IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

***CP* (IB) No.117/BB/2023**
U/s. 7 of the IBC, 2016
R/w Rule 4 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

Canara Bank
Asset Recovery Management Branch, Madurai
St. Mary's Campus
Circle Office
1st Floor, East Veli Street
Madurai 625001

…Financial Creditor/Petitioner

VERSUS

M/S Shree Basaveshwara Sugars LTD
No, 6, Mallikarjun Badavane, Managuli Road,
Ganesh Nagar, Bijapur,
Karnataka

Admn Address:
274/C, Thuraiyur Main Road
Peramabur
Tamil Nadu 621212

… Respondent/Corporate Debtor

Order delivered on: 10/01/2024

Coram: Hon'ble Mr. K Biswal, Member (Judicial)
Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Smt Chithra Nirmala

For the Respondent : Ms Carol

O R D E R

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 16/05/2023, under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016, by Canara Bank, Asset Recovery and Management Branch, Madurai (for brevity 'Financial Creditors/Petitioners') *inter alia* seeking to initiate Corporate Insolvency Resolution Process in respect of M/s Shree Basaveshwara Sugars Ltd (hereinafter referred to as 'Corporate Debtor/Respondent').
2. The Corporate Debtor, namely, M/s Shree Basaveshwara Sugars Ltd is a Public Unlisted Company, incorporated on 10/01/2001 with CIN: U15421KA2001PLC028434, having its registered office at No.6 Mallikarjun Badavane, Managuli Road, Ganesh Nagar, Bijapur, Karnataka 621212 which falls within the territorial jurisdiction of this Adjudicating Authority. The Company is engaged in the business of manufacturing Sugars, Herbs, Spices, Coconut, oils, pulses, grains, and related food commodities. The Authorised Share Capital of the Respondent/Corporate Debtor is Rs.600000000/- and the Paid-Up Share Capital is Rs. 600000000/-.
3. The facts of the case are discussed below:
   i. The present Petition is filed by the Financial Creditor vide CP (IB) No. 117/BB/2023, dated 16/05/2023 against the Corporate Debtor in respect of the default amount of 1,61,55,37,601.82 (Rupees One Hundred and Sixty One Crores Fifty Five Lakhs Thirty Seven Thousand Six Hundred and One and Eighty Two Paise Only) as on 31/01/2016 as per part IV of Form No. 1.
   ii. It is submitted that Corporate Debtor had obtained Term Loan Facility vide Sanction Letter dated 29/12/2010 of Rs 50 Crores for the purpose of establishing an Integrated Sugar Mill of 3500 TCD Sugar Plant (Expandable to 5000 TCD) complex with a 50 KLPD Distillery and a 25 MW Bagasse Based Company-generation plant in Bijapur District, (Karnataka). Further, appropriate loan documents, mortgage by

deposit of title deeds was created by the Corporate Debtor and its guarantors.

iii. As the Corporate Debtor was unable to complete the project within time, it sought for restructuring of the facilities. The Financial Creditor bank considered the same and granted extension of DCCO for Sugar Mill Unit & Distillery Unit, and permitted restructuring of Term Loan I of Rs 25.74 Crores and Term Loan II of Rs 12.01 Crores vide its Sanction Letter dated 18/04/2013, bearing Ref No: SBSPL CR 2013 MSS. The OCC/ODBD limit was enhanced from 12.13 Crores to 24.26 Crores.

iv. Pursuant to the restructuring of the facilities the Corporate Debtor had executed Debt Restructuring agreements and other loan documents to support the restructuring of the credit facilities. The Corporate Debtor also executed Restructuring Agreement dated 30/04/2013 in favour of the Consortium of Lenders, apart from other documents such as joint deed of Hypothecation, Guarantee Deed etc., The restructured facilities were secured by the Personal Guarantors Shri A Srinivasan, Shri P Nelraj, Shri S.Kathiravan, Shri R.Rajasekhar by execution of Guarantee Deed and the Corporate guarantee of M/S Vasan Contractions Company Ltd.,

v. It is submitted that, on 16/09/2014 the Corporate Debtor sought for enhancement of OCC/ODBD fresh limit of Rs 21 Crores, while the total limit requested from the consortium of Rs 91.00 Crores. The same was granted by the Financial Creditor Bank vide its sanction letter dated 26/02/2015.

vi. In Part IV of Form No.1 following information is given-

'Amount claimed to be in Default' on 16/03/2023 :

S.No	Nature of facility and A/c.No	Liability with interest as on 16/03/2023	Rate of Interest (5) applicable from 17/03/2023
1	Overdraft/OCC A/c.1214261000053	66,23,63,312.24	13.3%+2% penal interest

2.	Term Loan A/c.1214747000001	5,98,70,890.10	16.65%+2% penal interest
3.	Term Loan A/c.1214766000003	61,31,57,202.24	12.90%+2% penal interest
4.	Term Loan A/C.1214766000004	28,01,46,197.24	12.90%+2% penal interest
		Total	**1,61,55,37,601.82**

Date of Default:

Account No	**Date of NPA**	**Date of default NeSL**
Overdraft/OCC A/c.1214261000053	01/05/2016	31/01/2016
Term Loan A/c.1214747000001	01/05/2016	30/06/2016
Term Loan A/c.1214766000003	01/05/2016	15/02/2016
Term Loan A/C.1214766000004	01/05/2016	15/02/2016

vii. Further, the Corporate Debtor had undertaken to make payment of its liabilities, however the Corporate Debtor failed to make payment of the same. Inspite of the Applicant Bank's continuous follow-up, the Corporate Debtor has failed to honour its liabilities, consequently the account of the Corporate Debtor was classified as a Non-performing Assets as on 01/05/2016.

viii. Subsequently, the members of the consortium of lenders had initiated Original Application before Hon'ble Debts Recovery Tribunal II at Chennai in O.A.606/2016 which passed the final Orders on 20/07/2018, directing payment of Rs 61,99,89,597/- to the Financial

Creditor Applicant Bank with interest @ 12% (simple) from the date of OA till the date of realisation. However the Corporate Debtor failed to comply with the final Order of the Hon'ble Debt Recovery Tribunal.

ix. It is submitted that, as on 16/03/2023, the Corporate Debtor is liable to make payment of an amount of Rs1,61,55,37,601.82 (Rupees One Hundred and Sixty One Crores Fifty Five Lakhs Thirty Seven Thousand Six Hundred and One and Eighty Two Paise only). The Petitioner contends that, the manufacturing unit of the Corporate Debtor is a going concern, and it has been functioning without hindrance, and has been manufacturing various products. However, in spite of the same, the present management of the Corporate Debtor has purposefully defaulted in making payment of its liabilities in spite of repeated requests.

x. Moreover, the Financial Creditor issued Demand Notice dated 22/09/2022 under Section 13(2) of the SARFEASI Act calling upon the Corporate Debtor, the Personal Guarantors and the Corporate Guarantor to make payment of the dues to the Financial Creditor Bank.

xi. Hence, this application is filed for resolution of the Corporate Debtor. It is stated that the application is made within the limitation period as is available under the Statue. The Corporate Debtor has made payments in the month of May 2018, and 'applying the extension in limitation granted by the Hon'ble Supreme Court in *In re: Cognizance for Extension of Limitation* dated 10/01/2022, the limitation period is available for filing of this application. Further, the Corporate Debtor has submitted an Offer Letter for One Time Settlement on 07/06/2022 vide reference SBSL/CB/21-22/PR/001 admitting its liability to the Financial Creditor.

5. In compliance to the Order dated 08/09/2023, Ld.Counsel for the Petitioner has filed a memo explaining the issue of Limitation, vide Diary No.4712, dated 11/09/2023, stating as under:

   i. That the Financial Creditor sanctioned Credit Facilities amounting to Rs.50.00 Crore, vide its Sanction Letter dated 29/12/2010. That as per the sanction letter "Repayment clause" the said facilities were to be repaid, "*in 32 quarterly instalments of Rs.156.25 lacs each with an initial repayment holiday of 2 years. Interest to be serviced as and when due, including the interest debited during the holiday period.*"

ii. Further, the Financial Creditor on request of the Corporate Debtor sanctioned restructuring of Credit Facilities with enhancement to Rs 62.01 Crores, vide sanction letter dated 18/04/2013 and also sanction of fresh working Capital of Rs 21.00 Crores vide sanction letter dated 26/02/2015.

iii. The cause of action arose from the earliest time when the facilities were granted on 29/12/2010, the last facilities having been granted on 26/02/2015. Though the date of default is 31/01/2016, the Corporate Debtor has credited his account with Rs 6,98,807/-, 6,00,000/-, 6,00,000/- and 6,00,000/- to the different accounts of Creditor as on 21/05/2018. Thus, by making the above credits, the Corporate Debtor has revived the limitation period under Section 19 of the Limitation Act, 1963, enabling the Financial Creditor to raise this application.

iv. It is submitted that in pursuant to the Final Order passed by the DRT, directing the Corporate Debtor to make payment of Rs.61,99,89,567/- with interest of 12% p.a, is within 3 years from the date of default and date of last credit, hence Fresh Limitation rises from the date of Final Order/Decree passed by the DRT held in *Dena Bank v. C.Shivakumar Reddy-(2021) 10 SCC 330.*

v. Further, the Balance Sheet of the Corporate Debtor, as at 31/03/2020, as per the MCA records, shows that borrowing from the Financial Creditor made within 3 years from the date of last Credit. Therefore, fresh Limitation rises from the date of admission in Balance Sheet as held in *Dena Bank v. C.Shivakumar Reddy-(2021) 10 SCC 330.*

vi. Moreover, One Time Settlement Offer submitted on 07/06/2022 by the Corporate Debtor admitting the liability, is made within 3 years of admission in the Balance Sheet as on 31/03/2020. Hence, fresh Limitation rises from the date of OTS as held in *Dena Bank v. C.Shivakumar Reddy-(2021) 10 SCC 330.*

vii. Rejection of OTS on vide letter dated 14/06/2022 by the Financial Creditor Bank is again within 3 years of admission in the Balance Sheet as on 31/03/2020.

6. The Respondents have filed the Statement of Objection vide Diary No: 6329 dated:15/12/2023 and contended as under:

   i. The Respondent approached the members of the consortium of bankers to avail credit facilities and Bank of India was the designated lead bank of the consortium. The Applicant was one of the members of the consortium. Based on the understanding between the lead bank and the consortium banks, Bank of India was transferring amount to the Applicant to the credit of Account No.1214296000001 in Perambalur branch for servicing the Respondents loan accounts with the Applicant. The documents relied on by the Applicant are intra bank transfers and the same cannot be considered as acknowledgment of liability by the Respondent for calculating fresh period of limitation as per Section 18 of the Limitation Act.

   ii. Further, that the entries of Statement of Accounts of the Applicant Bank show that they are fund transfers from Applicant Bank to another and not receipt of payment directly from the Respondent/or the lead bank on behalf of the Respondent as per the requirement under section 18 of the Limitation Act. Therefore, the payment to the Applicants A/C on 21/05/2018 by the Corporate Debtor is denied.

   iii. It is submitted that the application of the extension order of the Hon'ble Supreme Court for COVID period has been wrongly comprehended by the Applicant. The calculation of the limitation period excluding the period of 14 months as in the case of the facts herein reveals that the present filing of the Application is not within the prescribed time.

   iv. Moreover, the order of the Hon'ble Debt Recovery Tribunal Chennai dated 20/07/2018 has not been further acted upon by the Applicant, not even to the extent of applying for debt recovery certificate; and instead the Applicant has chosen to move the NCLT with the present application. The intent of the Applicant is not for Resolution but Recovery of the debt by arm twisting.

v. Further, the Applicant has erroneously taken the date of classification of the NPA to be considered as Date of Default. In view of the Legal position in *Edelweiss Asset Reconstruction Company Limited v. Perfect Engine Components Pvt. Ltd [(2022) SCC OnLine NCLAT 1622],* wherein the Hon'ble NCLAT held that the date of default cannot be strictly construed as the date of NPA.

vi. In the present case, despite the Corporate Debtor being a solvent company, the Applicant have incorrectly approached the Adjudicating Authority with the sole intention of recovering their money. The Code does not endorse the Adjudicating Authority (NCLT) to be used as a money recovery forum for the benefit of creditors. In case of *Mobilox Innovations Private Ltd v. Kirusa Software Private Limited, [(2018),* the Hon'ble Supreme Court has inter alia held that the object of the Code is not intended to be a substitute to a recovery forum and cannot be used to jeopardise the financial health of an otherwise solvent company by pushing it into insolvency.

vii. It is further submitted that the CIRP of the Respondent will impact the entire Community of workers and staff dependent on the Respondent. The Respondent is a viable company and is a going concern employing 200 number of staffs, who are being regularly paid salaries and having 500 number of workers earning their livelihood through their engagement with Respondent. If the Application is allowed, the same will cause serious harm and injury to the rights of the Respondent in law as well as the entire ecosystem dependent on the Respondent namely employees, labourers, support staff, etc.

viii. Finally, the application may be dismissed as it is barred by limitation.

7. Heard the Ld.Counsel for the Petitioner and the Respondent and perused the pleadings on record.

8. It is noticed that, the Petitioner has disclosed various dates of Default between 31/01/2016 and 30/06/2016, for different accounts in the Form 1, Part IV which is a statutory form for filing Application u/s 7. This is based on the Authenticated Record of Default (ROD) issued by NESL in Form No. D. It is further observed in the Part IV of Form No.1, that the date of NPA has been disclosed as 01/05/2016. The RBI Circulars on Prudential Norms for

classification of a Loan Account as NPA presupposes a default first. As per the RBI Circular on Prudential Norms on Income Recognition, Asset Classification and Provisioning, a loan account is declared as NPA only after the interest and/or instalment of principal amount remaining overdue for a period of more than 90 days. Therefore considering the date of Default is for first the Loan as mentioned in Part IV of Form. No.1, being 31/01/2016; the classification of the Loan a/c as NPA w.e.f 01/05/2016 is in order. The application u/s 7 is to be considered essentially on the basis of the Date of Default declared in the Part IV of Form No.1. The disclosure made in the statutory Form No.1 to be enclosed with an application has to be compulsorily relied upon for this purpose.

9. Under Section 7 of the IBC, in order to initiate CIRP, it is essential that the Applicant proves that there is a financial debt as defined under Section 5(8) of the IB Code and that a default under Section 3(12) has been committed in respect of that financial debt. In the present case the material on record clearly goes to show that Corporate Debtor had availed the loan and has committed default in repayment of the outstanding loan amount. The Corporate Debtor has neither denied the existence of debt and nor the factum of default. The OTS proposal given by the Corporate Debtor to the Applicant Bank itself proves the existence of the Debt and the Default.
10. Now the question is whether the present petition satisfies the Limitation period of 3 years from the date of default being 31/01/2016. As observed, The Applicant Bank filed O.A.606/2016 before the Debts Recovery Tribunal II at Chennai. The Hon'ble DRT passed its final Orders on 20/07/2018, enabling the Applicant Bank to recover a sum 61,99,89,597/-. As per the decision of the Hon'ble Apex Court in the case of *Dena Bank v. C. Shivakumar Reddy (2021) 10 SCC 330,* the Judgement and order/decree of the DRT gave a fresh cause of action and therefore there is an extension of 3 years (i.e, till 19/07/2021) in the limitation period.
11. Next, the Applicant has placed the Balance Sheet of the Corporate Debtor as at 31/03/2020 on record, which clearly reflects the debt of the Financial Creditor, disclosed in the Balance Sheet as on 31/01/2020. As per the decision of Hon'ble Apex Court in the case of *Dena Bank v. C. Shivakumar Reddy (2021) 10 SCC 330,* "*It is well settled that entries in books of accounts*

and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act." Therefore, limitation period is extended by a further period of 3 years from 31/03/2020.

12. Finally, it is seen from the memo filed on 11/09/2023 by the Applicant that the Corporate Debtor vide letter dated 07/06/2022 had proposed an OTS to the Financial Creditor. Therefore, as laid down by the Hon'ble Supreme Court in the case of *Dena Bank v. C. Shivakumar Reddy (2021) 10 SCC 330,* and the decision of Hon'ble NCLAT, New Delhi in *Tejas Khandhar v. Bank of Baroda in CP(AT)(Ins) No. 371 of 2020*, the OTS proposal falls within the ambit of 'acknowledgement of debt' as defined under Section 18 of the Limitation Act, 1963. Hence the limitation period stood revived from the OTS proposal. In light of the above discussion we hold that the present Company Petition filed on 16/05/2023 is within limitation. The OTS proposal further establishes the existence of the Debt and the default.
13. In the given facts and circumstances, the present petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs1,00,00,000/-, the petition is liable to be admitted in terms of Section 7 of the IBC, 2016.
14. Accordingly, the instant Company Petition bearing CP (IB) No. 117/BB/2023 is admitted and moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:
    (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
    (b) any court of law, tribunal, arbitration panel or other authority;
    (c) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
    (d) 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;

(e) the recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;

(f) it is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;

(g) the provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;

(h) the order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31, or passed an order for liquidation of Corporate Debtor under Section 33 of the IB Code, 2016 as the case may be;

1. In Part-III of Form No.1, Shri Kanekal Chandrasekhar bearing Registration No. IBBI/IPA-002/IP-N00642/2018-19/11964 has been proposed as Interim Resolution Professional (IRP). Form No.2 Written Communication by the IRP has been filed along with the C.P are found at Page Nos.859 of the Petition. In view of the above, we appoint Shri Kanekal Chandrasekhar Registration No. IBBI/IPA-002/IP-N00642/2018-19/11964, having registered address at 6, Shree, 9th Cross, Bhuvaneshwari Nagar, Hebbal Kempapura, Dsarahalli Main Road, H.A. Farm Post, Bengaluru, Karnataka 560024 as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, especially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.
2. The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
3. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the

report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

4. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

-Sd-	-Sd-
(MANOJ KUMAR DUBEY) **MEMBER (TECHNICAL)**	**(K. BISWAL)** **MEMBER (JUDICIAL)**