

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-III**

CP(IB)No. 263/MB/2019

Under Section 7 of the I&B Code, 2016

In the matter of:

**The Solapur Dist. Central Co – Operative
Bank Limited**

[RBI Licence No.:1261/18.01.038/2011-
12]

...Financial Creditor/Applicant

V/s

**Sangola Taluka Sahakari Sakhar Karkhana
Limited**

[Identification No: SUR/PRG/(A)-
29(S)1990]

...Corporate Debtor/Respondent

Order Dated: 04.02.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

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

Appearances (via videoconferencing):

For the Petitioner(s) :

Mr. Raghunath Sarangapani,
Chartered Accountant

For the Respondent(s)

:

None Appeared

ORDER

Per: Rajesh Sharma, Member (Technical)

1. This is an application C.P. (IB) No. 263/MB/2019 filed by The Solapur Dist. Central Co – Operative Bank Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Sangola Taluka Sahakari Sakhar Karkhana Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).
2. The Application is filed by Mr. Raghunath Sarangpani, authorised representative of Financial Creditor vide its Resolution dated 01.08.2018, claiming total default of Rs.8339.66/- Lakhs (Rupees Eight thousand three hundred thirty-nine lakh only).
3. The Date of Default as mentioned in the Petition is 01.04.2016. The Petition is filed on 15.01.2019.
4. The case of the Financial Creditor is as under:
 - a) The Counsel for the Financial Creditor submits that, the Corporate Debtor approached the Financial Creditor seeking total loan facilities for an amount of Rs. 8236.25 Lakhs, for the purpose of setting up of plant for production of sugar, cutting of sugarcane, transport advance, machinery repair, pre – seasonal purchase & other expenses. The Financial Creditor sanctioned and disbursed the credit facilities from time to time over the period from 2006 to 2011. Out of the above, an amount of Rs. 1336.26 lakhs towards Restructured Loan was disbursed as a member consortium of banks and the balance on standalone basis.

- b) The Counsel for the Financial Creditor also submits that, the Corporate Debtor defaulted in the repayment of the credit facilities and interests thereon, whereupon the Financial Creditor initiated legal action under the provisions of the Maharashtra State Cooperative Societies Act, 1960 and obtained recovery certificate u/s 98 of the said Act with reference to few of the credit facilities.
 - c) The Counsel for the Financial Creditor also submits that, the Corporate Debtor had appealed against the order of the District Co-Operative Court before the Maharashtra State Co-Operative Appellate Court which was pleased to set aside the order of lower court on the condition of deposit of various amount within a period of two months from the date of the respective order. The Corporate Debtor has failed to deposit the said amounts within the stipulated period.
 - d) Further the Counsel for the Financial Creditor submits that, a legal action under Sarfaesi Act, 2002 was initiated by the Maharashtra State Co-Operative Bank, the leader of the Consortium for the Restructured term loan. The Corporate Debtor has filed an SLP which is pending before the Hon'ble Supreme Court.
 - e) The Counsel for the Financial Creditor submits that, the Financial Creditor is now filing this application u/s 7 of the IBC, 2016 read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 as a Financial Creditor for initiating Corporate Insolvency Resolution Process (CIRP).
5. The Learned Counsel for the Financial Creditor has filed its written submissions and submitted as under:

- a) The Financial Creditor had extended credit facilities to the tune of Rs. 8236.25 Lakhs/- (Rupees Eight thousand three hundred thirty-nine lakhs only) had been sanctioned for setting up of plant for production of sugar, cutting of sugarcane, transport advance, machinery repair, pre-seasonal purchase & other expenses. The Financial Creditor also sanctioned and disbursed the credit facility from time to time over the period from 2006 to 2011. Out of the total sanctioned amount, an amount of Rs.1336.25/- Lakhs (Rupees one thousand three hundred and thirty-six lakhs rupees) towards Restructured Loan was disbursed as a member of consortium of banks and the balance on standalone basis.
- b) Relying upon the Judgement of Hon'ble Supreme Court in "*M/s Adani Power (Mumdra) Ltd. v/s Gujarat Electricity Regulatory Commission and Ors.*" (Civil Appeal No. 11133 of 2011), the Financial Creditor submits that applying the rule of construction in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provisions. While explaining the same the petitioner submits that according to Section 3(7) of the Code, 2016, being more specific in nature would prevail over Section 2 (d) of the Code, 2016. To support the said argument the Financial Creditor has also relied upon the judgement of Hon'ble Supreme Court in "*CTO v/s Binani Cement Ltd.*" [(2014) 8 SCC 319]
- c) The Financial Creditor argued that the intention of the Central Legislature was always to include registered co-operative societies within the purview of the Code, 2016. The Code, 2016, was created for the sole purpose of completely subsuming a plethora of

legislation on resolving Insolvency and Bankruptcy in the Country, and thus to bring about a single, comprehensive and exhaustive framework. This, the Financial Creditor submits, is based on the Report of the Bankruptcy Law reforms Committee ('the Committee') in their Report: Volume I: Rationale and Design ('their Report'), wherein the following was stated:

"5.1 A single Code for all legal entities

The Committee recommends that there is a single Code to resolve insolvency for all legal entities. The Code will not cover entities that have a dominantly financial function, whose resolution is covered by the Resolution Corporation in the draft Indian Financial Code, proposed by the Financial Sector Legislative Reforms Commission. In order to ensure legal clarity, the Committee recommends that provisions in existing law that deals with insolvency of all registered entities be replaced by this Code.."

- d) The Petitioner further argued that the Code, 2016 had been enacted with the intention of including all the registered legal entities, with the exception of financial service providers. This submission is also clearly resonated in the Long Title or Purpose, of the Code, 2016, which is reproduced below:

"An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order or priority of payment of Government dues and to establish an Insolvency and

Bankruptcy Board of India, and for matters connected therewith or incidental thereto.”

- e) Relying on the Judgment of Hon’ble Supreme Court **“Swiss Ribbons Pvt. Ltd. v Union of India”** [Writ Petition (Civil) No. 99/2018 decided on 25th January 2019] wherein the reliance was placed on the Preamble of the Code, 2016, by observing as follows:

“11. As in discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtor. Unless such reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs.”

- f) The Petitioner argued that the intention of the Code, 2016, so for resolution of the corporate debtor and that insolvency, for any corporate debtor, should only be the last resort and to support this argument the Financial Creditor has relied upon the judgement of Hon’ble Supreme Court in **“Rahul Jain v Rave Scans Pvt. Ltd. & Ors.”** [Civil Appeal No. 7940/2019 decided on 8th November 2019].
- g) The Financial Creditor also submits that the Central Legislation in what is written in the law, it is submitted that it is also imperative to read what is not explicitly mentioned in the law so as to glean from the words the true intention of the Central Legislation in drafting the law. The provisions of the Code, 2016, in terms of Section 2 as

well as definition of 'Corporate Persons' as enshrined in Section 3(7) of the Code, 2016, only seek to exclude 'financial service providers.' If it had been the intention of the Central legislation to exclude registered co-operative societies, then the law would have been accordingly drafted so as to create an exclusion. However, it is pertinent to note that no such exclusion was drafted into the law.

Findings/Observations:

6. We have heard the submissions of the counsels of the Financial Creditor and perused the records.
7. The Corporate Debtor was given opportunities to appear and file reply in the matter. However, the Corporate Debtor chose not to appear in the matter and did not file Reply in the matter.
8. When the matter was last listed on 07.01.2022, the Corporate Debtor again not appeared in the matter and vide the said order, the Corporate Debtor set Ex-parte and the matter was Reserved for Orders.
9. While perusing the documents on record, the following issues arose before this Bench:
 - I. Whether the Petition filed by the Financial Creditor under section 7 of the Code is well within limitation?
 - II. Whether the Petition filed by the Financial Creditor under section 7 of the Code is maintainable under the provisions of IBC?

With respect to Issue I:

- a) The Financial Creditor submitted that the Petition filed by the Financial Creditor is well within the Limitation. To explain the limitation aspect, the Financial Creditor has submitted an Additional Affidavit dated 11.11.2019 wherein the Financial Creditor has submitted the Audited Financial Statement of the

Corporate Debtor as on 31.03.2018. The said Audited Financial Statement shows an amount of Rs.13.63 crore as Long-Term Loan. Rs.1.99 crore as Short-Term Loan and Rs.9.51 crore as Pre-Seasonal Loan due and owing to the Financial Creditor. Hence the Petition is well within Limitation.

- b) As the Financial Creditor has also submitted the sufficient relevant documents to prove the Limitation, this Bench finds that no further discussion is needed on the issue of limitation.

With respect to Issue II:

- c) The Financial Creditor has filed the present Petition to initiate the CIRP against the Corporate Debtor which is a Co-Operative Society incorporated under the Maharashtra State Co-Operative Societies Act, 1960.
- d) This Bench has relied upon the Judgment of Hon'ble NCLAT in the matter of *Asset Reconstruction Company (India) Ltd. v. Mohammadiya Educational Society [Company Appeal (AT) (Insolvency) No. 495 of 2019]*. The issue before the Hon'ble NCLAT was whether a society registered under the Societies Registration Act would fall under the definition of a corporate person under the Code.
- e) The facts before the Hon'ble NCLAT involved two separate applications filed by the appellant, Asset Reconstruction Company under Section 7 of the IBC against two Societies which were registered under the AP Societies Registration Act, 2001 at the time of the application. Both the societies were previously registered under the Central Act which governed societies i.e. Societies Registration Act, 1860 which was repealed in Andhra Pradesh after the 2001 Act was brought into force on October 10, 2001. The Hyderabad bench of the NCLT had dismissed both the applications on the ground that the societies were not "Corporate Persons" under

Section 3(7) of the IBC. Aggrieved by the order of the Hon'ble NCLT, the appellant approached the Hon'ble NCLAT.

f) However, the Hon'ble NCLAT has held as follows:

“31. It does not appear that when this judgment in the matter of ‘Illachi Devi’ (supra) was passed in 2003, the A.P. Act of 2001 was noticed. Section 18 of the A.P. Act appears to have attempted to meet the requirements expressed by Hon'ble Supreme Court (Para 53) in the matter of ‘Illachi Devi’. What appears from reading of Section 18 of the A.P. Act is that the registration of a Society shall render it a body corporate by the name under which it was registered having perpetual succession and a common seal. Thus, although the Society is not incorporated and it is registered, it is rendered a body corporate which can have perpetual succession and have a common seal. Section 18 makes it clear that as the Society will be rendered body corporate, it shall be entitled to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all other things necessary for the furtherance of the aim for which it was constituted. The Learned Counsel for the Respondents has rightly submitted that even if best case of the Appellant is accepted, the Society which will be deemed to be a body corporate is for the purposes as mentioned in Section 18, and not Company incorporated as such.

32. We need not deliberate in more details on the effect of Section 18 of the A.P. Act for the reasons we have already discussed above. Looked at in any manner, Section 2 read with Section 3 (7) does not spell out that the Respondents in these Appeals are ‘Corporate Persons’ under the ‘I&B Code’ to whom provisions for ‘I&B Code’ would apply.

33. For such reason, we do not find any substance in these Appeals. For reasons mentioned above:

(a) Company Appeal (AT) (Insolvency) No. 495 of 2019 is dismissed. No order as to costs.

(b) Company Appeal (AT) (Insolvency) No. 496 of 2019 is dismissed. No order as to costs.”

- g) Moreover, the Central Government has issued the notifications with respect to CIRP of the Corporate Debtor [Ministry of Corporate Affairs - Commencement of Sections under Chapter II, Chapter VII of Part IV and sections under Part V- Dated 01.11.2016 - SO 3355 (E)] and the Personal Guarantor to Corporate Debtors [Insolvency and Bankruptcy Board of India Notification (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 – Dated 20.11.2019 – IBBI/2019-20/GN/REG051]. However, the Central Government has not issued notification with respect to the CIRP of the Co-Operative Societies. In view of this, it is not admissible to initiate the CIRP of the Co-Operative Society as the Corporate Debtor is registered/incorporated under the Maharashtra State Co-Operative Societies Act, 1960 or any other Legislation in this respect.
- h) Hence, in view of the Judgment of the Hon'ble NCLAT, this Bench finds no merit in admitting the above Petition filed by the Financial Creditor under section 7 of the Code against the Corporate Debtor who is a Co-operative Society registered/Incorporated under the Maharashtra State Co-Operative Societies Act, 1960.
- i) Therefore, this Bench is of considered view that the Corporate Debtor who is a Co-Operative Society registered/incorporated

under the Maharashtra State Co-Operative Societies Act, 1960, does not come under the purview of the Code and therefore the CIRP cannot be initiated against the Corporate Debtor.

10. While considering the contentions of the Financial Creditor with respect to the Limitation Period, this Bench observed that even if the Petition filed by the Financial Creditor is within the limitation, the Financial Creditor is not eligible to file a petition under the IBC against the Corporate Debtor here, being a Co-operative Society registered under the Maharashtra State Co-operative Societies Act, 1960. The remedy to the Financial Creditor can be available under any other applicable Legislation.
11. In view of the above, this Bench is of the opinion that, the Petition filed by the Financial Creditor is not maintainable and therefore, C.P. (IB) No. 263/MB/2019 filed by The Solapur Dist. Central Co – Operative Bank Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Sangola Taluka Sahakari Sakhar Karkhana Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process is hereby **Dismissed** with no Cost.

Sd/-
RAJESH SHARMA
MEMBER (TECHNICAL)

04.02.2022

Sd/-
H. V. SUBBA RAO
MEMBER (JUDICIAL)