

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT - II**

**C.P.(IB)-3639(MB)/2019**

(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 Limited**

Having registered office at: Star House, C-5, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400051

**.....Financial Creditor**

**Vs**

**Shree Gajanan Agro Farms Private Limited**

Having Registered Office at: Flat No. 101, Vishvakarma Complex K Building, Devkar Panand, Vasahat Kolhapur- 416012.

**.....Corporate Debtor**

**Order delivered on: 06.05.2022**

***Coram:***

**Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)**

**Hon'ble Member (Technical) : Shri Shyam Babu Gautam**

***Appearances:***

For the Financial Creditor : Ms. Prajakta Menezes

For the Corporate Debtor : Ms. Shweta Tripathi

**ORDER****Per- Shyam Babu Gautam, Member Technical**

1. The Present Application is filed under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Bank of India Limited (for brevity 'Financial Creditor') through its Assistant General Manager, Mr. Kishorchand Rameshchand Kandi, who has been duly authorised vide Board Resolution dated 27.06.2019 for initiating Insolvency Resolution Process (CIRP) against Shree Gajanan Agro Farms Private Limited (for brevity 'Corporate Debtor') for default in repaying **₹19,19,35,805.66** as on 31.03.2015.
2. On perusal of the Company Petition, it reveals that the Corporate Debtor approached the Financial Creditor on 21.08.2012 with a request of financial assistance. After looking into the representations and warranties of Corporate Debtor, the Financial Creditor acceded to the request of Corporate Debtor as per loan application and allowed the loan amounting to **₹5,46,00,000** for **mango plantation** and **₹64,00,000** as **crop cash credit loan** on 24.12.2012.

Further on the request of the Corporate Debtor, the Financial Creditor has provided a short-term loan amounting to **₹3,00,00,000** for trading mango on 20.05.2014. The aforesaid loans were repayable along with interest as per agreed terms, but the Corporate Debtor failed to repay and the same was declared as NPA on 31.03.2015. Under these circumstances, the Financial Creditor /Petitioner has filed the present Petition against the Corporate Debtor under Section 7 of I&B Code, 2016.

3. In addition to the **NPA**, this Financial Creditor also issued a recall notice dated 29.05.2017 to Corporate Debtor and all the guarantors. This Financial Creditor has also filed Copies of **Deed of Guarantee**, Copies of **Demand Promissory Notes**, Copies of the **Instalment Letters in form of L-440**, Copies of the **Declaration in form of L-515**, Copies of **Agreements for Term Loan and Hypothecation in Form AG** and Copies of the **multipurpose undertaking in Form L-516**.
4. In response to this, the Corporate Debtor has filed a reply and has raised a preliminary objection that the Petition is bared by Limitation as per the law in force. The Financial Creditor has clearly stated that the default date 31.03.2015 whereas the application is seen filed on 14th October 2019, much beyond the period of limitation. The Corporate Debtor has further submitted that it is a well settled principle of law as laid down by the Hon'ble Supreme Court that for

Applications filed under Section 7 of the Insolvency Bankruptcy Code, 2016, the period of Limitation shall be reckoned solely in accordance with the provisions of Article 137 in the Schedule to the Limitation Act, 1963. Further referred the judgment of the Hon'ble SC in the case of **BK Educational Service Private Limited vs Parag Gupta and Associates, MANU/SC/1160/2018:**

*"48. It is thus clear that since the limitation act is applicable to the applications filed u/s 7 and 9 of the Code from the inception of the Code Article 137 of the Limitation Act gets attracted. The right to sue thereto accrues when a default occurs. If the default has occurred over three year prior of the date of filing the applications, the application would be bure by limitation under Article 137 of the Limitation Act, save and except to those cases where, in the facts of the case, section 5 of the Limitation Act may be applied to condone the delay in filing the such application."*

The Corporate Debtor has submitted that the default was made i.e. 31.03.2015, the date on which the Corporate Debtor Account was declared as a Non-Performing Asset (NPA). Hence, the period Limitation is also to be considered from 31.03.2015

5. The Financial Creditor has filed a brief synopsis to the objections and submitted that ground of limitation is not

applicable in the present case as the said petition is filed well within the Limitation period. The date of default/date of NPA is 31 March 2015 and within three years from date of default i.e. on 17 January 2017 the Corporate Debtor provided Acknowledgement of Debt in writing. Hence fresh period of limitation as per section 18 of the Limitation Act 1963 begins from 17 January 2017. Further the present petition has been filed on 14 October 2019 which is within 3 years from the fresh limitation period. It is well settled that section 18 of the Limitation Act 1963 (Limitation Act) applies to the IBC as per section 238 A of the Code. In this regard reliance is placed on recent Apex Court Ruling in the case of ***Laxmi Pat Surana vs. Union Bank of India & Ar (Civil Appeal No. 2734 of 2020)*** wherein it has been held that Section 18 of the Limitation Act applies to extend the period of limitation for filing an application under Section 7 of the IBC. While the Supreme Court reiterated and held that the intent of the IBC was not to reopen or revive time-barred debts, it clarified that accrual of fresh period of limitation in terms of Section 18 is under the Limitation Act itself and it will not be a case of giving new lease to time-barred debts.

6. This Bench is of the view that the Petitioner has proved the 'existence of debt' and 'default' on the part of the Corporate Debtor. Further, on the ground of limitation, the Financial Creditor has filed the copies of acknowledgement by the Directors of the Corporate Debtor dated 17.01.2017 with respect to the outstanding amount of **₹7,29,03,668.53**,

**₹71,50,886.50** and **₹3,51,64,981** respectively. The acknowledgement by the Directors of the Corporate Debtor on 17.01.2017, would extend the period of limitation under Section 18 of the Limitation Act and as such the present Petition which is filed before this Tribunal on 14.10.2019 falls well within the period of limitation. Moreover, the Corporate Debtor admitted the debt on the day of final hearing. Hence the Petitioner has proved the 'existence of debt' and 'default' on the part of the Corporate Debtor. Under the said circumstances, since the debt and default on the part of the Corporate Debtor being proved and also by looking at the consent given by an Insolvency Professional, we hereby admit this petition by appointing **Mr. Kamal Kishor Gurnani** (Insolvency Professional) as IRP with a direction to the IRP to compute this claim by deducting the payments made by the Corporate Debtor during the pendency of this Company Petition. The Petitioner shall pay the remuneration of the IRP as well as initial costs to the IRP until constitution of the Committee of Creditors, Accordingly this petition is admitted with the direction as follows: -

### **ORDER**

- a. **The above Company Petition (IB) 3639(MB)/2020 is hereby allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Shree Gajanan Agro Farms Private Limited.

- b. This Bench hereby appoints **Mr. Kamal Kishor Gurnani**, Insolvency Professional, Registration No: **IBBI/IPA-001/IP/P-01463/2018-19/12338** as the Interim Resolution Professional having registered office at **1301, Building No. 23, E Palazzio CHS LTD, Mahada HSG SOC, Powai, Mumbai-400076** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs.5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- 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 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 concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.
7. Accordingly, this Petition is admitted.
  8. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-  
**SHYAM BABU GAUTAM**  
**(MEMBER TECHNICAL)**

Sd/-  
**JUSTICE P.N. DESHMUKH**  
**(MEMBER JUDICIAL)**