

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP/IB/61/CHE/2022

*(filed 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 **GONLU AGRO PRIVATE LIMITED***

DBS BANK INDIA LIMITED

806, ANNA SALAI,
CHENNAI- 600 002.

... Financial Creditor

-Vs-

GONLU AGRO PRIVATE LIMITED

Having Registered Office at:
No. 1B & 1C, Sivanandham Apartments,
4th Floor, 4A, East Park Road,
Pulla Avenue, Shenoy Nagar,
Chennai, Tami Nadu- 600 030

...Corporate Debtor

*Order Pronounced on **30th May 2022***

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Financial Creditor : Kumarpal R Chopra, Advocate

*For Corporate Debtor : Dhanisha Giri
for Anant Merathia, Advocate*

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

This Application has been filed by one **DBS Bank India
Private Limited** (hereinafter referred to as 'Financial Creditor') on

07.04.2022 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **GONLU AGRO PRIVATE LIMITED** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that the Financial Creditor is a Bank. Further, Part-I lays down the Authorized Representative of the Financial Creditor to be one Mr.Pankaj Maroo, Vice President of the Financial Creditor to submit his Application on their behalf and the verifying Affidavit to that effect is placed as Page Nos.518-519 of the Application typeset.

3. Part II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a Private limited Company incorporated under the Companies Act, 1956 on 17.04.2013 with CIN: U15500TN2013PTC090649 and the registered office of the Corporate Debtor as per the Application is stated to be No 1B & 1C, Sivanandham Apartments, 4th Floor, 4A, East Park Road, Pulla Avenue, Shenoy Nagar, Chennai, Tamil Nadu, Pin-600 030.

4. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Mr. Lalit Kumar Dangi, Reg. No. IBBI/IPA-001/IP-P-01821/2019-2020/12859; to act as the IRP.

5. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a sum of Rs. 20,00,89,611.34/- (Rupees. Twenty Crore Eighty Nine Thousand Six Hundred Eleven and Thirty Four Paise) as on 29.12.2021 along with the applicable interest, till the realization of the debt amount claimed. Further, the date of default in the Application is stated to be 28.05.2021 and the Loan Account of the Corporate Debtor was declared NPA on 27.08.2021.

6. Part-V of the Application places on record the following documents to prove the existence of financial debt:-

- a. Annexure E (Colly.) are the Sanction Letters.
- b. Annexure F is the Facility Agreement dated 25th May 2017.
- c. Annexure G is the Sanction letter dated 28th October 2020.
- d. Annexure H is the Facility Agreement dated 28 October 2020.
- e. Annexure I is the Bank Statements evidencing the loan availed by the Corporate Debtor.
- f. Annexure J is the Bank Statements evidencing the GECF Facility availed by the Corporate Debtor.
- g. Annexure K is the workings for computation of amount and days of default.
- h. Annexure L (Colly.) are the copies of the above-mentioned documents inter alia, creating security in favour of the Financial Creditor with regard to

the working capital facility via execution of Facility Agreement dated 25th May 2017.

- i. Annexure M (Colly) are the copies of the above-mentioned documents inter alia, creating security in favour of the Financial Creditor with regard to the GECL Facility via execution of Facility Agreement dated 28th October 2020.
- j. Annexure N (Colly.) are the copies of the above-mentioned documents inter alia, Registration of Charge issued by the Registrar of Companies.
- k. Annexure O is the Record of Default with the Information Utility.
- l. Annexure P (Colly.) are copies of entries in a Bankers Book in accordance with the Bankers Book of Evidence Act, 1891 (18 of 1891) along with Bank statements.

7. It is averred in the Application that the Financial Creditor originally granted credit facilities to the Corporate Debtor to the tune of Rs.20,00,00,000/- (Rs. Twenty Crore) and USD 1,40,000 vide sanction letter dated 23.05.2017 and the same were renewed vide letters dated 08.10.2018, 14.08.2019, 05.08.20120.

8. The Ld. Counsel for the Financial Creditor submitted that pursuant to the Credit facilities extended to the Corporate Debtor, a facility Agreement dated 25.05.2017 was executed between the Financial Creditor and the Corporate Debtor and the same was amended from time to time. The said facility agreement is placed as Annexure F of the Application typeset.

9. Further, the Ld. Counsel submitted that the Financial Creditor issued fresh Guarantee Emergency Credit Facility (GECL) to the

Corporate Debtor to the tune of Rs. 3,50,00,000/- (Rupees Three Crore Fifty Lakhs) vide sanction letter dated 28.10.2020 and the same is placed as Annexure G of the Application typeset. Further the GECL Facility Agreement executed between the Financial Creditor and the Corporate Debtor is placed as Annexure H of the Application Typeset.

10. The Ld. Counsel for the Financial Creditor submitted that the Corporate Debtor defaulted in the repayment of loans availed by the Corporate Debtor irrespective of the remainders sent by the Corporate Debtor. Subsequently, owing to the non-repayment of loans availed by the Corporate Debtor, the Corporate Debtor was classified as an NPA on 27.08.2021. Further, Ld. Counsel for the Financial Creditor submitted that the record of default from the Information Utility Form-C as on 30.09.2021 has been placed at page 512-515 of the Application typeset.

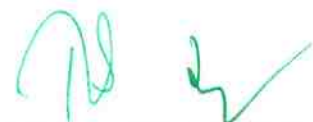
11. It is averred in the Application that the outstanding dues as on 29.12. 2021 to be paid by the Corporate Debtor amounts to Rs. 20,00,89,611.34 (Rupees. Twenty Crore Eighty Nine Thousand Six Hundred and Eleven and Thirty Four Paise) and no efforts have been made by the Corporate Debtor to repay the said amount irrespective of constant remainders from the Financial Creditor.

Thus the Ld. Counsel for the Financial Creditor submitted that they are left with no option rather than approaching this Tribunal with this present Application.

12. The Respondent/ Corporate Debtor have filed the counter/Reply statement in this matter.

13. The Ld. Counsel for the Corporate Debtor appeared and submitted that the date of default mentioned in the present Application viz., 28.05.2021 which has been wrongly construed by the Financial Creditor without any valid grounds. Further, the Ld. Counsel submitted that despite the COVID-19 lockdown, the Corporate Debtor has made payment towards interest due and payable till 01.08.2021.

14. Heard the submissions made by the Learned Counsel for both the parties and perused the records including the pleadings placed on record. From the records it is seen that the Applicant had placed the record of default, the Information Utility Form-C as on 30.09.2021 and the same is annexed as pages 512-515 of the Application typeset. Further, during the hearing, Learned Counsel for the Corporate Debtor had admitted the debt default.



15. During the course of arguments, the Respondent / Corporate Debtor submitted that the Resolution Plan in respect of one Corporate Debtor viz. M/s. Capricon Foods Private Limited is pending before the CoC and the said Capricon Foods Private Limited is part of the group Company of the Respondent / Corporate Debtor. Further, it was submitted that the Respondent being an MSME unit is also participating in the Resolution process as a Resolution Applicant apart from being the borrower Corporate Debtor. However, the Counsel for the Respondent admits that the debt herein are totally independent of that of Capricon Foods Private Limited in IBA/386/2020 and hence the ground raised by the Respondent Counsel, regarding pending Resolution Plan before the CoC in IBA/386/2020 as a ground for deferring the case is hereby rejected.

16. It is significant to point out here that the Hon'ble Supreme Court in the case of **Innoventive Industries Limited v. ICICI Bank Limited**, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section

7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

17. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the

'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor, which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

18. As a consequence of the Application being admitted in terms of Section 7 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in

any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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 or a similar grant or right during moratorium period;

19. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

- (b) a surety in a contract of guarantee to a corporate debtor.

20. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

21. The Financial Creditor has proposed the name Mr. Lalit Kumar Dangi as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till 28.12.2022. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of

the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

22. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

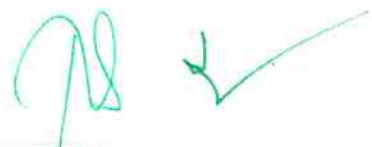
23. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016 and file his report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

24. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and

cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

25. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

26. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.



27. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

28. Post this CP/IB/61/CHE/2022 for hearing on **18.07.2022**.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)


-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

Vinita Varshini