

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP. No. 1817/IBC/NCLT/MAH/2017

Under Section 7 of the I&B Code, 2016

In the matter of

ICICI Bank,
ICICI Bank Tower,
Near Chakli Circle, Old Padra Road,
Vadodara - 397007,
Gujarat, India
..... Financial Creditor/
Petitioner
Vs.
Usher Agro Ltd.
422, Laxmi Plaza Industrial Estate, New
Link Road Andheri (w), Mumbai 400
053
..... Corporate Debtor/
Respondent

Order delivered on: 21.03.2018

Coram:

Hon'ble Mr. B.S.V. Prakash Kumar, Member (J)
Hon'ble Mr. Ravikumar Duraisamy, Member (T)

For the Petitioner: Mr. Shyam Mehta, a/w Ms. Dhanyashree Shah, i/b AZB &
Partners

For the Respondent: Ms. Komal Thadani, Kaunak Samdani, i/b Crawford Bayley
& Co.

ORDER

Per: Shri. Ravikumar Duraisamy, Member (T)

1. ICICI Bank Ltd., the Financial Creditor has filed this Company Petition

under Section 7 of the IBC, 2016 on 27.12.2017 against the Corporate Debtor, Usher

Agro Ltd., claiming an amount of Rs.267,62,74,870.17 against various credit

facilities extended to the Corporate Debtor.

2. However, the captioned Petition contained lot of discrepancies with regard

to dates of default, Certificate of Registration of Charge, unconditional and

irrevocable personal guarantees extended by Mr. Manoj Pathak, various other

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documents, agreements executed between both the parties. The Petitioner has filed amended Application MA 128/2018 on 20.2.2018 and the same was heard on 12.3.2018 wherein the Bench permitted the Financial Creditor to carry out the amendments. Subsequently, the Financial Creditor has filed the amended petition on 13.3.2018 and the same was heard by this Bench on 14.3.2018.

3. As per the amended Petition, the amount claimed to be in default and the date of default towards various credit facilities extended to the Financial Creditor are as stated below:

Sr. No.	Facility	Debt Granted (Rs)	Date of Disbursement
1.	Rupree Term Loans	811,536,906.00	July 01, 2017
2.	Working Capital Facilities		
	Line of Credit for Short Term Loan (LOCSTL)	800,000,000.00	April 23, 2015
	1. Cash Credit	USD 3,000,000.00	August 27, 2015
	2. Foreign Currency Non Resident (Borrowing)	USD 3,500,000.00	January 04, 2016
	3. One-time short Term Loan	USD 5,000,000.00	March 02, 2015
	Letters of Credit	70,000,000.00	
	Total	870,000,000.00	
3.	One time Short term Loan	250,000,000.00	April 25, 2015 April 27, 2015 April 27, 2015 April 28, 2015 April 28, 2015 April 28, 2015 December 11, 2015
4	Farmer Finance Corporation Guarantee	250,000,000.00	February 13, 2015 February 05, 2015 January 01, 2016 January 05, 2016 January 07, 2016
	TOTAL	2,091,536,906.00	



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4. The following are the details of outstanding as on 30.9.2017 and the details

of date of default.

Sr. No.	Facility	Total Overdue as on September 30, 2017 (Principal + Interest + Overdue Interest) Rs.	Date of Default
1	Rupee Term Loans	Principal: Rs. 811,536,906.00 Interest: Rs. 108,658,035.00 Overdue Interest: Rs. 54,154,959.00 Total: Rs. 974,349,900.00	July 01, 2016
2	Working Capital	Line of Credit Short Term Loan (LOCSTL) Principal: Rs. 441,155,000.00 Interest: Rs. 56,111,797.00 Overdue Interest: Rs. 25,789,402.00 Total: Rs. 523,056,199.00	February 29, 2016
		Cash Credit (As a sublimit of LOCSTL) Principal: Rs. 420,991,352.50 Interest: Rs. 129,632,856.20 Overdue Interest (including) Total: Rs. 550,624,208.70	February 29, 2016 and August 04, 2016
		FCNR (As a sublimit of LOCSTL) Principal: Rs. 6,084,823.10 Interest: Rs. 7,219,215.70 Overdue Interest: Rs. 4,143,508.00 Total: Rs. 17,447,546.80	February 20, 2016
		Letters of Credit Principal: Rs. 50,777,708.30 Interest: Rs. 17,518,557.00 (including) Overdue Interest Total: Rs. 68,296,265.30	
		Consolidated Amounts: Principal: Rs. 919,008,884.00 Interest: Rs. 240,415,335.90 Total: Rs. 1,159,424,219.90	
3	One time Short term Loan	Principal: Rs. 19,339,1389.10 Interest: Rs. 24,280,307.00 Total: Rs. 217,671,696.10	February 29, 2016
4	Derivative (as on September 30, 2017)	Principal (Rs. 11,012,684.20)	May 27, 2016



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Total		2,676,274,870.17
1. Harprasad Group	August 29, 2015	Principal: Rs. 50,000,000.00 Interest: Rs. 13,333,356.00 Overdue Interest: Rs. 2,312,329.00 Total: Rs. 65,645,685.00
2. Bhagwat Krishi Farm Group	August 29, 2015	Principal: Rs. 50,000,000.00 Interest: Rs. 13,435,822.00 Overdue Interest: Rs. 2,312,329.00 Total: Rs. 65,748,151.00
3. Laddi Kishan Samit Group:	April 30, 2016	Principal: Rs. 50,000,000.00 Interest: Rs. 9,209,110.00 Overdue Interest: Rs. 1,641,096.00 Total: Rs. 60,850,205.00
4. Mahadev Group	April 30, 2016	Principal: Rs. 50,000,000.00 Interest: Rs. 9,157,877.00 Overdue Interest: Rs. 1,641,096.00 Total: Rs. 60,798,973.00
5. Hardayal Group	April 30, 2016	Principal: Rs. 50,000,000.00 Interest: Rs. 9,132,260.00 Overdue Interest: Rs. 16,41,096.00 Total: Rs. 60,773,356.00
Consolidated Amounts:		Principal: Rs. 25,00,00,000.00 Interest: Rs. 54,268,425.00 Overdue Interest: Rs. 9,547,945.00 Total: Rs. 313,816,370.00
Corporate Guarantee invoked vide notice dated November 13, 2017		

5. The Financial Creditor has also tendered its written submissions during the hearing on 12.3.2018 which is taken on record. The Financial Creditor has also submitted additional Affidavit dated 12.3.2018 confirming that the total amount defaulted as stated in the Petition is Rs.267,62,74,870.17. The Account of the Corporate Debtor is classified as NPA.

6. The applicant has also declared that there is no delay in preferring the Petition under Section 7 of the IBC, 2016 and therefore, the present Petition is not barred by Limitation Act, 1963.

is occupied by or in the possession of the corporate debtor.

(d) the recovery of any property by an owner or lessor where such property of Security Interest Act, 2002 (SARFAESI Act);

the Securitisation and Reconstruction of Financial Assets and Enforcement the corporate debtor in respect of its property including any action under (c) any action to foreclose, recover or enforce any security interest created by

debtor any of its assets or any legal right or beneficial interest therein;

(b) transferring, encumbering, alienating or disposing of by the corporate

order in any court of law, tribunal, arbitration panel or other authority;

1 (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or

accordingly, the Adjudicating Authority passes the following order:

default are established and the proposed IRP is also eligible to be appointed as IRP, disciplinary proceedings are pending against him. Having satisfied that the debt and No.2 was also submitted by the Proposed IRP and he has also confirmed that no Mr. Krishna Chamadia, Registration No. JBB/IFA-001/IP-P00694/2017-2018/11220. Form the Financial Creditor has also recommended the Interim Resolution Professional, viz.

8. In the Petition filed by the Financial Creditor, after the amendments made in the original petition, there are no defects and the application is complete in all respects and

accordingly, the Petition filed under Section 7 of the IBC, 2016 is to be admitted.

7. Though the Counsel for the Corporate Debtor appeared before the Adjudicating Authority during the hearings held on various dates, viz. on 26.2.2018, 9.3.2018, 12.3.2018, 13.3.2018 and 14.3.2018 however, the Corporate Debtor has not filed any reply to the Petition filed by the Financial Creditor. In the above background, we are satisfied that the debt and default is established and the Corporate Debtor has not objected to the same. Therefore, we are satisfied that the claim of the Financial Creditor is to be admitted,



(II) 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.

(III) 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.

(IV) That the order of moratorium shall have effect from 21.03.2018 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.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

(VI) That this Bench hereby appoints Mr. Krishna Chamadia, B 1804, Raheja Heights, Off Gen A. K. Vaidya Marg, Dindoshi, Malad East, Mumbai - 400 097, Email krishna@spheradvisory.com, having Registration No. JBI/PA-001/IP-P00694/2017-2018/11220 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

9. Accordingly, this Petition is admitted.

10. The Registry is hereby directed to communicate this order to both the parties within seven days from the date order is made available.

Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-
B. S.V. PRAKASHKUMAR
Member (Judicial)



Certified True Copy
Copy Issued "Free of cost"
On 28/03/2018

[Handwritten Signature]

Assistant Registrar
National Company Law Tribunal Mumbai Bench