

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

CP (IB) 691/MB/C-IV/2022

Under section 7 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Unity Small Finance Bank Limited
[BOM/BNK/174 of 1983]

Office No. 4 & 5, 3rd Floor, Dreams Mall, LBS Marg,
Bhandup (West), Mumbai - 400078.

... Financial Creditor/Petitioner

Versus

Auto Creates (India) Private Limited
[CIN: U99999MH1991PTC059843]

B-301, Amaltas Co-operative Housing Society Limited,
Juhu Versova Link Road, Andheri (West), Mumbai -
400053.

... Corporate Debtor/Respondent

Order Delivered on 06.10.2023

Coram:

Hon'ble Member (Judicial) : Mr. Kishore Vemulapalli
Hon'ble Member (Technical) : Ms. Anu Jagmohan Singh

Appearances:

For the Financial Creditor : Mr. Maulik Choksi, Advocates.
For the Corporate Debtor : Mr. Sunil Kadam, Advocate.

ORDER

Per: Anu Jagmohan Singh, Member (Technical)

1. This Company Petition is filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Unity Small Finance Bank Limited** ("the Financial Creditor"), seeking to

initiate Corporate Insolvency Resolution Process (CIRP) against **Auto Creates (India) Private Limited** ("the Corporate Debtor").

2. Punjab & Maharashtra Co-Operative Bank Limited was original Creditor of the Corporate Debtor. On 25.01.2022 the Punjab & Maharashtra Co-Operative Bank Limited merged with the Financial Creditor. Post-merger, the name of Punjab & Maharashtra Co-Operative Bank Limited was replaced to Unity Small Finance Bank Limited.
3. The Corporate Debtor is a private company limited by shares incorporated on 16.01.1991 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at B-301, Amaltas Co-operative Housing Society Limited, Juhu Versova Link Road, Andheri (West), Mumbai - 400053. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present Petition was filed on 25.11.2022 before this Tribunal claiming a sum of Rs.24,15,99,853.18/- (Rupees Twenty-Four Crore Fifteen Lakh Ninty-Nine Thousand Eight Hundred Fifty-Three and Paise Eighteen Only) as on 31.08.2021 which includes the principal amount of Rs.18,63,18,154.80/- and accrued interest of Rs.5,52,81,698.38. Details of the facilities sanctioned are as follows:

Date of Sanction:

**I. Cash Credit Limit bearing Account No.
008130100001450:**

a. 30.09.2009

The Cash Credit limit was enhanced for Rs.1,00,00,000/- (Rupees One Crore Only) at 14% interest per annum.

b. 20.07.2010

The Cash Credit limit was further enhanced for Rs.4,00,00,000/- (Rupees Four Crore Only) at 14% interest per annum.

c. 12.07.2011

The Cash Credit limit was further enhanced for Rs.6,50,00,000/- (Rupees Six Crore Fifty Lakh Only) at 13% interest per annum.

d. 29.12.2012

The Cash Credit limit was further enhanced for Rs.8,00,00,000/- (Rupees Eight Crore Only) at 14% interest per annum.

e. 30.03.2016

The Cash Credit limit was further renewed for Rs.8,00,00,000/- (Rupees Eight Crore Only) at 15% interest per annum.

f. 09.03.2017

The Cash Credit limit was further renewed for Rs.8,00,00,000/- (Rupees Eight Crore Only) at 14% interest per annum.

g. 25.04.2018

The Cash Credit limit was further renewed for Rs.8,00,00,000/- (Rupees Eight Crore Only) at 14% interest per annum.

II. Term Loan bearing Account Number 008301100000041:

Term Loan was sanctioned by the Financial Creditor as on 18.06.2015 for an amount of Rs.9,00,00,000/- (Rupees Nine Crore Only) at 14% interest per annum.

III. Term Loan bearing Account Number 008301000000052:

Term Loan for refurbishment of existing vehicles was sanctioned by the Financial Creditor as on 19.12.2017 for an amount of Rs.65,00,000/- (Rupees Sixty-Five Lakh Only) with an interest rate of 13.50% p.a.

IV. Term Loan bearing Account Number 008305600000003:

Term Loan for purchase of commercial vehicles was sanctioned by the Financial Creditor as on 27.03.2019 for an amount of Rs.3,41,00,000/- (Rupees Three Crore Forty-One Lakhs Only) with an interest rate of 11% p.a.

Submissions made by the Financial Creditor:

5. The Corporate Debtor is a company engaged in transportation business.
6. The Financial Creditor Sanctioned various facilities to the Corporate Debtor as follows:

6.1. Cash Credit Limit bearing Account Number 008130100001450:

The said Credit Facility was Sanctioned vide Sanction Letter dated 30.09.2009, thereafter renewed and increased vide on 20.07.2010, 12.07.2011, 29.12.2012, 25.03.2016, 09.03.2017 and 25.04.2018.

6.2. Term Loan bearing Account Number 008301100000041:

The said Term Loan was Sanctioned vide Sanctioned Letter dated 18.06.2015.

6.3. Term Loan bearing Account Number 008301000000052:

The said Term Loan was Sanctioned vide Sanctioned Letter dated 19.12.2017.

6.4. Term Loan bearing Account Number 008305600000003:

The said Term Loan was Sanctioned vide Sanctioned Letter dated 27.03.2019.

7. Date on which default occurred:

7.1. Cash Credit Limit bearing Account Number 008130100001450:

The date of default as per the NESL Report is 30.08.2019 which is continuing till date.

7.2. Term Loan bearing Account Number 008301000000052:

The date of default as per the NESL Report is 10.06.2019 which is continuing till date.

7.3. Term Loan bearing Account Number 008301100000041:

The date of default as per the NESL Report is 24.06.2019 which is continuing till date.

7.4. Term Loan bearing Account Number 008305600000003:

The date of default as per the NESL Report is 27.06.2019 which is continuing till date.

The date of NPA (Non-Performing Asset) as per the Financial Creditor's records and books of accounts for all the facilities is 30.09.2019.

Further, several notices were issued from 11.09.2019 to 07.03.2020, the said notices were duly served upon the Corporate Debtor and also to the Personal Guarantors. Therefore, the Financial Creditor issued statutory notice u/s 13(2) of SARFAESI Act, 2002 on 30.09.2020 to which the Corporate Debtor replied by letter dated 03.12.2020 for settlement of the dispute against the Financial Creditor. Despite same, the Corporate Debtor and Personal Guarantors failed and defaulted in making payment of the claim amount to the Financial Creditor.

8. List of the documents referred to prove existence of debt and default:

Sr. No.	Particulars of documents	Annexure to the Petition
1.	The Cash Credit Limit Facility was Sanctioned vide Sanction Letter dated 30.09.2009, thereafter renewed and increased vide letters on 20.07.2010, 12.07.2011, 29.12.2012, 25.03.2016, 09.03.2017 and 25.04.2018.	P, Q, R, S, T, U and V
2.	The Term Loan Application dated 16.03.2015 Sanction Letter dated 18.06.2015.	W Colly

3.	The Term Loan Application dated 29.09.2017 Sanction Letter dated 19.12.2017.	X Colly
4.	The Term Loan Application dated 04.02.2019 Sanction Letter dated 27.03.2019.	Y Colly
5.	Copy of the entries in the Financial Creditor's books as per Bankers Book Evidence Act, 1891.	Z
6.	Copy of the Deed of Hypothecation as on 09.01.2018	F
7.	Registration of Charges filed with the Registrar of Companies, Mumbai in "CHG 1" on 19.01.2018	G
8.	Copy of the Deed of Hypothecation as on 27.03.2018	H
9.	Registration of Charges filed with the Registrar of Companies, Mumbai in "CHG 1" on 10.04.2019	
10.	Copy of the Mortgage Deed dated 24.04.2019 entered into between the Financial Creditor, Corporate Debtor and the Personal Guarantor for the Property at Plot No. 180, Hissa No. 2, Adm 1H-11R-OP, Village Poyanje, Taluka Panvel, District Raigad.	J
11.	Copy of the Valuation report dated 24.01.2019 issued by the registered valuer Yardi Prabhu Consultants & Valuers Private Limited.	K
12.	Copy of the record of default registered with the National E Governance Services Limited	L
13.	Copy of the record of default registered with the National E Governance Services Limited	M
14.	Copy of the record of default registered with the National E Governance Services Limited	N
15.	Copy of the record of default registered with the National E Governance Services Limited	O

9. The Corporate Debtor failed to comply with the Recall Notices, following which the Financial Creditor was constrained to issue a Notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, (hereinafter referred to 2002 as "SARFAESI Act") dated 30.09.2020) whereby the Corporate Debtor was called upon to clear the outstanding dues with respect to Cash Credit Facility and Term Loan Facilities availed by the Corporate Debtor from the Financial Creditor.
10. The Possession Notice bearing Ref. no./PM/CO/RD/949/20-21 dated 01.12.2020 was issued to the Corporate Debtor and the Personal Guarantors of the Corporate Debtor wherein the Financial Creditor had asked them to handover the symbolic possession of the Land situated at Plot No. 180/2, Adm. 1H-11R-0P, Village Payonji, Taluka Panvel, District Raigad standing in the name of Mr. Gurinder Singh Arora which was mortgaged with the Financial Creditor as Collateral security against the Terms loans as well as Cash Credit facilities which the Corporate Debtor has availed from the Financial Creditor.
11. The Corporate Debtor sent representation dated 03.12.2020 to the Demand Notice dated 30.09.2020 requesting the Financial Creditor to not to take any statutory action and once again enumerated his restructuring plan to overcome its debt. Thereafter several Possession Notices were sent to the Corporate Debtor, final Possession Notice was sent on 20.08.2021.

Submissions made the Corporate Debtor:

12. The Corporate Debtor submitted that the Respondent was not NPA on 23.09.2019 when the banking operations of the PMC Bank was closed by RBI. The Corporate Debtor received rental amount of Rs.10,83,295.72/- on 13.09.2019. The PMC Bank did not utilize the said amount immediately and it remained in the current account till 10.10.2019 and same was subsequently appropriated towards interest. As on 23.09.2019 the account of the Respondent was standard account. There was fraud discovered in HDIL which led to closure of the Banking operations of the PMC Bank by RBI. On 23.09.2019, Reserve Bank of India suspended powers of the Board and appointed administrator.
13. Further it is submitted that the Respondent wanted to shift their entire banking operations to some other Bank and therefore asked for NOC from the Applicant. Yes bank was willing to takeover all the facilities from the Applicant. However, due to internal issues of the Applicant, there was no response to the request of the Yes Bank. Applicant failed to give NOC to Yes Bank and also stopped the operations in the Cash Credit account. The entire business of the Respondent was running through this cash Credit account and abruptly closure of Bank's operations, the Applicant could not move their banking with the other Bank.

Findings:

14. Heard the Ld. Counsel for the Financial Creditors and perused the records.
15. The following facts are not in dispute:
 - 15.1. At the request of the Corporate Debtor, the Financial Creditor granted following facilities to the Corporate Debtor.

I. Cash Credit Limit bearing Account No. 008130100001450:

The Cash Credit limit was further renewed on 25.04.2018 for Rs.8,00,00,000/- (Rupees Eight Crore Only) at 14% interest per annum.

II. Term Loan bearing Account Number 008301100000041:

Term Loan was sanctioned by the Financial Creditor as on 18.06.2015 for an amount of Rs.9,00,00,000/- (Rupees Nine Crore Only) at 14% interest per annum.

III. Term Loan bearing Account Number 008301000000052:

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IV. Term Loan bearing Account Number 008305600000003:

Term Loan for purchase of commercial vehicles was sanctioned by the Financial Creditor as on 27.03.2019 for an amount of Rs.3,41,00,000/- (Rupees Three Crore Forty-One Lakhs Only) with an interest rate of 11% p.a.

15.2. Several letters and notices have been issued to the Corporate Debtor calling upon the repayment of the debt. The Corporate Debtor made representation dated 03.12.2020 to the Demand Notice dated 30.09.2020 requesting the Financial Creditor to not to take any statutory action and once again enumerated his restructuring plan to overcome its debt.

15.3. The said amount was extended to the Corporate Debtor for a consideration in time value of money and hence is a Financial Debt within the meaning of Section 5(8) of the IBC.

- 15.4. At the outset, we note that there is no dispute over the fact that the Corporate Debtor defaulted in paying the financial debts of more than Rs. 1 Crore (as per Section 4 of the IBC). From evidence and material on record, we also hold that the application is filed by properly authorized person.
16. It is the case of the Corporate Debtor that there was balance in the account on 30.09.2019, which could have been utilized by the Financial Creditor instead of declaring account NPA. It is observed that default was much prior and amount in account at that point was insufficient to cover that defaulted amount. As per records available, the Corporate Debtor on 03.12.2020 requested for further time to repay or consider their restructuring plan. Therefore, it is clear that the Corporate Debtor had defaulted in repayment. Also, the plea of the Corporate Debtor that they have requested for issuance of NOC to transfer the account to other bank has no bearing since the debt and default is established.
17. We also consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018] upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.
18. Upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the fact that the Corporate Debtor owes debt to the Financial Creditor.

19. The Financial Creditor has proposed the name of **Mr. Shailesh Desai**, Registration No: IBBI/IPA-001/IP/P-00183/2017-18/10362, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
20. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
21. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing **CP (IB) 691/MB/C-IV/2022** filed by **Unity Small Finance Bank Limited**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Auto Creates (India) Private Limited [CIN: U99999MH1991PTC059843]**, the Corporate Debtor, is **admitted**.
 - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:-
- (i) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) 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.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Shailesh Desai**, Registration No: IBBI/IPA-001/IP/P-00183/2017-18/10362, having address at C/o Headway Resolution and Insolvency Services Private Limited (IPE), 708, Raheja Centre, 7th Floor, Free Press Marg, Nariman Point, Mumbai - 400021, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/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 IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs 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) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, 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.

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)

06.10.2023
SAM

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)