

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V**

**Under Section 60(5) of Insolvency & Bankruptcy Code, 2016
R/W Rule 11 of NCLT Rules, 2016**

Interlocutory Application 2756/2021

In

Company Petition No. 1398/I&B/NCLT/MAH/2020

Dhanashri Mahila Gramin Bigar Sheti Sahakari

Patasanstha Maryadit

.... Applicant/ Petitioner

Vs.

Mr. Ritesh R.Mahajan, Resolution Professional,
Fabtech Sugar Limited

.....Respondent

In the matter of

Autade Sugar Private Limited

.... Financial Creditor/ Petitioner

Vs.

Fabtech Sugar Limited.

... Corporate Debtor

Order delivered on 20.04.2022

Coram:

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

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (T)

For the Applicant: Ms. Ayushi Patidar, Chartered Accountant

For the Respondent: Mr. Prakhar Tandon, Advocate

Per: Suchitra Kanuparthi, Member (J)

ORDER

1. This is an application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules, 2016. The Applicant is a Co-operative Credit society registered under the Maharashtra Cooperative Societies Act, 1960 having its Registration No. S.U.R./M.D.A/R.S.R.(R)1436/96 established on 26 January, 1996.
2. The Applicant had extended a Loan - Harvesting and Transportation Loan for the crushing season 2016-2017 to the tune of Rs.14,90,00,000/- (Rupees Fourteen Crores Ninety Lacs Only) in the year 2016 to the sugarcane Harvesters and Transport contractors, to which the Corporate Debtor stood as "Guarantor" and executed a Guarantee Document dated 01/04/2016.
3. Pursuant to initiation of CIRP against the Corporate Debtor, the IRP invited claims along with proof of claims through Public Announcement in Form A dated 20/05/2021.
4. In compliance of Regulation 8(1) of the IBBI (Insolvency Resolution Process for the Corporate Persons) Regulations, 2016, the Applicant had submitted its claim to the Respondent /IRP in electronic and physical form in "Form C" of the Schedule of the Regulation, along with supplementary documents in support of the claim.
5. Thereafter, the Applicant was initially admitted in the Committee of Creditors as a Financial Creditor with 4.58% of voting share against the financial debt of Rs,25,86,14,865/- (Rupees Twenty Five Crores


Eighty Six Lacs Fourteen Thousand Eight Hundred and Sixty Five Only).

6. Post Four meetings of CoC, without according any opportunity to clarify/justify, the IRP/ Respondent "Rejected" the claim of Applicant / Financial Creditor, stating that there exists no Corporate Guarantee Bond, by the Corporate Debtor on the basis of which the Applicant /Financial Creditor had filed its claim.

Finding

7. Heard the learned counsel for the Applicant and the Respondent and perused the documents. During the course of the hearing it was pointed out that the applicant had annexed only a copy of a letter issued by the Corporate Debtor, which purported to be a letter of guarantee according to the counsel for the Applicant. The letter in Marathi with the English Translation is reproduced below;

ANNEXURE P 2



फॅबटेक
शुगर लिमिटेड

राजि. ऑफिस
फॅबटेक शुगर लिमिटेड
जे-५०४, एमआयडीसी, भोसरी
पुणे - ४११ ०२६ (भारत)

बँक ऑफिस
फॅबटेक शुगर लिमिटेड
मु.पो. नंदूर (बालाजीनगर)
ता. मंगळवेढा, जि. सोलापूर ४१३ ३१९ (महाराष्ट्र)

17

Reg. NO. UI5424PN2010PTC137545

दि- १/४/२०२६

जा. क्र. फॅबटेक शुगर/शेकी/१३/२०२६-१७

प्रति,


मा व्यवस्थापक साहेब
धनश्री महिला ग्रामीण विंगरजोती
सहकारी पतसंस्था मंगळवेढा मर्या
सोलापूर जिल्हा
शिवप्रेमी चौक, दामाजी रोड,
मंगळवेढा, जि. सोलापूर

विषय:- कर्ज हमी बाबत.....


महोदय,

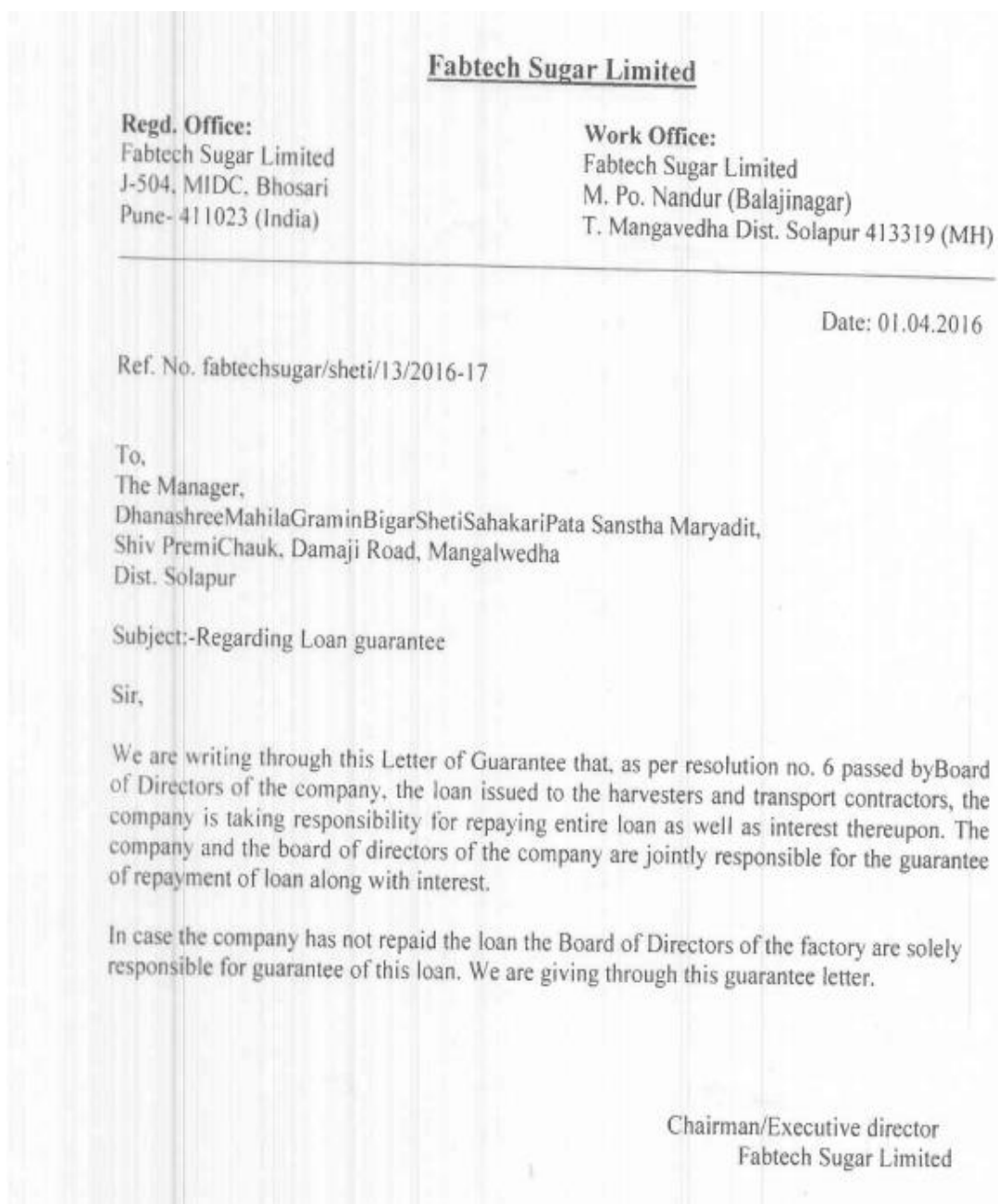
या हमीपत्राद्वारे लिहून देत आहोत की कारखान्याचे संचालक मंडळ ठराव नं. ६ नुसार तोडणी वाहतूक कंत्राटदार यांचे नावे कर्जाउ घेतलेल्या रकमेस कारखान्याच्या वतीने सर्व संचालक मंडळ याची जबाबदारी घेत आहेत तसेच आपण दिलेल्या कर्जाची व्याजासह परतफेड करणेची हमी कंपनी व कंपनीचे संचालक मंडळ संयुक्तपणे जबाबदार आहेत. सदर कर्जाची परतफेड न झालेस या कर्जास कारखाना व कारखान्याचे संचालक मंडळ सर्वस्वी जबाबदार आहेत. या कर्जाची हमी आम्ही या हमीपत्राद्वारे देत आहोत.

कळावे



राजेश्वर / कार्यकारी संचालक
फॅबटेक शुगर लि





8. The applicant had annexed claim "Form C" to support the claim of the Applicant as a Financial Creditor and has claimed an amount of Rs. 25,86,14,865/-. The Applicant has not enclosed any other documents to substantiate the debt.

9. The RP has rightly rejected the claim of the Applicant/ Financial Creditor on the basis that no Corporate Guarantee Agreement, duly executed between the Applicant and the Corporate Debtor, has been placed on record. The letter of the RP is reproduced below;

Date: 17th August, 2021

To,

Mr. Vishwanath Sukhdev Nagane

Recovery In charge

**Dhanashri Mahila Gramin Bigarsheti Sahakari Patsanstha
Mangalwedha Maryadit Solapur District**

Sub : -INTIMATION OF STATUS OF YOUR CLAIM

Ref : -CR/FC/02-06-2021/10

This is with reference to your claim submitted in respect of CIRP proceedings of M/s Fabtech Sugar Limited ('the Corporate Debtor'), under the provisions of the IBC, 2016. I have verified your claim based on the data provided by you and the last audit report of the CD available with me. **Your Claim has been rejected.** The details of the same are as mentioned below:

Claim Received	Claim Admitted	Claim Rejected	Claim under Verification								
Rs. 25,86,14,865	Nil	Rs. 25,86,14,865	Nil								
<table border="1"> <tr> <td>Outstanding</td> <td>Interest</td> </tr> <tr> <td>14,90,00,000</td> <td>10,96,14,865</td> </tr> </table>	Outstanding	Interest	14,90,00,000	10,96,14,865		<table border="1"> <tr> <td>Outstanding</td> <td>Interest</td> </tr> <tr> <td>14,90,00,000</td> <td>10,96,14,865</td> </tr> </table>	Outstanding	Interest	14,90,00,000	10,96,14,865	
Outstanding	Interest										
14,90,00,000	10,96,14,865										
Outstanding	Interest										
14,90,00,000	10,96,14,865										

Notes:

- Initially, we have admitted your claim provisionally on the basis of the Audit Report of the Corporate Debtor for FY 2019-20. Thereafter, we observed the following discrepancies in the claim documents submitted by you and other records.
- The financial records maintained by the suspended management of the CD has not been found to be reliable as they are not maintained as per Accounting Standard IND IAS 37, which in our opinion is not complied with, more particularly in accounting relating to the secured and unsecured liabilities of the CD. As per the documents submitted by you, there is no

corporate guarantee given by the CD and also there is not an iota of evidence that any property of the Company is subject to any charge or is offered as security against the claimed amounts.

3.It can be observed from the Guarantee Letter dated 01.04.2016, we have observed that Mr. Bhausaheb Ananda Rupnar is solely responsible for the said repayment and not the Corporate Debtor.

4.Apart from the above, no Corporate Guarantee Agreement, which is duly executed and stamped is on record that has been executed between Dhanashri Mahila Gramin Bigarsheti Sahakari Patsanstha Mangalwedha Maryadit Solapur District and the Corporate Debtor.

5.Also, Dhanashri Mahila Gramin Bigarsheti Sahakari Patsanstha Mangalwedha Maryadit Solapur District has never issued any notice to the Corporate Debtor. Instead, the notices are issued to Mr. Bhausaheb Ananda Rupnar and other parties.

6.Due to above stated reasons; your claim is hereby rejected.

The above information is for your record. Kindly take note of the status of your claim.

Warm Regards

Mr. Ritesh R. Mahajan
Interim Resolution Professional
IP Registration No. **IBBI/IPA-002/IP-N00048/2017-18/10132**
Fabtech Sugar Limited (Under CIRP)
Address:- **B-203, Devgiri, Ganeshmala Sinhagad Road, Pune, Maharashtra, 411030**

10. This Bench notes that the Financial debt of the Applicant is not established, in the absence of any agreements to that effect, and that the applicant has enclosed a mere letter of guarantee issued by the Corporate Debtor. Hence, it is held that the Resolution Professional has rightly rejected the claim of the Applicant herein. Hence, the Application is dismissed.

Sd/-

Anuradha Sanjay Bhatia
Member (Technical)

Sd/-

Suchitra Kanuparthi
Member (Judicial)