

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P (IB) No. 600/KB/2019

In the matter of

An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of

UCO Bank

...Financial Creditor

Versus

In the matter of:

GIT Textiles Manufacturing Limited

...Corporate Debtor

Date of hearing: 20/05/2022

Order Pronounced on : 22/06/2022

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Counsels appeared physically/ through Video Conference:

Mr. Rahul Auddy, Adv. : For Financial Creditor

Mr. Shaunak Mitra, Adv.

Mr. Aditya Goopty, Adv.

Mr. Ritesh Agarwal, Adv. : For Corporate Debtor

Mr. Patita Paban Bishwal, Adv.

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The court convened physically/ through Video Conference today.
2. This petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **UCO Bank** on 4.04.2019 through its Chief Manager namely Ravi Kachhawa, authorised vide Power of Attorney dated 26th June, 2007(Annexure- I). The Financial Creditor seeks initiation of Corporate Insolvency Resolution Process in respect of **GIT Textiles Manufacturing Limited** /Corporate Debtor.
3. *Submissions/Contentions on behalf of Corporate Debtor*
 - 3.1. According to the Financial Creditor, in or about the year 2008, it was approached by the Corporate Debtor for sanction of credit facilities for Rs. 1162 Lakh. The Financial Creditor accordingly sanctioned credit facilities vide sanction letter dated 16.06.2008. The said sanction letter is annexed to the application as Annexure 4.
 - 3.2. Thereafter, the Corporate Debtor approached the Financial Creditor on multiple occasions for renewal of Credit Facilities and the Financial Creditor, on each separate occasion, renewed the credit facilities by the following sanction letters:
 - a. Sanction letter dated 21.07.2009 for Rs.1489 Lakhs [Annexure 5];
 - b. Sanction letter dated 22.06.2010 for Rs.2041 Lakhs [Annexure 6];
 - c. Sanction letter dated 19.06.2012 for Rs.3191 Lakhs [Annexure 7];
 - d. Sanction letter dated 29.09.2012 for Rs.3380 Lakhs [Annexure 8];
 - 3.3. Thereafter, the Corporate Debtor failed and neglected to pay its dues and interest on facilities as sanctioned by the Financial Creditor, and accordingly the account of the Corporate Debtor was declared NPA on

30.09.2012. The Financial Creditor accordingly sanctioned total credit facility of Rs. 20,41,00,000/- in favour of the Corporate Debtor.

- 3.4. The Financial Creditor has also filed application before the debt recovery Tribunal – I of the Gujarat state of Ahmedabad as properties of the Corporate Debtor is situated within the jurisdiction of Gujarat state.
- 3.5. Total amount claimed to be in default is Rs. 54,33,52,844.37/-. The date of NPA is shown to be 30th of September, 2012 which is also taken to be the date of default.
4. Part I of the petition contains the details of the applicant.
5. Part II of the petition contains the details of the Corporate Debtor.
6. Part III of the petition contains the particulars of the proposed Interim Resolution Professional.
7. Part-IV contains particulars of Financial Debt. In item 2 of this part the amount claimed to be in default and the date on which the default occurred are mentioned.
8. Part-V contains the particulars of financial debt, documents, records and evidence of default.
9. The CIBIL report is annexed at page- 403 to 424 of this application.

10. Submissions/Contentions on behalf of Corporate Debtor

- 10.1. There is no record of default with any information utility annexed with this application under Section 7 of IBC therefore, this application is defective. The applicant is guilty of forum shopping as he had filed proceedings before DRT for the same cause. The applicant does not have any authority to have filed this petition. There is no default within the meaning of IBC to initiate the present proceedings. Further, the instant petition is barred by limitation.
- 10.2. The applicant has not approached the tribunal with clean hands for the reasons mentioned in paragraph 6 of the reply affidavit. There was no mention of validity period of sanction the promoters and the Corporate

Debtor company had invested their contribution in the project and subsequently approach the applicant bank for disbursement as per their sanction.

- 10.3. It is submitted that the applicant has sanctioned the alleged credit facilities to the respondent by way of sanction letter dated 29.12.2005 as per terms and conditions mentioned therein and thereby sanctioned three separate credit facilities *i.e* cash credit facility of ₹40 lakh, term loan of ₹960 lakh, bank guarantee of ₹82 lakh and One Time Import Letter of Credit (DP) – Limit ₹1111.76 Lakh.
- 10.4. It is further submitted that the implementation period according to the project submitted by the respondent was for two years, and the same was accepted by the bank in their sanction letter by not mentioning any validity period of sanction. Further, there was a condition that the promoters of the respondent would bring their contribution as upfront and would invest the same in the project before disbursement of any amount as per sanction dated 29.12.2005 by the applicant bank. As per the terms of the sanction letter dated 29.12.2005, the promoters of the respondent company have invested their contribution in the project and subsequently, approached the applicant bank for disbursement as per their sanction. At that point of time, instead of disbursement of the amount it was informed by the applicant bank that validity of sanction letter 29th of December, 2005 has expired.
- 10.5. The Applicant bank has not averred anything about first sanction of the year 2005 and pleaded that the first sanction had taken place only in 2008 therefore, the bank has suppressed the factual position from this Adjudicating Authority.
- 10.6. The Applicant bank stopped the disbursement of the sanctioned limit and therefore, the Corporate Debtor suffered huge loss on account of pre-operative expenses and escalation of project cost and interest etc. The enhanced limit was not sufficient to implement the project nor it was as per the request of the Corporate Debtor.
- 10.7. The Corporate Debtor in paragraph 10, 11, 12, 13, 14, 15, 16 has tried to point out breach of various obligations on the part of the bank in providing

the credit facilities to the Corporate Debtor. The respondent thus states that the Corporate Debtor is not responsible for the alleged claims of the bank.

- 10.8. It is further submitted that the amount shown in the application is not correct and the applicant bank is not entitled to any relief in its favour. Being aggrieved of the action of the bank, the Corporate Debtor accordingly had filed S.A No. 46/ 2013 before DRT-I Ahmedabad thereby challenging the actions of the bank.
- 10.9. It is submitted that the alleged default occurred on 30.09.2012 and the classification was also done on 30.09.2012, whereas the present petition was filed somewhere in the month of April, 2019, this clearly establishes that the same is not within the limitation period.

11. Analysis and Findings:

- 11.1 Heard the Ld. Counsel for the Financial Creditor and the Ld. Counsel for the Corporate Debtor and perused the records.
- 11.2 Firstly, the Corporate Debtor contended that the Financial Creditor is guilty of forum shopping and has filed proceedings before DRT for the same cause. However, it is to be noted that the purpose of proceedings under Recovery of Debts Due to Banks and Financial Institutions (RDDBFI Act), 1993 is debt recovery and an action under the Insolvency and Bankruptcy Code aims at resolution of the insolvency of the Corporate Debtor. As such, taking action under one legislation cannot curtail the Financial Creditor's right under the Insolvency and Bankruptcy Code 2016.
- 11.3 The second contention of the Corporate Debtor is that the instant petition is barred by limitation. It can be seen that the date of default is mentioned to be 30.09.2012 i.e the date on which the account became NPA. Accordingly, the limitation period for filing the application would ordinarily end on 30.09.2015. However, balance sheets of the Corporate Debtor from the year 2012 to 2019 have been placed on record by the Financial Creditor in the supplementary affidavit dated 6.02.2020. In these Balance sheets, multiple acknowledgments of debt to the Financial Creditor have been made by the Corporate Debtor, specifically, the Corporate Debtor has acknowledged the

debt in the balance sheets of Financial Years 2012-13, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19.

In this regard, we seek to rely on the law laid down in ***Laxmi Pat Surana V. Union Bank of India & Anr, decided*** on March 21, 2021, wherein the Hon'ble Supreme Court has held that

*“37. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 of the Code. However, Section 7 comes into play when the corporate debtor commits "default". Section 7, consciously uses the expression "default" not the date of notifying the loan account of the corporate person as NPA. Further, the expression "default" has been defined in Section 3(12) to mean non-payment of "debt" when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor would get triggered the moment the principal borrower commits default due to non-payment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of PA but before the expiration of three years there from including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. **Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 of the Code enures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be***

before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 of the Code. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under section 7 of the Code.”

In light of the aforementioned judgment, it is clear that due to the specific admissions of debt by the Corporate Debtor, section 18 of the Limitation Act, 1963 will come into effect and result in computation of fresh limitation period of three years from the date of acknowledgment in each balance sheet. Since the last of such acknowledgments was made on 31st March 2019, the limitation period would last up till 31st March 2022. As such, the present petition is well within limitation.

- 11.4 The third contention of the Corporate Debtor is that the above-mentioned admissions are not valid as the debt so acknowledged by the Corporate Debtor in the said balance sheets is disputed. The Corporate debtor has claimed that there was breach of various obligations on the part of the bank in providing the credit facilities to the Corporate Debtor. As such, the Corporate Debtor is not responsible for the alleged claims of the bank. While considering this plea of the Corporate Debtor, we seek to rely on the decision taken by Hon’ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank [(2018)1SCC407]*** wherein it was held that:

“30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the

adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

Further, in ***Khan Bahadur Shapoor Freedom Mazda v. Durga prasad***, [(1962) 1 SCR 140], the Hon’ble Supreme Court has held that:

“6.....Words used in the acknowledgment must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words.

If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement.”

In view of the law laid down in the aforementioned judgments, this Adjudicating Authority is satisfied that the debt albeit disputed was due from the Corporate Debtor to the Financial Creditor and the Corporate Debtor has made a default in the payment of the same and has also acknowledged the said fact and therefore the plea of Corporate Debtor is untenable and needs to be rejected.

12. It is, accordingly, hereby ordered as follows: -
 - a. The application bearing **CP (IB) No. 600/KB/2019** filed by **UCO Bank** (Financial Creditor), under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **GIT Textiles Manufacturing Limited** , CIN: U18101WB2005PLC104725, the Corporate Debtor, is **admitted**.
 - b. There shall be a moratorium under section 14 of the IBC.

- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority 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.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Mr. Sunil Kumar Agarwal**, registration number **IBBI/IPA-001/IP-P01390/2018-19/12178**, email: **anil91111@hotmail.com** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. 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 shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h. The Financial Creditor shall deposit a sum of ₹2,00,000/- (Rupees Two 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. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
 - j. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means 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.
13. **CP (IB) No. 600/KB/2019** to come up on **2nd August 2022** for filing the progress report.
 14. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed this the 22nd day of June, 2022

Zia/ SM[LRA]