

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.3049/MB.IV/2019

*Under section 7 of the Insolvency and
Bankruptcy Code, 2016*

In the matter of

The Janata Sahakari Bank Ltd.
...Financial Creditor

Versus

Oasis Alcohol Limited
[CIN: U15510PN2002PLC137000]

...Corporate Debtor

Order pronounced on 04.08.2020

Coram:

Mr. Rajasekhar V.K. : Member (Judicial)

Mr. Ravikumar Duraisamy : Member (Technical)

Appearances:

For the Financial Creditor : Mr Avinash Rajan Khanolkar,
Advocate

For the Corporate Debtor : Mr Suddhasattwa Roy i/b Vis
Legal Law Practice, Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) by The Janata Sahakari Bank Ltd.(*Financial Creditor*), seeking to initiate Corporate Insolvency

Resolution Process (CIRP) against Oaisis Alcohol Limited (*Corporate Debtor*).

2. The Corporate Debtor is an unlisted public company limited by shares and incorporated on 21.01.2002 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Pune. Its Corporate Identity Number (CIN) is U15510PN2002PLC137000. Its registered office is at Survey No.657/6, Plot No.6, ShelkeWasti, Near Shelke Gotha, Upper Indira Nagar, Pune 411037, within the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 14.08.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹ 34,10,18,430.39 (Rupees thirty-four crore ten lakh eighteen thousand four hundred and thirty and thirty-nine paise only) as principal and ₹ 6,71,33,068.29 (Rupees six crore seventy-one lakh thirty-three thousand and sixty-eight and twenty-nine paise only) as interest as on 23.12.2018, which is the date of default.
4. The case of the Financial Creditor is as follows: -
 - (a) The Financial Creditor is a multi-state co-operative society registered under the Multistate Cooperative Societies Act, 2002, and has a banking licence from the Reserve Bank of India. It renders financial assistance by way of loan to its members (*para 3 at page 33 of the Petition*);
 - (b) The Financial Creditor extended certain credit facilities to the tune of about ₹ 63.30 crore against mortgage and first charge over its immovable and hypothecation of movable properties. Various documents were also executed in this regard (*para 6 at page 33 of the Petition*);

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- (c) The claim of the Financial Creditor arising out of a judgment and decree dated 23.03.2017 granted by the Arbitral Tribunal constituted under the Consortium Agreement in Dispute No.Oasis/4/2017 in terms of the compromise reached between the parties. The total amount owed to the consortium is ₹ 60,82,02,939.39. The Financial Creditor is the lead bank of the consortium. The amount owed to the Financial Creditor is ₹ 40,81,51,498.68, consisting of the principal amount of ₹ 34,10,18,430.39 and interest of ₹ 6,71,33,068.29.
- (d) Thereafter, a section 7 IBC petition bearing CP (IB) No.3619/2018 was also filed before this Adjudicating Authority, which was admitted *vide* order dated 06.03.2019. Subsequently, the Financial Creditor decided to renegotiate and restructure the facilities and approached the Adjudicating Authority for withdrawal of the petition filed under section 7 of the IBC, which was allowed *vide* order dated 01.04.2019.
5. The underlying documents have been placed on record as Exhibit '5' at pp.29-47. The rate of interest charged is 9% per annum. Bank statements are also attached as Exhibit '9' at pages 75-98. The total debt due and payable to the Financial Creditor is ₹ 40,81,51,498.68 (Rupees forty crore eighty-one lakh fifty-one thousand four hundred and ninety-eight and paise sixty-eight only), as mentioned at page 8 of the Petition.
6. The matter was heard on 30.08.2019, 13.09.2019, 30.09.2019, 24.10.2019, 11.11.2019, 28.11.2019, 13.12.2019, 06.01.2020 and finally on 23.01.2020. It is necessary briefly to state what transpired on various dates of hearing.
7. On 30.08.2019, court notice was ordered to be served on the Corporate Debtor, and the matter was posted for 30.09.2019.

8. On 30.09.2019, Mr Avinash Rajan Khanolkar, learned counsel for the Financial Creditor submitted that the debt had been assigned in favour of an Asset Reconstruction Company (ARC), and that modalities were being worked out. He sought some time in the matter, which was granted, and the matter was posted to 24.10.2019.
9. On 24.10.2019, again the learned counsel for the Financial Creditor sought an adjournment on the ground that the meeting with the ARC was yet to take place. The matter was posted to 13.11.2019.
10. On 13.11.2019, Ms Anagha Mhatre i/b Vis Legis Law Practice, appeared on behalf of the Corporate Debtor and sought time to file vakalatnama, board resolution and reply in the matter. Mr Avinash Rajan Khanolkar, learned counsel for the Financial Creditor submitted that a meeting of the Asset Reconstruction Company to whom the debt of the Financial Creditor had been assigned, was to take place on 19.11.2019 and therefore again sought sometime in the matter. At request, the matter was posted to 28.11.2019.
11. On 28.11.2019 and 13.12.2019, learned counsel for the parties were present. The matter was listed for admission on 06.01.2020.
12. On 06.01.2020, learned counsel for the Financial Creditor was present. There was no representation on behalf of the Corporate Debtor. Learned counsel for the Financial Creditor submitted that the proposed assignment of debt in favour of the ARC had failed, and therefore, he would like to proceed in the matter. The Corporate Debtor, which had not filed a reply so far, was directed to file its reply in the matter within a period of seven days. The Financial Creditor was also directed to intimate the next date of

hearing in the matter to the Counsel for the Corporate Debtor, and the matter was posted to 23.01.2020 for admission.

13. On 23.01.2020, Mr Suddhasattwa Roy appearing on behalf of M/s Vis Legal Law Practice filed vakalatnama along with board resolution on behalf of the Corporate Debtor. But reply was not filed. The matter was taken up for admission.
14. It is clear that there is already an order of admission dated 06.03.2019 in CP (IB) No.3619/2018, and the only reason for withdrawal was because the Financial Creditor was ready to renegotiate and restructure the facilities extended to the Corporate Debtor. Not only did the restructuring exercise fail, the proposed assignment of debt in favour of an ARC also did not go through. There is also no defence submitted on behalf of the Corporate Debtor even after many opportunities. We have also considered the background in which the present petition has been filed, *viz.*, consent agreements in the Arbitration Proceedings as well as the order of admission dated 06.03.2019.
15. The Financial Creditor has proposed the name of Mr Vishram Narayan Panchpor, having Registration No.IBBI/IPA-002/IP-N00269/2017-18/10782, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
16. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in

excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the petition. In view of the same, this Adjudicating Authority admits this petition and orders initiation of CIRP against the Corporate Debtor.

17. It is, accordingly, hereby ordered as follows: -

- (a) The petition bearing CP (IB) No.3049/MB.IV/2019 filed by The Janata Sahakari Bank Ltd., the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Oasis Alcohol Limited [CIN:U15510PN2002PLC-137000], the Corporate Debtor, is admitted.
- (b) 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,-
- (i) 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;
- (ii) 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 Adjudicating Authority 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 and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mr Vishram Narayan Panchpor, Reg. No.IBBI/IPA-002/IP-N00269/2017-18/10782, having address at B-506, 5th Floor, Building No.83, ChemburSindhoo Cooperative Housing Society, Tilak Nagar, Chembur, Mumbai, 400089 [email: vishramp@gmail.com, Mobile: +91 98190-47836], is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The

fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 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 IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (i) The Financial Creditor shall deposit a sum of ₹ 3,00,000/- (Rupees three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (j) In terms of section 7(5)(a) of the IBC, the Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp 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, Pune, 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/-

Ravikumar Duraisamy
Member (Technical)

Sd/-

Rajasekhar V.K.
Member (Judicial)