



S.No.2

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
24-03-2023 AT 10:30 AM

CP (IB) No. 335/7/HDB/2022
u/s. 7 of IBC, 2016

IN THE MATTER OF:

State Bank of India

...Financial Creditor

VS

M/s. G S Biotech Limited

...Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

ORDER

Orders pronounced, recorded vide separate sheets. In the result, CIRP is ordered against the Corporate Debtor as per the terms mentioned in the order.

Mr. Rajesh Chillale, Insolvency Professional is appointed as Interim Resolution Professional and moratorium declared as per Section 14 of the Code.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)



**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD
COURT No.1**

CP (IB) No.335/7/HDB/2022

U/s 7 of I&B Code, 2016 read with Rule
4 of I & B (AAA) Rules, 2016.

In the matter between:

**State Bank of India
Stressed Assets Management Branch
H. No.5-9-76, 2nd Floor
Prabhat Towers, Opp. Amaravathi LHO
Chapel Road, Gunfoundry
Hyderabad- 500001.**

Represented by S. Radhakrishna
Assistant General Manager.

**.. Petitioner
Financial Creditor**

VERSUS

**M/s G.S. Biotech Limited
Plot No.22 & 23
G.S. Estates
Adilabad – 504001.**

**.. Respondent
Corporate Debtor**

Date of order : 24th March 2023

Coram:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
HON'BLE MEMBER (JUDICIAL)**

**SHRI CHARAN SINGH
HON'BLE MEMBER (TECHNICAL)**



Parties / counsels present:

For petitioner : Shri G.P. Yash Vardhan, Advocate.

For respondent: Dr. S.V. Ramakrishna, Advocate.

ORDER

The Company Petition under section 7 of the I&B Code, 2016 is filed under Section 7 of Insolvency and Bankruptcy Code, 2016, read with Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, is preferred by State Bank of India, Hyderabad, through its Assistant General Manager, Stressed Assets Management Branch, having Authorisation Letter dated 19.10.2022 (Annexure-1, page 15), claiming a sum of **Rs.773,30,22,118.85** (Rupees seven hundred seventy three crores thirty lacs twenty two thousand one hundred eighteen and paise eighty five only) as on **30.09.2022**. The Financial Creditor seeks admission of this petition, initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

II. The respondent stood guarantor to one M/s G.S. Oils Limited, which is presently under liquidation vide order dated 12.09.2022 passed by this Tribunal in IA (IBC) No.619 of 2022 in CP (IB) No.155/9/HDB/2021.

III. The averments made in the application are:

(i) M/s G.S. Oils Limited is the principal borrower, which has availed financial assistance from the erstwhile State Bank of Hyderabad. The



respondent/ Corporate Debtor stood as Corporate Guarantor by executing Guarantee Agreement dated 10.07.2012 (ANNEXURE-3). The principal borrower/ M/s GS Oils Ltd. having availed such financial assistance had committed default due to which the loan account of M/s GS Oils Ltd was declared as Non-Performing Asset (NPA) on 11.07.2012.

(ii) Notice dated 13.09.2012 (ANNEXURE-4) under section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) has been issued by erstwhile State Bank of Hyderabad. Neither the principal borrower nor the Corporate Guarantor paid the outstanding dues compelling the Financial Creditor to file OA No.451 of 2014 before the DRT-I, Hyderabad.

(iii) The DRT vide order passed in Recovery Certificate No.451 of 2014 dated 10.01.2020 (ANNEXURE-5) has directed the principal borrower/ M/s G.S. Oils Limited and other Guarantors to pay the following amounts:

- Rs.271,79,13,974.27 towards outstanding on CC and term loan with future simple interest @ 15.20% p.a. from 08.12.2013 till the date of realisation.
- Rs.67,54,00,355/- towards outstanding under the devolved LCs with future simple interest @ 13.75% p.a. from 08.12.2013 till the date of realisation.

The Debt Recovery Tribunal, Hyderabad (DRT-1) has also issued Recovery Certificate RC-314/2020 in Case No.OA/451/2014 vide order dated **21.02.2020** (ANNEXURE-6) in favour of the Financial Creditor for



recovering an amount of **Rs.647,77,76,801.07** (Rupees six hundred and forty seven crores seventy seven lakhs seventy six thousand eight hundred one and seven paise only). The Financial Creditor has claimed date of default to be the date of Recovery Certificate issued by the DRT, viz. 21.02.2020 (Annexure-6)

IV. The respondent/ Corporate Guarantor filed COUNTER dated 07.12.2022 contending that:

(i) The Corporate Debtor contended that the Financial Creditor has already availed alternative remedy before the DRT, Hyderabad and obtained Recovery Certificate dated 21.02.2020. Now invoking provisions of section 7 of the I&B Code, 2016 by way of this petition amounts to double jeopardy or multiple jeopardy.

(ii) The phrase “when default occurred” used in sections 7, 8 and 10 is the guiding factor for Corporate Insolvency Resolution Process and shelter taken under section 238A of I&B Code is meant for lodging claims after CIRP is ordered. The Corporate Debtor wondered how can the Financial Creditor approach this Tribunal in 2022 ten years after the principal borrower/ GS Oil Ltd became NPA on 11.07.2012. The Corporate Debtor has relied section 238A of the I&B Code.

(iii) The Corporate Debtor has also relied on phrase “on the occurrence of a default” as occurring in section 8 of the I&B Code, 2016, besides similar expression occurring in sections 6, 7 and 10 of the I&B Code, 2016. By means of the above sections the Corporate Debtor contends that



proceedings under I&B Code should be made at the earliest possible occasion, not after exhausting all other remedies availed to the Financial Creditor. A conjoint reading of sections 6, 7 and 10 of the I&B Code, 2016 make clear that on occurrence of default I&B Code be invoked. It is submitted that the date of default which is different from date when account becomes NPA as per RBI Guidelines (i.e. after 90 days of default). In the present case, the date of default was 12 year old and thus, it is barred by limitation. On this ground this petition is liable to be dismissed.

(iv) Under the guise of ‘resolution process’ the Financial Creditor is tacitly trying to execute Recovery Certificate issued by the Recovery Officer, DRT, Hyderabad through this Adjudicating Authority invoking section 7 of the I&B Code, 2016. Having exhausted multiple ways to recover dues, such as, invoking provisions of RDDB Act, 1993, SARFAESI Act, 2002, filing complaints under PML Act, 2022, etc., now the Financial Creditor seeks to invoke section 7 of the I&B Code, 2016. It is serious case of misuse of law.

(v) The Financial Creditor is guilty of suppression of the following facts:

- The Financial Creditor has filed complaint before CBI, BS & FC, Bangalore vide RC No.04(E)/ 2014 dated 13.05.2014 on the subject matter of alleged NPA of the principal borrower/ company. The principal borrower was the complainant in OC No.1713 of 2022 in a case filed under PMLA, 2002 in ECIR/HYZO/ 04/2016. Joint Director, Enforcement Directorate, Hyderabad had issued Provisional Attachment Order No.09/ 2022 bearing



No.ECIR/HYZO/ 04/2016/1269 dated 25.03.2022 (ANNEXURE R-1 of this Counter)

- The Deputy Director, Directorate of Enforcement, Hyderabad has filed Original Complaint (OC) No.1713/ 2022 before the Adjudicating Authority, New Delhi under PMLA, 2002. The Adjudicating Authority vide order dated 16.09.2022 (ANNEXURE R/2 of this Counter) upheld the Provisional Attachment of various properties, which are already mortgaged with the Financial Creditor itself.
- The matter is sub-judice before the Appellate Authority, New Delhi.

(vi) It is submitted that in view of the properties being under attachment vide the orders of the Enforcement Directorate (supra) this petition has become infructuous. Even assuming that the present petition is admitted and Resolution Professional is appointed under I&B Code, 2016, he has to get the attached properties released and face the litigations pending before criminal courts and the Appellate Authority under PMLA, 2002 on going concern basis.

V. The petitioner/ Financial Creditor has filed WRITTEN SUBMISSIONS dated 20.01.2023 made submissions mainly on fresh cause of action as following:

(i) Having narrated the events of financial assistance given to the principal borrower and the failure on the part of the principal borrower and the guarantor in repayment of the dues, the Financial Creditor has



emphasised the Recovery Certificates issued by the DRT vide orders produced at Annexures 5 and 6 and fresh cause of action accrued in favour of the Financial Creditor to initiate proceedings under section 7 of the I&B Code. In this context the Financial Creditor relied on judgment dated 04.08.2021 in Civil Appeal No.1659 of 2020, rendered by the Hon'ble Supreme Court of India in Dena Bank & others Vs. C. Shiva Kumar Reddy. Para 143 of the said judgment is as under:

“143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.”

(ii) Recovery Certificate was issued on 20.02.2020 and the present petition is filed on 27.10.2022. Therefore, the present petition is within the period of limitation.

(iii) The Financial Creditor has submitted that by virtue of sanction letters, loan documents, Statement of Account and Recovery Certificates issued by the DRT, which are filed along with the present Company Petition debt and default has been established against the Corporate Debtor.



VI. The respondent/ Corporate Debtor has filed WRITTEN ARGUMENTS dated 23.01.2023 submitting that:

(i) The account of the principal borrower, viz. M/s GS Oils Ltd was declared as Non-Performing Asset (NPA) on 11.07.2012. Whereas the present petition is filed on 27.10.2022, claiming defaulted amount of **Rs.773,30,22,118.85** (Rupees seven hundred seventy three crores thirty lacs twenty two thousand one hundred eighteen and paise eighty five only). Thus, the present petition is filed 10 years after account having been declared as NPA and that default had occurred more than 10 years prior to filing of the present petition. The present petition is, therefore, time-barred.

(ii) The respondent is only a Corporate Guarantor, which has executed Guarantee Agreement dated 10.07.2012 (Annexure-3) in respect of the facilities granted to the borrower/ company, viz. M/s G.S. Oils Limited (pages 5 & 6 of Form-1).

(iii) Recovery Certificate issued by DRT in OA No.451 of 2014 is dated 21.02.2020 showing the date of default as 21.02.2020, viz. date of issuance of the said Recovery Certificate. However, occurrence of default as provided under sections 7, 8 and 10 of the I&B Code, 2016 is different than the date of Recovery Certificate for initiating Corporate Insolvency Resolution Process under section 7 of the I&B Code.

(iv) The Financial Creditor exhausted all its powers available to it, after instituting proceedings before the DRT in 2014, and sold off all the properties of the promoters, mortgaged properties of the borrower



company, field criminal case before the CBI, filed cases under the PMLA on the same subject matter against the promoters/ borrower companies and the Corporate Guarantor. At this juncture, when the respondent/ Corporate Guarantor has become a dead-company with no activity and when the whole of its assets are lying in the control of the Financial Creditor, filing of this petition under section 7 of the I&B Code is of no significance.

VII. In the light of the aforestated contentions, the *point* that emerged for our due consideration is:

Whether a *financial debt* of a sum over rupees one crore is *due and payable* by the respondent to the applicant? If so, whether the respondent has *defaulted* in repayment of the same?

VIII. We have heard Shri G.P. Yash Vardhan, learned counsel for the petitioner/ Financial Creditor and Dr. S.V. Ramakrishna, learned counsel for the respondent/ Corporate Debtor. Perused the record, case law and the written submissions filed by the parties.

POINT:

Whether a *financial debt* of a sum over rupees one crore is *due and payable* by the respondent to the applicant? If so, whether the respondent has *defaulted* in repayment of the same?

IX. Admittedly, the present application is filed on the strength of Recovery Certificate issued by the Presiding Officer, Debt Recovery Tribunal, Hyderabad (DRT-1) bearing No.RC-314/2020 in Case No.OA/451/2014 vide order dated **21.02.2020** (ANNEXURE-6),



whereunder the respondent/ Corporate Debtor among 12 others was held jointly and severally liable to pay the applicant a sum of Rs.271,79,13,974.27 being outstanding dues under CC & Term Loan facilities with future interest at the rate of 15.20% per annum simple from 18.12.2013 till the date of realisation. The respondent/ Corporate Debtor among 13 others was further held jointly and severally liable to pay the applicant a further sum of Rs.67,54,00,355/- being outstanding dues under the devolved LCs with future interest at the rate of 13.75% per annum, simple from 08.12.2013 till the ate of realisation.

X. The debt due and payable under the said Recovery Certificate has not been satisfied. The Corporate Debtor had resisted this application on the ground of limitation and also contended that the applicant is resorting to “double jeopardy” by simultaneously pursuing remedies under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act); Prevention of Money Laundering Act, 2002 as well as under I&B Code, 2016, as such the present application is not maintainable.

XI. Having regard to the facts and on perusal of the record placed before us we find that no substance whatsoever in any of the aforesaid contentions of the learned counsel for the Corporate Debtor, inasmuch as the debt claimed as due and payable under the present application is based on Recovery Certificate issued by the DRT on 21.02.2020, pursuant to allowing the recovery claim of the applicant in OA No.451 of 2014, in which proceedings the Corporate Debtor is 13th defendant. The Hon’ble Supreme Court of India, in Dena Bank & others Vs. C. Shiva Kumar Reddy held as follows:



“143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.”

XII. Therefore, a fresh period of limitation of three years from the date of issuance of Recovery Certificate has accrued to the Financial Creditor. The present application which is filed on 28.10.2022 is thus, well within the period of limitation.

XIII. Hence, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-

(A) Corporate Debtor, **M/s G.S. Biotech Limited** is admitted in Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016,

(B) The Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right



or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

(C) 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.

(D) Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

(E) 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.

(F) That the order of moratorium shall have effect from the date 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, whichever is earlier.

(G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

(H) That this Bench hereby appoints Shri **Chillale Rajesh** having Registration No.IBBI/IPA-001/IP-P00699/2017-2018/11226, as Interim Resolution Professional, whose contact details are:

e-mail ID: chillaleraajesh[at]yahoo[dot]co[dot]in

Address: B-713, Western Plaza, OU Colony, HS Darga,
Manikonda
Hyderabad, Telangana- 500104

as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

(I) Proposed IRP has filed Form-2 dated 19.10.2022. His Authorisation for Assignment is valid till 25.10.2023. This information is available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

(J) The Registry is directed to furnish certified copy of this order to the parties as per Rule 50 of the NCLT Rules, 2016.



(K) The petitioner is directed to communicate this order to the proposed Interim Resolution Professional.

XIV. Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.

XV. Accordingly, this Petition is admitted.

Sd/-
CHARAN SINGH
MEMBER (TECHNICAL)

Sd/-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)

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