

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/763/2019 filed under Section 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. Vajram Spinning Mills Pvt. Ltd.***

UCO Bank

Rep by its Chief Manager,
Rajapalayam Branch,
Zonal Office, Vijay Towers,
1st Floor, 22, Father Randy Street,
R.S. Puram
Coimbatore – 641 002

... Financial Creditor

-Vs-

M/s. Vajram Spinning Mills Private Limited

Reg. Off:-

No.135, Cotton Market,
Rajapalayam,
Tamil Nadu – 626 117

...Corporate Debtor

Order Pronounced on 30th January 2020

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Financial Creditor : V. Suthakar, Counsel
K.S. Viswanathan, Counsel
T. Hemalatha, Counsel*

For Corporate Debtor : None – appeared



ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. Under Adjudication is IBA/767/2019 that has been filed by **UCO Bank** (hereinafter referred to as '**Financial Creditor**') under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Vajram Spinning Mills Private Limited** (hereinafter referred to as '**Corporate Debtor**'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part I of the application, sets out the details of the Financial Creditor from which, it is evident that the Financial Creditor is body Corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 and the Registered office as per the Application is stated to be at Vijay Tower, 1st Floor, 22, Father Randy Street, R.S. Puram, Coimbatore – 641 002.

3. As per Part II of the application, the Corporate Debtor is a Private Limited Company with Corporate Identification



Number U17121TN2008PTC068260 and registered office of the Corporate Debtor as per the Application is stated to be situated at No.135, Cotton Market, Rajpalayam, Tamilnadu – 626 117. As per Part III of the application, the Financial Creditor has proposed the name of one S. Muthuraj, Registration Number: IBBI/IPA-002/IP-N00009/2016-17/10013 as the Interim Resolution Professional

4. Part IV of the application signifies the amount of debt to the tune of Rs.9,44,55,508.38/-. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default as described below:

- i) Hypothecation of Goods to secure a Demand Cash
- ii) Guarantee Agreement
- iii) Deed of Hypothecation of movable plant and machinery to secure a term loan.
- iv) Agreement relating to term loan
- v) Acknowledgment of debts and liabilities (five loan accounts)
- vi) Equitable mortgage created by depositing title deeds belonging to M/s. Vajram Spinning Mills measuring an extent of 409 Cents situated at Survey No.61/1, 2A, 2B, 2C, 3A, 3B, 7, 8 and 9, Madurai Road, Mamasapuram Village, Idayankulam, Panchayat, Srivilliputhur Taluk.

- vii) Equitable mortgage created by depositing the title deeds of the land and building belonging to N. Selvaraj, comprised in S.No.135/11, New Survey No.135/2, Door No.79C and 79D, Ward No.31, New Ward No.41, Town Survey No.6 and 7, Ward I, Block No.12, P.S. Kumarasamy Raja Nagar, Pudupalayam, Pudupalayam town, Rajapalayam

5. The Learned Counsel for the Financial Creditor submitted that the Financial Creditor has granted Cash Credit and Term Loan to the Corporate Debtor on various dates and the Corporate Debtor has committed default in the repayment of the said loan. The details of the loans granted by the Financial Creditor and the Outstanding Balance are reproduced below;

Sl. No.	Facility	Sanction Limit	Outstanding Balance (without interest) as on 06.02.2016
1	Cash Credit	3,50,00,000	3,27,10,608.69
2	Term Loan	3,60,00,000	1,67,69,499.36
3	Term Loan	50,00,000	48,06,582.41
4	Term Loan	51,70,000	46,76,098.58
5	Term Loan	30,00,000	3,58,199.24
	TOTAL	8,41,70,000	5,93,20,988.28

6. It was submitted by the Learned Counsel for the Financial Creditor, the account of the Corporate Debtor was classified as NPA on 06.02.2016 and the above table would show the outstanding amount of the Corporate Debtor without

interest as on the date of NPA. Upon a query raised by this Tribunal to the Financial Creditor, that as to whether this petition has been filed within the period of limitation, because, it is evident from the records that the date of NPA is 06.02.2016 and the present petition was filed on 28.05.2019, which is beyond the 3 years period of limitation for pre-forming this Application, for which, the Learned Counsel for the Financial Creditor submitted that they have obtained acknowledgment of debt from the Corporate Debtor on 06.01.2018 and as per Section 18 of the Limitation Act, the said acknowledgment was obtained within the 3 years period of limitation and as such the period of limitation is extended for a further period of three years from 06.01.2018 and as a result thereof, the present petition is saved by limitation.

7. A perusal of the typed set filed by the Financial Creditor would show that the Financial Creditor has obtained acknowledgment of debt from the Corporate Debtor on 06.01.2018 with respect to 5 different accounts as mentioned above independently.

8. Further, the Financial Creditor has filed their Information utility Report dated 27.11.2019 in relation to the Corporate Debtor on 10.12.2019 vide Diary No.6545 and a perusal of the



same shows the Status of Authentication as "Deemed to be Authenticated".

9. In relation to the Corporate Debtor, it may be noted from the record of proceedings that the Corporate Debtor has not preferred to enter appearance before this Tribunal despite notice being served from the Registry of this Tribunal and also by the Financial Creditor. The Financial Creditor has also filed an affidavit of service vide diary No. 5845 dated 14.11.2019 and the service against the Corporate Debtor is held sufficient and in the circumstances, we are constrained to proceed in the absence of the Corporate Debtor.

10. Thus, we are also satisfied that there is a debt and default on the part of the Corporate Debtor and the Corporate Debtor is unable to repay its dues to the Financial Creditor. It has also been consistently held by the Hon'ble Supreme Court both in **Innoventive Industries Ltd. -Vs- ICICI Bank and another (2018) 1 SCC 407** as well as **Mobilox Innovations Pvt. Ltd.. -Vs- Kirusa Software Pvt. Ltd. (2018) 1 SCC 353** after going through the Scheme of I&B Code, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor as compared to the one filed under Section 9 by an Operational Creditor, in relation to a Section 7



Application where there is an existence of a 'financial debt' and its default in excess of Rs.1,00,000/-, this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP) and in relation to a Section 7 Application defence of set off or counter claim put forth by the Corporate Debtor cannot be considered as a dispute in relation to the Financial debt and default in relation to it. In the present case, it is clear that there is a default on the part of the Corporate Debtor for a sum exceeding Rs.1 Lakh.

11. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that this Application as filed by the Applicant – Financial Creditor is required to be admitted under Section 7 (5) of the I&B Code, 2016.

12. The Financial Creditor has proposed the name of one **S. MUTHURAJ** having Registration Number [**IBBI/IPA-002/IP-N00009/2016-2017/10013**] (Email id:- **smrajunaidu@gmail.com**) (Mob:- **+91-9994103021**) as *Interim Resolution Professional* (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to



Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

13. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- (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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (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.”

14. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) The provisions of sub – section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”

15. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;



- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub - section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

16. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the Respondent above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order forthwith by the Registry.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond