

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

**C.P. 02 OF 2022**

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*

**RBL Bank Limited**

One World Center, Tower 2B, 20<sup>th</sup> Floor, 841,  
Senapati Bapat Marg, Lower Parel, Mumbai – 400  
013

**..... Financial Creditor**

V/s

**Geeta Refinery Private Limited**

**[U51410MH1998PTC116338]**

Gut No. 175, Rammurthi Village, Mantha Road,  
Jalna- 431 203

**.....Corporate Debtor**

**Order reserved on: 09.01.2023**

**Order Pronounced on: 03.03.2023**

**Coram:**

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

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

*Appearances (via videoconference)*

**For the Petitioner:** Adv. Nishit Dhruva a/w Adv Meghna Arvind

**For the Corporate Debtor/ Respondent:** Adv. Aniruth Purusothaman

*Per: Shri Kuldip Kumar Kareer, Member (Judicial)*

## ORDER

1. The above Company Petition is filed by RBL Bank Limited, hereinafter called as “**Petitioner**” seeking to initiate of Corporate Insolvency Resolution Process (“**CIRP**”) Geeta Refinery Private 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. 2,31,89,322/-.

## Facts of the case

2. The Petitioner submits that vide a Sanction Letter dated 16.03.2016 and addendum dated 23.03.2016, it had provided a credit facility for an amount of Rs. 8,00,00,000/- in relation to the scheme of financing the Agro Processing unit/aggregators namely, Tanmay Trading Company, a proprietorship represented by its proprietor Mr. Vijay Prahlad Bhandarge, Mantya Trading Company, Gauri Trading Company and Sandeep Traders (“**Aggregators/Borrowers**”), of the Respondent. The said facility was guaranteed by the Respondent along with one Mr. Atul Omprakash Mantri, vide Deed of Guarantee dated 21.03.2016. The said facility vide Sanction Letter dated 10.03.2017 and addendum dated 20.03.2017 was enhanced, modified and converted into a bill discounting facility aggregating to Rs. 10,00,00,000/-. The facility was guaranteed by a Supplemental Deed of Guarantee dated 23.03.2017. Upon request of the borrowers, the Petitioner agreed to grant a Bill Discounting Facility in favour of the former for an amount of Rs. 2,25,00,000/- (“**Credit Facility**”). The same was acknowledged by one of the Borrower and the Corporate Debtor, vide letter of acknowledgement dated 31.08.2018. in addition to that the borrower had also executed a Demand Promissory Note and Letter of continuity for the same dated 31.08.2018. In view of execution of the above documents, the Petitioner disbursed the loans on 10.02.2020.

Thereafter, the Borrower had requested for rescheduling of payment vide letter dated 05.08.2020. Resultantly, the Petitioner rescheduled payment of principal and interest under the working capital facility to 01.09.2020. The Borrower failed to repay the bill discounting facility. Accordingly, the account of the Borrower was classified as Non-Performing Asset (“**NPA**”) with effect from 30.11.2020. Thereafter the Respondent vide its letter dated 23.02.2021 proposed a restructuring plan for the outstanding facilities and admitted its liability to repay the debt. The Petitioner vide loan recall and invocation of guarantee notice dated 17.08.2021, called upon the Respondent to repay the outstanding loan amount of Rs. 2,28,47,252/- which the Respondent has failed to repay. Hence the Petition.

### **Reply by the Respondent**

3. The Respondent has filed a reply controverting the allegations made in the Petition.
4. The Respondent submits that the Petition is not maintainable due to the fact that the Petitioner classified the account of the Respondent as NPA with effect from 30.11.2020. Thus, the date of default falls within period excluded by Section 10A of the Code and the Petition is barred under the said Section.
5. The Respondent submits that the Documents relied upon by the Petitioner are insufficiently stamped and, thus, no reliance can be placed upon the same.
6. The Respondent submits that the Borrower vide letter dated 05.08.2020 had sought a deferment/re-scheduling of repayment of debt amount under credit facilities. The same was acknowledged by the Petitioner vide its letter dated 28.08.2020. The said deferment/re-scheduling of the repayment of the debt was not intimated to the Respondent. Since the Petitioner had not taken any consent from the Respondent, Section 135

of the Indian Contract Act, 1872 applies in the present case, and therefore, the surety (i.e. the Respondent) is discharged from obligations as a surety.

7. The Respondent submits that the Petitioner has levied an unjustified and heavy interest which is impermissible as under the Usurious Interest Act, 1918.

### **Rejoinder by the Petitioner**

8. The Petitioner has filed a rejoinder addressing the contentions raised by the Respondent.
9. The Petitioner submits that the date of default does not fall within the Section 10A period. Since the date on which the guarantor is called upon to make payment ought to be considered as the date of default and, therefore, the date of default in respect of the Corporate Debtor is 31.08.2021 which cannot be said to be within the Section 10A period.
10. The Petitioner submits that the Respondent had proposed a restructuring plan for repayment of outstanding debt vide letter dated 23.02.2021 and thereby admitted its liability to pay the debt. The said restructuring proposal was not acceptable to the Petitioner and, therefore, a Loan Recall Notice dated 17.08.2021 was issued by the Petitioner recalling the loan facilities. Moreover, the Respondent in Deed of Guarantee consented to the Petitioner to make any variance/change/modification in the terms of the facility. Apart from that, the Respondent has also waived off its rights available to it as surety under Section 135 of the Contracts Act. In addition to this, the Petitioner has also stated that providing a moratorium/reschedule does not discharge the Surety from its obligations.

## **FINDINGS**

11. We have heard the counsels for the parties and gone through the records.
  
12. During the course of the arguments, it has been contended by the counsel for the Petitioner that it has been established from the record that the Corporate Debtor stood as the Guarantor along with Mr. Atul Omprakash Mantri vide the Guarantee Deed dated 21.03.2016 as well as the Supplemental Guarantee Deed dated 23.03.2017 for the principal borrower i.e. Tanmay Trading Company. The principal borrower failed to repay the loan amount as per the repayment schedule. The counsel for the Financial Creditor has further pointed out that vide letter dated 5th August 2020 the borrower requested for rescheduling of the payment under the credit facility availed and the Financial Creditor vide the letter dated 28th August 2020 (Exhibit U) allowed the request and rescheduled the payment as a result of which the payment became due w.e.f. 1st September 2020 instead of 31<sup>st</sup> August 2020. It is further been pointed out that as the payment was not made, the account of the borrower was classified as NPA on 30.11.2020.
  
13. The counsel for the Petitioner has further argued that vide letter dated 23rd February 2021 (Exhibit V), the Corporate Debtor proposed the restructuring plan for the outstanding facilities. However, the said request was not acceded to and recall cum guarantee invocation notice dated 17th August 2021 was issued whereby the Corporate Debtor was called upon to pay an outstanding amount of Rs. 2,28,47,252. According to counsel for the Petitioner, this is a clear-cut case of debt and default and, therefore, the instant Petition under Section 7 deserves to be admitted.

14. On the other hand, the counsel for the Corporate Debtor has raised defence that the present petition is barred under section 10A of the Code. In this regard, it has been argued that admittedly the loan account was classified as NPA on 30th November 2020. Normally the account is declared NPA after a period of 90 days from when it becomes irregular. Therefore, the default, if any, took place either in August 2020 or in November 2020. In either of the case, the default period is covered under Section 10A of the Code and on this short ground alone, the Petition deserves to be dismissed.

15. It has also been argued that since the terms of the loan facilities originally granted to the principal borrower were varied/ modified as admitted in part IV of the petition itself, the liability of the Corporate Guarantor stands unextinguished in the light of the provisions of section 135 of the Contract Act as the Corporate Debtor was never a party to this said modification of the terms and conditions of the Contract / Loan Agreement. Apart from this, it has also been argued that the present petition has not been filed by duly authorised person and, therefore, merits dismissal on the ground as well.

16. We have thoughtfully considered the contentions raised by the parties and have also perused the records.

17. So far as the contentions raised on behalf of the Corporate Debtor with regard to the fact that the petition is barred under section 10A of the Code is concerned, it is not disputed that the loan account of the Principal Borrower was declared NPA on 30.11.2020 which is apparently covered under the period excluded under section 10A of the Code. However, the present Petition has not been filed against the principal borrower. In order to determine as to whether the date of default on the part of the Corporate Debtor/ Corporate Guarantor is also the same as that of the principal borrower, we have to see the terms and conditions of the guarantee Deed. A perusal of the Deed of Guarantee dated

21.03.2016 reveals that Clause 2 of the Deed provides that the amount hereby guaranteed shall be due and payable by the guarantors jointly and severally to the bank two days after the demand and without demur merely upon **the bank sending to the guarantors a demand notice requiring payment of the amount.** Clause 2 further says that the guarantors agreed that they will not require any further proof of these facts from the bank and will pay the amount demanded forthwith **on receipt of the demand notice.**

18. From the above quoted clause of the Guarantee Deed, it is evident that so far as the liability of the Corporate Guarantor is concerned, the same was to come into being as and when the notice was served to it as per the Clause 2 of the Guarantee Deed and not before that. As per the record, the recall notice was served upon the guarantor / Corporate Debtor on 17.08.2021 whereby the latter was called upon to pay the outstanding amount within seven days from the date of receipt of the notice, as stated in Para 10 of the notice. Therefore, so far as the Corporate Guarantor is concerned, the default would be deemed to have been occurred on lapse of seven days from the receipt of the notice dated 17.08.2021. It, therefore, cannot be said by any stretch of imagination that the date of default applicable to the principal borrower would also be the date of default in respect of the Corporate Guarantor. The matter would have been different had there been no clause in the Guarantee Deed requiring the financial creditor to invoke the guarantee by giving the demand notice. As a result, the contention that the petition is barred under section 10A is liable to be repelled.

19. As far as the contentions raised by the counsel for the Corporate Debtor that his liabilities have been extinguished in the light of the section 135 of the Contract Act is concerned, it would again be worthwhile to refer to the Guarantee Deed wherein clause 12 specifically provides that notwithstanding any variation made in the terms and conditions of the Facility Agreement and /or any of the said security documents including

reallocation, interchange of the individual limits within the guaranteed sum, guarantor shall be deemed to have become liable hereunder as a result of the said variations or composition of the arrangement. Further Clause 17 of the Guarantee Deed further provides that the guarantors do hereby waive all the rights available to the sureties under Sections 133,134, 135, 139 and 141 of the Contract Act. In the light of the fact that the Corporate Debtor had already waived its rights under section 135 of the Contract Act in the Guarantee Deed itself, it cannot be heard harping that due to any variations of the agreement with the principle borrower, its liability has come to an end or stands extinguished.

20. As regards the objection raised by the Corporate Debtor with regard to the provisions of Usurious Interest Act, 1918, the same is not relevant as this Adjudicating Authority is not a forum for recovery.

21. So far as the objection with regard to the documents not been sufficiently stamped, it is notable that the question of insufficiently stamped documents is not relevant while adjudicating upon the admissibility of a Petition under Section 7 of the code. This position is also settled in **SpiceJet Limited v/s Credit Suisse AG 2022 SCC OnLine Mad 112**, wherein the Hon'ble Madras High Court has held as under:

*“... the point at issue is not whether the document sought to be relied by the petitioner is sufficiently stamped or stamped at all. The only point to be verified is whether the debt is bonafide disputed and whether the said defence is a substantial one. Applying this test, keeping in view the binding decision in this regard, which is referred to by the Company Court in the impugned order, independent of the satisfaction recorded by the Company Court, we also hold that such a defence can not be said to be a bonafide defence and at the stage of admission of the petition, it need not be gone into. This argument therefore needs to be rejected.”*

22. As a result of the above discussion, we are of the considered view that the Petitioner has been able to make out a good case that there has been a financial debt and default and the present Petition has been filed within a period of limitation. Therefore, the Petition deserves to be **admitted**. It is ordered accordingly in the following terms:

### **ORDER**

- a. The above Company Petition No. 02 OF 2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Ms Geeta Refinery Private Limited**
- b. The Petitioner has proposed the name of Insolvency Professional. The IRP proposed by the Petitioner, **Mr. Hari Kishan Bhoklay**, having Address 905 E, Raheja Residency, Off General A. K. Vaidya Marg, Malad (East), Mumbai – 400 097 and having registration No. IBBI/IPA-003/IP-N00228/2019-2020/12696, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner 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 till his fee is decided by CoC.
- 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.
- 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) NO. 02 OF 2022 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/-**

**Kuldip Kumar Kareer**  
**Member (Judicial)**