

27

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

IBA/481/2020

*(filed 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 **M/s. GHO Agro Private Limited**

Punjab National Bank

Represented by its Senior Manager
T.Nagar Branch, Raja Street,
T.Nagar, Chennai- 600 017

... Financial Creditor

-Vs-

M/s. GHO Agro Private Limited

Formerly Known as M/s. Adinath Dairy Co.

Reg. Off:-

Old No. 122, New No. 10,
PS SivasamySalai (Sullivan Gardens Road),
2nd Floor, St. Ebbas Avenue, Mylapore,
Chennai - 600 004

...Corporate Debtor

Order Pronounced on 1st November 2021

CORAM:

**R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Financial Creditor : M.L. Ganesh, Advocate
For Corporate Debtor : Prapti Mehta, Advocate*

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Under Adjudication is an application which has been filed
under Section 7 of the Insolvency & Bankruptcy Code 2016

("hereinafter referred to as IBC, 2016") r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Punjab National Bank** represented by its Senior Manager (hereinafter referred to as '**Financial Creditor**') against **M/s. GHO Agro Private Limited** (CIN-U15549TN2016PTC112099) (hereinafter referred to as '**Corporate Debtor**'). This Application is filed to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.

2. Part I of the application, sets out the details of the Financial Creditor from which, it is evident that the Financial Creditor is a state owned Nationalised Bank. As per Part II of the application, the Corporate Debtor is a Private Limited Company with Corporate Identification Number U15549TN2016PTC112099 and with registered office at Old No. 122, New No. 10, PS SivasamySalai (Sullivan Gardens Road), 2nd Floor, St. Ebbas Avenue, Mylapore, Chennai - 600 004. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. L.K. Sivaramakrishnan, Registration Number: IBBI/IPA-001/IP-P00045/2017-2018/10119 as the Interim Resolution Professional

3. Part IV of the application signifies the amount of debt to the tune of Rs.50,40,76,432/- as on 18.05.2020. Part V of the



application describes the particulars of Financial Debt, documents, records and evidence of default as described below:

- a) The Certificate of Charge ID 100054345, date modified 09.08.2019
- b) Record of Default with the Information Utility
- c) Bank Statement certified under Bankers Book

4. The Learned Counsel for the Financial Creditor submitted that originally M/s. Adinath Dairy Co. was a partnership firm represented by its partners, whose banking operations, were with HDFC Bank which was taken over by the Financial Creditor in the year 2015. The Financial Creditors Taylors road branch had initially sanctioned cash credit facility to the tune of Rs. 4.80 Crore, Term Loan I- IV – Rs. 5.98 Crore (taken over from HDFC Bank) and term loan VII (Fresh) – Rs. 20.25 Crore on account of sanction letter dated 21.02.2015. The said partnership firm on 04.03.2015 had executed loan security documents in favour of the Financial Creditor. As per the sanction letter dated 20.09.2016 the Taylors road branch of the applicant had enhanced the cash credit facility to the tune of 12 crores and has sanctioned a fresh term loan to the tune of Rs. 7.3 Crore, for which the said partnership firm has executed security documents in favour of the applicant.

5. The Learned Counsel for the Financial Creditor submitted that the above mentioned partnership firm was subsequently converted



as a private limited company in the name of M/s. GHO Agro private limited as incorporated on 22.08.2016. It is further submitted that the loan amount of the corporate debtor was transferred to Mylapore Branch pursuant to the request of enhancement of credit facility from Rs. 12 crore to Rs. 19 crore vide sanction letter dated 10.01.2018 for which loan security documents had also been executed on 23.01.2018 in confirmation to the availed credit facility.

6. The Learned Counsel for the Financial Creditor submits that they had sanctioned a cash creditadhoc limit to the tune of Rs. 4.75 crore at the request of the Corporate Debtor Company for which loan security documents were executedby the CD and deed of guarantee by the guarantors was also executed on 20.12.2018 confirming the credit facility. Later vide sanction letter dated 09.08.2019 the cash credit facility was again enhanced from Rs. 19 crore to Rs. 30 crore for which the Corporate Debtor and the Guarantors have executed loan security documents and deed of guarantee respectively on 09.08.2019 along with extended EM over the property as per the EM letter dated 12.08.2019. It is further submitted that the Corporate Debtor and the Guarantors have executed MOD registered under various document numbers as mentioned in page 9 of the Typed Set of Papers on account of confirmation of creation and extension of EM in terms of sec 58 (f)

of Transfer of Property Act. It is also submitted that the Corporate Debtor had executed balance confirmation letters dated, 22.05.2019 and 03.06.2019 for the above mentioned three loan accounts confirming the debt.

7. The Learned Counsel for the Financial Creditor submits that due to the failure of the corporate debtor to repay the debt the loan account was declared Non Performing Asset on 31.01.2020. It is further submitted that the corporate debtor company had virtually closed the unit prior to the lockdown period itself.

8. In relation to the Corporate Debtor, it is seen that they have filed a reply by way of counter along with few documents.

- a) MSME Registration Certificate
- b) Board Resolution of Corporate Debtor dated, 14.07.2020
- c) FSSAI Order dated, 23.01.2020
- d) Section 13 (4) Notice dated, 08.09.2020
- e) OTS Proposal by Corporate Debtor dated, 25.08.2020
- f) Requisition letter for rescheduling of loan account by Corporate debtor dated, 11.01.2021
- g) Email from Mitcoin Consultancy and Engineering services limited dated, 24.02.2021.

9. The Learned Counsel for the Corporate Debtor submits that the Corporate Debtor an MSME registered company is a successful venture represented by its Director Mr. Vimalraj Chordia. It is

submitted that on account of business development the corporate debtor had availed loan from HDFC Bank. Due to enhancement in profit year to year the Financial Creditor has enhanced the loan from time to time. It is further submitted that during the year 2017-2018 and 2018-2019 the respondent herein have achieved sale to the tune of Rs. 95.92 crore and Rs. 157.48 crore respectively.

10. The Learned Counsel for the Corporate Debtor submits that on account of further development of the corporate debtor business, the loan account was shifted to the financial creditor herein with the assurance to keep up with the needs of the corporate debtor. It is further submitted that the value of movable and immovable properties including the primary security and the collateral security properties are higher than the total amount of the loan obtained from the Financial Creditor.

11. The Learned Counsel for the Corporate Debtor further submits that during the month of January 2019, the corporate debtor had requested for enhancement of working capital and term loan to the tune of Rs. 41 crore and 10 crore respectively based on the properties already mortgaged. However, despite multiple requests, timely disbursement of fund by the financial creditor was not made. As a result, the corporate debtor lost big business



opportunities. Additionally the corporate debtor has also lost the subsidy of Rs. 8.5 crore sanctioned by Ministry of Food Processing Industries (MoFPI) due to the financial creditor's behaviour. It is further submitted that the financial creditor has arbitrarily taken Rs. 5 crore out of the Rs. 11 crores sanctioned during August 2019 against various adjustments towards the loan and security.

12. The Learned Counsel for the Corporate Debtor submits that the financial creditor have not issued NoC for multiple banking despite the fact of various prosperous offers from other banks. It is submitted that during November 2019, due to malfunction in the plant system, the products of the debtor have got contaminated as a result of which it was discarded causing huge loss financially, which was informed to the financial creditor accordingly. It is further submitted that the corporate debtor has agreed for such takeover of loan account from HDFC on account of assurance given by the financial creditor only, however it is submitted that during the malfunctioning crises faced by the company the creditor has failed to provide funds to the debtor herein for the revival of the company. It is also submitted that the interest was paid successfully till December 2019.

13. The Learned Counsel for the Corporate Debtor submits that the Corporate Debtor herein is not a wilful defaulter. It is

submitted that the Corporate debtor has submitted title documents of a residential plot to the value of Rs. 1,00,00,000/- located at Ulundurpet as an additional security along with a cash deposit amounting to Rs. 13,75,000/- on 07.02.2020 after the declaration of NPA, demonstrating that the default is not intentional, despite which the Covid19 pandemic has caused a major drawback to the debtor company.

14. The Learned Counsel for the Corporate Debtor submits that the Corporate Debtor has proposed an OTS to the Financial creditor for full and final settlement of the amount due and payable and has also approached for settlement and revival however the same has gone in vain. Despite consideration of the same the financial creditor have issued possession notice dated 08.09.2020 under Section 13 (4) & 13 (2) of SARFAESI Act for possession and hypothecation of the properties and securities. And an application in O.A. No. 221 of 2020 has also been filed before the Hon'ble DRT-III, Chennai.

15. The Learned Counsel for the Corporate Debtor submits that the applicant has approached this Tribunal purely with an intention to harass them, despite acknowledgment of their settlement talks. It is also submitted that the primary security and the collateral security properties mortgaged with the financial creditor are 1.5

time higher than the loan obtained. As such it is submitted that the financial creditor is invoking the provisions of IBC in a wrong manner, that the financial creditor has not mentioned the date of default nor the date of the account on which the account was declared NPA, it is also mentioned that the two notice dated 03.02.2020 and 05.02.2020 are contradictory to each other on the date of NPA, alongside the financial creditor has not given a clear note on the principal, interest and other related charges as to the amount claimed in total.

16. The Learned Counsel for the Corporate Debtor submits that the applicant in para 11 of the fact sheet has mentioned that the debtor's company had virtually closed during the pandemic, however no such closure of the debtor has been carried out till date and thus is putting the applicant to strict proof of the same. It is accordingly submitted that the plant has to be kept as running unit in order to avoid deterioration of the machinery and accordingly if CIRP is initiated the company shall face severe difficulties on the note of production and would fail to attract investors further. Thus it is prayed to dismiss the present application.

17. Heard the Counsel for the Financial Creditor and Corporate Debtor and perused the documents placed on record. From the

submissions made by the learned counsel for the Corporate Debtor it is evident that the Corporate Debtor has made an OTS proposal with the Financial Creditor, which fact shows that the Corporate Debtor has committed 'default' in repayment of its 'financial debt' to the Financial Creditor. Further, in relation to the other issues raised by the Corporate Debtor, it has been consistently held by the Hon'ble Supreme Court in **Innoventive Industries Ltd. –Vs- ICICI Bank and another (2018) 1 SCC 407** as well as **Mobilox Innovations Pvt. Ltd. –Vs- Kirusa Software Pvt. Ltd.(2018) 1 SCC 353** that, after going through the Scheme of I&B Code, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor as compared to the one filed under Section 9 by an Operational Creditor, in relation to a Section 7 Application where there is an existence of a 'financial debt' and its default in excess of Rs. 1,00,000/- (Now- Rs.1,00,00,000/-) this Adjudicating Authority is constrained to admit the application. Further, as the default has occurred much before the covid-19 lockdown period the corporate debtor is restrained to take shelter under section 10A of IBC, 2016 as well. Accordingly, this Adjudicating Authority is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP). In the present case, it is clear that there is a default on the part of the Corporate Debtor for a sum exceeding Rs.1 Crore. Thus, we are satisfied that there is a 'financial debt' and the Corporate Debtor has committed



'default' in repayment of the said 'financial debt'. Thus taking into consideration of the facts and circumstances of the case as well as the position of Law, this application is admitted.

18. The Financial Creditor has proposed the name of one **Mr. L.K.Sivaramakrishnan**, having Reg. No **IBBI/IPA-001/IP-P00045/2017-2018/10119** (*email id:- lks@rvkassociates.com*) as *Interim Resolution Professional (IRP)* and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. Hence, Mr. L. K. Sivaramakrishnan is appointed as IRP.

19. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

20. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:



- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.
- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

21. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:



- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

22. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the above named Respondent by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named also be furnished with copy of this order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

MohanaPriya R