

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH at AHMEDABAD
COURT 1**

TP 128 of 2019 [CP(IB) 220 of 2019]

Coram: Hon'ble Ms. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 13.03.2020**

Name of the Company: Bank of India
V/s
Krishna Oils & Proteins Pvt Ltd

Section: Section 7 of Insolvency & Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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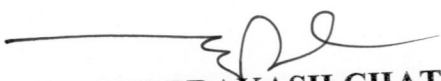
ORDER

None appears for the Parties.

The present case is fixed for pronouncement of order today.

The order is pronounced in open Court vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 13th day of March, 2020

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
INDORE BENCH at AHMEDABAD**

C.P. (I.B.) No. 220/7/NCLT/AHM/2019

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

In the matter of:

BANK OF INDIA
Saket Nagar Branch, Indore
Incorporated under the Banking
Companies (Acquisition and Transfer of
Undertakings) Act, 1970 (Act V of 1970)

Having Registered Office at:
Bandra-Kurla Complex,
Star House, C-5, G Block,
Bandra(E), Mumbai – 400051

Having its Branch Office at:
Bank of India,
Saket Nagar Branch,
202, SAKET, Indore – 452001.

.....Petitioner

Versus

KRISHNA OILS & PROTEINS PVT. LTD.
Having Registered Office at:
Survey No. 331, 332,
Village Jawasia Kumhar,
P.O. Undasa (Narwar),
Near Nagziri Ujjain,
Madhya Pradesh - 456010

.....Respondent

Appearance:

Advocate, Mr. Ketan M. Parikh for the Applicant/Financial Creditor
Advocate, Mr. Akshat Agarwal for the Respondent/Corporate Debtor

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Order Pronounced and delivered on 13.03.2020

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present I.B. Petition is filed by the Financial Creditor (FC), **Bank of India** under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code"), **seeking initiation of Corporate Insolvency Resolution Process** ("CIRP" in Short) against the Corporate Debtor Company namely, **Krishna Oils & Proteins Private Limited** for the default committed by the Corporate Debtor in making repayment of the Term Loans, EPC & CC facility availed from the Bank. The Applicant (FC), Bank of India (BOI) is a Bank, incorporated under the provisions of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970. The application has been filed by the duly authorised officer, Shri Sunil Kumar Dhaka, Chief Manager, Bank of India, Saket Nagar Branch, 202, Saket, Indore - 452001.
2. The Respondent Corporate Debtor (CD) Company, namely, **Krishna Oils & Proteins Private Limited** was incorporated on **04/10/2006** with CIN: **U01405MP2006PTC018996**.
3. The nominal share capital of the Respondent (CD) Company is **INR.1,00,00,000/- (Rupees One Crores**

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Only) divided into **10,00,000/- (Ten Lakhs Only)** equity shares of INR.10/- (Ten) each and the paid-up capital of the company is INR.**95,29,100/- (Rupees Ninety Five Lakhs Twenty Nine Thousand One Hundred Only)** divided into **9,52,910/- (Nine Lakhs Fifty Two Thousand Nine Hundred Ten Only)** equity shares of INR.10/- (Ten) each. The Registered Office of the Corporate Debtor Company is situated at: Survey No.331, 332, Village Jawasia Kumhar, P.O. Undasa (Narwar), Near Nagziri Ujjain, Madhya Pradesh – 456010.

4. The main objects of the company, by which the Respondent (CD) Company is incorporated, are mentioned in the Memorandum of Association which are briefly mentioned as:

***“To carry on the business of oil by any means or process whatsoever from Cotton Seed, Rice bran oil seeds, Soyabean seed, Oil cakes, nuts and grasses or other substance yielding oil or essence and to manufacture all types of crude oils therefrom refine or double refine the same and to manufacture, treat, prepare, pack, distribute, perfume or otherwise deal in, import and export all oils or raw materials for manufacture of oils and to manufacture bio-diesel and resins from agro produces and forest produces.*”**

To manufacture all type of products from oil seeds and substances therefrom including De-oiled cake, Meal, budies, chunks, granules, flour, rava, Maida, milk and flavors and to deal in all type of agro commodity.

5. The Corporate Debtor availed the Loans by executing various documents and some documents executed by the mortgagors/guarantors in favour of the Applicant Bank binding themselves as liable to repay the loan facilities availed by the Corporate Debtor. Various loans/credit facilities granted by the applicant Bank are narrated as under;

(A) Amount of Financial Debt Granted with Date of Disbursement:

(i) Sanction Letter dated 25.09.2007

(a) Term Loan-I Rs.116 Lakhs,

(b) Term Loan-II Rs.249 Lakhs,

Aggregate Term Loans Rs.365 Lakhs

(c) Cash Credit Facility:

Against Stock – Rs.500 Lakhs

Against Book debt – Rs.100 Lakhs

(d) EPC/FBP/FBN Rs.500 Lakhs

(e) Cheques/Bills Purchased Rs.100 Lakhs

Maximum Fund Based

Working Capital Limits: Rs.500 Lakhs

Total Aggregate

Limits: Rs.865 Lakhs

(B)

(ii) Sanction Letter dated 02.02.2011

(f) Term Loan-I Rs.0.75 Crore,

(g) Term Loan-II Rs.1.62 Crore,

(h) Term Loan-III (New) Rs.1.34 Crore,

(i) Term Loan-IV Rs.3.51 Crore,

Aggregate Term Loans Rs.7.22 Crore

(j) Cash Credit Facility:

- Against Stock – Rs.5 Crore
Against Book Debt – Rs.1.25 Crore
(k) EPC/FBP/FBN Rs.2 Crore
(l) Cheques/Bills Purchased Rs.1.25 Crore

**Maximum Fund Based
Working Capital Limits: Rs.5 Crore
Total Aggregate
Limits: Rs.12.22 Crore
Date of Disbursement: 02.02.2011**

(C)

(iii) Sanction Letter dated 04.04.2013

- (m) Term Loan-I Rs.0.28 Crore,
(n) Term Loan-II Rs.0.60 Crore,
(o) Term Loan-III Rs.0.43 Crore,
(p) Term Loan-IV Rs.2.24 Crore,

Aggregate Term Loans Rs.3.55 Crores

(q) Cash Credit Facility:

Against Stock – Rs.15 Crore

Against Book Debt – Rs.5 Crore

(r) EPC/FBP-DP/DA 90 days Rs.15 Crore

Maximum Fund Based

Working Capital Limits: Rs.15 Crores

Total Aggregate Fund Based

Limits: Rs.18.55 Crores

(s) Bank Guarantee
(Max 36 months) Rs.0.50 Crores

Total Non-Fund
Based Limits: Rs.0.50 Crores

Total Aggregate

Limits: Rs.19.05 Crores

Date of Disbursement: 04.04.2013

The total aggregate limit of Rs.19.05 Crores was sanctioned by the Applicant Bank vide sanction letter dated 04/04/2013 with certain terms and conditions including hypothecation of plant and machineries, stocks and book debt and other moveable assets to secure multiple facilities which were duly accepted/acknowledged by the Corporate Debtor. Charge was created on the properties on 25.09.2007 which were subsequently

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modified on 24.02.2011 and 22.05.2013. Thereafter, first supplemental memorandum of entry for additional security was created on 24.02.2011 (Page no. 154 to 204 of paper book)

6. The Corporate Debtor defaulted in payment and the **date of default is 02/08/2014** as stated by the Petitioner Bank (page no. 5 to 11 of paper book). CIBIL Report (page no. 346 to 348 of the paper book) filed by the Petitioner Bank confirms that the Account is **in default**.
7. The statements of accounts of the Corporate Debtor have been filed and the Petitioner Bank has submitted a **Certificate to this effect under Banker's Book of Evidence Act, 1891**. (Page no. 97 to 111 of paper book). The Petitioner Bank has claimed their dues of **Rs.15,56,82,404.36 (Rupees Fifteen Crores Fifty Six Lakhs Eighty Two Thousand Four Hundred Four and Thirty Six Paise Only)** as on **01.03.2019** as computed in the page no. 7 to 11 of the paper book which is given below:

Sr. No.		Outstanding Amount as on 02/08/2014	Interest + Penalty + Other Debits	Recovery made by the Bank	Total Dues
1.	CC Facilities	INR.5,22,60,003.00	INR.4,12,85,109.63	INR.18,14,833.42	INR.9,17,30,279.21
2.	Term Loan	INR.39,69,209.00	INR.29,98,275.23	NIL	INR.69,67,484.23
3.	Term Loan-II	INR.2,04,43,705.05	INR.1,54,42,838.73	NIL	INR.3,58,86,543.78
4.	EPC Facility	INR.10,53,40,000.00	INR.7,02,68,967.36	INR.1,99,26,563.00	INR.15,56,82,404.36

8. The Petitioner Bank, in support of its contentions has **annexed the details of Financial Debt**, records and

evidences of default including copies of all the sanction letters, the workings showing the amount claimed to be in default and its calculation in tabular form as on 02/08/2014 along with ROC search report and Valuation reports.

9. The present application has been filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy before this Adjudicating Authority to initiate the Corporate Insolvency Resolution Process.
10. The Financial Creditor, to substantiate its claim, has annexed following documents with the petition:-
 - i. Statement of Accounts of the Corporate Debtor maintained by Bank of India along with Certificate issued under Banker's Book Evidence Act, 1891 (Page no.97 to 111 of paper book)
 - ii. Certified Copy of an extract from the minutes of meeting of the Board of Directors of the Corporate Debtor held on 25/09/2007 at the registered office of the Corporate Debtor. (Page no.112 to 118 of paper book)
 - iii. Certified copy of an extract from the minutes of meeting of the Board of Directors of the Corporate

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Debtor held on 04/02/2011 at the Indore Office of the Corporate Debtor situated at Gangotri Bhavan, 3/3, Manoramaganj, Indore (M.P) (Page no.119 to 124 of paper book)

- iv. Certified Copy of an extract from the minutes of meeting of the Board of Directors of the Corporate Debtor held on 05/04/2013 at the registered Office of the Corporate Debtor. (Page no.125 to 127 of paper book)
- v. Copy of the Hypothecation cum Loan Agreement executed by the Corporate Debtor on 25/09/2007 in favour of the Financial Creditor. (Page no.128 to 141 of paper book)
- vi. Copy of the Deed of Guarantee executed by the Guarantors of the Corporate Debtor in favour of the Financial Creditor dated 25/09/2007. (Page no.142 to 153 of paper book)
- vii. Copy of 1st supplemental Deed of Hypothecation dated 24/02/2011 between the Corporate Debtor and the Financial Creditor. (Page no.154 to 204 of paper book)
- viii. Copy of the Deed of Guarantee executed by the Abhimanyu Agrawal as Guarantor of Corporate

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Debtor in favour of the Financial Creditor dated 22/11/2011 (Page no.205 to 216 of paper book)

- ix. Copy of the Deed of Guarantee executed by the Guarantors of Corporate Debtor in favour of the Financial Creditor dated 24/02/2011. (Page no.217 to 228 of paper book)
- x. Copy of the Supplemental Deed of Hypothecation dated 22/05/2013 between the Corporate Debtor and the Financial Creditor. (Page no.229 to 253 of paper book)
- xi. Copy of the Deed of Guarantee executed by the Guarantors of Corporate Debtor in favour of the Financial Creditor dated 22/05/2013 (Page no.254 to 265 of paper book)
- xii. **Copy of latest RoC Search report dated 06/02/2019 of Corporate Debtor** (Page no.266 to 297 of paper book)
- xiii. Copy of Valuation Reports (Page no.298 to 338 of paper book)
- xiv. Copy of Term Loan Agreement executed on 25/09/2007 (Page no.339 to 345 of paper book)
- xv. **CIBIL Report dated 30/01/2019** (Page no. 346 to 348 of paper book)

xvi. Date of mortgage of the Property is 25.09.2007,
SARFAESI proceeding initiated on 16.08.2014.

11. In the present matter, this Tribunal, vide its order dated 03/04/2019 directed the Petitioner Bank to serve the notice of date of hearing to the Corporate Debtor and file the proof of service of notice before this Tribunal. Thereafter, the Respondent, Corporate Debtor appeared before this Tribunal on 19/06/2019 and sought time to file objections within two weeks.
12. In response to the present I.B. Petition, filed by the Petitioner Bank, the Respondent filed its reply on 07/11/2019. In the replies filed by the Respondent, the Respondent has made complaints against the Petitioner Bank alleging excessive interest and other charges levied by the bank and providing inadequate cash credit limit. It is further stated by the Respondent that during the year 2011-12, the Unit suffered setback resulting into huge loss due to slow down in Indian and Global economy coupled with widening disparity prevailing in Soya Processing Industry and in the subsequent years, did not allow the Unit to come out of financial crisis. Under these circumstances, the Corporate Debtor is not left with other option but to wait for new season to open with hope that operation of industry remains viable.

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Under these circumstances, the Corporate Debtor is not a defaulter but has sustained losses.

Besides, it is alleged by the Corporate Debtor that the claim of the Financial Creditor is time barred; this Adjudicating Authority has no jurisdiction to deal with this matter; Mr. Sunil Kumar Dhaka, Chief Manager, Bank of India is not an authorised person to file the present application and the copy of relevant account from the Bank is not as per the Bankers' Books Evidence Act, 1891.

In addition, many feeble objections have been raised by the Corporate Debtor and the same are not narrated herein.

13. The Learned Lawyer of the Petitioner Bank (FC) clarified the position and put forth their arguments **relying on the documents submitted by them, which were executed by the Corporate Debtor and the Mortgagors/Guarantors.** The Petitioner Bank has also referred the CIBIL report filed with their application which **confirms the debt is in default.** The Petitioner Bank has also filed RoC report alongwith the petition in support file charge created by the Corporate Debtor in favour of the Petitioner Bank.



14. The matter was taken up and this Bench heard both sides on 03/04/2019, 26/04/2019, 19/06/2019, 13/08/2019, 03/09/2019, 10/10/2019, 23/10/2019, 21/11/2019, 14/11/2019, 29/11/2019, 20/12/2019, 03/01/2020 & 30/01/2020. The Learned Counsels of the Petitioner Bank and the Respondent were present and put forth their submissions before the Bench.
15. It is a settled legal position that pendency of SARFAESI proceeding or other dispute does not prevent a Financial Creditor to trigger the C.I.R.P. because the nature of remedy being sought for under the provisions of the I.B. Code is "Remedy in Rem" in respect of the Corporate Debtor.
16. The Petitioner Bank has suggested the name of Insolvency Professional to be appointed, if this petition is allowed and the proposed I.R.P. has also given his affirmation/consent in writing, which is annexed with the present I.B. Petition.

OBSERVATIONS

17. **It is observed that** the Petitioner Bank has submitted the documents duly executed by the Corporate Debtor and guarantors along with a Certificate under the Banker's



Book of Evidence Act, 1891, in support of their IB Petition for initiation of C.I.R.P.

- 17.1 The Cash Credit/Term Loans/EPC Facility were sanctioned and released by the Petitioner Bank and the same were availed by the Corporate Debtor, Krishna Oils & Proteins Pvt. Ltd. **The Charges have been** filed by the Corporate Debtor with the ROC in favour of the Petitioner Bank as per the details mentioned in ROC Search Report dated on **06.02.2019** annexed at (Page no. 266 to 297 of the paper book)
- 17.2 The Corporate Debtor has defaulted in making repayment of loan/credit facilities to the Petitioner Bank and **the date of default is 02.08.2014**. The Statement of accounts and the **CIBIL Reports** submitted by the applicant Bank **confirm the default** committed by the Corporate Debtor.
- 17.3 The Petitioner Bank has filed the petition **within the period of limitation**, as the Credits have come into the loan accounts on 25.01.2017, when the application has been filed on 13.03.2019.
- 17.4 The present I.B. Petition is filed by the duly authorised official of the Applicant Bank in a prescribed format under **Section 7** of the I.B. Code annexing copies of loan documents **confirming the**

existence of debt due and defaulted and proposed name of the Resolution Professional to act as an Interim Resolution Professional (IRP)

ORDER

18. **Considering the material papers filed by the Petitioner Bank** and the facts mentioned in **Para No.17, 17.1, 17.2, 17.3 & 17.4** this **Adjudicating Authority is satisfied that,**
- (a) The Corporate Debtor availed **the loan/credit facilities** from the Financial Creditor Bank.
 - (b) Existence of **debt is above Rs. One Lac;**
 - (c) **Debt is due;**
 - (d) Default has occurred on **02/08/2014;**
 - (e) Petition had been filed **within the limitation period as the last credit into the loan account has come on 25.01.2017, when this Application has been filed on 13.03.2019 which is within 3 years of last payment;**
 - (f) Copy of the Application filed before the Tribunal has been sent to the Corporate Debtor and the application filed by the **Petitioner Bank Under Section 7 of IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process** against the Corporate Debtor.



Hence, **the present IB Petition is admitted** with the following Directions/observations. **The date of admission of this petition is 13.03.2020.**

19. This Adjudicating Authority hereby appoints, as proposed, **Mr. Nimit Kalsi, having Insolvency Professional Registration No. IBBI/IPA-002/IP-N00451/2017-18/11267, Email ID: nimitkalsi@yahoo.co.uk, Mob. No. 7738386240, Address: A-402, Ravechi Heights, Plot No.25, Sector 7, Kharghar, Navi Mumbai - 410210, India as an Interim-Resolution Professional.** The Interim Resolution Professional is directed to make public announcement of moratorium in respect of Corporate Debtor soon after receipt of an authenticated copy of this order and to act further as per the **order/directions** issued by this Adjudicating-Authority and to follow the provisions **under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code.**
20. As per the provisions of Section 13 and 14 of the Code on the date of commencement of insolvency, this **Adjudicating Authority declares moratorium with effect from today** for prohibiting all of the following, namely: -
- I. (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal arbitration panel or other authority.*

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(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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

(d) *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

II. *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*

III. *The provisions of sub-section (1) shall not apply to (a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

IV. *The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.*

21. The **IRP is hereby advised to adhere the time limit** as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP" in short) and perform the duties as specified under Section 17, 18, 20, & 21 of I.B Code. **The Interim Resolution Professional shall perform all functions contemplated, inter-alia, in Sections 15, 17, 18, 20 & 21 of the Code and transact proceedings with** utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and



Regulations. It is further made clear that all the **personnel connected with the Corporate Debtor, its promoters or any other persons associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional** as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution **Professional would be at liberty to make appropriate application to this Tribunal** with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to **protect and preserve the value of** the property of the '**Corporate Debtor**' as a part of its obligation imposed by Section 20 of the Code and perform all her functions strictly in accordance with the provisions of the Code, Rules and Regulations.

22. It is also observed that the Petitioner Bank has claimed **total dues of INR.15,56,82,404.36/- which includes undebited interest, Penal interest and Other debts of INR.6,14,85,346.44.** One of the **prime objectives** of the Insolvency and Bankruptcy Code, 2016 is to **find** out an **Insolvency Resolution Plan in time** for the Corporate Debtor and in order to have a Resolution Plan **viable, feasible and implementation successful, in the era of**


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Minimum Cost of funds based Lending Rate ("MCLR" in short))/Repo Linked Interest Rate/Interest Rate falling Regime and Competitive market condition, the **Committee Of Creditor(s) (COC) may explore**, while finalizing the Resolution Plan for the Corporate Debtor, the **possibility of loading maximum interest** at the Applicant Bank's Base Rate (BR) +1% from the date of default to the date of implementation of MCLR and further from the date of implementation of MCLR till the date of approval of the Resolution Plan at the rate of Petitioner Bank's One Year MCLR or One Year MCLR + 1% without any penal /overdue interest.

23. The **Registry is hereby directed** to communicate the authenticate copy of this order to the Financial Creditor, Corporate Debtor Company, the I.R.P and also to the Registrar of Companies, Madhya Pradesh immediately through speed post / registered post immediately.

24. Thus the present I.B petition filed Under Section 7 of the **IBC stands admitted with the above directions and observations.**


(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (T)


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (J)