



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

CP (IB) No. 75/KB/2022

*A petition 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.*

In the matter of:

UCO Bank

...Financial Creditor

Versus

Sunny Valley Tea & Industries Limited

...Corporate Debtor

Order pronounced on: 01 May 2024

Coram:

Shri Rohit Kapoor : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

Appearances (through hybrid mode):

For the Financial Creditor: Mr. Shaunak Mitra, Advocate
Mr. Aditya Gooptu, Advocate

For the Corporate Debtor: Mr. Mainak Bose, Advocate
Mr. Rishab Karnani, Advocate
Mr. Anurag Bagaria, Advocate
Mr. Devansh Sonthalia, Advocate

ORDER

Per Coram

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") by UCO Bank, represented by Mr. Ajit Kumar, Chief Manager, authorized through an Authority Letter dated 17 February 2022 seeking to initiate Corporate Insolvency Resolution Process

("CIRP") against Sunny Vally Tea & Industries Limited (*"Corporate Debtor"*).

3. The Corporate Debtor was incorporated on 01 January 1976, having CIN: U01132WB1918PLC002925. Its registered office is Gurjunghora Building, Mahatma Gandhi Road, Jalpaiguri- 735101. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 24 February 2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.15,36,00,000/- (Rupees Fifteen Crore Thirty-Six Lakh only) as on 31 January 2022. The date of default has been mentioned as 31 March 2018.

Submission of learned Counsel appearing for the Financial Creditor

5. The learned Counsel submitted that the Financial Creditor had sanctioned credit facilities for Rs,14,31,00,000/- (Rupees Fourteen Crore Thirty One Lakh only) but due to default in the credit facilities on account of interest as well as principal amount the account of the Corporate Debtor was declared as a NPA on 30 June 2018. The default in servicing of interest was on 31 March 2018.
6. The account of the Corporate Debtor was restructured and renewed *vide* Sanction Letter dated 06 March 2020 for Rs.16,43,00,000/- (Rupees Sixteen Crore Forty-Three Lakh only), and the terms and conditions in the said sanctioned letter was accepted by the Corporate Debtor.
7. The Corporate Debtor once again defaulted in payment in terms and conditions of the Sanction Letter dated 06 March 2020. Various documents were executed by the Corporate Debtor on 12 March 2020 to secure the credit facilities.
8. It is submitted that the Financial Creditor recalled the entire credit facilities *vide* letter dated 23 November 2021¹.
9. The Corporate Debtor has acknowledged the outstanding balance on 12 March 2020.


¹ Annexure M @ Pp. 208-209 of CP



10. The learned Counsel further submitted that the amount claimed in default as on the date of NPA is Rs.1473Lakh (only principal amount) and the amount in default including uncharged interest and any other additional interest and penal interest as on 31 January 2022 is Rs.1731 Lakh.
11. The Financial Creditor has placed the following documents on record:
- a. Copies of Balance Sheet of the Corporate Debtor for the Financial Year 2019-2020 and the Letter of Balance Confirmation dated 12 March 2020 are annexed collectively and marked as Annexure D;
 - b. Copy of Sanction Letter dated 06 March 2020 is annexed and marked as Annexure G;
 - c. Copy of Demand Promissory Note, copy of letter of Waiver, copy of letter of Continuity have been annexed and marked as Annexures H to I;
 - d. CIBIL Report is annexed as Annexure P.
12. The Financial Creditor has proposed the name of **Mr. Nitesh Kumar More**, registration number IBBI/IPA-001/IP-P01087/2017-2018/11785, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given 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 registration.

Submission of learned Counsel appearing for the Corporate Debtor

13. The learned Counsel submitted that the Company Petition is not maintainable as the person who has purportedly affirmed the affidavit has no authority to represent the Financial Creditor, there is no Board Resolution or a valid Power of Attorney in favour of Mr. Ajit Kumar.
14. Ld. Counsel Mr. Bose asserted that there is no financial debt that has become due and payable in accordance with the Code.
15. It is further submitted that in the year 2002, the Tea Industry faced severe recession and the Central Government appointed a committee, being the



Madhukar Committee. The Corporate Debtor faced problems during the period 2011-2012 due to unprecedented drought and dry weather.

16. It is further submitted that the account was restructured in 2015 at the request of the Corporate Debtor. In 2018, the Corporate Debtor faced recession.
17. Mr. Bose submitted that the default occurred on 31 March 2018 and the account of the Corporate Debtor was classified as NPA on 30 June 2018 and hence the present Company Petition is barred by limitation.
18. It is further submitted that the Corporate Debtor and its officers agreed to restructure the account and accordingly *vide* letter dated 09 January 2020 revised the restructuring proposal submitted earlier *vide* letter dated 17 March 2019. On 06 March 2020, a proposal for restructuring and renewal of credit limits was sanctioned by the Financial Creditor and a CC account was opened to the tune of Rs.2Crore for running and managing the tea estate and the balance overdue was restructured to be repaid over a period of time.
19. It is submitted that payment Rs.37,74,429/- was made in instalments on 31 December 2019, 01 January 2020, and 06 January 2020.
20. Pursuant to the restructuring on 16 March 2020 it was only on 09 July 2020 that the Financial Creditor allowed the operation in the Cash Credit Account and consequently the timeline specified in the terms of restructured sanction *ipso facto* stood deferred. It is submitted that under the restructured credit facility, the first instalment and/or payments became due and payable in December 2020, in June 2021 and thereafter in December 2021.
21. It is submitted that Covid-19 and the Lockdown imposed by the Government, created a severe impact on the financial status of the Corporate Debtor and the Corporate Debtor made requests for grant of additional credit facilities to tide over the situation.
22. The Ministry of Finance had issued the Credit Guarantee Scheme for Subordinate Debt, which, *inter alia*, entitled the Corporate Debtor to a pre-approved loan to the extent of 15% of the promoters' stake subject to a maximum amount of Rs.75Lakh. The Financial Creditor committed a breach by refusing to sanction the pre-approved loan under the Credit Guarantee Scheme.



23. It is further submitted that despite the moratorium enforced by the Reserve bank of India, the Financial Creditor adjusted the proceeds of the sale of the Tea Estate that were deposited in the account. Further, for June 2021 and December 2021, a further sum was adjusted and appropriated from the Cash Credit Account which aggregated in excess of Rs.3.35Crore. Hence, between August 2020 to December 2021, a sum of Rs.2.28Crore became due and payable by the Corporate Debtor, in terms of the restructured credit arrangement. The Financial Creditor charged renewal charges on 26 February 2021 but no formal letter of renewal was forwarded to the Corporate Debtor.
24. It is submitted that as on December 2021, there was no debt that was due and payable to the Financial Creditor.
25. The Corporate Debtor made an application for renewal of the Cash Credit Account on 14 February 2021 which was not acted upon by the Financial Creditor.
26. The Financial Creditor has initiated recovery proceedings under section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 which has been registered as O.A. No. 21 of 2022. Proceedings have also been initiated by the Financial Creditor under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
27. In the supplementary affidavit filed by the Corporate Debtor, it is stated that even after filing of the petition in terms of the restructured sanction dated 06 March 2020 the Corporate Debtor has paid till 30 August 2023, a sum of Rs.8.85Crore. It is submitted that this Adjudicating Authority had directed the Financial Creditor to file an affidavit stating the exact amount to be in default in terms of the restructuring plan as on the date of filing of the petition and as on the date of the order i.e. 12 September 2023. The details of the amount payable as per the restructuring plan and the amount that has been actually paid by the Corporate Debtor. The Supplementary Affidavit filed by the Financial Creditor does not disclose the amount to be in default in terms of the restructuring plan as on the date of filing of the petition nor does it provide any detail of the amount payable as on 12 September 2023.




28. It is further submitted that the Company Petition is barred by Section 10A of the Code, as it appears that the default arose between the period of 25 March 2020 and 25 March 2021.

Submissions in rejoinder of the learned Counsel appearing for the Financial Creditor

29. The Learned Counsel submitted that the Power of Attorney has been enclosed with the Company Petition. Pursuant to the notification notified in the Gazette of India in 27 February 2019 by the Ministry of Corporate Affairs, a person duly authorized by the Board of Directors of a company can initiate a section 7 petition under the Code.

30. It is further submitted that the account of the Corporate Debtor was first restructured in 2014-2015. Pursuant to the order dated 18 November 2022, the Financial Creditor submitted that as per Term Loan III, as of June 2022, the Corporate Debtor ought to have paid a total of Rs.28.20Lakh however till date only Rs.18.75Lakh has been paid. With respect to WCTL-I, the Corporate Debtor ought to have paid a total of Rs.81.88Lakh however till date only Rs.34.50Lakh has been paid, with respect to WCTL-II, the Corporate Debtor ought to have paid a total of Rs.164.6Lakh however till date only Rs.36.68Lakh has been paid, with respect to FITL, the Corporate Debtor ought to have paid a total of Rs.29.32Lakh however till date only Rs.3.61Lakh has been paid. Further with respect to cash credit, an amount of Rs.54,15,581.60 plus interest and cost is due.

31. Thereafter, pursuant to the order dated 12 September 2023, the Financial Creditor filed an affidavit stating the details of the amounts due till June 2023, with respect to Term Loan III, the Corporate Debtor ought to have paid a total of Rs.92,34,003/- however till date only Rs.36.75Lakh has been paid. With respect to WCTL-I, the Corporate Debtor ought to have paid a total of Rs.2,71,05,218/- however till date only Rs.1,46,50,000/- has been paid, with respect to WCTL-II, the Corporate Debtor ought to have paid a total of Rs.5,56,81,675/- however till date only Rs.2,26,43,898/- has been paid, with respect to FITL, the Corporate Debtor ought to have paid a total of Rs.1,54,94,427/- however till date only Rs.1,23,61,000/- has been paid. Further



with respect to cash credit, an amount of Rs.2,03,11,398/- was due out of which a sum of Rs.2Crore was paid. Hence, a total of Rs.5,44,96,822/- is due and payable.

32. The Corporate Debtor *vide* letter dated 13 July 2022 wrote to the Financial Creditor for modification in the restructured loan facility which was rejected by the Financial Creditor on 31 December 2022.
33. The learned Counsel submitted that during the course of hearing the Corporate Debtor submitted that it was ready to pay the balance amount in terms of the restructured plan and on 10 February 2023, the Financial Creditor submitted that if the Corporate Debtor paid the amounts as on December 2022 and undertook to pay the future installments in time, then the Bank will consider the default to be settled.

Analysis and Findings

34. Heard the learned Counsel appearing for the Financial Creditor and the learned Counsel appearing for the Corporate Debtor and perused the record.
35. The Corporate Debtor has contended that there is no default on the part of the Corporate Debtor. Upon directions from this Adjudicating Authority passed on 14 September 2022, the Corporate Debtor filed the balance sheets for the last three years i.e. from 2019-2020, 2020-2021 and 2021-2022.
36. From perusal of the financial statements, it is evident that the Corporate Debtor has dues with respect to the Financial Creditor. Now moving on to whether the Corporate Debtor is in default or not, the Financial Creditor produced several notices dated 09 July 2018, 01 September 2018, 05 November 2018, 05 December 2018, 03 January 2019, 02 February 2019, 05 March 2019, 19 March 2019, 22 March 2019, 08 April 2019, 06 June 2019, 01 February 2021, 23 November 2021, wherein the Financial Creditor has informed the Corporate Debtor about the irregularity in the accounts of the Corporate Debtor. It is evident that the Corporate Debtor has defaulted in payment of its dues and the action is one that is constantly recurring.



37. In the supplementary affidavit dated 11 October 2023 filed by the Financial Creditor, it is submitted that in compliance of the order dated 21 August 2023, a meeting was held between the Financial Creditor and the Corporate Debtor on 24 August 2023 and a letter dated 07 September 2023 was issued by the Financial Creditor to the Corporate Debtor clarifying all the queries about interests charged and debited and how the moneys have been adjusted.
38. During the course of hearings, the learned Counsel had submitted on 11 January 2023 that the Corporate Debtor is ready to pay the balance amount in terms of the restructured plan. The Financial Creditor also accepted to receive the payments. Thereafter, the Corporate Debtor has made a payment of Rs.1.5Crore to the Financial Creditor.
39. The Corporate Debtor undertook to pay all the outstanding dues of the bank in terms of the restructuring plan shall be cleared in full and final by 15 June 2023, thereafter the Corporate Debtor made a payment of Rs.2.10 Crore. On 22 June 2023, the Corporate Debtor stated that it would require three more weeks to settle the entire amount with the Financial Creditor. This amounts as admission of debt and default on the part of the Corporate Debtor.
40. As submitted by the Financial Creditor, as on June 2023, a sum of Rs.5,44,96,822/- is due and payable.
41. Let us now deal with whether the petition has been filed within the period of limitation. The Financial Creditor has stated the 1st default to have occurred on 31 March 2018 and the account was declared as NPA on 30 June 2018. Despite restructuring of the accounts the Corporate Debtor continued to default after making part payments. Taking into consideration the first date of default, the period of limitation would end on 31 March 2021, but due to the Covid-19 lockdown, the Hon'ble Supreme Court excluded the period from 15 March 2020 till 28 February 2022 in computing the period of limitation. Hence, considering the above, the present petition has been filed within the period of limitation.

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42. Further, the Corporate Debtor has also acknowledged the due in its Financial Statements for the years 2019-2020, 2020-2021 and 2021-2022, hence due to such acknowledgement, the period of limitation is further extended.
43. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition and the submissions establish that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.
44. In the light of the above facts and circumstances, it is, hereby ordered as follows:-
- a. The application bearing **CP (IB) No. 75/KB/2022** filed UCO, the 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 **Sunny Valley Tea & Industries Limited**, 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. **Mr. Nitesh Kumar More**, registration number IBBI/IPA-001/IP-P01087/2017-2018/11785, email id: nmore2091@gmail.com, phone no. 9831046652, 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 the RP, as the case may be, 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 Directors, 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. There shall be no future opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i. 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).

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- j. 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.
- k. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, 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.
45. **CP (IB) No. 75KB/2022** to come up on **21st June 2024** for filing the first progress report.
46. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

This order is pronounced on the 1st day of May, 2024.

GGRB_LRA