IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT NO. V, MUMBAI BENCH

CP No. 599/(IB)-MB-V/2021

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 Mohandas Chhataram,

Sarda Building, Maskasath, Itwari, Nagpur

…. Petitioner/Financial Creditor

Vs.

Gokul Sugar Industries Limited,

Datta Nagar at and Post-Dhotri, Taluka, South Solapur, Mh-413258.

...Corporate Debtor/Respondent

Order Reserved on: **07.12.2021**

Order Pronounced On: **18.02.2022**

Coram:

Hon'ble Suchitra Kanuparthi, Member (Judicial)

Hon'ble Anuradha Sanjay Bhatia, Member (Technical)

Appearances (Via Video Conference):

For the Petitioner: Mrs. Prachi Wazalwar, Advocate I/b Mr. Amit Tungare, Advocate

For the Respondent: Mr. Ashish Agarkar, Advocate.

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. The Petitioners/Applicant viz. ‘M/s Mohandas Chhataram’. (hereinafter as **Petitioner**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of “Financial Creditor” by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against ‘Gokul Sugar Industries Limited’ (hereinafter as ‘**Corporate Debtor**’).

2. In the requisite Form-1, under the head “Particulars of Financial Debt” the amount claimed to be in default is Rs. 57,29,55,685.94/-. (Including Interest, Discount & Damages). The date of default is stated to be 09.05.2021.

Brief Facts-

3. The Petitioner submits that the Petitioner is in business of purchasing refined sugar in bulk quantities from various sugar mills. The Petitioner has been buying large quantities of sugar from the Corporate Debtor. The Corporate Debtor had approached the Petitioner for the purpose of financial assistance to the tune of Rs. 45,00,00,000/- (Forty-Five Crores).

4. The Corporate Debtor is engaged in the business of running sugar mills in the name of M/s. Gokul Sugar Private Limited, the Corporate Debtor through its directors approached M/s Mohandas Chatatam (the Petitioner) being one of the Vendors, having regular business transactions and requested to provide financial assistance for ‘payment

to Sugar Cane and Advance to Sugar Cane Team, HNT Workers (harvesting, cutting and transportation) and for re-oiling and machinery etc. for the season of year 2019-20. The Applicant viz M/s Mohandas Charatam, agreed to give loan to the Corporate Debtor.

5. On 01.06.2019, two Memorandum of Understanding was executed between Gokul Sugar Industries Limited and M/s Mohandas Chhataram for an amount of Rs. 15,00,00,000/- & Rs. 30,00,00,000/-. The Applicant claimed to have disbursed loan amount to Corporate Debtor as and when required by the Corporate Debtor (June 2019- January 2020). The Corporate Debtor agreed to supply the sugar as per MOU by the end of December 2019 and he failed to do so on the due date.

6. The Corporate Debtor supplied sugar in the month of January 2020 and paid the amount of Rs. 1.40 crores against the balance amount due to him and assured that the balance amount of loan would be repaid by 08.02.2020. However, they have failed to repay the amount due and have been giving different dates and false commitment with respect to the payment.

7. Corporate Debtor informed Applicant about sanction of loans from various banks and they will return the loan taken from applicant once the loan gets disbursed, for same Corporate Debtor requested applicant to pay Rs. 48. Lacs with respect to payment of loan processing charges and shares certificates on various occasions.

8. On 02.05.2021, a legal notice for payment was served on the Corporate Debtor and on its Directors by the Petitioner for discharge of loan

liabilities with full (including interest & Discount/Damages) but the Corporate Debtor has failed to discharge their liabilities.

9. The Petitioner served a second Legal Notice dated 28.05.2021 to the corporate Debtor seeking repayment of Rs. 57.29 crores (including discount, damages and interest) within a period of 7 days.

10. Hence, due to nonpayment of debts, the Petitioner filed this Petition u/s 7 of the IBC, as a Financial Creditor, for initiating the Corporate Insolvency Resolution Process (CIRP). On the ground that the Corporate Debtor is liable to pay Rs. 57,29,55,685.94/- the total outstanding of loan, interest, discount and damages in the books of account of M/s. Mohandas Chhataram. The date of default is stated to be 09.05.2021.

11. List of documents attached to this Petition in order to prove the existence of Financial Debt, the amount and date of default are as follows:
    i. Loan confirmation certificate received from M/s. Gokul Sugar Industries Limited as on 30.04.2020.
    ii. Statement of accounts of Corporate Debtor maintained in the books of Applicant-Financial Creditor.
    iii. Accounting vouchers issued by M/s Gokul Sugar Industries Limited, mentioning interest provision on loan and TDS deducted.

<u>Submissions by The Corporate Debtor:</u>

12. The Corporate Debtor is a company duly incorporated under the provisions of Companies Act, 1956. The Corporate Debtor is engaged

in the business of manufacturing Sugar and is having a Sugar Mill at Solapur.

13. The Corporate Debtor had been supplying Sugar to the Petitioner since 2018 against the advances given by the Financial Creditor, even prior to the execution of MOU and had maintained business relationship. The Corporate Debtor approached the Petitioner to provide funds in nature of advance for purchase of sugar cane, advance to sugar cane team, H&T workers and for reoiling plant and machinery for the year 2019-20 against the sale of sugar for the sugar season 2019-20. The Petitioner agreed to provide the funds and executed a MOU on 01.06.2019 for an amount of Rs. 15 crores and another MOU dated 01.06.2019 for an amount of Rs. 30 crores.

14. The Corporate Debtor submits that the Petitioner approached this Tribunal with *malafide* intention and to mislead the Tribunal. The Corporate Debtor submits that the Petitioner has wrongly calculated the amount and arrived at the present alleged claim, which has no adherence to the MOU, dated 01.06.2019 for Rs. 15 Crores and MOU dated 01.06.2019, for Rs. 30 Crores, and for conditions more specifically stated therein.

15. That the Memorandum of Understanding dated 01.06.2019 for Rs. l5 Crores and Memorandum of Understanding dated 01.06.2019 for Rs. 30 Crores entered into between parties envisaged to provide finance for payment for purchase of Sugar Cane, advance to Sugar Cane cutting team, transporter and for re-oiling of plant and machinery, etc. specifically for the sugar season of year 2019-2020 which starts from October 2019 and ends on September 2020 in consideration for supply

of 50,000 Quintal sugar in respect of MOU for Rs. 15 Crores and 1,00,000 Quintal sugar in respect of MOU for Rs. 30 Crores on part of the Corporate Debtor from the 10th day after the Corporate Debtor starts crushing process and the entire supply of sugar is to be completed in total period of 30 days.

16. The Corporate Debtor further claimed that the Petitioner had not come with clean hands and had suppressed material information to mislead this Tribunal. The Petitioner has sought to place reliance in incorrect remittances and the same do not form part of two MOU dated 01.06.2019 execute by both the parties for the funds for an amount of Rs. 49 crores.

17. While considering the claim under the MOU dated 01.06.2019 for providing funds amounting to Rs. 15 Crores, the Petitioner has place reliance on remittances from 13.02.2019 to 17.05.2019 which are preceding the date of the MOU, by their own admission as evidenced by annexure to the Notice dated 28.05.2021 of the present Company Petition. By doing so, the present Financial Creditor has sought to account for remittances which are beyond the scope of the present MOU dated 01.06.2019 for Rs. 15 Crores and also do not form part of the Sugar Season of the year 2019-20.

18. The Corporate Debtor further stated that while considering the claim under the MOU dated 01.06.2019 for providing funds amounting to Rs. 30 crores, the Petitioner has put reliance on remittances from 17.05.2019 which are preceding the date of the MOU by their own admission as evidenced. By doing so, the present Petitioner has sought to account for remittances which are beyond the scope of the present

MOU dated 01.06.2019 for Rs. 30 crores and also do not form part of the Sugar season of the year 2019-20.

19. The Corporate Debtor stated that it had duly supplied 1,50,000 Quintals of sugar to the Financial Creditor as per the provisions of the said MoU dated 01.06.2019 for Rs 15 Crores and MoU dated 01.06.2019 for 30 Crores. That the Corporate Debtor started supplying sugar after the start of sugar season for year 2019-20, from 09.12.2019 and fully supplied 1,50,120 Quintals of sugars by 13.03.2020, as per the agreement against the advance given by Financial Creditor from 06.06.2019 till 13.03.2020 amounting to Rs. 45,21,02,900/- A copy of the Ledger account of the Petitioner in books of Corporate Debtor was annexed to the Petition.

20. The Corporate Debtor duly complied with all the conditions of the MOU dated 01.06.2019 for Rs. 15 crores and MOU dated 01.06.2019 for Rs. 30 crores and had supplied 1,500 quintals of Sugar against the total funds of Rs. 45 crores as advanced by the Petitioner, there is no outstanding liability in respect of MOU date d01.06.2019 for Rs. 15 crore and MOU dated 01.06.2019 for Rs. 30 crores.

21. The Corporate Debtor further claimed that it is a going concern and suffer irreparable injury if the Company petition is admitted and that the goodwill of the Company will be affected.

Rejoinder of The Petitioner:

22. The Petitioner points out that on about May 2019 the Corporate Debtor approached the Petitioner and requested for Financial Assistance of approximately Rs. 45 crores against sale of sugar for the sugar season

2019-20. The Corporate Debtor informed the Petitioner that the said Financial Assistance was required for making payments towards Sugarcane and to the Sugarcane cutting team, transporters, and for re-oiling of plants and machinery, etc. for the sugar season 2019-20. Both the parties agreed to execute two MOU's both dated 01.06.2019, to record the terms and conditions for providing financial assistance of approx. Rs. 45 crores.

23. The Petitioner reiterated that pursuant to the two MOU's, the Corporate Debtor has issued Loan Confirmation Certificate dated 30.04.2020.

24. The Corporate Debtor had been supplying Sugar to the Petitioner since the year 2018 against the advances given by the Petitioner and that even prior to the execution of two MOU's the Petitioner and Corporate Debtor had business relationship. the Corporate Debtor further suppressed the crucial fact that the Petitioner had made full payment towards the supply of Sugar by the Corporate Debtor and that there are no outstanding payable by the Corporate Debtor to the Petitioner with respect of Sugar supplied by the Corporate Debtor. The Petitioner confirmed that the Financial Assistance provided to the Corporate Debtor under two MOU record all the sums paid by the Petitioner to the Corporate Debtor.

25. Supply of approximately 1,50,000 quintals of sugar by the Corporate Debtor to the Petitioner against the total Financial Assistance of approximately Rs. 45 crores disbursed by the Petitioner under the two MOUs. The below table demonstrates the sums paid by the Petitioner to the Corporate Debtor towards supply of sugar from the period 01st April 2018 to 31st March, 2021:

Particulars	**Amount (Rs.)**
Total sums paid/advanced by the Financial Creditor to the Corporate Debtor from 1st April 2018 to 31st March 2021	**84,77,11,910.00** (Rupees Eighty-Four Crores Seventy-Seven Lacs Eleven Thousand and Nine Hundred and Ten Only)
Total sums repaid by the Corporate Debtor to the Financial Creditor towards financial assistance provided by the Financial Creditor from 1st April 2018 to 31st March 2021	**1,74,60,000.00** (Rupees One Crore Seventy-Four Lacs and Sixty Thousand Only)
Total value of sugar supplied by the Corporate Debtor to the Financial Creditor from 1st April 2018 to 31st March 2021	**51,72,82,710.00** (Rupees Fifty-One Cores Seventy Two Lacs Eighty-Two Thousand Seven Hundred and Ten Only)
Total Principal outstanding dues from the Corporate Debtor to the Financial Creditor from 1st April 2018 to 31st March 2021	**31,29,69,200** (Rupees Thirty-One Crores Twenty-Nine Lacs Sixty Nine Thousand Two Hundred Only)

26. The Petitioner further stated that the Corporate Debtor had deliberately sought to mix supply of Sugar under running business account with the Financial Assistance provided by the Petitioner under two MOU's. The supply of Sugar under the running business account, have no correlation/ connection/linkage to the Financial Assistance provided by the Petitioner herein. Even otherwise, look for many angles the principle amount of Rs. 31.30 crores is outstanding and liable to be paid by the Corporate Debtor to the Petitioner.

27. Despite receiving full payment towards supply of Sugar by the Corporate Debtor to the Financial Creditor, under the running business account between the Parties, the Corporate Debtor has deliberately sought to adjust the same against the Financial Assistance provided by the Financial Creditor to the Corporate Debtor under the two MoU's. The only intention of the Corporate Debtor to make such unilateral and mala-fide adjustment is to portray before this Tribunal that the Corporate Debtor has supplied sugar towards the said Financial Assistance under the MoU's and has thus complied with the terms and conditions thereunder. However, the Corporate Debtor cannot escape from the fact that the Corporate Debtor has received entire payment towards such sale of sugar from the Financial Creditor over and above/in addition to the loan advance remittances made under the two MoU's. The said running business account is essentially a bifurcated ledger account recording only the trading entries for supply of sugar and payments made with resect thereto in the books of the Financial Creditor. The loan account ledger between the Financial Creditor and Corporate Debtor, maintained by the Financial Creditor in its books from April 1, 2019 to March 31, 2020. It is pertinent to state here that the last 3 entries of Rs. 81,24,239.70 each are only the accounting entries as per the Journal Voucher provided by Corporate Debtor and these amounts have not been remitted to Financial Creditor.

28. It is pertinent to note that all the entries recorded by the Corporate Debtor in the ledger account of the Financial Creditor produced at Annexure "B" to the Reply are recorded in the running business account maintained by the Financial Creditor and annexed at the Petition, is a Bank Certificate issued by the HDFC Bank dated November 3, 2021 confirming payment made by the Financial Creditor

to the Corporate Debtor towards the supply of sugar recorded by the Financial Creditor recorded in Exhibit “2” and by the Corporate Debtor in Annexure “B” to the Reply. It is pertinent to note that the payments recorded in the Bank Certificate dated November 3, 2021, are separate and distinct from the Financial Assistance provided by the Financial Creditor and recorded in the Bank Certificate dated May 24, 2021 annexed at Exhibit “5” to the present Petition. It is further stated that the entire sums remitted by the Financial Creditor to the Corporate Debtor and detailed in Exhibit “1” hereto are recorded in the Bank Certificates dated May 24, 2021 and November 3, 2021 issued by the HDFC Bank.

29. The Corporate Debtor is trying to mix the entries and payments in the Financial Assistance provided by the Financial Creditor and running business account between the Parties, is also belied by the Loan Confirmation Certificate dated April 30, 2020 issued by the Corporate Debtor. As per the Corporate Debtor’s own records annexed at Annexure “B” to the Reply, the last entry for supply of Sugar by the Corporate Debtor to the Financial Creditor is on March 13, 2020. However, even after the supply of Sugar by the Corporate Debtor to the Financial Creditor on or about March 13, 2020 and after the closure of the financial year 2019-20, the Corporate Debtor issued a Loan Confirmation Certificate dated April 30, 2020, admitting the loan liability of the Corporate Debtor to the Financial Creditor in the sum of approximately Rs. 33.80 Crores.

Findings: -

30. The Petitioner Mohandas Chhataram (Financial Creditor) is a merchant/ trader/ wholesaler of refined Sugar has provided Loan to the Corporate Debtor. The Corporate Debtor is engaged in running of the Sugar Mill in the name of M/s Gokul Suagr Industries Limited. As per the Petition, the Respondent (Corporate Debtor) defaulted in repayment. As per the Petition the outstanding amount as on date of default i.e. on 09.05.2021 was Rs. 57,29,55,685.94/-.

31. The only issue which arises for consideration is whether there is any outstanding liability arising under the two MOU's dated 01.06.2019 qua the Loan Confirmation Certificate issued by the Corporate Debtor.

32. The Respondent has been supplying sugar to the Financial Creditor/Petitioner since the year 2018 against advances given by the Financial Creditor. Even prior to the execution to the Memorandum of Understanding by way of which certain amounts were advanced, the Financial Creditor and Corporate Debtor has had a business relationship thereby maintaining a running business account.

33. The Corporate Debtor further admitted the Memorandum of Understanding dated 01.06.2019 for Rs. 15 crores and Memorandum of Understanding 01.06.2019 for Rs. 30 Crores entered into between the parties envisaged to provide finance for purchase of Sugarcane, advance to Sugarcane cutting team, transporter and for re-oiling of plant and machinery, etc. specially for the sugar season of year 2019-20 which starts from October 2019 and ends on September 2020 in consideration for supply of 50,000 quintal Sugar in respect of MoU for Rs. 15 crores and 1,00,000 quintal Sugar in respect of MoU for Rs. 30

Crores on part of the Corporate Debtor from the 10th day after the Corporate Debtor starts crushing process and the entire supply of sugar is to be completed in total period of 30 days.

34. The Corporate Debtor has duly supplied 1,50,000 quintals of Sugar to the Financial Creditor as per the provisions of the said MoU dated 01.06.2019 for Rs. 15 crores and MoU dated 01.06.2019 for Rs. 30 crores. That the Corporate Debtor started supplying sugar after the start of sugar season for year 2019-20 from 09.12.2019 and fully supplied 1,50,120 Quintals of sugar by 13.03.2020 as per the agreement against the advance given by Financial Creditor from 06.06.2019 till 13.03.2020 amounting to Rs. 45,21,02,900/-. A copy of ledger account of the Financial Creditor in books of Corporate Debtor is annexed to the Petition.

35. The Corporate Debtor further stated that it has duly complied with the conditions of the said MoU dated 01.06.2019 for Rs. 15 crores and MoU dated 01.06.2019 for Rs. 30 crores and has supplied 1,50,000 quintals of Sugar to the Financial Creditor against the total funds of Rs. 45 crores disbursed by the Financial Creditor and hence there is no outstanding liability of the Corporate Debtor as on date in respect of the said MoU dated 01.06.2019 for Rs. 15 crores and MoU dated 01.06.2019 for Rs. 30 crores.

36. At the outset, it is relevant to refer to the two MOU's dated 01.06.2019 executed between both the parties. The said MOU's were annexed with the Petition. It is necessary to high light important aspects of the MOU. The same is reproduced below:-

- ***Recital 4*** *– The party of No. 2 needs funds for making payment for sugar cane and advance payment to the sugar cane cutting team, transporters, and for re-oiling of plants & machinery etc., for season 2019-20.*
- ***Recital 5*** *– Chairman & MD of party No. 2 sugar factory to accept advance amount against the Forward sale of sugar….*
- ***Para 4*** *– In case the party no. 2 does not deliver the agree sugar... party no.1 shall have right to cancel the present MOU and in the event the party No. 2 shall forthwith pay the entire consideration amount of Rs. 30 Cr or the amount then found due (after adjusting the sale consideration amount of the sugar supplied if any) to party No. 1* ***along with damages*** *as stated in para No. 6 of the present MOU.*
- ***Para 4 (Second Para)*** *Party No. 2 will complete MOU agreement within the date before 30th Dec 2019.*

37. The execution of two MOU's establishes the fact that both the parties envisaged to have an express agreement in writing beyond the supply of sugar and business relationship which existed between the parties.

38. Further, the 'Loan Confirmation Certificate' dated 01.04.2020 duly executed and signed by the Corporate Debtor, confirms/acknowledges the liability of payment of Rs. 33.80 crores by the Corporate Debtor. If monies which were advanced post execution of two MOU's were adjusted against the supply of sugar, there was no need for the Corporate Debtor to execute a loan conformation certificate which evidences the debt which is due and payable by the Corporate Debtor. The snapshot of the Loan Confirmation Certificate is as follows:

(77)

SUGAR • POWER

GOKUL SUGAR
INDUSTRIES LIMITED

गोकुळ

LOAN CONFIRMATION CERTIFICATE

From:
Gokul Sugar Industries Limited
Datta Nagar, At and post Dhotri, Taluka
South Solapur, District Solapur, Maharashtra
PIN – 413258

Date: April 30, 2020

(Name & Address of the person who has taken the loan)

Dear Sir,

We give herebelow the details of loan account as per our books of accounts as on March 31,2020

Particulars	Date	Amount (Rs.)
Opening Loan Balance	4/1/2019	-
Amount Borrowed during the year		32,76,29,200.00
Add: Interest during the year		2,43,72,719.10
Amount Repaid during the year		1,40,00,000.00
Closing Loan Balance	3/31/2020	33,80,01,919.10

For Gokul Sugar Industries Limited

Director

GOKUL SUGAR INDUSTRIES LTD. At-Dhotri, Tal. South Solapur, Dist. Solapur.

CONFIRMATION BY DEPOSITOR

We hereby confirm that what is stated above is correct.

Name & Address:
M/s. Mohandas Chhattaram
Maskasath, Itwari, Nagpur – 440002

For Mohandas Chhattaram

Signature P. S. Somaiya
Partner

PAN: AACFM8152B

Corporate Office : 131, Monalisa Chambers, 2nd Floor, Opp. Kukreja Sports, Lucky Chowk, Solapur-413 001 (MH)
Tel. : 0217 - 2623288 ◆ email : gokulsugar@gmail.com
Factory Site / Reg. Office : Datta Nagar, A/p. Dhotri, Tal. South Solapur, Dist. Solapur - 413 228. Tel. : 0217 - 2911288

Mohandas Chhataram
P. S. Somaiya
Authorized Signatory

39. The Petitioner states that the Corporate Debtor has shared the ledger of Petitioner's accounts in the books maintained by Corporate Debtor in his books. The same is annexed to the Additional documents where even in books of Corporate Debtor, as on 31st March 2020, there is an outstanding balance of 33.80 crores. Corporate Debtor has booked interest on the unsecured loans and the relevant entries are also evident from book of the Corporate Debtor are also annexed to the additional affidavit. This ledger is admitted by the Corporate Debtor during the pleadings.

40. The Corporate Debtor has booked an interest on the unsecured loan to the tune of Rs. 2.7 Crores and TDS of Rs. 27 Lacs under Sec 194A of Income Tax Act annexed to the Additional Documents filed by the Petitioner.

41. The Corporate Debtor has also admitted the pending loan amount of Rs. 33.80 Cr. The said ledger shared by Corporate Debtor and the IT Certificate is annexed to the additional document. Corporate Debtor has never ever disputed the same.

42. Further, an amount of Rs. 24 lakh out of Rs. 2.7 Crores was paid towards interest in the year 2020 and 2021 which is evidenced from ledger account which is annexed to the additional document.

43. It is further stated that from the Additional document submitted before us, it can be seen that a Journal Voucher Entry has been passed under the provisions of Sec 194A, wherein TDS on such interest was booked and has been admitted by the Corporate Debtor. On further enquiry, the counsel of the Corporate Debtor stated that the said TDS was never paid to the Government account. It may be noted that deduction of TDS

may not amount to admission of liability however, it is an admission of fact that amount was treated as loan because TDS was deducted under the relevant provisions of the Income Tax Act, 1961.

44. It is now a settled law, for a debt to be a Financial Debt, payment of interest is not mandatory. However, in this case, interest is also provided for, as set out above and the same fortifies the commercial effect of borrowing. It is established that both the Parties have treated this as a loan at all times and loan confirmation certificate was issued by the Corporate Debtor. It is also settled by the *Hon'ble Supreme Court in Pioneer Urban Land and infrastructure Ltd & Anr V.s Union of India & Ors, (2019, SCC Online SC 1005)* that for a financial debt there can be multiple ways to repay to loan and it may not always be the repayment of loan by paying money.

45. Even otherwise the term financial debt is defined in Section 5(8)(f) of the Insolvency and Bankruptcy Code, 2016. "Financial Debt" is any amount raised under any other transaction, **including any forward sale** or purchase agreement, having the commercial effect of a borrowing". The MOU at 4th recital clearly records the transactions between the parties as "***Forward sale of sugar***".

46. Thus, even amounts advanced which can be repaid in different ways as set out in the MOU will have commercial effect of borrowing. The phrase 'commercial effect of borrowing' would imply that it need not be borrowings but something which is equivalent to borrowings.

47. The Corporate Debtor has admitted in the Board resolution and the MOU's that the said financial assistance was required for the purpose

of procurement of Sugar Cane and for payment of team. Thus, the Corporate Debtor admits that the said loan was needed for the purpose of running business operations.

48. In *M/s. Orator Marketing Private Limited V/s. M/s. Samtex Desinz Private***,** *2021 SCC OnLine SC 513*, the **Hon'ble Supreme Court has held that any transaction for meeting the working capital requirement and money raised for business operation is a Financial Debt**. It does not matter whether it carries interest or not. The relevant extract of this judgment is as follows:

> "*The short question involved in this Appeal is, whether a person who gives a term loan to a Corporate Person, free of interest, on account of its working capital requirements is not a Financial Creditor, and therefore, incompetent to initiate the Corporate Resolution Process under Section 7 of the IBC. In Jaypee Infratech Ltd. (supra), the debts in question were in the form of third-party security, given by the Corporate Debtor to secure loans and advances obtained a third party from the Respondent Lender and, therefore, held not to be a financial debt within the meaning of Section 5(8) of the IBC. There was no occasion for this Court to consider the status of a term loan advanced to meet the working capital requirements of the Corporate Debtor, which did not carry interest.* ***Having regard to the Aims, Objects and Scheme of the IBC, there is no discernible reason, why a term loan to meet the financial requirements of a Corporate Debtor for its operation, which obviously has the commercial effect of borrowing, should be excluded from the purview of a financial debt.*** *At the cost of repetition, it is reiterated that*

the trigger for initiation of the Corporate Insolvency Resolution Process by a Financial Creditor under Section 7 of the IBC is the occurrence of a default by the Corporate Debtor. 'Default' means non-payment of debt in whole or part when the debt has become due and payable and debt means a liability or obligation in respect of a claim which is due from any person and includes financial debt and operational debt. The definition of 'debt' is also expansive and the same includes inter alia financial debt. ***The definition of 'Financial Debt' in Section 5(8) of IBC does not expressly exclude an interest free loan. 'Financial Debt' would have to be construed to include interest free loans advanced to finance the business operations of a corporate body."***

(Emphasis supplied).

49. Transaction documents and admission of liability, all satisfy the elements of Section 5(8)(f). It may also be noted that the present case involved providing finance for buying raw material (sugar cane) and for refurbishment of plant and machinery (its re-oiling) which in effect is business operation of corporate debtor. This advance which would be repaid by forward sale of sugar has commercial effect of borrowing.

50. The intent of the Corporate Debtor was always to raise/borrow funds. It can be seen from the Board Resolution dated 01.06.2021 of the Corporate Debtor. The Board Resolution has been annexed to the Company Petition clearly records that '*M/s Gokul Sugar Industries Limited is in need of funds of Rs. 45 Cr from Mohandas Chhattaram for commencement of season 2019-20.'*.

51. Therefore, in view of the above it is clear that the Debt comes under the head of Financial Debt. It is beyond doubt that the Petitioner is a "Financial Creditor" to whom the "Financial Debt" is owned by the Corporate Debtor. The Table of events is below: -

Sr No.	Particular	Details
1.	P. Debt	**Rs. 32,80,61,910/-** (Rupees Thirty-Two Crore Eighty Lakh Sixty-One Thousand Nine Hundred and Ten)
2.	Admission of Loan	**'Loan Confirmation Certificate'** dated 01.04.2020 duly executed and signed by the CD
3.	Default date	**9th May 2021**
4.	Proof of Default	**Legal notice** dated 2nd May 2021 **Legal notice** dated 28th May 2021 Legal Notices were never responded nor objected to by the CD.
5.	Proof of disbursement of Loan	**Bank Certificate** indicating loan advanced to the CD

52. On going through the submissions made by the Learned Counsel for the both the sides and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt and the Corporate Debtor failed to pay.

53. The above facts clearly reveal that the Corporate Debtor is liable to pay the Petitioner and defaulted in making the payment to the Petitioner. 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. The formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves '**Admission**'.

54. Further that, 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.

55. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Jagdish Kumar having registration No. IBBI/IPA-001/IP-P00671/2017-2018/11143, having address at B56, Wallfort City, Bhatagaon, Ring Road No.1, Raipur, Chhattisgarh, 492001, having email id: Jkparukar.ip@gmail.com, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

56. 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.

57. 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.

58. That the Interim Resolution Professional shall perform the duties as assigned under Section 15 and Section 18 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.

59. In view of the above, the Bench "**Allows**" the Company Petition No. **599/(IB)-MB-V/2021** u/s.7 initiating CIRP against the Corporate Debtor M/s Gokul Sugar Industries Limited. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

60. Ordered Accordingly.

Sd/-	sd/-
Anuradha Sanjay Bhatia	Suchitra Kanuparthi
Member (Technical)	Member (Judicial)