**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**MUMBAI BENCH, COURT – I**

**CP (IB) 3755/MB/2019**

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rules, 2016

*In the matter of*
**Canara Bank**.
7th Floor, Cnergy, Appasaheb Marathe Marg, Prabhadevi, Mumbai – 400025.
.….Financial Creditor

Versus

**Paranjape Agro Products Pvt. Ltd.**
(U01403MH2010PTC207927)
502, Rugved CHS Ltd, Wayle Nagar, Birla College Road, Kalyan W, Thane – 421301.
…..Corporate Debtor

**Order Delivered on: 10.06.2022**

Coram:
Hon'ble Member (Judicial): Justice P.N. Deshmukh (Retd.)
Hon'ble Member (Technical): K.K. Vohra

***Appearances:***

For the Financial Creditor: Adv Prakash Shinde i/b MDP Partners
For the Corporate Debtor : Adv Kunal Kanungo

**ORDER**

*Per:- K.K. Vohra, Member (T)*

1. This is a Company Petition (CP) originally filed by Syndicate Bank; the name of Petitioner was changed to Canara Bank, the Financial

Creditor (FC) on 11.10.2019. The petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Paranjape Agro Products Pvt. Ltd, the Corporate Debtor (CD) for non-payment of outstanding dues.

**Submissions of FC:**

2. Following facilities were Sanctioned on 12.06.2017 (Pg 6 of CP):

   a. Term Loan = Rs 583 Lakhs

   b. SOD=Rs 600 Lakhs

   c. PCL = Rs 200 Lakhs

   The working computation of the Claim amount along with interest charged as on 30.09.2019 (Pg 37) is as follows:

| Accounts | Principal Balance | Interest | Unreld Charges | Total |
|---|---|---|---|---|
| 1 | 5,97,71,116 | 1,46,17,869 | 885 | 7,43,89,870 |
| 2 | 2,46,69,859 | 54,73,521 | 1,16,295 | 3,02,59,676 |
| 3 | 1,05,66,053 | 23,87,121 | 4,720 | 1,29,57,895 |
| 4 | 9,21,922 | 2,01,527 | 2,360 | 11,25,809 |
| 5 | 7,31,882 | 1,60,020 | 1,180 | 8,93,083 |

| | | | | |
|---|---|---|---|---|
| 6 | 1,67,30,256 | 38,48,176 | 4,720 | 2,05,83,153 |
| 7 | 1,79,50,809 | 60,87,535 | | 2,40,38,344 |
| Total | 13,13,41,899 | 3,27,75,772 | 1,30,160 | **16,42,47,832** |

Therefore, the total claim amount to be in default is Rs 16,42,47,832. The date of default is 03.01.2018 and the account was classified as NPA on 03.04.2018.

3. The particulars of various securities held by the FC are given below:

A. Mortgaged Securities:

a) Land and Factory building bearing Plot No. G-1/1, MIDC, Ratnagiri Industrial Area within the limits of Mouje Mirjole (Outstand Ratnagiri Municipal Council), Tal. & District Ratnagiri Adm. About 8,891 Sq Mtrs + Plant and Machinery at the site of the Factory.

b) Flat No. 502, A-Wing, 5$^{th}$ Floor, Rughved Vedant CHS, Ltd. Wayal Nagar, Birla College Road, Kalyan (W), Thane– 421301.

B. Hypothecated Securities on Moveable Assets:

a) Plant and Machinery of factory at Plot No. G-1/1, MIDC, Mirjole, Ratnagiri.

b) Eicher Bus MH 08E 9197.

c) Stock (RM, WIP, FGs etc) and book debts/receivables.

4. Details of documents for Loan facilities are specified below:

    i. General Agreement dated 15.07.2017.

    ii. General Agreement dated 25.07.2017.

    iii. Payment receipts dated 21.07.2017.

    iv. Guarantee Agreement dated 15.07.2017 executed by all the Personal Guarantors, for amounts of Rs 2,58,00,000, Rs 1,10,50,000, Rs 7,75,000, Rs 9,75,000, 1,74,00,000 and Rs 600 Lakhs.

    v. Copy of Guarantee Agreement dated 25.07.2017 executed by all the guarantors for an amount of Rs. 2,00,000,00.

    vi. Composite Hypothecation Agreement dated 15.07.2017, for outstanding limit of Rs 1,10,50,000 and 9.75 Lakhs.

    vii. Copy of the Composite Hypothecation Agreement dated 15.07.2017.

    viii. Copy of the Composite Hypothecation Agreement dated 15.07.2017 for term loan limit of Rs. 1,74,00,000, 600 Lakhs

    ix. Comprehensive Pre and Post Shipment Agreement dated 25.07.2017.

    x. Confirmation letter dated 20.11.2017.

5. Copy of the CIBIL report dated 09.10.2019 has also been attached to the CP.

6. The Statements of Accounts for the Financial Years 01.06.2017 to 30.09.2019 have been produced on record in order to corroborate the claim filed by the FC.

7. The petitioner submits that the petition is complete in all respects, the default has been corroborated by enough substantial evidences, therefore, the petition ought to be admitted and CIRP be initiated against the CD.

**<u>Submission of CD:</u>**

8. The CD filed its Reply dated 17.01.2020 opposing the admission of the Petition on the grounds of maintainability. The CD alleges that the petition is an attempt to liquidate the CD. Further, the CD is in the business of trading cashew nuts and enjoys an impeccable reputation in the market. But due to unforeseeable circumstances in the cashew nut trade, the **CD defaulted in some of its payment obligations** (pg 3 of reply). CD also stated that to secure the said loan amount, the CD had executed documents as per the requirements in the sanction letter dated 12.06.2017 and the facilities referred above in para 2 were granted to the CD. The CD was regular in making the interest payments as per the agreed terms until 03.01.2018.

9. CD faced various problems in carrying out the business due to economic changes and various other factors and hence the CD could not deposit the amounts of instalment in due course. CD made all its endeavours to clear the dues of the FC and at all times intimated the financial position of the CD.

10. CD on 21.11.2019 had given a One Time Settlement (OTS) proposal to the FC, but the same was rejected by the FC on 05.12.2019 and asked CD to make a revised proposal. Further CD states that the CD falls

within the purview of Micro, Small and Medium Enterprises Development Act, 2006 and the said should be considered by the FC and should bear as the financial position of the CD is unstable.

11. Further, the CD states that it has already advanced its efforts to settle the entire claim and is trying to come up with a good offer. The CD submitted that in the interest of Justice, an opportunity be granted to the CD to enable them to settle with FC.

## **FINDINGS**

12. We have heard the submissions of the Counsel appearing for the FC and Counsel appearing for the CD.

13. It is evident from the reply that the CD has admitted its liability to pay to the FC when CD offered OTS. The CD has not disputed the amount taken as loan from the FC. Also, the FC has satisfactorily established the existence of debt. The CD has not denied its liability to repay. Yet the fact of the matter remains that though the CD has admitted the said debt, they are unable to pay the outstanding amount owing to non-availability of funds. Since the business of the CD is unsustainable at the moment, there is no scope for making repayment at the earliest. We note that the FC has not received the outstanding debt from the CD and that the formalities as prescribed under the Code have been duly complied with by the FC.

14. Further, CD has confirmed in its Balance Sheet as on 31.03.2018, having taken Term Loan facilities totaling Rs. 5.53 Crore (Pg. 83 of Petition) duly signed by the Chartered Accountants.

15. Ongoing through the facts and submissions of the FC and upon considering the same, it is concluded that the FC has established that the loan/ facilities were duly sanctioned and duly disbursed to the CD and there has been default in payment of Debt on the part of the CD.

16. Considering the above facts, we come to the conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined u/s 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e. existence of 'debt' and 'default', for admission of a petition u/s 7 of the Code have been met in this case.

17. As a consequence, keeping the afore said facts in mind, it is found that the FC has not received the outstanding Debt from the CD and that the formalities as prescribed under the Code have been completed by the FC, we are of the conscientious view that this Petition deserves 'Admission'.

18. The FC has proposed the name of Mr. Ajay Marathe having IBBI Registration No. IBBI/IPA-001/IP-P01262/2018-19/12170 as the Interim Resolution Professional (IRP). The IRP has submitted its consent vide Form 2.

19. For the foregoing reasons, the above CP is liable to be admitted, and accordingly the same is admitted by passing the following:

**<u>ORDER</u>**

a. **CP No. (IB) -3755 (MB)/2019 is hereby admitted** and initiation of CIRP is ordered against the CD.

b. This Court hereby **appoints Mr. Ajay Marathe, Registration No: IBBI/IPA-001/IP-P01262/2018-19/12170, having address at 205, Sudama Yash Apartment, Chittaranjan Das Road, Dombivli (E) – 421201 as IRP** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The FC shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the IRP appointed herein, immediately upon communication of this Order.

d. This Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the CD 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 CD any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover enforce any security interest created by the CD 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 CD.

e. The supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. The provisions of section 14 (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. The order of moratorium shall have effect from the date of pronouncement of order till the completion of the CIRP or until this Bench approves the resolution plan u/s 31(1) IBC or passes an order for liquidation of CD u/s 33 of IBC as the case may be.

h. The public announcement of the CIRP shall be made immediately as specified u/s 13 of IBC.

i. During the CIRP period, the management of the CD will vest in the IRP/RP. The suspended directors and employees of the CD 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 concerned Registrar of Companies for updating the Master Data of the CD.

k. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**K.K. VOHRA**
**(MEMBERTECHNICAL)**

Sd/-

**JUSTICE P.N. DESHMUKH**
**(MEMBERJUDICIAL)**