

SL. No.1

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II

(Video Conference)

CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON'BLE MEMBER (J)
CORAM: SHRI SATYA RANJAN PRASAD, HON'BLE MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 25.11.2022 AT 2:00 PM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company petition IB/334/2022
NAME OF THE COMPANY	Sri Dakshinamurthy Agro Industries Pvt Ltd
NAME OF THE PETITIONER(S)	Union Bank of India
NAME OF THE RESPONDENT(S)	Sri Dakshinamurthy Agro Industries Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

Mr. Ravi Kumar, Learned Counsel for Corporate Debtor appeared in person.

Orders pronounced vide separate sheets. In the result, **CP(IB) 334/7/HDB/2022 is rejected**, however, in the event of default in making payment of Rs.4.50 crores by 31.12.2022 by the Corporate Debtor, liberty is granted to the Financial Creditor to apply afresh for initiation of CIRP against the Corporate Debtor as per Law.

Self

MEMBER (TECHNICAL)

Syamala

Self

MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

CP (IB) 334/7/HDB/2022

(u/s. 7 of I&B Code, 2016 r/w Rule 4 of I & B (AAA) Rules, 2016)

In the matter of:

Union Bank of India

Stressed Asset Management Branch, 3rd Floor
e Andhra Bank Building, Sultan Bazar
Koti, Hyderabad – 500 095, Telangana.

.... Financial Creditor

Vs.

M/s. Sri Dakshinamurthy Agro Industries Private Limited

Regd. Office: Flat No.303, ASR & YSR Residency
Mathrusrinagar Colony
Near Mathru Srinagar Society, Miyapur
Hyderabad – 500 049

Present Communication Address:

Plot No.30, 3rd Floor, Sri Venkateshwara Residency
Mathrusri Nagar, Miyapur
Hyderabad – 500 049

... Corporate Debtor

Date of Order: 25.11.2022

Coram:

Hon'ble Dr.Venkata Rama Krishna Badarinath Nandula, Member (Judicial)
Hon'ble Shri Satya Ranjan Prasad, Member (Technical)

Counsels Present:

For the Petitioner : Mr. R.V.Subba Rao, Mr. A. Anil Kumar,
Advocates

For the Respondent : Mr. VK Sajith, Mr.V. Ravi Kumar, Mr. Arjun K.
Sujith, Advocates

Heard on: 16.11.2022

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[PER : BENCH]

ORDER

- I. This is a petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, for short 'IBC' by Union Bank of India, for short 'Petitioner/Financial Creditor', for initiation of Corporate Insolvency Resolution Process, for short 'CIRP', against M/s.Sri Dakshinamurthy Agro Industries Private Limited, for short 'Respondent/Corporate Debtor', alleging failure on the part of the Corporate Debtor in discharging the financial debt of a sum of Rs.62,50,27,204.21 (Rupees Sixty Two Crores Fifty Lakhs Twenty Seven Thousand Two Hundred Four and paise twenty one only) as on 31.12.2018.
- II. The gist of the Financial Creditor's brief is –
- i. The Financial Creditor had sanctioned Term Loan of Rs.30 crores and Open Cash Credit (OCC) Limit of Rs.12 crores vide Lr.No.1405/1/4, dated 24.06.2016 to the Corporate Debtor and loan documents executed on 29.06.2016. A copy of the Sanction Letter is filed at page nos. 59 to 66 of the application. Renewal cum Enhancement of Open Cash Credit (OCC) of Rs.35.00 crores was sanctioned on 10.11.2017. For OCC, created first Charge on entire current assets (including but not limited to) by way of Hypothecation of Inventory viz. RM, Stock in Process, Consumable Stores and spares, Finished Goods and Receivables and other current assets on 29.06.2016 and 10.11.2017. For Term Loans, created charge on Factory Land & Buildings situated in Ac.14.22 Gts. and factory building in Sy.No.111, Chilakamarri (V), P.A.Palli

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(M), Nalgonda Dist. belonging to Mr. Maligireddy Ravinder Reddy, S/o. M. Pratap Reddy, Mrs. Patlolla Aruna Reddy, W/o. P. Vijaya Mohan Reddy, Mrs. Patlolla Kavya, W/o. P. Dasharathram Reddy, Mrs. Gugulothu Maniki, W/o. Nanya & Mrs. Padmavathi Munagala W/o. M. Sudhakar Reddy (Lessors) & M/s. Sri Dakshinamurthy Agro Industries Pvt. Ltd. (Lessee), which is valued at Rs.11.25 crores and on Plant & Machinery of Rs.21.56 crores.

- ii. It is averred that OA No.418/2020 filed on 17.11.2020 before the Hon'ble DRT-I, Hyderabad u/s. 19 of the Recovery of Debts and Bankruptcy Act, 1993, in which, decree is yet to be passed by the Hon'ble Debt Recovery Tribunal in respect of the default amount. A copy of the Order is filed vide Memo dated 31.10.2022.
- iii. Documents filed alongwith the application are listed at page nos.18 to 19 of the application.

III. The Corporate Debtor filed a Counter, inter alia, contending that the debt allegedly defaulted by the Corporate Debtor is barred by limitation, as such, the application is liable to be dismissed on this ground alone. Nextly, it is contended that the Financial Creditor, vide Letter No. 12041/SDAIP/OTS/180, dated 30.07.2022 sanctioned One Time Settlement (OTS) to the Corporate Debtor as per the terms and conditions mentioned therein. A copy of the OTS Sanction Letter is reproduced hereunder:

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(A Govt. of India Undertaking)
Stressed Asset Management Branch : Hyderabad
3rd Floor, Andhra Bank Building, Sultan Bazar, Koti, Hyderabad-500095
Phone: 24683003/05/10; Email: bm1204@unionbankofindia.com

Lr.No: 12041/SDA(PI)/OTS/160 Date:30.07.2022

To

M/s Sri Dakshinamurthy Agro Industries Pvt Ltd
Plot No.30, 3rd Floor, Sri Venkateswara residency
Matrusri Nagar, Miyapur, Hyderabad-49

Dear Sir,

Sub: M/s Sri Dakshinamurthy Agro Industries Pvt Ltd - Communication of sanction of OTS.

Ref: Your letter dated 05.07.2022 requesting for sanction of OTS of your loan accounts with our branch.

With reference to the above, we hereby communicate the decision of competent authority approving OTS for an amount of Rs.56.00 Crores towards full & final settlement of your loan accounts with our branch. The OTS sanction terms & conditions are as follows:

Terms & Conditions of sanction:

- > The approved One Time Settlement (OTS) amount of Rs.56,00,00,000.00(Rupees Fifty Six Crores Only) to be paid on or before 28.02.2023.
- > Branch shall adjust the upfront amount of Rs. 5.60 crores upon conveying the OTS sanction.
- > Borrower shall pay the balance OTS amount of Rs.50.40 Cr as per the following schedule:

Date of payment	Amount
31.10.2022	10.00
30.11.2022	10.00
31.12.2022	25.00
28.02.2023	5.40
Total	50.40

- > You are advised to pay the legal charges / other expenses of Rs.14,30,965.00 over and above the OTS amount.
- > Release of primary & collateral securities will be in a phased manner on payment of respective partial OTS amount as mentioned below in the schedule of payment.
- > Release of personal guarantees of the promoters / directors / owners of collateral securities upon receipt of the entire OTS amount.

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For Sri Dakshinamurthy Agro Industries Pvt. Ltd.

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The securities shall be released after receipt of respective partial OTS amount as per the following schedule:

Sr. No.	Description of Securities	(Rs in Cr)	
		Market Value	OTS Amount
1	Factory Land & Building and Plant & Machinery on land admeasuring Ac 14.22 Gt in Sy.No.111 (Nala Obtained), Chilakamarri (V), Pedda Adiserlapally (M), Nalgonda Dist belonging to Mr. Maligreddy Ravinder Reddy (Ac. 2-20 Gt), Mrs. Patlolla Aruna Reddy (Ac. 1-14 Gt & Ac. 2-29 Gt), Mrs. Patlolla Kavya (Ac 3-39 Gt), Mrs. Gugulothu Manikl (Ac. 1-20 Gt) & Mrs. Padmavathi Munagala (Ac. 2-20 Gt) -Lessors & M/s Sri Dakshinamurthy Agro Industries Pvt Ltd-Lessee.	35.14	42.50
2	Open Land an extent of Ac.3.23 Gt in Sy.No.110/A, 110/AA, 110/E, 110/UU (Nala Obtained), Chilakamarri (V), P.A. Palli (M), Nalgonda Dist belonging to Mrs.Patlolla.Aruna Reddy	6.49	
3	Open Land an extent of Ac. 3.23 gts in Sy.No.110/U, 110/LU1, 110/EE, Chilakamarri (V), P.A. Palli (M), Nalgonda Dist. (Nala Obtained) belonging to Mrs. Patlolla.Kavya		
4	Open Land an extent of Ac.2.25 gts in Sy.No.110/EE, 110/LU2, 110/U, Chilakamarri (V), P.A. Palli (M), Nalgonda Dist. (Nala Obtained) belonging to Mrs.Gugulothu Manikl		
5	Open Land an extent of Ac.2.15 gts in Sy.No. 110/RU, Chilakamarri (V), P.A. Palli (M), Nalgonda Dist (Nala Obtained) belonging to Mrs.M.Padmavathi		
6	Open Land an extent of Ac.2.16 gts in Sy.No. 110, Chilakamarri (V), P.A. Palli (M), Nalgonda Dist. (Nala Obtained) belonging to Mr.M.Ravinder Reddy		
7	Open Land an extent of Ac.1.31 gts in Sy.No.111, Chilakamarri (V), P.A. Palli (M), Nalgonda Dist. (Nala Obtained) belonging to Mrs.G.Manikl		
8	Open Land an extent of Ac 0.33 Gutas in Sy.No. 121, Chilakamarri (V), Pedda Adisarlapally (M), Nalgonda Dist belonging to Mr.M. Ravinder Reddy, Mrs.P. Aruna Reddy, Mrs.P.Kavya, Mrs.G.Manikl & Mrs. M. Padmavathi	0.74	
9	Open Land an extent of Ac2.02 Gutas in Sy.No. 104, Chilakamarri (V), Pedda Adisarlapally (M), Nalgonda Dist belonging to Mr.M. Ravinder Reddy, Mrs.P. Aruna Reddy, Mrs.P.Kavya, Mrs.G.Manikl & Mrs. M. Padmavathi		
A	Sub-Total	42.37	42.50
10	EM of Open Plot No.33 in S No 225, Madeenaguda (V), Serilingampally (M), RR Dist belonging to Mrs.D.Aruna W/o Niranjan Reddy	1.99	13.50
11	Open Land an extent of Ac 6.01 gutas in Sy.No. 346/1, 340/1, Kondripole (v), Damarcharia (M), Nalgonda Dist. (Nala Obtained) belonging to Smt.A.Parvathi W/o	2.29	

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For Sri D. ... Agro Industries Pvt. Ltd.

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Sr. No.	Description of Securities	Market Value	OTS Amount
	A.Sharath		
12	Open Land an extent of Ac 3.39 guntas in Sy.No. 346/1, 367/4, Kondripole (V), Damarcharla (M), Nalgonda Dist. (Nala Obtained) belonging to Smt.D.Susheela W/o Hari Singh Naik		
13	Land an extent of Ac 3.00 guntas & godowns, buildings Sy.No.386/200/2, 386/2A/2, 386/2AA/2, 386/2EE/2, 381/A4/1, 381/A/1, 381/A/1/1, 381/A/2/1, 381/A/3/1, 381/E/1, 386/1/A/2, 386/1AA2, 386/1E/2, 386/1EE/2, 382A/1, 382AA/1, Tuniki (Village), Kowdipally Mandal, Medak Dist belonging to Smt P Aruna Reddy	6.87	
14	Land an extent of Ac 3.18 guntas and godowns, buildings in Sy.No.386/1, at Tuniki (Village), Kowdipally Mandal, Medak Dist belonging to Smt Kavya		
15	Open land an extent of Ac 1.05 guntas (residential) situated in Sy. No. 2, situated near Ozone heights (apartments complex), opposite Raj Puspha Enclave, Tellapur-Kollur road, Osman nager (V), Ramachandrapuram (M), Sangareddy (Dist) (formerly Medak dist) belonging to Mrs. D Aruna & Mr. D Niranjan Reddy.	16.87	
16	Land an extent of 300 Sq yards and 5 (G + 4) Storey residential building admeasuring 3919 S.ft "Hanuman Nilayam", Plot No: 14 in S No: 165 & 167, D No: 25-35/3/1/B, Road No: 01, Ramachandra Reddy Nagar, RC Puram (BHEL), Medak belonging to Mr Dokuri Niranjan Reddy	3.02	
B	Sub-Total		
	Total (A+B)	31.04	13.50
		73.41	56.00

- > Applicable Interest @ 1Y MCLR will be charged on OTS amount proposed to be paid beyond 3 months period on reducing balance.
- > All claims/Suits/ legal proceedings, if any initiated against the Bank or its officials by the borrower/guarantor/third party/legal heirs, known or unknown to the Bank must be withdrawn before implementation of OTS.
- > You are advised to pay / settle statutory dues, if any from your own sources & to deal with concerned authorities separately and also to give an undertaking to the effect that, Bank is not liable to pay any statutory dues payable to the state / central government authorities / third parties before implementation of OTS.
- > Apart from the OTS amount, you are advised to pay TDS amount @ 10% under sec 194R of IT Act 1961 on the write off amount of Rs.4,32,73,456.98 to Income Tax department and the same has to be paid before issuing No due certificate to you as per the guidelines issued by CBDT vide circular no 12/2022, dated 16.06.2022.



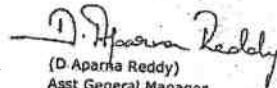
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- > Any default in payment of OTS amount within stipulated period will render the OTS as failed and all reliefs and concessions shall lapse automatically and Bank will be entitled to recover the entire dues as per documents/ prayer in the plaint, after adjusting the payment, if any, received.
- > The proposed settlement of the account will not have any bearing whatsoever on the ongoing criminal proceedings pending in the account against the party.
- > Post settlement of the loan account, criminal case will not be withdrawn by Bank. All the assistance required or called for by the investigating agency or court to take the case to its logical conclusion should be promptly adhered to by the borrower & guarantors.
- > OTS is being considered by the bank as a commercial decision and shall have no bearing whatsoever on the ongoing criminal case/investigation, if any, not known to the Bank, being carried out by the CBI/ Police and the same shall proceed as per law.
- > Application filed under IBC before NCLT, Hyderabad shall be withdrawn only after receipt of the entire OTS amount.
- > Consent terms with default clause to be filed in DRT & consent decree to be obtained. Bank will withdraw suit/ legal proceeding against the company only on receipt of full and final payment of OTS amount.

Yours sincerely,


(D Aparna Reddy)
Asst General Manager

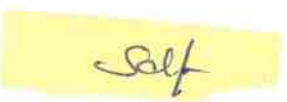


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For Sri Dakshinamurthy Agro Industries Pvt. Ltd


Director





IV. It is stated that while as per the above terms, the upfront amount of Rs.5.60 crores has been paid and the first tranche of payment of Rs.10.00 crores was due and payable by 31.10.2022. The Financial Creditor had filed the present application at this Tribunal on 21.10.2022, ordered notice to the Corporate Debtor. It is contended that as on 21.10.2022, “default”, did not take place in as much as the Corporate Debtor has time upto 31.10.2022 in terms of the OTS supra, hence in the absence of default, an application under Section 7 of the Insolvency & Bankruptcy Code, 2016 is not maintainable and is liable to be dismissed. Thus contending prayed for dismissal of the application.

V. In the above backdrop, the point that emerges for consideration by this Adjudicating Authority is –

Whether the default as alleged by the Financial Creditor has not occurred as on the date of filing the present application? If so, whether the application is sustainable under Law?

VI. We have heard Mr.R.V.Subba Rao, Learned Counsel for Financial Creditor and Mr. VK Sajith, Learned Counsel for Corporate Debtor, perused the documents and the Case Law.

VII. Admittedly, the Financial Creditor, vide Letter No.12041, dated 30.07.2022 has extended OTS to the Corporate Debtor, for a sum of Rs.56.00 crores towards full and final settlement of the amount due and payable by the Corporate Debtor, subject to the terms and conditions mentioned therein. During the course of hearing, we have ascertained

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from the Learned Counsel for Financial Creditor whether the upfront payment of Rs.5.60 crores envisaged under the OTS, has been paid by the Corporate Debtor and Learned Counsel for Financial Creditor submitted that the same has been paid.

- VIII. In the above backdrop, we have perused the record available before us, and found that the present application though presented in the Inward Section of this Tribunal on 16.03.2022. no court fee was paid until 21.10.2022 and upon payment of the Court fee, the present application was registered on 21.10.2022.
- IX. Therefore, it is quite clear that the Financial Creditor has filed this application praying for initiation of CIRP against the Corporate Debtor, alleging default on the part of the Corporate Debtor even while the Corporate Debtor has been granted time upto 31.10.2022 to pay the first tranche payment of Rs.10.00 crores. Thus, occurrence of default, which is sine quo non, for filing an application under Section 7 of IB Code has not taken place on the date when the present application has been filed.
- X. Needless to say that in terms of Section 7 (5)(b) of IB Code, if the Adjudicating Authority is satisfied that default has not occurred it may, by order reject such application.
- XI. However, during the course of hearing on 16.11.2022, Learned Counsel for the Corporate Debtor submitted that the Corporate Debtor undertakes to discharge the sum of Rs.45.00 crores by 31.12.2022 and the balance sum of Rs.5.40 crores by 28.02.2023 as per the terms of the OTS, as such,

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the Adjudicating Authority may grant time to the Corporate Debtor till 31.12.2022 for making payment. Pursuant thereto, the Learned Counsel for the Financial Creditor submitted that in the event, the Tribunal is inclined to hold that the default has not occurred by 31.10.2022 and intends to dispose of the application by granting time to the Corporate Debtor to make payment till 31.12.2022, liberty may be granted to the Financial Creditor to approach the Tribunal for revival of this application in the event the Corporate Debtor defaults in making payment by 31.12.2022.

XII. In the matter of **Vidharbha Industries Power Limited vs. Axis Bank Limited in Civil Appeal No.4633 of 2021**, Hon'ble Supreme Court of India has held that –

“79. As observed above, the financial strength and nature of business of Financial Creditors and Operational Creditors being different, as also the tenor and terms of agreements/contracts with financial creditors and operational creditors, the provisions in the IBC relating to commencement of CIRP at the behest of an Operational Creditor, whose dues are undisputed, are rigid and inflexible. If dues are admitted as against the Operational Creditor, the Corporate Debtor must pay the same. If it does not, CIRP must be commenced. In the case of a financial debt, there is a little more flexibility. The Adjudicating Authority (NCLT) has been conferred the discretion to admit the application of the Financial Creditor. If facts and circumstances so warrant, the Adjudicating Authority can keep the admission in abeyance or even reject the application. Of course, in case of rejection of an application, the Financial Creditor is not denuded of the right to apply afresh for initiation of CIRP, if its dues continue to remain unpaid”.

XIII. Therefore, denial of the leave to the Financial Creditor to apply afresh for initiation of CIRP, if dues are not paid by the Corporate Debtor tantamounts to conferring an undue advantage on a defaulter like the Corporate Debtor herein. It may be stated that OTS is a facility extended for the benefit of the Corporate Debtor and if the Corporate Debtor defaults

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in complying the terms, we cannot deny the Financial Creditor from approaching this Tribunal under Section 7 of IB Code.

- XIV. Since, we have already stated that the Learned Counsel for the Corporate Debtor has categorically undertaken before this Adjudicating Authority that the Corporate Debtor if given time till 31.12.2022 would pay the sum of Rs.4.50 crores by 31.12.2022, we record the said undertaking and dispose of the matter as follows:

The Company Petition is hereby rejected, however, in the event of default in making payment of Rs.4.50 crores by 31.12.2022 by the Corporate Debtor, liberty is granted to the Financial Creditor to apply afresh for initiation of CIRP against the Corporate Debtor as per Law.

- XV. Accordingly, the Company Petition **CP(IB) 334/7/HDB/2022 is disposed of. No costs.**

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**SATYA RANJAN PRASAD
MEMBER (TECHNICAL)**

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**Dr.N.V.RAMA KRISHNA BADARINATH
MEMBER (JUDICIAL)**