National Steel & Agro Industries Ltd

11th June, 2020
Ref No.: NSAIL/SEC/2020

To,
Corporate Relationship Department,
BSE Limited
1st Floor, New Trading Ring,
Rotunda Building, P J Towers,
Dalal Street, Fort,
Mumbai– 400001.

To,
Listing Department,
National Stock Exchange of India Limited
Exchange Plaza', C-1, Block G,
Bandra - Kurla Complex,
Bandra (E)
Mumbai - 400051.

Sub: Intimation of initiation of Corporate Insolvency Resolution Process (CIRP) and appointment of Interim Resolution Professional of National Steel and Agro Industries Limited under Regulation 30 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

This is to inform you that the Hon'ble National Company Law Tribunal (NCLT), Mumbai Bench vide its Order CP(IB) No. 798/MB/C-IV/2019 dated June 09, 2020 ('**NCLT Order**'), uploaded on the website of NCLT on June 10, 2020, has admitted the application for initiation of Corporate Insolvency Resolution Process (CIRP) in respect of National Steel and Agro Industries Limited ("**Company**") filed by Agrocorp International Private (PTE) Limited ("**Agrocorp**") under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") for failing to make payment , arising out of a sale contract dated October 11, 2017 entered into between the Company and Agrocorp. A copy of the said NCLT Order is attached herewith.

In terms of Section 17 of the Code and as stated in the NCLT Order, the powers of the Board of Directors of the Company (during the CIRP Period) shall stand suspended and such powers shall now be vested with Mr. Rajeev Mannadiar (IP Registration No. IBBI/IPA- 001/ IPP00212/2017-2018/10412), who is appointed as the Interim Resolution Professional (IRP) with respect to the Company.

NATIONAL STEEL & AGRO INDUSTRIES LTD.

It may be noted that as per Section 14 of the Code, the said NCLT Order has declared a moratorium with respect to the following, namely:

(i) The institution of suits or continuation of pending suits or proceedings against the Company 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 Company 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 Company in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Company.

However, the NCLT Order also provides that the supply of goods and essential services to the Company shall not be terminated or suspended or interrupted during moratorium period and also that the provisions of sub-section (1) of Section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any sector regulator.

The moratorium shall be effective from the date of the NCLT Order i.e. from June 09, 2020, till the completion of CIRP or until the NCLT approves the resolution plan under sub-section (1) of Section 31 of the Code or passes an order for liquidation of the Company under Section 33 of the Code, as the case may be.

NATIONAL STEEL & AGRO INDUSTRIES LTD. NATIONAL

Further, the Company is in discussion with the Agrocorp in order to settle and simultaneously, seeking legal advice on the next course of action to be undertaken by the Company in light of the aforesaid NCLT Order.

You are requested to kindly take the same on record and acknowledge the receipt.

Thanking you,

Yours sincerely,

For National Steel and Industries Limited

Anurag Gangrade
Company Secretary
Membership No: FCS-9187

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-IV

CP(IB) No. 798/MB/C-IV/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of

Agrocorp International Private (PTE) Limited

[UEN: 199005306N]

…Operational Creditor

Versus

National Steel and Agro Industries Limited

[CIN: L27100MH1985PLC140379]

…Corporate Debtor

Order pronounced on: 09.06.2020

Coram:

Mr. Rajasekhar V. K.	:	Hon'ble Member (Judicial)
Mr Ravikumar Duraisamy	:	Hon'ble Member (Technical)

Appearances:

For the Operational Creditor	:	Mr. Shyam Kapadia a/w Mr. Shavez Mukri and Ms. Almira Lasrado i/b Indialaw LLP, Advocates.
For the Corporate Debtor	:	Mr. Zal Andhyarujina a/w Mr. Shrey Sancheti, Mr. Devesh Juvekar and Mr. Dikshat Mehra i/b Rajani Associates, Advocates.

ORDER

Per: Rajasekhar V. K. Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 **(IBC)** by **Agrocorp International Private (PTE) Limited**, a Private Company incorporated under the Companies Act (CAP 50) of Republic of Singapore, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **National Steel and Agro Industries Limited** [CIN: L27100MH1985PLC140379] ("the Corporate Debtor").

2. The Corporate Debtor is a company incorporated on 09.01.1985 under the Companies Act, 1956, as a public company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at No.621, Tulsiani Chambers, Nariman Point, Mumbai – 400021, within the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with the present petition.

3. The present petition was filed on 22.02.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of $930,000.00 (US Dollars nine lakh thirty thousand only) as principal amount and $38,971.84 (US Dollars thirty-eight thousand nine hundred seventy-one and cent eighty-four only) as interest at the rate of 4% p.a. compounded quarterly along with $9,536.00 (US

Dollars nine thousand five hundred and thirty-six only) being cost awarded to the Operational Creditor by Arbitral Award (at p.3 of the Petition) arising out of a sale contract dated 11.10.2017, a copy of which is placed as Exhibit E at pp.42-52. The date of default is 19.04.2018, date on which Award of Arbitration was announced. A copy of the Arbitral Award is placed as Exhibit D at pp.17-41.

4. Mr. Shyam Kapadia, Learned Counsel appearing on behalf of the Operational Creditor submitted that the case of the Operational Creditor is as follows: -

   (a) The Operational Creditor and Corporate Debtor entered into a sales contract dated 11.10.2017 bearing no. AGS/17/10/14341 for supplying 30,000 MT of whole yellow peas at a rate of $281.00 per MT.

   (b) On 04.12.2017, after there was no response from the Corporate Debtor to the repeated reminders through emails dated 23.11.2017, 24.11.2017, 27.11.2017, 29.11.2017 and 01.12.2017, the Operational Creditor resold the cargo not claimed by the Corporate Debtor at $250 CNF per MT and a debit note dated 06.12.2017 bearing no. DN/17-18/00159 of $930,000.00, for the difference of $31 per MT was raised on the Corporate Debtor for payment. A copy of the Debit Note is placed as Exhibit H-1 on p.63. The copies of correspondence through emails have been placed as Exhibit H at pp. 55-62 of the petition.

(c) The Debit Note was sent to the Corporate Debtor along with an email dated 08.12.2017. A copy of the email is placed as Exhibit H at p.55 of the petition.

(d) No payment was received from the Corporate Debtor against the Debit Note raised. Thereafter the Operational Creditor initiated an Arbitration proceeding wherein the Ld. Sole Arbitrator passed an Arbitral Award where the Corporate Debtor was ordered to pay the default damages of the sum of $930,000.00 and costs, fees and expenses of arbitration of $6,720.00 together with compound interest thereon @4% per annum, compounded at three monthly rests from 02.12.2017 to the date of payment.

(e) Further on 12.09.2018 the President of Global Pulse Confederation (GPC) sent an email to the Corporate Debtor reminding them to pay the dues to the Operational Creditor. On 13.10.2018 GPC Executive Director also wrote to the Corporate Debtor stating that failure of payment of dues to the Operational Creditor will lead to suspension of membership of the Corporate Debtor. A copy of these emails is placed at pp.64-65 of the petition.

(f) A copy of ledger account of the Corporate Debtor in the books of Operational Debtor is placed as Exhibit G at p.54 of the petition.

(g) The Operational Creditor issued a Demand Notice to the Corporate Debtor under section 8 of IBC. A copy of the said Demand Notice is placed as Exhibit I at pp.67-70 of the petition. There was no reply to the Demand Notice.

(h) Affidavit as required under section 9(3)(b) of the IBC, 2016 is placed at pp.74-75 of the petition.

5. Mr. Zal Andhyarujina a/w Mr. Shrey Sancheti, Mr. Devesh Juvekar and Mr. Dikshat Mehra i/b Rajani Associates, Advocates, appeared on behalf of the Corporate Debtor.

6. In its reply dated 14.06.2019, the Corporate Debtor has set up the following defence:

(a) The present petition is defective for want of Board Resolution of the Operational Creditor as required under the Code, authorising the initiation of corporate insolvency resolution process as per para I on p.3 of the reply.

(b) The Demand Notice is defective. The Demand Notice issued by the Operational Creditor relies on the Foreign Arbitral Award passed by a Sole Arbitrator under the Grain and Feed Trade Association Rules (GAFTA) and fails to provide particulars of transaction on account of which debt had fallen due as per para II on pp.3-4 of the reply.

(c) The Sole Arbitrator, while passing the award had observed that *"under the 'GAFTA' Arbitration Rules 125, the juridical seat of this arbitration, as defined in the Arbitration Act 1996, is England…."* and a Foreign Arbitral Award was subject to English procedural and substantive law, as opposed to an Arbitral Award passed under the provisions of The Arbitration and Conciliation Act, 1996. Therefore, the Foreign Arbitral Award would have to be declared to be enforceable in India before it is deemed to be a decree of the

court and become executable in India as per para III of the reply on pp.4-5.

(d) There was no valid and binding contract with the Operational Creditor and hence there could be no arbitration proceedings and no arbitral award. The contract relied on be the Operational Creditor, on the basis of which the Foreign Arbitral Award was passed by the Sole Arbitrator was a 'draft' agreement, pending confirmation by the Corporate Debtor as per para IV of the reply on pp.5-6. The Corporate Debtor has placed on record all the written submissions made by it submitting the above-mentioned defences with the Sole Arbitrator as Exhibit R1 at pp.14-30 of the reply.

7. The objections of the Learned Counsel for the Corporate Debtor can be classified as follows: -

(a) A foreign award is not binding upon parties in India when it is yet to be found to be enforceable by the competent court under the Arbitration and Conciliation Act, 1996;

(b) There is a pre-existing dispute between the parties since the foreign award has not obtained finality;

(c) The petition is defective in as much as the signatory to the petition is not authorised by the board of directors of the Operational Creditor.

(d) Draft agreement and not a final contract between the parties.

8. The objections raised by the Corporate Debtor have been answered at length by the Learned Counsel of the Operational Creditor by its Rejoinder dated 12.07.2019 and written submissions dated 06.11.2019 and the Ld. Counsel of the Corporate Debtor by its written submissions dated 13.11.2019. The contentions of both the parties to the present petition can be collated and answered as under:

On foreign award 'not binding' upon parties in India

9. The Corporate Debtor has referred to section 46 of the Arbitration and Conciliation Act,1996 which provides that the enforceability of a foreign award is a pre-condition to its binding nature under the Indian law.

10. Section 46 of the Arbitration and Conciliation Act,1996 reads as under:

> *46. When foreign award binding.—Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defense, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.*

11. Accordingly, the reliance on the foreign award in the present petition by the Operational Creditor, without it being declared enforceable under applicable Indian law, is incorrect.

12. The provisions of section 46 read with section 48 and 49 of the Arbitration and Conciliation Act,1996 entitles a party to have a foreign award declared un-enforceable and not binding in India and that the binding nature of a foreign award is subject to the court being *"satisfied that the foreign award is enforceable under this chapter".* The scheme of the Arbitration and Conciliation Act,1996 further requires the party applying for enforcement of the foreign award to adduce evidence under section 47 in proof of the said foreign award.

13. The Corporate Debtor has also relied on the judgment of the Hon'ble Bombay High Court in the matter of ***Noy Vallesina Engineering Spa v. Jindal drugs Ltd. 2006 5 Bom CR 155*** which reads as follows:

"21. Reading of Section 46 of the Act quoted above shows that a foreign award is not considered to be binding in India on the parties to that award immediately after that award is made. But the award is considered to be binding on the parties only when it is found to be enforceable under Chapter-1 Part-II of the Act. Once it becomes binding, it can be relied on by the parties by way of defence, set off or otherwise in any legal proceedings in India. The provisions make it clear that a foreign award which is yet to be found to be enforceable by the competent court cannot be relied on for any purpose in India. It is also not considered to be binding on the parties to the award in India, till the competent court finds it to be enforceable. Finding of the court that the

foreign award is enforceable is necessary not only for the purpose of executing that award as a decree, but it is necessary also for relying on that award for any purpose in India. Thus, the term enforcement of a foreign award does not mean merely execution of that award as a decree, but it also includes using that award as a defence in legal proceedings for claiming set off on the basis of that award etc. Execution of the foreign award as a decree is only one facet of enforcement. Enforcement of a foreign award is a larger term than execution of the award. In other words, enforcement of a foreign award includes execution of that award as a decree.

22. Section 47 as observed above, lays down as to how an application for enforcement of foreign award is to be made. It is only Sub-section 1 of Section 47 which is relevant. It reads as under:

47(1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the court-

(a) the original award or a copy thereof, authenticated in the manner required by the law of the country in which it was made;

(b) the original agreement for arbitration or a duly certified copy thereof; and

(c) such evidence as may be necessary to prove that the award is a foreign award….

24. Perusal of the above quoted provisions shows that under Sub-section 1, the court can refuse to enforce the award only after the Respondent in those proceedings satisfies the court that the award is not enforceable for the reasons enumerated in Sub-section 1 of Section 48. In other words, Sub-section 1 of Section 48 casts the burden of proof on the Respondent to show that the foreign award, enforcement of which is sought, is not enforceable. In other words, if the Respondent in a petition either does not appear or fails to discharge the burden, the court would be justified in enforcing the award. So far as Sub-section 2 of Section 48 is concerned, it confers powers on the court to refuse to enforce an award, if the court is satisfied that the subject matter of the difference is not capable of settlement by the arbitration under the law of India or the enforcement of the award would be contrary to the public policy of India. In other words, Sub-section 2 casts the burden of proof on the Petitioner to satisfy the court that the subject matter of the award of which he is seeking enforcement is capable of being settled by arbitration under the law of India and that the award is not contrary to the public policy of India."

14. This principle of law was reinforced by the Hon'ble Supreme Court in the case of ***Sea Stream Navigation Ltd. V. LMJ International Ltd. 2013 SCC Online Cal 1940*** as under:

"68. … Since that decision of the Supreme Court the Arbitration and Conciliation Act, 1996 has been enacted Part II deals with enforcement of a foreign award. If we examine Sections 46, 48 and 49 of the Act, we form the opinion that a foreign award per se is not binding. It would only be binding if it passed the standards of enforceability set down in

Section 48. It stipulates the conditions when enforcement of a foreign award would be refused. However, the title to the section states the positive: the conditions for enforcement of foreign awards. Section 49 further strengthens the intention of Section 48 when it says that if and when the Court is satisfied that the award is enforceable, which simply means that the award satisfies the tests mention in Section 48, the award would be deemed to be a decree of the Court. Therefore, on my understanding of these sections a foreign award becomes binding and enforceable as a decree when objections are raised by the award debtor and after hearing the objections, the Court upholds the award. Or the Court suo motu examines the award and attains satisfaction (Section 49) that it is enforceable. The provision for suo motu satisfaction of the Court is ingrained in Section 49 of the Act."

15. The Operational Creditor submits that at the time of enforcement of foreign judgments in India, two situations may arise depending on whether the foreign judgment is passed by a court in – (i) a reciprocating territory or; (ii) a non-reciprocating territory.

16. A 'reciprocating territory' means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory. The decree passed by a court in a reciprocating territory can be executed in India as if it had been passed by the District Court.

17. The United Kingdom, where the Award has been passed in the present case, is a reciprocating territory in terms of section 44A

vide notification No.51 dated 01.03.1953 published in the Gazette of India, Extraordinary. Thus, the Award would no longer be open to challenge on merits.

18. The Operational Creditor submits that a Foreign Award is binding on persons between whom it was made and can be used by any of them by way of defence, set-off or otherwise in any legal proceeding in India. , in terms of section 46 of the Arbitration and Conciliation Act, 1996.

19. The Operational Creditor has relied on a judgment of the Hon'ble National Company Law Appellate Tribunal (NCLAT) in the matter of ***Usha Holdings L.L.C. & Anr. Vs Francorp Advisors Pvt. Ltd. C.P. No. (IB)- 196(PB)/2017*** which observed the following:

"4. Learned counsel appearing on behalf of the Appellants submitted that the Adjudicating Authority has no jurisdiction to decide the legality and viability of foreign decree and no right finding can be given by it….

*5. …*** – 13. …****

14. In the circumstances, we answer the first question in favour of the Appellant and hold that the Adjudicating Authority has no jurisdiction to decide the question of legality and propriety of a foreign judgment and decree in an application under Sections 7 or 9 or 10 of the 'I&B Code'…."

20. The Operational Creditor also relied on a judgment of the Hon'ble NCLAT in ***Peter Johnson John (Employee) Vs M/s KEC International Limited Company Appeal (AT) (Insolvency) No. 188 of 2019*** which clearly states as follows:

    "7. It is well settled that foreign decree either of reciprocating or nonreciprocating territory not passed on merits or not satisfying the requirements of Section 13 of CPC cannot be the basis of winding up petition. An ex-parte decree based on default summary judgment for nonappearance before a foreign court cannot be relied upon for seeking winding up of a company. Such decree cannot be held conclusive as it has not been given on merits of the case. Reference may profitably be made to law laid down by Hon'ble High Court of Delhi in ***"Rajkumar Gupta Vs. Barnes Investments Ltd. & Ors.", reported in 2007 (99) DRJ 629*** *and Hon'ble High Court of Bombay in "****Marine Geotechnics LLC Vs. Costal Marine Construction and Engineering Ltd.", reported in (2014) 183 CompCas 438 (BOM).*** *It cannot be disputed that the concept of winding up under the Companies Act, 2013 tantamount to liquidation under the I&B Code and viewed in perspective of legislative change it has to be accepted that the liquidation being culmination of the process under I&B Code as a sequel to failure of Insolvency Resolution, a foreign decree passed in ex-parte for default in appearance of the Corporate Debtor and not on merit could not be the basis for initiation of Corporate Insolvency Resolution Process."*

On a pre-existing dispute between the parties since the Foreign Award has not obtained finality

21. During the arbitration proceedings the Corporate Debtor filed their defences and submissions on 19.02.2018, 07.03.2018 and 20.03.2018 raising *inter alia* the following disputes:

i. That there was no valid and binding contract between the parties;
ii. That the contract being adjudicated upon was merely a draft contract; and
iii. That the Corporate Debtor never confirmed the terms and conditions nor had they signed the contract.

22. The petition was filed on the basis of the underlying transaction and hence the Corporate Debtor had raised a prior existing dispute *vide* its replies in the arbitration proceedings.

23. The Corporate Debtor submits that the foreign award had not obtained finality as it could either, prefer an appeal in the appropriate forum in London or it can object to the enforcement of the award under the provisions laid under section 48 of the Arbitration Act.

24. The amount due under the un-enforced foreign award does not fall under the definition of claim or debt under the IBC as the foreign award has not been enforced in India under the Arbitration Act, it cannot be said to be a judgment under Indian law and therefore there can be no right to payment.

25. The Hon'ble Supreme Court in ***K. Kishan Vs M/S Vijay Nirman Company Pvt. Ltd (Civil Appeal No. 21824 of 2017)*** held that pendency of challenge to an arbitral award qualifies as 'pre-

existing dispute' for the purposes of initiating corporate insolvency resolution process by the operational creditor.

26. The Operational Creditor referred to section 3(6) of the IBC, 2016 which defines claim as under:

    "claim" means—

    (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

    (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

27. A claim is defined to include a right to a remedy for breach of contract, if such breach gives rise to a right of payment, whether or not such a right has been reduced to a judgment. Thus, a claim includes a judgment, being an award passed by a court of competent jurisdiction.

28. The Arbitral Award passed as per the Arbitration Rule No. 126 of the 'GAFTA' was initiated for the breach of sales contract, after considering the disputes and submissions made by the Corporate Debtor in the Arbitral proceedings.

29. The existence of contract was already proved during Arbitration proceedings and after considering those the award was decided by the Sole Arbitrator.

30. The Operational Creditor submits that if a party receives a binding award from a country which is signatory to the New York Convention or the Geneva Convention and the award was made in the territory which has been notified as a convention country by India, the award would then be enforceable in India. An award is 'final' if under the laws of the country in which an award has been made, is no longer open to challenge on merits.

On defective petition

31. The Corporate Debtor submitted that the Board Resolution submitted by Operational Creditor (Exhibit A to the petition) authorises Mr. Vijaykumar Gopalan Iyengar to file the present petition. However, the petition is signed by Mr. Nirav Gandhi as per the Power of Attorney submitted. The Corporate Debtor submits that in absence of specific authority in favour of Mr. Nirav Gandhi, the present petition is defective.

32. The Corporate debtor has relied on the judgment of the Hon'ble National Company Law Appellate Tribunal (NCLAT) **Palogix Infrastructure Private Limited Vs. ICICI Bank Limited—Company Appeal (AT) (Insol.) No. 30 of 2017** held that a power of attorney holder is not authorised to present an insolvency application under sections 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016 ("IBC"). It is only authorised representatives, duly authorised by board resolution,

who are eligible to present the same. This is based on the simple rationale that a company being juristic person acts only through its board of directors, who can exercise all powers that the company is entitled to exercise, and it may through a resolution authorise any person to present an application. Further, officers authorised by the board cannot in turn give a power of attorney to any other person.

33. Board Resolution dated 05.07.2018 (Exhibit A at p.9 of the petition) appoints Mr. Vijaykumar Gopalan Iyengar, Director as constituted attorney giving him the authority *to appoint and authorise substitute as attorneys and to represent the Operational Creditor in various courts including the National Company Law Tribunal under the provisions of the IBC, 2016 of India*. Further at pp.12-13 of the petition a Power of Attorney dated 08.11.2018 signed by Mr. Vijaykumar Gopalan Iyengar, Director is annexed which states that the Operational Creditor appoints Mr. Nirav Dilip Gandhi as a constituted attorney *to represent the Operational Creditor in various courts including the National Company Law Tribunal under the provisions of the IBC, 2016 of India* along with Mr. Vijaykumar Gopalan Iyengar.

34. Hence it is clear from the above that Mr. Nirav Dilip Gandhi is rightly the authorised representative for the Operational Creditor to initiate the corporate insolvency resolution process against the Corporate Debtor.

On foreign award 'not binding' upon parties in India

35. Section 44A of the Code of Civil Procedure reads as under:

44A. Execution of decrees passed by Courts in reciprocating territory. –

(1) Where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

Explanation 1. -- "Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and superior Courts, with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation 2. -- "Decree" with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a

like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment.

36. The United Kingdom, where the Arbitration Award has been passed in the present case, is a reciprocating territory in terms of section 44A vide notification No. 51 dated 01.03.1953 published in the Gazette of India, Extraordinary as SRO 399. Thus, the Award would be capable of execution in India, and the challenge by the Corporate Debtor on this score need to be repelled.

On a pre-existing dispute between the parties since the Foreign Award has not obtained finality

37. The Hon'ble Supreme Court in **K. Kishan Vs M/S Vijay Nirman Company Pvt. Ltd (Civil Appeal No. 21824 Of 2017)** held that pendency of challenge to an arbitral award qualifies as 'pre-existing dispute' for the purposes of initiating corporate insolvency resolution process by the operational creditor. In the present case, there is no pending challenge to the Arbitral Award. This Bench is of the considered view that it is not possible to wait indefinitely for the Corporate Debtor to challenge the Arbitral Award, and that it has to decide the present petition on the basis of the admitted positions, that is to say, there is an Arbitral Award passed by a competent Arbitral Tribunal after the consideration of the positions of both the sides, and there is no challenge to the Arbitral Award dated

16.04.2018 in a manner known to law. Hence the same cannot be considered as a pre-existing dispute, and the objection of the Learned Counsel for the Corporate Debtor on this count is rejected.

On defective petition

38. The Corporate Debtor submitted that the Board Resolution submitted by Operational Creditor (Exhibit A to the petition) authorises Mr. Vijaykumar Gopalan Iyengar to file the present petition. However, the petition is signed by Mr. Nirav Gandhi as per the Power of Attorney submitted. The Corporate Debtor submits that in absence of specific authority in favour of Mr. Nirav Gandhi, the present petition is defective.

39. In the present case the Board of Directors of the Operational Creditor has, at its meeting held on 05.07.2018, resolved as follows:

"*Mr. Iyengar Vijaykumar Gopalan be and is hereby appointed as the Company's Constituted Attorney to do various acts, deeds and thigs on behalf of the Company, including:*

1. *to appoint and authorise substitute as attorneys*
2. *to represent the Operational Creditor in various courts including the National Company Law Tribunal under the provisions of the IBC, 2016 of India….*"

In pursuance thereof, and in exercise of the powers conferred on Mr. Iyengar Vijaykumar Gopalan, a specific authorisation

was given to Mr. Nirav Gandhi to initiate the present proceedings.

40. At the outset, it is clarified that the authority of Mr. Nirav Gandhi to file this petition cannot be challenged given the judgment of the Hon'ble NCLAT in ***Palogix Infrastructure Private Limited v ICICI Bank Ltd.*** [Company Appeal (AT) (Insolvency) No. 30 of 2017], the judgment is crystal clear in terms of the authority to file the insolvency petition. It says:

"38. This apart, if an officer, such as Senior Manager of a Bank has been authorised to grant loan, for recovery of loan or to initiate a proceeding for 'Corporate Insolvency Resolution Process' against the person who have taken loan, in such case the 'Corporate Debtor' cannot plead that the officer has the power to sanction loan, but such officer has no power to recover the loan amount or to initiate 'Corporate Insolvency Resolution Process', in spite of default of debt.

39. If a plea is taken by the authorised officer that he was authorised to sanction the loan and had done so, the application under section 7 cannot be rejected on the ground that no separate specific authorization letter has been issued by the 'Financial Creditor' in favour of such officer designate.

40. Given reasons as recorded above, while we hold that a 'Power of Attorney Holder' is not empowered to file application under section 7 of the 'I&B Code', we further hold that an authorised person has power to do so."

41. Therefore, on a plain reading of this decision, it is held that Mr Nirav Gandhi has the proper authority to file the present petition, and the objection raised by the Corporate Debtor holds no water.

42. Therefore, the Petition made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is more than minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

43. The Operational Creditor has proposed Mr. Rajeev Mannadiar as Interim Resolution Professional (IRP) in the matter.

44. It is, accordingly, hereby ordered as follows: -

    (a) The petition bearing **CP (IB) No. 798/MB/C-IV/2019** filed by Agrocorp International Private (PTE) Limited [UEN: 199005306N]**,** the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against National Steel and Agro Industries

Limited [CIN: L27100MH1985PLC140379], the Corporate Debtor, is **admitted.**

(b) There shall be a moratorium under section 14 of the IBC, regarding the following:

(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 Debtor 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 (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium:

(i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

(ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) **Mr. Rajeev Mannadiar**, **Registration No. IBBI/IPA-001/ IPP00212/2017-2018/10412**, residing at 401,

Darshan CHS, R Dadaji Street, Fort, Mumbai-400001, is hereby appointed as Interim Resolution Professional to carry out the functions as mentioned under IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP/RP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest with the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Operational Creditor shall deposit a sum of ₹3,00,000/- (Rupees three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

(i) The IRP/RP shall submit periodical reports to this Adjudicating Authority indicating the progress of the CIRP.

(j) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and IRP by Speed Post, email and WhatsApp (wherever feasible) immediately, and in any case, not later than two days from the date of this Order.

(k) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

Sd/- Sd/-

Ravikumar Duraisamy **Rajasekhar V. K.**

Member (Technical) Member (Judicial)

09.06.2020