BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. 5

CP No. 1340/IBC/NCLT/MB/MAH/2020

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

ASREC (India) Limited
Unit No. 201, 200A, 202 & 200B, Ground Floor, Build. No. 2, Solitaire Corporate Park, Andheri (east), Andheri-Kurla Road, Mumbai – 400 059

….. Financial Creditor
(Petitioner/Applicant)

V/s

Shivaji Cane Processors Limited
Plot No. D4, MIDC Area, a/p MIDC Shirala, Tal – Shirala, Sangli – 415 408

….. Corporate Debtor
(Respondent)

Heard on: 15.01.2021
Pronounced on: 18.02.2021

Coram:
Hon'ble Smt. Suchitra Kanuparthi, Member (J)
Hon'ble Shri. Chandra Bhan Singh, Member (T)

For the Petitioner: Ms. Yashika Chhatani, Company Secretary.
For the Respondent: Mr. Avinash Khanolkar, Advocate.

Per: Suchitra Kanuparthi, Member (J)

ORDER

1. The Petitioner/Applicant viz. 'ASREC (India) Limited' (hereinafter as Financial Creditor) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "Financial Creditor" on 31.01.2019 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against 'Shivaji Cane Processors Limited' (hereinafter as 'Corporate Debtor').

2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be Rs. 19,62,72,000/-, and the amount claimed to be in default is 22,92,01,986/- including interest. The date of default is stated to be 31.01.2019. The account of the Corporate Debtor was declared as Non-Performing Asset on 31.01.2019.

BRIEF HISTORY OF THE CASE

3. The Financial Creditor is a Securitisation and Asset Reconstruction Company registered under Companies Act, 1956 and under Section 3 of Securitisation and Asset Reconstruction of Financial Assets and Enforcement of Securities Interest (SARFAESI) Act, 2002 having CIN U67100MH2003GOI143291.

4. The Corporate Debtor is a company having CIN U15421PN2010PLC136604. In September 2014 the Corporate Debtor had approached M/s. Dombivali Nagari Sahakari Bank Limited (DNSB) to take over its Term Loan from Mahindra & Mahindra Financial Services Limited and to grant additional Term Loan for expansion of jaggery and khandsari unit.

5. Pursuant to same, the Corporate Debtor submitted the loan application dated 27.09.2014 to DNSB for availing Term Loan of Rs. 29,00,00,000/-. The consortium of the bankers including DNSB vide its Sanction Letter dated 14.05.2015 sanctioned the Term Loan facility amounting to Rs. 27,37,90,000/- to the Corporate Debtor. The consortium took over Term Loan amounting to Rs. 17,15,00,000/- from Mahindra & Mahindra Financial Services Limited and sanctioned new limit amounting to Rs. 10,22,90,000/- for construction of factory building, plant & machinery. Out of total consortium term loan sanctioned, the exposure of DNSB amounted to Rs. 15,00,00,000/-. The Corporate Debtor vide its letter dated 21.05.2015 acknowledged the sanction of the Term Loan facility by DNSB.

6. The details of the term loan facility sanctioned as per Sanction Letter dated 14.05.2015 by DNSB along with the consortium lenders are as mentioned below:

Facility	Security	Review/Renewal New Limit	Amount (In Lacs)
1. Fund Based:			
Term Loan – I	Mortgage/Hypothecation of the entire fixed & moveable assets, both present and future, including land, buildings, plant and machineries, machinery spares, tools and accessories, electrical	Takeover from Mahindra & Mahindra Financial Services Limited.	1375.00
Term Loan – II			340.00
Term Loan – III		New Limit (for construction of factory building & plant & machinery)	1022.90

	installation, furniture and fixtures, and all other assets of the Company located at D-4, MIDC Shirala, Taluka – Shirala, Dist. Sangli.		
TOTAL			2737.00

7. The Corporate Debtor and DNSB executed a Composite Deed of Hypothecation dated 12.06.2015 for Term Loan amounting to Rs. 15,00,00,000/-.

Facility	Sharing Pattern		Total
	DNSB Ltd. (55%)	SDCC Bank Ltd. (45%)	(100%)
Term Loan – I	755.00	620.00	1375.00
Term Loan – II	185.00	155.00	340.00
Term Loan – III	560.00	462.90	1022.90
TOTAL	1500.00	1237.90	2737.90

8. Mahindra & Mahindra Financial Services Limited vide letter dated 14.08.2015 provided it's No Objection Certificate (NOC) to DNSB for sharing its first pari passu charge on the assets of the Corporate Debtor.

9. On 09.09.2015, the Deed of Mortgage was executed between the DNSB, Corporate Debtor and the Guarantors for Term Loan amounting to Rs. 15,00,00,000/- sanctioned by the DNSB. DNSB and the Corporate Debtor executed various documents i.e. Promissory Notes and Loan Agreements dated 29.08.2015 for the term loan facility amounting to Rs. 13,62,90,000/-.

10. The Corporate Debtor submitted a Loan Application dated 14.10.2016 to DNSB for sanction of Term Loan amounting to Rs. 18,20,00,000/- for expansion and enhancement in the Cash Credit Limit by Rs. 10,00,00,000/- against the stock of Khandsari Sugar.

11. DNSB vide its sanction letter dated 13.12.2016 sanctioned the Term Loan facility amounting to Rs. 18,20,00,000/- and Cash Credit Limit of Rs. 10,00,00,000/- under consortium arrangement with other bankers. The Corporate Debtor vide its letter dated 06.03.2017 acknowledged the sanction of the loan facility by DNSB.

12. The details of the term loan facility sanctioned as per Sanction Letter dated 13.12.2016 by DNSB along with the consortium lenders are as mentioned below:

Facility	**Security**	**Review/Renewal New Limit**	**Amount (In Lacs)**
1. Fund Based			
Working Capital			
Cash Credit Pledge Limit	Stock of Jaggery and Khandsari Sugar	Review with enhancement in limit	2000.00
Term Loans			
Term Loan I	Factory Land and Bldg.	New Limit	80.82
Term Loan II	Plant and Machinery	New Limit	519.18
TI-IPM-24	Factory land and building at Plot No. D-4, MIDC, Tal. Shirala, Dist. Sangli.	Review Existing Limit	81.74
TI-IPM-25		Review Existing Limit	240.00
TI-IPM-26		Review Existing Limit	1022.90
Total fund Based			**3944.64**

Sr. No.	**Details of Consortium Member Bank**	**Type of Loan**	**Sanctioned Amount (in Rs.)**	**Rate of Interest (in %)**	**% of Share**
1	DNS Bank – Lean Bank	Term Loan - I	80,82,000/-	12.50%	33%
		Term Loan - II	5,19,18,000/-		

2	Warana Sahakari Bank Ltd.	Term Loan – I	83,46,000/-	12.50%	34%
		Term Loan - II	5,36,54,000/-		
3	Kolhapur Urban Co-op Bank Ltd.	Term Loan – I	80,82,000/-	12.50%	33%
		Term Loan - II	5,19,18,000/-		
	Total		**18,20,00,000/-**		**100%**

13. On 17.03.2017, the Deed of Mortgage for further charge was executed between the Corporate Debtor, guarantors, DNSB and other banks under consortium for term loan amounting to Rs. 18,20,00,000/-.

14. DNSB and the Corporate Debtor executed various documents i.e. Promissory Notes, Loan Agreements and Deed of Guarantees dated 17.03.2017 for the term loan facility amounting to Rs. 6,00,00,000/-.

15. The Corporate Debtor registered the charge created and modified by DNSB with the Registrar of Companies in Form CHG-1.

16. The copy of the Statement of the Loan Account of the Corporate Debtor maintained by DNSB from 04.04.2015 to 30.09.2017 has been attached with the petition.

17. The Corporate Debtor defaulted in the payments of the loan instalments. Hence the loan account of the Corporate Debtor was declared as Non- Performing Asset (NPA) on 31.01.2019 by DNSB and other consortium banks.

18. DNSB then issued a Demand Notice dated 16.08.2019 on behalf of all consortium lenders under Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor demanding outstanding dues of Rs. 34,24,12,695/- as on 31.07.2019 along with further interest from 01.08.2019 and the cost of other incidental expenses.

19. The details of the outstanding dues demanded by DNSB and other consortium lenders in notice dated 16.08.2019 are as mentioned below:

(A) DOMBIVALI NAGARI SAHAKARI BANK LIMITED

Sr. No.	Nature of Facility (Loan Account Number)	Principal Outstanding	Interest & Other Charges Outstanding	Total Outstanding
1	058401100046549	5,21,78,272.00	84,24,592.00	6,06,02,864.00
2	058402600046702	1,25,00,000.00	22,50,268.00	1,47,50,268.00
3	058402600046703	9,61,59,354.00	1,68,83,625.00	11,30,43,006.00
4	058402600046704	80,82,000.00	12,93,090.00	93,75,090.00
	TOTAL	**16,89,19,626.00**	**2,88,51,602.00**	**19,77,71,228.00**

(B) THE KOLHAPUR URBAN CO-OP BANK LIMITED

Sr. No.	Nature of Facility (Loan Account Number)	Principal Outstanding	Interest & Other Charges Outstanding	Total Outstanding
1	60/04/201	5,19,17,435.00	95,61,599.00	6,14,79,034.00
2	50/08/1346	80,81,507.00	14,83,702.00	95,65,209.00
	TOTAL	**5,99,98,942.00**	**1,10,45,301.00**	**7,10,44,243.00**

(C) THE WARANA SAHAKARI BANK LIMITED

Sr. No.	Nature of Facility (Loan Account Number)	Principal Outstanding	Interest & Other Charges Outstanding	Total Outstanding
1	326/41012	5,72,64,440.00	64,10,329.00	6,36,74,769.00
2	316/42184	89,52,353.00	9,70,102.00	99,22,455.00
	TOTAL	**6,62,19,793.00**	**73,80,431.00**	**7,35,97,224.00**

	Grand Total (A+B+C)	**29,51,35,361.00**	**4,72,77,334.00**	**34,24,12,695.00**

20. Thereafter, DNSB assigned the loans of the Corporate Debtor to ASREC (India) Limited, the Financial Creditor vide Assignment Agreement dated 05.11.2019.

21. The Financial Creditor then vide letter dated 05.11.2019 intimated the Corporate Debtor and the Guarantors that the debt of Corporate Debtor has been assigned by DNSB to the Financial Creditor. Mr. Abhijit Naide, Director of the Corporate Debtor acknowledged the receipt of the said letter on 06.11.2019.

22. The Corporate Debtor vide its letter dated 07.11.2019 intimated the Financial Creditor that they are interested in the settlement of the loan account and will approach the Financial Creditor with One Time Settlement (OTS) proposal.

23. The Financial Creditor, on various occasions, approached the Corporate Debtor to submit their OTS proposal whereas the Corporate Debtor failed to submit the same.

24. Thereafter, the Financial Creditor issued notice dated 02.01.2020 to the demanding the dues amounting to Rs. 20,16,26,034/- as on 14.10.2019 along with further interest @13.50% with quarterly rest within 15 days of the said notice. The Financial Creditor further mentioned that in case of default in the payment of the outstanding dues by the Corporate Debtor, the Financial Creditor will file petition against the Corporate Debtor before the Hon’ble NCLT as per the provisions of IBC, 2016. Mr. Abhijit Naide, Director of the Corporate Debtor acknowledged the receipt of the said letter on 03.01.2020.

25. The statement of the dues of the Corporate Debtor in the records of the Financial Creditor as on 15.09.2020 has been attached with the petition.

26. The total outstanding against Corporate Debtor includes principal amount of Rs. 20,16,26,034/- plus interest of Rs. 2,75,75,952/- making in total to Rs. 22,92,01,986/-.

SUBMISSIONS BY THE CORPORATE DEBTOR:

27. The Financial Creditor filed a reply to the petition and submits that the Corporate Debtor admits the debt, as claimed, which is due and payable by the Corporate Debtor to the Financial Creditor.

28. The Financial Creditor is an assignee of the loan which was originally sanctioned and disbursed by DNSB.

29. Due to compelling circumstances the Corporate Debtor was not in position to make timely repayments to the DNSB on 31.01.2019 itself.

30. The said assignment agreement had been entered between the Financial Creditor and DNSB on 05.11.2019. Since, the loan of the DNSB got assigned to the Financial Creditor, who is an Asset Reconstruction Company, the Corporate Debtor approached the Financial Creditor for restructuring of the loan and settlement of the loan account immediately after the knowledge of the assignment. For the said purpose the Corporate Debtor has contacted with one investor also who would infuse the funds.

31. However, the said investor took a back and hence, the settlement with the Financial Creditor could not take place. Consequentially, the Financial Creditor initiated this action against the Corporate Debtor.

32. It may not be out of place to mention that the Corporate Debtor is engaged in the business of production and manufacturing of jaggery powder from sugarcane processing.

33. The Corporate Debtor describes the events as follows:

a. On 16.08.2011 the Corporate Debtor got possession of the land bearing Plot No. D-4, MIDC, Shirala in Sangli district admeasuring 81590 sq. mts.
b. The Corporate Debtor then approached M/s Mahindra and Mahindra Financial Services Limited (MMFSL), a Financial Institution, to provide financial assistance of setting up the jaggery project at the project site.
c. The MMFSL being satisfied with their due diligent and project appraisal, sanctioned a term loan of Rs. 16 crores vide its sanction letter bearing no. SME/VSS/SCPL-01/12-13 dated 08.05.2012 for a tenure of 60 months with a moratorium of 12 months.
d. On 19.06.2013 the Corporate Debtor got license to manufacture khandsari sugar from Sugar Commissionerate, Pune.
e. Since, the business being expanded the Corporate Debtor applied for an additional loan amounting to Rs. 3.75 crores for installation of the required machinery. The same was sanctioned by them vide sanction letter dated 10.10.2013.
f. After the disbursement received from the MMFSL the project was completed on 25.02.2014 which is within the one year of the first disbursement and within the moratorium period.
g. Usually, the crushing season of sugar plants are from November-March and since the unit was commissioned at the end of the crushing season, the company could only crush 5000 metric tonnes of sugarcane in season 2013-2014.
h. Further, the Corporate Debtor again felt necessity of financial assistance before the next season of 2015-2016 and hence, the Corporate Debtor approached Dena Bank for HNT loan of Rs. 6 crores and Bank of India for Rs. 5.50 crores. The same got sanctioned and disbursed the said Banks.
i. Since, the Corporate Debtor got the necessary financial assistance which was required during the crushing season, the Corporate Debtor was able to crush 1,00,005 metric tonnes sugarcane.

j. It may not be out of place to mention that the year 2014-2015 was not a good period for other sugar factories as the market rates of sugar were very low and there was over production. But since the Corporate Debtor was into manufacturing of jaggery powder and khandsari sugar which was supplied to very selective and value-added customers only, the Corporate Debtor could book net profit of Rs. 21,31,226/-.

k. Since, the Corporate Debtor was financially sound it was regular in paying all its dues and there were no defaults.

l. The Corporate Debtor had good orders in hand especially from bulk purchasers and corporates, there was need of further loan to expand its unit and fulfil the requirement of its clients. Hence, the Corporate Debtor availed loan of Rs. 15 crores from DNSB in August, 2015. The said Credit Facilities were sanctioned by DNSB in following manner:

   - The amount of Rs. 3.40 crores were against taking over of the outstanding total loan of MMFSL which was financed for khandsari unit.
   - Further an amount of Rs. 1.37 crores was against taking over of the part loan of MMFSL which was financed for jaggery unit.
   - Further an amount of Rs. 10.23 crores for expansion of the project from 500 tons of cane per day to 1000 tons of cane per day capacity.

m. The Credit Facilities disbursed by the MMFSL were taken over by the DNSB, the Corporate Debtor received a no due certificate from MMFSL on 30.09.2015 vide ref. SME/VSS/SCPL-02/13-14 in respect of the loan of Rs. 3.75 crores and subsequently, the Corporate Debtor had filed e-form CHG-4 with Registrar of Companies on 23.10.2015 vide SRN No. C67612507 for release of charge of MMFSL.

n. After the disbursement by the DNSB, the work of expansion of the unit and crushing of sugarcane was started simultaneously in the month of October, 2015.

o. The Corporate Debtor in the year 2015-2016 could crush 1,20,835 metric tonnes sugarcane and booked a net profit of Rs. 87,60,808/-

p. Till the F.Y. 2015-2016 also the Corporate Debtor was regular in payment of all the dues to all the banks and financial institutions.

q. Further, on 17.03.2016 the DNSB took over the part loan of MMFSL towards jaggery unit amounting to Rs. 68,25,867/- which was on the proportionate basis.

r. The Corporate Debtor thereafter on 31.01.2016 voluntarily made an additional payment of Rs. 12,62,438/- to MMFSL, so that the account of the Corporate Debtor be maintained regular in the MMFSL's books of accounts.

s. Even after the expansion of crushing capacity of the unit to 100 TCD, due to the shorter and late supply of sugarcane during the season of 2016-17, on account of draught, it was obvious that the unit could not able to achieve even the break-even capacity in 2016-17 and carter to the obligations of the banks and financial institutions.

t. In order to make sure that the Corporate Debtor is able to achieve breakeven, it was necessary for the Corporate Debtor to increase the plant capacity from 1000 TCD to 1750 TCD so that it could crush the required amount of sugarcane in the shortest period and achieve breakeven.

u. The Corporate Debtor discussed the issue with the MMFSL, but they were not keen to extend further facilities and therefore the Corporate Debtor approached other financial institutions for availing additional loan to increase the capacity of the plant from 1000 TCD to 1750 TCD.

v. The Corporate Debtor approached some banks on April, 2016 for the same, but the applications were rejected by banks and other financial institutions stating that the account was sub-standard as reported by MMFSL to CIBIL and therefore no loans could be granted.

w. This was a surprise for the Corporate Debtor as they had not only paid all the dues of MMFSL on time but also had made some additional payments in March, 2016, as stated herein above, to keep the account regular.

x. Then the Corporate Debtor immediately took a report from the CIBIL and found that the loan account, which was already taken over by the DNSB way back in September, 2015, stated as sub-standard by MMFSL to CIBIL.

y. This has affected the credit rating of the Corporate Debtor and its Guarantors.

z. The Corporate Debtor was shocked to see the CIBIL report as after receiving no due certificate from MMFSL and after filing release of charge in Form CHG-4 with Registrar of Companies how could MMFSL report to CIBIL the account being sub-standard when it was already closed.

aa. In and around 2nd week of April, 2016, the Corporate Debtor approached MMFSL regarding the above matter and they agreed that it is their mistake and promised to get the same rectified. MMFSL realising that there had been a mistake at their end, immediately issued an apology letter dated 31.03.2016 stating that due to their system issues, it has been wrongly intimated to CIBIL about the account being in default and promised that the same will be rectified in next reporting cycle. They further agreed to extend all help to the Corporate Debtor in availing additional finance as required by it.

bb. The Corporate Debtor trusting MMSFL requested the other banks and financial institutions to process their loan. Based on the apology letter received from MMFSL, the State Bank of India and IDBI Bank started processing the loan but made it clear that the loan would be sanctioned only after the CIBIL report in cleared.

cc. In the mean while with the available funds the Corporate Debtor started work for the expansion of the unit from 1000 TCD to 1750 TCD and for this the Corporate Debtor gave work orders in May-June 2016 and also started civil and fabrication work.

dd. Till July 2016 end there was no update to CIBIL reports and hence, the Corporate Debtor started following up with MMFSL regarding the regularisation of the account with CIBIL and the officials of MMFSL kept promising that it will get done in a few days and kept on postponing the matter and in that manner almost 3 months passed.

ee. Meantime the season of crushing was about to start from November and MMFSL did not rectify the report even after many follows ups and this led Corporate Debtor into financial crunch, since no bank or financial institution were ready to finance till the report was rectified.

ff. As the Corporate Debtor was on verge of losing the season as no financial institutions was ready to finance and this would have put all the loans of the Corporate Debtor into jeopardy, the Corporate Debtor had no option then to borrow monies from market/money lenders at very high interest rate and complete the expansion.

gg. The Corporate Debtor started its crushing season in month of December 2016 and season ended abruptly in January 2017 due to lack of sugarcane because of draught. The Corporate Debtor lost almost 2 months to start the crushing season as the Corporate Debtor was not able to avail any finance and on top of that all the funds of the Corporate Debtor were utilised on enhancing the plant machinery.

hh. The Corporate Debtor could have crushed approximately 1,70,000 metric tonnes of sugarcane, if proper and timely financing was made available and MMSFL had done its rectification in April 2016 itself. In this scenario the unit would had worked for almost 100 days with 1750 TCD and could achieved breakeven as was envisaged. However, due to circumstances as mentioned herein above, the Corporate Debtor could achieve crushing of only 69,000 metric tonnes during this season of 2016-2017, and consequentially the Corporate Debtor booked a loss of Rs. 5.58 crores against the earlier profits it was making.

ii. Even after the losses it made, the Corporate Debtor still tried and made a payment of Rs. 4.00 crores towards principal and interest to MMFSL from period December 2016 to January 2017 as it did not want to default any of the dues.

jj. However, the Corporate Debtor started making heavy losses as the loans taken from market/private money lenders were at a very high interest rate and also no liquidity was left with the Corporate Debtor.

kk. Further, the Corporate Debtor during the season of 2017-2018 achieved 95,000 metric tonnes crushing. This was because due to liquidity crisis the Corporate Debtor was not able to engage HNT labour required to maintain the supply of sugarcane to the plant. And consequentially the Corporate Debtor booked a loss of Rs. 5.73 crores for F.Y. 2017-2018.

ll. The Corporate Debtor has a capacity of 1750 TCD per day and at this capacity if the Corporate Debtor operates the plant for a full season it can make an operating profit of Rs. 8 to 9 crores before interest and depreciation.

mm. If the situation could improve as afore-stated in (ll) the same would be sufficient to meet the interest liability of all the banks and financial institutions and all the accounts could become regular by December 2019.

nn. However, the situation could not improve and the banks and Financial institutions have already declared all accounts of the Corporate Debtor as NPA.

34. Due to above mentioned facts and circumstances the Corporate Debtor is having huge financial crunches and therefore it is unable to survive with liquidity.

35. It is stated and submitted by the Corporate Debtor, that if the Corporate Insolvency Resolution process is initiated against the Corporate Debtor then it may give a new life to the Corporate Debtor and to the individuals who are directly or indirectly dependent over the Corporate Debtor’s business.

FINDINGS

36. In September, 2014 the Corporate Debtor was sanctioned a term loan by Mahindra & Mahindra Financial Services Limited for expansion of jaggery and Khandsari Unit. The said loan was taken over by M/s. Dombivali Nagari Sahakari Bank Limited (DNSB). The DNSB Bank Ltd. vide its sanctioned letter on 14.05.2015 sanctioned a term loan facility amounting to Rs.27,37,90,000/-. The consortium of banks including DNSB took over the loan of Rs. 17,15,00,000/- from Mahindra & Mahindra Financial Services Limited and sanctioned a new limit amounting to Rs. 10,22,90,000/- for construction of factory, building, plant and machinery out of the total consortium loan, the exposure of DNSB bank amounting to Rs. 15 crores. The Corporate Debtor vide its letter 25.05.2015 acknowledge the term loan facility to DNSB. The Corporate Debtor further, submitted a loan application dated 14.10.2016 to DNSB for sanction of term loan amounting to Rs. 18,20,00,000/- for expansion and enhancement of in cash and credit limit by Rs. 10 crores against the stock of Khandsari Sugar. The DNSB bank sanctioned the term loan facility amounting to Rs. 18,20,00,000/- and cash and credit facility to Rs. 10 crores under the consortium arrangement with other bankers on 13.12.2016. The Corporate Debtor on 06.03.2017 acknowledged the sanction of loan granted by DNSB bank.

On17.03.2017, a deed of mortgage was executed by Corporate Debtor in favour of DNSB Bank. The Corporate Debtor registered the charge with the Register of Companies.

37. The Corporate Debtor defaulted in payment of loan instalments and the loan was declared NPA on31.01.2019 by DNSB and other consortium banks the DNSB bank initiated the SARFAESI proceedings.

38. The DNSB bank assigned it loan to the petitioner vide assignment agreement dated 05.11.2019. The Corporate Debtor was informed regarding the assignment of debt, the petitioner also issued notices demanding the dues on 02.01.2020 to the Corporate Debtor.

39. The Corporate Debtor admitted that they were not in a position to make the payment to the DNSB due to compelling circumstances. The Corporate Debtor also explained in its reply the series of events after taking over of the possession of the MIDC land and the fact that it was financially sound and was regular in servicing the loans. The Corporate Debtor in the year 2015-16 could crush 1,20,00,835/- metric tons of sugar canes and the net profit of Rs. 87,60,808/- in the year 2016-17 on account of drought the unit could not achieved the break-even capacity. The Corporate Debtor then required the additional funds and hence approached the Mahindra & Mahindra Financial Services Limited and also to the other banks and the application were rejected by the banks as Mahindra & Mahindra Financial Services Limited had reported to CIBIL that the accounts were substandard thereafter the DNSB bank took over the loan from Mahindra & Mahindra Financial Services Limited. Mahindra & Mahindra Financial Services Limited realise their mistake and reported to CIBIL that due to their system issues, it has been wrongly intimated to CIBIL that the account was in default. Till 2016 July the CIBIL reports were not updated and it is to be the financial crunch no banks were ready to finance the Corporate Debtor till the report was rectified. The

Corporate Debtor in the crushing season in the month of December, 2016 started its business but however the season abruptly ended in January, 2017 due to lack of sugarcane, due to the drought and consequentially the Corporate Debtor booked the loss of Rs. 5.58 crores. The Corporate Debtor during the season of 2017 achieved the 95000 metric tons of crushing. Due to liquidity crises the Corporate Debtor could not engage the HNT labour required to maintain the supply of sugarcane plant and consequentially the Corporate Debtor again booked the loss of 5.73 crores in the financial year 2017-18.

40. At para 15 admitted that if the CIRP process is initiated against the Corporate Debtor then it may give a new life to the Corporate Debtor and the individuals who are directly or indirectly dependant over the business of the Corporate Debtor.

41. It is considered that the total amount of Debt granted to the Corporate Debtor is stated to be Rs. 19,62,72,000/-. The amount claimed to be in default is 22,92,01,986/- including interest. The date of default is stated to be 31.01.2019.

42. Considering the above facts, this bench is of the considered 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.

43. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent 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**'.

44. In view of the aforesaid observation and findings, this Bench is of the considered opinion that there is a debt, acknowledgement by the Corporate Debtor and default and there is a clear admission of debt with the specific averment in the reply that the initiation of the CIRP against the Corporate Debtor may give a new life to the Corporate Debtor. Hence, the ingredients of Section 7 are satisfied and this is a fit case for admission.

45. 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.

46. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Ritesh R. Mahajn, having registration No. IBBI/IPA-002/IP-N00048/2017-18/10132, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

47. 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.

48. 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.

49. That the Interim Resolution Professional shall perform the duties as assigned under Section 18and Section 15 of the Code and inform the progress of the Resolution Plan 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.

50. The Petition is hereby **"Admitted"**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

51. Ordered Accordingly.

Sd/-	**Sd/-**
Chandra Bhan Singh	**Suchitra Kanuparthi**
Member (Technical)	**Member (Judicial)**