BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

CP (IB) No. 699/7/NCLT/AHM/2019

Coram: Hon'ble Mr. MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)
Hon'ble Mr. VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE NATIONAL COMPANY LAW TRIBUNAL , AHMEDABAD BENCH ON 07.10.2020

Name of the Company: Shree Ambica Rice Mill
V/s
M/s. kaneri Agro Industries Ltd.

Section: Section 7 the Insolvency & Bankruptcy Code, 2016

ORDER

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Dated this the 7th day of October 2020.

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I

CP (IB) No.699/7/NCLT/AHM/2019

(Application for initiating Corporate Insolvency Resolution Process under Section 7 of the Insolvency & Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency & Bankruptcy Code, 2016 (Application to Adjudicating Authority Rules, 2016)

In the matter of :

Shree Ambica Rice Mill
registered Office at:
Salajada, Dholka Road,
Bavla-387810 **..Financial Creditor**

V/s

M/s. Kaneri Agro Industries Ltd.
Survey No. 155/P,
Village: Lodariyal Bavla,
Sanand Road,
Ahmedabad-382220 ..**Corporate Debtor**

Date of Pronouncement of Order 7th October, 2020

Coram: MADAN B. GOSAVI, MEMBER(J)
VIRENDRA KUMAR GUPTA,MEMBER (T)

Appearance:

Learned Counsel Mr. Ketan M. Parikh for the Financial Creditor

Learned Counsel Mr. Jaimin Dave for the Corporate Debtor.

ORDER

[Per: VIRENDRA KUMAR GUPTA, MEMBER(T)

1. An Application is filed by the **Shree Ambica Rice Mill** (hereinafter referred to as the 'Financial Creditor') through authorised person under Section 7 of the Insolvency & Bankruptcy Code, 2016, r.w. Rule 4 of the Insolvency & Bankruptcy Code, 2016, to start Corporate Insolvency Resolution Process (hereinafter referred to as the 'CIRP') against the **M/s. Kaneri Agro Industries Limited** the Corporate Debtor, on the ground that, it has committed a default in paying the outstanding debt of **Rs. 10,50,000/-** The date of default is stated as 30th September, 2019.

2. The brief facts of the case are as under :

   I. The Corporate Debtor, from time to time, availed loan from the Financial Creditor. The Corporate Debtor agreed to pay the same as per the terms and conditions made between the parties. However, a sum of Rs. 10,00,000/- has remained outstanding, which is net outcome of the transactions in the Financial Year 2018-19.

   II. The Corporate Debtor appeared through Learned Counsel and he did not controvert the claim of the Financial Creditor as regards the default in repayment of the outstanding dues, the same being payable in-fact and in law. Further, the Corporate Debtor through Affidavit-in-reply dated 3rd January, 2020 admitted the debt of the

Financial Creditor and submitted that they have no objection, if the Tribunal admits the present petition on its merits.

3. We have heard the submissions made by the Learned Counsel for the Financial Creditor and Learned Counsel for the Corporate Debtor and material available on record. It is noted that the Financial Creditor is not an entity engaged in business granting of loans on interest. It is a partnership firm, which has been established to carry on business of Paddy Milling and boiling, trading & manufacturing of Rice and other agricultural produce etc. (as mutually agreed upon by the parties). It is so provided in Clause no. 4 of Supplementary Partnership Deed dated 31.03.2019. In Clause No. 5, it is mentioned that in case of need of funds/finance, it may borrow money with interest or without interest. It is also provided that the Partner can borrow the money from outside. Apart from these clauses, there is no provision in the Partnership Deed, which provides for granting of loans/advances on interest to other parties. In this background, when we look at the transactions which happened between the Financial Creditor and the Corporate Debtor, we note that such transactions have been either squared up on the same date or in a very short time. A copy of account of the Corporate Debtor in the books of account of the Financial Creditor for the F.Y. 2018-2019 and 2019-20 is reproduced herein below to establish this factual situation.

SHREE AMBICA RICE MILL -SALAJADA
DHOLKA ROAD, BAVLA
Phone:9825323318
GSTIN: 24AAGFS54568NIZL PAN No. AAGFS5468N

Ledger Date: 01/04/2018 to 31/03/2019

Date	Type	Ref No.	Particulars	Debit	Credit	Balance
Account : KANERI AGRO INSUTRIES LTD -BAVLA (5833)						
16/04/2018	REC		HDFC BANK CC A/C NO. 09568		10,00,000.00	10,00,000.00
16/04/2018	PAY	ONLINE	HDFC BANK CC A/C NO. 09568	10,00,000.00		
19/04/2018	PAY	ONLINE	HDFC BANK CC A/C NO. 09568	15,00,000.00		15,00,000.00
21/04/2018	REC		HDFC BANK CC A/C NO. 09568		15,00,000.00	
26/04/2018	REC		HDFC BANK CC A/C NO. 09568		15,00,000.00	15,00,000.00
26/04/2018	PAY	ONLINE	HDFC BANK CC A/C NO. 09568	15,00,000.00		
26/07/2018	PAY	RTGS	HDFC BANK CC A/C NO. 09568(SARAFI)	20,00,000.00		20,00,000.00
10/08/2018	PAY	ONLINE	HDFC BANK CC A/C NO. 09568	10,00,000.00		30,00,000.00
17/10/2018	REC		HDFC BANK CC A/C NO. 09568		10,00,000.00	20,00,000.00
20/12/2018	REC		HDFC BANK CC A/C NO. 09568		10,00,000.00	10,00,000.00
05/02/2019	PAY	ONLINE	HDFC BANK CC A/C NO. 09568	25,00,000.00		35,00,000.00
15/02/2019	REC		HDFC BANK CC A/C NO. 09568		10,00,000.00	25,00,000.00
18/02/2019	REC		HDFC BANK CC A/C NO. 09568		10,00,000.00	15,00,000.00
27/02/2019	REC		HDFC BANK CC A/C NO. 09568		5,00,000.00	10,00,000.00
30/03/2019	REC		HDFC BANK CC A/C NO. 09568		1,48,241.00	8,51,759.00
31/03/2019	TDS		INTEREST RECEIVED A/C.	1,64,712.00		10,16,471.00
31/03/2019	TDS		T.D.S. ON INTEREST (RECEIVE)		16,471.00	10,00,000.00
			TOTAL	**96,64,712.00**	**86,64,712.00**	**10,00,000.00**

SHREE AMBICA RICE MILL –SALAJADA
DHOLKA ROAD, BAVLA
Phone:9825323318
GSTIN: 24AAGFS54568NIZL PAN No. AAGFS5468N

Ledger Date: 01/04/2019 to 31/03/2020

Date	Type	Ref No.	Particulars	Debit	Credit	Balance
Account : KANERI AGRO INSUTRIES LTD –BAVLA (5833)						
01/04/2019	OBL		OPENING BALANCE	10,00,000.00		10,00,000.00
17/04/2019	PAY	ONLINE	HDFC BANK CC A/C NO. 09568	25,00,000.00		35,00,000.00
18/04/2019	REC	ONLINE	HDFC BANK CC A/C NO. 09568		15,00,000.00	20,00,000.00
20/04/2019	REC	ONLINE	HDFC BANK CC A/C NO. 09568		10,00,000.00	10,00,000.00
			TOTAL	**35,00,000.00**	**25,00,000.00**	**10,00,000.00**

4. From the perusal of the above it is apparent that first transaction has been squared up on the same date itself i.e. 16.04.2018. Next transaction is squared up in two days. Third transaction is again squared up on the same date. Thereafter, two transactions of lending of money have happened for Rs. 20,00,000/- and Rs. 10,00,000/-respectively on 26.07.2018 and 10.08.2018 against which Rs. 10,00,000/- each have been repaid on 17.10.2018 and 20.12.2018 after sanction and disbursement of cash credit limit by Bank of Baroda on 12.10.2018. Thereafter, a sum of Rs. 25,00,000/- was given on 05.02.2019 which has been repaid on 15.02.2019, 18.02.2019 and 27.02.2019. Thus, Rs. 10,00,000/- have remained outstanding as on 31.03.2019 in F. Y. 2019-2020 a sum of Rs. 25,00,000/- has been given on 17.04.2019, which has been repaid in *toto in* two instalments on 18.04.2019 and 20.04.2019 (within three days)

Simultaneously, it is seen that cash credit limit has been sanctioned on 12.10.2018 for Rs. 24,00,00,000/-. The process for sanction of cash credit facility of this magnitude takes few months in normal course. Thus, transactions between the parties hereto coincide with the obtaining of seek facility from the Bank. In this background, these transactions lead to a prima-facie conclusion that these were entered between the parties to create turn over/volume of transactions in the account of Corporate Debtor, so that such limit could be sanctioned. Another reason can be that Rs. 30,00,000/- given in July and August, 2018 have been utilised by the Corporate

Debtor to give margin money to avail cash credit. The above conclusions are based upon the nature and sequence of transactions between the parties where no material has been brought on record to show that the Corporate Debtor in fact required this money i.e. amount disbursed in July and August, 2018 for its business purposes and actually utilised the same for that purpose as other transactions have been squared up either on the same date or within a period of less than four days from the date of receipt of money.

5. As per the practice MCA Data of the Corporate Debtor is required to be filed alongwith application filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, which was not attached initially, hence, this matter was fixed for clarification for filing of the same. The MCA Data filed by the Financial Creditor showed an open charge in favour of the Bank of Baroda (the Sole Secured Financial Creditor). Such loan has been taken in the year October 2018. It is also noted that the Bank has initiated proceedings against the Corporate Debtor for recovery of outstanding debt after declaring the account of the Corporate Debtor as "Non-Performing Assets" (hereinafter referred to as "NPA") on 02.08.2019, which also means that default in repayment of interest on cash credit and/or principal borrower amount happened almost immediately after getting the money from the bank. The Bank has also taken physical possession of the property of the Corporate Debtor under the provisions of Section 13(4) of the SARFAESI Act,2002 on 30.11.2019. It is noted that the charge of the bank was created on 06.11.2018

and i.e. to tune of Rs. 24.00 Crores. From the above facts, it is evident that this is a case where Bank has classified account of the Corporate Debtor as NPA within a period of less than one year after sanction and disbursement of the same and that too in a case of facility of nature of cash credit, which is given for working capital requirements of business entity. Such action by Bank by itself raises serious questions about the credibility and intention of the Corporate Debtor.

6. When the factual position as regards to the financial transaction between the Financial Creditor and Corporate Debtor coupled with the financial facility obtained by the Corporate Debtor by the Bank and declaration of the same as NPA are read together, the only inevitable conclusion which could be reached without any difficulty is that the Financial Creditor has helped the Corporate Debtor to obtain loan from the Bank particularly when no material of whatsoever nature has been brought on record by the Financial Creditor to show that money was indeed given to Corporate Debtor for genuine business purpose and it made sincere efforts to realise its money which was due.

7. In our considered view, it is the case of collusive application whereby the Corporate Debtor is trying to seek benefits of moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 and other advantages in accordance with other provisions of IBC, 2016 and in particular Section 31, 53 thereof by getting itself admitted under the Corporate Insolvency

Resolution Process and Financial Creditor is an active partner to this exercise.

8. In this view of the matter, we dismiss this application.

9. We also direct the Registry to issue Notice to the Financial Creditor under Section 65 of the Insolvency & Bankruptcy Code, 2016 to present their case as to why penalty may not be imposed on both the parties under this Section.

10. List this issue for hearing on 14.12.2020

7/10/2020

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Signed on this, the 7th October, 2020