

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH(Court – II)
KOLKATA**

C.P (IB) No. 106/KB/2021

*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

G R Multiflex Packaging Private Limited (CIN U25201WB2002PTC094844), a
Company incorporated under the Companies Act, 1956 having its registered office at 620,
Diamond Harbour Road, Industrial Estate, Plot No. BS/1, Behala, Kolkata – 700034.

...Corporate Debtor

Date of Hearing: 25.08.2022

Date of pronouncing the order: 19.09.2022

Coram:

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

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

Appearances (through Video Conferencing/ Physical hearing)

For the Financial Creditor : Mr. Sailesh Mishra, Adv.

For the Corporate Debtor : Mr. M. S. Tiwari, Adv.

: Ms. Shweta Poddar, Adv,

ORDER

Per Balraj Joshi, Member (Technical)

1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (*‘the Code’*) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. SBN Tiwari, Assistant General Manager, UCO Bank (*‘Financial Creditor’*), duly authorised vide board resolution dated 03 September, 1980¹ for initiation of Corporate Insolvency Resolution Process (“CIRP”) against G R Multiflex Packaging Private Limited (*‘Corporate Debtor’*).
3. The present Petition was filed on **01 April, 2021** before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted in the payment of sum of Rs.9,56,64,393.25/- (Rupees Nine Crore Fifty-Six Lakh Sixty-Four Thousand Three Hundred Ninety-Three Twenty-Five Paise only) [*Principal – Rs.6,84,34,296.75/- and Interest – Rs.2,72,30,096.50/-*] as on **30 December, 2020**, which is stated to be the *date of default*.
4. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is Rs. 3,75,00,000/- (Rupees Three Crore Seventy Five Lakh only) with paid up Capital as Rs. 3,21,67,700/- (Rupees Three Crore Twenty One Lakh Sixty Seven Thousand Seven Hundred only).
5. ***Submissions by the Ld. Sr. Counsel appearing on behalf of the Financial Creditor***
 - 5.1 In the year 2005, the Financial Creditor was approached by the Corporate Debtor for several credit facilities (*‘Loan’ or ‘Credit facilities’*) for business purpose. Subsequently, upon consideration, the Financial Creditor rendered financial assistance to the Corporate Debtor by way of sanctioning a Term Loan amounting to

¹Annexure - 1 of the Petition.

Rs.2,18,00,000/- (Rupees Two Crore Eighteen Lakh only) for the purpose of meeting the working capital requirement of the Corporate Debtor.

- 5.2 Pursuant to the said facilities, the Corporate Debtor utilized the sums, but, thereafter started defaulting in making the payments as per the Terms and Conditions of the Sanction and thereby cited various reasons for such overdue in the Cash Credit Account, one being poor market conditions and therefore requested the Financial Creditor to reschedule the Term Loan repayment period and also enhancement of the cash credit limit as well as of the Letter of Credit Limit. The Financial Creditor had acceded to the request of the Corporate Debtor to such extent and enhanced the Cash Credit limit to Rs.2,45,00,000/- (Rupees Two Crores Forty Five Lakhs Only) and the Letter of Credit limit to Rs.60,00,000/- (Rupees Sixty Lakhs Only) thus, enabling the Corporate Debtor to cope up with the financial exigency.
- 5.3 Thereafter, on 09.03.2010 had submitted an Enhancement-Cum-Renewal Proposal wherein they had applied for an enhancement in the Cash Credit limit to Rs.4,00,00,000/- (Rupees Four Crores Only). In reply to such proposal the Financial Creditor had requested the Corporate Debtor vide its letter dated 25.03.2010 to regularize the Cash Credit account and also to pay the outstanding EMI of the Working Capital Term Loan (WCTL) for processing the enhancement proposal.
- 5.4 Furthermore, on 18.06.2010 the Financial Creditor had requested the Corporate Debtor to adjust and/or regularize the overdue in the Cash Credit, Term Loan and the Working Capital Term Loan (WCTL) within 25.06.2010 and also intimated them about the possibility of the account becoming NPA (Non-Performing Asset.) followed by another letter on 23.07.2010.
- 5.5 On 16.03.2011 the Corporate Debtor had once again requested the Financial Creditor to sanction the said enhancement proposal so that upon availing the same the Corporate Debtor can generate profits and in turn regularize the EMI towards the Term Loan and interest thereon. Moreover, the Corporate Debtor had requested the

Financial Creditor to enhance the Cash Credit limit to Rs.5,00,00,000/-(Rupees Five Crores Only) in respect of the Working Capital Term Loan (WCTL).

- 5.6 On 30.06.2015 the Financial Creditor had renewed the cash credit limit and enhanced the same to Rs.7,00,00,000/- (Rupees Seven Crore Only) where under the Corporate Debtor were extended enhanced Cash Credit limit to Rs.6,00,00,000/- up to December 2016 and the balance limit of Rs.1,00,00,000/- to be released upon considering the operation of the account. Thereafter the Corporate Debtor requested for rescheduling the cash credit account. Accordingly, the Financial Creditor vide a letter dated 29.06.2017 had restructured the account of the Corporate Debtor wherein and where under the Financial Creditor had renewed the cash credit limit and enhanced the same to Rs.7,00,00,000/- (Rupees Seven Crores Only) along with Working Capital Term Loan amounting (WCTL) limit to Rs.95,50,000/-(Rupees Ninety Five Lakh Fifty Thousand Only).
- 5.7 Thereafter, with the consent of both the parties an Agreement was entered into and executed between the Corporate Debtor and the Financial Creditor on 29.06.2017. During the course of application for the various said credit facilities the Corporate Debtor have created security interests in favor of the Financial Creditor byway of Hypothecation of immovable properties belonging to the Corporate Debtor
- 5.8 From time to time, according to the stipulated Terms and Conditions the Corporate Debtor failed and neglected to make repayments of the principal debt and interest thereon in accordance with the Terms & Conditions. Furthermore, the Financial Creditor issued a notice under section 13(2) of the SARFAESI Act, 2002 on 07.05.2018 and thereby intimated the Corporate Debtor about the status of their account 27.07.2018. The Corporate Debtor had preferred an appeal under section 17 of the SARFAESI Act. 2002 before the Hon'ble Debts Recovery Tribunal -III, Kolkata Bench. The matter before the Hon'ble Debt Recovery Tribunal is still pending for adjudication.

6. Submissions by the Ld. Counsel appearing on behalf of the Corporate Debtor

- 6.1 The instant application is barred by limitation. The Financial Creditor has already adopted the mechanism under SARFAESI Act, 2002 and has issued possession notice. The Financial Creditor cannot be allowed to multiple the proceeding by filing this instant application.
- 6.2 Further, the account of the Corporate Debtor with the Financial Creditor needs reconciliation and adjustment of the amount already paid by the Corporate Debtor. The Financial Creditor has sold the portion of the mortgage property for a sum of Rs.1,20,63,000/- but did not mentioned the same in their application.

Analysis and Findings

7. We have heard the Ld. Senior Counsel appearing on behalf of the Financial Creditor and the Ld. Counsel appearing on behalf of the Corporate Debtor.
8. Upon perusal of the record it is seen that the Credit Facilities was renewed from time to time and was lastly restructured cum sanctioned on 29 June, 2017 [at pages 61 – 67 of the Petition]. As per the terms and conditions of the said restructured cum sanctioned letter the Corporate Debtor was to pay to the Financial Creditor as follows [at page 54 of the Petition];
- “(a) As regard Term Loan facility interest at the rate 3.90% p.a. above BPLR i.e., @ 12.50% p.a. with monthly rests
- (b) As regards Cash Credit/Overdraft facility interest at the rate of @2% p.a. above the BPLR with a minimum at present being @ 11.95% p.a. with monthly rests on the daily debit balance.”
9. The Corporate Debtor failed to adhere to the terms and conditions of the said restructured cum sanctioned letter and defaulted in payment of the outstanding dues to the Financial Creditor. Thereafter, the Financial Creditor on 07 May, 2018 sent a notice under section 13 (2) of the SARFAESI Act, 2002 [at pages 145 – 153 of the

Petition]. As per the records the account of the Corporate Debtor was declared as NPA as on 28 February, 2018 [at pages 137 of the *Petition*].

10. As per the master circular dated 12 November, 2021 of the Reserve Bank of India, an account will be classified as NPA if the interest applied at specified rests remains overdue for more than 90 days², thus, the submission of the Financial Creditor that the default occurred on **30 December, 2020** does not hold waters, because as per the records the account of the Corporate Debtor was classified as NPA 28 February, 2018. From the above records it can be construed that the default must have happened on or around 28 November, 2017. If that be the case, then the limitation would end on 28 November, 2020.
11. Upon perusal of the Pending restructural proposal – *vis-a-vis* OTS of the loan in the name of the Corporate Debtor dated 17 November, 2020, at page 177 of the *Petition*, is adequate enough to attract section 18 of the Limitation Act, 1882, which envisages that the acknowledgment of debt within the period of limitation would give rise to a fresh period of limitation. Also, in the light of the judgment by the Hon’ble NCLAT in *Tejas Khandhar v Bank of Baroda*³, where it has been held that a OTS proposal falls within the definition of ‘*acknowledgement of debt*’ under Section 18 of the Limitation Act, 1963. Nevertheless, even if we take the date of NPA as the date of default then also the letter dated 17 November, 2020 will attract Section 18 of the Limitation Act, 1963.
12. Further, we also rely on the judgment by the Hon’ble High Court for the State of Punjab and Haryana at Chandigarh in *Sumit Singla v. Kala Mandir Sarees and Jeweller*⁴s, where in the Court opined that-

“21. While considering acknowledgement ‘or “promise’, another important aspect would be as regards the quality and kind of evidence required to establish such ‘acknowledgement’ or ‘promise’. Hon’ble the Supreme Court, in Shapoor Freedom

² RBI/2021-2022/125, DOR.STR.REC.68/21.04.048/2021-22 dated 12, November, 2021

³ Company Appeal (At) (Insolvency) No. 371 Of 2020

⁴ CRM-M-34617-2022 (O&M).

*Mazda v. Durga Prosad Chamaria*⁵, while discussing 'acknowledgement' of debt in terms of section 19 of Limitation Act, held that an admission as regards liability may be in any form and may be 'express' or 'implied,' and that acknowledgment requires to be construed liberally.”

- 13.** The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes 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.
- 14.** Accordingly, it is, hereby ordered as follows:-
- (a) The application bearing CP (IB) No. 106/KB/2021 filed by UCO Bank, 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 G R Multiflex Packaging Private 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. Madhur Agarwal***, registration number ***IBBI/IPA-001/IP-P00653/2017-2018/11127***, email: ***madhuragarwal75@gmail.com***, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the

⁵ AIR 1961 Supreme Court 1236

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 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. No separate notice for cooperation by the suspended management should be expected.
- (g) 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.
- (h) The Financial Creditor shall deposit a sum of **Rs.5,00,000/- (Rupees Five 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).
- (i) 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 and email immediately, and in any case, not later than two days from the date of this Order.
- (j) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar

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UCO Bank v. G R Multiflex Packaging Private Limited

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.

- 15. CP (IB) No. 106/KB/2021** to come up on **02.11.2022** for filing the progress report
- 16.** 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)

The Order is pronounced on 19th day of September, 2022

SA, LRA