

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

CP (IB) - 2685/I&B/MB/2019  
Under Section 7 of the I&B Code, 2016

**In the matter of**

Bank of Baroda  
Meher Chambers, Ground Floor, Sunderlal  
behl marg, Ballard Estate,  
Mumbai - 400 001

.... Financial Creditor

Vs.

U S Realty Private Limited  
115 J K Chambers, Sec - 17, Vashi,  
Navi Mumbai - 400 705

....Corporate Debtor

**Order delivered on: 29.01.2020**

**Coram:**

Hon'ble Shri Bhaskara Pantula Mohan, Member (J)  
Hon'ble Shri Shyam Babu Gautam, Member (T)

For the Petitioner: Mr. Prakash Shinde, Ms. M. Swati, Mr. Nishit  
Dhruva, Advocates i/b MDP & Partners.

For the Corporate Debtor: None present

***Per: Shri Bhaskara Pantula Mohan, Member (Judicial)***

**ORDER**

1. This is an application filed under Section 7 of the Insolvency and Bankruptcy (I&B) Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Bank of Baroda (hereinafter called the 'Financial Creditor') through its authorised person Mr. Umesh Sonkar, Chief Manager, seeking the Corporate Insolvency Resolution Process of U S Realty Private Limited (hereinafter called the 'Corporate Debtor') on the ground that the Corporate Debtor committed breach by making default in repayment of the credit facilities provided to them.

2. The Financial Creditor is a Bank incorporated on 21/07/1908 whereas the Corporate Debtor is a company incorporated on 19/01/2005 bearing CIN U70100MH2005PTC150744, having Authorised Capital and Paid-Up Share Capital of Rs. 1,00,00,000/-.

3. The counsel appearing on behalf of the Financial Creditor submitted that two Credit facilities were sanctioned by them in favour of the Corporate Debtor. Cash Credit for working capital requirements worth Rs. 9,00,00,000/- was sanctioned vide sanction letter dated 08/09/2011. Further, this Cash Credit for working capital requirements was reviewed/revised and enhanced to 15,00,00,000/- vide a sanction letter dated 15.10.2012. Therefore, the total amount granted to the Corporate Debtor by the Financial Creditor is Rs. 15,00,00,000/-. The counsel for the Financial Creditor further submitted that the principal amount of Rs. 15,78,54,744/- along with uncharged interest of Rs. 13,85,53,744/- which comes to a tune of Rs. 29,64,08,019/- is due upon the Corporate Debtor as of 05/07/2019. The account of the Corporate Debtor was declared NPA on 01/10/2015.

4. There were various securities held by the Bank of Baroda with respect to these abovementioned loan facilities by it to the Corporate Debtor including equitable mortgages of different properties, Hypothecation of Stocks, book debts, plant machinery and other fixed assets etc. of the company.

5. The Financial Creditor has submitted the following documents in support of their contentions:

- i. Letter of Authorisation and Power of Attorney
- ii. Master Data as available on the website of Ministry of Corporate Affairs
- iii. Consent of the proposed Interim Resolution Professional in Form 2
- iv. Sanction Letter dated 08.09.2011
- v. Sanction Letter dated 15.10.2012
- vi. Working for computation of amount and days of default
- vii. Statement of Accounts
- viii. Valuation Reports
- ix. Copy of the Certificate of Registration of Charge

- x. Letter of Undertaking dated 29.09.2011, 29.10.2011 and 31.12.2012
- xi. Memorandum recording creation of equitable mortgage dated 29.09.2011
- xii. Demand Promissory Notes dated 29.09.2011 and 31.12.2012
- xiii. Composite Hypothecation Agreement dated 29.10.2011
- xiv. Agreement of Guarantee dated 29.09.2011
- xv. Declaration cum undertaking cum Authority dated 29.09.2011 and 02.01.2013
- xvi. General form of Guarantee dated 29.09.2011
- xvii. Memorandum of equitable mortgage dated 02.01.2013
- xviii. Corporate Guarantee issued by Udani Traders and U S Construction dated 31.12.2012
- xix. General Form of Guarantee of Personal Guarantors of Urmish Udani and Neha Udani dated 31.12.2012
- xx. Special Composite Agreement of Hypothecation of goods book debts movable machinery and vehicle dated 31.12.2012
- xxi. Letter of Continuing Security dated 31.12.2012
- xxii. Copy of the CIBIL Report of the Corporate Debtor
- xxiii. Copies of entries in the bankers book in accordance with Bankers Books Evidence Act, 1891 along with Certificates under Banker's Book Evidence Act, 1891
- xxiv. Letter of Acknowledgement of Debt in favour of the Financial Creditor dated 12.12.2014 and 31.12.2012
- xxv. Balance Sheets of the Corporate Debtor
- xxvi. Recall Notice
- xxvii. Form No. AOC-4 filed with MCA-Form for filing financial statement and other documents with the Registrar for the Financial Year ended 31.03.2018
- xxviii. Directors Report for the Financial Year ended 31.03.2018
- xxix. Independent Auditor's Report for the Financial Year ended 31.03.2018

6. The matter was listed for hearing before this bench on various dates i.e. on 22.08.2019, 18.09.2019 and 17.10.2019 but there was no representation on behalf of the Corporate Debtor whenever it came before us. Despite considerable opportunities given to the

Corporate Debtor, he did not tender his appearance and in view of this, the petitioner has presented his case. Accordingly, to meet the ends of justice, this Bench is pleased to pass the following order:

**FINDINGS**

7. We have heard the petitioner at length, taken all the submissions into account and perused the documents and evidences placed on record. It has become very clear that there was an express Loan Agreement in the form of Credit Facilities sanctioned in favour of the Corporate Debtor. Vide a sanction letter dated 08.09.2011, a Cash Credit for Rs.9,00,00,000/- was sanctioned. Later this amount was increased to Rs.15,00,00,000/- vide another sanction letter dated 15.10.2015.
8. The Statement of Accounts have been submitted by the Financial Creditor which clearly shows the disbursement of the amount to the Corporate Debtor. Further, as contended by the Financial Creditor the amount payable to them by the Corporate Debtor amounts to Rs.29,64,08,019,00/- including principal amount of Rs.15,78,54,744.00/- plus an interest of Rs.13,85,53,744.00/-.
9. Securities in the form of equitable mortgages of different properties, Hypothecation of Stocks, book debts, plant machinery and other fixed assets etc. of the company was held by the Bank of Baroda. The Corporate Debtor had also undertaken with the Financial Creditor for the above securities. Also, the Corporate Debtor had executed a Promissory Note dated 29.09.2011 for an amount of Rs.9,00,00,000/- and later another Promissory Note dated 31.12.2012 for an amount of Rs.6,00,00,000/-.
10. The counsel for the Financial Creditor also presented the Director's Report and the Independent Auditor's Report, both for the Financial Year ended 31.03.2018 wherein the Corporate Debtor has acknowledged the debt and hence, this is an implied admission on behalf of the Corporate Debtor as their balance sheet itself makes disclosure about the existence of debt.
11. Therefore, after perusing all the documents on record and hearing the petitioner at length, there remains no doubt regarding the

existence of default on part of the Corporate Debtor in making payment towards the liability of the Financial Creditor. Despite repeated requests and reminders in form of notices, the Corporate Debtor failed to repay the dues. Also, the Corporate Debtor had made no representation before this Tribunal even when a considerable opportunity was given by us on various dates of hearing i.e. on 22.08.2019, 18.09.2019 and 17.10.2019. Therefore, this Bench hereby passes this ex-parte order.

12. Further, it is to be noted that the amount of default is much above the minimum required amount of Rs,1 Lakh as well as this petition fulfils all the requisite conditions to admit a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 and therefore, the petition deserves to be admitted.

13. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Financial Creditor as a major constituent for admission of a petition under section 7 of the I&B Code. Therefore, the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

- (I) (a) 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;
- (b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (c) 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 Act, 2002 (SARFAESI Act);
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the 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 29.01.2020 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be.
- (V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (VI) That this Bench hereby appoints, Mr. Pravin R. Navandar, having office at 519-520, Neelkanth Business Park, Nathani Road, Opp. Vidhya Vihar Station, Vidhyavihar West, Mumbai-400 086 and having Registration No. IBBI/IPA-001/IP-P00008/2016-17/10027 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

14. Accordingly, this Petition is admitted.

15. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

**Sd/-**

**Shyam Babu Gautam**  
**Member (Technical)**

**Sd/-**

**Bhaskara Pantula Mohan**  
**Member (Judicial)**

/SNEHA BOTWE/