IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

CP No. 233/IBC/MB/2021

Under Section 7 of the I & B Code, 2016

In the matter of

ASREC (India) Limited
Unit No. 201, 200A, 202 & 200B, Ground Floor, Build No. 2, Solitaire Corporate Park, Andheri (E) Andheri, Kurla Road MH- 400059

….. Petitioner

vs.

Cane Agro Energy (India) Limited
Raigaon, Post Hingangaon (Budruk), Tal- Kadegaon, Kadegaon Sangli MH - 415305

….. Corporate Debtor

Order Pronounced on: 30.04.2021

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri. Chandra Bhan Singh, Member (Technical)

For the Petitioner: Mr. Nausher Kohli, Adv., i/b Mr. Avinash R. Khanolkar, Adv.

For the Corporate Debtor: Mr. Rohit Gupta, Adv., i/b Mr. Agam Maloo, Adv.

Per: Suchitra Kanuparthi, Member (J)

ORDER

1. The Petitioners/ Applicants viz. 'ASREC (India) Limited' (hereinafter called as Petitioner) has furnished Form No. 1 under Rule 4 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter called as Rules) in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter called as Code) against 'Cane Agro Energy (India) Limited' (hereinafter called as 'Corporate Debtor').

2. In the requisite Form, under the head "Particulars of Financial Debt", the total amount claimed to be in default is Rs. 38,87,53,376/- including interest of Rs. 8,15,08,241/-. The date of default for the Term Loan Facility is 30.10.2018 and the date of default for the Cash Credit Facility is 30.09.2018, i.e., the date from which the Corporate Debtor has defaulted in making the payments of the loan.

BRIEF HISTORY OF THE CASE:

3. The Petitioner is a Securitization and Asset Reconstruction Company registered under Companies Act, 1956 and under Section 3 of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest (SARFAESI) Act, 2002. The Corporate Debtor in the year 2014 submitted the loan application to M/s. Dombivli Nagari Sahakari Bank Limited (herein referred as "DNSB" (original lender)) for availing a term loan of Rs. 13,22,29,000/-.

4. The Deed of Mortgage dated 23.07.2014 was executed between DNSB and Corporate Debtor for term loan amounting to Rs. 13,22,29,000/-. DNSB and the Corporate Debtor further executed various loans documents which includes Promissory Note, Loan Agreement, Deed of Guarantee, Composite Deed of Hypothecation and Pledge Agreement dated 24.07.2014. DNSB and the Financial Creditor also executed inter-se pari-passu Agreement dated

01.10.2014 through which the Financial Creditor allowed DNSB to create mortgage over the assets of Corporate Debtor in its possession. At the request of the Corporate Debtor, DNSB vide its Sanction Letter dated 29.09.2015 sanctioned the Term Loan Facility amounting to Rs. 14,18,39,000/- under consortium arrangement with Sangli Urban Co-operative Bank Ltd. The share of DNSB in the said term loan was Rs. 6,18,39,000/- and the share of Sangli Urban Co-operative Bank Ltd. in the said term loan was Rs. 8 crores. The Sangli Urban Co-operative Bank Ltd. issued its Sanction Letter dated 29.09.2015 to DNSB for a term loan amounting to Rs. 8 crores. The Corporate Debtor vide its letter dated 14.10.2015 acknowledged the sanction of the loan by the DNSB in consortium with Sangli Urban Co-operative Bank Ltd.

5. The said loan account of the Corporate Debtor in other banks were assigned to the Financial Creditor/ Petitioner herein. Therefore, the Corporate Debtor requested the Financial Creditor to provide a No Objection Certificate for creation of charge on the assets of the Corporate Debtor by a DNSB. Pursuance to the same, the DNSB, Sangli Urban Co-operative Bank Ltd. and the Financial Creditor/ Petitioner executed an inter-se pari-passu Agreement for an extension of charge dated 14.10.2015 through the Financial Creditor allowed the DNSB and the Sangli Urban Co-operative Bank Ltd. to create over the charge of the assets in Sangli Urban Co-operative Bank Ltd. DNSB and the Corporate Debtor executed various loans document which includes Promissory Notes, Loan Agreement, Deed of Guarantee , Composite Deed of Hypothecation, Pledge Agreement.

6. The Corporate Debtor submitted the loan applications to DNSB for sanction of cash credit facility amounting to Rs. 18 Crores. In the year 2017, the Corporate Debtor sought for enhancement of Cash Credit Facility from Rs. 18 Crores to Rs. 30 Crores. DNSB vide its

Sanction Letter dated 25.04.2017 enhanced the Cash Credit Facility from Rs. 18 Crores to Rs. 30 Crores. On 25.04.2017, in pursuance of the same DNSB and the Corporate Debtor executed various loans documents such as Promissory Note, Loan Agreement, Pledge Agreement for further charge, Deed of Guarantee, undertakings dated 28.03.2018.

7. The Corporate Debtor defaulted in the payment of terms loans and cash credit facilities, hence the term loan and the cash credit facility were declared as NPA on 31.01.2019 and 31.03.2019.

8. Thereafter, the DNSB assigned the term loan facility and cash credit facility of the Corporate Debtor to the Petitioner vide Assignment Agreements dated 30.03.2019 and 05.11.2019.

9. The Petitioner, thereafter, issued Recall Notice dated 10.01.2020 to the Corporate Debtor demanding the Corporate Debtor to pay the dues of the term loan facilities of Rs. 8,60,09,164.14/- and dues towards cash credit facility of Rs. 27,83,07,159.48/- as on 10.01.2020 along with further interest from 11.01.2020 within 14 days of receipt of said notice. The Petitioner mentions that in case of default of payment and payment of outstanding dues by the Corporate Debtor the Petitioner initiate Insolvency Proceedings under IBC.

10. The statement of dues of the Corporate Debtor as on 28.01.2021 has been annexed with the Petition. The date of default of the Term Loan is 30.10.2018 and date of default of cash credit facility is 30.09.2018, i.e., from the date when the Corporate Debtor defaulted the payment of the facilities.

11. The amount of debt claimed by the Petitioner is as follows:

Total Principal Amount: Rs. 30,72,45,135/- (Rupees Thirty Crore Seventy Two Lacs Forty Five Thousand One Hundred and Thirty Five only)

Total Interest: Rs.8,15,08,241/- (Rupees Eight Crore Fifteen Lacs Eight Thousand Two Hundred and Forty One only)

Total Claim: Rs.38,87,53,376/- (Rupees Thirty Eight Crore Eighty Seven Lacs Fifty Three Thousand Three Hundred and Seventy Six only)

12. The Petitioner enclosed the list of documents filed along with the Petition as follows;
    a. Copy of the Sanction Letter dated 28.06.2014 issued by DNSB
    b. Copy of the NOC dated 14.07.2014 issued by the Financial Creditor
    c. Copy of the Deed of Mortgage dated 23.07.2014
    d. Copy of the loan documents dated 22.07.2014 and 24.07.2014
    e. Copy of the Inter-Se Pari-Passu Agreement dated 01.10.2014
    f. Copy of the Sanction Letter dated 29.09.2015 issued by DNSB and the copy of the acceptance letter dated 14.10.2015 sent by the Corporate Debtor to DNSB
    g. Copy of the NOC dated 01.10.2015 issued by the Financial Creditor
    h. Copy of the Inter-Se PariPassu Agreement for Extension of Charge dated 14.10.2015
    i. Copy of the loan documents dated 13.10.2015 and 14.10.2015
    j. Copy of the Joint Deed of Mortgage for Further Charge dated 14.10.2015
    k. Copy of the Inter-Se PariPassu Agreement dated 14.12.2015

l. Copy of the Sanction Letter dated 25.04.2017 issued by the DNSB and copy of acceptance letter dated 28.03.2018 sent by Corporate Debtor to DNSB
m. Copy of the loan documents dated 28.03.2018
n. Copy of the Statement of the Loan account of the Corporate Debtor maintained by DNSB
o. Copy of the Assignment Agreements dated 30.03.2019 and 05.11.2019 executed between DNSB and Financial Creditor
p. Copy of the Loan Recall Notices dated 10.01.2020
q. Copy of Statement of the Dues of the Corporate Debtor in the records of the Financial Creditor as on 28.01.2021
r. Copy of MCA Master data of the Corporate Debtor
s. Copy of Certificate of Incorporation, Memorandum of Association and Articles of Association of the Corporate Debtor

13. The Petitioner has enclosed the statement of accounts of DBSB showing the disbursement of loan to the Corporate Debtor.

Reply of the Corporate Debtor:

14. The Corporate Debtor in its reply confirmed that the Corporate Debtor had availed the loan facility aggregating to Rs. 30,72,45,135/- from DNSB and assigned the same debt to the present Petitioner. The Corporate Debtor due to its financial constraints requested the said DNSB and the Petitioner for financial assistance towards capital and working capital expenditure for maintaining sugar cane farms and for the payments of sugar cane farmers.

15. In the light of COVID-19 and Nationwide lockdown, the sugar industry has hit adversely which caused inordinate delay in harvesting. The entire value chain in the sugar industry which is sugarcane, sugar molasses, ethanol and their subsequent marketing

and export has been adversely affected from COVID-19, which directly affected the Corporate Debtor. During the initial days of lockdown, due to shortage of labour, Sulphur, packaging materials and other related challenges there has been indeed reduction in the sugar production in the country.

16. The Corporate Debtor requested for 6 months' time to clear the outstanding dues of the Petitioner. The Corporate Debtor also mentions that the business of the Corporate Debtor is dependent on the geographical conditions wherein, the raw product and the manufacture product of the Corporate Debtor falls under the essential commodity act and was hit by the poor rain fall from September, 2018 onwards, hence, the Corporate Debtor was irregular in making the payment of the instalments.

17. The Corporate Debtor mentions that admission of the CIRP against the Corporate Debtor in C.P. No. 3010 of 2019 and was ordered on 10.06.2020. Thereafter, the suspended directors of the Corporate Debtor settled the matter and filed form FA with the RP and the withdrawal of CIRP was granted on 16.02.2021.

18. However, the Corporate Debtor is not in a situation to handle the financés from the period 10.06.2020 till 16.02.2021. During this period, the sugar production did go waste, without the company being functional. It has further impacted the position of the Corporate Debtor. The Corporate Debtor can at the best start the upcoming season in the month of September, 2021. By that time, the Directors of the Corporate Debtor are not in a position to pay the loans of the Corporate Debtor. The Corporate Debtor also mentions that the two more applications are pending before the two other courts of NCLT vide C.P. 1458 of 2020 and I.A. 283 /2020 in C.P. 915 of 2019.

Findings:

19. The Petitioner being the assignee under the assignment deed dated 30.03.2019 and 05.11.2019 have taken over the loan the term loans of DNSB(original Lender), cash credit facilities granted by DNSB. The said term loan and cash credit loan accounts of the Corporate Debtor were declared as NPA as on 31.01.2019 and 31.03.2019. The Petitioner post assignment of debt issued Recall Notice dated 10.01.2020 to the DNSB demanding the outstanding liabilities of Rs. 8,60,09,164.14/- in the term loan and outstanding dues of cash credit dues of Rs. 27,83,07,159.48/-. The Corporate Debtor filed its reply admitting the liability and granted loan by the Petitioner by the DNSB which has assigned the Petitioner herein and further requested the time of 6 months for the repayment of entire monies.

20. The matter was posted on 16.04.2021 for final hearing and the counsel for the Corporate Debtor categorically admitted the claim and the Tribunal had passed an order on 16.04.2021 which is as follows;

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

(66). C.P.(IB)-233(MB)/2021

CORAM:

SH. CHANDRA BHAN SINGH, MEMBER (T)

MS. SUCHITRA KANUPARTHI, MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **16.04.2021.**

NAME OF THE PARTIES: ASREC (INDIA) LIMITED
V/s.
CANE AGRO ENERGY (INDIA) LIMITED

SECTION : U/s 7 of Insolvency & Bankruptcy Code, 2016.

ORDER

1. In this matter, Counsel for the Petitioner Mr. N. Kohli and for the Respondent side Mr. Rohit Gupta present. The Ld. counsel for the Respondent mentions that it is a matter where the Debt has been admitted by the Respondent case and, therefore, they do not have any defense and also mentions that this be recorded. The Ld. Counsel for the Respondent mentions that the email communication sent in this regard may be recorded which is as under:

   "To,
   The Hon'ble Bench National Company Law Tribunal
   Court Room – V
   I am concerned for the Corporate Debtor Cane Agro Energy (India) Limited. The said matter was listed on 16th April 2021, Friday

   The Corporate Debtor is financially distressed, therefore, the Corporate Debtor is unable to settle the matter with the Financial Creditor in the abovesaid matter. The Corporate Debtor has given the proposal for settlement, however, it has

(Contd….2.)

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been rejected by the Financial Creditor. Henceforth, the Corporate Debtor does not have any objection if it goes under the Corporate Insolvency ResolutionProcess.

Please find the attached copy of the reply filed in the abovementioned matter for your records.
Regards,
Agam H Maloo Advocate on behalf of Corporate Debtor"

2. The Bench heard the Petitioner side for admission of C.P.(IB)-233(MB)/2021. Reply has been filed by the Corporate Debtor.
3. **Reserved for Orders.**

Sd/-	Sd/-
CHANDRA BHAN SINGH	SUCHITRA KANUPARTHI
Member (Technical)	Member (Judicial)

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21. In view of the admission of liability by the Corporate Debtor on 16.04.2021 and the fact that there is a debt and default of non-payment of amounts under the term loan and the cash credit facility, both the loan accounts were thus declared as NPA as on 31.01.2019 and 31.03.2019. The Corporate Debtor in its reply sought six months' time to repay the debt, there is no denial of sums borrowed and default of non-payment. This bench is of the opinion that all the ingredients of Section 7 are satisfied and that the amounts disbursed by Petitioner to the Corporate debtor under two different facilities (term loan and Cash Credit facility) remain outstanding, owing to the default of non-payment by the Corporate Debtor. Hence, the Petition is admitted.

22. 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. This petition is admitted.

23. Further, we have also perused the Form – 2, i.e., written consent of the proposed Interim Resolution Professional submitted along with this Application/ Petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.

24. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Ritesh R. Mahajan, having registration No. IBBI/IPA-002/IP-N00048/2017-18/10132, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

25. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/ encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

26. That as prescribed under Section 13 of the Code, on declaration of Moratorium, the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

27. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 and Section 15 of the Code and inform the progress of the Resolution Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

28. The Petition is hereby "Admitted". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

29. Ordered Accordingly.

Sd/-	Sd/-
Chandra Bhan Singh	Suchitra Kanuparthi
Member (Technical)	Member (Judicial)