

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKT BENCH,

KOLKATA

C.P (IB) No.1380/KB/2020

In the matter of

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.

And

In the matter of:

Uco Bank , through its Flagship Corporate Branch, Kolkata, having its Head Office – 10,B.T.M. Sarani, Kolkata-700001, Flagship Corporate Branch , 2, India Exchange Place, Kolkata-700001.

... Financial Creditor

Versus

In the matter of:

M/s Bhumya Tea Company Private Limited, CIN U01409WB2005PTC102542, having its registered office 20, Coalberth Hoboken Road, Kolkata-700088.

...Corporate Debtor

Date of hearing : 07/03/2022

Order Pronounced on : 05/04/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Joy Saha,Sr. Adv. } For the Financial Creditor
2. Mr. Santosh Kumar Ray, Adv.
3. Ms.Rituparna Sanyal, Adv.

1. Ms Debaleena Ganguly, Adv. } For the Corporate Debtor

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.

This 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 has been filed by **UCO Bank**, having its Head Office – 10,B.T.M. Sarani, Kolkata-700001, Flagship Corporate Branch , 2, India Exchange Place, Kolkata-700001., through Prasenjit Roy, Assistant General Manager, UCO Bank (hereinafter referred to as the Financial Creditor) for initiation of Corporate Insolvency Resolution Process in respect of **M/s Bhumya Tea Company Private Limited, CIN U01409WB2005PTC102542**, having its registered office at 20, Coalberth Hoboken Road, Kolkata-700088 (hereinafter referred to as the Corporate Debtor).

2. It is submitted by the Financial Creditor that the Corporate Debtor had approached the Financial Creditor for financial assistance and accordingly the credit facilities were sanctioned to the Corporate Debtor, which were enhanced, modified and renewed from time to time as per the request of the Corporate Debtor. The Financial Creditor has sanctioned credit facilities to the tune of Rs. 48,30,00,000/-(Rupees Forty Eight Crores Thirty Lakhs only). The Corporate Debtor executed security documents in favour of the Financial Creditor and as per the Agreement, the Corporate Debtor was mandated to repay the outstanding sums for Term loan facility and cash credit facility. However, the Corporate Debtor failed and neglected to make payment as per the terms of the agreements and thereby committed breach of terms and conditions of the said agreements. Therefore, the Financial Creditor classified the account of the Corporate Debtor as a Non-Performing Asset.

3. It is submitted that the Corporate Debtor had also acknowledged the debt from time to time by confirming their dues by signing a letter of

confirmation to the Financial Creditor. The Financial Creditor had issued a notice to the Corporate Debtor and the guarantors under Section 13(2) of the SARFAESI Act, 2002 and had called upon the Corporate Debtor and the Guarantors to make payment of the total outstanding dues. The Corporate Debtor, thereafter, approached the Financial Creditor to settle its dues and one time proposal offer was accepted by the Financial Creditor. However, the Corporate Debtor failed to repay the outstanding dues and hence the Financial Creditor has filed the present petition to initiate Corporate Insolvency Resolution Process under the Code.

4. It is submitted that to avail the aforesaid credit facilities, the Corporate Debtor had executed the following documents:-

- i. A Demand Promissory Note,
- ii. Letter of Undertaking;
- iii. Composite Deed of hypothecation;
- iv. Extension of Equitable Mortgage;
- v. Personal Guarantee of Mr. Sanjay Prakash Bansal and Reena Bansal,
- vi. Corporate Guarantee of M/s Ambootia Tea Exports Private Limited.

5. It is further submitted that the Corporate Debtor and the corporate guarantor including the personal guarantors have duly availed the aforesaid credit facilities by securing the credit facilities by hypothecation of the following;

1. Hypothecation of the tea crops of the company's Jamguri Tea Estate for present and future seasons.
2. Hypothecation of plant and machinery, stores and spares and other movable assets (other than those purchased under H.P. scheme of Tea Board)
3. Hypothecation and charge on book debts of the company,
The aforesaid charges were duly registered and recorded with the Registrar of Companies. The copy of the same from the website of

Ministry of Corporate Affairs along with search report is annexed as Annexure-J.

6. It is submitted that the Corporate Debtor created equitable mortgage in respect of the leasehold agricultural land (tea estate) and construction thereon situated at village Nugora Grant, Mouza-Ghiladhari, Golaghat, P.O.- Oating P.S. and District- Golaghat, Assam in the name of company M/s Bhumya Tea Company Private Limited (taken on lease from government of Assam) having an area of 735.00 hact.

7. It is submitted that the Corporate Debtor has signed a balance confirmation on 06.11.2017 wherein the Corporate Debtor has acknowledged that an amount of Rs.79,68,00,000/- (Rupees Seventy Nine Crores and Sixty Eight Lakhs only) is due and payable by the Corporate Debtor inclusive of interest . Copy of the said balance confirmation is annexed as Annexure-K.

8. It is submitted that the Corporate Debtor undertook to strictly adhere to the Terms and Conditions which are part and parcel of the said sanction as entered into by and between the Financial Creditor and the Corporate Debtor. The Corporate Debtor therein were mandated to repay the loan at an agreed interest rate or as per the RBI/Bank's Directives from time to time, according to the stipulated Terms and Conditions as envisaged in the said sanction. Further, under the said agreement the Corporate Debtor were mandated to repay the sum but the Corporate Debtor have failed and /or neglected to make repayments of the principal debt and interest thereon in accordance with the Terms and Conditions as enshrined in the said sanction and thereby committed breach of the said sanction.

9. It is submitted that the Financial Creditor, having seen the conduct of the Corporate Debtor, was constrained to declare the account of the defendants as NPA on 31.03.2018 as per the prevailing directives/guidelines relating to asset classification issued by the Reserve Bank of India.

10. It is submitted that the Financial Creditor had called upon the Corporate Debtor and all its guarantors by a notice under 13(2) of the SARFAESI Act, 2002 dated 31.10.2019 to pay the outstanding dues of Rs.44,95,37,324.56p plus accrued interest from the date of last interest charged as 31.03.2019 along with further interest, incidental expenses and costs. The Corporate Debtor replied to the said notice through a notice dated 01.01.2020 and the Financial Creditor replied to their notice on 15.01.2020. A copy of the said notices are annexed as Annexure-L.

11. It is submitted the Corporate Debtor had approached the Financial Creditor to settle its dues and an one-time Settlement offer was given and was agreed between the Corporate Debtor and the Financial Creditor. The Corporate Debtor lastly paid a sum of Rs.78,60,444/- on 29.03.2019. However, it failed to pay the outstanding dues as per the schedule and memorandum and thereafter the one time settlement failed. Copy of the approval of one time settlement by the Financial Creditor is annexed as Annexure-M.

12. It is submitted that the outstanding sums due and payable by the Corporate Debtor to the Financial Creditor amounts to Rs.57,57,15,416.13p as on 22.09.2020 including accrued interest calculated from the date of NPA in respect of the credit facilities granted by the Financial Creditor and the outstanding balances thereof;

Nature of Facility	Outstanding inclusive of interest as on 22.09.2020(In crores)
TERM LOAN	11,08,61,339.06p
CASH CREDIT	31,50,04,999.85p
UNAPPLIED INTEREST (TERM LOAN)	4,05,13,258.35p
UNAPPLIED INTERST (CASH CREDIT)	10,93,35,818.35p
Total	57,57,15,416.13p

The said outstanding dues are supported with the Statement of Accounts and

interest calculation chart is annexed as Annexure-N.

13. It is submitted that the Corporate Debtor has accepted its liability in respect of the aforesaid credit facilities by executing confirmation of balances and revival letter from time to time. The Corporate Debtor has also accepted its liability by entering into a one-time settlement offer with the Financial Creditor. It is, therefore, evident that the said amount of Rs.57,57,15,416.13p is an admitted amount due and payable by the corporate debtor to the financial creditor.

14. It is further mentioned in the petition that default happened from time to time due to which account of the Corporate Debtor was renewed, revived and restructured and even thereafter the Corporate Debtor continued with defaults in complying with its obligation to regularize the accounts. First default took place on 5th January, 2018, in servicing of interest and thus on 31.03.2018, the accounts of the Corporate Debtor was declared as an NPA.

15. It is submitted that the outstanding debt payable by the Corporate Debtor to the Financial Creditor amounts to Rs. 57,57,15,416.13p as on 22.09.2020 in respect of the credit facilities granted by the Financial Creditor.

16. To further secure the loan, the Financial Creditor took various preliminary and collateral securities in respect of immovable properties/ assets of the Corporate Debtor.

17. On being served with the notice of the Court, the Corporate Debtor has filed its reply affidavit.

18. In reply affidavit filed by one of the Directors of the Corporate Debtor, it is submitted that application is not complete and no date of default has been mentioned in the application. It is submitted that the Financial Creditor has suppressed material facts.

19. It is further submitted that the date of declaration of NPA is 30th March, 2018 and that no such notice or letter mentioning the same is disclosed by the Financial Creditor. It is submitted that the Corporate Debtor has no knowledge as to when the account was declared as NPA and was not given any opportunity of hearing before the account was declared as NPA. The Corporate Debtor further submitted that the amount alleged to be due is highly inflated unreasonable and without any basis. It is submitted that the Financial Creditor has suppressed a letter dated 28th March, 2020 deliberately and it will be evident that a revised one time settlement was entered into between the parties. It is submitted that there is no default as per section 3(12) of the Code and the present application is premature and cannot be admitted. The Corporate Debtor thus prayed that the petition be dismissed in limine.

20. During the course of arguments, the Ld. Counsel for the Financial Creditor has taken us through all the documents placed on record accompanying the petition, including the demand promissory note, balance confirmation dated 6th November, 2017, notice under section 13(2) demanding a sum of Rs.44,95,37,324.56 plus interest accruing from the date of last charged. Ld. Counsel further submitted that the Corporate Debtor had approached the Financial Creditor to settle its dues. The OTS proposal was duly approved by the Financial Creditor. This fact has been acknowledged and admitted by the Corporate Debtor in its reply affidavit. It is submitted that by a letter dated 25th March, 2020, the Financial Creditor approved the OTS proposal. It is submitted that the proposal was entered into between the parties and this will appear from Annexure-B of the reply affidavit. This has not been denied by the Corporate Debtor; rather it is an admission of its liabilities by the Corporate Debtor.

21. We do not think the Corporate Debtor has any substance in its pleas raised in the reply affidavit. The Corporate Debtor has clearly admitted its liability, the account was declared as an NPA because the Corporate Debtor failed and defaulted in repayment of its financial debt.

22. The Financial Creditor proposed the name of **Mr. Santanu Brahma**, to act as an IRP having Registration No. **IBBI/IPA-001/IP-P01482/2018-2019/12251**, who has consented vide his affidavit and Form-2, and submitted that he has agreed to accept the appointment as IRP if an order admitting the present application is passed by this Adjudicating Authority. He has further submitted that no disciplinary proceedings are pending against him with the Board or Institute of Insolvency Professionals of ICAI.

23. The petition is otherwise complete in all respects.

24. In the facts and circumstances, we are satisfied that the petition under section 7 of the Code filed by the Financial Creditor deserves to be admitted and we, therefore, pass the following orders:-

O R D E R S

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor is hereby admitted.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. 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 Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

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- 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 assets 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 the possession of the corporate debtor.
- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- 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.

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- vii) The order of moratorium shall have effect from 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 the 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) **Mr. Santanu Brahma**, IRP registered with Insolvency and Bankruptcy Board of India, having Registration No. **IBBI/IPA-001/IP-P01482/2018-2019/12251**, Email ip.santanubrahma@gmail.com hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Financial Creditor/Applicant is directed to deposit **Rs.3,00,000/- (Rupees Three Lacs Only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

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- xii) Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii) List the matter on 25/05/2022 for the filing of the progress report.
- xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on, this 5th day of April, 2022

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