

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

CP(IB) No. 1144/KB/2020

*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**, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, through its Flagship Corporate Branch, Kolkata, having Head office at 10, Biplabi Trailakya Maharaj Sarani, Kolkata- 700001 and Flagship Corporate Branch office at 2, India Exchange Place, Kolkata- 700001

**.....Financial Creditor**

*Versus*

**Mayur Ply Industries Private Limited**, a company constituted under the relevant provisions of the Companies Act, 1956, and being a company within the meaning of Companies Act, 2013, having CIN: U20101WB1998PTC130655 and having its Registered Office at 46C, Rafi Ahmed Kidwai Road, Kolkata- 700016, in the state of West Bengal

**.... Corporate Debtor**

**Date of hearing: 04 August 2022**

**Date of pronouncing the order: 12 September 2022**

***Coram:***

<b>Shri Rohit Kapoor</b>	<b>:</b>	<b>Member(Judicial)</b>
<b>Shri Balraj Joshi</b>	<b>:</b>	<b>Member(Technical)</b>

***Appearances (via video conferencing/ physical):***

***For the Financial Creditor:***

**Mr. Rishav Banerjee, Advocate**

Mr. Rahul Auddy, Advocate

For the Corporate Debtor:

Mr. Shaunak Mitra, Advocate  
Ms. Sristi Burman Roy, Advocate  
Mr. Sidhartha Sharma, Advocate  
Mr. Arjun Asthana, Advocate  
Ms. Shalini Basu, Advocate

**ORDER**

***Rohit Kapoor, Member (Judicial)***

1. This Court convened through hybrid mode.
2. This Company Petition under section 7(1) of the Insolvency and Bankruptcy Code, 2016 (IBC) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has been filed by Mr. Prasenjit Roy on behalf of and authorised by **UCO Bank**(*hereinafter referred to as the Financial Creditor*), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Mayur Ply Industries Private Limited**(*hereinafter referred to as the Corporate Debtor*).
3. **Submissions on behalf of the Financial Creditor:**
  - 5.1 The case of the Financial Creditor is that in or around June 2004, it sanctioned to the Corporate Debtor cash credit facility of ₹1,50,00,000/- (Rupees One Crore Fifty Lakh Only), Letter of Credit of ₹7,50,00,000/- (Rupees Seven Crore Fifty Lakh Only) and Bank Guarantee Facility of ₹5,00,000/- (Rupees Five Lakh Only), aggregating to a total amount of ₹9,05,00,000/- (Rupees Nine Crore Five Lakh Only).
  - 5.2 Thereafter at the request of the Corporate Debtor, the Financial Creditor on 12<sup>th</sup> September 2005 enhanced the cash credit facility from ₹1,50,00,000/- to ₹2,60,00,000/- (Rupees Two Crore Sixty Lakh Only),

the Letter of credit facility from ₹7,50,00,000/- to ₹14,00,00,000/- (Rupees Fourteen Crore Only) and the Bank Guarantee from ₹5,00,000/- to ₹18,05,000/- (Rupees Eighteen Lakh Five thousand Only), aggregating to ₹16,78,00,000/- (Rupees Sixteen Crore Seventy-Eight Lakh Only) on the terms and conditions contained in the letter of sanction dated 12.09.2005.

- 5.3 Thereafter at the request of the Corporate Debtor, the Financial Creditor on 1st February 2008 enhanced the cash credit facility from ₹2,60,00,000/- to ₹8,00,00,000/-, the Letter of credit facility from ₹14,00,00,000/- to ₹25,00,00,000/- and the Bank Guarantee from ₹18,05,000/- to ₹50,00,000/-. The Financial Creditor had sanctioned a fresh term loan of ₹4,90,000/-. The aggregate of the credit facilities stood at ₹38,40,000/- and such facilities was sanctioned on the terms and conditions contained in the letter of sanction dated 1st February 2008.
- 5.4 Subsequently in September 2008, certain credit facilities amounting to ₹19,00,00,000/- were sanctioned by State Bank of India and the Financial Creditor agreed that the mortgage and charge of the Financial Creditor over other assets shall rank *pari passu* with the mortgages and charges to be created by the Corporate Debtor in favour of State Bank of India.
- 5.5 After State Bank of India granted credit facilities to the Corporate Debtor on parripasu basis, it was required to form a consortium of lenders.
- 5.6 In 2013, Allahabad Bank had granted certain credit facilities to the Corporate Debtor and in order to include Allahabad Bank in the consortium arrangement, certain documents were executed between UCO Bank (Financial Creditor), State Bank of India and Allahabad

Bank. In 2013, the Financial Creditor had not enhanced any limits sanctioned by it in 2008, and the same stood unchanged.

- 5.7 After the execution of the supplemental working capital agreement, the Corporate Debtor started failing to pay the agreed interest amounts and as such started defaulting in the terms and conditions of the sanction and the consortium documents executed by the Corporate Debtor.
- 5.8 The Corporate Debtor on 18th April 2016 has confirmed the balance due to the Financial Creditor as on 31st March 2016 in the balance confirmation certificate of the Bank.
- 5.9 Thereafter several letters of Credits which were issued by the Financial Creditor at the instance of the Corporate Debtor were dishonoured due to the non-payment of the LC facility amounts and the said facilities devolved upon the fund-based cash credit accounts on different dates of involvement.
- 5.10 The corporate debtor started defaulting in liquidating the dues under the credit facilities on account of interest as well as principal amount. The first default in servicing of interest happened on 31.03.2017 and the account of the corporate debtor was declared as a non performing asset (NPA) on 31st May 2017. The total days of default as on 15th March 2020 are 1019 days.
- 5.11 The principal amount due to the Financial Creditor as on the date of NPA being 31.05.2017 is ₹35,18,00,000/-. The total amount claimed by the Financial Creditor, including the uncharged interest, other interest and penal interest as on 31st July, 2020 is ₹58,16,00,000/-.
- 5.12 The documents produced by the Financial Creditor in support of his claims include:

- i. Copy of the Master data of Corporate Debtor being Annexure “B”;
- ii. Copy of the Balance sheet of Corporate Debtor for the year ending on 31<sup>st</sup> March 2019, being Annexure “D”;
- iii. Copies of the documents executed between the consortium of banks and Corporate Debtor in December 2013, being Annexure “H”;
- iv. Confirmation dated 18th April 2016 by the Corporate Debtor regarding the balance due to the Financial Creditor as on 31st March 2016 in form of the balance confirmation certificate of the Bank, being Annexure “I”
- v. order dated 23rd March 2020 of the Hon'ble Supreme Court of India passed in Suo Moto Writ Petition (Civil) No. 3/2020, being Annexure “J”;
- vi. Corporate Debtor's acknowledgment of debt and promise to pay vide letter dated 9<sup>th</sup> October 2018, being Annexure “K”;
- vii. CIBIL Report being Annexure “N” from pages 277 to 509 of the petition;
- viii. Copies of entries in Bankers Book in accordance with the Bankers Books Evidence Act, 1891, being Annexure “O”.

4. **Submissions on behalf of the Corporate Debtor:**

6.1 The Corporate Debtor submits that the Financial Creditor has relied upon a power of attorney dated 18th June 2020, claiming that one Mr. Prasenjit Roy has been authorised to file the present application under Section 7 of the Code on behalf of the Financial Creditor. The Financial

Creditor has failed to place on record the and Resolution passed by the UCO Bank which authorizes Mr. Prasenjit Roy to initiate proceedings under Section 7 of the Code and as such, in the absence of any valid board resolution, the power of attorney cannot be relied upon at all. As such, the present application deserves to be dismissed by this Tribunal.

- 6.2 The law laid down by the Hon'ble Appellate Tribunal in *Palogix Infrastructure Private Limited Vs. ICICI Bank Limited* [Company Appeal (AT) No 17 of 2017] expressly mandates a valid board resolution for juristic entities for institution of an application under Section 7 of the Code. Further, the Hon'ble Appellate Tribunal in *Palogix Infrastructure Private Limited* (supra) refused to accept power of attorney as a valid instrument conferring valid authorisation on an official of a juristic entity to institute an application under the Code. As such, the present petition deserves to be dismissed in limine by this Tribunal.
- 6.3 It is further submitted in this regard that flowing from the observations made in *Palogix* (supra) , which bars any person to present an application under section 7 on the basis of a power of attorney, the Hon'ble NCLAT even held that while only a Board Resolution is permissible, the authorization in such Board Resolution should also be specific.
- 6.4 On perusal of the contents of the Power of Attorney in the instant petition, it is revealed that the said Mr. Prasenjit Roy has not been authorised by virtue of the said Power of Attorney to institute the present application under Section 7 of the Code and as such, the present application has been filed without proper authorisation.
- 6.5 Further, the Financial Creditor, in its attempt to show acknowledgement of liability by the Corporate Debtor, has relied upon unsigned financial

statements of the Corporate Debtor. The same are also not verified by the Auditor of the Corporate Debtor. As such, the said documents cannot be relied upon to prove any alleged acknowledgment of debt by the Corporate Debtor.

- 6.6 The Financial Creditor had classified the accounts of Corporate Debtor as Non-Performing Asset on 31st May 2017. In accordance with Clause 2.1.1 of the Master Circular on Income Recognition, Asset Classification, Provisioning & Other Related Matters - UCBs dated 1st July 2009, an asset becomes nonperforming when it ceases to generate income for the bank. Furthermore, in accordance with Clause 2.1.2 of the Master Circular on Income Recognition, Asset Classification, Provisioning & Other Related Matters - UCBs dated 1st July 2009, 90 days overdue norms for identification of NPAs have been made applicable from the year ended March 31, 2004.
- 6.7 It is submitted that the date of default by the Corporate Debtor should be 90 days prior to classification of the account as NPA, i.e., 2nd March 2017. However, the petition has only been instituted by the Applicant on 10th October, 2020. Therefore, the instant petition has been filed after a delay of 1318 days and is thus beyond the period of three years.
- 6.8 The exclusion of period of time for the purpose of limitation as a result of outbreak of the pandemic has been lost as the lockdown begins to run only on and from 24th March 2020. The limitation period to file the present application has expired on 2nd March, 2020.
- 6.9 It is submitted that in accordance with Article 137 of the Schedule to the Limitation Act, 1963, the right to sue against the Corporate Debtor arose on the date of default, i.e., on 2nd March 2017, and accordingly, the Financial Creditor had right to institute the present petition only until

three years from the date of default, i.e., within 2nd March 2020 and therefore the present is barred by laws of limitation.

6.10 Further, the Financial Creditor has relied on the following documents to submit that the same constitute as an acknowledgment under section 18 of the Limitation Act, 1963:

- a. Copy of balance sheet of the Corporate Debtor as on 31<sup>st</sup> March 2019, which are unsigned and unverified;
- b. Copy of the balance confirmation certificate dated 18<sup>th</sup> April 2016 which has been issued even prior to the commission of default by the Corporate Debtor as per the case of the applicant Bank;
- c. Copy of letter dated 9<sup>th</sup> October 2018 issued by State Bank of India with copy marked to UCO Bank which does not amount to acknowledgement of liability of debts and is merely a resolution proposal.

6.11 It is submitted that none of the aforesaid documents establish a valid acknowledgment of liability within the period of limitation, i.e., within 3 years from the alleged date of default, as submitted by the Applicant in its application under Section 7 of the Code.

6.12 With reference to Copy of the balance confirmation certificate dated 18th April 2016, it is submitted it is the own case of the applicant that the Corporate Debtor first defaulted on 31<sup>st</sup> March 2017 and thereafter accounts of the Corporate Debtor were classified as Non-Performing Asset on 31<sup>st</sup> May 2017. Therefore, a balance confirmation acknowledgment dated 18<sup>th</sup> April 2016, i.e., an alleged acknowledgement issued prior to even commission of default cannot be considered to be as a valid acknowledgement of under Section 18 of the Limitation Act, 1963.

- 6.13 Further, even considering the said letter dated 18th April 2016 to be a valid acknowledgement, the said acknowledgment has been issued beyond the period of 3 years and as such, the same cannot constitute to be a valid acknowledgment under Section 18 of the Limitation Act, 1963.
- 6.14 Further, with reference to the copy of letter dated 9th October 2018 issued by State Bank of India with copy marked to the Financial Creditor, it is submitted that the said communication dated 9th October 2018 was not issued to the Financial Creditor but the same was issued by the Corporate Debtor to State Bank of India. Since the said proposal for resolution was not accepted by the State Bank of India and as such, the same cannot constitute to be a valid acknowledgment of liability. under Section 18 of the Limitation Act, 1963.
- 6.15 Further, the communications which can be considered as a valid acknowledgement of liability under Section 18 of the Limitation Act, 1963 have been discussed by the Hon'ble Supreme Court in *Khan Bahadur Shapoor Freedom Mazda vs. Durga Prasad Chamaria and Others* [AIR 1961 SC 1236]. In light of the said judgment, the communication dated 9th October 2018 does not constitute a valid jural relationship between the Corporate Debtor and the Financial Creditor.
- 6.16 The Financial Creditor has mentioned wrong dates of default and classification of Non-Performing Assets of the Corporate Debtor. The petitioner has submitted that the Corporate Debtor started making defaults since 31st March 2017 and consequently, the accounts of Corporate Debtor were classified as Non-Performing Asset on 31st May 2017. However, in accordance with Clause 2.1.2 of the Master Circular on Income Recognition, Asset Classification, Provisioning 86 Other Related Matters - UCBs dated 1st July 2009, the accounts can

be classified only after 90 days from principal default. In the present case, considering the submissions made by the applicant to establish date of default, the petitioner has wrongly classified the account of the Corporate Debtor as NPA within 60 days from the date of default.

6.17 It is therefore submitted that the Form - 1 filed by the Applicant is incorrect, defective and malicious and deserves to be dismissed by this Tribunal in so far as the petitioner does not contain correct facts and date of default.

**5. Rejoinder on behalf of the Financial Creditor:**

7.1 It is submitted that the Corporate Debtor has not denied the dues or its obligation of payment. It has tried to raise frivolous technical issues but has not dealt with anything on the merits of the matter. As such, the entire outstanding dues stand admitted.

7.2 It is further submitted that there is no issue with the authority of the deponent of the section 7 petition and the power of attorney is validly executed in accordance with law.

7.3 The signatory of the section 7 petition was the Assistant General Manager, Flagship Corporate Branch of the Financial Creditor and a principal officer thereof and thus, was competent to sign said petition. Further, in case of a Board Resolution of the Financial Creditor, all its Managers of the Branches are duly authorized to sign, verify, execute, affirm, present and file complaints, written statements, petitions, applications etc. and generally all other documents and papers expedient or necessary in connection with any suit or legal proceeding in any court or Tribunal or any other judicial or quasi-judicial authority. A copy of the said Board Resolution along with a Circular dated 20.07.2012 is annexed to the rejoinder and marked with letter "B".

- 7.4 Further, with regard to the date of a document, the date of notarization is to be construed as the date of the document since the affirmation is happening in the presence of the notary. That is the very purpose and intent of notarization and affirmation before a notary public.
- 7.5 A board resolution is not required in all cases when the power of attorney is there and branch managers have been specifically authorized. It is therefore denied that the Power of Attorney is defective as alleged or at all.
- 7.6 Further, pursuant to judgments of the Hon'ble Supreme Court, the bank has a general board resolution that every person designated as "Manager" of a branch is authorized to sign petitions and institute litigations on behalf of the Bank. A copy of the Circular dated 20.07.2012 evidencing that the signatory of the section 7 petition was the Assistant General Manager and duly authorized is annexed to the petition and marked with the letter "C".
- 7.7 So far as the issue of unsigned financial statements is concerned, it is submitted that these balance sheets and financial statements are downloaded from the website of the Ministry of Corporate Affairs. The balance sheets are uploaded by the Corporate Debtor only after being duly approved by the board and shareholders and by using the DSC of the director/company secretary etc. the authenticity of the same therefore cannot be challenged.
- 7.8 For the sake of arguments, if the stand of the Corporate Debtor that the balance sheets as uploaded in the website of the Ministry of Corporate Affairs cannot be relied upon is accepted, then as per the stand taken by the CD, the CD intentionally uploads unsigned documents in government portals and with the ROC to prevent giving the true and correct financial picture of the CD. Balance sheets are uploaded to give

the true and correct financial image of the Company and in this case, the deponent duly authorized by the board of directors of the CD is stating under oath that information obtained from balance sheets uploaded with the ROC cannot be relied upon. This act of uploading balance sheets in the ROC portal and then the CD themselves saying that they cannot be relied upon shows the true intent of the CD and all its directors and responsible officers. Then this will amount to a sheer act of fraud and misleading the public.

- 7.9 It is submitted that the default in the service of interest has started prior to the declaration of the NPA and the same is stated in the petition itself. As detailed in the petition, there are admissions in the balance sheets of 2017 and 2019, balance confirmations in 2016 and letters written to bankers in 2018 wherein debts have been admitted and promised to pay. Thus, the petition has been filed well within the period of limitation. Further, the limitation protection under the *suo moto* orders on limitation by the Hon'ble Supreme Court covers the limitation aspect in this matter.
- 7.10 So far as the issue of the balance sheet and balance confirmation is concerned, it is submitted that the same has been dealt with in details. So far as the letter dated 9<sup>th</sup> October 2018 issued to State Bank of India is concerned, it is submitted that in the said letter, there is categorical admission of the dues of the Financial Creditor and promise to pay the Financial Creditor and such letter was also copied to the Financial Creditor. Since State Bank of India is leader of the consortium, the letter was addressed to the consortium leader and copied to the other bankers, which is the Financial Creditor in the instant case. It is denied that none of the documents establish valid acknowledgment of liability as alleged or at all.

7.11 It is further denied that the letter dated 9<sup>th</sup> October 2018 does not constitute a valid jural relationship between the Corporate Debtor and the Financial Creditor or that the same cannot be construed as a valid document for extension of limitation.

7.12 It is denied that the application has not been filed *bonafide* or is used to pressurize the Corporate Debtor to succumb to the unjust demands of the Bank or that the Bank has no intention of resolution or that the instant application is not maintainable in facts or in law or is liable to be dismissed as alleged or at all.

6. **Supplementary Affidavit on behalf of the Financial Creditor:**

8.1 It is submitted that pursuant to the Notification No. 5.0.109 (E) dated 27<sup>th</sup> February 2019 issued by the Ministry of Corporate Affairs and published notified in the Gazette of India on 1<sup>st</sup> March, 2019, inter alia, that person duly authorized by the Board of Directors of a company may file an Application for initiating Corporate Insolvency Resolution Process against a Corporate Debtor before the Adjudicating Authority under Sub-Section (1) of Section 7 of the Insolvency and Bankruptcy Code, 2016 on behalf of the Financial Creditor.

8.2 On the basis of the aforesaid Notification, the Financial Creditor on or about 6<sup>th</sup> June, 2019 placed a Memorandum to the Board of Directors and proposed for an authority to Officers in the cadre of Scale - IV and above filing Application on its behalf initiation of Corporate Insolvency Resolution Process of Corporate Debtors its approval which was placed before the Board of Directors in its meeting dated 21.06.2019 as Item No. H-3 and by a Resolution the Board Directors of the Financial Creditor approved the proposal and resolved that officers of the Bank in the cadre of Scale - IV and above are authorised to file an Application for initiating Corporate Insolvency Resolution Process under the Insolvency and

Bankruptcy Code, 2016. An extract of the said Resolution duly certified is annexed to the instant supplementary affidavit and marked with letter "B".

8.3 As per the said Board Resolution, the officers in the cadre of Scale-IV are duly authorised and empowered by the Board of Directors to sign applications on behalf of the Financial Creditor to initiate CIRP proceedings.

8.4 The instant petition filed by the Financial Creditor under section 7 of the Code was signed and affirmed by Mr. Prasenjit Roy who was the then Assistant General Manager of the Bank and as such was a Scale - V Officer.

8.5 Pursuant to the provisions of the MCA Notification of 27th February 2019 and the Resolution passed by the Board of Directors of the Bank on 21.06.2019, Mr. Prasenjit Roy is duly authorized and competent to sign the Application on behalf of the Financial Creditor and the acts done by him is perfectly valid.

8.6 The Financial Creditor has also issued a Circular bearing No. CHO/RCR/08/2019-20 dated 09.07.2019 recording the approval of the Board of Directors authorizing officers of the Bank in the cadre of Scale-IV and above to file an application for initiating CIRP under the Code.

7. **Analysis and Findings:**

9.1 We had heard the Ld. Counsel on behalf of the Financial Creditor and the Ld. Counsel on behalf of the Corporate Debtor and perused the records.

9.2 The contention of the Corporate Debtor that the instant petition is defective as Financial Creditor has failed to place on record the Board Resolution which authorises Mr. Prasenjit Roy to initiate proceedings under Section 7 of the Code, is not correct as the Ministry of Corporate Affairs, vide

Notification No. 5.0.109 (E) dated 27th February 2019 clearly allows for a person duly authorized by the Board of Directors of a company to file an Application for initiating Corporate Insolvency Resolution Process against a Corporate Debtor before the Adjudicating Authority under Sub-Section (1) of Section 7 of the Insolvency and Bankruptcy Code, 2016 on behalf of the Financial Creditor.

9.3 In compliance with the above notification, the directors of the Financial Creditor, *vide* Item No. H-3 of the Board Resolution dated 21/06/2019, have authorised the officers in the cadre of Scale-IV to sign applications on behalf of the Financial Creditor to initiate CIRP proceedings. As such, the instant petition is non-defective to this extent and the abovementioned contention of the Corporate Debtor is untenable.

9.4 The Corporate Debtor has further contended that there is a defect regarding date of default and the date of NPA mentioned in the petition since the date of default mentioned is not 90 days apart from the date of NPA. In this regard, we would like to hold that the date of NPA finds no mention in the Insolvency and Bankruptcy Code, 2016 and has no relevance in the proceedings under the Code. The Code finds relevance in the default and date of such default. The instant petition clearly mentions a date of default to be 31.03.2017 *i.e* the date on which 1<sup>st</sup> default in servicing of interest happened. As such, the petition with the date of default being 31.03.2017 will be considered by this Adjudicating Authority.

9.5 On the question of limitation, we would like to rely on the provision of section 18 of the Limitation Act, 1963, under which a fresh limitation period starts from the date of acknowledgement of the debt. Further, in ***Rajendra Narottamdas Sheth and Another v. Chandra Prakash Jain and Another*** [2021 SCC OnLine SC 843], the Hon'ble Supreme Court has held that:

*“23. It is no more res integra that Section 18 of the Limitation Act is applicable to applications filed under Section 7 of the Code. In case the application under Section 7 is filed beyond the period of three years from the date of default and the financial creditor furnishes the required information relating to the acknowledgement of debt, in writing by the corporate debtor, before the Adjudicating Authority, with such acknowledgement having taken place within the initial period of three years from the date of default, a fresh period of limitation commences and the application can be entertained, if filed within this extended period.”*

9.6 In the instant petition, the date of default as mentioned by the Financial Creditor is 31.03.2017, which means originally, the period of limitation would end on 31.03.2020. Beside the fact that Hon'ble Supreme Court of India in *Suo Moto Writ Petition (Civil) No. 3/2020*, regarding cognizance for extension of limitation on account of Covid-19 has excluded the period from 15.03.2020 to 14.3.2021, the limitation has got extended due to a written acceptance by the Corporate Debtor which has been placed by the Financial Creditor in the shape of a letter dated 09.10.2018 (Annexed on pages 264 to 269) as issued by the Corporate Debtor to State Bank of India with a copy marked to the Financial Creditor. In the said letter, the Corporate Debtor has clearly admitted to its liability towards the Financial Creditor herein. Since the said letter was issued within the original limitation period, it would, under section 18 of the Limitation Act, 1963, extend the limitation period. The new limitation period would end on 09.10.2021. As such, the instant petition is well within the period of limitation. The abovementioned letter dated 09.10.2018 would further act as the Corporate Debtor's admission of the debt due to the Financial Creditor. Regarding the Corporate Debtor's contention that the said letter was addressed to the State Bank of India and not the Financial Creditor,

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH

UCO Bank v. Mayur Ply Industries Pvt. Ltd.

C.P. No. 1144/KB/2020

page 267 of the petition clearly mentions that a copy of the said letter was to be sent to the Financial Creditor.

9.7 It is to be noted that the parties herein have been given multiple opportunities to settle the instant dispute. On 4<sup>th</sup> July, 2022, the Ld. Counsel for the Corporate Debtor sought the last opportunity to settle the matter. The settlement however, has not come to pass. In this regard, two letters dated 07/07/2022 and 01/08/2022 regarding the One Time Settlement (OTS) proposal dated 23/05/2022 as issued by the Corporate Debtor to the Financial Creditor have been placed on record. The said letters further amount to the admission of the Corporate Debtor for its liabilities towards the Financial Creditor. The said letter dated 01/08/2022 has been extracted and placed hereinunder:



Dated:- 01/08/2022

To,  
The Deputy General Manager,  
UCO Bank  
India Exchange Place Branch,  
Kolkata.

WITHOUT PREJUDICE

Ref: Our One Time Settlement (the 'OTS Proposal') dated 23/05/2022.

Dear Sir,

With reference to our earlier One Time Settlement proposal (OTS) and the meeting Mr. Prakash Kumar More had with Mr Prosenjit Roy, DGM on dated 30/07/2022, Saturday, we further increase our offer to Rs 9.70 crore (Rupees nine crores seventy lacs) against Principal outstanding of Rs 29.37 crores. All others terms and condition as mentioned in our letter dated 23/05/2022 shall remain the same.

An early action in this regards shall be highly appreciated.

Thanking You,

Yours faithfully,

Mayur Ply Industries (P) Ltd.

*Prakash Kumar More*  
Director



Mayur Ply Industries Pvt. Ltd.  
NH2, Delhi Road, Belur Math, Sheoraphuli, Hooghly- 712223, India  
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PIN No: 712013 WB1992PFC130655

9.8 In view of the above facts based on record, the present petition made by the Financial Creditor is complete in all respect 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, *i.e.*, Rupees one crore.

9.9 It is, accordingly, hereby ordered as follows:-

- a) The application bearing **CP (IB) No. 1144/KB/2020** filed by UCO Bank(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 Mayur Ply Industries Private Limited, CIN: U20101WB1998PTC130655, 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. Rajesh Kumar Agarwal**, registration number **IBBI/IPA-001/IP-P01023/2017-18/11722** email: **rajesh521@yahoo.comis** 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, as the case may be, the RP 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.
- g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h) The Financial Creditor shall initially deposit a sum of ₹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).
- 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, 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.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH

UCO Bank v. Mayur Ply Industries Pvt. Ltd.

C.P. No. 1144/KB/2020

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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.

9.10 **CP (IB) No. 1144/KB/2020** to come up on 20.10.2022 for filing the periodical report.

9.11 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)

Signed on the 12<sup>th</sup> day of September, 2022

SM[LRA]