IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU

(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

C.P. (IB) No.09/BB/2022
Under Section 7 of the IBC, 2016
r/w Rule 4 of the I&B (AAA) Rules, 2016

In the matter of:

1. Sharanappa Sangappa Alur,
No. 791 KK Colony,
Near Kariholu Hospital,
Bijapur – 586109 --- Petitioner No.1 /Financial Creditor

2. Ashok Sharangowda Patil,
Solapur Road, Chalukya Nagar,
Bijapur Vijaya College
Bijapur – 586103 --- Petitioner No.2 /Financial Creditor

3. Annappa Guddodagi,
H.No. 716, WNO 5,
Shikarkhan Cross, Station Road,
Bijapur – 586104 --- Petitioner No.3 /Financial Creditor

4. Basanagouda Naganagoudar,
No. 1233A,
Gandhinagar, Bilagi,
Bagalkot – 587116 --- Petitioner No.4 /Financial Creditor

5. Girish Krishnappa Sarawad,
58, Malali,
H.No. 243 to 597, Mudhol,
Bagalkot – 587313 --- Petitioner No.5 /Financial Creditor

6. Shivanagouda Bhimangouda Patil,
Venkateshwar Nilaya Station Road,
Gopalpur,
Vijayapura – 586103 --- Petitioner No.6 /Financial Creditor

7. Sadashiv Chikkaraddi,
Shakti Nagar, Darga Road,
Bijapur – 586101 --- Petitioner No.7 /Financial Creditor

8. Shantayya Shivayya Golasangimath,
S89, K.H.B Colony,
Bijapur – 586104 --- Petitioner No.8/Financial Creditor

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9. Narayanrao Vittalrao Kulkarni,
560, Yaragal BK,
Sindagi,
Bagalkot – 587116 --- Petitioner No.9 / Financial Creditor

VERSUS

Dnyanyogi Shri Shivkumar Swamiji Sugars Limited,
Banashankari Complex, Opp. Anand Hospital
Akkamahadevi Road,
Bijapur- 586101 ... Respondent/ Corporate Debtor

Order delivered on: 07.03.2022

Coram: 1. Hon'ble Shri Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present:

For the Petitioners/Financial Creditors: Shri K.Chethan Kumar
For the Respondent/Corporate Debtor: Shri Hemanth Rao

ORDER

Per: *Ajay Kumar Vatsavayi, Member (Judicial)*

1. The present petition is filed, under Section 7 and 12 of the Insolvency and Bankruptcy Code, (hereinafter referred to as 'IBC'/Code) 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, r/w Regulation 40 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Rule 11 of the NCLT, Rules 2016 by Shri Sharanappa Sangappa Alur and 8 others (hereinafter referred to as 'Financial Creditors'/Petitioners No.1 to 9'), with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) against M/s. Dnyanyogi Shri Shivkumar Swamiji Sugars Limited (hereinafter referred to as Respondent/Corporate Debtor) in respect of the default amount of Rs. 34,73,54,802/- (Rupees Thirty Four Crores Seventy Three Lakh Fifty Four Thousand Eight Hundred and Two only).

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2. The Corporate Debtor namely, M/s. Dnyanyogi Shri Shivakumar Swamiji Sugars Limited is a company incorporated on 13th November 2002 with CIN No. U15429KA2002PLC031208 with its registered office at Banashankari Complex, Opp. Anand Hospital, Akkamahadevi Road, Bijapur Karnataka - 586101. Hence the jurisdiction lies with this Adjudicating Authority. The authorised share capital of the Respondent Company is Rs. 50,00,00,000/- and paid-up capital is Rs. 33,76,43,400/-.

3. Brief facts of the Petition as stated by the Petitioners/Financial Creditors that the Corporate Debtor/Respondent have defaulted the financial debt paid by the Financial Creditors/Petitioners towards the business purpose which was assured to be repaid on or before 31st December 2019, in accordance with the respective Loan Agreements dated 04.12.2019 executed between the parties/Applicants consequently. The financial debt defaulted by the Corporate Debtor can be summarised as follows:

Sl.No.	Name of the Financial Creditors	Default amount (INR)
1.	Sharanappa Sangappa Alur	1,03,50,000/-
2.	Ashok Sharangowda Patil	5,53,28,748/-
3.	Annappa Guddodagi	9,26,75,976/-
4.	Basanagouda Naganagoudar	4,64,63,393/-
5.	Girish Krishnappa Sarawad	4,01,84,726/-
6.	Shivanagouda Bhimagouda Patil	4,51,74,893/-
7.	Sadashiv Chikkaraddi	65,00,000/-
8.	Shantayya Shivayya Golasangimath	4,11,77,066/-
9.	Narayan rao Vittalrao Kulkarni	95,00,000/-
	Total	**34,73,54,802/-**

4. Notice was issued to the Corporate Debtor by the Petitioners through email. In response thereto, a Statement of Objections/Written Submissions has been filed by the Corporate Debtor vide Diary No. 417 dated 02.02.2022, wherein, the Respondent admitted the debt and its liability to pay to the Petitioners, as the Company is not able

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to function with its complete capacity and it is not able to mobilize funds to pay off its liabilities.

5. On 08.02.2022, this Adjudicating Authority directed the Respondent/Corporate Debtor to file a short affidavit indicating other liabilities and any action taken by any other Creditors against the Respondent/Corporate Debtor and with regard to the financial condition of the Respondent as on date.

6. Pursuant to the same, the Respondent/Corporate Debtor filed an affidavit vide Diary No. 545 dated 14.02.2022 stating that other than the Financial Creditors, the Respondent/Corporate Debtor has availed secured loans from Bijapur District Central Co-operative Bank Limited and the Karnataka State Co-operative Apex Bank Limited and Unsecured loans from Bank of India, Bijapur Branch. The total liability owned by the Corporate Debtor to the Banks is Rs. 66,52,02,262/- (Rupees Sixty-Six Crore Fifty-Two Lakhs Two Thousand Two Hundred and Sixty Two only). Further, submitted that the net worth of the Corporate Debtor is eroded due to hefty accumulated losses incurred. The Corporate Debtor also received several legal notices from Banks demanding the repayment of dues. However, none of the Creditors of the Corporate Debtor have initiated any legal action for recovery of their dues till date or have initiated any recovery proceedings against the Corporate Debtor.

7. We have heard the learned Counsel for the Petitioners and the Learned Counsel for the Respondent and have also perused the records carefully.

8. Section 7 (5) (a) of the Code is as follows:

> *"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*

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against the proposed resolution professional, it may, by order, admit such application."

9. In the present case, the occurrence of default is evidenced by the details furnished by the Petitioners/Financial Creditors including the record of financial information – Form C issued by NeSL in respect of the debt of the Corporate Debtor attached at Page 147-148 of the petition and the Bank Statements of Petitioners/Financial Creditors found at Page 272-292 of the Petition.

10. The other issue for consideration is whether present petition is filed within the limitation. The transaction involving the defaulted amount dates back to 04.01.2020 (Form C) and the instant petition is filed on 31st January 2022. Therefore, the petition has been filed within the period of limitation.

11. The application filed in the prescribed Form No.1 is found to be complete.

12. In the facts and circumstances, the present petition being complete and having established the default in payment to the Financial Debt for the default amount which is above 1,00,000/-, the petition is admitted in terms of Section 7 (5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the code.. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

    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 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 the possession of the corporate Debtor;

e) It is further directed that 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;

f) The provisions of Section 14 (3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;

g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution Process or until this Bench approves the resolution plan under sub-Section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

13. In Part III of Form 1, Ms. Pavitra Vyas, Registration No. IBBI/IPA-002/IP-N01144/2021-2022/13844 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 23.12.2021 is found at Page No. 185-186 of the petition. However, since certificate of registration is not filed, the IRP shall file the same within one week

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from the receipt of this order. The Law Research Associate of this Tribunal has checked the credentials of Ms. Pavitra Vyas and there is nothing adverse against her. In view of the above, we appoint Ms. Pavitra Vyas bearing Registration No. No. IBBI/IPA-002/IP-N01144/2021-2022/13844, residing at Manoj Arcade building, Guruwarpeth, Tilakwadi, Belagavi- 590003, email id: cspavitravyas@gmail.com as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15,17,18, 20 and 21 of IBC, 2016.

14. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

15. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at her email address forthwith.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

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