



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

CP (IB) No. 382/MB/2022

*[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:

ABHYUDAYA COOPERATIVE BANK LIMITED

[MSCS/CR/249/2007]

Registered Office: 36/2512

Abhyudaya Nagar, G.D. Ambekar Marg

Mumbai — 400033, Maharashtra.

...Financial Creditor

V/s

NIRMANGOLD PLASTTECH PRIVATE LIMITED

[CIN: U25199MH2013PTC242846]

Registered Office: Gut No. 17, Sultanpur Shivar

Near Jikthan Phata, Gangapur, Nagar Road

Aurangabad-431133, Maharashtra.

...Corporate Debtor

Pronounced: 05.06.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Hearing: Hybrid

Appearances:

Financial Creditor: Adv. Madhur Rai a/w Adv. Yogesh Mishra i/b. PRS Legal

Corporate Debtor: Adv. Manoj Mishra

**ORDER****[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]****1. BACKGROUND**

1.1 This Company Petition bearing C.P. (IB) No. 382/MB/2022 (Application) was filed on 09.09.2021 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AA Rules) by Abhyudaya Cooperative Bank Limited, the Financial Creditor (FC), through Mr. Rajendra S Gurav, Manager of the FC, authorised *vide* Board Resolution dated 28.07.2021, for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Nirmangold Plasttech Private Limited, the Corporate Debtor (CD).

1.2 The total amount of default alleged is Rs.14,03,75,530.25/- (Fourteen Crore Three Lakh Seventy-Five Thousand Five Hundred Thirty Rupees and Twenty-Five Paise) including the principal amount of Rs. 10,89,25,619.66/- along with the interest of Rs. 52,85,022/- compounded at monthly rests at the rate of 13.5 per cent. per annum; the unapplied interest of Rs. 2,60,60,707.59/-, calculated up to 31.07.2021; and the unapplied charges of Rs. 1,04,181/-. It is based on default in repayment of the loan / cash credit facilities sanctioned by the FC in favour of the CD.

1.3 The date of default as mentioned in Part IV of the Application is 29.10.2019 i.e., the date on which the CD's account was classified as Non-Performing Asset (NPA) by the FC. For the alleged default by the CD, in payment of its

outstanding dues, the FC prays that CIRP may be initiated in respect of the CD under Section 7 of the IBC.

2. CONTENTIONS OF FC

2.1 It is submitted that the FC is a co-operative bank registered under the Maharashtra Co-Operative Societies Act, 1960, while the CD is a private company, engaged in the business of manufacturing dish reflectors and automotive plastic parts. For business purposes, the CD sought credit facilities from the FC and obtained term loan as per the following details:

Sl. No.	Date of Sanction Letter	Reference No.	Details of Sanctioned Amount
1.	02.12.2013	HO/CD/476/2013-14	Term Loan of Rs. 8,43,48,000/- and Letter of Credit Limit worth Rs. 2,83,00,000/-
2.	03.06.2016	HO/CD/118/2016-17	Term Loan of Rs. 1,00,00,000/- and the Cash Credit Limit worth Rs. 3,00,00,000/-
3.	07.12.2018	068-AUR-CC-11/2019	Cash Credit of Rs. 4,00,00,000/- and the Letter of Credit Limit of Rs. 4,00,00,000/-
4.	22.03.2019	068-AUR-CC-/2019	Temporary Overdraft (TOD) Facility of Rs. 1,25,00,000/-



2.2 To secure the aforesaid credit facilities from the FC, the CD executed several documents including hypothecation deeds, etc., for which the FC placed the following documents on record:

- a) Letter of Acceptance of Terms and Conditions dated 05.12.2013;
- b) Demand Promissory Notes dated 05.12.2013; 17.06.2016; 21.12.2018; and 30.04.2019;
- c) Trust Receipt dated 21.12.2018;
- d) Letters of Undertaking dated 17.06.2016; 21.12.2018; and 30.04.2019;
- e) Hypothecation Agreement of Stock and Book-Debts dated 21.12.2018;
- f) Demand Promissory Note dated 21.12.2018;
- g) Copy of registered Mortgage Deeds dated 24.12.2013; 22.04.2015; 23.06.2016; and 16.10.2017; and
- h) Ratification Deed dated 20.06.2015.


2.3 The CD had acknowledged the term loans and cash credit facility for Rs. 100.00 Lakhs and 843.48 Lakhs, *vide* letters dated 30.04.2019 and 26.04.2019 respectively to the FC. However, due to the default in repayment of the aforesaid loan by the CD, its loan account was declared as NPA on 29.10.2019. Pursuant to declaration of the CD's account as NPA, the FC issued Loan Recall cum Guarantee Invocation Notice dated 15.07.2021 to the CD, seeking repayment of Rs. 5,69,68,063.14/- towards term loan facility along with Rs.8,16,13,696.05/- towards cash credit and letter of credit facilities. The FC has also annexed the statement of account of the CD's loan/cash credit accounts for the period between 2018-2021, along with the Certificate under Section 2A of the Bankers' Book Evidence Act, 1891.



- 2.4 The Ld. Counsel for the FC submits that the CD had neither made any part-payment of the aforesaid credit facilities during the period of 2013-2021 nor it ever furnished any reply to the FC's Loan Recall Notice dated 15.07.2021.
- 2.5 The FC has produced record of default of the CD from the Information Utility dated 10.08.2021 and the date of default mentioned is 29.10.2019, which is same as mentioned in the Part IV of the present Application.
- 2.6 It is submitted that the Arbitration application filed under Section 84 of the Multi-State Co-Operative Societies Act, 2002, *vide* Arbitration Case No. ARB/ACB/VNL/2065 of 2022 (Arbitration Case), before the Sole Arbitrator, Mr. V.N. Lothey Patil does not bar the present proceedings since it is filed for enforcing recovery through decree which is not barred under the provisions of the IBC.

3. CONTENTIONS OF CD

- 3.1 It is submitted by the CD that the FC has not complied with due process while declaring its account as NPA since the date of default in Part IV of the Application is 29.10.2019, which is same as the date of NPA while its account could have been declared as NPA only after the passage of 90 days from the alleged date of default as observed by the Hon'ble Supreme Court in *Swiss Ribbons Private Limited & Anr. Vs. Uol & Ors.* [Writ Petition (Civil) No. 99 of 2018].
- 3.2 The Ld. Counsel for the CD submitted that the FC did not intimate the CD regarding occurrence of default or declaring its account as NPA. He further argued that the FC has failed to issue notice under Section 13(2) of the




SARFAESI Act, which is mandatory, and that the FC was supposed to give an opportunity to the CD for settling its alleged dues by providing a time period of sixty days from the date of SARFAESI notice and the FC could have taken any action only after issuing the notice. He drew our attention to the decision of the Hon'ble Supreme Court in *M/S. Transcore Vs. UOI & Anr.* [Appeal (Civil) No. 3228 of 2006] to buttress his point.

3.3 Further, the FC has already initiated arbitration proceedings against the CD for recovery of the alleged outstanding dues by filing the Arbitration Case. The CD has produced copy of the Sole Arbitrator's notice dated 27.05.2022, issued to the CD for appearance before him in that matter. According to the Ld. Counsel for the CD, the FC is attempting recovery of money and not insolvency resolution of the CD. The FC has suppressed material facts and resorted to forum shopping despite pendency of Arbitration Case. Hence, the present Application is fit for dismissal.

4. ANALYSIS AND FINDINGS


4.1 We have perused all the documents and pleadings and heard both the Ld. Counsel for the FC and the CD.

4.2 Upon examination of available documents, we find that the date of default mentioned in the Part IV of the application is 29.10.2019, i.e., the date on which the CD's account was declared as NPA by the FC, while the Application was filed on 09.09.2021. We do not find any dispute raised by the CD as regards availing of loan and credit facilities provided by the FC or even the debt and




default in repayment of the same. The defence of the CD revolves around procedural irregularities in declaring its account as NPA.

4.3 As regards the issue relating to date of default and classification of CD's account as NPA, the Reserve Bank of India (RBI) has issued guidelines for maintaining financial health and stability of the banking sector. When a borrower defaults in loan payments for a stipulated period, typically ninety days, the loan account is to be classified as NPA, as per RBI guidelines. As Adjudicating Authority, it is our mandate to determine debt, liability and default of a corporate debtor under Section 7 of the IBC. The statement of account of the CD for the period of 01.12.2018 to 31.07.2021, as well as the FC's loan recall notice dated 15.07.2021, evidence that its account was declared as NPA on 29.10.2019. The CD has not denied the debt, liability and default due to the FC. The statement of account of the CD reveals that as on 29.10.2019, a total amount of more than one crore rupees was due and payable by the CD. Further, the record of default dated 11.08.2021, produced by the FC, corroborates the above. The Ministry of Corporate Affairs (MCA) Master Data of the CD also clearly shows availing of the aforesaid term loan and cash credit facilities from the FC by mortgaging its assets. It is for the CD, being the borrower, to rectify discrepancies, if any, in its loan account and to get the same regularised after the issuance of the two loan recall notices dated 15.07.2021. Moreover, the CD has admitted debt and liability *vide* two letters of acknowledgment of debt dated 26.04.2019 and 30.04.2019. The last repayment of loan was made by the CD on 24.07.2019 as per the statement of account. The CD was supposed to pay the next monthly instalment on



31.07.2019. However, there is no evidence to show that the CD has paid any outstanding amount to the FC by way of principal or interest after 24.07.2019. Hence, the FC declared the CD's account as NPA on 29.10.2019, i.e., after ninety days from the monthly instalment due date, being 31.07.2019. In such a situation, the FC is well within its rights to pursue its options for the outstanding amount owed by the CD.


4.4 Regarding the CD's contention of not receiving the notice under Section 13(2) of SARFAESI Act, as well as absence of opportunity for settling the dues, Clause 17 of the Other Terms and Conditions for Term Loan in the Sanction Letter dated 02.12.2013, No. HO/CD/476/2013-14 clearly states that "*Bank reserves the right to recall the advances at any time without any notice*" and the fact that the CD was afforded a statutory period of ninety days from the date of first irregularity in its loan account but it failed to make repayment after 31.07.2019, which led to the declaration of CD's account as NPA on 29.10.2019. In fact, under the paragraphs 6 and 9 of the FC's loan recall notices dated 15.07.2021, (one for recovery of term loan and the other for cash credit facility, respectively) it is clearly stated that in the event of failure in compliance with the aforesaid notices, the Bank shall initiate legal proceedings against the CD, not limited to SARFAESI Act. Proceedings under the SARFAESI Act and the IBC are for entirely different purposes, and hence, we hold that issuance of Section 13(2) SARFAESI notice is not a pre-condition for initiating insolvency proceedings under Section 7 of the IBC. Further, the decision in *M/S. Transcore Vs. UOI & Anr.* (supra) is inapplicable in the present case as the Hon'ble Supreme Court was dealing with a matter under



SARFAESI Act and not one under the IBC. Hence, this issue is decided against the CD.

4.5 As far as the issue of Arbitration Case is concerned, the CD has relied upon the notice dated 27.05.2022 for appearance before the Sole Arbitrator. Nothing has been brought on record as to the present status of the Arbitration Case. The claim of the FC in the present Application is not in execution or based on any award in the Arbitration Case. The Hon'ble NCLAT in *Milind Kashiram Jadhav Vs. State Bank of India and Anr.*, [Company Appeal (AT) (Insolvency) No. 1589 of 2023], held that once the CD defaulted and the loan accounts were classified as NPAs, a legal recourse is well within the Bank's statutory rights. Pursuing resolution under the IBC, which serves as a specialised law governing the resolution of distressed entities, is a legitimate course of action for the Bank. Further, the Hon'ble Supreme Court in *Laxmi Pat Surana Vs. Uol and Ors.* [(2021) 8 SCC 481] has categorically observed that Section 7 of the IBC comes into play when a corporate debtor commits default. Section 7 consciously uses "default" and not "the date of notifying the loan account" of the corporate person as NPA. This position has been reiterated in *Dena Bank Vs. C. Shivakumar Reddy & Ors.* [(2021) 10 SCC 330] by the Hon'ble Supreme Court. When the whole or any part or instalment of the amount of debt has become due and payable and is not paid by the CD, the only course open to us is to proceed with admitting the Application. In the view of the above, the issue is also found against the CD.

4.6 The FC has thus successfully demonstrated and proved the debt, liability and default for more than one crore rupees. We have seen that the CD has already



admitted the outstanding debt due and payable to the FC. Therefore, we are of the considered view that this Application is complete and satisfies all the necessary requirements for admission under Section 7 of the IBC.

4.7 The FC has proposed the name of Mr. Harish Kant Kaushik, a registered Insolvency Professional having Registration Number-IBBI/IPA-001/IP-P-01469/2018-2019/12340 as the Interim Resolution Professional (IRP), to carry out the functions as mentioned under the IBC. The proposed IRP has given his written consent and the same is placed on record.

ORDER

This Application bearing C.P. (IB) No. 382/MB/2022 under Section 7 of the IBC, filed by Abhyudaya Cooperative Bank Limited, the FC, for initiating CIRP in respect of Nirmangold Plasttech Private Limited, the CD is **admitted**.

We further declare moratorium u/s 14 of the IBC, with consequential directions as follows:

I. We prohibit-

- a) the institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the SARFAESI Act;
- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.
- II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under section 31(1) of the IBC or passes an order for the liquidation of the CD under section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Harish Kant Kaushik**, a registered Insolvency Professional having Registration Number- IBBI/IPA-001/IP-P01469/2018-2019/12340 and **e-mail- harishkant2007@gmail.com**, having valid Authorisation for Assignment up to 29.11.2024 as the Interim Resolution Professional (IRP) to carry out the functions under the IBC. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.
- VI. During the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their



knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- VII. In exercise of the powers under Rule 11 of the NCLT Rules, we order the FC to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the FC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the CD.
- IX. The Registry is directed to immediately communicate this Order to the FC, the CD and the IRP by way of e-mail and WhatsApp, not later than two days from the date of this Order.
- X. The Registry is directed to communicate this order to the Insolvency and Bankruptcy Board of India forthwith for information and record.
- XI. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)

//Tanmay Jain//