

sl No. 226

FREE OF COST COPY**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No.35/BB/2021

U/s 7 of IBC, 2016R/w Rule 4 of I&B (AAA) Rules, 2016**Between:****M/s. Shri Siddeshwar Souhard Sahakari Niyamit
Co-operative Bank**Near Bus Stand,
Bilagi – 587 116

... Petitioner/Financial Creditor

And**M/s. Manali Sugars Limited**Shop No. 30/31, Stadium
Complex Station Road,
Bijapur – 586 101

... Respondent/ Corporate Debtor

Pronouncement of Order: 22nd March, 2021**Coram:**

1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Mr. K. Chethan Kumar

For the Respondent : Mr. Theerthesh B.S

ORDER**Per:** Rajeswara Rao Vittanala, Member (J)

1. C.P (IB)No.35/BB/2021 is filed by M/s. Shri Siddeshwar Souhard Sahakari Niyamit Co-operative Bank (hereinafter referred to as 'Petitioner/Financial Creditor) U/s 7 of the IBC, 2016, R/w Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Manali Sugars Limited (hereinafter referred to as Respondent/Corporate Debtor) on the ground, that it has committed default for total amount of Rs.49,90,10,000/- (Rupees Forty Nine Crores Ninety Lakhs Ten Thousand Only).



2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

(1) M/s. Shri Siddeshwar Souhard Sahakari Niyamit Co-operative Bank (Petitioner/Financial Creditor) was registered on 16.01.2006 with the Identification No. AACAS9345R, having its Office situated at Near Bus Stand, Bilagi Karnataka 587116.

(2) M/s. Manali Sugars Limited (Respondent/Corporate Debtor) was incorporated on 26.07.1995 having CIN: U01542KA1995PLC048389 and having its registered Office situated at Shop No. 30/31, Stadium Complex Station road Bijapur 586101. Its Authorised Share Capital is Rs.40,00,00,000/- divided into 4,00,00,000 Equity Shares of Rs.10/- each and Issued, Subscribed and Paid-up Share Capital is Rs.33,49,20,290/- divided into 3,34,92,029 Equity Shares of Rs.10/- each. It is engaged in the Business of Manufacturing, Producing, Selling, Distributing and traders of Sugars and derivatives. It has availed cash credit facility upto the Rs. 37,71,40,000.00 (Thirty Seven Crores Seventy One Lakhs Forty Thousand Only) @16% rate of interest per annum from the Financial Creditor to be in force from 31.03.2018 to 31.03.2019, the date permitted by the bank for the repayment of said credit facility in accordance with the executed Hypothecation deed dated 31.03.2018 and Supplement Agreement of Hypothecation on 1st December, 2020.

(3) Total amount of default committed by the Corporate Debtor is Rs. 49,90,10,000.00 (Rupees Forty Nine Crores Ninety Lakhs Ten Thousand Only) including the Principal amount of Rs. 43,39,22,000 (Rupees Forty Three Crores Thirty Nine Lakhs Twenty Two Thousand Only) and interest of Rs. 6,50,88,000/- (Rupees Six Crores Fifty Lakhs Eighty Eight



Thousand Only) is due to the Applicant (being the amount due) for a period from 31stMarch, 2019 till 10th March, 2021. The Financial Creditor has also produced NeSL Certificate dated 16.03.2021, wherein, it is recorded that date of default is 31.03,2019, and the total outstanding amount is Rs. 49,90,10,000/-

3. The Respondent has filed its Statement of objections dated 18.03.2021 by *inter-alia* contending as follows:

(1) The Corporate Debtor is not in a position to honour its financial commitments. It has enclosed a list of Secured and un-secured Creditors wherein total liabilities are to the tune of Rs. 37,508.78(In lakhs) Further as per the annual Financial Statements for the financial year, though the assets are more than the existing liabilities, there are no liquid assets to pay off the debts of the Company. Due to the absence of the liquid assets, the Corporate Debtor will not be able to honour any payments with respect to the existing debts in the near future. The Corporate Debtor also is not in a position to ascertain the certain worthiness of the trade/account receivables and how the same can be converted into liquid assets for re-payment of debts. Therefore, the Corporate Debtor is now facing cash-flow insolvency.

(2) It is not disputing with the claim of the Applicant. The Corporate Debtor had availed cash credit facility upto the Rs.37,71,40,000/- @ 16% rate of interest p.a. from the Financial Creditor to be in force from 31.03.2018 to 31.03.2019 and also does not deny the advancement of loan amount to the Corporate Debtor by the Applicant. On 31.03.2019, the date permitted by the bank for the repayment as per the executed Hypothecation deed the Corporate Debtor could not repay the loan amount as agreed upon in terms of



Loan Agreement due to the financial constraints so faced by the Corporate Debtor, and thus it admits that there is breach of the financial obligations on its part. The Financial Creditor and Corporate Debtor shared creditor-debtor relationship and the debt in question is a financial Debt. Therefore, it signifies its willingness to initiate CIRP as prayed for the Petitioner.

4. Heard Shri K. Chethan Kumar, learned Counsel for the Petitioner, and Shri Theerthesh B.S, learned Counsel for the Respondent. We have carefully perused the pleadings of the Parties and the extant provisions of the Code, the Rules made there under, and the law on the issue.
5. Shri K. Chethan Kumar, learned Counsel for the Petitioner, while reiterating various averments made with regard to debt and default in question, as briefly stated supra, has further submitted that Debt and default in question is admittedly are not in dispute, the Petition is filed in accordance with law, and also suggested a qualified Resolution Professional namely Shri Kondishetty Kumar Dushyantha, with Registration No. IBBI/IPA-002/IP-N00237/2017-18/10688, who has filed his written Consent in Form 2 on 15.03.2021 by inter alia declaring that no disciplinary proceedings pending against him with the Board or ICSI Insolvency Professionals Agency. Therefore, he has urged the AA to admit the case as prayed for.
6. As stated supra, the Debt and Default in question are not disputed by the Respondent. The instant Petition is filed strictly in accordance with the extant provisions of the Code, and also suggested a qualified Resolution Professional namely Shri Kondishetty Kumar Dushyantha, with Registration No. IBBI/IPA-002/IP-N00237/2017-18/10688, who has filed his written Consent in Form-2 on 15.03.2021 by inter alia declaring that no disciplinary proceedings pending against him with the Board or ICSI Insolvency Professionals Agency; he is currently serving as an



K. Chethan Kumar

Interim Resolution Professional in one (01) CIRP process and as Liquidator in three (03) Liquidation Proceedings. Therefore he is provisionally eligible to be appointed as IRP. Hence, the Instant Company Petition is fit case to admit by initiating CIRP by appointing IRP, and declaring moratorium etc., in respect of the Corporate Debtor.

7. It is also relevant to point out here that another Petition bearing CP No.(IB) No. 34 of 2021 is filed by Indian Renewable Energy Development Agency Limited (IREDA) against the same Corporate Debtor herein, by claiming total amount of default to the tune of Rs. 37,43,36,507/-.
8. In view of the above facts and circumstances of the case, by exercising powers conferred on this Adjudicating Authority, under provisions of Section 7 of the Code, and other extant provisions of the IBC, 2016, we hereby admitted **C.P.(IB)No.35/BB/2021** by initiating Corporate Insolvency Resolution Process (CIRP) in respect **M/s. Manali Sugars Limited**, the Respondent/Corporate Debtor, with the following consequential directions:

- 1) Shri Kondisetty Kumar Dushyantha bearing Registration No. IBBI/IPA-002/IP-N00237/2017-18/10688, e-mail: dushyanthak@gmail.com, Karnataka, Bengaluru, who is qualified Insolvency Professional, is hereby appointed as Interim Resolution Professional, in respect of the Respondent/Corporate Debtor namely M/s. Manali Sugars Limited to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;

- 2) The following moratorium is declared prohibiting all of the following, namely:



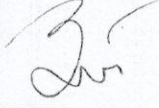
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- a) the institution of suits or continuation of pending suits or proceedings against the Respondent/Corporate Debtor including execution of any judgment, decree or order in any court of law, Tribunal, Arbitration panel or other authority;
 - b) transferring, 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 Securitisation 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 the possession of the Corporate Debtor;
 - e) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;
 - f) The provisions of sub-section (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 such order till the completion of the corporate insolvency resolution process;
- 3) The IRP is directed to follow all extant provisions of the IBC, 2016, as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Adjudicating Authority from time to time.

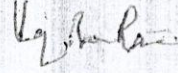


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- 4) The Board of Directors and all the staff of Respondent/ Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
- 5) The Registry is directed to forward a copy of this order immediately to both the Parties and IRP.
- 6) Post the case for report of IRP on **26th April, 2021.**



**(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL**



**(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL**

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for Deputy/ ~~Asst.~~ Registrar
National Company Law Tribunal
Bengaluru Bench
Rajeshwari M