



**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– I)
KOLKATA**

C.P. (IB)/157/KB/2021

A petition 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:

Central Bank of India, a nationalized public sector bank under Reserve Bank of India, having CIN: U99999MH1911PTC000337 and having its registered office at Chander Mukhi, Nariman Point, Mumbai, Maharashtra, Pin Code: 400 021, India and regional office at Central Bank of India, Siwan, Near Head Post Office, District – Siwan (Bihar), Pin Code- 841226

..... *Financial Creditor*

-versus-

Sasa Musa Sugar Works Private Limited, a company within the meaning of Companies Act, 2013 having CIN U15432WB1933PTC007599 and having its registered office at Mercantile Building, 9/12 Lalbazar Street, Kolkata, West Bengal, Pin Code: 700001, India

..... *Corporate Debtor*

Date of Hearing: 19th September, 2022

Date of Pronouncement of the order: 17th November 2022

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing/physical):

For the Financial Creditor:

Ms. Usha Doshi, Adv.

For the Corporate Debtor:



Mr. Debashis Karmakar, Adv.

Mr. Diptomoy Talukder, Adv.

ORDER

Balraj Joshi, Member (Technical):

1. This Court convened through hybrid mode.
2. This is a Company Petition under section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred as “the Code”) by **Central Bank of India**, hereinafter referred to as “*Financial Creditor*” seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Sasa Musa Sugar Works Private Limited**, hereinafter referred to as “*Corporate Debtor*”.
3. The Corporate Debtor is a private limited company incorporated on March 21, 1933. The authorized share-capital of the company Rs. 50,00,000/- and the paid-up share capital of the company is Rs. 49,56,300/-.
4. The total amount claimed to be in default as on 02.03.2021, by the Financial Creditor, is Rs. 68,35,04,916/- including uncharged interest from December, 2017 up to March 1, 2021. The account was classified as Non-Performing Asset (herein after referred as “NPA”) on March 14, 2018 and is still continuing as NPA account.
5. It is submitted that Part – I of this petition contains particulars of the Financial Creditor. Part- II of this petition contains the particulars of the Corporate Debtor. Part – III of the petition caters to the particulars of proposed Interim Resolution Professional. Part – IV of this petition provides the particular of Financial Debt and Part -V of this petition contains the particulars of the Documentations, Record and Evidence of Default.



6. The Financial Creditor has relied on the various documents in support of its claims, including:
- a) Copies of Articles of Association and Memorandum of Association of Corporate Debtor, marked with Annexure “**B**”.
 - b) Copy of Company Master Data of the Corporate Debtor, marked with Annexure “**C**”.
 - c) Copy of Demand Promissory Note date February 18, 2014, marked with Annexure “**G**”.
 - d) Copy of Letter of Continuity dated February 18, 2014 herein marked with Annexure “**H**”.
 - e) Copy of Letter of Waiver dated February 18, 2014 herein marked with Annexure “**I**”.
 - f) Copy of Letter of Interest Variation dated February 18, 2014 herein marked with Annexure “**J**”.
 - g) Copy of Agreement of Hypothecation to secure Demand Cash Credit against Goods dated February 18, 2014 herein marked with Annexure “**K**”.
 - h) Copy of Loan cum Hypothecation Agreement (Machinery) dated February 18, 2014 herein marked with Annexure “**L**”.
 - i) Copy of Pledge of Goods to secure a Demand Cash Credit dated February 18, 2014 herein marked with Annexure “**M**”.
 - j) Copy of supplementary agreement dated February 18, 2014 herein marked with Annexure “**N**”.
 - k) Copy of Letter of Intent date February 18, 2014 herein marked with Annexure “**O**”.
 - l) Copy of the page of Mortgage Register herein marked with Annexure “**P**”.
 - m) Copies of Title Deeds herein marked with Annexure “**Q**”.



- n) Copy of Certification of Registration for Modification of Mortgage u/s 132/135 of the Companies Act, 1956 issued by ROC, West Bengal herein marked with Annexure “R”.
- o) Copy of Report issued by ‘CRIF’ and ‘Experian’ for Corporate Debtor dated February 25, 2021 herein marked with Annexure “S”.
- p) Copy of Letter of Resignation from Mahmud Ali, one of the directors of the Board of Directors of Corporate Debtor dated January 15, 2020 herein marked with Annexure “V”.
- q) Copy of Certified Copy of Board Resolution of Corporate Debtor dated January 27, 2020 herein marked with Annexure “W”.
- r) Copy of Letter from Corporate Debtor to Financial Creditor dated February 10, 2020 herein marked with Annexure “X”.
- s) Copy of Letter from Corporate Debtor through its Advocate to Financial Creditor herein marked with Annexure “Z”.
- t) Copy of balance Sheet of the Corporate Debtor Company for the Financial Year 2019-20 herein marked with Annexure “Z-2”.

7. Submissions on behalf of the Financial Creditor:

- 7.1 The case of Financial Creditor is that it had sanctioned to the Corporate Debtor, Cash Credit Limit of ₹55 Crore, *vide* sanction letter dated 18.02.2014.
- 7.2 Since the facility granted to the Corporate Debtor was in the nature of the working capital loan, several disbursements took place through Cash Credit Account No. 1529378859. Further, there are two other current accounts being Current Account Nos. 3345964304 and 3746721003 operated by the Corporate Debtor maintained with Financial Creditor having branch at Gopalganj Bihar.



7.3 It is submitted that the Corporate Debtor has defaulted in payment to the Financial Creditor of Rs. 68,35,04,916/- as on March 2, 2021, including unchanged interest from December, 2017 to March 1, 2021.

7.4 It is further submitted that Corporate Debtor has been availing the Credit Facilities from the Financial Creditor since its incorporation and as Financial Creditor is the sole Financer of the Corporate Debtor thus, the security interest is in the favor of the Financial Creditor exclusively.

7.5 Further the account of the Corporate Debtor turned NPA on March 14, 2018. The Financial Creditor has started taking action against Corporate Debtor under the Recovery of Debts and Bankruptcy Act, 1993 and the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI) and applications in respect of both are pending before the Learned Debts Recovery Tribunal at Patna.

7.6 Further, it is stated that the Corporate Debtor last paid a sum of Rs.80,613/- to the Financial Creditor on February 22, 2021 in the Cash Credit Account maintained with the Financial Creditor. Hence, this application under section 7 of the Code is filed before the Hon'ble NCLT Kolkata.

8. Submission on behalf of Corporate Debtor:

8.1 The Corporate Debtor claimed that the instant petition is *ex-facie* barred by the laws of Limitation as the loan account pertaining to the credit facilities was declared as NPA on March 14, 2018, whereas, the petition was filed on March 9, 2021. Further, no specific date of default has been mentioned in the petition and the date of NPA cannot be taken as the date of default.

8.2 Further, the supplementary affidavit affirmed by the Financial Creditor on February 4, 2022 includes no prayer to carry out formal amendment to the petition. Thus, the petition is to be treated null and void.

8.3 It is also claimed that the petition is filed without any proper authorization of the competent authority. The petition is filed only by the Mr. Avinash



Kumar, Regional Manager of the Financial Creditor bank at Siwan in Bihar. To show his purported authorization, a Power of Attorney notarized on July 20, 2016 has been annexed and such unregistered Power of Attorney was not issued by any board resolution for filing the matter. Further the Supplementary Affidavit of the Financial Creditor was affirmed by a different person, not by the deponent. The Affidavit is affirmed by Mr. B.S. Harilal, the Field General Manager, Zonal Office Patna of the Financial Creditor Bank and no document has been disclosed with the supplementary affidavit to prove the alleged authority to affirm the Supplementary Affidavit.

- 8.4 It is claimed that no default is found from the record as the statement of account shows several transactions made after the alleged date of default *i.e* December 14, 2017
- 8.5 It is contended that the factory of the Corporate Debtor is tucked away in the remote area of Gopalganj in Bihar and from the very beginning the factory is the only source of the livelihood of thousands of sugarcane growers from the adjacent villages and also more than four hundred employees, who are working in the factory.
- 8.6 It is stated that the credit facilities provided by the Financial Creditor are secured by the primary security comprising hypothecation of plant machinery, stock finished goods, raw materials and by collateral security in the form of equitable mortgage of land and building having the conservative market value estimated in the year 2016 to approximately ₹133 Crore. The total extent of the land under mortgage is 66 bighas 7 katha and 16 Dhur out of which 21 Bighas 19 katha 9 Dhur has been leased in perpetuity by the Hathwa Raj (Estate) in favour of the company.
- 8.7 It is contended that on the night of December 20, 2017, due to an unfortunate accident at the factory, lives of six workers were lost. As an aftermath to that accident, the mob from the surrounding villages indulged in loot and arson of the assets of the company and also at the residence of the Managing



Director. Due this incident, properties worth Crores of Rupees were destroyed and criminal cases were filed and factory were sealed and no permission was granted to restart of factory. The Managing Director and his two sons were arrested subsequently. It is contented that the Financial Creditor had knowledge of these incidents. The Financial Creditor started mounting pressure on the factory to regularize the account when the factory was locked and not operational.

- 8.8 In the above circumstances, after receiving assurance from the Government of Bihar that monetary help will be provided, the management arranged to re-start the factory from November 2018 with help from relatives and friends. However, till date, no monetary aid has been received.
- 8.9 Later, the Cane Commissioner decided to utilize the sugar sale proceeds of the company for the payment of Sugar Cane dues, payment of bank dues and for essential payments and repairs expenses of the factory. As a result, the Company suffered huge losses. After the accident management paid Rs. 2.12 Crore(Check this figure) (March 31, 2018 to March 31, 2021) from their own resources to restart the factory.
- 8.10 It is further stated that after the declaration of bank account of the Corporate Debtor as NPA, the company paid of Rs. 14.85 Crore to the Financial Creditor towards the Cash Credit Account as well as the entire loan dues of Rs. 2.17 Crore along with accrued interest. Therefore, the Financial Creditor has been paid ₹17.02 Crore in total and it is certified that there are no dues in the loan account no. 3345964814 in the name of Corporate Debtor.
- 8.11 In the meantime, the Financial Creditor issued Demand Notice dated March 15, 2018 under Section 13 (2) SARFAESI Act, claiming dues of Rs. 58,82,59,220/-.
- 8.12 It is stated that Corporate Debtor made a representation under section 13 (3-A) of SARFAESI Act dated May 14, 2018. The same was replied to by the Financial Creditor *vide* reply dated May 21, 2018, which stated that a fresh



Demand Notice dated May 18, 2018 has been issued and the previous Demand notice dated March 15, 2018 has become null and void.

- 8.13 It is stated that the Financial Creditor circumventing the provision issued another Demand Notice raising the notice amount to Rs. 60,28,94,913/- as on May 18, 2018. The said demand notice further stated that in case of failure on the part of the borrowers, section 29 of the SARFAESI Act would be invoked.
- 8.14 Thereafter, the Financial Creditor issued a letter dated June 30, 2018 communicating for the first time that the account of Corporate Debtor was categorized as NPA on March 14, 2018 and referring the Second Demand Notice dated May 18, 2018. The Company exercising its right under 13 (3-A) SARFAESI Act, filed representation dated July 14, 2018.
- 8.15 It further contented that the Financial Creditor issued another Demand Notice dated July 5, 2018 raising the claimed amount to Rs. 61,46,87,852/- arbitrarily. Furthermore, without issuance of any notice under Rule 4 of the Security Interest (Enforcement) Rules, the Financial Creditor sealed the godown stacked with sugar, published in the Hindi Daily *Hindustan* dated April 21, 2018.
- 8.16 It is further submitted that the Financial Creditor restrained the Corporate Debtor from selling the sugar which was stored in its godown. The same resulted in financial difficulties and loss of reputation.
- 8.17 It is contented that the Financial Creditor in derogation of Rule 8 (1) of the Security Interest (Enforcement) Rules without individual delivery of the possession notice, affixed it at the conspicuous part of the factory on February 24, 2021 and mailed the notices the Directors by post. The same was received by staff of the factory on March 4, 2021, March 6, 2021 and March 11, 2021. Further, the possession notice showed that amount had once again for fourth time been inflated to Rs. 68,14,26,493/-.
- 8.18 Further, the Financial Creditor filed application under section 19(1) of the Recovery of Debts and Bankruptcy Act, 1993 being O.A/74/2021 against



the Corporate Debtor before the Hon'ble Debt Recovery Tribunal, Patna (DRT). The same is pending before the Hon'ble DRT.

9 Supplementary Affidavit dated February 02, 2022 on behalf of Financial Creditor:

The instant Supplementary - Affidavit has been filed by Mr. B.S. Harilal, on behalf of the Financial Creditor, pursuant to this Adjudicating Authority's order dated December 06, 2021, thereby directing the Financial Creditor to clarify a specific date of default.

10 Supplementary Affidavit dated August 24, 2022 on behalf of Financial Creditor:

The instant supplementary affidavit has been filed by Mr. Avinash Kumar, on behalf of the Financial Creditor, pursuant to the Adjudicating Authority's order dated 29th July 2022, whereby the Financial Creditor was directed to bring on record all documents in respect of the entry of ₹30,00,000/- dated 16.12.2017 in the statement of account bearing Account No. 1529378859.

11 Analysis and Findings:

- 11.1 Heard the Ld. Counsel for the Financial Creditor and Ld. Counsel for the Corporate Debtor and perused the record.
- 8.1 The first contention of the Corporate Debtor is that the persons filing the instant petition and the supplementary affidavits have not produced requisite documents to prove that they are authorized to file the said documents on behalf of the Financial Creditor. The petition as well as the supplementary affidavit dated 24th August 2022 were filed by Mr. Avinash Kumar. Annexure A of the petition (pages 13 to 26) contains Power of Attorney dated 20th July 2016, executed by Central Bank of India in favour of Mr. Avinash Kumar, authorizing him to act on behalf of the Financial Creditor. The said document is signed and sufficiently stamped. As such Mr. Avinash Kumar is sufficiently authorized to file the said documents.
- 8.2 Further, the supplementary affidavit dated 02 February 2022 has been filed by Mr. B.S. Harilal, the Field General Manager, Central Bank of India Zonal



Office, Patna, duly sworn on oath. It is stated therein in paragraph 1, that the deponent holds a valid power of attorney. Through the instant supplementary affidavit, some documents have been placed on record regarding the clarification of date of default. The said documents have not been denied or disputed even by a whisper or in any manner by the Corporate Debtor in reply- Affidavit. There is nothing that debars an officer of the bank from filing a supplementary affidavit, in a matter where the petition is preferred by another officer of the same bank. The contention of the Corporate Debtor, therefore, is utterly misconceived and therefore rejected.

8.3 Section 7(3) of the Code provides that the Financial Creditor shall, along with the application furnish record of default recorded with the information utility or such other record or other evidence of default as prescribed. Apart from the above-mentioned documents, the Financial Creditor has also placed on record, Experian and CRIF reports on pages 245 to 273 of the petition. The Experian report, on pages 251, 253 and 257 show active accounts of the Corporate Debtor with overdue amounts of ₹6,27,433/-, ₹29,97,84,909/- and ₹1,12,94,762/- respectively. The said documents therefore clearly indicate that debts of the abovementioned amounts are overdue from the Corporate Debtor to the Financial Creditor. It is pertinent to note that these documents have also not been disputed/denied by the Corporate Debtor in its reply. Therefore, in light of section 7(3) of the Code, no other proof of default is needed to be produced. Further, the fact that the account of the Financial Creditor has become NPA, a fact admitted to by the Corporate Debtor in its balance-sheets (Page 412 of the petition) as well as during arguments, also proves that a default in payment of the dues by the Corporate Debtor exists. Therefore, it is clear that a financial debt was due from the Corporate Debtor to the Financial Creditor and the Corporate Debtor has defaulted in the payment of the same.



8.4 The Corporate Debtor has further contended that the instant petition is barred by limitation. The date of default in this case is 14.12.2017. The limitation period would originally be over by 14.12.2020. However, various payments have been made by the Corporate Debtor on and between the dates of 18.12.2017 and 14.03.2018. As such in light of part payment of interest, under section 19 of the Limitation Act, 1963, the fresh limitation periods from the said dates would ensue. Therefore, a fresh limitation period would lastly ensue from 14.03.2018 and the limitation period would finally be over on 14.03.2021. As such the instant petition would be within the limitation period.

8.5 Furthermore, the Hon'ble Supreme Court in *Suo Motu Cognizance Case SMW (C) No. 3 of 2020* has held that-

*“Considering the reduction in prevalence of COVID-19 virus and normalcy being restored, the following order was passed in the *Suo Motu* proceedings on 08.03.2021:*

“1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply. “ (Para 2)

In light of the above judgment, even if the date of default is taken as 14.12.2017, the period between 15.03.2020 and 14.03.2021 will be excluded from the computation of the limitation period, and a period of 90 days will be counted from the date of 15.03.2021. The instant petition has been filed



on 09.03.2021, which falls within the said period of 15 days. Therefore, the instant petition is well within the limitation period.

8.6 In light of the above facts and circumstances therefore, this Adjudicating Authority is satisfied that the instant petition is complete in all respects and should be **admitted**.

8.7 It is, accordingly, hereby ordered as follows:-

- i) The application bearing **CP (IB) No. 157/KB/2021** filed by **Central Bank of India** (*Financial Creditor*), under section 7 of the Code read with rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Sasa Musa Sugar Works Private Limited**, CIN: U15432WB1933PTC007599, the Corporate Debtor, is **admitted**.
- ii) There shall be a moratorium under section 14 of the IBC.
- iii) 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.
- iv) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- v) **Mr. Sachin Gopal Jathar**, registration number **IBBI/IPA-002/IP-P00640/2018-19/11968**, email: **sgjathar@gmail.com** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee



- payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions 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 Code.
- vi) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.
- vii) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- viii) The Financial Creditor shall initially deposit a sum of ₹4,00,000/- (Rupees Four 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). Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.
- ix) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.



In the National Company Law Tribunal,
Kolkata Bench (Court- I)

Central Bank of India vs. Sasa Musa Sugar Works Pvt. Ltd.
C.P (IB) 157/KB/2021

- x) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means 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.
9. **CP (IB) No. 157/KB/2021** to come up on **15.12.2022** for filing the progress report.
10. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 17th day of November, 2022