

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT V**

C.P.(IB) No. 295 of 2022

&

IA. No. 2443 of 2022

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 4 of the
Insolvency and Bankruptcy (Application to
Adjudication Authority) Rule 2016)

In the matter of

Kotak Mahindra Bank Ltd.

27 BKC, C/ 27, G Block, Bandra Kurla
Complex, Bandra (East), Mumbai 400051

Branch office at: 5th Floor, Adams Plaza, CST
Road, Kalina, Santacruz East, Mumbai-400098

.....Financial Creditor/ Petitioner

Vs

M/s, Hybro Foods Private Limited,

(CIN:U15100MH1997PTC112310)

Registered office at: S. No. 247, Lahe Village,
Taluka Shahapur, Thane 421601,
Maharashtra

.....Corporate Debtor/ Respondent

Order reserved on: 11.01.2023

Order pronounced on: 03.03.2023

Coram:

Hon'ble Sh. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Financial Creditor: Mr. Shyam Kapadia a/w. Mr. Nikhil Rajani I/b. Ms. V. Deshpande & Co.

For the Corporate Debtor: Mr. Sujit S Mashal i/b Nasikwala Law Office

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. This Company Petition is filed by Kotak Mahindra Bank Ltd (hereinafter called "**Financial Creditor**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against M/s Hybro Foods Private Limited, (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor committed default in making payment to the Financial Creditor. This petition has been filed by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called "**Code**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of Financial Debt of Rs. 9,40,34,306.69/- inclusive of interest.

BRIEF FACTS

2. The Petitioner submits that the Respondent approached Religare Finvest Limited (hereinafter referred to as "**Assignor/ Original Lender**") for Credit Facility Loan against property (LAP) with a CC limit of Rs. 11,00,00,000/- . Thereafter Religare Finvest Limited sanctioned the loan amount. The said loan amount was to be repaid in 120 EMIs of Rs. 16,42,418/- each, with

interest, at floating reference rate of 13% p.a. The last EMI is due and payable on or before 01.03.2026.

3. It is further submitted that the Religare Finvest Limited and the Petitioner executed an Assignment Agreement dated 09.10.2018, whereby the Financial Creditor had stepped into the shoes of the Original Lender i.e Religare Finvest Limited wherein the debts along with all rights and liabilities were assigned to the Financial Creditor.
4. Further the Corporate Debtor had defaulted in repayment of credit facility loan. Therefore, the Petitioner issued a notice dated 23.09.2019, demanding the outstanding amount from the Corporate Debtor. The Petitioner again issued a letter dated 13.12.2019, demanding the outstanding amount of Rs. 9,42,65,080.60/-. Responding to the letter dated 13.12.2019, the Corporate Debtor, indicated its willingness to settle the matter amicably between the Lender and the Corporate Debtor.
5. Due to the continuous defaults in making the repayment of the loan, the account of the Corporate Debtor became irregular, during the period December 2019 and January 2020 and accordingly, the account was classified as Non-Performing Assets (**NPA**) on 31.01.2020. Thereafter, the Petitioner had issued a Demand Notice dated 27.02.2020, under Section 13(2) of SARFAESI Act, 2002 to the Corporate Debtor, recalling the loan amount. The Corporate Debtor has failed to reply the said letter.
6. The Petitioner again issued a letter dated 12.03.2020, to the Corporate Debtor, recalling the facility amounting to Rs. 9,40,34,306.69/- due and payable as on 27.02.2020 with further interest at the contractual rate, till payment and realization. The Corporate Debtor further failed to reply to the said letter. Hence this petition.

REPLY OF THE CORPORATE DEBTOR

7. The Ld. Counsel for the Respondent submit that the present petition is not maintainable, as it hit by Section 10A of the Code. Since, the Petitioner Bank has included the alleged EMI defaults are stated to pertain for the period starting from March 2020 to November 2020.
8. The Respondent further submits that there is no privity of contract between the Petitioner Bank and the Corporate Debtor. Therefore, the Petitioner Bank has no *Locus Standi* to file the present petition.
9. The Respondent further submits that, the Petitioner bank, on certain occasions, has claimed that only 90% of the loan was assigned to them, whereas the balance amount continues to be due with Religare Finvest Ltd. Therefore Religare Finvest Ltd. has not been arrayed as Petitioner. Hence, this petition is liable to be dismissed.
10. The Corporate Debtor raised the issue and submitted that the alleged Document, Assignment Deed, is not duly Stamped and therefore, cannot be relied upon. It is submitted that in terms of the provision of Section 18 of the Maharashtra Stamp Act, 1958 if an instrument is executed outside Maharashtra, then the same has to be stamped within 3 months from the date first it is received in the state. It is submitted that in the present case, it is unclear when the alleged documents were received from New Delhi, and therefore, none of these documents are sufficiently stamped in Maharashtra within the prescribed time.

REJOINDER OF THE FINANCIAL CREDITOR

11. The Petitioner submitted that the provision of Section 10A of the Code is not Applicable to the present case. It is submitted that default in the present case is in the nature of 'Continuing Default' **which commenced prior to the period mentioned under Section 10A of the Code**. The operation and conduct of the accounts under the said facilities became irregular during the period December 2019 to January 2020 and accordingly, the debt under the said amount has been classified as Non-Performing Assets on 31.01.2020. **The date of default is stated to be 23.09.2019**. The Petitioner, thereafter, proceeded to recall the entire loan facility vide 13(2) Notice dated 27.02.2020 and called upon the Corporate Debtor to pay a sum of Rs. 9,40,34,306.69/- due and payable as on 27.02.2020 with further interest at the contractual rate till payment and/or realization. Therefore, it is stated that the default mentioned in the Petition is much prior to the period stipulated under Section 10A.
12. The Petitioner further submitted that it is a matter of record that under a valid Agreement of Assignment dated 09.10.2018, Religare Finvest Ltd. assigned upon the Financial Creditor, its rights, title and interest, benefits in and to the debts due and payable by the Corporate Debtor. Therefore, the Petitioner is legally entitled to demand/ receive/ recover the repayment of the said debts, or any part thereof, including the right to file a suit or institute other recovery proceedings in its own name and right to take any other action as may be required for the purpose of recovery of debts as an assignee.
13. The Petitioner submitted that as per the Assignment Agreement, the pay-out of Religare Finvest Ltd., comprises of 10% of the receivables collected in the collection month corresponding to the pay-out date and the Financial Creditor's pay-out comprises of 90% of receivable collected

in the Collection Month corresponding to the previous date. Pertinent to this, the Financial Creditor is entitled to assigned portion of the loan/ receivables along with the corresponding security and interest with respect to secured assets.

14. The Petitioner further stated that the Part IV Para 1 of the Petition unambiguously clarifies the arrangement between the Financial Creditor and Religare Finvest Ltd. Relying upon the judgement of Hon'ble Supreme Court in ICICI Bank Ltd. vs APS Star, it is further stated that assignment of debt is a permissible activity.
15. The Financial Creditor, on the issue of documents as insufficiently stamped, submitted that under Section 7 of the Code, this Tribunal is required to ascertain the existence of a default from the records or on the basis of the evidence furnished by the Financial Creditor and the issue of insufficiency of stamp duty is not germane at the time of the admission of petition. It has been further stated that the Corporate Debtor has not substantiated its contentions by providing any material documents and/ or indicating as to how much insufficient stamp duty has been paid on the security documents.

FINDINGS

16. We have heard the counsel appearing for parties and perused all the material on record.
17. The present petition is filed to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor for the default in payment amounting to Rs. 9,40,34,306.69/-.
18. It is an undisputed fact that the Corporate Debtor had availed the Credit Facility from the Religare Finvest Limited and also the Religare Finvest

Limited and the Petitioner had entered into an Assignment Agreement dated 09.10.2018 whereby the debts and all rights and liabilities of the Religare Finvest Limited are assigned to the Petitioner.

19. The counsel for the Corporate Debtor in its reply has raised, the following contentions disputing the debt:
- i. That Petition is not maintainable in view of Section 10A of the Insolvency and bankruptcy Code, 2016;
 - ii. That there is no privity of contract between the Petitioner and Corporate Debtor and No Locus of the Petitioner in view of the Assignment Deed; and
 - iii. The Documents Relied upon by the Petitioner in support of its debt are insufficiently stamped and therefore cannot be relied upon;
20. With regard to the First contention raised by the Corporate Debtor that the present Petition is barred by Section 10A of the Code, it is pertinent to note that the loan account of the Corporate Debtor was classified as NPA on 31.01.2020 and a Demand Notice under Section 13(2) of SARFAESI Act, 2002 was issued on 27.02.2020 with further recall notice dated 12.03.2020. Therefore, the Bench is of the view that the Period of classification as NPA and Demand notice are much prior to the Period mentioned in the Section 10A of the Insolvency and Bankruptcy Code, 2016, Hence the Petition is not hit by Section 10A of the Insolvency and Bankruptcy Code, 2016.
21. It is important to note that Legislature introduced Section 10A of the Code in order to protect defaulting borrowers by barring initiation of CIRP applications against such borrowers for a limited duration of one year from 24th March 2020 till 25th March 2021. The intent of the legislation was to provide temporary protection to borrowers. The

Bench is of the view that Corporate Debtor, in no way, can misuse this provision and set away from the debt taken prior to the Introduction of the provision of Section 10A.

22. With regard to the next contention raised by the Corporate Debtor that there is no privity of contract between the Petitioner and the Corporate Debtor. The Bench is of the view that a bare perusal of Clause 2.1 (a) of the Assignment Agreement dated 09.10.2018, the Financial Creditor is legally entitled to demand/ receive/ recover the repayment of the said debts, or any part thereof, **including the right to file a suit or institute other recovery proceedings in its own name** and right to take any other action as may be required for the purpose of recovery of debts as an assignee. In addition to above, the Corporate Debtor vide letter dated 15.01.2020 (Exhibit-M) had sought time for the settlement of the due amount. It is noteworthy that the said letter was address to the Financial Creditor and not to the original lender acknowledging the *locus standi* of Financial Creditor in the present case. Therefore, in view of above the defence raised by the Corporate Debtor does not survive.
23. With regard to the next contention raised by the Counsel for the Corporate Debtor that the documents Relied upon by the Petitioner in support of its debt are insufficiently stamped. In this regard, the Ld. Counsel for the Financial Creditor has stated that the Corporate Debtor has not disputed the existence of loans. In furtherance the Corporate Debtor has also availed the said loan facility advanced by the original Lender So far as the objection with regard to the loan documents not been sufficiently stamped, it is notable that the question of insufficiently stamped loan documents is not relevant while adjudicating upon the admissibility of a Petition under Section 7 of the code. This position is also settled in **SpiceJet Limited v/s Credit Suisse AG 2022 SCC OnLine Mad 112**, wherein the Hon'ble Madras High Court has held as under:

“... the point at issue is not whether the document sought to be relied by the petitioner is sufficiently stamped or stamped at all. The only point to be verified is whether the debt is bonafide disputed and whether the said defence is a substantial one. Applying this test, keeping in view the binding decision in this regard, which is referred to by the Company Court in the impugned order, independent of the satisfaction recorded by the Company Court, we also hold that such a defence can not be said to be a bonafide defence and at the stage of admission of the petition, it need not be gone into. This argument therefore needs to be rejected.”

24. Considering the above facts, we come to conclusion that the nature of Debt is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of ‘**debt**’ and ‘**default**’, for admission of a petition under Section 7 of the I&B Code, have been met in this case.

ORDER

- a. The above Company Petition No. (IB) 295/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s, Hybro Foods Private Limited.**
- b. This Bench hereby appoints **Mr. Pankaj Shyam Joshi**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00507/2017-18/11556 and having contact number as 9820436268 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this 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 the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an

order for liquidation of corporate debtor under section 33, as the case may be.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition 295 of 2022 is **allowed** and IA. No. 2443 of 2022 become **infructuous**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)