IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I,
KOLKATA

CP(IB) No. 1837/KB/2019

A Petition under section 7(1) 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, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970, having its head office at 10, BTM Sarani, Kolkata- 700001 and Flagship Corporate Branch at 2, India Exchange Place, Kolkata 700001, in the State of West Bengal.

.....Financial Creditor

-Versus-

Limtex (India) Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, and having Corporate Identification No- U01132WB1992PLC054383 and its registered office at "the legacy", 25A, Shakespeare Sarani, 2nd Floor, Kolkata-700017 in the State of West Bengal.

.... Corporate Debtor

Date of Hearing : 07 June, 2022

Date of pronouncing the order: 13 June , 2022

Coram:

Shri Rajasekhar V.K., Member(Judicial)

Shri Balraj Joshi, Member(Technical)

Appearances (via video conferencing):

For the Financial Creditor : Mr. Rishav Banerjee, Advocate
Mr. Rahul Auddy, Advocate
Mr. Aditya Gooptu, Advocate

For the Corporate Debtor : Ms. Debaleena Ganguly, Advocate
Mr. Tapas Kumar Das, Advocate

ORDER

Rajasekhar V.K., Member (Judicial):

1. This Court convened through video conferencing.
2. This Company Petition under section 7(1) of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 , has been filed by **UCO Bank** through its Flagship Corporate Branch, Kolkata (hereinafter referred to as the Financial Creditor), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Limtex (India) Limited** (hereinafter referred to as the Corporate Debtor).

Submissions on behalf of the Financial Creditor:

3. The corporate Debtor was a constituent of the Financial Creditor and was enjoying credit facilities with the Financial Creditor with an aggregate limit ₹15,00,00,000/- (Rupees Fifteen Crore Only) under a consortium arrangement with State Bank of India, inter alia, in the following Accounts:-
   i) Cash Credit (Hypothecation A/c)- ₹4,00,00,000/- (Rupees Four Crore Only);
   ii) Export Packing Credit- ₹4,40,00,000/- (Rupees Four Crore Forty Lakh Only);
   iii) FBP/FBN A/c- ₹5,00,00,000/- (Rupees Five Crore Only);
   iv) Letter of Credit A/c- ₹2,00,00,000/- (Rupees Two Crore Only);.
4. The said credit facilities were sanctioned, inter alia, on the terms and conditions as recorded in a Sanction Advice dated 20 November, 2014 issued by the Financial Creditor. The Corporate Debtor duly accepted the terms and conditions of such sanction and the same is evident from a copy of the said Letter of Sanction dated 20 November, 2014 as well as from the extract of the Board Resolution of the Corporate Debtor dated 21 November, 2014. On 25 November, 2014, the Corporate Debtor executed various banking

documents for the purpose relating to such credit facilities and undertook to comply' with various export trade/ exchange, etc. In or about January, 2015 at the request of the Corporate Debtor the terms of the said credit facilities were modified by the Financial Creditor.

5. The Corporate Debtor failed to operate the said amounts in terms of the agreement and/or arrangement and the Corporate Debtor started defaulting in the servicing of interest as well as the principal amounts. Thus, the accounts have become Irregular and declared a Non-Performing Asset (NPA) on 30th September 2016.
6. In view of the failure on the part of the Corporate Debtor and/or the guarantors to liquidate their dues with the Financial Creditor in spite of repeated requests and reminders, the Financial Creditor was compelled to call up the said credit facilities and issued Notice of Demand dated 6 March, 2017 demanding payment of the entire outstanding from the Corporate Debtor.
7. In spite of such demand made as aforesaid, the Corporate Debtor has failed to liquidate the outstanding in the said accounts. The Corporate Debtor availed of the aforesaid credit facilities but failed to operate the said accounts in conformity with the terms and conditions on the basis or which it was granted and started defaulting in liquidating the outstanding dues and/or to regularize the accounts there became due from and owing by the Financial Creditor to the Corporate Debtor an aggregate sum of ₹25,58,52,513/- (Rupees Twenty-Five Crore Fifty-Eight Lakh Fifty-Two Thousand Five Hundred and Thirteen Only) as on 30 September 2019. In spite of repeated requests and reminders, the Corporate Debtor have faulted and neglected to clear the Corporate Debtor's dues.

Submissions on behalf of the Corporate Debtor:

8. The application filed by the Financial Creditor under section 7 of the Code is not maintainable in law and is barred by limitation. According to the Financial Creditor, the loan account was classified as NPA on 30 September, 2016 and the said application under section 7 of the Code has been filed 24 October 2019.

9. It is an admitted fact that the loan granted by UCO Bank to the Corporate Debtor was granted under a Consortium with State Bank of India (SBI). The present application under section 7 of the code is not maintainable only at the instance of the UCO Bank without making SBI a party in the present proceedings. SBI is the lead bank. The lead bank, SBI for self and on behalf of UCO Bank, have issued possession notice dated 17 August 2017 under section 13(4) of the SARFAESI Act 2002 in respect of the Coimbatore property belonging to the Corporate Debtor. Challenging the said possession notice, the Corporate Debtor had filed an application under section 17 of the SARFAESI Act, 2002 in the Debt Recovery Tribunal- I Kolkata. The said application is still pending. As such, during the pendency of the said application, the Financial Creditor is not entitled to file the instant petition.
10. The Corporate debtor denies that as on 30 September 2019, the outstanding principal payable by the Corporate Debtor is ₹ 25,58,52,513/-. Further, it is stated that Sri Prasanjit Roy, who has verified and affirmed the affidavit in support of the application under section 7 of the Code, is not legally authorized by the Financial Creditor to do so and on this ground too, the instant petition is liable to be dismissed

Rejoinder on behalf of the Financial Creditor:

11. It is submitted on behalf of the Financial Creditor that the instant petition under section 7 of the Code is maintainable and not barred by the laws of limitation at all. It is stated that the account of the Corporate Debtor was declared NPA on 30 September 2016. Thereafter the Corporate Debtor has made clear unequivocal admission in its balance sheet for the year ending 31 March 2018 and 31 March 2019 about its debts and outstanding to the Financial Creditor. It is a settled principle of law that an acknowledgment in a balance sheet will be considered as a continuation of the cause of action under section 18 of the Limitation Act, 1963.
12. It is further stated that from the Index of Charges of the Corporate Debtor as available in the website of the Ministry of Corporate Affairs, a charge in connection with the credit facilities granted by UCO Bank for a sum of

₹15,00,00,000/ - is appearing even as on date of affirmation of this Rejoinder, and the creation of charge and the subsistence of the same as on date is also to be construed as an acknowledgment of debt by the Corporate Debtor.

13. It is further denied that the instant section 7 petition is not maintainable since the same is not conjointly filed with State Bank of India. It is further stated that under the law there is no embargo for one of the financial creditor to proceed individually under the Code against the Corporate Debtor so long as the said Financial creditor is meeting the minimum criterion required to file a section 7 application. It is denied that during the pendency of a SARFAESI proceeding, application under section 7 of the Code cannot be filed. Both the proceedings are independent and there is no embargo under the law. It is denied that during the pendency of SARFAESI application the financial creditor is not entitled to file a petition under Section 7 of the Code as alleged or at all.
14. It is denied that Prasenjit Roy is not properly, legally or validly authorized by UCO Bank to sign or affirm the instant section 7 petition or that the instant application is liable to be dismissed with costs as alleged or at all.

Analysis and Findings

15. Heard the Ld. Counsel for the Financial Creditor and the Ld. Counsel for the Corporate Debtor and perused the records.
16. The date of default in the instant petition is 30 June 2016 *i.e* the date on which the accounts of the Corporate Debtor were declared NPA. The date of filing of this petition is 24 October, 2019, which would ordinarily mean that the petition would be barred by limitation. However, in light of the acknowledgement of the Corporate Debtor towards its debt due to the Financial Creditor in its balance sheets for years ending on 31 March 2018 and 31 March 2019 as well the admission of the said fact in the auditor’s reports attached to the abovementioned balance sheets , specifically at pages 36 and 169 respectively of the rejoinder, fresh limitation periods shall ensue from the date of the acknowledgements. As such the instant petition is well within the period of limitation.

17. Further a demand letter under section 13(2) of the SARFAESI Act, 2002 was issued on 8 March 2017. The contention of the Corporate Debtor is that during the pendency of proceedings under SARFAESI Act, 2002, a petition under the Code cannot be filed. The said contention cannot be considered since actions under the Code and the SARFAESI Act are two different legislations in two different fields. The purpose of one is recovery and the purpose of the other is resolution of insolvency. Therefore, proceeding with one course of action cannot hinder with the right of the party to proceed with another.
18. Keeping in view that a default in the payment of a financial debt has occurred and has been acknowledged by the Corporate Debtor, and that the said application is not barred by limitation, we are of the view that the instant application under section 7 of the Code is complete in all respects.
19. It is, accordingly, hereby ordered as follows: -
    a) The application bearing **CP (IB) No. 1837/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 **Limtex (India) Limited**, CIN: U01132WB1992PLC054383, 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) **Shri Sandip Mitra**, registration number **IBBI/IPA-001/IP-P00497/2017-18/10085**, email: **sasoso@gmail.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 Rs. 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) 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.

20. **CP (IB) No. 1837/KB/2019** to come up on **29 July 2022** for filing the periodical report.

21. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

BALRAJ JOSHI
Digitally signed by BALRAJ JOSHI
Date: 2022.06.13 15:40:54 +05'30'

Rajasekhar V K
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Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

Signed on this, the 13th day of June, 2022

SM[LRA]