



S. No.5

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH -1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON **24.06.2022**
AT 10:30 AM THROUGH VIDEO CONFERENCE

CP (IB) No. 299/7/HDB/2018
U/s. 7 of IBC, 2016.

IN THE MATTER OF:

Punjab National Bank (Erstwhile Oriental Bank of Commerce)
... Financial Creditor

Vs.

NCS Sugars Ltd **... Corporate Debtor**

CORAM:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER
(JUDICIAL)**

SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Orders passed in CP IB No.299/7/HDB/2018, vide separate sheets.
In the result, this petition is admitted moratorium declared in terms of this
order. Accordingly, Petition is allowed.

Sd/-

MEMBER(T)

Sd/-

MEMBER(J)



**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.299/7/ HDB/2018

U/s 7 of I&B Code, 2016 read with Rule
4 of I & B (AAA) Rules, 2016.

In the matter between:

Punjab National Bank
[Erstwhile Oriental Bank of Commerce]
Registered Office and Corporate Office:
Plot No.5
Institutional Area, Sector 32
Gurgaon – 122001
Branch Office: Plot No.1271
Road No.63, Jubilee Hills
Hyderabad – 500 033.

**.. Applicant
Financial Creditor**

VERSUS

NCS Sugars Limited
405, Minar Apartments
Deccan Towers, Basheer Bagh
Hyderabad, Telangana – 500 001.

**.. Respondent
Corporate Debtor**

Date of order : 24th June 2022

Coram:

**HON'BLE SHRI VENKATA RAMAKRISHNA BADARINATH
NANDULA, MEMBER (JUDICIAL)**

and

**HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)**



Parties / counsels present:

For the Petitioner : Shri G.P. Yash Vardhan, Advocate.

For the Respondent: Shri Nitish Bandary, Advocate.

PER BENCH

ORDER

This Company Petition is filed by the erstwhile Oriental Bank of Commerce (now Punjab National Bank) (hereinafter called “Financial Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against M/s NCS Sugars (hereinafter called “Corporate Debtor”) alleging that the Corporate Debtor had committed default in making payment to the Financial Creditor. This petition has been filed by invoking section 7 of the Insolvency & Bankruptcy Code, 2016 (hereafter called "I&B Code) read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor has failed to make payment of a sum of Rs.226,94,94,093/- (Rupees two hundred twenty six crores ninety four lacs ninety four thousand and ninety three only) as on 31.03.2018.



3. Submissions of the Financial Creditor:

- (i) During 2002 the Corporate Debtor approached the Consortium Banks consisting of Andhra Bank, Indian Overseas Bank and Global Trust Bank Limited (which are merged with Financial Creditor) and the Financial Creditor disbursed sums aggregating to Rs.130,37,47,281/- (Rupees one thirty crores thirty seven lacs forty seven thousand two hundred and eighty one only).
- (ii) As part of repayment, the Corporate Debtor has created charge with respect to immovable properties and hypothecation of goods and assets of the Corporate Debtor for the limits sanctioned under the loan agreements. Apart for the above, the Corporate Debtor has executed Agreement of Term Loan dated 12.06.2006 (Annexure-5, pages 39-56), Term Loan Agreement dated 12.08.2006 (Annexure-6, pages 57-69), Common Agreement dated 12.06.2006 (Annexure-7, pages 70-73), Agreement of Term Loan dated 31.03.2008 (Annexure-13, Pages 94-111), Common Agreement dated 22.03.2010 (Annexure-15, Pages 119-122) and Common Agreement dated 25.09.2012 (Annexure-17, Pages 125-128).



- (iii) On consistent failure of the Corporate Debtor to repay the amount the account was classified as Non-Performing Asset (NPA) on 30.12.2013. Consequently, all closing balances in the above loan accounts were transferred NPA Consolidated Account on 27.10.2014.
 - (iv) As on 31.03.2018, and amount of Rs.226,94,94,093/- is due and payable to the Financial Creditor by the Corporate Debtor.
 - (v) The Financial Creditor had issued Demand Notice dated 12.05.2014 under section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) (pages 582-592).
 - (vi) In response to the Demand Notice the Corporate Debtor has submitted OTS Proposal dated 13.12.2027 (page 593-599).
 - (vii) The Financial Creditor has given reply dated 20.12.2017 to the Corporate Debtor advising the Corporate Debtor to improve the offer amount and other terms of the proposal.
4. Submissions made by the Corporate Debtor in COUNTER dated 09.10.2018 :
- (i) The Corporate Debtor is one of the sugar factories of the erstwhile Nizam Sugars Limited, a state owned sugar factory. The factory management of NCS Sugars Ltd had commenced on



17.01.2003 and it had registered a phenomenal growth in its yield and could earn huge amounts. The respondent/ Corporate Debtor has made sugar production a full year activity. Thus, the Corporate Debtor has bagged second place in Best Case Development Award.

- (ii) However, the huge glut that had engulfed the sugar industry in the country had plunged the sugar mills including the Corporate Debtor into debt leading to untold losses. Its export potential got affected.
- (iii) The respondent/ Corporate Debtor could not even declare lockout or crop holiday having regard to livelihood of farmers who are depending on sugarcane industry and their families.
- (iv) Sugar companies, Sugar Mills Associations and other stakeholders approached various Hon'ble High Courts. The Hon'ble Supreme Court got all such proceedings from Hon'ble High Courts transferred unto itself vide order dated 11.09.2018 and was pleased to grant status quo. A copy of said order dated 11.09.2018 is at pages 10-13 of the Counter.
- (v) The respondent invoked force majeure and submitted that in view of the stay granted by the Hon'ble Supreme Court, prayed



for time to enable the Corporate Debtor have restructuring of loan. It is further submitted that this Tribunal had considered force majeure condition in CP (IB) No.127/10/ HDB/ 2017 in the matter of Anrak Aluminium Limited Vs. State Bank of India. A copy of said order is at pages 14-23 of the Counter.

5. WRITTEN SUBMISSIONS dated 09.03.2022 of the Financial Creditor are as follow:

- (i) The Corporate Debtor in its Financial Statements for the years 2015-16 and 2016-17 has declared that it is due and liable to pay the outstanding amounts to the Financial Creditor. The Financial Creditor has furnished details of such admission on the part of the Corporate Debtor with page numbers of the relevant documents.
- (ii) During the pendency of the petition the Corporate Debtor submitted OTS proposal and the same was approved by the Financial Creditor. However, the Corporate Debtor has failed to honour the said OTS.

6. It is observed that even thereafter learned counsel for the Corporate Debtor on 04.02.2022 and 14.02.2022, reported likelihood of settlement in the matter. However, no breakthrough could be achieved.



7. In the light of the contest as mentioned above, the following point is framed for consideration by this Adjudicating Authority:

POINT

- Whether there is a financial debt as claimed by the applicant is due and payable by the respondent/Corporate debtor? If so, whether the Corporate Debtor had defaulted in payment of the same?

8. We have heard Shri Yash Vardhan, learned counsel for the petitioner/ Financial Creditor and Shri Nitish Bandary, learned counsel for the respondent/ Corporate Debtor.

9. At the outset, we wish to refer to the ruling of the Hon'ble Supreme Court in Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited in Civil Appeal No.9405 of 2017, wherein the Hon'ble Supreme Court of India referred to its earlier ruling in re. Innoventive Industries Ltd. Vs. ICICI Bank & anr. (Civil Appeal Nos.8337-8338 of 2017), wherein it was held that:

“30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”



10. We therefore, proceed to decide the point as framed above in the legal frame of the aforesaid ruling.”

The Financial Creditor, in support of its plea that it had advanced sums aggregating to Rs.130,37,47,281/- to the Corporate Debtor for its business needs, had placed reliance among other, on the following documents:

- (a) Sanction Letter dated 18.05.2006
- (b) Agreement of Term Loan dated 12.06.2006
- (c) Term Loan Agreement under Banks Consortium Scheme dated 12.08.2006.
- (d) Common Agreement dated 12.06.2006 executed by the Corporate Debtor in favour of the Financial Creditor.
- (e) Sanction letter dated 14.07.2007
- (f) Sanction letter dated 28.03.2008
- (g) Agreement of Term Loan dated 31.03.2008
- (h) Sanction letter dated 18.03.2010
- (i) Common Agreement dated 22.03.2010
- (j) Sanction letter dated 20.06.2012, and
- (k) Common Agreement dated 25.09.2012.
- (l) Board Resolutions dated 07.08.2006, 28.03.2008, and 10.04.2008,

and contended that these records which are not disputed by the Corporate Debtor clinching Ly establishes availing credit facilities to the tune of Rs.130,37,47,281/- by the corporate debtor.

12. Learned counsel further submitted that the Demand Notice dated 12.05.2014 issued under section 13(2) of Securitisation and Reconstruction



of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) by the Financial Creditor has not been complied with by the Corporate Debtor. The learned counsel further submitted that the OTS proposal submitted by the applicant dated 22.02.2018 though has been accepted by the Financial Creditor, the Corporate Debtor failed to make payments as per the approved OTS. According to the learned counsel for the Financial Creditor, the above non-compliance conclusively establishes the default. Thus, both debt and default since established, this application is liable to be allowed and the Corporate Debtor be put under CIRP.

13. Per contra, the learned counsel for the Corporate Debtor would submit that while business of the Corporate Debtor was running successfully, due to huge glut that had engulfed the sugar industry in the country and the sugar mills all over India, including the respondent/ Corporate Debtor fell into debt trap beyond imaginable levels and as such unable to even sustain its production. The learned counsel further submitted that on account of such a situation even payments to the cane farmers became difficult to meet. The learned counsel for the Corporate Debtor further submitted that though OTS proposal put forth by the Corporate Debtor has been accepted by the Financial Creditor, however on account of



financial difficulties being faced by the Corporate Debtor, the terms could not be complied with. The learned counsel further submitted that in view of the orders passed by the Hon'ble Supreme Court of India dated 11.08.2018, the present application is not maintainable. Thus, contending the learned counsel for the Corporate Debtor prayed this Tribunal to dismiss this application.

14. Having heard the learned counsel for both sides, and on perusal of the loan and security documents, supra, which remain undisputed, besides taking into consideration the OTS proposal accepted by the corporate debtor but failed to comply, we have no hesitation to hold that the applicant has established financial debt of a sum of over Rupees one crore payable by the Corporate Debtor. The Demand Notice dated 12.05.2014 issued under section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 issued to the Corporate Debtor remained uncomplied. The Financial Creditor has also offered OTS to the Corporate Debtor. However, the Corporate Debtor failed to make payment in terms of the approved OTS. The Balance Sheet of the Corporate Debtor for the year 2016-2017 filed by the Corporate Debtor at pages 601-635 also disclosed financial debt of the Corporate Debtor in favour of the applicant. Therefore, this record clinchingly establishes not only the existence of



financial debt but also its default by the Corporate Debtor. Therefore, this Tribunal is satisfied, a financial debt due and payable by the corporate debtor to the applicant and its default stands established, hence it is a fit case to put the Corporate Debtor in CIRP.

15. Therefore, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-

(A) Corporate Debtor, M/s NCS Sugars Limited is admitted in Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016,

(B) The Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of



2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

(C) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(D) Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

(E) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(F) That the order of moratorium shall have effect from this day, the 24th June 2022 till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-



Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

(G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

(H) That this Bench hereby appoints **Shri K. Sivalingam**, having Registration No. IBBI/IPA-001/IP-P-01597/2018-2019/12430, as Interim Resolution Professional, whose contact details are:

e-mail ID: siva[dot]k220353[at]gmail[dot]com

Address: Flat No. 1603 Tulive Horizon Residences, 16/01 Arunachalam Road, Saligramam, Chennai, Tamil Nadu-600093.

as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

(I) Proposed IRP filed Form-2 issued by the Institute of Insolvency Professionals. His Authorisation for Assignment is valid till 12.12.2022. This information is also available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.



16. The petitioner is directed to communicate this order to the proposed
IRP.

17. Registry of this Tribunal is directed to send a copy of this order to
the Registrar of Companies, Hyderabad for marking appropriate remarks
against the Corporate Debtor on website of Ministry of Corporate Affairs
as being under CIRP.

17. Accordingly, this Petition is admitted.

Sd/-

VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

Sd/-

DR. N.V. RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)

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