

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

CP 500 (IB)/MB/2019

Under Section 7 of the I&B Code, 2016

In the matter of

UCO Bank

...Financial Creditor/ Applicant

v/s

Gangakhed Sugar & Energy Limited

...Corporate Debtor

Order Dated 10.10.2019

Coram: Hon'ble Member (Judicial) Mr V.P. Singh
Hon'ble Member (Technical) Mr Rajesh Sharma

For the Petitioner: Adv. Bindu Bhatia

For the Respondent: Adv. Aashutosh Srivastava

Per V.P. Singh, Member (Judicial)

ORDER

1. This is an application being CP 500/2019 filed by, **UCO Bank**, Financial Creditor or Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Gangakhed Sugar & Energy Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. This application is filed by Mr Gopalkrishna Sarvegar, Assistant General Manager of the Applicant Bank, who is duly authorised to do so vide authorisation dated 17.01.2019.
3. The Applicant has claimed an amount of ₹194,26,53,633/- as due and payable and outstanding as on 17.01.2019 including interest.
4. The Applicant, along with other consortium banks, sanctioned a Term Loan with a limit of ₹100 Crore and Working Capital limit of ₹15 Crore on 16.09.2008 against Principal Security, Collateral Security and Personal Guarantee of Promoter Directors. The said loan facilities

were renewed several times and the latest deed sanctioning the renewed limits was executed on 28.09.2015. As per the said sanction letter dated 28.09.2015, the loan was to be repaid in 16 quarterly instalments after 12 months.

5. The Corporate Debtor is said to have defaulted in the repayment of all the Credit facilities, and its account was classified by the Applicant as Non-Performing Asset on 31.01.2017. The Applicant Bank also sent a loan recall notice, dated 10.09.2018, to the Corporate Debtor recalling an outstanding amount of ₹160,68,00,839.10 as on 31.08.2018.
6. The applicant has submitted on record, the Commercial Creditor Information Report issued by Trans Union CIBIL (**CIBIL Report**) of the Corporate Debtor dated 07.01.2019 that reflects an amount of ₹94,46,61,982/- against the working capital and term loan facilities being classified as Doubtful.
7. The Applicant has also submitted on record balance confirmation letter of the Corporate Debtor dated 24.08.2018, acknowledging and admitting the outstanding balance of its loan accounts and respective security interest created in favour of the Applicant. The Corporate Debtor in its audited Balance Sheets has shown the loan taken from the Applicant and the respective securities created in favour of the Applicant.
8. The Applicant has submitted on record, the account statements of the Corporate Debtor with computation of the outstanding amount of ₹194,26,53,633 as on 17.01.2019 and the certificate under Banker's Book Evidence Act, 1891 dated 17.10.2019.
9. The Corporate Debtor in its affidavit in reply has relied upon the judgment of Hon'ble Supreme Court in *Dharani Sugars and Chemicals Ltd. vs. Union of India & Ors., Transferred Case (Civil) No. 66 of 2018 in Transferred Petition (Civil) No. 1399 of 2018* dated 02.04.2019.
10. It is contended that by the said judgment, the RBI circular regarding the revised framework for the resolution of stressed assets, dated 12.02.2018, was set aside along with all the actions taken under the said circular and as a result of the judgment of the Hon'ble Supreme Court in *Dharani Sugars and Chemicals Ltd.(supra.)*, all applications

under I&B Code in which debtors have been proceeded against by financial creditors due to operation of the impugned circular will be non-est.

11. The Corporate Debtor has further stated that a Joint Lender Forum (**JLF**) have previously approved a Corporate Debt Restructuring (**CDR**) proposal of the Corporate Debtor and executed a Master Restructuring Agreement (**MRA**) on 11.05.2017. It is argued that the duly sanctioned CDR scheme could not be executed as per MRA dated 11.05.2017 due to the RBI circular dated 12.02.2018 however the MRA and all the sanction letters issued in favour of the Corporate Debtor have never been cancelled or revoked as of now and hence, after quashing of the said RBI circular dated 12.02.2018, the Financial Creditor is duty-bound to comply with the said sanctioned schemes.
12. It is alleged that the Financial Creditor refused to go ahead with the restructuring process despite the approval of the same due to the 12.02.2018 RBI circular.
13. The Applicant in its affidavit in rejoinder has submitted that it has applied on account of defaults committed by the Corporate Debtor and not under the 12.02.2018 RBI Circular. It is pointed out that in consortium meetings dated 01.02.2018 and 28.02.2018 it was opined that as the CDR scheme is not implemented and has become redundant, the members sought to consider taking fresh view on the recovery of dues to banks including referring to NCLT. It is pointed out that in the consortium meeting held on 28.08.2018 the members expressed their inability to extend additional funds to the Corporate Debtor as all the accounts of the Corporate Debtor have been classified as Non-Performing Asset and decided to consider referring the matter to the NCLT.
14. We have heard the arguments of both the parties and perused the records.
15. At the outset, it is pertinent to note that the decision of Hon'ble Supreme Court in *Dharani Sugars and Chemicals Ltd. (supra.)* dated 02.04.2019 wherein the circular issued by Reserve Bank of India on 12.02.2018 regarding the revised framework for the resolution of stressed assets was set aside, and all actions against the Corporate

Debtor under the I&B Code initiated only because of the operation of the impugned circular were declared non-est. the relevant extract of the said judgment is reproduced below:

“There is nothing to show that the provisions of Section 45L(3) have been satisfied in issuing the impugned circular. The impugned circular nowhere says that the RBI has had due regard to the conditions in which and the objects for which such institutions have been established, their statutory responsibilities, and the effect the business of such financial institutions is likely to have on trends in the money and capital markets. Further, it is clear that the impugned circular applies to banking and non-banking institutions alike, as banking and non-banking institutions are often in a joint lenders’ forum which jointly lend sums of money to debtors. Such non-banking financial institutions are, therefore, inseparable from banking institutions insofar as the application of the impugned circular is concerned. It is very difficult to segregate the non-banking financial institutions from banks so as to make the circular applicable to them even if it is *ultra vires* insofar as banks are concerned. **For these reasons also, the impugned circular will have to be declared as *ultra vires* as a whole, and be declared to be of no effect in law. Consequently, all actions taken under the said circular, including actions by which the Insolvency Code has been triggered must fall along with the said circular. As a result, all cases in which debtors have been proceeded against by financial creditors under Section 7 of the Insolvency Code, only because of the operation of the impugned circular will be proceedings which, being faulted at the very inception, are declared to be non-est.” (emphasis supplied)**

16. It may be noted that the Hon’ble Supreme Court has held that all the cases in which debtor have been proceeded against by financial creditors under Section 7 of the I&B Code, only because of the operation of the impugned circular will be proceedings which, being faulted at the very inception, are declared to be non-est. But no bar

was imposed upon the financial creditors to file a section 7 application against the defaulting financial debtor.

17. The decision and the reason for filing the application under section 7 of the I&B Code can clearly be made out from the minutes of consortium meeting dated 28.08.2019, wherein it is recorded that the CDR scheme has been put on hold, because fraud has been reported in the loans sanctioned to the farmers against the corporate guarantee of the Corporate Debtor. The consortium members have clearly expressed their inability to provide any additional funding to the Corporate Debtor as all the accounts of the Corporate Debtor have been classified as NPA. It is specifically recorded in the minutes that all consortium members have expressed their in-principle approval for referring the matter to NCLT. The relevant extract of the minutes of meetings is reproduced below for reference:

LENDERS' DISCUSSION

Mr. A.K.Sharma again requested IDBI bank to honor the spirit of Consortium and refund the amount which has been wrongly credited to them. He requested the IDBI Bank officials to take up the matter with their higher ups for early resolution of the issue.

With regard to the information submitted by the company in the meeting as to the cash flow of the company during the ensuing crushing season, Mr. A.K.Sharma requested the member banks to express their views and comments on the business estimations/projections of the company. The members were of the collective opinion that the business projections of the company may be considered as realistic and reasonable. However, the lenders expressed their inability to provide any additional funding to the company at this juncture since all the accounts of the company have been classified as NPA.

Mr. A.K.Sharma informed the member banks that UCO bank is preparing for referring the case to NCLT and in principle approval from the competent authority has already been received for the same. All the member banks also expressed their in principle agreement for referring the matter to NCLT. They have informed that they will seek the required approval from their respective competent authorities for referring the matter to NCLT.

Mr. A.K.Sharma also apprised the member banks that referring the matter to NCLT in respect of an operating company is a good option. In the meantime he advised the member banks to recall their exposure to the company individually since some of the banks have exposure like crop loan to farmers and loans to H& T contractors which are outside the consortium.

Further, Mr. Sharma informed that the member banks are required to provide a copy of their recall notice along with their mandate in favour of the leader bank authorizing them to collectively refer the matter to NCLT on behalf of all the members of the consortium, with their consent for proportionately sharing the expenses thereof.

Mr. A.K.Sharma apprised the member banks that the restructuring package approved under CDR mechanism has been put on hold because fraud has been reported in the crop loans sanctioned to the farmers against the corporate guarantee of the company.

With regard to the request of the company to allow them to utilize the full (100%) amount of pending power bills receivable of Rs. 39.49 crores (i.e., Power Bills for the months of April, May, June & July 2018), the Lender banks decided not to accede to the request of the company since the company had agreed to give the lenders 100% cut back out of the power bills receivable for the months of March, April, May and June 2018 to make good the short fall in total agreed cut back which is equivalent to the EBIDTA of Rs. 69.40 Crore estimated for the crushing season 2017-18. Company should honor their commitment.

As far as modification of charge in ROC relating to the corporate guarantee executed by the group companies is concerned, it was decided that member banks will not modify the charge. However, it was decided that leader bank may issue a certificate on behalf of the lenders stating that the group companies M/s Gangakhed Solar and Energy Limited and M/s Yogeshwari Hatcheries are not enjoying any credit facilities with any of the member banks of the consortium. However, the member banks decided not to release any additional security which was taken for securing the restructured limits of the company.

18. Further, the minutes of the consortium meeting dated 15.12.2017 record that in light of the certain alleged irregularities, till the concerns of the banks are resolved the restructuring proposal was put in abeyance.
19. Given the above observations of the members to the consortium, it becomes clear that the reason for not executing the debt restructuring scheme as well as filing of an application under section 7 of I&B Code is the debt and default committed by the Corporate Debtor and not the RBI Circular dated 12.02.2018. Therefore, the present application filed under section 7 of I&B Code is nowhere affected by the judgment of the Hon'ble Supreme Court in *Dharani Sugars and Chemicals Ltd. (supra.)* as it is not filed under said RBI Circular dated 12.02.2018.
20. On perusal of the documents submitted by the applicant, it is clear that on 17.01.2019, debt amounting to ₹194,26,53,633/- is due and payable by the Corporate Debtor to the Applicant. The debt is established by the deed sanctioning the renewed limits executed on

28.09.2015. The Applicant has also submitted on record balance confirmation letter of the Corporate Debtor dated 24.08.2018, acknowledging and admitting the outstanding balance of its loan accounts and respective security interest created in favour of the Applicant. Further, the Corporate Debtor in its audited Balance Sheets has shown the loan taken from the Applicant and the respective securities created in favour of the Applicant.

21. The Applicant Bank sent a loan recall notice, dated 10.09.2018, to the Corporate Debtor recalling an outstanding amount of ₹160,68,00,839.10 as on 31.08.2018. The CIBIL Report of Corporate Debtor dated 07.01.2019 also reflects an amount of ₹94,46,61,982/- against working capital and term loan facilities being classified as Doubtful. Further, debt and default are admitted by the Corporate Debtor in its affidavit in reply. Therefore, the debt and default of more than Rupees One Lac are established.
22. The application filed by the financial creditor is on proper Form 1, as prescribed under the Adjudicating Authority Rules and application is complete.
23. The Applicant has proposed the name of Mr Ankur Kumar, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-002/IP-N00113/2017-18/10283] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that no disciplinary proceedings are pending against him.
24. The Application under sub-section (2) of Section 7 of I&B Code, 2016 filed by the financial creditor for initiation of CIRP in prescribed Form 1, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing financial debt of more than Rupees One Lakh against the corporate debtor and its default is also proved. Accordingly, the petition filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This petition filed under Section 7 of I&B Code, 2016, filed by **UCO Bank**, against **Gangakhed Sugar & Energy Limited**, for initiating corporate insolvency resolution process is at this moment **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 activity 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 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 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 at this moment appoints Mr Ankur Kumar, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-002/IP-N00113/2017-18/10283] 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.

25. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
RAJESH SHARMA
Member (Technical)

10th October 2019

Sd/-
V.P. SINGH
Member (Judicial)