



**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
COURT-V, MUMBAI BENCH**

**C.P.(IB) /747/MB/2021**

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of **Netafim Agricultural Financing Agency Private Limited** having its registered office at The Affaires, Premises No. 1602 and 1603, Plot No. 9, Sector 17, palm beach Road, Sanpada, Navi Mumbai, Thane, MH 400705.

**.....Financial Creditor/Petitioner**

V/s

**Lokmangal Agro Industries Limited**, having its registered office at Lokmangal House, 8536, A/11, Murarji Peth , Old Poona Naka, Solapur, Maharashtra: 413001

**.....Corporate Debtor/Respondent**

**Order Reserved on:17.10.2022**

**Order Pronounced on:15.11.2022**



**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

*Appearances (via video conferencing)*

**For the Petitioner:** Mr. Sameer Walimbe, Advocate

**For the Respondent:** None Appeared

**Per:** *Smt. Anuradha Sanjay Bhatia, Member (Technical)*

**ORDER**

1. The above Company Petition is filed by **Netafim Agricultural Financing Agency Private Limited**, (hereinafter called as "**Petitioner**") seeking to initiate of Corporate Insolvency Resolution Process (**CIRP**) against **Lokmangal Agro Industries Limited**, (hereinafter called as "**Corporate Debtor**") by invoking the provisions of Section 7 Insolvency and Bankruptcy Code (hereinafter called "**Code**" read with rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 1,48,64,339/-
2. The Petitioner is a non-banking finance company conceived with the core objective of offering various customized financial solutions to borrowers and various stakeholders in the value chain of Micro Irrigation and agricultural related activities. The Petitioner was incorporated in August, 2011 and was granted license during March, 2013 by the Reserve Bank of India as a non-deposit taking NBFC. The Corporate Debtor is engaged



in the production of sugar from sugarcane crops grown by the registered farmers in its command area.

**3. Submissions of the Petitioner:**

- a. The Petitioner submits that, the Corporate Debtor entered into a Tripartite Agreement along with Netafim Irrigation India Private Limited and Petitioner on 25.09.2014 and 30.07.2015 respectively. As per the general arrangements and terms and conditions, the Corporate Debtor's responsibility included recommending farmers having requirement to install the Micro Irrigation System in their farms. Furthermore, the Corporate Debtor's responsibility also included deducting the principal and interest outstanding of the farmer-borrower from the farmer-borrower's sugarcane sale proceed and to pay the same to the Petitioner.
- b. Thereafter, the Corporate Debtor entered into a continuing Deed of Guarantee dated 25.09.2014 and 30.07.2015, guaranteeing the Petitioner to repay the amount due from the recommended farmer-borrowers who have defaulted.
- c. The Petitioner further states that, the Corporator Debtor recommended the names of farmer-borrowers for sanction of loan for installation of Micro Irrigation Systems. On the basis of the Deed of Guarantee entered with the Corporate Debtor, the Petitioner transferred the amount from loan account of the farmer-borrowers in favour of Netafim Irrigation India Private Limited. The loan is back-ended. The Petitioner as matter of practice, sent a monthly



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Management Information System reports as Written Certificate to the Corporate Debtor thereby providing the outstanding repayment status and defaulting borrowers along with their outstanding dues.

- d. Further the Petitioner states that, as on 30.06.2021, 64 farmer-borrowers are in default and have an outstanding due of Rs.1,48,64,339/-. Therefore, the Petitioner invoked the guarantee for repayment of then entire outstanding amount of Rs. 1,39,85,930/- vide the Legal Notice - Invocation of Guarantee dated 25.02.2021 within 7 days from the date of receipt of the notice. The notice was received by the Corporate Debtor on 01.03.2021, however the Corporate Debtor has not paid any amount till date and thus defaulted.
  - e. The Petitioner had sent a reminder vide an email dated 14.07.2021 to the Corporate Debtor. However, the Corporate Debtor still failed to repay the outstanding dues.
  - f. The Petitioner states that thereafter the Corporate Debtor through its Advocate, replied on 25.06.2021 disowning the entire liability.
  - g. It appears that the Corporate Debtor is unable to pay its debts towards the Financial Creditors and hence this Petition.
4. Since the Corporate Debtor failed to appear before this Hon'ble Tribunal even after the Service of Notice, he was set Ex-parte vide order dated 12.08.2022. This matter was listed finally for arguments on 17.10.2022. The Counsel of the Petitioner appeared however, none appeared for the Corporate Debtor.



5. Heard the Counsel for the Petitioner and after perusing the material available on record, it is observed that the Corporate Debtor has replied to the Legal Notice - Invocation of the Guarantee issued by the Petitioner, opposing the contentions of the Petitioner. The Corporate Debtor has replied to the legal notice stating that the Petitioner was responsible for recovering the defaulted amount from the farmers and was being extremely negligent in processing the loan documents, conducting the KYC checks and also securing the loan tendered to the farmer borrowers.
6. However, in the Tri-Partite Agreement dated 25.09.2014 between the Petitioner, the Corporate Debtor and Netafim Irrigation (India) Private Limited, the relevant clauses shows the liability of the Corporate Debtor which are extracted for a ready reference:

***(IV) WARRANTIES BY THE FARMERS TO BE ASSUMED BY SUGAR FACTORY BY A SEPARATE UNDERTAKING:***

***Clause 1:*** *Sugar Factory shall obtain from all the Farmers all documents as deemed necessary for obtaining the Subsidy Amount from the State Agricultural Department of Government of Maharashtra along with relevant undertakings and documents as deemed necessary for receiving the subsidy credit by NAFA from State Agriculture Department of Government of Maharashtra.*



**Clause 8:** *The Sugar Factory shall provide an undertaking to NAFA to recover from the farmers, the outstanding loan amount as per the terms and conditions as stated in **ANNEXURE V** and pay principal amount plus interest (Outstanding amount) till the closure of loans from the proceeds payable to the farmers after purchasing the sugar cane from them. Notwithstanding, anything contained herewith , in case of any default from the Farmers, in supplying sugarcane to the Sugar Factory shall pay Principal amount plus accrued interest (outstanding amount) as per the terms of the Credit Arrangement Letter, till the closure of such loans including the penal charges (for the delayed period, to be recovered from the farmer).*

**ANNEXURE-V**

**Clause 10:** *Conducting Proper due-diligence on the background of the interested farmer- borrowers/ customer before recommendation per the provision of this tri-party agreement.*

In accordance with the above-mentioned Tripartite Agreement clauses, Annexure -V and Deed Of Guarantee annexed to the Company Petition, the Corporate Debtor has admitted the liability and further



has accepted to pay the amount along with its interest in case of the default by the farmer borrowers.

7. Considering the above facts, we come to 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. Since the Corporate Debtor did not choose to appear, the debt of the Financial Creditor remains unchallenged. Besides, the Company Petition is well within the period of limitation. The Petitioners have also suggested the name of proposed Interim Resolution Professional in Part-3 of the Petition along with his consent letter in Form-2.
8. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Corporate Debtor 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**’ by passing the following:
9. Accordingly, the above Petition is **admitted** by passing the following:

**ORDER**

- a. The above Company Petition No. (IB) /747/ (MB)/2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Lokmangal Agro Industries Limited**.
- b. The Petitioner has proposed the name of **Mr. Ajay Ganesh Marathe** Insolvency Professional, Registration No: IBBI/IPA/001/IP-PO1262/2018-2019/12170 residing Flat no: 205, Sudama Yash, Chittarajan Das Road, Next to Ramkrishna Hotel, Dombivili (East),



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Maharashtra 421201 as the Interim Resolution Professional Insolvency Professional. The IRP proposed by the Petitioner, is hereby appointed as Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee.
- d. That this 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 the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. 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.



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- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement 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, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P.(IB)/747/MB/2021 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**SD/-**

**ANURADHA SANJAY BHATIA**  
**MEMBER (TECHNICAL)**

**SD/-**

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**