

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

**MA/514/2018
CP/768/ (IB)/2018**

Under Section 7 of the IBC, 2016

In the matter of

M/s. BANK OF INDIA

.....Financial Creditor

V/s

M/s. PADMAADEVI SUGARS LIMITED

.....Corporate Debtor

Order delivered on : 15.10.2018

CORAM:

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

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Petitioner/FC : Shri.S.Sathiyarayanan, Advocate
Ms.Pavithra, Advocate
Shri.Rajendran Raghavan, Advocate

For the Respondent/CD : Shri.K.Gowtham Kumar, Advocate

ORDER

Per : S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Under consideration is a Company petition filed by Bank Of India (in short Petitioner/Financial Creditor) against M/s. Padmaadevi Sugars Limited (in short Corporate debtor) under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code 2016)

1. The Corporate Debtor is a public Company formerly known as M/s.S V Sugar Mills Limited incorporated on 23.10.1995 under the Companies

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Act, 1956 having its registered office at No.106, Palayasivaram Village, Kancheepuram, Tamil Nadu- 631606.

2. The amount claimed to be in default is ₹1,69,35,51,840.53 and the date of occurrence of default for the purpose of IBC is considered to be the date of issuance of Debt Recovery Certificate (DRC) by DRT-2, Chennai on 01.01.2016. Various facilities were sanctioned/renewed from time to time to the Corporate Debtor. The summary of facilities granted along with sanctioned limits are as follows;

S.No.	Nature of Facilities	Sanctioned Limit(₹)
1	Term Loan I	84.75 crores
2	FITL I	14.00 crores
3	FITL II	00.45 crores
4	WCDL	2.35 crores
5	Letter of Credit	18.50 crores
	Total Amount	120.05 crores

3. The Applicant Bank has sanctioned various credit facilities to the tune of ₹ 84.75 Crores to the Corporate Debtor vide Sanction Letter dated 10.10.2008. Thereafter, credit facilities offered to the Corporate Debtor by the Applicant Bank was reviewed and enhanced at various dates at the request of the Corporate Debtor.

On account of continuous default in repayment of dues to the Applicant Bank, the Corporate Debtor's account was classified as Non-Performing Asset with effect from 21.09.2012 in accordance with the directions/ guidelines issued by the Reserve Bank of India.

4. The Applicant Bank initiated recovery action under SARFAESI Act and also filed an Original Application before DRT - 1 Chennai vide OA No. 54 of 2013. Meanwhile, the Corporate Debtor came forward with an OTS Proposal to pay ₹ 104 Crores and that the same was accepted in terms including payment of various installments; the parties applied and obtained a consent order dated 28.11.2013 from the DRT- 1, Chennai.
5. The Corporate Debtor defaulted in payment as per OTS terms. The OA No.54 of 2013 was subsequently transferred to the DRT-2, Chennai and numbered as OA 798 of 2015. The DRT-2, Chennai issued Debt Recovery Certificate vide DRC No.03/2016 dated 01.01.2016 against the Corporate Debtor and others for recovery of ₹ 121,70,87,470.74 being lawfully due to the Applicant Bank, after duly considering/crediting the amounts received from the Corporate Debtor under the OTS terms.
6. In the counter filed by the Corporate debtor, it has been stated that the Petition is liable to be dismissed on the ground that the Petitioner has not disclosed several material facts before this Tribunal. It has been submitted

that the present Petition has been filed by the Petitioner claiming an amount of ₹ 1,69,35,51,840 from the Corporate debtor. The date of occurrence of default for this purpose has been taken as, after 90 days from the date of issuance of DRC Certificate by DRT - 2, Chennai on 01.01.2016. It has been alleged that the said amount has been claimed completely by suppressing the fact that the Corporate debtor has already paid an amount of ₹43,98,00,000 and another instalment of ₹3 Crores until September 2017 towards the one time settlement amount of ₹104 Crores, which was also accepted by the Petitioner. Further the Petitioner has also calculated interest from 01.01.2016, despite the fact that OTS was still applicable until 27.09.2017.

7. It has been stated that the demand notice under sec 13(2) of SARFAESI Act was issued by the Petitioner on 30.11.2012 and the symbolic possession of the assets of the Corporate debtor on 04.12.2012. The Corporate debtor has challenged the joint possession notice dated 03.05.2013 by filing SARFAESI Appeal no.179 of 2013. The Presiding officer upheld the Possession notice vide order dated 12.09.2013. Meanwhile, the Corporate debtor approached the Petitioner with an offer for One time Settlement (OTS). The OTS offer of ₹104 Crores made by the Corporate debtor was accepted by the Petitioner on 01.10.2013 and the entire amount under the OTS was to be paid within 90 days from the said date. A compromise memo enumerating the terms and conditions of the

OTS was filed on 22.11.2013 and final order was passed on 28.11.2013 taking on record the memo of compromise.

8. It has been submitted that the terms and conditions of the said compromise was to be adhered to by both the parties. In view of the same, the Corporate debtor has paid an aggregate sum of ₹43,98,00,000 as follows:-

DATE	AMOUNT PAID (₹)
23.11.2013	8,00,00,000
03.01.2014	10,00,00,000
29.03.2014	5,00,00,000
31.03.2014	19,86,00,000
25.06.2014	12,00,000
02.07.2014	1,00,00,000
Total	43,98,00,000

9. It has been submitted that an aggregate sum of ₹43,98,00,000 was paid by the Corporate debtor under the One time Settlement. Further another installment of ₹2.60 Crores was paid to the Petitioner in September 2017 which was also accepted by the Petitioner. Thus the remaining amount payable by the Corporate debtor to the Petitioner is only ₹57.42 Crores. However the Petitioner has claimed that the ₹46.58 Crores paid by the Corporate debtor was adjusted towards the interest since the OTS had failed.

10. It has been stated by the Corporate debtor that the Petitioner vide letter

dated 27.01.2016 had stated that the delayed period interest is payable as per the Petitioner's NPA policy. From the said letter it has been made clear that the payments made under the OTS have been appropriated towards the principal. But despite the same, the Petitioner issued a fresh possession notice dated 08.03.2016 and obtained the recovery certificate demanding ₹ 121,70,87,470 which is not in consonance with the final order passed on 28.11.2013.

11. It has been submitted that against the said possession notice dated 08.03.2016, the Corporate debtor filed SA 274 of 2016 and in the said proceedings also the Petitioner admitted that they had received a sum of ₹43.98 Crores. In the said proceedings the Petitioner admitted to have received the remaining ₹60 Crores from the Petitioner as the full final settlement and vide order dated 26.08.2016, the DRT directed the parties to complete the settlement within 90 days.

12. It has been submitted that it was only after the above order dated 26.08.2016, the Corporate debtor paid a sum of ₹3 Crores which was duly acknowledged by the Petitioner on 02.01.2017 as No lien deposit. Out of the ₹3 Crores, the Petitioner has appropriated the payment of ₹2.60 Crores and it was informed to the Corporate debtor that it was only towards the OTS dues. This is also acknowledged in the letter dated 25.09.2017 sent by the Petitioner to the Corporate debtor. The amount of ₹104 Crores which was agreed to be the OTS amount in October 2013,

after receiving amounts to an extent of ₹46.58 until September 2017 as part of the OTS settlement, the Petitioner has approached this Tribunal with a claim of ₹1,69,35,51,840.53.

13. Further, it has been submitted that in Part II (4) of the Application, the paid up share capital of the Company is wrongly mentioned as ₹80,06,83,170 instead of ₹1,39,47,33,170 and further in Part IV(1), the Petitioner has failed to mention the amount and date of disbursement of loan towards the Corporate debtor.

14. It has been stated by the financial creditor that in Para 1.5 and 1.6 of the counter filed by the Corporate Debtor, they made payment of ₹2.60 Crores in September 2017. Further, they have admitted in their counter that DRT- 2, Chennai vide its Order in SA 274 of 2016 dated 26.08.2016 granted liberty to pay the balance OTS amount within a period of 90 days together with interest thereon. But, the Corporate Debtor failed to pay the same. Thus, the Corporate Debtor has committed default in the payment of Financial Debt.

15. It is has been submitted that all the amounts received from the Corporate Debtor pursuant to OTS or otherwise has been duly accounted/given credit in the DRC and/ or the statement showing interest calculation from DRC date and that there is no suppression.

ORDER

1. The Tribunal observes that in the final order passed by the DRT-1 dated 28.11.2013 it has been stated that

“it is mutually agreed that in case of default of payment of any amount as mentioned above the compromise shall stand revoked and the Applicant Bank shall be at liberty to proceed against the Defendants and entitled to recover the entire amount as prayed in the Original Application along with interests, expenses and costs.”

In view of the above the financial creditor shall proceed against the corporate debtor for the entire amount claimed before the DRT-1 including interests, expenses and cost.

2. In the Recovery certificate issued by the DRT-II in DRV No. 03/2016 it has been stated as follows;

“... it is ordered that the Applicant/certificate holder is entitled to recover a sum of Rs.125,59,38,318.00 as principal, comprising Rs.95,19,31,832.00 in respect of Term Loan-1, Rs.1,29,57,290.00 in respect of FITL-1, Rs.18,99,363.00 in respect of FITL-II, Rs.2,80,87,418.00 in respect of WCDL and Rs.16,10,62,415.00 in respect of letter of credit, Rs.10,07,41,652.74 as future interest @ 14.75%p.a. with monthly rests from the date of filing of OA i.e. 09.04.2013 till the date of final order and Rs.2,07,500.00 as cost and expenses of Original Application in all totalling to Rs.121,70,87,470.74 after deducting Rs.43,98,00,000.00 paid by the defendants on various dates as per the Schedule of Costs annexed hereunder(Annexure-1) and further interest until realization is fully jointly and severally from the Defendants No.1 to 5 hereinafter referred to as:”

From the above, the Tribunal observes that the amounts paid by the corporate debtor has been accounted for the calculation in the Debt Recovery Certificate issued by the DRT-II and this Tribunal finds no

suppression of facts by the Financial Creditor as alleged by the Corporate Debtor.

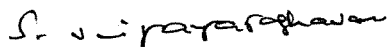
3. Therefore, the instant petition is admitted and we order the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.
4. We appoint **Mr.Mudappallur Varieth Gangadharan**, as Interim Resolution Professional (IRP) proposed by the Applicant. There is no disciplinary proceedings pending against the IRP and his name is reflected in IBBI website. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the I& B Code, 2016 within three days from the date of the copy of this order is received and call for submissions of claims in the manner as prescribed.
5. We declare the moratorium which shall have effect from the date of this order till the completion of Corporate insolvency resolution process for the purpose referred to in Section 14 of the I & B Code, 2016. We order to prohibit all of the following, namely:
 - (i) *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.*
 - (ii) *Transferring, encumbering, alienating or disposing of by the corporate debtors any of its assets or any legal right or beneficial interest therein;*

- (iii) *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 (54 of 2002)*
- (iv) *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
6. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.
7. The IRP shall comply with the provisions of sections 13(2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I & B Code.
8. The petitioner/FC as well as the Registry is directed to send the copy of this order to IRP so that he could taken charge of the Corporate Debtor's assets etc and make compliance with this order as per the provisions of the I & B Code, 2016.
9. The Registry is also directed to communicate this order to the Financial Creditor and the Corporate Debtor.
10. With the above directions the Company Petition in **CP/768/IB/2018** is **disposed of as admitted.**

11.In the above petition MA/514/2018 has been filed by the Indian Overseas Bank to implead themselves in the petition. Since the CP/768/IB/2018 is admitted the Indian Overseas Bank is directed to submit their claims to the IRP. In view of the above the Application in **MA/514/2018** is **disposed of.**

12.The address details of the IRP are as follows: -

Mr.Mudappallur Varieth Gangadharan
Reg. No. IBBI/IPA-001/IP-P00438/2017-2018/10761)
No. 341, 6th Floor, Fountain Plaza,
Pantheon Road, Egmore, Chennai – 600 008
E-mail ID: mvgfca@gmail.com
Mobile No: 9381020638



S. VIJAYARAGHAVAN
MEMBER (TECHNICAL)



B.S.V.PRAKASH KUMAR
MEMBER (JUDICIAL)

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