IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.190/MB-IV/2021
Under Section 7 of the I&B Code, 2016

In the matter of:
Ahmednagar Merchant's Co-op. Bank Limited
[Identification No.: ANR/BNK/131]
…Financial Creditor/Petitioner
V/s
Ramnath Agro Manufacturer Private Limited
[CIN: U15428MH2012PTC237329]
...Corporate Debtor/Respondent

Order pronounced on : 30.11.2022

Coram:

Mr. Manoj Kumar Dubey Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s)	:	Mr. Rohit Gupta, Advocate
For the Respondent(s)	:	Mr. Anil D'Souza a/w Mr. Kartik Vig, Advocates

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition being C.P. (IB) No. 190/NCLT/MB/C-IV/2021 filed by Ahmednagar Merchant's Co-op. Bank Limited, the

Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Ramnath Agro Manufacturer Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Petition is filed by Mr. Suresh Hiralal Katariya, Chief Executive Officer, authorized by the Financial Creditor vide Board Resolution dated 09.06.2020. The Petition is filed claiming an amount of Rs.12,44,06,504.01 (Rupees Twelve Crore, Forty-Four Lakhs, Six Thousand, Five Hundred Four and One Paisa) as on 15.12.2020 inclusive of interest. The computation of claim amount annexed with the petition is reproduced hereunder: -

Sl No.	**Account Type**	**Date of Default**	**Date of N.P.A**	**Outstanding as 15.12.2020**	**No. of days default as 15.12.2020**
1.	Cash Credit (Hypothecation)	31.12.2017	31.03.2018	10,79,18,066.01	1080
2.	Term Loan	31.12.2017	31.03.2018	4,24,401.00	1080
3.	Term Loan	31.12.2017	31.03.2018	36,91,167.00	1080
4.	Term Loan	31.12.2017	31.03.2018	82,31,529.00	1080
5.	Term Loan	31.12.2017	31.03.2018	41,41,341.00	1080
			TOTAL	**12,44,06,504.01**	

3. The date of Default is 31.12.2017. The petition is filed on 23.12.2020.

4. The case of the Financial Creditor is as under:

a) The Financial Creditor is a Co-operative Society registered under Maharashtra Co-operative Societies Act, 1960 and is in the Banking Business. The Corporate Debtor is a Private Limited company incorporated under Companies Act, 1956 and is engaged in the business of manufacturing and sale of wheat products such as Maida, Suji, Rava, Tandoor Atta, Bhusa (Bran) etc.

b) The Financial Creditor submits that the Corporate Debtor approached them on 03.11.2012 for grant/sanction of Cash Credit facility and Term Loan facility. The Financial Creditor considered the request of the Corporate Debtor and granted/sanctioned the Machinery Loan of Rs. 90,00,000/-, Hypothecation Loan of Rs.2.00 Crore and Term Loan of Rs.75,00,000/- total aggregating facility to the extent of Rs.3,65,00,000/- vide sanction letter dated 27.11.2012. The aforesaid credit facility was disbursed upon the Corporate Debtor on 15.03.2013 and 29.05.2013. To secure the aforesaid credit facilities, the Corporate Debtor executed various loan and security documents in favour of the Financial Creditor.

c) Pursuant to aforesaid loan, the Corporate Debtor again approached the Financial Creditor to grant/sanction of Term Loan on 05.02.2013. The Corporate Debtor considered the request of the Corporate Debtor and granted/sanctioned Machinery Loan of Rs.33,40,000/- vide sanction letter dated 18.02.2013 and on the request of the Corporate Debtor, Rs. 32,49,000/- was disbursed out the sanctioned amount on 01.03.2013.

d) Again, the Corporate Debtor approached the Financial Creditor/Petitioner Bank on 01.08.2014 for grant/sanction of loan to the tune of Rs.6 Crores for the purpose of expansion of business. The

Financial Creditor considered the request of the Corporate Debtor to some extent and granted/sanctioned/enhanced the Fresh Term Loan of Rs.75,00,000/- and Cash Credit Hypothecation Limit is enhanced from Rs.2.00 Crore to Rs.4.00 Crore vide sanction letter dated 17.09.2014. The aforesaid Cash Credit limit was disbursed on the Corporate Debtor on 17.09.2014 and Term Loan of Rs.75.00 Lakh on 17.10.2014. To secure the aforesaid credit facilities, the Corporate Debtor executed various loan and security documents in favour of the Financial Creditor.

e) On 20.04.2015, the Corporate Debtor again approached the Financial Creditor for grant of fresh loan. The Financial Creditor considered the request of the Corporate Debtor and grant/sanction the Fresh Term Loan of Rs.1.00 Crore and enhanced the existing Cash Credit Hypothecation Limit from Rs. 4.00 Crores to Rs.5.50 Crore vide sanction letter dated 30.04.2015. On 26.02.2016, the Corporate Debtor again approached the Financial Creditor for grant of fresh loan. The Financial Creditor considered the request of the Corporate Debtor and granted/sanctioned the Fresh Term Loan of Rs.43.00 Lakh and enhanced the existing Cash Credit Hypothecation Limit from Rs. 5.50 Crores to Rs.7.00 Crore vide sanction letter dated 26.02.2016, the same was disbursed on the Corporate Debtor on 04.03.2016. Subsequently on 31.03.2018, the Cash Credit hypothecation loan of Rs.7.00 Crores was renewed for further period of one year.

f) To secure the aforesaid credit facilities, the Corporate Debtor created mortgage by executing mortgage deed on 16.09.2014, 11.05.2015 and 04.03.2016 in favour of the Financial Creditor. The details of mortgaged property is reproduced hereunder.

"All part and parcel of the property bearing Plot Nos. 15 to 19 (Phase I) admeasuring 3051.24 sq.mtr (as per Index-II 4000 sq.mt) out of Gat No. 26, situated at Village Chitegaon, Taluka Paithan, District Aurangabad. The said plots have been allotted by Udyog Mitra Co-operative Industrial Estate Limited. Chitegaon to the Corporate Debtor having lease hold rights in the said plot. There is construction of factory shed etc. In the said plots and total built up area of the same is admeasuring 2800 sq.mt. together with plant & machinery installed therein."

g) The statement in respect of total amount of debt granted and date of disbursement to the Corporate Debtor is reproduced hereinunder: -

Sr. No.	A/c No.	A/c type	Amount Sanction	Amount disbursed	Date of disbursement
1	52/44	Cash Credit (Hypothecation)	2,00,00,000/-	2,00,00,000/-	29/05/2013
2	53/26	Machinery Loan	33,40,000/-	32,49,000/-	01.03.2013
3	53/28	Machinery Loan	90,00,000/-	90,00,000/-	15.03.2013
4	70/15	Term Loan	75,00,000/-	75,00,000/-	29.05.2013
5	70/18	Term Loan	75,00,000/-	75,00,000/-	17.10.2014
6	52/44	Cash Credit (Hypothecation)	4,00,00,000/-	4,00,00,000/-	17.09.2014
7	70/19	Term Loan	1,00,00,000/-	1,00,00,000/-	07.09.2015
8	52/44	Cash Credit (Hypothecation)	5,50,00,000/-	5,50,00,000/-	11.05.2015
9	70/20	Term Loan	43,00,000/-	43,00,000/-	04.03.2016
10	52/44	Cash Credit (Hypothecation)	7,00,00,000/-	7,00,00,000/-	04.03.2016

11	52/44	Cash Credit (Hypothecation)	7,00,00,000/-	7,00,00,000/-	31.03.2018

h) The Financial Creditor submits that the Cash Credit Account was renewed on 31.03.2018 and therefore the amount becomes due on 31.03.2019 and the Corporate Debtor committed default in repayment of the same as on 31.03.2019 but the statutory auditor of the Financial Creditor did not agree with this and the Financial Creditor classified the said account as substandard on 31.03.2018. Hence, the date of default is treated as 31.12.2017 as directed by statutory auditor and as such, the first default under this facility occurred on 31.12.2017. The Corporate Debtor made the payment on 31.03.2018 and regularized the term loan account. However, the Corporate Debtor committed the first default in Term Loan Account No. 70/19 on 07.02.2018 and in Term Loan A/c No. 70/20 is on 04.03.2018. But the statutory auditor of the Financial Creditor did not agree with this and hence, the Financial Creditor classified as substandard on 31.03.2018. Hence the date of default is treated as 31.12.2017 as directed by statutory auditor and as such, the first default under the facility occurred on 31.12.2017.

i) The Corporate Debtor availed the aforesaid Credit facilities but failed to repay the outstanding dues as a result of which the loan accounts of the Corporate Debtor were classified as Non-Performing Assets (NPA) as per Reserve Bank of India of prudential norms. The Financial Creditor issued notice dated 03.03.2020 u/s 13 (2) of the SARFAESI Act, 2002 thereby recalling and demanding for repayment of entire outstanding dues within a period of 60 days to the tune of Rs.11,06,26,064.01 together with interest @15% p.a. w.e.f. 01.03.2020. On receipt of said Notice dated 03.03.2020, the

Corporate Debtor replied to same thereby admitted and acknowledged about taking of loan, however, evasively denied the contentions.

Reply by the Corporate Debtor

5. The Corporate Debtor filed affidavit in reply thereby denying each and every allegation, averment, submission and insinuation made by the Financial Creditor.

6. The Corporate Debtor submits that the Company Petition is not maintainable and the Financial Creditor has approached this Hon'ble Tribunal with unclean hands and for this reason alone, the Petition is liable to be dismissed.

7. The Corporate Debtor further submits that the Loan Accounts of the Corporate Debtor became NPA on 31.12.2017 whereas at the same time the Financial Creditor alleges that the first default occurred for the term loan A/c No. 70/19 on 07.02.2018 and for Term Loan A/c No. 70/20 on 04.03.2018. Even assuming for the sake of arguments, if the said allegations were true, the Financial Creditor fails to explain as to how an account is declared an NPA on earlier date i.e. 31.12.2017, if the first default occurred on 07.02.2018. The aforesaid stand of the Financial Creditor clearly shows that the Financial Creditor has acted arbitrarily and illegally to extract huge amount from the Corporate Debtor. The Financial Creditor deliberately suppressed the fact that the Financial Creditor sanctioned a loan amount of Rs.9.93 Crores on 31.03.2018 and also the Financial Creditor did not disclose this fact as they cannot explain how an account which according to the Financial Creditor became an NPA on 31.12.2017 was given loan sanction at a later date i.e. 31.03.2018.

8. The Corporate Debtor states that it availed the loan from the Financial Creditor. However, the Financial Creditor exorbitantly increased the amount and has shown wrong value of loan amount which is due and payable by the Corporate Debtor. The Loan amount and the interest is wrongly calculated by the Financial Creditor.

9. It is contended that, despite the hurdles of Demonetisation, new GST regime, and COVID-19 Pandemic, the Corporate Debtor has regularly paid the amount to the Financial Creditor.

Rejoinder by The Financial Creditor

10. The Financial Creditor submits that all the allegations made by the Corporate Debtor are devoid of any substance and false. He further stated that at the main contentions raised are in respect of date of default and declaration of NPA on 31.12.2017 when default in Term Loan Account 70/19 and 70/20 accrued on 07.02.2018 and 04.03.2018 respectively. It is further contented that even though the account is declared NPA on 31.12.2017, how the Bank has sanctioned further loan of Rs.9,93,00,000/- vide Sanction Letter dated 31.03.2018. In this respect, it is submitted that the Statutory Audit of Bank for the year ended 31.03.2018 has been conducted by VPB & Associates, Chartered Accountant, Pune and vide letter dated 28.08.2018 they have forwarded their Audit Report to the Bank and in the said Audit Report in Part “A” they have observed that the Account of the Corporate Debtor as on 31.03.2018 shall be treated as sub-standard and Bank shall make provision for the same. At that time a sum of Rs. 815.39 lakhs were due from Corporate Debtor in various loan accounts and Statutory Auditor directed the Bank to make provision for such sub-standard Account. As per the Regulations of RBI, the Statutory Audit Report is binding on the

Bank. Hence, there was no alternative but to treat 31.12.2017 as the date of default. It is denied that the Bank has acted arbitrarily and illegally to extract huge amount from the Corporate Debtor.

11. The hypothecation loan of Rs.7 crore was renewed for the period of one year on 31.03.2018. So far as the term loan of Rs.2.93 crore is concerned, it is submitted that the Corporate Debtor has failed to comply with the terms and conditions as mentioned in the said Sanctioned Letter. The Corporate Debtor was *inter alia* required to execute a mortgage deed of immovable property as mentioned in the said Sanctioned Letter and to execute various security documents. The Financial Creditor submits that the Corporate Debtor has failed to comply with all these requirements for availing the loan. The said term loan of Rs. 2.93 crore was not disbursed. This fact is well within the knowledge of the Corporate Debtor and therefore, the Corporate Debtor from 31.03.2018 till date of filing his reply dated 07.01.2022 has not uttered a single word in respect of the same. The Corporate Debtor has thereafter never approached the Bank in this connection. Thus, the Corporate Debtor failed to comply with the condition precedent in the Sanctioned Letter and so the question of disbursement of term loan amount of Rs.2.93 crore did not arise at all.

12. The Corporate Debtor in its written submissions stated that a copy of letter dated 31.03.2018 was issued by the Financial Creditor to the Corporate Debtor and its Directors informing the additional sanction of SSI hypothecation loan for an amount of Rs.7 Crore and a SSI hypothecation Term Loan for an amount of Rs.2.93 Crore aggregating to Rs.9.93 Crores. With this letter, the Financial Creditor has also enclosed a copy of loan agreement duly signed by the respective parties which are annexed to the Application. The above candid and unequivocal admission points out that even according to the financial

Creditor, once the Corporate Debtor had renewed the hypothecation loan of Rs. 7 Crore on 31.03.2018 and the obligation to repay the sum with interest was within a period of one year therefrom i.e. 31.03.2019. Therefore, considering the above renewal and execution of document dated 31.03.2018 by no stretch of imagination, it can be argued by the Financial Creditor that the so-called date of default in the present case is 31st December, 2017 as sought to be contended in part 4 of the Petition.

13. The Corporate Debtor further pleaded that provisions of Section 7(5) (a)& (b) of the Code, the Adjudicating Authority ought to consider the existence of the mandatory requirements under the section. In the present case, the date of default is admittedly incorrect and as per the Financial Creditor's own admission, there could have been no default in the eyes of law for a period of one year from 31.03.2018. The Financial Creditor has sought to rely upon the Annexures to the auditor report which is dated 20.08.2018. The fact that the report was prepared almost 2 quarters after the renewal of hypothecation loan, the Auditor's report cannot govern the situation which have already taken place and have created certain rights in favour of the Corporate Debtor without resorting to appropriate remedies under law. Even assuming for the sake of arguments, that the Auditor's report is genuine and proper, it cannot retrospectively undo the actions that have already taken place and the rights that have already been created in favour of the Corporate Debtor. The statutory auditor is not a court or a Tribunal to declare a particular document or act as *non-est*, null and void *ab-inito*. In such circumstances, the reliance placed by the Financial Creditor on the said Auditor's report is misplaced.

14. The Financial Creditor filed written submissions and synopsis of submissions wherein he relied on certain catena of judgements which are reproduced hereinunder: -

a. Innoventive Industries Limited Vs. ICICI Bank & Anr. *2018 1 SCC 407 at Para 27* has held that even if right of payment is disputed, the code gets triggered, the moment the defaults exceed the threshold amount.

b. *Rajesh Kedia Vs. Phoenix ARC Pvt. Ltd.,* the NCLAT held that

> *"13. In so far as the contention of the Appellant qua the quantum of payment of debt is considered, we are of the earnest view that the same does not fall for consideration before the Adjudicating Authority at the stage of 'admission' of the Application under Section 7 of the Code. The only requirement is that the minimum outstanding debt should be more than the threshold amount provided for under the Code. The actual amount of 'Claim' is to be ascertained by the Resolution Professional after collating the 'Claims' and their verification which comes at a later stage. Keeping in view all the aforenoted reasons, this Tribunal is satisfied that there is an admission of 'debt' and 'default' as defined under the Code and we do not find any illegality or infirmity in the Impugned Order dated 07/10/2021, passed by the Learned Adjudicating Authority."*

c. The Hon'ble Apex Court in matter of Union Bank of India Vs. M/s Krupa Nidhi Educational Trust & Another in AIR 2019 SC 3441 para 7 observed that :

> *"We are of the considered opinion that once a loan agreement was signed between the parties, a concluded contract came in to being incorporating pre-payment charges. The agreement would bind the parties..."*

Findings: -

15. We have heard and prudently gone through the materials available on record. The Financial Creditor sanctioned/granted/enhanced the Cash Credit (Hypothecation) Limited and Term Loan to the Corporate Debtor from time to time. The Corporate Debtor enjoyed the credit facility but did not adhere to repayment of the outstanding dues as a result of which, the loan accounts of the Corporate Debtor were classified as Non-Performing Assets. The Financial Creditor issued notice u/s 13 (2) of the SARFAESI Act 2002 on 03.03.2020 thereby demanding and recalling for outstanding dues. Despite receipt of said Demand Notice, the Corporate Debtor did not repay the outstanding dues. The Financial Creditor submits that the Cash Credit Account was renewed on 31.03.2018 and therefore the amount becomes due on 31.03.2019 and the Corporate Debtor committed default in repayment of the same as on 31.03.2018 but the statutory auditor of the Financial Creditor did not agree with this and hence, the Financial Creditor classified the said account as substandard on 31.03.2018. Hence, the date of default is treated as 31.12.2017 as directed by statutory auditor and as such, the first default under this facility occurred on 31.12.2017. The Corporate Debtor made the payment on 31.03.2018 and regularized the term loan account.

16. On perusal of Petition, this Bench finds that there is no clarity with the date of default as submitted by the Financial Creditor. The Notice u/s

13 (2) of the SARFAESI Act, 2002 filed by the Financial Creditor at Page 506 of the Petition states that the accounts of the Corporate Debtor were classified as N.P.A. on 29.04.2017, however, the Financial Creditor has made submissions before this Bench that the accounts were substandard and classified as N.P.A. on 31.03.2018 and therefore the date of default can be treated as 31.12.2017. This Bench is of the view that the Financial Creditor has failed to satisfy the date of default in its submission.

17. Furthermore, the Financial Creditor submitted that the account of the Corporate Debtor was classified as N.P.A on 31.03.2018 and the account was declared as substandard on 31.03.2018 and therefore the date of default can be treated as 31.12.2017. However, the Financial Creditor in its own submission also submit that the existing Cash Credit (Hypothecation) Limit of Rs.7.00 Crore was renewed and Term Loan of Rs.2.93 Crore was sanctioned and disbursed on 31.03.2018 (as per sanction letter dated 31.03.2018). Further, it is to be noted that the Financial Creditor has renewed/sanctioned the same loan facility provided to the Corporate Debtor which as per the Financial Creditor, the Corporate Debtor has defaulted and claimed. When the Financial Creditor is of the opinion that the Corporate Debtor has defaulted in repaying the loan facility provided to the Corporate Debtor, the Financial Creditor should not have renewed/sanctioned the Further Loan facility.

18. Prima facie, this Bench is of the considered view that from act of the Financial Creditor, it is clear that the default has never occurred as the Financial Creditor has renewed/revived the existing Cash Credit facility.

19. This Bench therefore finds, the Financial Creditor has failed to satisfy us under the requirement of section 7(5)(a) of the Code. Section 7(5)(a) is reproduced hereunder: -

Section 7

> *(5) Where the Adjudicating Authority is satisfied that—*
>
> *(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or*

20. In view of the above section reproduced (*supra*), this Bench holds that the Financial Creditor has failed to satisfy this Bench in the sense that the loan has been renewed by the Financial Creditor even after declaring the Loan accounts as N.P.A., thereby giving a fresh life to the loan accounts. This Bench is of the considered view that no default on the part of the Corporate Debtor occurs in view of renewal of existing Cash Credit (Hypothecation) Limit of Rs.7.00 Crores, thus the Loan Account can no longer be considered as N.P.A.

21. This Petition is hereby dismissed with no costs.

Sd/-	Sd/-
Manoj Kumar Dubey	Kishore Vemulapalli
Member (Technical)	Member (Judicial)

/NP/
30/11/2022