

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
09-07-2024 AT 10:30 AM**

**CP(IB) No. 259/7/HDB/2023**  
u/s. 7 of IBC, 2016

**IN THE MATTER OF:**

M/s. Prudential Ammana Sugars Limited

**...Financial Creditor**

**AND**

M/s. Trident Sugars Limited

**...Corporate Debtor**

**C O R A M:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Orders pronounced. **In the result, this Company Petition is allowed**, the Corporate Debtor is admitted into CIRP, IRP appointed and moratorium in terms of Section 14 Insolvency & Bankruptcy Code, 2016 imposed.

Immediately after pronouncing the order in the open court, learned counsel for Corporate Debtor Smt Sandhya Rani present through Video Conference and stated that the Corporate Debtor is in the process of settling the matter with the Financial Creditor and therefore the Tribunal may hear the Corporate Debtor on settlement. The Tribunal, therefore directed the learned counsel for the Corporate Debtor to state in writing about the proposed settlement. Pursuant thereto vide the memo in Dairy No 6702, the Corporate Debtor filed an affidavit of the officer of

the Corporate Debtor stating that “ the Corporate Debtor is in the process of settlement with the Financial Creditor, and requested this Tribunal to allow the Corporate Debtor to report settlement and this Hon’ble Tribunal directed to file an affidavit before 4::30 PM on 09.07.2024” and prayed to allow the Corporate Debtor to report settlement entered with the Financial Creditor.

In the light of the above, let notice of this memo and affidavit be served on the Financial Creditor and matter be listed on 12.07.2024 for reporting settlement by the Corporate Debtor.

Call on 12.07.2024.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BRANCH-I, HYDERABAD**

CP No. 259/7/HDB/2023

*[U/s. 7 of the Insolvency and Bankruptcy Code, 2016 R/w Rule 4 of the Insolvency and Bankruptcy  
(Application to Adjudicating Authority) Rules, 2016]*

**IN THE MATTER OF M/S TRIDENT SUGARS LIMITED**

**Between:**

M/s Prudential Ammana Sugars Limited  
Rep by its Director, Shri. Vinod Baid,  
Office at: Akash Ganga, 144, Srinagar Colony,  
Hyderabad- 500073.  
Reg office at: Prudential Nagar, Koppedu post,  
Nindra Mandal, Chittoor, Andhra Pradesh- 517587

....Petitioner/Financial Creditor

**Versus**

M/s Trident Sugars Limited  
Kothur Village, Madhunagar Post,  
Zaheerabad mandal, Sangareddy District,  
Telangana- 502228.

...Respondent/Corporate Debtor

**Order pronounced on: 09.07.2024**

**Coram:**

Dr.Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)

Shri Charan Singh, Hon'ble Member (Technical)

**Appearance:**

For Petitioner : Y. Suryanarayana, Advocate

For Respondent : Mumaneni Vazra Laxmi, and Ms.Sandhya Rani, Counsels.

**PER: BENCH**

**ORDER**

This Company Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 by M/s Prudential Ammana Sugars Limited, (hereinafter, referred to as 'Financial Creditor') against the M/s Trident Sugars Limited (Corporate Debtor) for non-payment of a sum of Rs. 17,10,00,000/- along with interest up to 31.08.2023 amounting to Rs. 34,32,69,456/- and prayed for following reliefs:

- i. to initiate corporate insolvency resolution process against the Corporate Debtor;*
- ii. Appoint Mr. Manjeet Buccha as the Interim resolution professional of the Corporate Debtor.*
- iii. Declaring a moratorium in terms of Section 14 of the code.*

**1) Brief averments of the Petition are as follows:**

- 1.1. It is averred that the Financial Creditor had entered into a Facility-cum-Shares-Pledge Agreement on April 27, 2017, with Natems Sugars Private Limited, the holding company of the Corporate Debtor. Under this agreement, the Financial Creditor advanced Rs. 30 crores to Natems Sugars Private Limited. In return, Dr. R N Ramnath and Mr. Nandakumar Ramanujalu pledged 85,30,000 and 8,85,000 shares, respectively, of Natems Sugars Private Limited.
- 1.2. It is averred that in April 2018, the Corporate Debtor sought loan of Rs. 17.10 crores from the Financial Creditor to meet long-term funding needs, offering a pledge of shares from Natems Sugars Private Limited. The Natems Sugars Private Limited also proposed to repay their existing loan fully. Consequently, on 17.04.2018, the Financial Creditor sanctioned the loan of Rs. 17.10 crores to the Corporate Debtor, secured by 96,23,731

shares of the Corporate Debtor owned by its holding company, Natems Sugars Private Limited.

- 1.3. It is averred that the loan agreement stipulated a commencement date from the execution of the agreement, with repayment scheduled in equal quarterly instalments from 30.08.2018 to 30.06.2019. The loan carried an interest rate of 12% per annum, and repayment, including interest, was to be made in quarterly instalments. The loan was to be disbursed within 60 days of signing the agreement, upon submission of a disbursement request by the Corporate Debtor. In case of default, the Financial Creditor reserved the right to invoke the security interest on the pledged shares and could levy a default interest rate of 2% per annum above the regular interest rate.
- 1.4. It is averred that on 16.04.2018, the Corporate Debtor sent two letters to the Financial Creditor, the first letter stated that the pledge of 96,23,731 equity shares would be created once the Financial Creditor provided their Demat account details, in the meanwhile, they requested the loan disbursement based on a signed pledge request form and issued four post-dated cheques of Rs. 4,27,50,000 each, dated 30.08.2018, 31.12.2018, 31.03.2019, and 30.06.2019 and the second letter formally requested the disbursement of Rs. 17.10 crores as per Clause 2.3.3 of the Facility-cum-Share-Pledge Agreement dated 17.04.2018.
- 1.5. It is averred that in September 2018, the Corporate Debtor informed the Financial Creditor about financial difficulties and requested not to deposit four post-dated cheques totalling to Rs. 4,27,50,000/- each, scheduled for repayment of the Rs. 17.10 crores loan. They assured continued monthly interest payments. Considering these constraints and a partial repayment of Rs. 10.80 crores from an earlier loan, the Financial Creditor sympathetically agreed to amend the repayment terms.

- 1.6. It is averred that on 08.11.2019, an Amendment Agreement was executed, extending the loan repayment start date to 30.11.2019 (previous date 30.09.2018) extending the loan tenure until June 2022, and increasing the interest rate from 12% to 15% per annum. Dr. R.N. Ramnath, Managing Director of the Corporate Debtor, also provided a Personal Guarantee for the repayment. However, despite the Financial Creditor's reminders and opening of a Demat account in April 2018, the Corporate Debtor failed to pledge the equity shares of the Corporate Debtor held by Natems Sugars Private Limited to the Financial Creditor.
- 1.7. It is averred that the Corporate Debtor initially paid monthly interest regularly until August 2019. Payments dwindled thereafter, with only small amounts made until June 2020, and eventually stopped making any payments.
- 1.8. It is averred that amidst numerous discussions, the Financial Creditor requested the Corporate Debtor to repay the principal amount with interest and create a pledge on the Corporate Debtor's equity shares as per the Facility-cum-Share-Pledge Agreement dated 17.04.2018. However, the Corporate Debtor failed to comply despite regular reminders. Consequently, the Financial Creditor sent letters on 06.10.2021, 29.11.2021 and 29.01.2022, seeking repayment of Rs. 23,59,33,645.24/- outstanding as of 31.12.2021. It is further averred that the holding company of the Financial Creditor, Prudential Sugar Corporation Limited, signed an Operations and Management (O&M) Agreement with the Corporate Debtor on 21.10.2021, and has since been managing its operations. In a letter dated 05.02.2022, the Corporate Debtor acknowledged the Financial Creditor's letters, confirmed the debt amount of Rs. 23,59,90,607.1/- as per their books, and enclosed a ledger copy verifying the outstanding debt.

- 1.9. It is averred that despite repeated letters and reminders, the Corporate Debtor failed to repay the principal amount with interest and did not create the agreed-upon pledge of equity shares. In several meetings, the Corporate Debtor admitted their inability to pledge the equity shares due to existing financial arrangements with another party. The corporate debtor requested to continue with the pledge of Natems Sugars Private Limited as per the original agreement. The Corporate Debtor also agreed to create a first charge in favour of the Financial Creditor on their entire assets, including land, building, and machinery, on a pari passu basis with Tata International Limited. However, they noted that these assets were already mortgaged to State Bank of India and UCO Bank, with a second charge given to IFCI, and stated they were actively discussing settlements to satisfy these charges.
- 1.10. It is averred that they proposed executing a Memorandum of Understanding (MoU) with the Financial Creditor and Tata International Limited to secure the repayment of Rs. 23,90,57,194 (principal + interest) as of 31.01.2022, according to a mutually agreed repayment schedule. After extensive discussions, the Financial Creditor agreed to the MoU, which was signed on 18.02.2022, by the Corporate Debtor, Tata International Limited (Party of the First Part), and the Financial Creditor (Party of the Second Part), wherein the Corporate Debtor acknowledged the outstanding amount and assured repayment.
- 1.11. It is averred that the Corporate Debtor further assured they would repay their secured creditors, State Bank of India and IFCI, promptly and notify the Financial Creditor once the charges on their assets were satisfied. It is further averred that the Corporate Debtor also committed to executing and registering the necessary deeds with the appropriate authorities.

- 1.12. It is averred that on 01.04.2022, the Financial Creditor sent a letter to the Corporate Debtor seeking confirmation of an outstanding receivable of Rs.24,50,05,896.05/- for the period from 01.04.2021 to 31.03.2022. The Corporate Debtor acknowledged and confirmed this amount but failed to make payments as per the repayment schedule agreed upon in the MoU dated 18.02.2022. In a subsequent meeting, the Corporate Debtor requested more time for repayment. In April 2022, Dr. R.M. Ramnath, Managing Director of the Corporate Debtor, stated that Tata International Limited was no longer willing to extend the repayment period, making it impossible to create the *pari passu* charge in favour of both the Financial Creditor and Tata International Limited.
- 1.13. It is averred that the Corporate Debtor proposed to enter a new Memorandum of Understanding (MoU) with the Financial Creditor to secure the outstanding debt of Rs. 24,50,05,896/- as of 31.03.2022. This MoU, dated 31.05.2022, included the creation of a charge on the Corporate Debtor's assets, including land, buildings, plant, and machinery, located in Kothur Village, Madhunagar Post, Zaheerabad Mandal, Sangareddy District, Telangana. The Corporate Debtor also executed and registered a Deed of Mortgage on the same date, acknowledging the debt and creating a first charge over the specified assets. The charge was filed with the Registrar of Companies, Hyderabad, and a Certificate of Registration of Charge was issued on 31.05.2022.
- 1.14. It is averred that subsequently; the Corporate Debtor confirmed the outstanding debts through various letters: Rs. 27,60,05,292/- as of 30.09.2022, Rs. 28,71,86,729/- as of 30.11.2022, and Rs. 30,45,18,961/- as of 28.02.2023. A statement of account from the Financial Creditor showed



an outstanding debt of Rs. 31,07,26,142/- as of 31.03.2023, which the Corporate Debtor acknowledged on 05.04.2023.

1.15. It is averred that due to repeated defaults in repayment, the Financial Creditor reported the default to the National E-Governance Services Limited (NeSL) on 07.06.2023. On 06.07.2023, the Corporate Debtor requested the release of a mortgage on 18.15 acres of land to clear cane arrears owed to farmers. The Financial Creditor agreed in principle, provided the outstanding debt was paid before the release of the mortgage. The Corporate Debtor assured payment within 30 days from the mortgage release date. A No Objection Certificate (NOC) was issued by the Financial Creditor on 06.07.2023.

1.16. It is averred that despite acknowledgments and creation of charges, the Corporate Debtor repeatedly defaulted, with an outstanding debt of Rs. 34,32,69,456/- as of 31.08.2023. Due to the same the Financial Creditor has filed the present petition.

**2) Brief averments of the Counter are as follows:**

2.1. It is averred that the financial creditor is neither a financial institution nor engaged in the business of extending finance. Instead, it is involved in the manufacturing of white crystal sugar, an activity similar to that of the Corporate Debtor and its holding company, M/s Natems Sugar Private Limited. That the Financial Creditors lacks any such license to operate as non-banking finance companies. It is further averred that the Financial Creditor devised a plan to take over the company by sanctioning a loan of Rs. 17.10 crores, secured against a pledge of shares held by its holding company, amounting to 25% of its paid-up capital, equivalent to 96,23,731 shares. However, as the pledge did not materialize, the Corporate Debtor

has been dragged into the Corporate Insolvency Resolution Process by the Financial Creditor, indicating a *mala fide* intention.

- 2.2. It is averred that a loan of Rs. 17.10 crores were extended to the Corporate Debtor under a Facility-cum-Share Pledge Agreement on 17.04.2018. The agreement required pledging 96,23,731 shares, equating to 25% of the paid-up capital in Trident Sugars Limited, which did not occur. No Demand Promissory Note was executed for this loan. Therefore, the Share Pledge Agreement and its amendment dated 08.11.2019 are invalid. The Memorandums of Understanding dated 18.02.2022 and 31.05.2022 remain non-binding as they were not converted into legally binding agreements with requisite stamp duty.
- 2.3. It is averred that the guarantee executed by Dr. RN Ramnath on 08.11.2019 is invalid as it was not on stamped paper. Similarly, the memorandum of deposit of title deeds dated 08.08.2022 by the Corporate Debtor is ineffective because the mortgage deed lacks the essential requirement of acknowledging a subsisting liability. Moreover, the mortgage is not backed by any consideration, rendering it null and inoperative.
- 2.4. It is averred that, according to the amended agreement dated 08.11.2019, the repayment of the Rs. 17.10 crore loan was to commence with Rs. 2 crores on 30.11.2019, another Rs. 2 crores on 31.12.2019, and the remaining Rs. 13 crores in 10 equal quarterly instalments. The interest was to be paid monthly without any change. Due to financial constraints, the Corporate Debtor could not make the payments due from 30.11.2019, including the interest. Consequently, on 14.12.2022, the Corporate Debtor requested the Financial Creditor to extend the repayment schedule until March 2023.

- 2.5. It is averred that the contention of the Financial Creditor that the default occurred on 31.07.2022 is based on the MoU dated 31.05.2022, with the amount of default being Rs. 34,32,69,456/-. Based on the said claim the company petition was filed on 22.11.2023. However, the MoU dated 31.05.2022 is merely an understanding and not a legally binding agreement as the same was not stamped appropriately.
- 2.6. It is averred that the Facility-cum-Share Purchase Agreement was entered into on 17.04.2018, and the limitation period expires on 17.04.2021, as per Article 21 of Part 1 of the Schedule to the Limitation Act, 1963. Adding the period from 17.04.2021 to 28.02.2022, i.e., 10 months and 11 days, the petition should have been filed by 08.01.2023. However, the petition was filed on 22.11.2023, making it not maintainable and subject to dismissal under Section 3 of the Limitation Act, 1963. It is further averred that, according to Section 9 of the Limitation Act, once the limitation period begins to run, it cannot be halted. Section 18 of the Limitation Act extends the period of limitation based on an acknowledgment; accordingly, the company petition is barred by limitation.
- 2.7. It is averred that the other documents submitted with the petition, such as the MOUs dated 18.02.2022 and 31.05.2022, and the Corporate Debtor's letters dated 05.02.2022, 10.11.2022, 02.12.2022, 14.12.2022, 23.03.2023, and 05.04.2023, cannot extend the limitation period, as they were all executed after the principal document became time-barred on 17.04.2021. Additionally, the Financial Creditor did not submit a Board resolution authorizing the borrowing by the company and the manner of execution of documents along with the petition. Without these resolutions, the parties are not competent to enter into these agreements, rendering all these documents void ab initio under Section 10 of the Indian Contract Act, 1872.

2.8. Stating the above it is averred that the application is not maintainable due to the lack of valid written documents or evidence in the form of a loan agreement or promissory note to substantiate the claim of financial debt and default. In the absence of such documentary evidence or a loan agreement, the claim cannot be upheld. Further the application is barred by limitations.

3) Both the Learned Counsels have filed written submissions reiterating their oral submissions. Learned Counsel for Respondent also relied on the following rulings:

4.1. **Swiss Ribbons Pvt. Ltd. v. Union of India, reported in (2019) 4 SCC 17 (para 37) in Writ Petition (civil) No. 99 of 2018**, the Hon'ble Supreme Court held that:

*"37. The trigger for a financial creditor's application is non-payment of dues when they arise under loan agreements It is for this reason that Section 433(c) of the Companies Act, 1956 has been repealed by the Code and a change in approach has been brought about. Legislative policy now is to move away from the concept of -inability to pay debts to -determination of default. The said shift enables the financial creditor to prove, based upon solid documentary evidence, that there was an obligation to pay the debt and that the debtor has failed in such obligation."*

4.2. **Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd., (2019) 10 SCC 572]**, wherein the Hon'ble Apex Court was held:

*"the right to sue accrued on 21.07.2011 and section 7 application was filed during 2017. Hence since 3 (three) years have elapsed since then in 2014, the section 7 application filed in 2017 was held to be clearly time barred by Hon'ble Supreme Court of India."*

**4.3. Dena Bank (now Bank of Baroda) versus C. Shivakumar Reddy and another in civil appeal No. 1650 of 2020, dated 04.05.2021, wherein the Hon'ble Supreme Court was held that:**

para No.142 of the judgement with regard to obtaining acknowledgement before expiry of the period of limitation as under:

*" To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of years, limitation would get extended by a further period of three years."*

**4.4. Hon'ble Supreme Court in Sesh Nath Singh & Anr. in Civil Appeal No. 9198 of 2019 Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr.** was held that after setting out the issues that arose in that case paragraph 57, and after referring to Section 238A of IBC, held in:

*"66. Similarly, under Section 18 of the Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing of a fresh period of limitation, from the date on which the acknowledgement is signed. However, the acknowledgement must be made before the period of limitation expires. of debt made in writing and signed by the corporate debtor."*

Further reliance was placed on the judgement of NCLT in ***Indus biotech vs Kotak India (Offshore) Fund reported in 2020 SCC online NCLT 1430*** submitted that the Courts have a mandatory duty to refer the parties to arbitration where an arbitration clause exists. Since the subject matter of the dispute was arbitral and an arbitration clause existed under the Agreement an attempt to reconcile the differences between the parties and their respective perceptions was in order. The

Hon'ble Supreme Court in the matter of Indus Biotech Private Limited vs. Kotak India Venture (Offshore) Fund (earlier known as Kotak India Venture Limited) & Ors. Reported in (2020) SCC Online [Para 27 to 30]. The Supreme Court justified the NCLT Judgment and upheld the dismissal of the Insolvency Application.

- 4) In the light of the contentions put forth by both the parties, the following points arise for our consideration:

**Points**

- 1). Whether a financial debt exceeding rupees one crore due and payable by the corporate debtor *exists*? if so, whether the corporate debtor has defaulted in its payment?
  - 2). Whether the present company petition is barred by limitation?
- 6) We have heard Mr. Y Suryanarayana, learned counsel for Financial Creditor and Ms. Sandhya Rani, learned counsel for the Corporate Debtor, perused the record and the written submissions.

**Point 1**

Whether a financial debt exceeding rupees one crore due and payable by the corporate debtor *exists*? if so, whether the corporate debtor has defaulted in its payment?

**The Submissions:**

- 7) Mr. Y. Suryanarayana, learned counsel for the petitioner, submits that the petitioner is a Financial Creditor, and it extended a loan to the respondent/corporate debtor vide agreement dated 17.04.2018, secured by a pledge of M/s. Natems Sugar Private Limited, however, the respondent/Corporate Debtor could not create the pledge as the shares were in physical form and not dematerialized (Demat). Ld. Counsel

further submits that, on 19.04.2018, the pledgor company, informed the Financial Creditor that they had pledged 9,415,000 equity shares in physical form, which would remain effective until Demat shares were credited and requested the disbursement of Rs. 17.10 crores to the Corporate Debtor. Despite multiple discussions and reminders, the Corporate Debtor failed to repay the loan and create the pledged shares as agreed in the 17.04.2018 agreement. Consequently, on 06.10.2021, the Financial Creditor demanded repayment of Rs. 22,71,18,850.85/- (including interest). The Corporate Debtor admitted they couldn't pledge the shares as they had used them to secure another loan. According to the Ld. Counsel, the Corporate Debtor cannot claim invalidity of the agreement due to their own failure to comply. Ld. Counsel submits that when the Corporate Debtor informed the Financial Creditor that they couldn't pledge the equity shares, the Financial Creditor requested additional security. As a result, the Corporate Debtor created a first charge on their assets in favour of the Financial Creditor. A Memorandum of Deposit of Title Deed was executed on 08.08.2022, to create and register this mortgage, which was registered with the Sub-Registrar, Zaheerabad Mandal, Sangareddy District, under Document No. 8139/2022 dated 01.09.2022.

- 8) Ld. Counsel submits that advancing loan of Rs. 17.10 Crores to the respondent/corporate debtor, on 19.04.2018 has been admitted by the corporate in its counter and since the said amount is not repaid, both debt and default stands admitted by the respondent/corporate debtor. According to the Ld. Counsel, the total amount due including interest up to 31.08.2023 is Rs. 34,32,69,456/- and the same is in default since 31.07.2022 as per MoU dated 31.05.2022.
- 9) Learned counsel further submitted that said default of corporate debtor is recorded with the information utility, NeSL, and a certificate with default

reference no. 7962507 under the category “deemed to be authenticated” is enclosed as Annexure 36 in the petition. Learned counsel further submitted that this loan amount is secured by Memorandum of deposits of title deed document no. 8139/2022 dated 08.08.2022 covering mortgage of 57 acres of Land of corporate debtor. Further the loan amount is also secured by pledge of 96,23,731 equity shares of the corporate debtor held by M/s Natems sugars pvt Ltd and also pledge of 8,85,000 and 85,30,000 equity share of M/s Natems sugars pvt Ltd held by Mr. Nanda kumar Ramanajulu and Dr Ramanath. Learned counsel finally submitted that despite acknowledgements, creation of charges and extension of repayment period, the corporate debtor repeatedly defaulted and due to the same the financial creditor has filed the present petition.

- 10) Ms. Sandya Rani, the learned counsel for respondent did not deny the existence of debt exceeding rupees one crore, however contented that that financial creditor is *neither a financial institution nor engaged in the business of extending finance like NBFC*, as such the petitioner cannot be treated as a *financial creditor* under the ambit of IBC, 2016, hence the present petition is not maintainable. Learned counsel further submitted that since no demand promissory note has been executed for the loan given by petitioner, the share pledge agreement and its amendment dated 08.11.2019 are invalid. Learned counsel further submitted that MoU’s dated 18-02-2022 and 31-05-2022 remain non-binding on the respondent as they were not converted into legally binding agreements with requisite stamp duty. Learned counsel contended that similarly Memorandum of deposit of title deed dated 08-08-2022 by the corporate debtor is ineffective because the Mortgage deed lacks the essential requirement of acknowledging subsisting liability. Learned counsel also averred that financial creditor did



not submit a board resolution authorizing the borrowing by the company and therefore the parties are not competent to enter into these agreements.

- 11) Learned counsel for financial creditor *refuted* the above contentions of the respondent by relying on sections 5(7) & 5(8) of IBC, 2016 and submitted that none of the provisions of IB Code, mandates the financial creditor to be a financial institute or a company engaged in the finance activities. Learned counsel further placed his reliance on Section 186 of the companies act, 2013 and submitted that the said provision allows inter corporate loans between the companies and submitted that in view of the said legal provision the petitioner is very much a financial creditor. Learned counsel further submitted that under the Agreements and MoUs executed between the corporate debtor and the financial creditor, supra, and also under series of letters the corporate debtor has acknowledged the debt amount. Therefore, the contention of corporate debtor that since the DP note is not executed there was no financial debt is baseless and untenable. The learned counsel further contented that Memorandum of deposit of title deed is registered in the Sub-registrar, Zaheerabad Mandal, Sangareddy District, vide document bearing no. 8139/2022 dated 01.09.2022 in favour of the financial creditor. The learned counsel further contented that in the said Memorandum of deposit of title deeds it is very clearly written that second party through this deposit deed of title deeds, by way of security for the repayment of money advanced for a loan amount of Rs. 24,50,05,896/- as on 31.03.2022. Learned counsel submitted that therefore, the said Memorandum of deposit of title deeds and all the agreements are valid agreements and binding on both the financial creditor and corporate debtor and there is a clear-cut acknowledgement of debt.

**Our analysis and findings:**

- 12) On a bare reading of the pleadings and also the written submissions of the corporate debtor, it can be stated firmly that the respondent corporate debtor has not denied the existence of debt exceeding rupees one crore due and payable by the respondent/corporate debtor in favour of the petitioner /financial creditor which is in default, but has raised contentions such as the Petitioner does not fall under the category of financial creditor and agreements executed for the loan are not enforceable on account of some deficiencies in them besides the plea of limitation. In order to decide the contention of the corporate debtor that the petitioner cannot be treated as financial creditor as per provisions of the IBC, 2016, we feel it proper to refer to section 5(7) of Code which defines the term financial creditor which is extracted below:

Section 5(7) "Financial creditor" means any person to whom a financial debt is owned and includes a person to whom such debt has been legally assigned or transferred to;

10. We also usefully reproduce section 5(8) of the Code, which reads as under:

“(8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

- (a) money borrowed against the payment of interest;
- (b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
- (e) receivables sold or discounted other than any receivables sold on nonrecourse basis;
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;”

- 13) From the above definition of the financial creditor and financial debt it is very much clear that *it is not mandatory to be financial institution or bank for being treated as financial creditor under IBC, 2016*. Further we find that both the petitioner as well as the respondent/corporate debtor are companies and as per section 186 of the Companies act, 2013 the companies can give *inter corporate loans* to each other subject to compliance to the provisions as laid down in the Companies act, 2013.
- 14) We also examined the Facility Cum Share Pledge Agreement dated 17.04.2018, wherein the Petitioner is shown as a Lender, the corporate debtor as Borrower and the Natems Sugar Private Limited (the Holding company of the Corporate Debtor) as a Pledgor. It is further observed that in clause (B) of the above said agreement it is clearly written that corporate debtor has availed loan from the Petitioner, the said clause is extracted hereunder:
- “(B) The Borrower has approached the Lender for a Loan of such amount as mentioned in Annexure A (“Facility Amount”) for the purpose of meeting a part of its long-term requirement of funds.”
- 15) The above-mentioned clause clearly shows that the corporate debtor has availed a loan from the petitioner. We also find that “Annexure A” of the Facility Cum Share Pledge Agreement incorporates interest rate on the loan wherein the rate of interest payable was 12% and additionally the rate of default interest was 2% per annum over and above the interest rate. We

further examined that the Loan was secured by pledge of shares, the relevant clause of the Facility Cum Share Pledge Agreement is extracted hereunder:

“(C) Upon the request of the Borrower, the Lender has agreed to grant to the Borrower, the Facility, with a condition that the Pledgor shall execute and deliver a pledge over such number of equity shares held by them, as more specifically stipulated in Annexure D, representing 25% of the total paid up share capital of the Borrower in favour of the Lender.”

- 16) Therefore, on careful examination of the clauses of the agreement, *supra*, besides the *factual matrix* of this case which we referred above, it is clear that a loan of a sum exceeding rupees one crore has been availed by the respondent/Corporate Debtor from the Petitioner/financial creditor and the Corporate debtor has *defaulted* in its repayment. Given these observations, it is unequivocally established that corporate debtor owes a financial debt which is over rupees one crore, and that the same has defaulted. The point is accordingly answered.

Point 2:

Whether company petition is barred by limitation?

***The Submissions:***

- 17) Learned counsel for the respondent submits that Facility cum share purchase agreement was entered on 17.04.2018 and therefore the limitation period for filing of this petition expired on 17.04.2021 as per Article 21, Part 1 of the Schedule of Limitation act, 1963. Learned counsel further added that even if we take into account the extension as allowed by Hon’ble Supreme Court on account of Covid pandemic, the petition should have been filed on or before 08.01.2023 but it has been filed on 22.11.2023, thus

making it non-maintainable and subject to dismissal under Section 3 of the Limitation act, 1963.

- 18) However, the learned counsel for petitioner rebutted the argument put forth by the Learned counsel for the respondent and submitted that the facility cum share pledge agreement was executed on 17.04.2018 and thereafter an amendment agreement was executed on 08.11.2019. Learned counsel further submitted that on 05.02.2022, corporate debtor acknowledged and confirmed the debt through a letter filed as Annexure 21 with the petition. Learned counsel further submitted that thereafter an MoU was executed on 18.02.2022 wherein the Facility agreement was acknowledged. Further on 08.08.2022 Memorandum of deposit of title deed was executed where the Facility agreement was acknowledged. Further the corporate debtor has acknowledged and confirmed the outstanding amount through its various letters dated 10.11.2022, 02.12.2022, 14.12.2022, 23.03.2023 and 05.04.2023. Therefore, the contention of the respondent is baseless and not maintainable as every acknowledgement made by corporate debtor give effect to commencement of fresh period of limitation.

### **Our analysis and findings:**

- 19) We have perused Amendment Agreement dated 08.11.2019 (Page no. 109-111 of the company petition) to the Facility cum share pledge agreement dated 17.04.2018 (Page no. 55-100 of the company petition), the clause 2 of which states as under:

**“2. Amendment to the Original Agreement.**

**2.1.** S.No. 2 of the Point 3 of Annexure A to the Original Agreement shall stand deleted and replaced with the following:

Repayment to commence from November 30, 2019 for an amount of Rs. 2,00,00,000/- December 31, 2019 of Rs. 2,00,00,000/- and balance Rs. 13,00,00,000/- in ten equal instalments. ”

- 20) We also perused the letter dated 05.02.2022 and the relevant portion of the acknowledgment is extracted hereunder:

“We hereby confirm that the outstanding balance payable to you as on December 31, 2021 in our books is INR 23,59,90,607/-. The Ledger copy of the same confirming the outstanding amount is enclosed herewith...”

4.5. As already stated the undisputed Amendment Agreement being dated 08.11.2019 and the letter of the corporate debtor confirming the outstanding balance of INR 23,59,90,607/ payable as on December 31, 2021 as per the books of the corporate debtor being dated 05.02.2022 unhesitatingly it can be said that the said letter which undoubtedly amounts to ‘acknowledgment of debt by the Corporate Debtor as per section 18 of limitation Act, grants additional time of three years to commence legal proceedings from the date of acknowledgement i.e. 05.02.2022, thereby extending the limitation in this case upto 05.02.2025.

4.6. Here we rely on the ruling in re, ***Dena Bank (now Bank of Baroda) versus C. Shivakumar Reddy and another***, wherein it was held as under

" To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of years, limitation would get extended by a further period of three years."

- 21) Since the Company Petition is filed on 22.11.2023, we hold that it is filed well within the limitation period. Therefore, the present company petition

having been filed on 22.11.2023, the same is well within the prescribed period of limitation.

The point is accordingly answered.

- 22) Therefore, in light of our discussion as afore stated and the case law, we unhesitatingly hold that there exists a debt over rupees one crore due and payable by the respondent/corporate debtor to the petitioner/financial creditor and that the corporate debtor/ respondent has failed in its timely repayment. This fact of default is also recorded in the information utility i.e., NeSL certificate with default reference no. 7962507. We also find that the petition is in order.
- 23) Hence, this Adjudicating Authority admits this Petition under Section 7 of IBC, declare moratorium for the purposes referred to in Section 14 of IBC, with following directions:
  - i. The Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against 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;

- 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 the date of this order till the completion of 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.
- v. This Bench hereby appoints of Mr. Manjeet Buccha as Interim Resolution Professional, having Reg. No. IBBI/IPA-002/IP-N00808/2019-2020/12551, whose address is : 5-9-91 93, D.No-204,02nd Floor,Shakti Sai Complex,Beside Udai Omni Clinic,Chapel Road ,Abids ,Other, Telangana-500001 and Email: manjeetbuccha[at]gmail[dot]com. He has given his AFA which is valid till 24.10.2024 and Form -2.
- vi. 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.
- vii. The Financial Creditor is directed to send a Copy of this Order to the appointed Interim Resolution Professional and Registrar of Companies, Hyderabad for making appropriate remarks against Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.



- viii. The Registry is directed to send a copy of this order to the Financial Creditor and Interim Resolution Professional appointed in this case.
- ix. The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.
- x. Accordingly, this Petition is admitted. No costs.

**SD**

**Sh. Charan Singh**  
**Member (Technical)**

*Bhargavi Kinhalkar*

**SD**

**Dr. Venkata Ramakrishna**  
**Badarinath Nandula**  
**Member (Judicial)**