

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH : C-1 (Special Bench)

IA-224/2022

in

C.P.(IB)-35(BB)/2021

Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016.

Application moved by:

IFCI Ltd.

...Applicant

Vs.

1. Kondisetty Kumar Dushyantha
2. Shri Siddeshwar Souharda Sahakari
Niyamit Cooperative Bank
3. The Karnataka State Cooperative
Apex Bank Ltd.
4. The Bagalkot District Central
Cooperative Bank Ltd.
5. The South Canara District Central
Cooperative Bank Ltd.
6. Bilagi Sugar Mill Ltd.
7. Jawahar Vasantrao Hunagund
8. Veerendra Sivanagouda Patil
9. Shivangouda Thimmamgouda Patil

...Respondents

In the matter of

**Shri Siddeshwar Souhard Sahakari Niyamit
Co-operative Bank**

...Financial Creditor

Vs.

Manali Sugars Ltd.

...Corporate Debtor



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Order Pronounced on : 18.10.2022

Coram:

Shri Kishore Vemulapalli : Hon'ble Member (Judicial)
Shri Satya Ranjan Prasad : Hon'ble Member (Technical)

Appearances:

For the Applicant : Mr. Sreenath, Advocate
For the Respondent-1 : Mr. Anant Merathia, Advocate.
Mr. K. Dushyantha Kumar, Applicant/RP
in person

ORDER

1. This is an Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 filed by a Financial Creditor viz. IFCI Ltd. who is aggrieved by the decision of the Resolution Professional (RP) to consider the Respondents 2 to 5 as Secured Financial Creditors instead of treating as Unsecured Financial Creditors.
2. The Applicant herein states that it has provided a secured loan of Rs.7,24,86,000/- (Seven crore twenty-four lakh eighty-six thousand only) to the Corporate Debtor; Manali Sugars Ltd. vide Sanction Letter dated 14.08.2012 creating *pari-pasu* first charge on its fixed and movable assets. The Corporate Debtor executed Deed of Hypothecation on 12.08.2013 in favour of the Applicant herein creating charge in respect of movable assets of the Company to secure the Loan. The Corporate Debtor also executed Declaration and Undertakings on 12.08.2013. The loan of Rs. 7,24,86,000/-



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was disbursed on 12.08.2013. The charge was registered before the Registrar of Companies, Bangalore. The Clause 5(ix) of the Tripartite Agreement dated 15.03.2013 specifically provides as:

"The Borrower shall not without the prior written approval of the Central Government/IFCI sell, dispose, transfer, lease, remove, pull down or demolish Land, Buildings, Structures of Plant and Machinery, etc. and charge, encumber or alienate such Land, Buildings, Structures, Machinery, etc. In case of breach of the above terms and conditions, the Borrower will be treated as 'defaulter' and the Central Government/IFCI will be entitled to initiate such legal action against the Borrower including enforcing the securities created/executed in terms of this agreement."

3. The Applicant further states that as the Corporate Debtor defaulted in repayment, the Applicant issued a Loan Recall Notice on 14.02.2019. As the Corporate Debtor failed to comply with the demand, the Applicant filed an Application before the Debts Recovery Tribunal-2 at Bengaluru on 18.06.2019, which is pending for adjudication. Meantime, the Corporate Debtor got admitted into CIRP vide an order dated 22.03.2021 of this Tribunal and IRP was appointed. IRP constituted CoC and the first meeting was held on 22.04.2021.
4. During the fifth meeting of the CoC held on 17.09.2021, the Applicant and IREDA had raised queries as to whether in absence of NoC from prior secured lenders for creation of any secured charge, subsequent registered charge was valid, and RP assured that status on NoC from all prior charge holders for secured lenders shall be received and details of the same shall be shared with CoC in due course. Subsequently thereto, the RP vide e-mail dated 18.11.2021 confirmed the Applicant that Corporate Debtor has registered charges on the assets of the Corporate Debtor subsequent to



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execution of documents with the Applicant and also confirmed that Corporate Debtor has no NoC from existing charge holders.

5. The Applicant further submits that despite the fact that subsequent charges created by the Corporate Debtor was without obtaining NoC from the existing charge holders; the Applicant and IREDA, RP categorized the subsequent charge holders as Secured Creditors, on which basis the Resolution Applicant submitted the Resolution Plan and during seventh CoC meeting held on 20.04.2022 the said Plan was approved.
6. In view of the above, the Applicant requests the Adjudicating Authority to declare the Respondents 2-5 are unsecured financial creditors and direct the Respondents 6&7 to submit revised resolution plan re-allocating the amount approved for the secured and unsecured Financial Creditors.
7. In reply to the above, the Respondent-1 submits that the charges in question have been registered as per the MCA records between 2014 and 2020, while the Applicant's charge was created on 15.03.2013. Further submits that as per Section 80 of the Companies Act, 2013 the notice is deemed to have been provided and it was up to the Applicant to check with the appropriate authority rather than jeopardising the interest of the larger stakeholders. The Applicant approached this Tribunal at the last minute although multiple opportunities were available to the Applicant. He further submits that the present Application will hinder the approval of the resolution plan of the Corporate Debtor and further cause delay in the implementation of the resolution plan.



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8. This bench observes that the Applicant's claim is valid as the agreement was executed well before the creation of second charge. Here, the Corporate Debtor violated the terms of agreement thereby Respondents 2-5 became victims. At the same time, as stated by the Respondent-1, the Applicant should have been taken appropriate legal step well in advance as the second creation of charge began since 2014 and as per Section 80 of the Companies Act, 2013, notice is deemed to have been provided to the Applicant. At present, the Corporate Debtor is under CIRP and the Resolution Plan is approved by CoC except the aggrieved members. At this juncture, it is critical for the Adjudicating Authority to adjudicate with full fairness to the Applicant as well the Respondents. However, considering the grievance of the Applicant and the interest of other stakeholders, the bench hereby orders to restructure the secured Financial Creditors into two categories as below:

Sr. No.	Secured Financial Creditor	Admitted Claims	Proposed Pay Out
I.	Category-A (40%)		
1.	Indian Renewable Energy Development Agency Limited	39,73,69,685	15,89,47,874
2.	IFCI Limited - Sugar Development Fund	10,90,98,789	4,36,39,515.6
II.	Category-B (25.35%)		
1.	The Karnataka State Co-operative Apex Bank Limited	40,05,82,551	10,15,51,682.5
2.	The Bagalkot Dist. Central Cooperative Bank Limited	39,24,95,000	9,95,01,407.45
3.	The South Canara District Central Co-operative Bank Ltd	34,37,29,950	8,71,38,979.62
4.	Shree Siddeshwar Souharda Sahakari Niyamit	44,62,80,350	11,31,37,659.5
	TOTAL	2,08,95,56,325	60,39,17,119




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9. Accordingly, the above structure of the secured Financial Creditors will be reflected in the Resolution Plan.
10. With the above directions, the IA-224/2022 is partly **allowed** and **disposed** of.


SATYA RANJAN PRASAD
MEMBER (TECHNICAL)

pvs/18.10.2022


KISHORE VEMULAPALLI
MEMBER (JUDICIAL)