

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – I

CP (IB) 162/MB/2023

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.

Saisidha Sugar Equipments And Engineering Company Private Limited

[CIN: U29254PN1991PTC061899]

Plot No. 95, Sector No. 10 PCNTDA, Bhoisari Pune, 411026

...Financial Creditor/Petitioner

Versus

Indian Sugar Manufacturing Company Limited

[CIN: U15424PN2000PLC014353]

Vitthal Auto Lines N.H. No. 9, A.P. Tembhorni TQ. Mhada, Solapur 413210

...Corporate Debtor/Respondent

Order Delivered on 23.03.2023

Coram:

Hon'ble Member (Judicial) : Mr. H. V. Subba Rao

Hon'ble Member (Technical): Mr. Shyam Babu Gautam

Appearances:

For the Financial Creditor : Mr. Vijay Parikh a/w Mr. Shyam
Kapadia, Counsels

For the Corporate Debtor : Mr. Agam H. Maloo, Advocate

ORDER

Per Coram:

1. The present Petition has been filed by **Saisidha Sugar Equipments And Engineering Company Private Limited** (hereinafter referred to as “the

Financial Creditor”) under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “**the Code**”) read with Rule 4 Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against **Indian Sugar Manufacturing Company Limited**, (hereinafter referred to as “**the Corporate Debtor**”).

2. The Financial Creditor is a company registered under the provisions of the Companies Act, 1956. The Corporate Debtor is a Company registered under the provisions of the Companies Act, 1956 having CIN No. U15424PN2000PLC014353 with Pune RoC. Hence this bench has jurisdiction.
3. The total amount claimed to be in default by the Financial Creditors is Rs.71,38,76,048/- (Rupees Seventy-One Crore Thirty-Eight Lakhs Seventy-Six Thousand and Forty-Eight only). The date of default stated to be is 20.01.2023.
4. The facts leading to the case in hand are as follows:
 - i. Counsel for the Financial Creditor submits that during the month of April 2021, the Corporate Debtor requested the Financial Creditor to convert the advance amounting to the tune of Rs.

71,38,76,048/- provided for supply of plant & machinery & stores to Inter Corporate Loan.

- ii. The Board of Directors of the Financial Creditor in their board meeting dt. 21.04.2021, passed the Resolution for granting Inter Corporate Loan amounting to the tune of Rs. 71,38,76,048/- to the Corporate Debtor subject to the approval of the members in the Extraordinary General Meeting (EoGM) of the Company. Thereafter, the members of the Financial Creditor in their EoGM dt. 21.05.2021, accorded their consent by way of Special Resolution to grant Inter Corporate Loan amounting to the tune of Rs. 71,38,76,048/- to the Corporate Debtor.
- iii. Therefore, the Financial Creditor and the Corporate Debtor entered into a Memorandum of Understanding dt. 24.05.2021, for deciding the terms and conditions of the Inter Corporate Loan amounting to the tune of Rs. 71,38,76,048/-. As per the Memorandum of Understanding, Inter Corporate Loan amounting to the tune of Rs. 71,38,76,048/- was to be repaid by the Corporate Debtor to the Financial Creditor on 30.04.2022.
- iv. Counsel for the Financial Creditor submits that the Corporate Debtor defaulted in the repayment of the above stated amount

and hence, the Financial Creditor sent various letters to the Corporate Debtor from May, 2022 to November, 2022, thereby requesting the Corporate Debtor to repay the Inter Corporate Loan.

- v. The Corporate Debtor *vide* various letters from May, 2022 to November, 2022, sent to the Financial Creditor acknowledged that the Inter Corporate Loan is outstanding towards the Financial Creditor and also requested to the Financial Creditor to grant some more time for the repayment of the said Loan.
- vi. The Corporate Debtor failed to repay the said Loan to the Financial Creditor in spite of repeated assurances. Hence, the Financial Creditor sent a Demand Notice dt. 12.01.2023, to the Corporate Debtor demanding to pay an amount to the tune of Rs. 71,38,76,048/-, towards the Inter Corporate Loan, within 7 days from the receipt of the demand Notice.
- vii. Financial Creditor further submits that the Corporate Debtor failed to repay the said amount towards the Inter Corporate Loan, within 7 days from the receipt of the demand Notice on 12.01.2023; hence, committed default. Therefore, the date of default has been considered as 20.01.2023.

- viii. The Financial Creditor has prepared the ledge statement of the Corporate Debtor in its books for the Financial Year 2021-22 and Financial Year 2022-23. The total amount outstanding from the Corporate Debtor is to the tune of Rs. 71,38,76,048/-. Hence this Petition.
5. The Corporate Debtor has filed and placed on record Affidavit in Reply to the present Company Petition. The Corporate Debtor is in the business of manufacturing sugar as well as has a Co-generation plant for generation of electricity. The Corporate Debtor has a substantially long-standing name in the business of manufacturing of sugar such as white crystal sugar, raw sugar as well as generation of electricity and production of alcohol from by-products created during the process of manufacturing of sugar from sugarcane.
6. The Corporate Debtor, in Para 4 of Affidavit in Reply, submits that the debt claimed by the Financial Creditor in terms of the Memorandum of Understanding dt. 21.05.2021, became due and payable on 30.04.2022, as per Clause A(2) of the said Memorandum of Understanding; however, further submits that due to circumstance beyond its control, the Corporate Debtor could not pay the amount due and payable to the Financial Creditor as there have been draught like

situations in the areas within which the Corporate Debtor conducts its operations and such draught like situations have the liquidity situation of almost all the sugar factories in the said areas including that of the Corporate Debtor.

7. Heard both sides and perused records filed, it is noted from the reply of the Corporate Debtor that debt is due and payable to the Financial Creditor. Ld. Counsel appearing for the Corporate Debtor has brought attention to the para 5 of the reply whereby they have prayed for time to pay the entire outstanding amount of the Financial Creditor. Therefore, under these circumstances there is no point in postponing admission of this Company Petition.
8. Upon perusal of records, this Tribunal is of the considered opinion that the Corporate Debtor is in default of debt and owes money to the Financial Creditors.
9. We also consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018]* upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7

petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.

10. The Financial Creditor has proposed the name of **Mr. Ritesh R Mahajan**, an Insolvency Professional registered with **ICSI Institute of Insolvency Professionals**, having Registration No. **IBBI/IPA-002/IP-N00048/2017-18/10132**, as the Interim Resolution Professional of the Corporate Debtor. **Mr. Ritesh R Mahajan**, has also 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.
11. 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 stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
12. It is, accordingly, hereby ordered as follows:

- (a) The petition bearing **CP (IB) 162/MB/C-I/2023** filed by **Saisidha Sugar Equipments And Engineering Company Private Limited**, 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 **Indian Sugar Manufacturing Company Limited** 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) 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 & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Ritesh R Mahajan**, an Insolvency Professional registered with **ICSI Institute of Insolvency Professionals**, having Registration

No. **IBBI/IPA-002/IP-N00048/2017-18/10132**, having address **B-203, Devgiri, Ganeshmala, Sinhad Road, Pune – 411, 030, Maharashtra**, having E-mail address– riteshmahajancs@gmail.com 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 issued/as may be issued by the Insolvency & 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 Financial Creditor shall deposit a sum of Rs.5,00,000/- (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).

- (i) Registry is directed to communicate this Order to the Financial Creditor, 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.
- (j) IRP is directed to send a copy of this Order 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.
- (k) Ordered accordingly.

Sd/-

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

23.03.2023

SAM/ Vedant Kedare

H. V. SUBBA RAO
Member (Judicial)