

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

CP No. 3664/IBC/NCLT/MAH/2019

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

HDFC Bank Limited

Having its Registered Office at: HDFC
Bank House, Senapati Bapat Marg,
Lower Parel (West), Mumbai- 400 013.

... Financial Creditor

V.

Sakar Poultry Private Limited

Having its Registered Office at: Office
No. 4A, Visionnaire, S. No. 232/ 1&2,
Plot No. 121 & 122, Sakorenagar
Society, Lohegaon, Vimannagar,
Pune- 411 014

... Corporate Debtor

Order delivered on: 03.06.2022

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Financial Creditor : Ms. Harshika Makwana, Advocate

For the Corporate Debtor : Ms. Shaba Tarannum, Advocate

ORDER

Per:- Shyam Babu Gautam, Member Technical

1. This Company Petition is filed by *HDFC Bank Limited* (hereinafter called “Financial Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Sakar Poultry Private Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate Debtor committed default in making payment to the Financial Creditor. This Petition has been filed by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called “IBC”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present Petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of an **aggregate amount of Rs. 52,43,634.09/-** (Rupees Fifty-Two Lakhs Forty-Three Thousand Six Hundred Thirty-Four and Nine Paise Only) including the **Principal amount of Rs. 50,00,000/-** (Rupees Fifty Lakhs Only) and interest @16% per annum and @2% per month in case of late payment of EMI.

3. The Corporate Debtor approached the Financial Creditor for availing a Business Loan of Rs. 50 Lakhs on 18th August 2017. The Loan was sanctioned by the Financial Creditor and accordingly a **Business Loan Agreement dated 17th October 2017** was executed between the Financial Creditor and Corporate Debtor. The Loan was duly disbursed from 29th September 2017. The Corporate Debtor availed and utilized the amounts in due course of their business. The Corporate Debtor defaulted on the repayment of the said loan on **6th September 2018**. Subsequent to a series of continuous defaults, the Financial Creditor declared the Corporate Debtor's account as Non- Performing Asset (**NPA**) on **31st March 2019**.
4. The Financial Creditor issued a **Loan Recall Notice dated 26th August 2019** to the Corporate Debtor wherein the Financial Creditor called upon the Corporate Debtor to repay the outstanding dues within 7 days from the date of the notice. The Corporate Debtor failed to do so and as a consequence of this, the Financial Creditor filed this Petition under IBC. The aggregate amount claimed as on **16th September 2019** is Rs. 52,43,634.09/- including interest according to the Loan Agreement. Copies of the Loan Agreement and the Loan Recall Notice have been duly annexed to this Petition.

5. The Corporate Debtor filed their reply to this Petition on 4th October 2021 wherein they admitted their liability to repay the loan availed from the Financial Creditor. The Corporate Debtor is engaged in the business of selling Poultry products and submits that their business was facing problems because the sale of poultry products had fallen as people were avoiding the consumption of poultry products due to reasons like Covid-19, Bird Flu and owing to lack of demand and sales, the Corporate Debtor was facing financial crunches. The Corporate Debtor submits that they intend to repay the outstanding amounts and are also ready for settlement but cannot make any payments immediately as the Company is completely non-operational at the moment and there are no funds available to keep the business afloat.

FINDINGS

6. We have heard the submissions of the Counsel appearing for the Financial Creditor and the Corporate Debtor and perused the relevant documents. The Financial Creditor has satisfactorily established the existence of debt of Principal Loan Amount of **Rs. 50,00,000/-** and default of the outstanding dues aggregating to **Rs. 52,43,634.09/-** as evidenced by **CIBIL Reports dated 9th September 2019** attached to this Petition.

7. The Corporate Debtor has not disputed the disbursal of the Loan and the execution of the Loan Agreement between the parties. In fact, the Corporate Debtor has already made payment of Rs. 14,17,010/- towards the aggregate Loan amount. The Financial Creditor submits that they have received a sum of Rs. 25,000/- from the Corporate Debtor as directed by this Bench vide Order dated 21st September 2021. Yet the fact of the matter remains that though the Corporate Debtor admits the said debt, they are unable to pay the outstanding amount owing to non-availability of funds. Since the business of the Corporate Debtor is unsustainable at the moment, there is no scope for making repayment at the earliest. We note that the Financial Creditor has not received the Outstanding Debt from the Corporate Debtor and that the formalities as prescribed under the Code have been duly complied with by the Financial Creditor.
8. The Financial Creditor has thus successfully demonstrated and proved the debt and default in this case. It is noted that the Corporate Debtor admits the said outstanding debt. Therefore, this Bench is of the view that that this Petition satisfies all the necessary requirements for **admission** under Section 7 of the Code.

9. For the foregoing reasons, the instant Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

- a. **The above Company Petition No. (IB) - 3664(MB)/2019 is hereby allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Sakar Poultry Private Limited.
- b. This Bench hereby appoints **Mr. Manoj Kumar Jain**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00535/2017-18/10960 as the Interim Resolution Professional having address at 11, 2nd Floor, Friends Union Premises CSL, 227, PD Mello Road, Opp- St. George Hospital, Mumbai- 400 001 to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs.2 Lakh towards the initial CIRP cost 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 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 concerned
Registrar of Companies for updating the Master Data of
the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this
order to both the parties and to IRP immediately.

Sd/-

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

JUSTICE P. N. DESHMUKH
(MEMBER JUDICIAL)