IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

IBA/1017/2019

Under Section 7 of the IBC, 2016 r/w Rule 4 of the I & B (Application to Adjudicating Authority) Rules, 2016

In the matter of Shree Ambika Sugars Limited

Punjab National Bank
Large Corporate Branch,
Rayala Towers, Anna Salai,
Chennai-600002

---Financial Creditor

V/s

Shree Ambika Sugars Limited
No.112, Eldorado Building,
5th Floor, Nugambakkam High Road
Chennai-600034

---Corporate Debtor

Order delivered on: 18.12.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Financial Creditor : *Shri. M.L. Ganesh, Advocate*
Shri. S. Arunkumar, Advocate

For the Corporate Debtor : *Shri. Rahul Balaji, Advocate*
Shri. Vishnu Mohan, Advocate

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Order Pronounced on: 18.12.2019

It is an Insolvency and Bankruptcy Application (in short **"IBA"**) filed u/s 7 of the Insolvency & Bankruptcy Code, 2016 (**"the Code"**)

by Punjab National Bank (hereinafter referred as **"Financial Creditor"**) for initiation of Corporate Insolvency Resolution Process (in short **"CIRP"**) against M/s. Shree Ambika Sugars Limited (hereinafter referred as **"Corporate Debtor"**) on the ground that the Corporate Debtor has defaulted repaying an amount of ₹2,83,10,52,539.32 as on 14.01.2019 as against the loans availed by the Corporate Debtor.

2. The Financial Creditor counsel states that Corporate Debtor availed the working capital credit facilities for its **Sugarcane Division** from the Financial Creditor (Punjab National Bank) consortium comprising of Canara Bank (CB), Union Bank of India (UBI), State Bank of India (SBI), Andhra Bank (AB), Indian Bank (IB) and Lakshmi Vilas Bank (LVB) based on the respective sanction letters given by the Financial Creditor as given hereunder:

Nature of Facility	PNB	CB	UBI	SBI	AB	IB	LVB	Total (in Crores)
(A) Fund based working capital	93.34	29.50	0.00	9.10	14.66	15.00	28.40	200.00
(B)Non Fund	14.00	1.75	13.72	0.40	8.48	--	--	28.35

Based working capital								
Total	**107.34**	**31.25**	**13.72**	**9.50**	**23.14**	**15.00**	**28.40**	**228.35**
Sanction Letter	**12/5/09**	**21/9/11**	**15/12/15**	**8/3/11**	**19/3/11**	**3/10/11**	**22/1/11**	**---**

In pursuance of the grant of aforesaid credit facilities, the Corporate Debtor and Guarantors executed the loan security documents on 28.12.2011 in favour of PNB consortium.

2.1. The Financial Creditor counsel further states that the Corporate Debtor executed Memorandum of Title Deeds on 14.02.2013 and the same was registered as Doc. No.645/2013, SRO, Virudhachalam to cover the credit facilities of Term Loan of ₹60 crores extended by the Financial Creditor. The Corporate Debtor gave consent to the Financial Creditor to continue to hold and retain the existing title deeds as security on the company's immovable property together with buildings and structures, plant and machinery situated at Kanadhukandan village, Virudhachalam Taluk, Cuddalore District on 1st charge basis to Corporation Bank of its Term Loan of ₹40 crores and on 2nd charge basis to L&T Infrastructure Finance Company Ltd, Punjab National Bank,

Canara Bank, Union Bank of India, State Bank of India, Andhra Bank, Indian Bank and Lakshmi Vilas Bank. Further, the Corporate Debtor had executed revival letter on 26.12.2014 to cover the total fund-based exposure of ₹200 crores and non-fund based exposure of ₹28.35 crores in favour of Creditor Bank.

2.2 The Financial Creditor counsel submits that since the Corporate Debtor was not in a position to service the liability, the Industrial Finance Corporation of India Ltd (IFCI Ltd) had formed a Joint Lenders Forum in order to identify incipient stress in the account of the Corporate Debtor and classified the account as 'Special Mention Account (SMA)' in terms of guidelines issued by Reserve Bank of India. In a bid to tide over the business operation, the Corporate Debtor sought for sanction of Export Performance Bank Guarantee (**EPBG**) facility vide loan application dated 10.01.2015. In consideration of the grant of aforesaid EPBG facility, the Corporate Debtor had offered collateral security of 1st paripassu charge on all present and future fixed assets of the company (excluding current

assets of distillery and co-generation division). On the request of Corporate Debtor vide letter dated 19.10.2015 for release of undisbursed amount against the EPBG facility of USD 43 million, non-fund based facilities aggregating to USD 95.91 million equivalent to about ₹595.08 crores was sanctioned for which Corporate Debtor executed loan security documents and general counter indemnity on 04.06.2015.

2.3 To support their claim, the Financial Creditor filed dates and events disclosing existence of debt and occurrence of default, which are as follows:

S.No	DATE	EVENTS
1.	28.12.2011	Loan Security documents executed in favour of PNB consortium
2.	14.02.2013	MOD registered in favour of PNB/FC to cover term loan amount of ₹60 crores
3.	10.03.2014	Corporate Debtor had exclusively availed TL facility to the tune of ₹27.85 crores from PNB
4.	20.03.2014	Corporate Debtor executed loan security documents for the aforesaid Term Loan
5.	26.12.2014	Revival letter executed by Corporate Debtor
6.	10.01.2015	Corporate Debtor executed Joint Lenders Forum Agreement as IFCI Ltd. had formed a JLM
7.	16.05.2015	Corporate Debtor availed EPBG facility to the tune of ₹266.17 crores

8.	21.09.2017	Supplementary and mandatory agreement executed by the Corporate Debtor wherein SBI and L&T Infrastructure Finance Company had become members of PNB Consortium
9.	24.11.2017	Balance and security confirmation executed by the Corporate Debtor
10.	05.11.2018	Demand Notice issued by PNB Consortium through its security trustee, IDBI Trusteeship company u/s.13(2) of the SARFAESI Act
11.	21.01.2019	Certificate of Charge for the total limit of ₹ 608.80 crores issued by RoC in favour of PNB consortium
12.	11.02.2019	Legal Notice issued to the Corporate Debtor
13.	19.02.2019	Certificate issued under Banker's Book Evidence Act

2.4. Looking at the dates and events as well as the annexures to the Application, we hereby hold that the Creditor Bank has furnished material disclosing the Creditor Bank having provided credit facilities as mentioned above, and the Corporate Debtor had defaulted in repaying the same.

2.5. The Financial Creditor's counsel further states that despite nursing the unit of the Corporate Debtor by extending aforesaid credit facilities, yet it could not achieve the target

resulting in the loan accounts becoming NPA on the following dates:

Name of the lender	NPA Date
Punjab National Bank	27.05.2018
IDBI Bank Ltd.	02.10.2018
Canara Bank	01.10.2018
Andhra Bank	30.09.2018
Lakshmi Vilas Bank	03.10.2018
Indian Bank	01.10.2018
Corporation Bank	02.10.2018
State Bank of India	27.09.2018
Union Bank of India	03.10.2018
L&T Infrastructure Finance Co. Ltd.	31.05.2018

2.6. The Financial Creditor counsel submits that all the original documents are deposited with security trustee namely, IDBI Trusteeship Services Limited. Since the loan accounts had become NPA, the demand notice sent through security trustee on 05.11.2018 evoked no response and the Financial Creditor also caused on 11.02.2019 to the Corporate Debtor but for no avail. Since the Corporate Debtor has not come forward to repay the loan amount, the Financial Creditor and other banks have jointly filed OA. No.262 of 2019 for recovery of

₹643,10,31,414.99 crores as on 14.01.2019 before DRT-II Chennai and it is pending for adjudication.

3. The Corporate Debtor counsel submitted that prolonged drought and shortage of cane took a heavy toll on the availability of molasses and bagasse for viable operation of the distillery and co-generation plants and that these factors had already been brought to the attention of Bankers and it had proposed one Time Settlement (OTS). The Corporate Debtor made a request that the recovery proceedings initiated before NCLT/DRT may be kept in abeyance and in case of accounts already admitted by NCLT, banks may defer holding meetings of CoC till a decision is taken on request for restructuring of loans which will help the financially stressed sugar mills to start the crushing operations immediately and motivate cane farmers to do more cane planting during the current season in the backdrop of good monsoon rainfall. These measures will help around 25,500 farmers in the State to get their cane dues and also revive the Tamilnadu Sugar Industry which is the life-line for the farmers.

4. On perusal of documents, it appears that the Corporate Debtor has not denied having availed credit facilities, creation of mortgage, and classification of the loan account as *"Non Performing Asset"* and the non-payment of the loan amount. The Corporate Debtor and its Guarantors are jointly and severally liable to pay the outstanding amount against the loans availed by the Corporate Debtor. Since the Financial Creditor has proved existence of debt and default and there being no denial from the Corporate Debtor with respect to the outstanding amount of ₹2,83,10,52,539.32 as on 14.01.2019, we hereby admit this Application by appointing Mr. Anurag Goel as Interim Resolution Professional (IRP), as proposed by the Financial Creditor. We hereby declare moratorium with the following directions:

I. That Moratorium is hereby declared prohibiting all of the following actions, namely,

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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

d) *the recovery of any property by a 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 of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period.

III. That the provisions of Sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by

the Central Government in consultation with any financial sector regulator.

IV. That the order of moratorium shall have effect from the date of issue of order till the completion of the Corporate Insolvency Resolution Process (CIRP) or until this Bench approves the resolution plan under sub-section (1) of Section 31 of IBC or passes an order for liquidation of Corporate Debtor under section 33 of IBC, 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 IBC.

VI. That this Bench hereby appoints **Mr. Anurag Goel, having Reg.No. [IBBI/IPA-001/IP-P00876/2017-2018/11460], 10/349 1st Floor, Sunder Vihar, Paschim Vihar, New Delhi - 110087, E-Mail: agoel@caanurag.com, Mobile No.9212117008, Land Line : 011-48 666 888** as Interim Resolution Professional (IRP) to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in

compliance with the IBBI Regulations/Circulars/ Directions issued in this regard.

5. Accordingly, this Application is hereby **admitted.**

6. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by way of email.

-Sd-
(S. VIJAYARAGHAVAN)
Member (Technical)

-Sd-
(B. S.V. PRAKASH KUMAR)
Member (Judicial)

KNP/TJS