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

C.P.(IB) 985 /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 **Bank of India** having its head office at Star House, C-5 G Block, bank Kurla Complex, Bandra (East),

......Financial Creditor/Petitioner

V/s

Vitthal Refined Sugars Limited, having its registered office at Post Nimagaon, Taluka-Madha, Solapur-413 208 Limited. [CIN: U15421PN2010PLC135465]

......Corporate Debtor/Respondent

Order Dated: 29.09.2022

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. Harsh Kesharia, Advocate

For the Respondent: None Appeared

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

ORDER

1. The above Company Petition is filed by Bank of India, (hereinafter called as "**Petitioner**") seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against Vitthal Refined Sugars 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. 30,00,00,000/-(Rupees Thirty Crores Only).

2. The Petitioner submits that, the Corporate Debtor vide Letter Bearing Reference no: VRSL/FIN/368/2018-19, dated 20.07.2018, had requested the Petitioner for financial assistance for Harvesting & Transportation Loan, (hereinafter called as "H & T Loan") for Crushing Season 2018-2019.

3. Thereafter, the Petitioner vide Sanction Letter, dated 06-09-2018, sanctioned the H & T Loan for a sum of Rs. 30,00,00,000/- (Rupees Thirty Crores Only) to the Corporate Debtor for the Crushing Season 2018-2019.

4. Thereafter, the Corporate Debtor executed a duly stamped Deed of Guarantee and various other security documents dated 06.09.2018 with the Petitioner for giving credit facilities to the Individual Tractor Operators/Bullock Cart operators of the Corporate Debtor. Pursuant to which, The Petitioner also

executed the necessary documents with individual for disbursal of H&T Loan.

5. The Corporate Debtor vide its Letter Bearing Reference No. VRSL/FIN/04/2019-20, dated 03.04.2019, submitted 4 unsigned cheques bearing nos. 016621, 016622, 016624 towards total indebtedness inclusive of interest of the recovery of H&T dues.

6. On the account of the default by the Corporate Debtor, the Petitioner vide email dated 19.05.2021, requested the Corporate Debtor to repay the outstanding dues.

7. Further, the Petitioner, vide its email dated 13.07.2021, served a letter dated 13.07.2021 bearing Reference No. KRL/AAP/2021-22/51 to the Corporate Debtor, thereby invoking the Corporate Guarantee of the Corporate Debtor for the H&T Loan. Hence, this Petition.

8. Since, the Corporate Debtor failed to appear before this Hon'ble Tribunal even after Service of Notice, he was set Ex-parte vide order dated 09.09.2022. This matter was listed finally for arguments on 29.09.2022. The Counsel of the Petitioner appeared however, none appeared for the Corporate Debtor.

9. Heard the Counsel of the Petitioner and after perusing the material available on record, the Counsel appearing for the Petitioner invited the attention of this Hon'ble Tribunal, to the Statement of Account produced by the Petitioner from pages 96 to 100 of the Company Petition. It is established beyond doubt, that there was a Loan Agreement executed between the parties.

10. Further, the Petitioner has drawn the attention of this Bench to letter dated 06.09.2018 of page 60 of the Company Petition which is extracted for ready reference:

EXHIBIT - "G" 60

VITTHAL REFINED SUGARS LTD;
AT/POST: - PANDE, TAL:-KARMALA DIST:- SOLAPUR – 413 203
Email: vrslsugar555@gmail.com Mobile No:- 9637971155

06/09/2018

To,
The Branch Manager,
Bank of India,
Branch - Karmala.

Sub: Letter regarding undertaking for repayment of loan with interest

Dear Sir

The Bank of India sanctioned Harvesting & transport contractors loan of Rs. 30.00 crore sponsored by the VITTHAL REFINED SUGARS LTD.

We enclosed resolution passed by board meeting , we here by undertake for the repayment of entire loan with interest within due date on or before 31/07/2019.

Thanking You

Yours faithfully,
For Vitthal Refined Sugars Ltd.,

(Chairman/Director) DIRECTOR
Vitthal Refined Sugars Ltd.

TRUE COPY

In accordance with the above-mentioned letter, the Corporate Debtor has admitted the liability and further has accepted to pay the amount along with its interest on or before by 31.07.2019.

11. On going through the submissions, made by the Learned Counsel for the Petitioner and on perusing the documents produced on record, it is clear that the Corporate Debtor has defaulted in repayment of debt. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be admitted u/s 7 of the I&B Code.

12. 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. 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.

13. 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:

14. Accordingly, the above Petition is **admitted** by passing the following:

ORDER

a. The above Company Petition No. (IB) 985 (MB)/2021 is hereby allowed and initiation of Corporate Insolvency

Resolution Process (CIRP) is ordered against **Vitthal Refined Sugars Limited.**

b. The Petitioner has proposed the name of **Mr. Umang S. Khandelwal** Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00669/2017-18/11142 residing Flat no: 6AB, Mangaldeep Apartment, Plot No.134/14, farmland, Nr. Gurudwara, Ramdaspeth, Nagpur-440010 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.

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)/985/MB/2021 is **admitted**.

l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-	**SD/-**
ANURADHA SANJAY BHATIA	**H.V. SUBBA RAO**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**