IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH COURT III

C.P. No. 4182/IBC/MB/2018

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of
UNION BANK OF INDIA
Having registered office at: Union Bank Bhavan, 239, Vidhan Bhavan Marg, Mumbai 400021
……**Financial Creditor**

Vs

M/s Indian Transformers Co. Ltd.
Office No. 409, Shri Ramwadi, J P Road, near Dhake Colony, Andheri West, Mumbai- 400058
…….Corporate Debtor

Order delivered on:17.09.2021

Coram:
Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Hara P Kar, advocate

For the Respondent: Mr. Naik Rajwani a/w Haridas Dave, Director of the Corporate Debtor

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. This Company petition is filed by *Union Bank of India* (hereinafter called "Financial Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *M/s Indian Transformers Co. Ltd.* (hereinafter called "Corporate Debtor") by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of a financial debt of Rs. 39,53,59,449.6/-.

THE BRIEF FACTS OF CASE ARE AS FOLLOWS:-

2. The present Company Petition has been filed by Union Bank of India, Financial Creditor. The Corporate Debtor is a Private Limited Company incorporated under the provisions of the Companies Act, 1956.

3. The Financial Creditor states that at the specific request of the Corporate Debtor, various Credit facilities were granted to Corporate Debtor from time to time since around 1980. The Total amount of debt granted to Corporate Debtor as per the last sanction dated 23.05.2013 includes:

   (i) LC/LG- Rs. 6.00 crores
   -W/w Inland/Import LC (4.00 Crores)
   (ii) CC (Hyp)- Rs. 5.00 Crores
   (iii) WCTL- Rs. 15 Crore
   (iv) FITL- Rs. 4.50 Crore
   Total aggregating Rs. 30.50 Crores (Rupees Thirty Crore Fifty Lakh only)

4. In order to secure the credit facility provided by the Financial Creditor, Corporate Debtor from time to time executed various Security Documents &lastly in 2013 i.e. General Term Loan

Agreement dated 12.10.2013, Letter of Undertaking not to alienate Hypothecated Goods dated 12.10.2013, Agreement on Rate of Interest dated 12.10.2013, Letter of Continuity dated 12.10.2013, Hypothecation Agreement of Goods and Debts dated 12.10.2013, Composite Hypothecation Deed dated 12.10.2013, Memorandum of Entry of Deposit of Title Deed dated 27.05.2002, Supplementary Memorandum (Equitable Mortgage) dated 12.10.2013 along with Notice of Intimation dated 11.11.2013, Letter of Guarantee (SD-01) dated 12.10.2013.

5. The Corporate Debtor executed two even Debit Balance confirmation (SD-23) dated 14.07.2015 thereby confirming and acknowledging the indirectness to the Financial Creditor.

6. The Financial Creditor from time to time vide its phone calls, written communications etc. called upon the Corporate Debtor to clear the outstanding dues and / or regularize the account, but all gone in vain. Financial Creditor vide their notice dated 29.04.2016 to Corporate Debtor initiated proceedings under Section 13(2) of SARFAESI Act intimating that the account of the borrower has been classified as NPA as on 31.03.2016 called upon the Corporate Debtor to repay the outstanding amount due and payable under the said credit facilities amounting to Rs. 33,30,30,407/- along with the interest at contractual rate as per terms and conditions of the loan documents executed by the defendants and discharge all their liabilities.

7. The Corporate Debtor enjoyed and availed the said credit facilities and have wilfully committed a default in the repayment. The Corporate Debtor failed to clear the outstanding and / or regularize the account and thus,

committed breach of the terms and conditions on which the said credit facility were granted to Corporate Debtor.

8. Financial Creditor filed Original Application bearing No. 1009 of 2018 at DRT-III for a claim amount of Rs. 37,18,82,327.80/- filed on 07.12.2017.

9. Hence, the above Company Petition was filed by Financial Creditor praying for an order of initiation of CIR Process.

FINDINGS

1. This Bench did not find any reply filed by Corporate Debtor from the record. However, the Corporate Debtor submitted written argument/submission and also Sur-Rejoinder dated 12.04.2019. The contents and the substance of the written submissions and the sur-rejoinder are nothing but repetition. The Corporate Debtor both in the written submission and the Sur-Rejoinder raised several issues with regard to the status of account, withholding and misrepresentation of facts, delay in arranging funds and non-cooperation by the Financial Creditor, violation of RBI guidelines/directives so on and so fore which are not at all relevant for the purpose of disposal of the above Company Petition. This bench after thoroughly going through the sur-rejoinder and the written submissions found that the only legal plea that matters and to be countenanced is the plea of limitation and therefore this bench is not dealing with any of the above irrelevant issues raised by the Corporate Debtor.

2. The matter was listed on board on 20.08.2021 for final hearing. On that date Mr. Haridas Dave, Director of the Corporate Debtor was present and requested this Bench to pass orders after perusing the written submission submitted by them. No oral arguments were addressed by any advocate on behalf of Corporate Debtor. After hearing the submission

of the counsel appearing for the Financial Creditor, this bench feels that the only issue that needs to be decided in the above Company Petition is:

Whether the above Company Petition is within limitation?

3. In order to decide the above issue, it is important to mention that the loan facilities availed by the Corporate Debtor were originally declared as NPA in 2011 and subsequently loan facilities were restructured, and fresh documents were obtained from the Corporate Debtor in 2013 and the accounts were declared as NPA on 31.03.2013. The Financial Creditor annexed two debit balance confirmations dated 14.07.2015 at page numbers 219 to 220 of the Company Petition in respect of loan account bearing no. 320506310000007 for an amount of Rs. 146936720.80 and 320505010090079 for an amount of Rs. 5,00,00,000/- respectively which are within 3 years from the date of declaring the account as NPA.
4. Subsequently, the Corporate Debtor paid an amount of 50,000/- on 13.10.2017 which was also confirmed by the Corporate Debtor through their reply dated 04.12.2017 raising objection to the possession notice issued by the Financial Creditor under SARFAESI Act. The Corporate Debtor also addressed letter dated 24.02.2016 confirming the LC outstanding dues and LG outstanding dues. The above Company Petition being filed on 31.10.2018 is well within limitation. As per the law laid down by the Hon'ble Supreme Court in *Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy & another;* an OTS letter addressed by borrowers also amounts to an admission of liability/acknowledgment of debt. Therefore, the only legally

sustainable plea of limitation raised by the Corporate Debtor in the sur-rejoinder and written submission is liable to be rejected and accordingly rejected.

5. Upon hearing the submissions of the counsel appearing for the Financial Creditor and upon perusing the material available on record, this bench is of the considered opinion that the Financial Creditor has successfully proved the existence of debt and default and the debt is also within limitation. The Financial Creditor has also suggested the name of proposed Interim Resolution Professional in part-3 of the Petition along with his consent letter in Form-2. Thus, the present Company Petition satisfies all the necessary legal requirements for admission.
6. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the same is admitted by passing the following:

ORDER

a. The above Company Petition No. (IB) -4182(MB)/2018 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Indian Transformers Co. Ltd.
b. This Bench hereby appoints **Mr. Ankur Kumar** Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00113/2017-18/10283 as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
c. The Financial Creditor shall deposit an amount of Rs.5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution

Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-	**Sd/-**
CHANDRA BHAN SINGH	**H.V. SUBBA RAO**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**