

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB) No.464/MB-IV/2021**

Under Section 7 of the I&B Code, 2016

In the matter of:

**Netafim Agricultural Financing  
Agency Private Limited**

[CIN: U67190MH2011PTC220385]

...Financial Creditor/Applicant

V/s

**Shraddha Energy And Infraprojects  
Private Limited**

[CIN: U62100PN2004PTC020022]

...Corporate Debtor/Respondent

**Order Dated: 03.03.2023**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. Sameer Walimbe, Advocate

For the Respondent(s) : Mr.Shavez Mukri, Advocate.

**ORDER**

***Per Prabhat Kumar, (Member Technical)***

1. This is an application bearing C.P. (IB) No. 464/MB/C-IV/2021 filed by Netafim Agricultural Financing Agency Private Limited, the Financial Creditor/Applicant, under section 7 of Insolvency &

Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Shraddha Energy and Infraprojects Private Limited, Corporate Debtor on 24.04.2021.

1.1. The Application is filed by Mr. Nikhil Madhusudan, Authorised Representative of the Financial Creditor duly authorised vide its Board Resolution dated 15.05.2019 passed by the Board of Directors, claiming total default of Rs.5,41,34,813/- (Rupees five crore forty one Lakhs thirty four thousand eight hundred and thirteen only), which includes:

- i. Rs. 3,65,19,184/- Rupees three crore sixty five lakh nineteen thousand one hundred and eighty four only) as the Principal outstanding; and
- ii. Rs.1,71,57,300/- (Rupees one crore seventy one lakh fifty seven thousand three hundred only) as the Interest at 12% p.a. till 15.04.2021
- iii. The date of default is 15.04.2021

2. The Financial Creditor had provided FCE facility for disbursement of loan of Rs.9,16,07,065/- (Rupees nine crore sixteen lakh seven thousand and sixty five only) along with 12% p.a. interest (i.e. 1% p.m. interest) to 995 farmers as per the Tripartite agreement dated 03.10.2013 entered between the Financial Creditor, Corporate Debtor and Netafim Irrigation (India) Private Limited (hereinafter referred to as '*the Tripartite Agreement*').

- 2.1. As per the Tripartite Agreement dated 13.10.2013, the Financial Creditor proposed to provide financial assistance to registered sugarcane buyers of the Corporate Debtor for purchasing drip/micro irrigation system from Netafim Irrigation (India) Private Limited. The Corporate Debtor responsibility included recommending farmers having requirement to install the Micro irrigation systems in their farms. The Financial Creditor has submitted that the Corporate Debtor's responsibility also included deducting principal and interest outstanding from the farmer borrower's sugarcane sale proceeds to remit the same to the Financial Creditor.
- 2.2. The Corporate Debtor also entered a Continuing Deed of Guarantee dated 03.10.2013 guaranteeing the Financial Creditor to repay the amount due from the recommended farmer borrowers, in case such farmer(s) defaults in repayment.
- 2.3. The Financial Creditor submitted that 580 farmer borrowers have an outstanding of Rs. Rs.5,41,34,813/- (Rupees five crore forty-one lakh thirty-four thousand eight hundred and thirteen only) as on 31.03.2021. The Financial Creditor has invoked the continuing guarantee for repayment of the entire outstanding vide legal notice dated 07.04.2021 giving 7 days from the date of receipt of the notice to the Corporate Debtor for payment of the amount in default. The Financial Creditor submits that the notice was received by the Corporate Debtor on 07.04.2021 via email; however, the Corporate Debtor did not pay by 15.04.2021 and thus the Corporate Debtor committed default.

Thus, the Date of default is taken to be as 15.04.2021. The Company Petition is filed within limitation

3. The Corporate Debtor has filed its Affidavit-in-reply dated 21.01.2022 stating that the Corporate Debtor has failed to establish the presence of loan and/or whether any amount has been disbursed to the borrowers. Further it is stated by the Corporate Debtor that the Financial Creditor has only mentioned one single date of default despite having hundreds of borrowers. It is the contention of the Corporate Debtor, the date of default as mentioned by the Financial Creditor is incorrect. The same should be taken from the Tripartite Agreement dated 03.10.2013 wherein clause (VII) mentions that the validity of the agreement shall be from 03.10.2013 to 30.06.2014 and that the Financial Creditor has not placed on record any document mentioning that the said agreement was extended and the cause of action, if any, should have been taken from the Tripartite Agreement.

3.1. Furthermore, the Corporate Debtor has mentioned that the Financial Creditor has not filed their Statement of Account for verifying the calculations with respect to the default amount. It is the contention of the Corporate debtor that Clause (VI) (8) of the Tripartite Agreement mentions that the Financial Creditor and Corporate Debtor shall jointly initiate and undertake recoveries from the borrowers; however, the Financial Creditor has neither taken nor shown any actions taken by them towards such recoveries. Thus, it is pleaded by the Corporate Debtor that the case be dismissed as the farmers

have faced draught in recent times and the same ought to be taken into consideration.

4. The Financial Creditor has re-joined through Affidavit dated 12.04.2022 and stated that the present Petition is not filed on the breach of any of the terms and conditions of the Tripartite Agreement but on the inability of the Corporate Debtor to repay the defaulting loans of the borrowers guaranteed by the Corporate Debtor under the Deed of Guarantee dated 03.10.2013. It is the submission of the Financial Creditor that the breach of guarantee is the cause of action and the single date of default is the date of default of the guarantee.
5. We have heard the arguments of the Learned Counsel for both the parties and perused the records.
  - 5.1. It is not in dispute that the Applicant/Financial creditor has disbursed the loan to various farmers under the Tripartite Agreement to which corporate debtor was one of the party and these loans were disbursed from 23.12.2013 till 31.10.2014. Accordingly, the contention of Corporate Debtor that the agreement was valid till 30.06.2014 cannot hold good as even if loans granted till 30.06.2014 are taking into account the aggregate of outstanding pertaining to loans granted till 30.6.2014 exceeds Rs. 1 Crore. There is also no dispute that the farmers have defaulted in payment of these loans and the Corporate Debtor has also not remitted any money out of the sales proceeds of the sugarcane supplied by the farmers.

- 5.2. There is no dispute that the Corporate Debtor had executed a Guarantee Agreement and in pursuance of this agreement, the Applicant Financial Creditor has invoked the guarantee of the Corporate Debtor vide notice dated 07.04.2021 and the Corporate Debtor has defaulted in honouring its guarantee obligation to satisfy the debt outstanding.
- 5.3. After perusal of the material on record, this Bench is of considered view that the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor is complete and filed in the proper form.
- 5.4. On perusal of the documents submitted by the Financial Creditor, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Financial Creditor in capacity of Guarantor to the Credit facility extended to farmers. There is default by the Corporate Debtor in payment of debt amount. Therefore, this is a fit case for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor is liable to be admitted.
6. The Financial Creditor has proposed the name of Mr. Ajay Ganesh Marathe, a registered Insolvency Resolution Professional<sup>1</sup> having Registration Number [IBBI/IPA-001/IP-P01262/2018-19/12170] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code. The proposed IRP has

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<sup>1</sup> P.5, Part IV of the Petition

given the consent along with the declaration that no disciplinary proceedings are pending against him.

### **ORDER**

This Application being C.P. (IB) No. 464/NCLT/MB/C-IV/2021 filed under Section 7 of I&B Code, 2016, filed by Netafim Agricultural Financing Agency Private Limited, the Financial Creditor/Financial Creditor, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Shraddha Energy And Infraprojects Private Limited, Corporate Debtor is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
  - a) 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;
  - b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - c) 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;

- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
  - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Mr. Ajay Ganesh Marathe, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01262/2018-19/12170], e-mail:

ajaym7@rediffmail.com, as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

- e) The Financial Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two 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).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp.  
**Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-  
Prabhat Kumar  
Member (Technical)  
03.03.2023

Sd/-  
Kishore Vemulapalli  
Member (Judicial)