

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COURT – IV**

6. C.P. (IB)/1454(MB) 2020

CORAM:

SHRI RAJESH SHARMA
MEMBER (Technical)

SMT. SUCHITRA KANUPARTHI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **18.11.2021**

Name of the Parties: ICICI Bank Limited
Vs.
Sanvi Milk & Milk Products Private Limited

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

The Court is convened through Video Conference.

1. Mr. Gopalakrishnan, Ld. Counsel for the Petitioner present. No representation on the part of the Corporate Debtor. Mr. Indrajit Mukherjee, proposed IRP, present in person.
2. This is a Company Petition filed by Financial Creditor ICICI Bank Limited claiming a sum of Rs. 4,05,85,939/- (Rupees Four Crores Five Lakhs Eighty-Five Thousand Nine Hundred and Thirty-Nine only). Ld. Counsel for the Petitioner submits that Corporate Debtor is incorporated under the Companies Act, 2013 and the registered office is situated in the state of Maharashtra.
3. Ld. Counsel for the Petitioner/Financial Creditor submits that the Corporate Debtor has executed Facility (Rupee Loan) Agreement on 19.12.2017 stating that the agreement contains several terms and conditions regarding repayment of loan at clause 2.7 of the agreement

(supra) and the due date of payment has been defined at clause 2.9 of the Facility Agreement.

4. The Ld. Counsel for the Petitioner has also annexed the repayment schedule at Schedule-II of the Facility Agreement which states that the borrower shall repay the loan in 20 quarterly installments commencing from 15.08.2019 and ending on 15.05.2024. Ld. Counsel for the Petitioner also annexed the ledger statement of the Corporate Debtor which shows that an amount of Rs. 3.75 crore is outstanding towards loan sanctioned to the Corporate Debtor.
5. Ld. Counsel for the Petitioner has filed an additional affidavit stating the dates of disbursement of monies to the Corporate Debtor. The monies were disbursed to the Corporate Debtor on three installments i.e. Rs. 1.80 crore on 12.01.2018, Rs. 1.30 crore on 09.04.2018 and Rs. 65 lakhs on 17.05.2018. The Petitioner also enclosed list of security held by the Petitioners as on date of default. The date of default as given in the additional affidavit is 15.05.2019 and the Petition was filed on 03.03.2020, which shows that the petition is well within the period of limitation. The Petitioner have further enclosed the list of mortgage documents and have also enclosed Registration of Charge. The list of mortgage and security documents are provided as under:-
 - i. *Land ad-measuring about 2000 sq.mtrs from and out of Gat No. 761, total area admeasuring about 73 Area admeasuring about 73 Ares at Village Mayani, Taluka Khataav, Dist. Satara, Maharashtra.*
 - ii. *Row House No. G-01, Area Admeasuring about 55 sq.mtrs of Plot and entire construction standing on the said portion admeasuring about 1081 sq.ft. i.e. 100.46 sq.mtrs along with perpetual right to*

take water from common bore well-constructed on the Plot No. 20 carved out of land S.No. 78/3 of Village Khed, Taluka & District Satara, Maharashtra.

- iii. Agricultural Land admeasuring about 4.33 Ares out of 24.33 Ares, acquired under partition by Mr. Sachin Deshmukh from and out of total land 73 Area from Gat No. 761 of Village Mayani Taluka, Khataav, District Satara, Maharashtra.*
- iv. Agricultural Land bearing Gat No. 967, admeasuring about 76 Ares out of total area admeasuring about 1H.52 Area Plus Potkharaba of 21 Ares and the land at Gat No. 968, area admeasuring about 2 H. 28 Ares, i.e. 1 H. 17, Ares Plus, Potkharaba of 1H. 11 Ares, situated at Village Ranand, Taluka Man, District Satara, Maharashtra.*
- v. Agricultural Land admeasuring about 00H 40.33 Ares from and out of total land 1H.21 Ares from Gat No. 85 of Village Mayani Anphale, Taluka, Khataav, District Satara, Maharashtra.*
- vi. Agricultural Land admeasuring about 01 H 55.34 Ares Plus Potkharaba of 16 Ares from and out of total land 4H. 66Ares, Plus, Potkharaba of 00H.48 Ares, from GAT No. 86 of Village Anphale, Taluka Khataav, District Satara, Maharashtra.*
- vii. Agricultural Land admeasuring about 1 H 59.33 Ares Plus Potkharaba of 7 Ares from and out of total land 4H. 78 Ares, Plus, Potkharaba of 21 Ares, total area of 4 H.99 Ares from GAT No. 88 of Village Anphale, Taluka Khataav, District Satara, Maharashtra.*

6. The Petitioner also enclosed recall/demand notice dated 28.11.2019 thereby recalling and demanding the entire outstanding dues. Despite receipt of said recall notice, the Corporate Debtor neither appeared nor filed reply in rebuttal.

7. The Corporate Debtor has failed to appear on 11.01.2020 subsequently on 06.09.2021, the Corporate Debtor failed to appear despite publication of notice in the newspapers. The matter again posted for hearing on 07.09.2021 wherein certain clarifications were sought from the Petitioner with regard to date of default, disbursement of loan, NeSL Certificate and the Corporate Debtor company is functional or not. On 06.10.2021, the Corporate Debtor was set exparte and the matter is posted today for final hearing. Today also there is no representation on the part of the Corporate Debtor.
8. In view of the disbursement of loan and the outstanding amount is payable by the Corporate Debtor, the debt and default are constituted. Accordingly, this Petition is **admitted**.
9. Mr. Indrajit Mukherjee, proposed Interim Resolution Professional, present and he gave his consent to appoint him as IRP in the matter.
10. This Bench having been satisfied with the Application filed by the Financial Creditor which is in compliance of provisions of section 7 of the Insolvency and Bankruptcy Code, admits this Application declaring Moratorium.
 - (a) 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.
- (b) 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;
- (c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal 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.
- (d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (e) Mr. Indrajit Mukherjee, Flat No. 705, A Wing, Deep Towers, D N Nagar, Andheri (W), Mumbai-400053, having Registration No. IBBI/IPA-001/IP-P01533/2018-2019/12450, mobile-7045312912

email- indrajitmukherjee15@yahoo.com, appointed as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- (f) 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.
- (g) The Petitioner shall deposit a sum of Rs.5,00,000/- (Rupees five 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).
- (h) The Registry is directed to communicate this Order to the Petitioner, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (i) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, 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/-
RAJESH SHARMA
Member (Technical)
/NP/

Sd/-
SUCHITRA KANUPARTHI
Member (Judicial)