

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

CP (IB) No.631/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

State Bank of India

...Financial Creditor/Petitioner

V/s

Gopinath Dairy Products Private Limited

[CIN: U15100MH1994PTC081329]

...Corporate Debtor/Respondent

Order pronounced on : 09.02.2023

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Siddha Pamecha i/b Thodur Law
Associates, Advocate.

For the Respondent(s) : Mr. Pulkit Sharma, Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition being C.P. (IB) No. 631/NCLT/MB/C-IV/2021 filed on 03/03/2021 by State Bank of India Limited, the Financial Creditor/Applicant, under section 7 of Insolvency &

Bankruptcy Code, 2016 (I&B Code) against Gopinath Dairy Products Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Petition is filed by Mr. Girish J. Sangalgikar, Chief Manager and CLO authorized by the Deputy General Manager of the Financial Creditor vide Authority Letter dated 26.02.2021, claiming total default amount of Rs.58,84,79,327.42 (Rupees Thirty-Six Crore Eighteen Lakh Three Thousand Nine Hundred Ninety-Five and Eighty-Nine Paise Only) as on 28.02.2021. The Date of default is 11.11.2018.

The case of the Financial Creditor

3. The Financial Creditor on 13.03.2013 sanctioned Cash Facility vide a Letter of Arrangement bearing No. IFB/MALAD/AGM/RSCPL/206 for Rs. 25,00,000 and a Term Loan of Rs.11,50,00,000/- aggregating to Rs. 11.75 crores to the Corporate Debtor. A Board Resolution was passed on 03.04.2013 to this effect.
4. The Corporate Debtor on 27.04.2013 executed a Deed of Guarantee and Agreement of Loan-cum-Hypothecation and Memorandum of Equitable Mortgage in respect of the securities created for the aforesaid facilities sanctioned. The Corporate Debtor also issued Letters of Confirmation for creation of mortgage by way of deposit of title deeds on 27.04.2013 and 29.04.2013.
5. Thereafter the Financial Creditor on 12.03.2015 issued a fresh Sanction Letter thereby renewing the credit facilities upon the request of the Corporate Debtor. Letter of Arrangement dated 01.06.2015 was thereby issued renewing the existing credit facilities granted by the Financial Creditor to the Corporate Debtor.

6. Further, the Corporate Debtor in August 2015 applied for enhancement of the Cash Credit Facility to Rs. 90,00,000 from the existing amount of Rs. 25,00,000 and enhanced the Term Loan facility to Rs. 30,00,00,000 from the existing limit of Rs.11,50,00,000 aggregating to a total of Rs. 30,90,00,000 (30.90 crores). The Letter of Arrangement bearing No. IFB/MALAD/AGM/GDPPL/203 in this regard was executed on 06.10.2015. The Board Resolution was passed on 30.09.2015 to this effect. The Form 8 and Form CHG-1 for registration of creation of charge of the Corporate Debtor with the ROC, Mumbai are annexed to the petition.
7. The Corporate Debtor on 09.10.2015 executed a Deed of Guarantee and Supplemental Agreement of Loan-cum-Hypothecation and Memorandum of Equitable Mortgage in respect of the securities created for the aforesaid renewed/enhanced/sanctioned facilities. The Corporate Debtor also issued Letters of Confirmation for creation of mortgage by way of deposit of title deeds on 09.10.2015 and 12.10.2015.
8. CIBIL Report dated 27.04.2013 and Asset ID Based Search Report and Security Interest ID Based search report in respect of the Corporate Debtor in records of CERSAI are annexed to the Petition.
9. The Corporate Debtor on 09.10.2015 issued a Revival Letter in favour of the Financial Creditor. The Corporate Debtor submitted Board Resolution alongwith Revival Letter dated 14.04.2018 annexed to the petition.
10. The Financial Creditor has annexed the Balance Sheet for the F.Y. 2018-2019 to the petition which confirms the debt in the books of accounts of the Financial Creditor.

11. The Statement of Accounts from 01.04.2015 to 13.12.2018 duly signed and verified as per the Banker's Book Evidence Act and the Certificate issued by the Banker under 2A(a), (b) and (e) is annexed to the present Company Petition.
12. Further due to Corporate Debtor's neglect and failure to repay the outstanding dues to the Financial Creditor, the Corporate Debtor's accounts were declared as NPA by the Financial Creditor on 28.12.2016 as per the RBI guidelines/directives.
13. Thereafter, on 03.11.2018, the Financial Creditor sent a Legal Notice to the Corporate Debtor alongwith AD Cards, Postal website report and postal cover.
14. Subsequently, in view of failure of the Corporate Debtor to repay the outstanding dues, in accordance with the time specified in the Legal Notice dated 03.11.2018, on lapse of 7 days therefrom, i.e. 11/11/2018, an aggregate amount of Rs.58,84,79,327.42/- inclusive of interest thereon @13.05% on Cash Credit dues and 13.25% on Term Loan and Penal Interest @2% became payable till 28.02.2021.
15. The Financial Creditor issued notice under Section 13(2) of SARFAESI Act upon the Corporate Debtor on 04/01/2019. Thereafter, the Financial Creditor issued Possession Notice under Section 13(4) of SARFAESI Act on 30/05/2019 taking symbolic possession of immovable property being Flat No. 163/B, Heera Panna CHSL, Opp. Haji Ali, Mumbai- 400026 and Factory Land and Building.
16. The Financial Creditor submitted the NeSL report showing the record of default in relation to the aforesaid loan facilities in the Written Submissions.

17. The Financial Creditor has filed Rejoinder to the Reply filed by the Corporate Debtor and Written submissions.

Submissions/Reply of the Corporate Debtor

18. The Corporate Debtor in the reply filed by it has vehemently denied every contention of the Financial Creditor.
19. The Corporate Debtor raised questions on important contentions of the Financial Creditor in reply and in the Written Submissions filed by it.
20. The Corporate Debtor states that the Authority letter annexed to the Company Petition confers no authority upon Mr. Girish Sangalgikar to file the petition to initiate CIRP and ought to be dismissed. The Corporate Debtor cited a judgement of NCLT, Mumbai Bench in this regard.
21. Further, the Corporate Debtor states that the Financial Creditor has failed to prove the disbursement of debt and cited judgements of this Bench in this regard.
22. The Corporate Debtor further states that the financial debt as claimed by the Financial Creditor is in dispute in several proceedings filed by the Corporate Debtor i.e. in the Hon'ble High Court of Bombay, Hon'ble Chief Metropolitan Magistrate, Esplanade, Hon'ble Debt Recovery Tribunal, Mumbai & Hon'ble City Civil Court and that the Financial Creditor has committed fraud by not disclosing the details of the said proceedings.
23. The Corporate Debtor reiterates that the Financial Creditor herein has in the reply filed before the Hon'ble High Court, admitted on oath that there are factual disputes amongst the parties and elaborate evidence is required.

24. The Corporate Debtor submits that the Financial Creditor has annexed incomplete statements of accounts as the statement of accounts pertaining to the first loan sanctioned for the period from 2013 to 2015 is not annexed to the petition.
25. The Corporate Debtor further states that the Statements of Accounts are not certified in the manner required under Section 2A of the Banker's Book Evidence Act, 1891.
26. The Corporate Debtor further states that the Financial Creditor has not clearly explained how it arrived at the date of default mentioned in Part IV of the petition.
27. The Corporate Debtor further states that the Financial Creditor is misusing the provisions of IBC as a tool for recovery of disputed debt.
28. The Corporate Debtor has also disputed the reliability of the revival letter on the basis of which the Corporate Debtor has calculated the date of default.
29. The Corporate Debtor further states that as held by the Hon'ble Supreme Court in the case of Vidarbha Industries Power Limited vs. Axis Bank Ltd., reliance should not be placed only upon the debt and default and other circumstances shall also be considered in order to admit an Application under Section 7 of IBC.
30. The Corporate Debtor has also filed Written submissions.

Findings:

31. This Bench has perused the material on record and heard both parties and finds that there is no ground to dismiss the present application as all

the objections have been dealt with by the Financial Creditor in its Rejoinder and the same is satisfactory.

32. The Bench further states that the Date of default as calculated and mentioned by the Financial Creditor in Part IV is correct and can be relied upon as the legal notice was issued to the Corporate Debtor on 03.11.2018 and received by it. Despite that, neither reply has been filed to the legal notice nor repayment has been made till 28.02.2021 by the Corporate Debtor to the Financial Creditor. The legal notice had the stipulation that the debt in whole should be repaid within 7 days of the date of the notice. Hence, the date of default is 11.11.2018 .
33. Further, on one hand, the Corporate Debtor is disputing the disbursement of debt and on other hand the Corporate Debtor has executed a revival letter on 14.04.2018, thereby acknowledging its liability. The Corporate Debtor herein has tried to take disadvantage of the *Vidarbha judgement* in which it was held that the Bench should not only consider the debt and default but also consider the other circumstances of the case. The said judgement is not applicable to the facts of this case.
34. Thus, it is crystal clear that there is a clear debt and default on the part of the Corporate Debtor and the debt claimed in the Petition is covered under Section 5(8) of the Code. Thus, the Petition squarely falls within the period of limitation as prescribed under Section 18 of Limitation Act, 1963.
35. In view of the above observations, this Bench is of the considered view that this petition is deserves to be admitted.

36. The Financial Creditor has proposed the name of Mr. Brijendra Kumar Mishra, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00109/2017-18/10257] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

- a) This Application being C.P. (IB) No. 631/NCLT/MB/C-IV/2021 filed by State Bank of India Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Gopinath Dairy Products Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) is **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 action 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
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- 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 appoints Mr. Brijendra Kumar Mishra, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00109/2017-18/10257] 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.

- e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh 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 (CoC).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is 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 Joint Registrar is to be submitted within 3 days from the date of uploading of the order.

Sd/-
Manoj Kumar Dubey
Member (Technical)

09/02/2023
Akshata

Sd/-
Kishore Vemulapalli
Member (Judicial)