IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

CP (IB) 885/MB/C-II/2019

Under section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of

The Solapur Dist. Central Co.Op Bank Limited
[RBI Licence No: RPCD(MRO)1261/18.01.038/2011-12]
207/8/9, Goldfinch Peth, Dist: Solapur
… Financial Creditor /Petitioner

Versus

Govindparva Agro Products Private Limited
[CIN: U01110PN2009PTC135159]
At Post: Rajuri Tal: Karmala, Dist: Solapur
… Corporate Debtor/Respondent

Order Delivered on 01.07.2022

Coram:

Hon'ble Member (Judicial)	:	Justice P. N. Deshmukh (Retd.)
Hon'ble Member (Technical)	:	Mr. Shyam Babu Gautam

Appearances:

For the Financial Creditor	:	Mr. Raghunath Sarangpani, PCA
For the Corporate Debtor	:	None Present.

ORDER

Per: Justice P. N. Deshmukh, Member (Judicial)

1. This Company Petition is filed under Section 7 (“hereinafter called the Petition”) of the Insolvency and Bankruptcy Code, 2016 **(IBC)** by **The Solapur Dist. Central Co. Op. Bank Limited** ("the Financial Creditor or FC"), seeking to initiate Corporate Insolvency Resolution Process

(CIRP) against **Govindparva Agro Products Private Limited** ("the Corporate Debtor or CD").

2. The Corporate Debtor is a Private Limited Company limited by shares and incorporated on 15.12.2009 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is At Post: Rajuri, Tal: Karmala, Dist: Solapur MH 413203. Therefore, this Bench has jurisdiction to deal with this petition.

3. It is the case of the Financial Creditor that the Corporate Debtor approached the Financial Creditor for credit facilities aggregating to Rs.1573.42 Lakhs for setting up of a plant for the production of jaggery.

Sanction of credit facilities with a credit limit of Rs. 1573.42 lakhs is detailed as under:

Sr. No	Date of Sanction Letter	Particulars	Amount in Lakhs	Repayment Schedule (As per latest sanction letter)	Interest and Penalty rate (As per latest sanction letter)
1.	28.05.2010	Medium Term Loan	684.49	2013-2017	Interest Rate- 12.25% p.a. Penalty- 1.50% p.a.
2.	15.03.2011	Additional Term Loan	288.93	2013-2017	Interest Rate- 12.25% p.a. Penalty- 1.50% p.a.
3.	25.01.2012	Cash Credit	600	Renewed on 11.12.2013	Interest Rate- 12.50% p.a.

					Penalty- 1.50% p.a.
		Total	1573.42		

The Outstanding amount in default of the Corporate Debtor including interest is Rs. 2416.78 Lakhs (Rupees Twenty Four Crore Sixteen Lakh Seventy Eight Thousand) as on 31.08.2018 in the repayment of the Credit Facilities and interest thereon. **(Please refer to Page No. 22 of the Application).**

Sr. No.	**Nature of Loan**	**Date of Default**	**Pg. No. In Petition**
1.	Medium Term Loan	31.05.2013	22
2.	Additional Term Loan	31.03.2014	22
3.	Pledge Loan	31.10.2014	22

4. The Financial Creditor submits that the Financial Creditor sanctioned and disbursed the credit limits sought. The Corporate Debtor defaulted in the repayment of the term loan and sought restructuring of the credit facility. The Financial Creditor vide its Board Resolution dates 27.02.2012 restructured the credit facility by extending the timeline for repayment of term loan to 31.05.2013 for first installment and the balance in four equal annual installments.

5. The Financial Creditor further submits that the Corporate Debtor further assured the Financial Creditor with respect to repayment of loan and issued three post dated cheques of Rs.75,00,000/- (Rupees Seventy-Five

Lakhs Only) each and three post-dated cheques of Rs.50,00,000/- (Rupees Fifty Lakhs Only) each, all of which were returned unpaid by its bankers with the reason 'funds insufficient'. The Financial Creditor has initiated action u/s 138 of the Negotiable Instruments Act.

6. The Financial Creditor submits that Corporate Debtor has defaulted in the repayment of the credit facilities even after the restructuring whereupon the financial creditor initiated legal action under the provisions of the Maharashtra State Cooperative Societies Act, 1912 and the SARFAESI Act, 2002.

7. The Financial Creditor has also filed a criminal complaint with Judicial Magistrate First Class, Karmala against the corporate debtor and its Directors u/s 120(b), 402 and 409 read with 34 of the Indian Penal Code for illegally disposing the Financial Creditor of the stock of jaggery powder in contravention of the terms of mortgage agreement.

8. The Financial Creditor further submits that Corporate Debtor has expressed its interest in One-Time Settlement with the Financial Creditor vide its letters dated 29.12.2016 and 07.09.2018.

9. Thereafter, on 29.07.2021, in order to place additional facts on record, the Financial Creditor filed a second Additional Affidavit annexing the following documents:

    i. Entries made in the books of the Financial Creditor maintained in the Electronic Form along with the Certificate under Section 2A(a) and the Certificates under Section 2A(b) and (c) of the Bankers Book Evidence Act, 1981.

ii. Balance Sheet of the Corporate Debtor as on 31.03.2016, 31.03.2017 and 31.03.2018 as proof of acknowledgement of debt.

iii. Letters dated 29.12.2016 and 17.09.2018 sent to the Financial Creditor by the Corporate Debtor acknowledging its debt and indicating to repay the same.

10. The Financial Creditor has attached the particulars of security held as on the date of its creation (Pg 23-24 of the Petition).

11. As regards the filing of the Additional documents before the admission of the Petition under Section 7 of the Code, 2016 is concerned, the Financial Creditor rely on the decision of the Hon'ble Supreme Court in the matter of *Dena Bank vs C. Shivakumar Reddy and Anr*. dated 04.08.2021 (Civil Appeal No. 1650 0f 2020), the relevant extract of which is reproduced here below:

"144. There is no bar in law to the amendment of pleadings in an application under Section 7 of the IBC, or to the filing of additional documents, apart from those initially filed along with application under Section 7 of the IBC in Form-1. In the absence of any express provision which either prohibits or sets a time limit for filing of additional documents, it cannot be said that the Adjudicating Authority committed any illegality or error in permitting the Appellant Bank to file additional documents. Needless however, to mention that depending on the facts and circumstances of the case, when there is inordinate delay, the Adjudicating Authority might, at its discretion, decline the request of an applicant to file additional pleadings and/or documents, and proceed to pass a final order. In our considered view, the decision of the Adjudicating Authority to entertain and/or to allow the request of the Appellant Bank for the filing of additional

documents with supporting pleadings, and to consider such documents and pleadings did not call for interference in appeal."

[Emphasis Supplied]

12. The Financial Creditor states that the Corporate Debtor had acknowledged the debt in its Balance Sheet for the years 31.03.2015, 31.03.2016, 31.03.2017, 31.03.2018.

    a. **<u>Balance Sheet for the year 31.03.2015 & 31.03.2016</u>** – The liability of the Corporate Debtor towards the Financial creditor (Rs.13,88,61,781/- & Rs.12,81,66,781 /- respectively) is reflected in the said balance sheet, under the head **"Non - Current Liabilities" at Page 18 of the Additional Affidavit.**
    b. **<u>Balance Sheet for the year 31.03.2017</u>** – The liability of the Corporate Debtor towards the Financial Creditor (Rs. 128,179,781 /-) is reflected in the said balance sheet, under the head **"Non – Current Liabilities at Page 27 of the Additional Affidavit".**
    c. **<u>Balance Sheet for the year 31.03.2018</u>** - The liability of the Corporate Debtor towards the Financial Creditor (Rs. 12,93,22,891 /-) is reflected in the said balance sheet, under the head **"Non – Current Liabilities at Page 34 of the Additional Affidavit."**

For this, reliance is placed on the decision of the Hon'ble Supreme Court in the matter of *Asset Reconstruction Company (India) Limited vs Bishal Jaiswal & Anr.* (Civil Appeal No. 323 of 2021), wherein the Hon'ble Bench held as follows:

"35. On the facts of this case, the NCLT, by its judgment dated 19.02.2020, recorded that the default in this case had been admitted by the corporate debtor, and that the signed balance sheet of the corporate debtor for the year 2016-2017 was not disputed by the corporate debtor. As a result, the NCLT held that the Section 7 application was not barred by limitation, and therefore, admitted the same. We have already set aside the majority judgment of the Full Bench of the NCLAT dated 12.03.2020, and the impugned judgment of the NCLAT dated 22.12.2020 in paragraphs 33 and 34. This appeal is, therefore, allowed, and the matter is remanded to the NCLAT to be decided in accordance with the law laid down in our judgment."

13. The Financial Creditor submits that the Petition is within the time limit provided under the residual entry 137 of the Schedule to the Limitation Act, 1963 by virtue of Sections 18 of the said Act, 1963.

14. The corporate Debtor vide its letter dated 29.12.2016 acknowledged its debt and default and further requesting for details of the loan account. (Page No. 39 to 41 of the Additional Affidavit). Also, the Corporate Debtor vide its letter dated 07.09.2018 requested the Financial Creditor to consider the proposal of One Time Settlement of dues. (Page No. 42 of the Additional Affidavit).

Section 18(1) of the Limitation Act, 1963 states as follows:

"(*1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of* *limitation shall be computed from the time when the acknowledgment was so signed*."

15. It is observed from the records that Corporate Debtor has been given multiple opportunities to appear before this Tribunal and plead his case. The corporate debtor chose not to appear and plead or file his reply on record. Therefore, the Corporate Debtor set *ex-parte* vide Order dated 20.04.2022 and the matter is taken on its merit.

16. We have heard the arguments of Financial creditor and Corporate Debtor and perused the records.

17. Upon going through the facts and submissions of Financial Creditor and upon considering the same, it is concluded that the Financial Creditor has established that the Credit facilities were sanctioned and duly disbursed to the Corporate Debtor and there has been default in repayment of Debt on the part of the Corporate Debtor.

18. Considering the above facts, we come to the 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.

19. In light of the aforesaid decision of the Hon'ble Supreme Court (Supra), it can be inferred that, it is a settled law that liabilities stated in the Balance Sheet of the Corporate Debtor amounts to an acknowledgement of debt, wherein a fresh period of limitation begins to run on each acknowledgement.

20. We have also considered the facts of the case in the lights of Judgement in the case of *Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors.* [Writ Petition (Civil) No. 99 of 2018] wherein the Hon'ble Supreme Court held that in section 7 of the Petition when the debt and default is proved the Adjudicating Authority bound to admit the Petition. Unlike section 9 where the scope to look into, disputes which is necessary to be considered before admission of the Petition. In view of the above, the facts and present Petition reveals that the Corporate Debtor has admitted the debt and the same is due and payable.

21. The Financial Creditor has proposed the name of **Mr. Vinit Gangwal,** Registration No. IBBI/IPA-002/IP-N00091/2017-2018/10235, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written consent in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.

22. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

23. It is, accordingly, hereby ordered as follows: -

   (a) The petition bearing **CP (IB) 885/MB/C-II/2019** filed by **The Solapur Dist. Central Co. Op. Bank Limited,** the Financial

Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Govindparva Agro Products Private Limited [CIN: U01110PN2009PTC135159],** the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

(i) 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;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium:

(i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

(ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) **Mr. Vinit Gangwal,** Registration No. IBBI/IPA-002/IP-N00091/2017-2018/10235, having address at 503, Varun Capital, Next to Hotel Sudama, Off. J.M. Road, Shivajinagar, Pune-411005, [email: ip.vinitgangwal@sudharman.in], is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three 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 (CoC).

(i) Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-	**Sd/-**
SHYAM BABU GAUTAM	**JUSTICE P. N. DESHMUKH**
Member (Technical)	**Member (Judicial)**

01.07.2022
SAM