

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

CP (IB) No.57/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

**Indian Renewable Energy Development
Agency Limited**

[CIN: U65100DL1987GOI027265]

...Financial Creditor/Applicant

V/s

**Lokshakti Sugar & Allied Industries
Limited**

[CIN: U01115PN2008PLC132484]

...Corporate Debtor/Respondent

Order Dated: 11.01.2023

Coram:

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

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Ms. Fereshte Sethna, Advocate.

For the Respondent(s) : None.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being C.P. (IB) No. 57/MB-IV/2021 filed by Indian Renewable Energy Development Agency Limited, the Financial

Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Lokshakti Sugar & Allied Industries Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Application is filed by Ms. Bhagyashree Katdare, Deputy Manager (Technical Services) of the Financial Creditor vide its Authority Letter dated 16.12.2020, claiming total default of Rs.69,43,53,390/- (Rupees sixty-nine crore forty-three lakh fifty-three thousand three hundred ninety only) as on 30.09.2020 which includes:
 - i. Principal Amount of Rs.41,21,38,985/-;
 - ii. Interest of Rs.26,26,66,825/-;
 - iii. Liquidated damages of Rs.1,91,81,617/- and
 - iv. Incidental Charges of Rs.3,65,963/-
3. The Date of Default as mentioned in the Petition is 31.03.2018. The Petition is filed on 17.12.2020. Date of NPA is 31.03.2018.
4. The case of the Financial Creditor is as under:
 - a) The Financial Creditor is a Company wholly owned by the Government of India, a Public Financial Institution, and registered as Non-Banking Financial Company with the RBI.
 - b) The Corporate Debtor is engaged in the business of growing of crops, market gardening, horticulture and allied activities.
 - c) On 29.10.2012, the Applicant issued a sanction letter to the Corporate Debtor for sanction of term loan of Rs.39,78,00,000/-

(Rupees thirty-nine crore seventy-eight lakh only) towards setting up of 14 MW bagasse-based cogeneration plant in its upcoming integrated 3500 TCD Sugar Mill at Aurud (Mandrup) Village, South Solapur Taluka, Solapur District, Maharashtra on terms and conditions mentioned therein.

- d) On 20.11.2012, the Corporate Debtor passed the requisite shareholders resolutions for compliance of the conditions of the sanction letter dated 29.10.2012.
- e) Subsequently, on 04.02.2013, the Corporate Debtor passed a board resolution for accepting financial assistance offered by Financial Creditor and for executing documentation in relation thereto.
- f) On 22.04.2013, Financial Creditor entered into a loan agreement with the Corporate Debtor in furtherance of the sanction letter for a loan of Rs.39,78,00,000/- (Rupees thirty-nine crore seventy-eight lakh only) towards setting up of 14 MW bagasse-based cogeneration plant in its upcoming integrated 3500 TCD Sugar Mill at Aurud (Mandrup) Village, South Solapur Taluka, Solapur District, Maharashtra on terms and conditions mentioned therein.
- g) Simultaneously, the parties executed various documents in relation to the various documents in relation to the loan transaction, set out as under:
 - i. General declaration and Undertaking given by Corporate Debtor in relation to loan agreement dated 22.04.2013;
 - ii. Deed of Guarantee by Shri Manohar Sidu Dongare in favour of the Financial Creditor;

- iii. Unattested Deed of Hypothecation executed by the Corporate Debtor in favour of the Financial Creditor;
 - iv. Undertaking to meet shortfall in the project given by Shri Manohar Sidu Dongare in favour of the Financial Creditor;
 - v. Undertaking for non-disposal and non-pledging of shares given by Shri Manohar Sidu Dongare in favour of Financial Creditor; and
 - vi. Undertaking by whole time director, Shri Manohar Sidu Dongare in favour of the Financial Creditor.
- h) A Deed of Personal Guarantee was executed by Shri Manohar Sidu Dongare, Shri Vijayraj Manohar Dongare, Mr. Shivanand Iranna Patil and Mr. Vikas Kerba Galande.
- i) Borrower company was subsequently sanctioned terms loans by Union Bank of India consortium Banks to the Corporate Debtor for its Sugar projects. All the term Lenders of the Corporate Debtor and the Corporate Debtor decided to opt for common Loan documents, retaining their respective loan sanction terms.
- j) Accordingly, a Common Loan Agreement dated 03.02.2015 was entered into between Corporate Debtor, UBI, IOB, and the Financial Creditor, with UBO as Security Trustee on terms and conditions mentioned therein. The Common Loan Agreement was amended vide an amendment dated 10.03.2015.
- k) In connection with the common loan agreement, a Promoters Undertaking was executed by Shri Manohar Sidu Dongare, Shri

Vijayraj Manohar Dongare, Mr. Shivanand Iranna Patil and Mr. Vikas Kerba Galande. Further, a deed of mortgage was executed for mortgage of immovable properties of the Corporate Debtor in favour of UBI in its capacity as Security Trustee for the lenders.

- 1) The Corporate Debtor has executed/arranged the execution of following documents in favour and for the benefit of lenders:
 - i. Mortgage Deed dated 03.02.2015 by deposit of title deeds in favour of Security Trustee, for the benefit of Lenders which was further modified on 09.03.2015;
 - ii. Deed of Guarantee dated 22.04.2015 executed by Shri Manohar Sidu Dongare director of the Company at Corporate office of IREDA, New Delhi;
 - iii. Deed of Guarantee dated 06.02.2015 executed by Shri Vijayraj Manohar Dongare, Shri Sanjay Manohar Dongare, Shri Shivanand Iranna Patil and Shri Viakas Kerba Galande at Solapur. The same has been executed in favour of Security Trustee.
 - iv. Trust and Retention Account Agreement dated 10.03.2015 has been executed amongst the Company, Security Trustee, Union Bank of India and on behalf of IREDA a Corporate office IREDA.
- m) On 10.03.2015, additional documentation was executed in relation to the Common Loan Agreement dated 03.02.2015, an Inter-se Agreement was executed between the lenders.

- n) 25.04.2015, the promoters of the Corporate Debtor, Shri Vijayraj Manohar Dongare and Shri Manohar Sidy Dongare executed an Agreement for pledge of shares in favour of the Financial Creditor, offering additional security in the form of pledge of 1,00,74,000 equity shares of Rs.10 each of the Corporate Debtor. Shri Vijayraj Manohar Dongare also issued a letter to the Financial Creditor for deposit of the shares pledged.
- o) In furtherance of the loan arrangements, the Financial Creditor disbursed a total amount of Rs.39,05,84,787/- on various dates in the following manner:

Date	Amount in Rs.
15.06.2015	15,00,00,000
12.08.2015	11,95,00,000
29.09.2015	2,53,40,000
07.12.2015	4,00,00,000
30.12.2015	2,30,00,000
03.03.2016	2,00,00,000
31.03.2017	1,27,44,787
Total	39,05,84,787

- p) In terms of the Loan Agreement dated 22.04.2013 and Common Loan Agreement dated 03.02.2015, as amended, the Corporate Debtor was to repay the loan of Rs.39,78,00,000/- in quarterly instalments and pay interest at the rate of 12.5% p.a. plus interest tax, if any, on the principal outstanding amount of the loan in each year which is variable and subject to reset clause and 1% interest in excess of prevailing rate of interest fixed till the commissioning of

the project. Further, in the event of its default, compound interest and conditional interest by way of liquidated damages at the rate of 2.5% per annum for the period of default was to be charged.

- q) Pursuant to request of the Corporate Debtor, the Financial Creditor agreed to reschedule the repayment of the loan vide letter dated 30.09.2016. Pursuant to defaults of the Corporate Debtor to fulfil its obligations under the Loan Agreement dated 22.04.2013 and Common Loan Agreement dated 03.02.2015 as amended, on 10.03.2015, a Notice was issued by UBI under section 13, SARFAESI Act 2002 for discharge of liability of Rs.1,12,98,00,430.04.
- r) In view of the failure of the Corporate Debtor to discharge the liability within 60 days, on 07.05.2018, UBI issued a notice to the Corporate Debtor, Shri Manohar Sidu Dongare, Shri Vijayraj Manohar Dongare, Mr. Shivanand Iranna Patil and Mr. Vikas Kerba Galande for taking possession of the assets in accounts of the Corporate Debtor and taking symbolic possession of Project land and assets.
- s) On 10.05.2018, the Financial Creditor issued a letter to the Corporate Debtor for clearance of the overdue amount of Rs.500.00 lakh on or before 25.05.2018 to avoid recovery action by the Financial Creditor, notifying that the account had been identified as NPA on 31.03.2018.
- t) Finally, on 21.01.2019, the Financial Creditor issued a notice under section 13(2) SARFAESI Act, 2002 seeking payment of aggregate amount of Rs.54,85,33,125 up to 31.12.2018 and additional interest

by way of liquidated damages with effect from 01.01.2019 until date of payment.

5. The Financial Creditor has filed Statement of Accounts, at pp 527-535 of the Petition. The Financial Creditor has filed Certificate of Registration of Charge which is at p.536 of the Petition.
6. The Financial Creditor has also filed the NeSL Report dated 14.12.2020 which is at pp537-543 of the Petition, wherein the date of default given as 31.03.2018 and the total outstanding of Rs.69,43,53,390/- (Rupees sixty-nine crore forty-three lakh fifty-three thousand three hundred ninety only).
7. The Financial Creditor has issued the Notice dated 21.01.2019 to the Corporate Debtor under section 13(2) of SARFAESI Act, 2002 claiming total amount of Rs.54,85,33,125/- (Rupees fifty-four crore eighty-five lakh thirty-three thousand one hundred twenty-five only) up to 31.12.2018.
8. The Corporate Debtor has not filed its reply in the matter. on 22.02.2021, the Court Notice was issued to the Corporate Debtor. Pursuant to the said Notice, Corporate Debtor appeared on 22.03.2021 and was directed to file its reply within two weeks. On 03.08.2021, 09.09.2021 and 21.10.2021 due to paucity of time the matter could not be reached for hearing. Again on 08.12.2021 the Corporate Debtor was given last chance to appear and file its reply in the matter. On 11.01.2022 the Corporate Debtor was once again given opportunity to file its reply and imposed cost of Rupees One Lakh to be deposited in '*Bharat Kosh*' towards delay in filing its reply. After several opportunity to file reply in the matter, the Corporate Debtor did not appear and

chose not to file reply and in view of this vide Order dated 08.02.2022, the right to file reply of the Corporate Debtor was forfeited. The matter was again listed on 03.03.2022 wherein the Corporate Debtor did not appear in the matter. Hence, vide order dated 04.03.2022, the Corporate Debtor was set *ex-parte* and the matter was listed for final hearing on 11.04.2022.

9. Further, the matter was listed for final hearing on 11.04.2022 and 01.06.2022. On 21.07.2022, the Corporate Debtor appeared in the matter and submitted that the Corporate Debtor has filed IA for setting aside the order of *ex-parte* dated 04.03.2022, however, the IA was not listed. In view of this the Corporate Debtor was given time in the matter and the next of hearing was given in the matter as 22.09.2022. Again on 22.09.2022 and 17.11.2022, the Corporate Debtor did not appear in the matter and finally on 17.11.2022 the matter was Reserved for Orders.

Findings:

10. We have heard the arguments of the Learned Counsel for Financial Creditor and perused the records.
11. It is observed by the Bench that the Financial Creditor has sanctioned vide letter dated 29.10.2012 Loan to the Corporate Debtor for amount of Rs.39,78,00,000/-. For the purpose of the Loan Facility various documents were entered into Financial Creditor, Corporate Debtor and the Guarantors.
12. Borrower Company was subsequently sanctioned term loan by Union Bank of India consortium Banks to Corporate Debtor for its Sugar Projects. Hence, all the Lenders of the Corporate Debtor and the

Corporate Debtor decided to opt for Common Loan documents. As per the Common Loan Agreement dated 03.02.2015, the Corporate Debtor was to repay the loan of Rs.39,78,00,000/- in quarterly instalments and 1% interest in excess of prevailing rate of interest fixed till the commissioning of the project. The Corporate Debtor has not discharged liability or replied to the Notice issued by the Financial Creditor.

13. The Corporate Debtor has not filed its Affidavit in Reply. The Bench has given several opportunities to the Corporate Debtor to file the Reply in the matter. However, the Corporate Debtor chose not to file the Reply in the matter.
14. After perusal of the material on record, this Bench is of considered view that there is no reason to deny the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor as the Corporate Debtor himself has admitted its liability.
15. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor is liable to be admitted.
16. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established.

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17. The Applicant has proposed the name of Mr. Charudutt Pandhrinath Marathe, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00350/2017-2018/10651] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being C.P. (IB) No. 57/MB-IV/2021 filed under Section 7 of I&B Code, 2016, filed by Indian Renewable Energy Development Agency Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Lokshakti Sugar & Allied Industries Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
- a) 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;
 - 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 possession of the corporate debtor.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

- VI. That this Bench appoints Mr. Charudutt Pandhrinath Marathe, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00350/2017-2018/10651], E-mail: charuduttm@yahoo.co.in , as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five 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).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or Whats App. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Manoj Kumar Dubey
Member (Technical)
11.01.2023

Sd/-

Kishore Vemulapalli
Member (Judicial)