

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

C.P. (IB) No.69/BB/2022
Under Section 7 of the IBC, 2016
r/w Rule 4 of the I&B (AAA) Rules, 2016

IN THE MATTER OF:

Canara Bank

Registered Office at T.S. No. 81/1, 15th ward,
Light House Hill, Mangalore
Head Office at 112, J.C. Road
Bangalore 560002
Branch Office at ARM-I,
#86, Spencers Towers, MG Road, Circle Office
Bangalore - 560001

... Financial Creditor

VERSUS

Sree Shanmuga Modern Rice Mills Private Limited

Deshihally, K.G.F Road,
Bangarpet – 563114

... Corporate Debtor

Order delivered on 17th March, 2023

Coram: 1. Hon'ble Justice (Retd) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri. Aditya
For the Respondent : Shri. Chandrashekar

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. This present Company Petition has been filed on 10.01.2022 by **Canara Bank** (for brevity 'Financial Creditor') under Section 7 of the IBC, 2016, r/w Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) against

Sree Shanmuga Modern Rice Mills Private Limited (hereinafter called as 'Corporate Debtor'), on the ground that it has committed default for total amount of Rs.43,42,21,646 /- (Rupees Forty Three Crores Forty Two Lakhs Twenty One Thousand Six Hundred and Forty Six Only) as on 30.01.2019.

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

I. It is stated that the Corporate Debtor approached the Financial Creditor in 2005, seeking to avail a working capital facility, by way of open cash credit (OCC) limit, as well as a term loan, for installation of machinery. The applicant granted the same, subject to certain terms and conditions of repayment and creation of charges and execution of documentation securing the applicants right to repayment. The corporate debtor thereafter from time to time requested for enhancement of the OCC limit as well as additional term loans. The applicant, at every such instance, granted the same subject to execution of security documentation. The details of the loans disbursed and the enhancement of OCC limit granted, are as follows:

i. Sanction of working capital facility by way of OCC limit of Rs. 75,00,000 and a term loan of Rs. 25,00,000 vide sanction communication letter dated 28.03.2005 (Document No. 1)

ii. Renewal and enhancement of working capital OCC limit from Rs.75,00,000 to Rs. 1,75,00,000, Rs. 1,75,00,000 to Rs. 2,50,00,000, Rs. 2,50,00,000 to Rs. 5,00,00,000 and Rs. 5,00,00,000 to Rs. 7,00,00,000 for a term of 1 year vide sanction letter dated 22.03.2006, 31.03.2009, 24.03.2010 and 25.03.2011 are in Document No. 8, 17, 24 & 33 respectively.

iii. Sanction of term loans of Rs. 4,00,00,000 ad Rs.1,22,00,000 for modernisation and expansion of the milling plant vide sanction letter dated 10.07.2014 (Document No. 78)

iv. Renewal and enhancement of working capital OCC limit from Rs. 7,00,00,000 to Rs. 14,50,00,000 for a term of one year, and sanction of term loan of Rs.3,50,00,000 for construction of a rice

mill shed, vide sanction letter dated 05.03.2015 (Document No. 49)

v. Sanction of a term loan of Rs.45,70,000 for purchase of new generator vide sanction letter 14.03.2016 (Document No.86)

vi. Renewal and enhancement of working capital OCC limit from Rs.14,50,00,000 to Rs.20,00,00,000 for a term of one year, and sanction of term loan of Rs.7,50,00,000 for purchase and installation of new machinery, vide sanction letter dated 28.09.2016 (Document No. 60)

vii. Sanction of loan against hypothecation of Vehicle, of a sum of Rs. 56,00,000 for purchase of 5 brand new Eicher trucks vide sanction letter dated 14.03.2016 (Document No.86)

viii. Sanction of term loan of a sum of Rs. 2,80,00,000 for purchase of double drier and par boiling machinery vide sanction letter dated 29.09.2016 (Document No.95) and

ix. Renewal and enhancement of working capital OCC limit from Rs.20,00,00,000 to Rs.30,00,00,000 for a term of one year vide sanction letter dated 30.03.2017 (Document No.71)

- II. It is submitted that, in consideration to the aforesaid credit facilities, the corporate debtor through its Managing Director produced the letter of gurantee, demand promissory notes, common hypothecation agreements and supplement common hypothecation agreements, agreements regarding collateral security with respect to plant and machinery, spare tools, accessories, etc., letter of undertaking to repay such debt due, Mortagae by deposit of title deeds in respect of lands.
- III. It is submitted that the corporate debtor has executed letters of revival dated 09.01.2008, 15.02.2008, 26.03.2010, 25.03.2011, 11.05.2012, 05.03.2015, 15.06.2015 and 31,03.2017 declaring and confirming that all the documents/ loan papers and securities shall remain in force and continue to remain in force and binding on them for all purposes.

- IV. However, the respondent failed and neglected to pay the instalments of payments, as well as the interest component, due in terms of the aforesaid facilities provided by the Applicant. The Corporate has only repaid sum of Rs. 12,13,14,354 to the Applicant. In the circumstances, the Applicant classified the accounts of the corporate debtor as Non-Performing Asset (NPA) on 30.01.2019.
- V. Further, the financial creditor issued a demand notice dated 14.05.2019, under section 13(2) of the SARFAESI Act, 2002. However, the Respondent failed to repay the debt within the time frame stipulated in the demand notice. In the circumstances, the applicant filed OA No.1583/2019 under section 19 of the Recovery of Debts and Bankruptcy Act, 1993, before the Hon'ble Debts Recovery Tribunal – II, at Bengaluru, which is pending at the stage for the Respondent to file their written statement.
- VI. It is submitted that as on 30.01.2019, i.e., the date of default when the Corporate Debtor was classified as a non-performing asset, the corporate debtor liability towards various credit facilities availed by it, is a sum of Rs.43,42,21,646 and a shadow of debt of Rs.3,94,83,001.74 (totally amounting to Rs.47,37,04,647.74, as on 31.09.2021). The detailed computation of the liability is at Annexure C. Further, the outstanding amount which is owed by the corporate debtor to the financial creditor constitutes a financial debt as contemplated under IBC, 2016. Moreover, the corporate debtor failed to pay the debt as default.
3. The Corporate Debtor has contended in its Reply vide Diary No. 4014 dated 22.09.2022 stating that the applicant bank cannot seek for adjudication before two authorities, since an application was already filed under SARFAESI Act, 2002 in O.A 1583/2019 by the Applicants. Further it was stated that the State Government has initiated proceedings under KPID (The Karnataka Protection of Interest of Depositors in Financial Establishments) and through notification has ordered to attach the properties of the Corporate Debtor, therefore, the CD's properties are not available for the

Insolvency Proceedings. It is stated that the proceedings before Hon'ble High Court of Karnataka in WP No. 1880/2022 filed by the petitioner Bank against the attachments under KPID is still pending for adjudication. It is further submitted that due to false complaints by business rivals in 2019, the directors were under judicial custody till April, 2020 and could obtain bail only after that from the Hon'ble High Court. Further, proceedings under KPID Act was also initiated by attaching all the properties. So, the entire business of the corporate debtor remained stands till due to these circumstances. Therefore, it become non-functional due to the lack of liquidity and declared NPA. Hence, the corporate debtor admitted that due to these pending proceedings, it could not dispose of the properties to repay the loan to the Applicant bank. Moreover, inspite of the above, the Corporate Debtor had made OTS proposal to the Bank, for an amount of Rs. 10 Crore on 04.10.2021 subject to the release of the secured assets; and this OTS offer has been raised to Rs. 15 Crores vide letter dated 25.02.2022; but the same has not been considered.

4. The rejoinder to the above was filed by the applicant vide diary no. 4135 dated 30.09.2022. It is stated that it is a settled law that a petition can be moved under section 7,9, and 10 of IBC, 2016 when proceedings for the same debt under SAERFASI Act, 2022 are pending, and the said proceedings are independent of the current proceedings. Reliance was placed on the judgment of Hon'ble NCLAT in the case of *Mr.Amar Vora v. City Union Bank Ltd, 2022 SCC Online NCLAT 276*, by observing Section 238 of IBC has a overriding effect on other laws. Further, the NCLAT Order in the case of *The Direcorate of Enforcement v. Manoj Kumar, 2021 SCC Online NCLAT 121*, was cited and it was contended that Writ petition before the Hon'ble High Court of Karnataka has been filed against the attachments made under KPID. It is further explained that the averments that the corporate debtor is unable to repay the loan outstanding to the Applicant constitutes an admission of the liability. The applicant has rejected the OTS proposal dated 25.02.2022 made by the corporate debtor vide reply dated 16.03.2022. Therefore, the contention that it has not been considered is not

correct; as it has been rejected. The applicant is relying on the Hon'ble Supreme Court Judgment in *Bijnor Urban Cooperative Bank Limited v. Meenal Agarwal*, 2021 SCC online SC 1255 wherein it was held that a borrower cannot as a matter of right, pray for grant of benefit of OTS.

5. Heard learned Counsel for the Financial Creditor and for the Corporate Debtor. We have carefully perused the pleadings of the parties and extant provisions of the Code, and the Rules made thereunder. On 31.01.2023, both the learned counsels were directed to file written submissions/bullet points but not more than four pages in total along with the copies of the citations on which they were placing reliance on.
6. The compliance to the above order was filed vide diary no 710 & 864 dated 06.02.2023 & 14.02.2023 respectively, in which it was explained by the petitioner as under:-

“As on the date of filing of the present petition the corporate debtor had defaulted in repayment of various credit facilities and the total amount standing to petitioning financial creditor was Rs. 50,28,70,000 excluding interest. The Corporate Debtor has admitted his liability towards default of repayment of various credit facilities in statement of objections at Paragraphs 8 and 10. There is no dispute in respect of the default hence, the present application is admissible. Further, the contention that due to proceedings under KPID Act, the present petition cannot be entertained is untenable. The IBC has overriding effect over proceeding instituted under other Acts. The present petition is filed within the limitation after excluding the period due to Covid-19 pandemic.”

In this regard the Petitioner relied on the following judgments:-

- I. *Suo Motu Writ Petition (Civil) No. 3/2020 (2022) 3 SCC 117, Judgment dated 10.01.2022*
- II. *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited, (2018) 1 SCC 353 Judgment dated 21.09.2017*

III. The Directorate of Enforcement v. Manoj Kumar, 2021 SCC Online NCLAT 121 order dated 11.05.2022

7. In the given facts and circumstances, the present petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs.1,00,00,000/-, the petition is liable to be admitted in terms of Section 7 of the IBC, 2016. The CD in the reply filed vide Diary No.4014 dated 22.09.2022 has duly admitted the default in payment of debt; and the OTS proposal with an offer to pay Rs. 15 Crore is in itself an admission of the default. Accordingly, the petition filed under Section 7 of the IBC, 2016 is admitted and moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- (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
- (b) any court of law, tribunal, arbitration panel or other authority;
- (c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (d) 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
- (f) It is further directed that 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;
- (g) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in

consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;

(h) The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

8. In Part III of Form 1, Mr.Kanekal Chandrasekhar, Registration No. IBBI/IPA-002/IP-N00642/2018-2019/11964 has been proposed as Interim Resolution Professional (IRP). Written Consent given by the IRP in Form 2 dated 05.11.2021 has been filed along with the C.P at Page Nos.32-33. However, since certificate of registration is not filed, the IRP shall file the same within one week from the receipt of this order.
9. The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr. Kanekal Chandrasekhar and there is nothing adverse against him. In view of the above, we appoint Mr. Kanekal Chandrasekhar, bearing Registration No. IBBI/IPA-002/IP-N00642/2018-2019/11964, registered address at No.60, "Shree" 9th Cross, Bhuvaneshwari Nagar, Hebbalkempapura, H.A.Farm Post, Bengaluru – 560024, as the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016.
10. The Financial Creditor shall deposits a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
11. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim

Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.

12. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioners shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

-Sd/-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd/-

(T. KRISHNAVALLI)
MEMBER (JUDICIAL)