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**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
INDORE BENCH at AHMEDABAD  
COURT 1**

**TP 200 of 2019 [CP(IB) 548 of 2018]**


**Coram: Hon'ble Ms. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)  
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 05.03.2020**

Name of the Company: Bank of India  
V/s  
MP Agro BRK Energy Foods Pvt Ltd

Section: Section 7 of Insolvency & Bankruptcy Code

**S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE**

1. NILESH UDERNANI ADDOLATE APPLICANT 


2.

**ORDER**

The Petitioner is represented through respective Learned Counsel(s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.

  
**(PRASANTA KUMAR MOHANTY)  
MEMBER (TECHNICAL)**

  
**(HARIHAR PRAKASH CHATURVEDI)  
MEMBER (JUDICIAL)**

Dated this the 5th day of March, 2020

**BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
INDORE BENCH AT AHMEDABAD**

C.P. (I.B.) No. 548/7/NCLT/AHM/2018

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)  
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

**In the matter of:**

BANK OF INDIA  
Incorporated under the Provisions of  
the Companies Act, 1956

Having Registered Office at:  
Bandra-Kurla Complex,  
Star House, C-5, G Block,  
Bandra(E), Mumbai – 400051

Having its Branch Office at:  
UG 2,3,4 Om Gurudev Complex,  
Scheme No.54, Opp. Rajshri Apollo,  
Hospital, Vijay Nagar,  
Indore – 452010.

.....Petitioner

Versus

M.P. AGRO BRK ENERGY FOODS  
LIMITED

Having Registered Office at:  
Plot No.71 (B&C), Industrial area,  
Dewas (M.P.) – 455001IN

.....Respondent

**Appearance:**

Advocate, Mr. Nilesh P. Udernani for the Applicant/Financial  
Creditor

Advocates, Mr. Hemang H. Parikh & Mr. Rasesh H. Parikh for the  
Respondent/Corporate Debtor

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**Order Pronounced and delivered on 05/03/2020**

**[Per: Mr. Prasanta Kumar Mohanty, Member (T)]**

1. The present I.B. Petition is filed by the Financial Creditor **Bank of India** under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code"), **seeking initiation of Corporate Insolvency Resolution Process** ("CIRP" in Short) against the Corporate Debtor Company namely, **M.P. Agro BRK Energy Foods Limited** for the default committed by the Corporate Debtor in making repayment of the Term Loans, CC facility availed from the Bank. The Applicant (FC), Bank of India (BOI) is a Body Corporate constituted under the Banking Companies (Acquisition and transfer of undertaking) Act, 1970 having branch office at UG 2, 3, 4 Om Gurudev Complex, Scheme No.54, Opp. Rajshri Appolo Hospital, Vijay Nagar, Indore – 452010 within the meaning of Section 2(1)(c) and (d). The application has been filed by the duly authorised officer, Shri Sridhar Seshadri, Chief Manager of Bank of India.
2. The Respondent Corporate Debtor (CD) Company, namely **M.P. Agro BRK Energy Foods Limited** was incorporated on **26/04/2007** with CIN: **U15410MP2007PLC019486**.
3. The nominal share capital of the Respondent (CD) Company is **INR.50,00,000/- (Rupees Fifty Lakhs Only)**

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and the paid-up share capital of the company is **INR.44,59,670/- (Rupees Forty Four Lakhs Fifty Nine Thousand Six Hundred Seventy Only)**. The Registered Office of the Corporate Debtor Company is situated at: Plot No.71 (B&C), Industrial Area, Dewas (M.P.) – 455001IN.

4. It is submitted that the Corporate Debtor has availed various credit facilities including CC and Term Loans to the extent of INR.11.75 Crores from the Applicant since 2014, which facilities have been renewed/modified/enhanced and restructured from time to time. It is submitted that various securities and credit agreements/documents including but not limited to corporate guarantees, personal guarantees, third party mortgages, were executed/signed by the Corporate Debtor and other obligators on behalf of the Corporate Debtor, which have been extended from time to time in order to secure the credit facilities. It is submitted that in spite of all the support from the Applicant Financial Creditor at every step, the Corporate Debtor failed to comply with the applicable terms and conditions of the sanction letters and various agreements/documents thereto as executed from time to time, particularly vis a vis the requirement of credit facilities. It is submitted that since the corporate debtor was unable to perform its repayment obligations towards the Financial Creditor, the Financial Creditor was

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constrained to send repeated reminders in the form of letters, demand notices and correspondences to the corporate debtor and the guarantors requesting them to clear the outstanding dues.

5. It is submitted that in view of the default by the Corporate Debtor, its account was classified **as a Non Performing Asset on 30.09.2017 by the Financial Creditor**, as per the applicable RBI guidelines owing to the persistent Financial/non-financial irregularities in relation to repayment of the credit facilities, as per the terms of the various credit agreements/documents executed by the Corporate Debtor. The Applicant Bank has issued a Notice on 06.11.2017 under Section 13(2) of the SARFAESI Act, 2002 to the Corporate debtor demanding to discharge its full liabilities to the tune of **Rs.1066.21** Lakhs as on the date of notice, along with future interest at the contractual rate on aforesaid amount together with incidental expenses, costs, charges, etc. within 60 days from the date of notice.
  
6. It is submitted that the Corporate Debtor had on several occasions, during the pendency of this **Petition, offered various settlement** proposals and the Applicant Financial Creditor has always shown its support to that effect. However, the latest OTS proposal **also failed** on account of non-compliance of the **terms and conditions of the**

**settlement scheme by the Corporate Debtor.** The letter of rejection addressed by the Applicant dated 07.10.2019 is **produced by the Respondent.**

7. The Applicant submits that the total outstanding amount due and payable by the Corporate Debtor is to the tune of INR.11,57,89,697.00. The outstanding debts have not been repaid till date and the same are due and payable. That with an intent of framing a comprehensive resolution plan post initiation of corporate insolvency resolution process, the present application under Section 7 of the Code is filed.
8. It is submitted that a total amount of **INR.9,92,68,000.00** was sanctioned to the corporate debtor as per the details given below:

Sr. No.	Particulars	Amount disbursed INR.
1	Working Capital Cash Credit - I	1,00,00,000.00
2	Working Capital Cash Credit - II	7,00,00,000.00
3	Term Loan	1,92,68,000.00
	<b>Total Amount Sanctioned</b>	<b>9,92,68,000.00</b>

9. The Corporate Debtor has defaulted payment and the **date of default is 30/09/2017** as stated by the Petitioner Bank (page no.209 of paper book). **CIBIL Report** (page no.268 to 289 of the paper book) has been filed by the Bank which confirms that the Account is **in default.**

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10. The statements of accounts of the corporate debtor have been filed and the Petitioner Bank has submitted a Certificate to this effect under Banker Books of Evidence Act, 1891 (Page no. 290 to 474 of paper book). The Petitioner Bank has claimed their dues of **Rs.11,57,89,697.00 (Rupees Eleven Crores Fifty Seven Lakhs Eighty Nine Thousand Six Hundred Ninety Seven) as on 30.09.2017** as computed in the page no. 3 of the paper book which is given below:

Particulars	Amount
Principal Outstanding	10,43,09,697.00
Interest Outstanding	1,14,80,000.00
<b>Total Outstanding</b>	<b>11,57,89,697.00</b>

11. The Petitioner in support of its contentions has annexed the details of Financial Debt, Records and **evidence of** default including copies of all the sanctions letters, the workings show the amount claimed to **be in default and its** calculation in tabular form as on **30/09/2017**.
12. The present application has been filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy before this Adjudicating Authority to **initiate**

**the Corporate Insolvency Resolution Process** against the Corporate Debtor.

13. The Applicant Bank has submitted copies of the following documents in support of their claim:-

- i. Copy of Loan Sanction Documents from 2014 to 2017, **acknowledgement of Debt.** (Page no.29 to 208 of paper book)
- ii. Copies of statement showing Amount claimed to be in default and days of defaults. (Page no. 209 of paper book)
- iii. Copy of list of properties mortgaged, **certificate of registration of charge along with valuation reports & Search Report.** (Page no. 210 to 267 of paper book)
- iv. Copy of CIBIL Report of Corporate Debtor (Page no.268 to 289 of paper book)
- v. Copies of Bank statement in accordance with the Banker's Book of Evidence Act, 1891. (Page No. 290 to 474 of paper book)

14. In the present matter, this Tribunal, vide its order dated 13/11/2018 had directed the Petitioner Bank to serve the notice of date of hearing to the Corporate Debtor and file the proof of service of notice before this Tribunal. Thereafter, the Corporate Debtor appeared before this

Tribunal on **03/01/2019** and sought time to file objections within two weeks.

15. In response to the present I.B. Petition filed by the Petitioner Bank, the **Respondent has filed Affidavit in Reply as detailed below:**

15.1 It is submitted that the petition preferred by the Petitioner under Section 7 of Insolvency and Bankruptcy Code, 2016 unless anything expressly admitted herein below nothing shall be construed to be deemed as admission for want of traverse.

15.2 It is submitted that the present petition is required to be dismissed inasmuch as there **is no 'default'** as described Under Section 3(12) of the Code. It is submitted that as per dictum of law enunciated by the Hon'ble Supreme Court in the case of Innoventive Industries Limited Vs. ICICI Bank and another, reported at 2008 (2) SCC 134, existence do 'default', as per provisions of the Code is essential before petition under Section 7 of the Code can be admitted. The sole premise for instituting the present petition and considering default by the petitioner is on the premise that the Account of the corporate debtor is classified **as NPA on 30/09/2017**. The said classification **is not only** incorrect but also illegal and untenable on

facts as well as in law, that is demonstrated hereinafter. In view of the fact that 'default' on the part of corporate debtor is not established within the meaning of Section 3(12) of the Code, the present petition deserves to be dismissed.

15.3 It is submitted that the corporate debtor was established as proprietor ship concern in the year 1991. Thereafter, Corporate debtor was converted into a partnership Firm in the year 2006, **incorporate as a Private Limited Company** in the **year 2007**. In the year 2009, the Corporate Debtor was converted into a Public Limited Company.

15.4 It is further stated by the Respondent that the sole premise on which default is described in Form No.1 is classification of credit facility of Respondent as non-performing asset (NPA). Refer PART IV (item 2) in Form 1. Reference be also made to Annexure E. The Applicant has unequivocally stated that credit facility has become NPA on 30.09.2017. As demonstrated hereinafter classification of credit facility of Respondent is not in compliance of Circular issued by Reserve Bank of India dated 07.02.2018 and therefore classification of credit facility of Respondent as NPA is not only bad in law, but also terming "default" based on wrong

classification as NPA is also incorrect. It is stated that except classification of Respondent's credit facility as NPA, no other contention is pressed by the Petitioner to support the contention of "default" under the provisions of "the Code".

15.5 It is further submitted that the perusal of Circular issued by RBI dated 07.02.2018 (produced at page – 517) clearly demonstrates that classification of credit facility of Respondent is erroneous. Condition No.II of the said circular reveals that if non-fund based facilities of banks vis-à-vis borrower do not exceed 250 million rupees on 31.01.2018 and coupled with the fact that the borrower is a MSME unit with further condition that the account of borrower was "standard" as on 31.01.2017, the account cannot be classified as NPA based on 90 day and 120 day delinquency norms.

It is submitted that the Respondent satisfies above stated conditions of the said circular and therefore classification of credit facility as NPA is bad in law and untenable. Perusal of Page no. 30 reveals that on 13.09.2017, the non-fund based exposure of Respondent was "0". Thus condition II of the said circular is satisfied. Apart from this it is

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stated that as on 31.08.2017, the account of Respondent was “standard” as the minutes of the ZLCC meeting dated 13.09.2017 reveals that Petitioner is eligible for credit facility of INR.955.42 Lakhs (refer Page no. 29 to 32). At this stage, it is germane to note that as on 17.04.2018, (Page no.529), the petitioner has issued certificate that account of petitioner is “Operational” with it. This clearly shows that even after classifying Account of Respondent as NPA, the petitioner has described account of Respondent as “Operational”. The further condition about Respondent being MSME unit is evident by the fact that on page 413, bank account is produced by petitioner where it is described that Respondent is a small scale industrial unit. Apart from this on page no.504 to 516, registration certificate of Respondent being MSME are produced. In view of above the classification of credit facility as on 30.09.2017 is untenable and therefore there is no default under Section 3(12) of “the Code”.

16. The Learned Lawyer of the Applicant Bank(FC) clarified its positions and put forth its arguments **relying on the documents submitted by them, which were executed by the Corporate Debtor and the**

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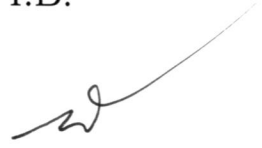
**Mortgagors/Guarantors.** They have also referred the CIBIL report filed with the application which confirms the debt is in default. Valuation Reports and Search Report filed by them are referred to in **support of the charge created in its favour by Corporate Debtor.**

17. The Corporate Debtor offered OTS letter dated **06/08/2019, it is germane of Rs.8,41,00,000.00 and one of the pre-conditions for OTS was that Respondent had to deposit Rs.25,00,000.00 upfront.** The further condition was that 10 % OTS amount i.e. Rs.84,10,000.00 was to be deposited within **30 days from the date of OTS letter.**
18. The Lawyer of the Financial Creditor also stated that the Corporate Debtor has issued a cheque (chq no. "29653" dated 28.06.2019) to the tune of INR.5 Lakhs as upfront amount of the OTS. It is to bring to notice that the said cheque has got dishonoured with endorsement of insufficient funds. It appears that the cheque was issued with an intention to prolong and delay the matter and the Corporate debtor is not interested in OTS as they were not having sufficient balance to clear the said cheque.
19. The matter was taken up and heard both sides by this Bench on 13.11.2018, 11.01.2019, 22.02.2019,

29.03.2019, 03.05.2019, 12.06.2019, 11.07.2019, 08.08.2019, 03.09.2019, 10.10.2019, 16.01.2020 & 30.01.2020. The counsels of the Petitioner and the Respondent were present and put forth their submissions before the Bench.

20. IA 249 of 2019 in CP(IB) No.548/7/NCLT/2019 has been filed by the Financial Creditor stating that since the Respondent Corporate Debtor has misrepresented before this Hon'ble Tribunal, it becomes necessary to bring the correct facts before this Hon'ble Tribunal, hence this application is for early hearing. The Financial Creditor submits that firstly no such settlement proposal is pending before Financial Creditor. Secondly, the Financial Creditor is apprehending that the Corporate Debtor may cause damages to the property mortgaged with the Financial Creditor if any further time is granted by this Hon'ble Tribunal. It may not be out of place mention here that the Corporate Debtor has been declared as Willful Defaulter by the Bank of Baroda, which categorically demonstrates the intentions of the Corporate Debtor.
21. It is a settled legal position that the pendency of SARFAESI proceeding or other disputes do not prevent a Financial Creditor to trigger the C.I.R.P. because the nature of remedy being sought for under the provisions of the I.B. Code is "Remedy in Rem" in respect of the CD.

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22. The Petitioner Bank has suggested the name of Insolvency Professional to be appointed, if this petition is allowed and the proposed I.R.P. has also given his affirmation/consent in writing, which is annexed with the present I.B. Petition.

### **OBSERVATIONS**

23. The Petitioner Bank has submitted the documents duly executed by the Corporate Debtor and guarantors along with a Certificate under the Banker's Book of Evidence Act, 1891, in support of its IB Petition for initiation of C.I.R.P.
- 23.1 The Cash Credit and Term Loan facilities were sanctioned by the Petitioner Bank and the same were availed by CD, M.P. Agro BRK Energy Foods Limited. **The Charges have been filed by the CD with RoC and the Financial Creditor has filed valuation report and search report.**
- 23.2 The CD has defaulted in making repayment of loan/credit facilities to the Petitioner Bank and **the date of default is 30.09.2017.** The Statement of accounts and the **CIBIL Reports** submitted by the applicant Bank **confirm the debt is due and default has been** committed by the Corporate Debtor.
- 23.3 The Petitioner Bank has filed the petition **within the period of limitation**, as the last **credit has come to the account on 31.08.2018 when this application**

**has been filed on 22.10.2018 which is within 3 years of last payment.**

- 23.4 The present I.B. Petition is filed by the duly authorised official of the Applicant Bank in a prescribed format under **Section 7** of the I.B. Code annexing copies of loan documents **confirming the existence of debt due and defaulted** and proposed a name of Resolution Professional to act as an Interim Resolution Professional (IRP)

#### **ORDER**

24. **Considering the material papers filed by the Petitioner Bank**, arguments of the counsels of both parties and the facts mentioned in the **Para No.23, 23.1, 23.2, 23.3 & 23.4** this **Adjudicating Authority is satisfied that**,
- (a) The Corporate Debtor availed **the loan /credit facilities** from the Financial Creditor Bank.
  - (b) Existence of **debt is above Rs. One Lac;**
  - (c) **Debt is due;**
  - (d) Default has occurred on **30/09/2017;**
  - (e) Petition had been filed **within the limitation period** as **the last payment of INR.2,50,000.00 has come to the account on 31.08.2018** whereas this petition has been **filed on 22.10.2018;**

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(f) Copy of the Application filed before the Tribunal has been sent to the Corporate Debtor and the application filed by the **Petitioner Bank Under Section 7 of IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process** against the Corporate Debtor.

(g) The Applicant's submission in IA 249 of 2019 that no such settlement proposal is pending before the Financial Creditor is taken record IA is thereby disposed of.

Hence, **the present IB Petition is admitted** with the following Directions/observations. **The date of admission of this petition is 05.03.2020**

25. This Adjudicating Authority hereby appoints, as proposed, **Ms. Teena Saraswat Pandey, having Insolvency Professional Registration No. IBBI/IPA-001/IP-P00652/2017-18/11126, Email ID: [teenasaraswat@yahoo.co.in](mailto:teenasaraswat@yahoo.co.in), Address: 387F, 114 Scheme Part 1 Behind Diksha Boys Hostel, Sant Nagar, Indore, Madhya Pradesh - 452010 India as an Interim-Resolution Professional.** The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor soon after the receipt of an authenticated copy of this order IRP has to act further as per the





**order/direction** issued by this Adjudicating Authority and to follow the provisions **Under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code.**

26. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this **Adjudicating Authority declares moratorium with effect from today** is 05/03/2020 for prohibiting all of the following, namely: -

I. (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.*

(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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.*

II. *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.*

III. *The provisions of sub-section (1) shall not apply to*

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

IV. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.

27. The **IRP is hereby advised to adhere the time limit** as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP" in short) and perform the duties as specified Under Section 17, 18, 20, & 21 of I.B Code. **The Interim Resolution Professional shall perform all her functions contemplated, inter-alia, in Sections 15, 17, 18, 20 & 21 of the Code and transact proceedings with** utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the **personnels connected with the Corporate Debtor, its promoters or any other persons associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional** as may be required by her in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution **Professional would be at liberty to make appropriate application to this Tribunal** with a prayer for passing an

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appropriate order. The Interim Resolution Professional shall be under duty to **protect and preserve the value of** the property of the **'Corporate Debtor'** as a part of its obligation imposed by Section 20 of the Code and perform all her functions strictly in accordance with the provisions of the Code, Rules and Regulations.


28. It is also observed that the Petitioner Bank has claimed **total outstanding amount Rs.11,57,89,697.00, i.e. principal Outstanding of Rs.10,43,09,697.00 + Interest Outstanding of Rs.1,14,80,000.00.** One of the **prime objectives** of the Insolvency and Bankruptcy Code, 2016 is to **find** out an **Insolvency Resolution Plan in time** for the Corporate Debtor and in order to have a Resolution Plan **Viable, feasible and implementation successful, in the era of Minimum Cost of funds based** Lending Rate ("MCLR" in short)/Repo Linked Interest Rate/Interest Rate falling Regime and Competitive market condition, the **Committee Of Creditor(s) (COC) may explore**, while finalizing the Resolution Plan for the Corporate Debtor, the **possibility of loading maximum interest** at the rate of Petitioner Bank's One Year MCLR or One Year MCLR + 1% without any penal /overdue interest.

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29. The **Registry is hereby directed** to communicate the authenticate copy of this order to the Financial Creditor, Corporate Debtor, the I.R.P and also to the Registrar of Companies, Madhya Pradesh immediately through speed post / registered post immediately.

30. Thus the present I.B petition filed Under Section 7 of the **IBC stands admitted with the above direction and observations.**

  
**(Prasanta Kumar Mohanty)**  
**Adjudicating Authority &**  
**Member (T)**

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**(Harihar Prakash Chaturvedi)**  
**Adjudicating Authority &**  
**Member (J)**