

**In the National Company Law Tribunal  
Kolkata Bench  
Kolkata**

**CP(IB)No.306/KB/2019**

**In the matter of:**

An application for initiation of Corporate Insolvency Resolution Process 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;

**-And-**

**In the Matter of:**

UCO Bank, a Banking Company constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and having its head office at 10, Biplabi Trailakya Mahraj Sarani, Kolkata – 700001 and its Assets Management Branch, 5, L.L.R. Sarani, Kolkata-700020.

.....Financial Creditor

**In the Matter of:**

M/s Kumlai Tea and Industries Ltd., a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 1, Ganesh Chandra Avenue, Kolkata-700013.

..... Corporate Debtor

**CORAM: Shri M.B. Gosavi, Member (Judicial)**

52

Counsels appeared:

## For Financial Creditor

1. Mr. Rishav Banerjee, Advocate
2. Mr. Rahul Auddy, Advocate

## For Corporate Debtor

1. Mr. Sukanta Sarkar, Advocate

## For Corporate Guarantor

1. Mr. Deepak Kumar Khaitan, Pr. CS

Date of pronouncement of order: 01<sup>st</sup> August, 2019.

**ORDER**

Per Shri M.B. Gosavi, Member (J):

1. **UCO Bank** - the Financial Creditor has filed this application under Section 7 of Insolvency and Bankruptcy Code, 2016 against **M/s Kumlai Tea and Industries Ltd.** - the Corporate Debtor to start Corporate Insolvency Resolution Process (in short "CIRP") of the Corporate Debtor as the Corporate Debtor committed default in paying financial debt of Rs. 45,62,70,000/- (Rupees Forty Five Crores Sixty Two Lakhs Seventy Thousand Only).
2. The Financial Creditor stated that by letter of disbursement dated 23.04.2019, the Financial Creditor granted and disbursed various terms loan, cash credit facilities etc. to the Corporate Debtor. Total sum of money then lent was Rs. 12,06,82,000/- (Rupees Twelve Crore Six Lakh Eighty



Two Thousand Only). The Corporate Debtor committed default in paying the debt. After 3206 days from disbursement of the amount, the Corporate Debtor declared to Non Performing Assets (in short "NPA") (i.e. on 31.01.2019). Since the Corporate Debtor committed default in in paying the financial debt, this proceeding is filed under Section 7 of Insolvency and Bankruptcy Code,2016.

3. The Corporate Debtor served with the notice of this proceeding. They appeared in the matter through M/s S L Services & Company, Advocates but they did not file affidavit-in-reply despite several opportunities. On the date of hearing of this application, i.e. on 25.07.2019, one Mr. Deepak Kumar Khaitan, Pr. CS appeared and submitted that he was appearing for the guarantor of the Corporate Debtor and they are trying to resolve the issue.

4. This proceeding is pending for admission for more than six(6) months. Hence, his prayer to adjourn the matter was rejected and matter was heard ex-parte against the Corporate Debtor.

5. I Heard Ld. Counsel for the Financial Creditor, Mr. Rishav Banerjee. I perused the records.

6. The Financial Creditor produced on record all relevant evidence to establish the facts that there is a financial debt due and payable by the Corporate Debtor to the Financial Creditor and Corporate Debtor committed default in paying such debts. These are only material facts, the Financial Creditor has to establish in enquiry in the proceedings under Section 7 of Insolvency and Bankruptcy Code,2016 against the Corporate Debtor. Upon query from the Bench as to how this proceeding can be said to be filed within the period of limitation because loan was granted in the year 2009, Ld. Counsel pointed out that in the year 2010 itself, notice under SARFAESI Act, 2002 was served on the Corporate Debtor and the proceeding was also filed before Debt Recovery Tribunal (DRT). In view of



this, I hold that this proceeding is filed within time as period of limitation stopped running against the Financial Creditor because they have already initiated the DRT proceeding in time.

7. The Financial Creditor suggested name of one Mr. Samya Sengupta of 2, Lal Bazar Street, 2<sup>nd</sup> Floor, Room No. 204 & 205, Kolkata – 700001, email id samyax@gmail.com having registration no. IBBI/IPA-001/IP-P00098/2017-2018/10198 as Interim Resolution Professional (in short "IRP"). There is nothing on record to show that any disciplinary proceeding is pending against him. This application is defect free. Hence, I admit Corporate Debtor in CIRP and pass the following order.

### ORDER

- i) The application filed by the Financial Creditor under section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s Kumlai Tea and Industries Ltd.**, is hereby admitted.
- ii) I declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

52



- 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 (54 of 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.
- v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- vi) 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.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) 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

52



cease to have effect from the date of such approval or liquidation order, as the case may be.

ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

x) **Mr. Samya Sengupta** of 2, Lal Bazar Street, 2<sup>nd</sup> Floor, Room No. 204 & 205, Kolkata – 700001, email id samyax@gmail.com having registration no. IBBI/IPA-001/IP-P00098/2017-2018/10198 is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

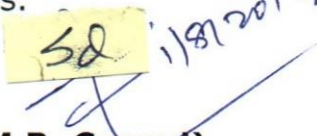
xi) The Financial Creditor to pay sum of Rs. 50,000/- (Rupees Fifty Thousand Only) to IRP as advance fees as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.

xii) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

xiii) Registry is hereby directed under section 7(7) of the I.B.Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

List the matter on **16.09.2019** for the filing of the progress report.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

  
(M.B. Gosavi)  
Member (Judicial)

Signed on this, the 1<sup>st</sup> day of August, 2019.