

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-V, MUMBAI BENCH**

C.P.(IB) / 680/MB/2021

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of **Bank of India** Limited having its registered office Star House, C-5, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai - 400051

..Financial Creditor/Petitioner

V/s

Yashwant Sugar and Power Private Limited having its registered office at Plot No. 350, Vasant Market Yard Sangli-416416

..Corporate Debtor/Respondent

Order Reserved on: 03.11.2022

Order Pronounced on: 16.12.2022

Coram:

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

Hon'ble Shri K.K. Singh, Member (Technical)

Appearances (via video conferencing)

For the Petitioner: Advocate Prajakta Menezes

For the Respondent: None Appeared

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. The above Company Petition is filed by **Bank of India**, (hereinafter called as “**Petitioner**”) seeking to initiate the Corporate Insolvency Resolution Process (**CIRP**) against **Yashwant Sugar and Power Private Limited** (hereinafter called as “**Corporate Debtor**”) by invoking the provisions of Section 7 Insolvency and Bankruptcy Code (hereinafter called “**Code**” read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 78,67,83,468.70/- (Rupees Seventy-Eight Crores Sixty-Seven Lakhs Eighty-Three Thousand Four Hundred and Sixty-Eight point Seventy Only).
2. The Petitioner has enclosed the following documents which demonstrates the existence of Debt:
 - a. Sanction Letter of the term loan facility dated 05.09.2014.
 - b. Sanction Letter of enhancement of term loan facility dated 01.01.2015.

- c. Copy of NPA Certificate dated 01.01.2020.
 - d. Statement of Account as per Bankers' books Evidence Act, 1891 dated 01.01.2020;
 - e. Notice issued under Section 13(2) of the SARFAESI Act dated 02.05.2019;
 - f. Copy of One Time Settlement dated 28.03.2020 and 30.09.2020;
 - g. Copy of Financial Statements year ending 31.03.2019 of the Corporate Debtor;
 - h. Copy of Notice invoking Corporate Guarantee sent to the Corporate Debtor and Personal Guarantors dated 27.11.2017.
3. The Petitioner is a scheduled bank and is a body corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, carrying business through its different branches including one at Bank of India, Yelavi Branch A/p:- Yelavi Ta:- Tasgaon, Dist:- Sangli, Maharashtra – 416416.
4. The Corporate Debtor, is a Company incorporated under the Companies Act, 1956 carrying business of manufacturing of sugar and allied products of sugar, etc.

5. Submission of the Petitioner:

- a. The Petitioner states that, the Corporate Debtor had requested the Petitioner to provide the financial assistance to 400 individual harvesting and transportation contractors ("H & T Contractors") engaged by the Corporate Debtor.
- b. Thereafter, the Petitioner vide a sanction letter dated 05.09.2014, sanctioned the term loan facility of INR 36,50,00,000/-. Further, the Petitioner vide a sanction letter dated 01.01.2015, enhanced the term loan facility from INR 36,50,00,000/- to INR 42,90,00,000/- at the request of the Corporate Debtor.
- c. In furtherance to the same, the Corporate Debtor executed a Mortgage Deed dated 29.09.2014 and 03.01.2015 in favour of the Petitioner corresponding to the abovementioned term loan facilities respectively.
- d. The Petitioner further stated that, the Deed of Guarantee dated 27.01.2015 was executed between the Petitioner and the Corporate Debtor supported by the Board Resolution for the Term loan of INR 42,90,00,000/- granted to the individual harvesting and transportation contractors engaged by Corporate Debtor.
- e. The sanction and disbursement of the term loan has been done to the individual H & T Contractors engaged by the Corporate

Debtor. Hence, the sanction date of each individual engaged by the Corporate Debtor varies and corresponding date of default also varies, however all the individual defaulted accounts were classified as NPA on 30.06.2017.

- f. Thereafter, the Petitioner vide Notice dated 27.11.2017 invoked the Corporate Guarantee provided by the Corporate Guarantor against the Term Loan granted to the individual H & T Contractors.
- g. Further, the Petitioner issued a notice dated 02.05.2019 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for the properties mortgaged to the Petitioner vide the Mortgage Deed.
- h. Thereafter the Corporate Debtor sent the letters dated 28.03.2020 and 30.09.2020 respectively to the Petitioner acknowledging the Term Loan facility provided by the Petitioner to the H&T Contractors engaged by the Corporate Debtor and confirming the default amount due and payable of INR 56,05,00,000 and offering the One Time Settlement of INR 22,42,00,000/-.

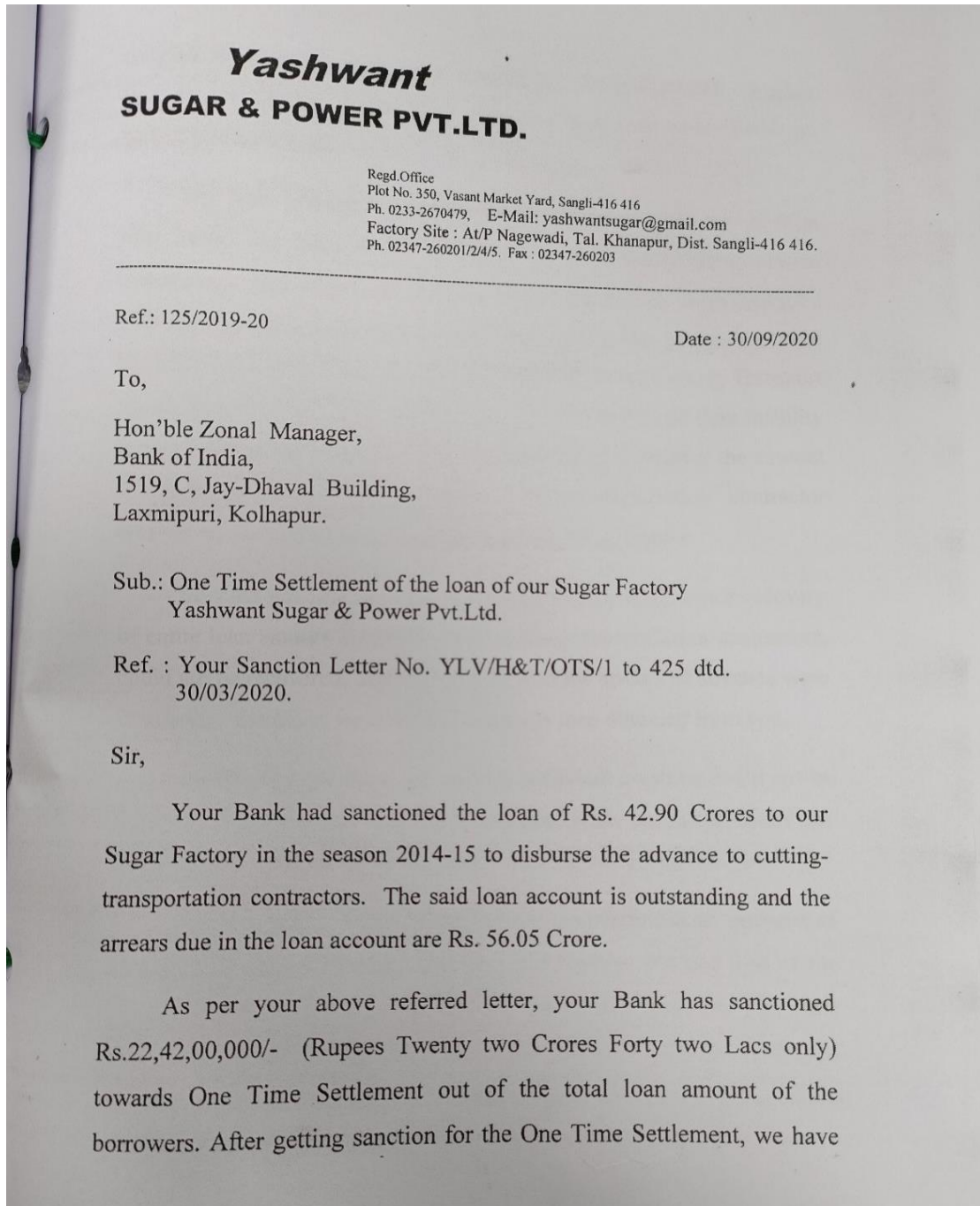
Findings:

6. Since the Corporate Debtor failed to appear before this Hon'ble Tribunal even after service of notice, the Corporate Debtor was set

ex-parte vide order dated 26.07.2022 and the matter was finally listed for ex-parte arguments on 03.11.2022.

7. Heard Miss Prajakta Menezes, the Counsel appearing for the Petitioner and perused the material available on record. The counsel appearing for the Petitioner invited the attention of this tribunal to Part-IV of the Company Petition whereunder the Financial Creditor claimed an amount of Rs. 78,67,83,468.70 (Rupees Seventy-Eight Crores Sixty-Seven Lakhs Eighty-Three Thousand Four Hundred and Sixty-Eight point Seventy Only) as on 31.05.2021.
8. She has also invited the attention of this tribunal to the Deed of Guarantee executed on 27.01.2015 by the Corporate Debtor agreeing to stand as Corporate Guarantor to the credit facility and disbursed by the Applicant to the 400 individual Harvesting and Transportation Contractors.
9. She has also invited the attention of this tribunal to the Deed of Mortgage dated 29.09.2014 and also the supplementary Mortgage Deed dated 03.01.2015. She has also invited the attention of this tribunal to the copy of legal notice dated 27.11.2017 got issued by the Financial Creditor to the Corporate Debtor herein as well as to the other borrowers recalling the loan facilities.
10. She has also invited the attention of this tribunal to the certificate dated 01.01.2020 whereunder the account was classified as NPA on 30.06.2017. She has also invited the attention of this tribunal

to the letter dated 30.09.2020 addressed by the Corporate Debtor to the Zonal Manager of the Financial Creditor which is extracted hereunder for ready reference whereunder the Corporate Debtor while acknowledging their liability sought for an extension for repayment of the loan facility up to December-2020.



credited 5% amount of the total amount i.e. Rs.1,12,10,000/- (Rupees One Crore Twelve Lakhs Ten thousand only) in your Bank on 30/03/2020 by RTGS.

The loan amount of cutting-transportation obtained by us from your Bank, has been disbursed by us to the Cutting-Transportation Contractors. Out of the said amount, a huge amount has been entangled with the Cutting-Transportation Contractors and in few extents the same has been recovered. When we tried for recovery, many Cutting-Transport contractors were not found and those found, they expressed their inability to repay the amount. Hence, there is no possibility to recover the amount disbursed to them. For all these cutting-transportation contractor borrowers, our Company has issued the corporate guarantee.

In some past seasons, the crushing got decreased, hence recovery of entire loan amount disbursed to the cutting-transportation contractors, could not be recovered, hence in each season the arrears of advance were increasing, therefore, we could not repay the loan obtained from you.

Considering the above all matters, sufficient crushing could not be done, the advance paid to the cutting-transportation contractors could not be recovered, hence we could not repay the loan obtained from you.

In the current situation of the National calamity due to outburst of Corona Vires and emergency situation, the Section 144 and 188 of the Indian Penal Code was applied, also the curfew was imposed. The order was passed to have only 5% staff in all types of Offices. Under the circumstances, our Company's Office had also been kept closed considering the public interest.

Under such circumstances, it was legally binding upon all of us to obey the instructions and Orders issued by the Central Government and State Government. It appears that, it will take some time to improve the current emerged situation of National calamity and the public life to return to normalcy.

We are going to take the crushing season of the factory for 2020-21. As the sugarcane production is at the large extent this year, by running the factory at full capacity, it is our intention to produce maximum sugar this year. We are going to repay the said loan from the production of sugar and from the individual self income of the directors of the Company. Also the repayment of this loan shall be made within three months i.e. October, November and December in small instalments, hence, we should get an extension for repayment of the said loan upto December, 2020.

Hence, you are humbly requested to consider this proposal sympathetically taking into account the present situation.

Yours faithfully,

Sd/-

Director
Yashwant Sugar & Power Pvt.Ltd.

To,
Hon'ble Branch Manager,
Bank of India,
Branch Yelavi.

11. After hearing the submissions of the Learned Counsel appearing for the Financial Creditor and upon perusing the above documents relied by the Financial Creditor more so the above letter dated 30.09.2020 this Bench is of the considered opinion that the “**debt and default**” in this case are proved beyond doubt and the limitation gets extended in view of the acknowledgement vide the

above referred letter dated 30.09.2020. Thus the above Company Petition being filed on 31.08.2021 is well within limitation. The Financial Creditor has also proposed the name of IRP Mr. Kamal Kishore Gurnani, having registration no. IBBI/IPA-001/IP-P-01463/2018-2019/12338 and thus the Company Petition satisfies all the legal requirements for its admission. Since the Corporate Debtor remained ex-parte, the claim of the Financial Creditor remained unchallenged.

12. Accordingly, the above Company Petition is admitted by passing the following order:

ORDER

- a. The above Company Petition No. (IB) 680 (MB) of 2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Yashwant Sugar and Power Private Limited**.
- b. The Petitioner has proposed the name of **Mr. Kamal Kishore Gurnani** Insolvency Professional, Registration No: IBBI/IPA-001/IP-P-01463/2018-2019/12338, e-mail id: kamalguraniip@gmail.com, residing at Flat No. 1301, Building No: 23, E Palazia CHS Limited, Mhada Housing Society Powai, Mumbai City, M: 400 076; as the Interim Resolution Insolvency Professional. The IRP proposed by the Petitioner, is hereby appointed as Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards fee till his fees is decided by CoC.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P.(IB)/680/MB/2021 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

K.K. SINGH
(TECHNICAL MEMBER)

Sd/-

H.V. SUBBA RAO
(JUDICIAL MEMBER)