

**NATIONAL COMPANY LAW TRIBUNAL,**

**MUMBAI BENCH, COURT V**

**C.P.(IB)-228(MB)/2024**

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

***In the matter of***

**Janaseva Sahakari Bank Limited**

Plot No. 14. S. No. 112 A, Hadapsar Industrial Estate, Hadapsar, Pune – 411013

... Petitioner/Financial Creditor

**V/s**

**M/s. Shitole Tissue Culture Private Limited**

Gate N. 259, Koregaon Mul, Tal: Haveli, Pune, Maharashtra – 412202

... Respondent/Corporate Debtor

**Order Pronounced on:--20.01.2025.**

***Coram:***

Hon'ble Reeta Kohli, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

***Appearance:***

For the Petitioner: Adv. Avinash R. Khanolkar (PH)

For the Respondent: Adv. Priti Bhat (VC)

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**ORDER**

***Per: Reeta Kohli, Member (Judicial)***

1. This Company Petition is filed by **Janaseva Sahakari Bank Limited** (hereinafter referred as "**Petitioner/Financial Creditor**") on 04.04.2024 seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as "**CIRP**") against **M/s. Shitole Tissue Culture Private Limited** (hereinafter called "**Corporate Debtor**") by invoking provisions of **Section 7** of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "**Code**") read with Rule 5 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a Financial Debt of **Rs. 11,56,01,730/-** and the Date of Default being **30.01.2022**.
2. The present Petition is being preferred by the Petitioner with respect to a default of an amount of Rs. 11,56,01,730/- on part of the Corporate Debtor. As stated, the principal outstanding amount is Rs. 9,34,98,951.80/- and total interest outstanding amount is Rs. 2,21,02,779/-. The date of default is stated to be the date of NPA which is 30.01.2022. The case of the Petitioner is that the total credit facilities sanctioned by the Financial Creditor / Petitioner were in the form of

term loan of Rs. 5.50 Crores which was disbursed on 18.02.2020 and cash credit facilities amounting to Rs. 4.50 Crores disbursed on 15.02.2020. The Petitioner has placed on record the sanction/revised sanction letter pertaining to the term loan facility wherein the repayment period was stated to be 12 months including the moratorium period and the said moratorium period, as stated, is 6 months. The prime security of this Cash Credit Facility was the hypothecation charge on the Corporate Debtor's stock of raw material, processed stock, finished goods, packing material and Book debts. The loan was stated to be repayable on demand. As stated above, the term loan facility was made available for one year, subjected to a review in January, 2021. In view of the said review, the aforementioned term loan facility could be cancelled/reduced depending upon the conduct of account, utilisation of advance etc. As submitted, the terms and conditions stipulate that in the event of the Corporate Debtor committing default in repayment of instalments of the loan or payment of interest on due dates, the bank shall have the right to insist for accelerated repayment, right to change the rate of interest, and also the right to withhold the disbursement of the loan at any time.

3. On the other hand, the case of the Respondent/Corporate Debtor is that even though vide sanction letter dated 06.02.2020, the Credit Facilities to the tune of Rs. 10 Crores were extended to the Corporate Debtor but by way of securities, various properties owned by the directors of the Corporate Debtor, in personal capacity; and several agriculture properties were offered as securities. The details of which are as under:

*A) All that piece and parcel of the Non Agricultural (Commercial) landed property of Plot No. 6 area admeasuring 3.78.75 sq. mtrs, Plot No. 8 area admeasuring 3.41.00 sq. mtrs, plot No. 9 area admeasuring 3.43.75 Sq. Mtrs, Plot No. 10 area admeasuring 3.47.00 Sq. Mtrs, Plot No. 11 area admeasuring 3.53.00 Sq. Mtrs,*

*Plot No. 12 area admeasuring 3.56.25 Sq. Mtrs, Plot No. 13 area admeasuring 3.62.50 Sq. Mtrs, Plot No. 14 area admeasuring 3.69.75 Sq. Mtrs. And Plot No. 15 area admeasuring 4.62.00 Sq. Mtrs. Total area of plots of 3314 Sq. Mtrs i.e. 35671 Sq. Ft. of Gat No. 249/1 (Old Survey No. 28/1 + 28/3 + 28/9A + 28/9B and 28/9C), situated within the limits of Sub-Registrar Haveli and within the limits of village Kadamwak Vasti Tal. Haveli Dist. Pune.*

*B) All that piece and parcel of the non-agriculture landed property of Gat No. 265 area admeasuring 79 Aar + 1 Aar Potkharaba total 80 Aar out of area admeasuring of 01 H 70 Aar situated within the limits of Sub-Registrar Haveli and within the limits of village Koregaon Mul Tal Haveli Dist. Pune.*

*C) All that piece and parcel of the non-agriculture landed property of Gat No. 410 Hissa No. 2 area admeasuring 20 Aar out of area admeasuring of 80 Aar situated within the limits of Sub-Registrar Haveli and within the limits of village Koregaon Mul Tal. Haveli Dist. Pune.*

*D) All that piece and parcel of the non-agriculture*

*(a) Landed property of Gat No. 258- property admeasuring 00 H 52.60 Aar out of Total area 02 H 63 Aar situated along with constructed structure there on Polyhouse Shed and Office situated within the limits of Sub-Registrar Haveli.*

*(b) Landed property of Gat No. 258-property admeasuring 00 H 65.75 Aar out of Total area 02 H 63 Aar and within the limits of village Koregaon Mul Tal. Haveli Dist. Pune.*

*E) Gat No. 259 – all that piece and parcel of the non-agriculture*

*landed property of Gat No. 259 constructed structure thereon Polyhouse Shed and office situated within the limits of Sub-Registrar Haveli and within the limits of village Koregaon Mul Tal. Haveli Dist. Pune.*

*a) The Landed property admeasuring 00 H 48.25 Aar out of Gat No. 259 Total area 03 H 86 Aar situated at Mouje Koregaon mul Tal. Haveli Dist. Pune.*

*b) The landed property admeasuring 129.75 Aar out of Gat No. 259 Total area 03 H 86 Aar situated at Mouje Koregaon mul Tal. Haveli Dist. Pune.*

*F) All that piece and parcel of the non-agriculture landed property of Gat No. 11 – area admeasuring of 03 H 72 Aar + 08 Potkharaba total area admeasuring 03 H 80 Aar i.e. 38,000 Sq. Mtrs. Situated within the limits of Sub-Registrar Baramati and within the limits of village Murti Tal. Baramati Dist. Pune.*

4. As stated by the Corporate Debtor, the aforesaid properties were valued at more than Rs. 100 Crores while the dues of the Corporate Debtor were much lesser. Further, as stated, the Corporate Debtor is engaged in the business of tissue culture, livestock, and horticulture. On account of the outbreak of the Covid-19 Pandemic, the Corporate Debtor suffered huge losses and thus the business of the Corporate Debtor became unstable. The Corporate Debtor was unable to pay the dues and the Applicant in timely manner due to reasons beyond the control of the Corporate Debtor. It was under these circumstances that the Petitioner issued a notice under Section 13 (2) of the SARFAESI Act, 2002 to the Corporate Debtor.
5. As stated by the Corporate Debtor, there are several irregularities committed by

the Financial Creditor / Petitioner in maintaining the loan accounts and proceedings under the SARFAESI Act. As submitted, it was because of the aforementioned irregularities having been committed by the Petitioner, that a detailed inquiry with respect to the accounts of the Petitioner Bank was made by the Deputy Registrar, Cooperative Society Maharashtra. It was taken note of that no further detail of any inquiry/complaint has been provided in the reply filed by the Corporate Debtor. The Corporate Debtor further submitted that the Petitioner has sold non-agricultural properties, namely Plot No. 6 & 8 to 15 admeasuring 3314 sq. mtrs. out of the land bearing GAT No. 249/1 within the limits of Sub-Registrar, Kadamvasti within the limits of, District Pune, for a much lower price than the market valuation. The sale certificate with respect to the said property is dated 06.10.2023. The symbolic possession of the property was also handed over without following the due process of law. Furthermore, it was submitted that the Corporate Debtor has filed an application under Section 17 of SARFAESI Act, 2002 before the Hon'ble DRT, Pune and also an IA 1518 of 2024 in the said SA (D) no. 1358 of 2024. The Ld. Presiding Officer was pleased to direct the Petitioner Bank to restrain from taking possession of the secured assets subject to deposit of certain sum vide order dated 22.07.2024. It is further stated that the Petitioner had under-valued the property by deliberately showing incorrect zone and sold it for Rs. 5.27 Crores while the Government valuation of the said property is more than Rs. 6.25 Crores. It was further vehemently argued that the Petitioner has failed to disclose the factum of receipt of Rs. 5.27 Crores and the same has not been accounted for.

6. After having heard both the Ld. Counsel for the Parties and appreciating the contentions of the Respondent that the land sold by the Petitioner has not been accounted for, the following Order was passed on 05.12.2024:

*“After arguing for some time, the Respondent has brought to our attention that during the pendency of the present Petition,*

*the Petitioner-Bank has disposed of few of the properties belonging to the Corporate Debtor. The Counsel for the Petitioner admits the said fact and submits that it was done to set off the loan not of the Corporate Debtor but that of other sister concern. There is no relevant document placed on record. The Counsel for the Petitioner prays for time to place on record the relevant documents so as to show that the same set of property is a collateral security qua the Corporate Debtor and also other partnership concerns. The details of the property sold and the amount set off be placed on record before the next date of hearing. Adjourned to 02.01.2025. “*

7. Pursuant to the said order, the Petitioner filed an affidavit dated 27.12.2024 along with the affidavit, the summary of Credit Facilities and securities held for the said facilities by the Petitioner and the copy of statement of loan account of the Corporate Debtor from 01.09.2023 till 30.11.2024 was enclosed. It was stated as under:

*Accordingly, it is hereby stated and submitted that during the interregnum period of decision of Board of the Petitioner for initiation of the CIRP against the Corporate Debtor and actual filing of the Petition by the Petitioner; on 07<sup>th</sup> October, 2023 the Petitioner has conducted an Auction under the provision of SARFAESI Act, 2002 of a Property situated at “Total 8 Plots situated at Gat No. 249/1, Kadamvakwasti, Dist. Pune” for an amount of Rs. 5,27,00,000/-. It is noteworthy that the said property is given as a Collateral Security against the Credit Facilities availed by the Corporate Debtor and the same was owned and possessed by Shri. Dashrath Shitole, Director of the Corporate Debtor.*

*Accordingly, after realisation of the said property an amount of Rs. 5,27,00,000/- has been adjusted by the Petitioner against total outstanding amount as on 31<sup>st</sup> August, 2023 viz. Rs. 11,64,35,000/. So thereby, an amount of Rs. 6,37,35,000/- remains outstanding as on 7<sup>th</sup> October, 2023 after realisation of the amount recovered from the SARFAESI Proceedings.*

8. Thus, in light of the aforementioned, the contention of the Ld. Counsel for the Financial Creditor is that the amount so realised has not been recovered from the Corporate Debtor but the said property belonged to the Personal Guarantors of the Corporate Debtor and thus the amount realised has been adjusted towards the Credit Facilities availed by the Corporate Debtor. The Ld. Counsel further emphasized that the Petition was rightly filed on the strength of the outstanding amount as on 31.08.2023 which was Rs. 11,64,35,000/- whereas the properties were disposed of subsequently on 07.10.2023 raising an amount of Rs. 5,27,00,000/-. Thus, the case of the Petitioner is that now an amount of Rs. 6,37,35,000/- remains outstanding as on 07.10.2023 after realisation of the amount recovered from SARFAESI Proceedings.
9. After having appreciated the contentions of both the Ld. Counsels, we deem it appropriate to take notice of the debt due towards the Petitioner which the Corporate Debtor has not denied in his reply and also the default having been committed by the Corporate Debtor. The Corporate Debtor, in no uncertain terms, in the reply has stated that it has not been able to pay the debts because of the onset of the Pandemic because of which the business of the Corporate Debtor suffered.
10. Keeping in view of the totality of the circumstances of the present case and in view of the fact that there is a clear default in payment of the credit facilities, and the fact that the present Petition has been filed by the Financial Creditor well within the limitation period, it is a fit case for admission. Furthermore, the

amounts stated to be due in this case is well above the threshold limit as stipulated under Section 4(1) of IBC and in view of the settled law wherein the Hon'ble Supreme Court has been pleased to hold in the matter of *M/s. Innoventive Industries Ltd. vs. ICICI Bank 2018 (1) SCC 407*

*“28. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the Adjudicating Authority. Under sub-section (7), the Adjudicating Authority shall then communicate the order passed to the Financial Creditor and Corporate Debtor within 7 days of admission or rejection of such application, as the case may be.”*

**11.** Thus, keeping in view of the above-said, we deem it appropriate to allow the present Petition and **admit** the Corporate Debtor to CIRP with the following order:

- a) *The above Company Petition No. 228 /IBC/MB/2024 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. **Shitole Tissue Culture Private Limited.***
- b) *The IRP proposed by the Financial Creditor, **Ms. Anagha Anasingaraju**, Registration No: IBBI/IPA-002/IP-N00247/2017-18/10732, having email: [rp.anagha@kanjcs.com](mailto:rp.anagha@kanjcs.com) and address: Kanjmag & Co, 1-2 Aishwarya Sankul, G.A. Kulkarni Path, Pune, Maharashtra, 411038 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.*

- c) *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 towards expenses and not towards fee till his fee is decided by CoC.*
- d) *That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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 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.*

- f) *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.*
- g) *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.*
- 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 board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the 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.*
- k) *Accordingly, C.P. No. 228/IBC/MB/2024 is **admitted**.*
- l) *The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.*

Sd/-

MADHU SINHA  
Member (Technical)

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Sd/-

REETA KOHLI  
Member (Judicial)