rs.39,60,00,000/-	30.06.2019
2	Working Capital Loan by way of Pledge with interest @ 10.50% p.a.	Rs.40,00,00,000/-	31.10.2019

- b) The said facilities were disbursed to the Corporate Debtor in the following manner:

Sr. No.	Amounts Disbursed	Date of Disbursement)
1	19,80,00,000/-	26.10.2018
2	19,80,00,000/-	06.11.2018

- c) A total amount of Rs.40,00,00,000/- (Rupees forty crore only) was sanctioned by the Financial Creditor which was utilised by the Corporate Debtor as and when it was in need of utilising the said funds.
- d) The Short-Term Loan facility was secured by mortgage of immovable and movable properties of the Corporate Debtor by way of a second charge by English Mortgage. The details of the documents executed with respect to the Short-Term Loan are as follows:
- Mortgage Deed dated 05.11.2018 registered at Serial No 4185/2018 at the office of Joint Sub Registrar Class 2, Solapur North-2.
 - Joint and Several Liability Bond dated 05.11.2018 registered at Serial No. 4186/2018 at the office of Joint Sub Registrar Class 2, Solapur North-2.
 - Joint Declaration dated 05.11.2018 notarised and registered at Serial No 8476/018 by Subhash N Bet, Advocate and Notary

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- e) The Corporate Debtor had availed the Short-Term Loan facility primarily to facilitate all its expenditure incurred during the non-crushing sugar season for the year 2018-19.
- f) The primary condition in respect of the Short-Term Loan facility was that all amounts including the interest applicable was to be repaid in full to the Financial Creditor on or before 30.06.2019. However, the Corporate Debtor did not pay the amount along with the applicable interest on the due date specified.
- g) The Financial Creditor issued several reminder letters as well as Legal Notice through Lawyer to the Corporate Debtor. No reply has been received from the Corporate Debtor till date.
- h) The outstanding amounts along with the interest accrued therewith constitute a debt which became due and payable on 30.06.2019 as per the terms of the facility but was not paid on 30.06.2019 and remained outstanding. The amount of default as on 30.06.2019 was Rs.3084.07 lakh.
- i) The details of the debt amount are as under:

Amount of Principal	-	Rs.29,80,00,000/-
Amount of Interest	-	Rs.1,04,07,000/-
Total outstanding as on 30.06.2019	-	Rs.30,84,07,000/-

5. The Corporate Debtor has submitted its Affidavit in Reply and submits as under:

- a) The Corporate Debtor is a Co-operative Society registered under the Multi-State Co-operative Societies Act, 2002. The Corporate Debtor is in the business of Sugar Factory. The Corporate Debtor is having 28,000 farmers as members of its society.
- b) The Corporate Debtor submits that, it is registered as a society with the Central Registrar of Co-operative Societies. Therefore, CIRP cannot be initiated against the Corporate Debtor, in terms of section 2 of the Code.
- c) The Corporate Debtor submits that, NCLT is Quasi-Judicial Authority created under the Companies Act, 2013 to handle corporate civil disputes under the Act. In view of the same the NCLT has no jurisdiction over the Co-operative Society.
6. The Financial Creditor has filed its written submissions and submitted as under:
- a) The Financial Creditor has sanctioned Short Term Loan by way of Mortgage with interest @14% p.a. of Rs. 39,60,00,000/- dated 30.06.2019 and Working Capital Loan by way of Pledge with interest @10.50% p.a. of Rs.40,00,00,000/- dated 31.10.2019.
- b) The repayment of Short-Term Loan was to be made by Corporate Debtor on or before 30th June 2019 along with the applicable interest. However, the Corporate Debtor has defaulted on the repayment. The details are as follows:

Principal Amount	29,80,00,000/-
Interest	1,04,07,000/-
Total Amount Outstanding as on 30.06.2019	30,84,07,000/-

- c) The facility pertaining to the Working Capital Loan, which was due and payable by Corporate Debtor on or before 31st October 2019, was eventually extended by the Financial Creditor and was due and payable on or before 31st December 2020.
- d) The Financial Creditors thereafter issued reminder letters informing the Corporate Debtor of the default and demanding payment of the outstanding amounts. The details of outstanding amount as on date 30th June 2020 is as follows:

Principal Amount	29,80,00,000/-
Interest	5,50,00,000/-
Total Amount Outstanding as on 30.06.2020	35,30,95,000/-

- e) The Corporate Debtor has raised the defence as to the maintainability of the petition on the following two grounds:
- I. The Corporate Debtor is a Co-operative Society registered under The Multi-State Co-operative Societies Act, 2002 and therefore by operation of section 2 of the IBC, 2016, the act does not apply to it.
 - II. The Multi-State Co-operative Societies Act, 2002 is a special statute and provides specific provisions for the winding up of the Societies registered under the same. The Act shall prevail over the IBC, 2016.
- f) The Financial Creditor submits that, both objections are not tenable, and petition is maintainable. The financial Creditor deals with the objections as follows:

- (i) On the objection of the Corporate Debtor that it is a Co-operative Society registered under The Multi-State Co-Operative Societies Act, 2002 (the Act) and therefore by operation of section 2 of the IB Code, 2016 the act does not apply to it, the arguments extended by the Financial Creditor is as under:

Section 2 of the Code is as follows:

Section 2: Application.

The provisions of this Code shall apply to—

(a) any company incorporated under the Companies Act, 2013 or under any previous company law;

(b) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;

(c) any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008;

(d) such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf;

(e) personal guarantors to corporate debtors;

(f) partnership firms and proprietorship firms; and

(g) individuals, other than persons referred to in clause (e).

in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be.

However, the Corporate Debtor stated that it is neither a Company nor Limited Liability Partnership and therefore it fits into the category mentioned in Section 2 (d) for which separate notification is necessary from Central Government.

(ii) Section 3(7) apart from Company and LLP also specifically includes any other person incorporated with limited liability under any law for the time being in force. To fit into this category the person must satisfy two conditions, namely:

- i. Person incorporated with limited liability; and
- ii. Such incorporation must be under any other law for the time being in force.

If the abovementioned two conditions are satisfied then such person shall be a corporate person and if he owes any debt then he becomes Corporate Debtor, thereby comes within the ambit of the code.

(iii) The Financial Creditor submits that, Section 3(7) of the code was notified by way of a notification dated 2nd November 2016. Section 2(d) of the code requires that for application of the code to any person other than Company and LLP notification from the Central Government is required and thereby objection of the Corporate Debtor does not remain valid. The notification is annexed to these written submissions at pp 15-16.

- (iv) The Financial Creditor submits that, assuming without admitting that there is a conflict between section 3(7) and section 2 of the code. It is cardinal principal of interpretation that when the language of the statute is plain, clear, unambiguous and easily susceptible to one meaning the effect should be given to the provision as such. The provision which is special shall prevail over the provision which is general in nature.
- (v) The Financial Creditor submits that, a legal enactment must be interpreted in its plain and literal sense, as that is first principal of interpretation. As per the cited judgement *Basawaraj & Anr v. Special Land Acquisition Officer, (2013 14 SCC 81)* and it is clear that when language of statute is clear, it must be given effect to. Any other interpretation adopted would have the effect of amending the law, which as per the Hon'ble Supreme Court, the court cannot do, and it is for the parliament to amend the Law.
- (vi) Therefore, as the wording of Section 3(7) is clear and unambiguous, it has given effect to and any other interpretation than what is suggested by the language of Section 3(7) of the code will have the effect of amending the law, which the Corporate Debtor cannot expect this Tribunal to do.
- g) The Corporate Debtor submits that Multi-State Co-operative Societies Act, 2002 is a special statute and provides specific provisions for the winding up of the Societies registered under the same. The Act shall prevail over the IB Code, 2016.

- i. The argument lead on behalf of the Corporate Debtor is that the Corporate Debtor is a registered Co-operative Society registered under the said Act. The said Act specially deals with the winding up provisions of the Societies registered under that Act. Therefore, it is the Corporate Debtor's argument that the application under Section 7 of the Code is not maintainable.
- ii. It was also argued on behalf of the Corporate Debtor that Section 121 of the act excludes the application of certain enactments.
- iii. The Financial Creditor submits that, the present application is under the provisions of the Code and the application of the Code is not excluded by the section 121 of the Act. Therefore, such argument is not tenable.
- iv. In respect of the issue of whether the provisions of Code override any other law, the issue is settled by the Judgement of Hon'ble Supreme Court in *Duncan Industries Limited*. It was held that:

"7.4 Section 16G (1) (c) refers to the proceeding for winding up of the such Company or for the appointment of receiver in respect thereof. Therefore, as such, the proceedings under section 9 of the Code shall not be limited and/or restricted to winding up and/or appointment of receiver only. The Winding Up/ Liquidation of the Company shall be the last resort and only on an eventually when the CIRP fails. As observed by this Court in Swiss Ribbons Pvt Ltd, referred to hereinabove, the primary focus of the legislation while enacting the IBC is to ensure revival and continuation debtor from its own management

and from a corporate debtor by liquidation and such CIRP is to be completed in a time-bound manner. Therefore, the entire CIRP as such cannot be equated with Winding Up proceedings. Therefore, considering Section 238 of the Code, which is a subsequent Act to the Tea Act, 1953. Any other view would frustrate the object and purpose of the IBC. If the submission on behalf of the Appellant that before initiation of proceedings under section 9 of the IBC, the consent of the Central Government as provided under section 16G (1) (c) of the Tea Act, 1953 is to be obtained, in that case, the main object and purpose of the IBC, namely, to complete the CIRP in a time-bound manner, shall be frustrated. In short, the provision of the IBC would have an overriding effect over the Tea Act, 1953 and that no prior consent of the Central Government before initiation of the proceedings under section 7 or section 9 of the Code would be required and even without such consent of the Central Government, the insolvency proceedings under section 7 or section 9 of the Code initiated shall be maintainable.”

- v. As per the cited judgement Duncan Industries clearly states that due to operation of section 238 of the Code, the Code shall have over-riding effect over all other statutes. Therefore, the argument lead on behalf of the corporate Debtor is not tenable.

Findings/Observations:

- 7. We have heard the submissions of the Counsel on both the sides.
- 8. After perusing the records, the issues arose before this Bench are as follows:
 - i. Whether Co-operative Societies registered under the Multi-State Co-operative Societies Act, 2002 fall within the meaning of

- “Corporate Person” as defined under Section 2(d) and Section 3(7) of the Code?;
- ii. Whether the provisions of the Code are applicable to Co-operative Societies registered under Multi-State Cooperative Societies Act, 2002 And;
 - iii. Whether the Multi-State Co-operative Societies Act, 2002 prevail over the IBC?
9. It was rightly contended by the Corporate Debtor that in view of the section 2 of the Code, the Co-operative Societies cannot be brought into the CIRP as the Corporate Debtor is registered under the provisions of the Multi-State Co-Operative Societies Act, 2002. The Corporate Debtor further contended that there are special provisions given under the Act for the Winding Up of the Societies registered thereunder.
10. This Bench has dealt with first and second issues in the common observation put up below. It is important to understand the application of the Code under section 2(d) and the definition of ‘Corporate Person’ given under section 3(7) of the Code. Section 2(d) and Section 3(7) of the Code are as under:

Section 2.

Application. –

The provisions of this Code shall apply to—

(d) such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf;

Section 3.

(7) “corporate person” means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;

11. After bare reading of the above provisions of the Code, even if we consider the Corporate Debtor to be a ‘Corporate Person’ as defined under section 3(7) of the Code, the Corporate Debtor is itself a Co-operative Society and hence cannot come under the provisions of section 2(d) of the Code as the Central Government has not issued the Notification of the applicability of the Code to the Co-operative Society.
12. Section 2 addresses the applicability of the code and listed down the various types of Corporate Debtors on whom/by whom Insolvency, Liquidation, Voluntary Liquidation or Bankruptcy Proceedings can be initiated.
13. From the bare reading of Section 2 of the Code, it can be understood that the Corporate Debtor in the given case is –
 - i. **Not** a company incorporated under the Companies Act, 2013 or under any previous company law (Section 2(a));

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- ii. **Not** a company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act (Section 2(b));
 - iii. **Not** a Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008 (Section 2(c));
 - iv. A body incorporated under any law (i.e., a 'Body Corporate' as per Section 9 of the Multi-State Co-operative Societies Act, 2002) for the time being in force *however it has not been notified by the Central Government by any notification* (Section 2(d));
 - v. **Not** a personal guarantor to corporate debtors (Section 2(e));
 - vi. **Not** a partnership firm and a proprietorship firm (Section 2(f));
and
 - vii. **Not** an individual, other than persons referred to in the above points (Section 2(g))
14. To explain further, this Bench has relied upon the Judgment of Hon'ble NCLAT in the matter of *Asset Reconstruction Company (India) Ltd. v. Mohammadiya Educational Society [Company Appeal (AT) (Insolvency) No. 495 of 2019]*. The issue before the NCLAT was whether a society registered under the Societies Registration Act would fall under the definition of a corporate person under the Code.
15. The facts before the NCLAT involved two separate applications filed by the appellant, Asset Reconstruction Company under Section 7 of the IBC against two Societies which were registered under the AP Societies Registration Act, 2001 at the time of the application. Both the societies

were previously registered under the Central Act which governed societies i.e. Societies Registration Act, 1860 which was repealed in Andhra Pradesh after the 2011 Act was brought into force on October 10, 2011. The Hyderabad bench of the NCLT had dismissed both the applications on the ground that the societies were not “corporate persons” under Section 3(7) of the IBC. Aggrieved by the order of the NCLT, the appellant approached the NCLAT.

16. The NCLAT has held as follows:

“31. It does not appear that when this judgment in the matter of “Illachi Devi” (supra) was passed in 2003, the A.P. Act of 2001 was noticed. Section 18 of the A.P. Act appears to have attempted to meet the requirements expressed by Hon’ble Supreme Court (Para 53) in the matter of “Illachi Devi”. What appears from reading of Section 18 of the A.P. Act is that the registration of a Society shall render it a body corporate by the name under which it was registered having perpetual succession and a common seal. Thus, although the Society is not incorporated and it is registered, it is rendered a body corporate which can have perpetual succession and have a common seal. Section 18 makes it clear that as the Society will be rendered body corporate, it shall be entitled to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all other things necessary for the furtherance of the aim for which it was constituted. The Learned Counsel for the Respondents has rightly submitted that even if best case of the Appellant is accepted, the Society which will be deemed to be a body corporate is for the purposes as mentioned in Section 18, and not Company incorporated as such.

32. We need not deliberate in more details on the effect of Section 18 of the A.P. Act for the reasons we have already discussed above. Looked at in any manner, Section 2 read with Section 3 (7) does not spell out that the Respondents Companies in these Appeals are 'Corporate Persons' under the 'I&B Code' to whom provisions for 'I&B Code' would apply.

33. For such reason, we do not find any substance in these Appeals. For reasons mentioned above:

(a) Company Appeal (AT) (Insolvency) No. 495 of 2019 is dismissed. No order as to costs.

(b) Company Appeal (AT) (Insolvency) No. 496 of 2019 is dismissed. No order as to costs."

17. The NCLAT noted that even though the 1860 Act did not confer the status of body corporate on societies registered thereunder, by operation of section 18 of the 2001 Act, a society which was registered under 1860 Act would also be granted the status of a body corporate, a separate legal existence, perpetual succession and the ability to enter into contract as well as institute and defend suits. Further the members of the society would not have any beneficial or proprietary interest in the property of the society.
18. Time and again the term 'Corporate Person' already discussed in various rulings by Hon'ble Supreme Court and NCLAT. The Hon'ble Supreme Court in *Hindustan Construction Company and Anr. v. Union of India* [2019 SCC OnLine SC 1520], has explained the term 'Corporate Person' as follows:

“63. As correctly argued by the learned Solicitor General, Shri Tushar Mehta, the first part of ‘corporate person’, as defined in Section 3(7) of the Insolvency Code, means a company as defined in Clause 20 of Section 2 of the Companies Act 2013. Sections 2(20) and 2(45) of the Companies Act, 2013, which define ‘company’ and ‘Government company’ respectively, are set out hereinbelow:

“2(20). “company” means a company incorporated under this Act or under any previous company law;”

“2(45). “Government company” means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.””

19. Further, the NCLAT in case of *Asset Reconstruction Company* also observed as:

“20. Section 3(7) defines “corporate person” and even if this definition is considered, the Respondents are not Companies defined in clause 2(20) of the Companies Act, 2013 or “limited liability partnership” as defined under the Limited Liability Partnership Act, 2008 or any other person incorporated with limited liability under any law for the time being in force. Even if the Appellant was to say that the Respondents should be treated as body corporate under Section 18 of the A.P. Act, nothing is shown that Respondents Societies are persons “incorporated” or that the incorporation is with “limited liability”. This has to be further read with Section 2(d) which requires that to

apply the Code such other body incorporated under any law for the time being in force needs to be specified by Central Government only then 'I&B Code' would apply to it.

20. From the entire observations of the rulings, it is well understood that, the Corporate Debtor which is Co-operative Society, to become the 'Corporate Person' under section 3(7) has to complete the criteria given under section 2 of the Code, which deals with applicability of the Code. If the Corporate Debtor in the matter is not covered under the section 2 of the Code, the question of applicability of section 3(7) does not arise.
21. It is also important to note that the Central Government has issued the notifications with respect to CIRP of Corporate Debtor [Ministry of Corporate Affairs – Commencement of Sections under Chapter II, Chapter VII of Part IV and sections under Part V – Dated 01.11.2016 – SO 3355(E)] and the Personal Guarantor to Corporate Debtor [Insolvency and Bankruptcy Board of India Notification (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019]. However, the Central Government has not yet issued notification with respect to the CIRP of the Co-Operative Society. In view of this, it is not admissible to initiate the CIRP of the Co-Operative Society as the Corporate Debtor is registered under the Multi-State Co-operative Societies Act, 2002.
22. From the above discussion, it is clear that the Corporate Debtor being Co-operative Society is not the 'Corporate Person' nor the provisions of Code are applicable to the Co-operative Society as the Corporate Debtor in the matter is registered/incorporated under Multi-State Co-operative Societies Act, 2002 which is a special statute and provides specific provisions for the winding up of the Societies registered under

the same. And hence, the Corporate Debtor being Co-operative Society cannot be put under Insolvency Resolution Process.

23. As regards to the third issue, it is well settled that the IBC is itself separate and independent statute which cannot be overruled by any other law and the same is already explained under section 238 of the Code. Section 238 is as follows:

”238. Provisions of this Code to override other laws. - The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

Hence, this Bench finds no merit for further discussion with respect to the third issue.

24. In view of the observations, this Bench finds no merit in admitting Petition filed by the Financial Creditor under section 7 of the Code against the Corporate Debtor who is a Co-operative Society registered under the Multi-State Co-operative Societies Act, 2002.
25. Therefore, this Bench is of considered view that the Corporate Debtor who is Co-operative Society registered/incorporated under the Multi-State Co-Operative Societies Act, 2002, does not come under the purview of the Code and therefore the CIRP cannot be initiated against the Corporate Debtor.
26. For above mentioned reasons, application being C.P. (IB) No. 1380/NCLT/MB/C-IV/2020 filed by Maharashtra State Co-operative Bank Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Shri

Siddheshwar Sahakari Sakhar Karkhana Limited, Corporate Debtor being Co-operative Society, is hereby **Dismissed** with no cost.

27. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the Financial Creditor/Applicant before any other judicial forum shall not be prejudiced on grounds of dismissal of the present petition

Sd/-

Rajesh Sharma
Member (Technical)

17.02.2022

Sd/-

Suchitra Kanuparthi
Member (Judicial)