

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.465/MB-IV/2021

Under Section 7 of the IBC, 2016

In the matter of

NETAFIM AGRICULTURAL
FINANCING AGENCY PRIVATE
LIMITED.

[CIN: U67190MH2011PTC220385]

...Financial Creditor

v/s.

BALIRAJA SAKHAR KARKHANA
LIMITED.

[CIN: U15421PN2001PLC147613]

...Corporate Debtor

Order Delivered on: 06.10.2023.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor:

Mr. Sameer Walimbe a/w Mr. Nitesh
Bhoir, Ld. Counsel.

For the Corporate Debtor:

Mr. Shavez Mukri, Adv. Vaibhav
Kamble i/b A&G Legal Associates
LLP, Ld. Counsel.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by NETAFIM AGRICULTURAL FINANCING AGENCY PRIVATE LIMITED, seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of BALIRAJA SAKHAR KARKHANA LIMITED., the Corporate Debtor.

1.1 The petition is filed on 25/04/2021 and the total outstanding amount of debt granted is Rs. 1,33,68,915/- in default (which includes Rs. 71,90,989/- as principal amount Rs. 61,10,601/- as interest and Rs. 67,324/- as other charges). The date of default as Specified in Part IV of the petition is 15.04.2021.

Submissions of the Financial Creditor:

2. The Financial Creditor is a non-banking finance company conceived with the core objective of offering various customized financial solutions to borrowers and various stakeholders in the value chain of Micro Irrigation and agricultural related activities. The Petitioner was incorporated in August, 2011 and was granted license during March, 2013 by the Reserve Bank of India as a non-deposit taking NBFC. The Corporate Debtor is engaged in the production of sugar from sugarcane crops grown by the registered farmers in its command area.

2.1 The Corporate Debtor entered into a Tripartite Agreement along with Netafim Irrigation India Private Limited (NIPL) and Netafim Agricultural Financing Agency Private Limited (NAFA) on 03/10/2013 and 04/09/2014. As per the general arrangements and terms and

conditions in the Tripartite Agreement, the Corporate Debtor's responsibility included recommending farmers having requirement to install the Micro Irrigation System in their farms. The NAFA will provide Financial Assistance to its registered sugarcane farmers of Sugar Factory for purchasing micro/drip irrigation systems (including accessories if supplied by NIPL). Further, the Corporate Debtor shall provide an undertaking to NAFA to recover from the farmers, the outstanding loan amount as per the terms and conditions and to pay the principal amount plus interest (Outstanding amount) till the closure of loans from the proceeds payable to the farmers after purchasing the sugar cane from them.

- 2.2 Further the Corporate Debtor entered into a continuing Deed of Guarantee dated 03/10/2013 guaranteeing the Financial Creditor to repay the amount due from the recommended. farmer-borrowers who have defaulted. The Corporator Debtor recommended the names of farmer-borrowers for sanction of loan for installation of Micro Irrigation Systems. On the basis of the Deed of Guarantee entered with the Corporate Debtor, the Financial Creditor transferred the amount from loan account of the farmer-borrowers in favour of Netafim Irrigation India Private Limited.
- 2.3 The Financial Creditor as matter of practice sent the monthly Management Information System reports as Written Certificate to the Corporate Debtor thereby providing the outstanding repayment status and defaulting borrowers along with their outstanding dues.
- 2.4 As on 31st March 2021, 110 farmer-borrowers are in default and have an outstanding due of Rs.1,33,68,915/-. The Financial Creditor invoked the guarantee for repayment of the entire outstanding amount vide the legal

notice dated 07/04/2021 within 7 days from the date of receipt of the notice. The notice was received by the Corporate Debtor on 07/04/2021 via email. The Corporate Debtor did not pay by 14/04/2021 and thus defaulted. Thus, the date of default is taken to be as 15.04.2021. The Company Petition is filed within Limitation.

Submissions of the Corporate Debtor:

3. The Corporate Debtor vide its Affidavit in reply dated 21.01.2022 stating that the Petitioner in the said Petition has miserably failed to establish its claim amount and default as prescribed under the Insolvency and Bankruptcy/ Code, 2016. In fact, the Petitioner has not even produced the primary Loan Agreements with the borrowers to establish the presence of loan and/or whether any amount has been disbursed to the borrowers; other than the Tripartite Agreement, the Petitioner has not produced any other document to substantiate its claim and even otherwise the Petitioner has miserably failed to show any proof that there are any pending outstanding dues by the borrowers i.e. the farmers; the Petitioner has not annexed any other document which has been acknowledged or confirmed by the Respondent or the borrowers showing that there are outstanding dues.

3.1. The Petitioner has failed to even mention date of defaults and the Petitioner on its own motion without any substantial basis has mentioned only one single date of default i.e. 15/04/2021 in the Petition.

3.2. As per Clause (VI) (8) of the Tripartite Agreement the principal amount and interest were to be paid within 6 months from the repayment / instalment due date and any action ought to have been taken from lapse of 6 months from such date. Moreover, the clause further mentions that the Applicant and Respondent jointly shall initiate and undertake recovery activities to

recover the dues from the defaulted farmer and the Applicant has not taken or shown that they have taken any steps of recovery from the defaulted farmers and has only chosen to take action against the Respondent.

3.3. The Applicant has wholly relied on the Tripartite Agreement dated 3rd October, 2013 in the Petition. That the said agreement mentions under clause (XVI) that any dispute or disagreement over the terms of this agreement shall be finally settled by arbitration. The present matter is subject of arbitration and in view section 8 of Arbitration and Conciliation Act, 1986, this Hon'ble Tribunal be pleased to refer the parties to Arbitration leaving all the contention open before the Arbitral Tribunal.

3.4. The Applicant has failed to take timely actions and now pressurizing the Respondent herein to make payments and furthermore in the Terms and conditions of the proposed arrangement at serial no .15, Point 31, Annexure V there was an option for documentation for creating first charge and hypothecation on the asset created out of term loan and the sugarcane crop sale proceed of the farmer supplied to the Sugar Mill. The Applicant had an option to exercise such a right which the Applicant neglected to do as the same is not been shown in the Petition.

Submissions of the Financial Creditor through its Affidavit in Rejoinder:

4. The Financial Creditor through its Affidavit in Rejoinder dated 12.04.2022 stated that the present Petition is not filed on the breach of any of the terms and conditions of the Tripartite Agreement but on the inability of the Corporate Debtor to repay the defaulting loans of the borrowers guaranteed by the Corporate Debtor under the Deed of Guarantee dated 03.10.2013. It is the submission of the Financial Creditor that the breach of guarantee is the cause of action and the single date of default is the date of default of the guarantee.

Findings:

5. We have heard the arguments of Learned Counsel for Financial Creditor and the Corporate Debtor.

4.1. As per the material on record, this bench finds that, it is not in dispute that the Applicant/Financial creditor has disbursed the loan to various farmers under the Tripartite Agreement to which corporate debtor was one of the party. The relevant extract of the Deed of Guarantee dated 03.10.2013, is reproduced below:

*“In the event of default on the part of the Borrower(s) in supply of sugarcane produce (equivalent of the amount due on part of the borrower in principal, accrued interest & any other applicable charges to NAFA in accordance with the terms of the Credit Arrangement Letter) to the sugar factory/ies of the Guarantor and/or in payment/repayment of loan and/or other monies due and payable under or in terms of the Loan Agreement(s) or in the event of any default on part of the Borrower(s) to comply with or perform any of the terms, conditions and covenants contained in the Loan Agreement(s) , the Guarantor unconditionally and irrevocably undertakes that is shall **upon demand**, forthwith pay to the lender without any demur or protest and without questioning ”.*

On the basis of the above facts, it is observed that, the Corporate Debtor was under an obligation to repay the outstanding amount on demand to the Financial Creditor. The Financial Creditor invoked the Deed of Guarantee vide letter dated 07.04.2021 demanding the outstanding amount of Rs. 1,33,68,915/-. It is not in dispute that the farmers have defaulted in payment of these loans and the Corporate Debtor has also not remitted any money out of the sales proceeds of the sugarcane supplied by the farmers.

4.2. After perusal of the material on record, this Bench is of considered view that the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor is complete and filed in the proper form.

4.3. On perusal of the documents submitted by the Financial Creditor, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Financial Creditor in capacity of Guarantor to the Credit facility extended to farmers. There is default by the Corporate Debtor in payment of debt amount. Therefore, this is a fit case for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor is liable to be admitted.

ORDER

6. The Petition bearing CP (IB) No.465/MB-IV/2021 filed by NETAFIM AGRICULTURAL FINANCING AGENCY PRIVATE LIMITED, seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of BALIRAJA SAKHAR KARKHANA LIMITED., the Corporate Debtor **Admitted.**

- a) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

- (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium, -
- (v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) The bench hereby appoints **Mr. Ajay Ganesh Marathe**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals

of ICAI having registration number **IBBI/IPA-001/IP-P01262/2018-2019/12170** and email- **ajaym7@rediffmail.com**. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- (i) In view of the submission of the financial creditor that there are no assets left with the Corporate Debtor, the IRP is directed to satisfy himself about this assertion and proceed to take appropriate steps accordingly.
- (j) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(k) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
06.10.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)