

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT- 5, MUMBAI BENCH**

C.P. No. 524/MB/I&B/2020

Under section 7 of the IBC, 2016

In the matter of

ICICI Bank Limited,

ICICI Bank Tower, Bandra-Kurla Complex,
Mumbai-400051.

....Petitioner

v/s.

Rajmangal Milk and Agro Foods Private
Limited,

A/P Hingangaon, Taluka Indapur, District
Pune-413106, Maharashtra.

....Respondent

Order Reserved on: 02.03.2022

Order pronounced on: 28.03.2022

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Petitioner : Mr. B. Gopalakrishnan a/w Mr. Nilesh Ghadge,

Mr. Ashish Dalal and Ms. Mamta Kadam, Advocates

For the Respondent: None.

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. ICICI Bank Limited (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process against Rajmangal Milk & Agro Foods Private Limited (hereinafter called the 'Corporate Debtor') on the ground that the Corporate Debtor has committed a default as on 15.02.2019 in the repayment of loan to the extent of Rs. 2,20,64,641/- including interest. This Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Petitioner Bank was incorporated under the Companies Act on 05.01.1994 having its registered office at ICICI Bank Tower, Near Chakli Circle, Old Padra Road, Vadodara- 390007, Gujarat. The Corporate Debtor is incorporated under Companies Act, having registered office at A/P Hingangaon, Taluka Indapur, District Pune-413106, Maharashtra.
3. The Petitioner has granted funding of project in pursuant of implementation of programme initiated by Government of India namely the Agricultural Commercialization and Enterprise Sanctity Programme (ACE title 3 Programme/ ACEP). The Petitioner granted Loan vide a Subsidiary Loan Agreement to Recipient Agency Agreement for ACEP dated 18.05.1998 entered between President of India through Ministry of Finance and ICICI Bank Limited. The aforesaid agreement was further extended by Government of India for a period of 10 years upto 17.05.2018 vide letter 01.09.2008.
4. The Petitioner granted a Rupee Term Loan of Rs. 4.90 Crores to the Corporate Debtor on 24.07.2017. The parties also executed an Amendatory Loan Agreement on 27.02.2018 in which they jointly agreed that the amount shall be revised to Rs. 2 Crores only.
5. Hence the amount in default as claimed in part 4 of Form 1 is as follows:

Nature of Credit facility	Principal Outstanding as on 15.11.2019 (Rs)	Normal Interest from date of default to 15.11.2019 (Rs)	Penal Interest from @15.00% on delayed payments (Rs) 15.08.2018 to 15.11.2019 (Rs)	Total Claim amount (Rs)
Term Loan	2,00,00,000	17,08,144	3,56,497	2,20,64,641
Grand Total	2,00,00,000	17,08,144	3,56,497	2,20,64,641

6. The particulars of Financial Debt are as follows:

A. Mortgage:

Corporate Debtor and its Directors vide a Memorandum of Entry for first time mortgage by deposit of title deeds dated 26.07.2017 has mortgaged and charges to the Bank in lieu of its term loan together with all interest, liquidated damages, commitment charges, premia on prepayment or on redemption, fees, costs, charges, expenses and other monies.

- a. The Properties are free from all encumbrances or charges and are not subject to any process issued by any court and borrower has not created any trust in respect of any immovable property.*
- b. Without the concurrence of the mortgagor, the borrower and/ or the lender shall be at liberty to modify the terms of the facility agreement. The lenders shall also be able at liberty to absolutely dispense with any or all of the securities furnished to secure the facility.*
- c. The mortgage security shall be enforceable against the mortgagor notwithstanding that any security or securities compromised in any instrument executed or to be executed by the borrower in*

favour of the lenders shall at the time when the proceedings are taken against the Mortgagor on the security documents, be outstanding or unrealized or lost.

d. The mortgagor agrees to give consent to the sale, mortgage on prior, pari-passu, etc of any assets by the borrower from time to time as may be approved by the lender or the transfer of any assets of the Borrower from one unit to the other.

B. Hypothecation:

Corporate Debtor vide a deed of Hypothecation dated 26.07.2017 hypothecated and charges to the Bank by way of first charge, on all borrower's movable assets, created under the Project including movable machinery, machinery spares, tools and accessories, present and future in consideration for aggregating the credit facility.

7. The Amendatory Agreement to the present agreement dated 27.02.2018 contained a repayment schedule at Schedule 2 which is as follows:

Date	Instalment	Amount (Millions)
		20.0
February 15, 2019	1.0	19.0
May 15, 2019	1.0	18.0
August 15, 2019	1.0	17.0
November 15, 2019	1.0	16.0
February 15, 2020	1.0	15.0
May 15, 2020	1.0	14.0
August 15, 2020	1.0	13.0
November 15, 2020	1.0	12.0
February 15, 2021	1.0	11.0
May 15, 2021	1.0	10.0
August 15, 2021	1.0	9.0

November 15, 2021	1.0	8.0
February 15, 2022	1.0	7.0
May 15, 2022	1.0	6.0
August 15, 2022	1.0	5.0
November 15, 2022	1.0	4.0
February 15, 2023	1.0	3.0
May 15, 2023	1.0	2.0
August 15, 2023	1.0	1.0
November 15, 2023	1.0	-

8. The Petitioner has annexed the details of Loan and the Ledger Account of Corporate Debtor from 01.08.2017 to 15.11.2019.
9. The Petitioner Bank issued a Recall Notice dated 20.08.2019 calling upon the Corporate Debtor to pay outstanding sum of Rs. 2,15,73,173/-. The Corporate Debtor defaulted in the payment of the said amount.
10. The Petitioner also enclosed the Certificate of Registration of Charges issued by ROC Pune.
11. The Corporate Debtor failed to appear and the Petitioner was directed to take out substituted service. The Petitioner carried out publication of notice in newspapers. Despite service of notice, the Corporate Debtor failed to appear before this Bench on 12.02.2020, 21.01.2021, 26.11.2021, 27.01.2022 and **therefore the Corporate Debtor is set ex-parte**. The order of the Bench is as follows:

“Counsel for the Applicant is present and mentions that the publication of notice in newspaper has been carried out and Affidavit of service has been filed. However, despite publication of

notice, the Respondent-Corporate Debtor failed to appear today.

The Corporate Debtor is set ex-parte.

List this matter for final hearing on 02.03.2022.”

Findings:

12. On perusal of documents and hearing the Counsel for the Petitioner it is established that there is a clear debt, vide Rupee Term Loan Agreement and Amendatory Loan Agreement and the record that the Corporate Debtor has failed to pay the said outstanding debt despite recall notice. Hence, the Petition deserves to be admitted.
13. On going through the submissions made by the Learned Counsel for the Petitioner and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be moved u/s 7 of the I&B Code.
14. Considering the above facts, we come to conclusion that the nature of Debt is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of ‘debt’ and ‘default’, for admission of a Petition under section 7 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation.
15. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves ‘Admission’.
16. Further that, we have also perused the Form – 2 i.e., written consent of the proposed Interim Resolution Professional submitted along with this Application/Petition by the Financial Creditor and there is nothing on

record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.

17. The Petitioner has proposed the name of Insolvency Professional. The IRP proposed by the Petitioner, Mr. Indrajit Mukherjee, having Email ID- indrajitmukherjee15@yahoo.com and having registration No. IBBI/IPA-001/IP/P-01533/2018-19/12450, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
18. 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, and 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.
19. 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.
20. That the Interim Resolution Professional shall perform the duties as assigned under Section 15 and Section 18 of the Code and inform the progress of the Resolution Process 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.
21. In view of the above, the Bench “**Allows**” the Company Petition No. 524 of 2020 u/s.7 initiating CIRP against the Corporate Debtor i.e. Rajmangal Milk and Agro Foods Private Limited. The commencement of

the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

22. Ordered Accordingly.

SD/-

ANURADHA SANJAY BHATIA

Member (Technical)

SD/-

SUCHITRA KANUPARTHI

Member (Judicial)