IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT V

C.P.(IB) No. 843 of 2022

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Bank of India Limited,
Star House, C-5, “G” Block, Bandra Kurla Complex, Bandra (East), Mumbai - 400051
……**Financial Creditor/ Petitioner**

Vs

M/s Pannageshwar Sugar Mills Limited,
(CIN No: US51311MH1985PTC036105)
P.O. Pangaon, Taluka – Renapur, latu, 431522
…….Corporate Debtor/ Respondent

Order pronounced on: 12.05.2023

Coram:
Hon’ble Sh. Kuldip Kumar Kareer, Member (Judicial)
Hon’ble Smt. Madhu Sinha, Member (Technical)

For the Petitioner: PCA Ayush J Rajani a/w. Khushboo Shah i.b AKR Advisors

For the Corporate Debtor: None

Per: Kuldip Kumar Kareer (Judicial)

ORDER

1. This Company Petition is filed by Petitioner, namely, Bank of India Limited (hereinafter called "**Financial Creditor**") through its Authorised Officer namely, Mrs. Bhagyaleelavathi Oburai, Assistant General Manager, seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against M/s Pannageshwar Sugar Mills Limited (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor committed default in making payment to the Financial Creditors. This petition has been filed by invoking the provisions of Section 7 Insolvency and Bankruptcy Code (hereinafter called "**Code**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of Financial Debt of **Rs. 14,37,51,961/-** which includes Rs. 10,00,00,000/- towards principal outstanding and Rs. 4,37,51,961/- on account of interest.

FACTS OF THE CASE

2. The Petitioner is a Scheduled Bank and a body corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act. 1970, and carrying on business through its different branches. The Corporate Debtor is a Company incorporated under the Companies Act, 1956 and carrying on the business of manufacturing of sugar.

3. The Petitioner has submitted that vide Sanction letter dated 31.05.2019, the Corporate Debtor has availed the facility of Working Capital Basal Dose

of Rs. 10 Crores for Plantation Season 2019-20 (Crushing Season 2020-21). It is further submitted that the Board of Directors of the Corporate Debtor in its meeting dated 01.06.2019 approved the availment of Basal Dose Loan Facility of Rs. 10 Crore from the Petitioner.

4. The Petitioner has submitted that the loan was disbursed to the Corporate Debtor on 23.07.2019. It has further been submitted that as per the Deed of Further Charge dated 09.07.2010, the Petitioner holds second charge on the block assets of the Corporate Debtor against the Basal Dose Loan of Rs. 10 Crore.

5. It has further been submitted that as per Sanction Letter dated 31.05.2019, the loan became due for repayment on 30.06.2021. It has been submitted that the account of the Corporate Debtor is not yet categorized as a Non-Performing Asset (NPA) as it is an agricultural loan and it can be classified as a NPA only if the default continues for a crop season which is 18 months in the present case.

6. After repeated reminders, the Petitioner sent a Legal Notice dated 05.05.2022 asking for the repayment of the sanctioned loan. As the Corporate Debtor has still not made the repayment of the loan, this necessitated the filing of the present Company Petition under Section 7 of the Code.

7. Notice was issued and served upon the Corporate Debtor on 01.08.2022, but none appeared on behalf of Corporate Debtor nor any reply has been filed. Due to non-appearance of the Corporate Debtor despite valid service, the Corporate Debtor was proceeded against exparte vide order dated 17.02.2023.

FINDINGS

8. We have heard the Ld. Counsel appearing for the Petitioner and perused the records.

9. The present petition has been filled by the Financial Creditor seeking the initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor for an aggregate amount of Rs. 14,37,51,961/-.

10. The Financial Creditor has submitted that the Corporate Debtor vide Sanction Letter dated 31.05.2019 availed the facility of Working Capital Basal Dose of Rs. 10 Crores for Plantation Season 2019-20 (Crushing Season 2020-21).

11. It is noteworthy that as the loan amount became due on 30.06.2021, the Financial Creditors, vide letter dated 03.07.2021 requested the Corporate Debtor to make repayment of the outstanding loan amount. Subsequently also, on various occasions, the Financial Creditor demanded the Corporate Debtor for repayment of the given loan amount, but the latter has not made any repayment of the loan. Eventually, the Financial Creditor sent a legal notice dated 05.05.2022 giving the final opportunity for the repayment of the loan amount along with the interest.

12. It is pertinent to note that the letter of authority dated 20.07.2019 was issued by the Corporate Debtor requesting for the disbursement of the loan amount of 10 Crore and the same has been annexed with the petition under "Exhibit 15". The Financial Creditor disbursed the loan amount and the proof of the same has been annexed with the petition as "Exhibit 13".

13. It has been pointed out by the Financial Creditor that account of the Corporate Debtor has not yet been categorized as a Non-Performing Asset (NPA) as it is an agricultural loan and it could be classified as an NPA only if the default continued for a crop season which is 18 months in the present case. However, as per Sanction Letter dated 31.05.2019, the loan was to be repaid on 30.06.2021. Since it was not repaid on the due date, the deemed date of default would be 30.06.2021 for all intents and purposes, as has been rightly claimed in Part IV of the petition.

14. Despite receiving the court notices, the Corporate Debtor has not appeared before the court to contest the matter. Resultantly, no reply has been filed by the Corporate Debtor to controvert the claim. Therefore, the facts stated in the petition have not been controverted at all. It is well settled that if the averments made are not controverted, the same are deemed to have been accepted as correct by the Respondent.

15. Thus, from the above discussion, it flows that Petitioner has been able to establish that there has been a financial debt in respect of which the default has been committed by the Corporate Debtor. The petition has also been filed within the period of limitation. Therefore, in our considered view, the Petitioner has been able to fulfil all conditions of Section 7 of the Code. The petition, therefore, deserves to be '**admitted**' in terms of the following order:

ORDER

a. The above Company Petition No. 843 of 2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Pannageshwar Sugar Mills Limited.**

b. **Mr Kamal Kishor Gurnani**, having registration No. IBBI/IPA-001/IP-P-01463/2018-2019/12338, having email Id-kamalgurnaniip@gmail.com, having address – Flat No. 1301, Palazzio Chs Ltd, Building No. 23E, Powai, Mumbai – 400076, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Operational Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, CP No. 843 of 2022 is **admitted**.

Sd/-	Sd/-
MADHU SINHA	**KULDIP KUMAR KAREER**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**