



NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

1. C.P.(IB)/585(MB)2021

CORAM:

SMT. ANURADHA SANJAY BHATIA,
MEMBER (T)

SH. H. V. SUBBA RAO,
MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **16.11.2022.**

NAME OF THE PARTIES: AXIS BANK LIMITED
Vs
M/S INDIAN MEGA AGRO ANAJ LIMITED

SECTION: 7 of IBC, 2016

ORDER

None appeared for the Petitioner. Mr. S.B. Talekar a/w Adv. Madhavi Ayyappan i/b Shon Gadgil, advocate on record made an unusual mentioning before the Bench requesting the Bench to differ the pronouncement stating that they have already filed an application to recall the order dated 11.10.2022 under which the above CP was reserved for orders. Since the order was already typed and signed by both the members, the request is rejected and accordingly, the order is pronounced in the open court. In the result the above CP is admitted. Detail order follows.

Sd/-
ANURADHA SANJAY BHATIA
Member(Technical)

Sd/-
H. V. SUBBA RAO
Member(Judicial)

/NT/



**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

C.P.585 OF 2021

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

Axis Bank Limited

Trishul 3rd Floor, Opp. Samartheshwar Temple, Law Garden, Ellisbridge, Ahmedabad Gujrat- 380 006

... Financial Creditor

V/s

India Mega Agro-Anaj Limited

D-9, Vishnu Complex, VIP road, Nanded, Maharashtra- 431 602

[CIN:U01110MH2010PLC204475]

...Corporate Debtor

Order reserved on: 11.10.2022

Order Pronounced on: 16.11.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via videoconference)

For the Petitioner: Mr. Shakib Dhorajiwala a/w Mr. Nachiket Ratnaparkhi i/b Vidhii Partners

For the Corporate Debtor/ Respondent: Mr. Shon D. Gadgil



Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. The above Company Petition is filed by Axis Bank Limited, hereinafter called as “**Petitioner**” seeking to initiate of Corporate Insolvency Resolution Process (“**CIRP**”) against India Mega Agro-Anaj Private Limited hereinafter called as “**Corporate Debtor**” by invoking the provisions of Section 7 Insolvency and Bankruptcy code (hereinafter called “**Code**” read with rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs.62,21,30,534.65/-
2. The Petitioner enclosed the following details of documents, records and evidence of default:
 - a. Sanction Letter dated 01.03.2014;
 - b. Working Capital Consortium Agreement dated 15.09.2014;
 - c. Inter se Agreement 15.09.2014;
 - d. Renewal cum Enhancement Sanction letter dated 25.11.2014, 15.12.2014;
 - e. Copy of Addendum Sanction Letter dated 27.02.2017, 04.03.2017;
 - f. Copy of Declaration dated 25.05.2017;
 - g. Acknowledgement of Debt dated 13.10.2017;
 - h. Notice under Section 13(2) of SARFAESI Act, Dated 22.05.2019;
 - i. Statement of Accounts along with Bankers Book Evidence Certificate.



Facts of the case

3. The Petitioner submits that, the Respondent approached to the Petitioner for availing Credit Facilities. The Petitioner upon consideration of the request of the Respondent and based on the representations made by the Respondent, sanctioned Rs. 11 Crores vide its Sanction Letter dated 01.03.2014. The Petitioner further submits that various other documents were also executed between the Respondent and the Petitioner. The Petitioner further renewed and enhanced the above-mentioned existing credit facilities and sanctioned fresh Term Loan of Rs. 5 crores and credit facilities of Rs. 9 crores on the terms & conditions mentioned in the Renewal cum Enhancement Sanction Letter dated 25.11.2014. The Petitioner further submits that, the existing limits of Rs. 11 Crores were enhanced to Rs. 20 Crores and a Term Loan of Rs. 5 Crores was sanctioned.
4. The Petitioner submits that, it further renewed & enhanced the above-mentioned existing credit facilities and sanctioned fresh Cash Credit facilities of Rs. 15 crores on the terms & conditions mentioned in Renewal cum Enhancement of Credit Sanction Letter dated 28.10.2015. The existing limits of Rs. 20 Crores were enhanced to Rs. 35 Crores.
5. The Petitioner further renewed & enhanced the above-mentioned existing credit facilities and sanctioned fresh credit facilities of Rs. 5 crores and sanctioned fresh Term Loan of Rs. 5 Crores on the terms & conditions mentioned in Enhancement and Fresh Term Loan Credit Facilities Addendum Sanction Letter dated 23.03.2017. The Petitioner further submits that the existing limits of Rs. 35 Crores were enhanced to Rs. 40 Crores.



6. The Petitioner submits that, the Respondent neglected and failed to repay the outstanding loan amount, despite several reminders from the Petitioner. Therefore, the Petitioner was constrained to classify the account of the Respondent as Non-Performing Asset on 31st January 2019.

7. The Petitioner submits that, a loan recall notice dated 13.03.2019 was issued to the Respondent, calling upon them to pay a sum of Rs.48,96,58,946.26/- as on 13.03.2019, plus applicable interest, penal interest, premia, charges etc. thereon at contractual basis. On failure of making repayment within 15 days from the loan recall notice dated 13.03.2019, the Petitioner invoked the provisions of SARFAESI Act, and issued a Demand notice under Section 13 (2) of the SARFAESI Act dated 22.05.2019 upon Respondent along with mortgagors, calling upon them to make payment of Rs. 48,56,85,686.99/- as on 22.05.2019 within 60 days from the date of the notice.

8. The Petitioner submits that vide a notice dated 05.02.2020, the Petitioner provided a final opportunity to the Respondent calling upon them to make payment of Rs.53,31,65,106.64/- as on 31.01.2020 within 15 days from the receipt of the notice failing which, legal proceeding would be initiated against the Respondent. The Petitioner further submits that despite recall notice and Demand Notice as mentioned above being issued upon the Respondent, the Respondent failed to pay any outstanding amount.

Reply by the Respondent

9. The Respondent in its reply denied each and every contention/allegation made by the Petitioner.



10. The Respondent submits that the Petitioner has no authority to file present Petition. Accordingly, it is submitted that through the Working Capital Consortium Agreement dated 15.09.2014, the Respondent has availed various Term Loans and Cash Credit Facilities from the consortium (comprising of Bank of Baroda and the Petitioner). The Respondent further submits that, as per the Inter Se Agreement dated 15.09.2014, between member Banks of consortium, in which the Bank of Baroda is recognised as the Lead Bank in all the transactions. Relying upon the abovementioned Agreement the Respondent submits that, any action for enforcement of security against the Corporate Debtor shall be taken by the Lead Bank i.e. Bank of Baroda. Therefore, the Petitioner is not entitled to initiate any proceedings against the Corporate Debtor.
11. The Respondent submits that, the Application made by the Petitioner is barred on the ground of non-joinder of necessary party. In this regard the Respondent submits that in July 2020, the Petitioner and the Respondent were in discussions for restructuring of various facilities. During the said discussions it was agreed between the parties that the Respondent would remit the amounts as agreed by the parties and thereafter Bank of Baroda would transfer the appropriate amount, i.e. Rs. 1,49,74,688/- which was due to the Petitioner. The Respondent submits that, as the Cutback arrangement between Bank of Baroda and Petitioner whereby Rs.1,49,74,688 payable to the Petitioner was paid to the Bank of Baroda. Thereafter, Bank of Baroda has not remitted the appropriate amount i.e. Rs. 1,49,74,688/- to the Petitioner, and since the abovementioned amount is also forms the part of the alleged amount in default. Hence, the Petitioner was required to make the lead bank i.e. Bank of Baroda, a party to the proceeding.



12. The Respondent submits that, the documents relied by the Petitioner appears to be unstamped and unregistered. It is the submission of the Respondent that, the documents relied by the Petitioner are insufficiently, inadequately and wrongly stamped. Hence, the documents submitted by the Petitioner cannot be relied upon or taken as a piece of documentary evidence. The Respondent further submits that, since the Petitioner relied upon the Working Capital Consortium Agreement dated 15.09.2014, the said agreement is unregistered and also insufficiently stamped. Since, the agreement appears to be executed on a stamp duty of Rs. 400/-

Findings

13. The contention of the Corporate Debtor is twofold:

- a) The Financial Creditor lacks the authority to file the present Petition. It is his contention that the Financial Creditor being the member bank of the consortium should have initiated present Petition in consultation or with the approval from the lead bank of the consortium i.e. Bank of Baroda or added Bank of Baroda as a necessary party;
- b) The Working Capital Consortium Agreement is unregistered and insufficiently stamped.

14. Let us deal with the first contention. In order to deal with the above issues, it is important to read Section 7 (1) of the Code, that reads as under:

“Section 7. (1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating



corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.”

In addition to the above, it is also important to look at Article V of the Working Capital Consortium Agreement dated 15.09.2014, that reads as hereunder:

“Article V

Clause 4 (i) *For all or any purposes aforesaid the Borrower irrevocably constitutes and appoints each of the said Banks to be the Borrower’s true and lawful attorney to do and execute for and in the name and on behalf of the Borrower all or any of the following acts, deeds and things that is to say:*

... Clause 4 (i) (d) To demand and receive all debts, sums of money, principal money, dividends, interest and dues of whatever nature.”

Therefore, it is very clear from the above two that the Financial Creditor can file an Application under Section 7 either individually or jointly. Even otherwise, lack of consent from a member of consortium and non-joinder of Bank of Baroda as a necessary party has to be raised by the other member of the consortium and not the Corporate Debtor. Therefore, the above objection raised by the Corporate Debtor with regard to non-competence of the Financial Creditor has no legal substance and is liable to be rejected.

15. The next contention raised by the Corporate Debtor is with regard to insufficient Stamp Duty paid on the documents. It is the contention of the Corporate Debtor:



“The Working Capital Consortium Agreement is unregistered, insufficiently stamped. The said agreement appears to have been executed on a stamp duty of Rs. 400/-. In view of the provisions of the Maharashtra Stamp Act, 1958 the said agreements cannot be read and relied upon particularly for the purpose of admitting an Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 for establishing debt and default.”

In this regard it is important to mention here that, the Financial Creditor has filed an Acknowledgement of Debt dated 13.10.2017 which is annexed to the Company Petition at page no. 707, wherein the Corporate Debtor has acknowledged the outstanding liability towards the Financial Creditor. Apart from that, the Financial Creditor also filed the Statement of Accounts of the Corporate Debtor duly certified as per Bankers' Books Evidence Act, 1891 and the Information Technology Act, 2000 . The Corporate Debtor did not dispute the above 2 documents nor the execution of all the loan documents by them at the time of sanctioning of the loan. Therefore, the debt of the Financial Creditor stands proved through all the above documents even without looking into the Working Capital Consortium Agreement dated 15.09.2014. Hence, the contention of the Corporate Debtor in this regard has to be rejected as per the law laid down by the Hon'ble NCLAT in *Praful Nanji Satra V/s Vistra ITCL (India) Limited and Others (2022 SCC OnLine NCLAT 336)*.

16. In the light of the above observations and findings, this Tribunal has no hesitation in holding that the 'Debt' and the 'Default' in this case are proved and also, the Financial Creditor suggested the name of the Interim Resolution Professional, and the above Company Petition being filed on 30.07.2021 is well



within time The Petitioner has proposed the name of Insolvency Professional. The IRP proposed by the Petitioner, Mr. Krishna Chamadia, having address at B-1804, Raheja Heights, Off Gen A K Vaidya Marg, Malad East, Mumbai 400 097 Email ID-krishna@sphereadvisory.com and having registration No. IBBI/IPA-001/IP-P00694/2017-2018/1220, to be appointed as the Interim Resolution Professional to conduct the Insolvency Resolution Process.

17. For the aforesaid reasons, this Tribunal did not find any valid reason warranting dismissal of the above Company Petition. Accordingly, the above Petition is Admitted by passing the following:

ORDER

The above Company Petition No. 585 of 2021 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **India Mega Agro Anaj Limited**.

- a. This Bench hereby appoints **Mr. Krishna Chamadia**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00694/2017-2018/1220 having Registered addressed at: B-1804, Raheja Heights, Off Gen A K Vaidya Marg, Malad East, Mumbai 400 097 having Email ID-krishna@sphereadvisory.com as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- b. The Petitioner 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. The IRP shall spend the above amount only towards expenses and not towards fee till his fee is decided by CoC.

- c. 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.
- d. 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.
- e. 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.
- f. 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.



- g. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- h. During the CIRP period, the management of the corporate debtor will vest in the IRP. 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.
- i. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- j. Accordingly, C.P. No. 585 of 2021 is **admitted**.
- k. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)