



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL)
COURT NO. I
KOLKATA

Company Petition (IB) No. 329(KB)2022

An Application 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:

City Union Bank Limited

... Applicant/ Financial Creditor

Verses

Amritpur Tea Company Limited

[CIN: U01132WB1913PLC002337]

... Respondent/ Corporate Debtor

Date of Hearing: September 25, 2023

Date of pronouncement: September 27, 2023

CORAM:

ROHIT KAPOOR, MEMBER (JUDICIAL)

D. ARVIND, MEMBER (TECHNICAL)

Appearance:

For the Financial Creditor:

1. Ms. Aasiya Hasan, Advocate

2. Mr. Mayukh Roy, Advocate

ORDER

Per D. Arvind, Member (Technical):

1. This Court is congregated through hybrid mode.
2. This instant Application is filed under **Section 7** of the **Insolvency and Bankruptcy Code, 2016** (for brevity “**I&B Code**”) read with other provisions by **City Union Bank Limited**, hereinafter referred to as the **Applicant/ Financial Creditor/ FC** against **Amritapur Tea Company Limited**, hereinafter referred to as the **Respondent/ Corporate Debtor/ CD**, seeking the direction

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA**

Company Petition (IB) No. 329(KB)2022

from the Adjudicating Authority to initiate Corporate Insolvency Resolution Process, for brevity “**CIRP**” of the Corporate Debtor, herein.

3. That, the Corporate Debtor was incorporated on January 10, 1913, bearing the CIN: U01132WB1913PLC002337, registered office at Raipur Tea Estate, P.O. Rangdhamali, Jalpaiguri, West Bengal – 735121. The Corporate Debtor has an Authorized Share Capital of Rs. 30 Lakh, in which the Paid-up Share Capital of Rs. 30 Lakh. Master Data of the CD is annexed as **Annexure “C”** at Page 48 of the Application.
4. That, the amount claimed to be in Default is **Rs. 12,60,90,830/-** (Rupees Twelve Crore Sixty Lakhs Ninety Thousand Eight Hundred Thirty Only) as on September 01, 2022, and the **Date of Default** as claimed is the date of classifying Non-Performing Asset (NPA) to the CD, i.e., as on **December 31, 2019 as per record of default mentioned in Form D of National E-Governance Services Limited which has been annexed in page 122 of the application.**
5. **Brief Fact of the Case:**
 - 5.1. That, the Applicant is a Banking Company registered with the Companies Act, 1956 and a Banking Company under Section 5(c) of the Banking regulation Act, 1949, having its registered office at 149, T.S.R. Big Street, Kumbakonam, Tanjore District, Tamil Nadu – 612001. The Applicant, from time to time sanctioned and disbursed an amount of Rs. 12,20,00,000/- (Rupees Twelve Crore Twenty Lakh Only) in favor of the CD as follows:
 - i. OSL- Terms EMI Loan A/c No.: 501812080011182 had sanctioned a limit of Rs. 6 Crore only to the CD under a sanctioned ticket dated Hune 24, 2015, along with Sanction Letter for advances dated June 29, 2015.
 - ii. The Applicant had further extended financial assistance under Secured OD with DP Loan A/c No. 512120020005361, and sanctioned a sum of Rs. 4 Crore only vide sanction letter for advances dated July 27, 2015 to the Respondent.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA**

Company Petition (IB) No. 329(KB)2022

- iii. The Applicant had further extended on 31.12.2018 the Applicant bank had further sanctioned an Ad hoc – OD limit of Rs. 70 Lakh only. The instant Ad hoc – OD limit subsequently stood repaid by the CD.
- iv. The Applicant Bank under CUB OSL SPECIAL BR: LOAN A/c No. 501812080059393 sanctioned another sum of Rs. 1.5 Crore only to the CD.

6. Applicant's Contention:

- 6.1. That, in order to secure repayment of such credit facilities, the CD executed various loan and security documents in addition to creation of mortgage of its immovable properties, hypothecation of movable assets and guarantees issued to secure repayment of liabilities. Copy of the Sanction Letter(s) dated June 29, 2015; July 27, 2015, and December 28, 2019, is **annexed at Page 49-73 as Annexure "D" to the Application.** Copy of the Consent Letter dated June 04, 2015 by the CD expressing willingness to offer its property as **security is annexed at Page 75-77 as Annexure "F" to the Application.** Copy of the Memorandum of Deposit of Title Deed dated June 29, 2015, executed by the CD is **annexed at Page 78-102 as Annexure "G" to the Application.** Copy of the Memorandum of Extension of Equitable Mortgage by way of deposit of Title Deeds dated July 28, 2015, is annexed at **Page 103-106 as Annexure "H" to the Application.**
- 6.2. The Ld. Counsel for the Applicant further submits that the Form(s) CHG – 1 dated June 29, 2015 and dated July 27, 2015, in respect of creation of charge in favor of the Applicant for a sum of **Rs. 6 Crore and Rs. 4 Crore** respectively, together with the Certificates of Registration of Charge is **annexed at Page 107-113 and Page 114-120 as Annexure "I" and "J" respectively to the Application.**
- 6.3. The Ld. Counsel for the Applicant further relies upon the data showing the records of default as maintained with National E-Governance Services

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA**

Company Petition (IB) No. 329(KB)2022

Limited in the Information Utility **annexed at Page 122-142 as Annexure “L” to this Section 7 Application.**

- 6.4.** The Ld. Counsel further contends that the Application cum Undertaking dated June 29, 2015, together with the Consent Letter of the Borrowers and Guarantors as well as Consent letter for the EMI Loans for the sum of Rs. 6 Crore was furnished, **annexed at Page 143-146 to this Section 7 Application as Annexure “M”.**
- 6.5.** The Ld. Counsel further would submit that the Hypothecation (Machinery) Agreement dated June 29, 2015 for the sum of Rs. 6 Crore was executed, **annexed at Page 147-150 as Annexure “N” to this Application.**
- 6.6.** It is further contended that the Agreement of Loan cum Hypothecation for a sum of Rs. 4 Crore dated July 27, 2015 was executed, **annexed at Page 151-174 as Annexure “O” to this Application.**
- 6.7.** It would further contend that the Demand Promissory Notes dated June 29, 2015 for a sum of Rs. 6 Crore and July 27, 2015 for a sum of Rs. 4 Crore were executed, **annexed at Page 175-176 as Annexure “P” to the Application.**
- 6.8.** It is further contended that the Letter of Continuity dated July 27, 2015, for the Loan of Rs. 4 Crore along with the Consent Letter is **annexed at Page 177-178 as Annexure “Q” to this Application.**
- 6.9.** It is further submitted that the Applicant Bank has furnished the Letters of Revival, Confirmation of Balance dated February 21, 2018 and March 14, 2018 of secure advances, **annexed at Page 179-188 as Annexure “R” to the Application.**
- 6.10.** Ld. Counsel for the Applicant further contends that the Application cum Undertaking for Loan dated December 30, 2019 together with Consent Letter of the Borrowers and Guarantor as well as Consent letter for EMI Loans for a loan of Rs. 1.5 Crore was executed, **annexed at Page 189-192 as Annexure “S” to the Application.**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA**

Company Petition (IB) No. 329(KB)2022

- 6.11.** It is further submitted the Agreement of Loan cum hypothecation along with the Demand Promissory Note dated December 30, 2019 of Rs. 1.5 Crore was executed, **annexed at Page 193-216 and Page 217 as Annexure “T” and “U” respectively.**
- 6.12.** The Ld. Counsel for the Applicant further submits the statement of accounts maintained by the FC along with the certificate under Banker’s Book evidence Act to substantiate its claim, **annexed at Page 218-305 as Annexure “V” to the Application.**
- 6.13.** The Ld. Counsel for the Applicant would further contend that the Notice dated March 06, 2020 under Section 13(2) of the SARFAESI Act, 2002 was served upon the CD, **annexed at Page 361-364 as Annexure “AA” to the Application.**
- 6.14.** The Ld. Counsel for the Applicant further submits that the Loan account of the CD maintained with the Applicant stood classified as NPA on **December 31, 2019.** The Outstanding sums, due and payable by the CD to the FC amounts to Rs 12,60,90,830/- as on September 01, 2022 including accrued interest thereon in respect of the credit facilities granted by the FC. The Applicant relies upon the computation of the amount claimed to be in default and days of default in tabular form, **annexed at Page 74 as Annexure “E” to the Application,** reproduced as:

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA

Company Petition (IB) No. 329(KB)2022

ANNEXURE - "E"

Working for computation of the amount claimed to be in default and days of default in
tabular form

74

Total Outstanding as on 01.09.2022

Sr. No.	Account No.	Principal Outstanding as on 01.09.2022 (in Rupees)	Amount towards Interest (in Rupees)	Total Amount Due as on 01.09.2022 (in Rupees)	Date of Default	Days of Default till 01.09.2022
1.	512120020 005361	30467776	20061118	50528894	31/12/19	975
2.	501812080 059393	15002875	6856371	21859246	31/12/19	975
3.	501812080 011182	36646975	17055715	53702690	31/12/19	975

6.15. Further to contend that the Applicant was restrained from initiating proceedings against the CD on account of lockdown due to Covid-19 Pandemic and it is argued that the period of March 15, 2020 to February 28, 2022 should be stood excluded as the Hon'ble Apex Court vide Order dated January 10, 2022, had taken *Suo moto* cognizance of the situation that:

"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings."

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA**

Company Petition (IB) No. 329(KB)2022

“II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.”

(Emphasis Added)

7. The Ld. Counsel for the Applicant has proposed the name of **Mr. Soumitra Lahiri (Registration No.: IBBI/IPA-001/IP-P00734/2017-2018/11232)** Address: Flat 14D & E, Tower 32, Genexx Valley, Joka, Diamond Harbour Road, Kolkata, West Bengal – 700104, Email ID: slahiri0207@gmail.com for appointing the **Interim Resolution Professional**, for brevity **“IRP”**.
8. The Ld. Counsel for the Applicant pursuant to the **Order dated 13.06.2023** passed by this Tribunal directed the Applicant, in accordance with Rule 35 of NCLT Rule, 2016, to serve the corporate debtor through two newspaper publications, one in vernacular language and one in English widely circulated in the State of West Bengal, has carried out the publication of Summon in *“The Statesman”* (in English) and in *“Aaj Kaal”* (in Bengali), both Kolkata edition, on June 23, 2023. The original newspapers (relevant portion) are annexed as Annexure “A” to the Affidavit dated July 10, 2023, filed by the Applicant with the Registry.
9. Vide an **Order dated August 09, 2023**, this Tribunal passed the order as:
 1. *Ld. Counsel for the Financial Creditor present.*
 2. *Affidavit in terms of order dated 13.07.2023 has been filed for placing on record the copies of publications made in two newspapers, namely, “The Statesman” & “Aajkal” for effecting service upon Corporate Debtor.*
 3. **Despite having served, none appears for the Corporate Debtor.**
 4. **Accordingly, Corporate Debtor is set ex parte.**
 5. *Post this matter for final hearing on 30.08.2023.”*
10. **Analysis and Findings:**
 - 10.1. We have heard the submission made by the Ld. Counsel for the Financial Creditor and perused the documents furnished.

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA

Company Petition (IB) No. 329(KB)2022

10.2. It is evident that the Applicant has claimed the date of classifying NPA to the Corporate Debtor as the Date of Default. We rely upon the judgement passed by the Hon'ble Apex Court in the case of *Laxmi Pat Surana v. Union Bank of India* reported in (2021) 8 SCC 481: MANU/SC/0221/2021 that

“37. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action Under Section 7 of the Code...”

(Emphasis Added)

Thus, the **Date of Default** on **December 31, 2019** is rightly claimed by the Applicant.

10.3. It is further evident that the Applicant, from time to time sanctioned and disbursed an amount of Rs. 12,20,00,000/- (Rupees Twelve Crore Twenty Lakh Only) in favor of the CD and the statement of accounts maintained by the Financial Creditor, **annexed as Annexure “V” at Page 218-305 to the Application** along with the documents executed and/or furnished between the parties, clearly substantiate the claim of the Financial Creditor.

10.4. We rely upon the judgment passed by the Hon'ble Apex Court in *Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund* reported in (2021) 6 SCC 436: MANU/SC/0231/2021 (para 14) that

“14. ... in order to trigger an application, there should be in existence four factors: (i) there should be a 'debt' (ii) 'default' should have occurred (iii) debt should be due to 'financial creditor' and (iv) such default which has occurred should be by a 'corporate debtor’”

(Emphasis Added)

10.5. Further, it is observed in the case of *Lepakshi Knowledge Hub Pvt. Ltd. v. Global Emerging Markets India Ltd.* reported in MANU/NL/0505/2022 that:

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA

Company Petition (IB) No. 329(KB)2022

“48. To be noted, that with a view to fulfil the requirement of Section 5 (8) of the I & B Code, 2016, the financial transaction ought to be in the nature of 'Debt'. An existing obligation to pay a sum of money is the sine qua non of a 'Financial Debt'. A sum of money which is certainly and, in all eventualities, payable is a 'Debt' without regard to the fact whether it is payable now or at a future date.”

(Emphasis added)

10.6. It is also evident that despite of a plethora of intimations, services thru courier, paper publication, the Respondent has failed to make its appearance before this Tribunal on any single date. At this juncture, it would be appropriate to go through **Rule 110** of the **NCLT Rules, 2016**, which are reproduced in verbatim as below: -

“110. Where the respondent, despite effective service of summons or notice on him does not appear before the date fixed for hearing, the Tribunal may proceed to hear the appeal or application or petition ex-parte and pass final order on merits:”

“Provided that it is open to the Tribunal to seek the assistance of any counsel as it deems fit in case the matter involves intricate and substantial questions of law having wide ramifications.”

Hence, the Corporate Debtor was set **ex-parte** and the hearing proceeded.

11. In the light of the facts stated in the petition and the evidence placed on record and the discussion hereinabove, we have no hesitation in admitting the application filed under Section 7 of I&B Code as all the ingredients such as default of a financial debt, amount due in excess of threshold limit prescribed, and the Section 7 application within the time limit, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by the **City Union Bank Limited**, Financial Creditor, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA**

Company Petition (IB) No. 329(KB)2022

Process in respect of **Amritpur Tea Company Limited** (Corporate Debtor).

- ii.** Moratorium Order is passed for a public announcement as stated in Section 13 of the Insolvency & Bankruptcy Code, 2016.
- iii.** The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The Interim Resolution Professional (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 Insolvency & Bankruptcy Code, 2016, shall be made immediately.
- iv.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following:
 - 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 asset 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 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 or suspended or interrupted during the moratorium period.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA**

Company Petition (IB) No. 329(KB)2022

- 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 affect 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 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 Insolvency & Bankruptcy Code, 2016 may be made by the Resolution Professional upon receipt of the copy of this Order.
- x.** As per proposal given by the Financial Creditors, **Mr. Soumitra Lahiri** (**Registration No.: IBBI/IPA-001/IP-P00734/2017-2018/11232**) Address: Flat 14D & E, Tower 32, Genexx Valley, Joka, Diamond Harbour Road, Kolkata, West Bengal – 700104, **Email ID: slahiri0207@gmail.com** for appointing the “IRP”, is appointed as the **Interim Resolution Professional** for ascertaining the particulars of Creditors and convening a Committee of Creditors (COC) for evolving a Resolution Plan.
- xi.** The Financial Creditors to pay to IRP a sum of Rs. **3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.
- xii.** The Resolution Professional shall conduct CIRP in time time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL), COURT NO. I
KOLKATA**

Company Petition (IB) No. 329(KB)2022

12. The Registry is hereby directed to communicate the Order to the Corporate Debtor, and to the Interim Resolution Professional by Speed Post and also by e-mail.
13. Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.
14. Post the matter on **31/10/ 2023** for the Progress Report.

**D. Arvind
Member (Technical)**

**Rohit Kapoor
Member (Judicial)**

This Order is signed on the 27th Day of September, 2023.

Bose, R. K. [LRA]