IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.3093/MB-IV/2019
Under Section 7 of the I&B Code, 2016

In the matter of:
Union Bank of India Limited
…Financial Creditor/Petitioner
V/s
Kharewali Steel Private Limited
[CIN: U70102MH2012PTC2]
...Corporate Debtor/Respondent

Order pronounced on : 13.12.2022

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):
For the Petitioner(s) : Ms. Vidisha Poonja, Advocate

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition being C.P. (IB) No. 3093/NCLT/MB/C-IV/2019 filed on 26/08/2019 by Union Bank of India Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Kharewali Steel Private

Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Petition is filed by Mr. Avdhoot Hari Prabhukhanolkar, Chief Manager of Vashi Turebhe Branch, authorized by the Financial Creditor vide Authority Letter dated 05.08.2019, claiming default amount of Rs. 36,18,03,995.89 (Rupees Thirty-Six Crore Eighteen Lakh Three Thousand Nine Hundred Ninety-Five and Eighty-Nine Paise Only) as on 31.08.2018. The Date of default is 31.0 8.2018.

<u>The case of the Financial Creditor is as under:</u>

3. The Corporate Debtor approached the Financial Creditor for availing a Working Capital Loan on 10.11.2014 of Rs.25,00,00,000/- by way of Cash Credit Facility during the Financial Year 2014-15. A Board Resolution was passed on 16.02.2015 to this effect.

4. The Financial Creditor on 12.02.2015 issued a Sanction Letter dated 12.02.2015 [Midcorp/Vashi/SVIPL/189/14-15]. The loan was granted for a period of one year from 2015-16 and was renewable at the instance of the Financial Creditor upon the request of the Corporate Debtor. This loan was linked to the Account No. 732605010000103.

5. Further, the Corporate Debtor on 27.02.2017 entered into a Hypothecation Agreement of Goods and debts with the Financial Creditor for availing the Cash Credit Facility of Rs.25 Cr. Subsequently, for the said purpose a Composite Hypothecation Deed was entered into by Financial Creditor with the Corporate Debtor. Mr. Shersingh Omprakash Agarwal and Mr. Dinesh Shersingh Agarwal extended a Guarantee for the loan in favour of the Corporate Debtor.

6. Further, on 27.03.2015 the Corporate Debtor executed a Demand Promissory Note in favour of the Financial Creditor and later on executed a Letter of Continuity and Authority Letter dated 05.08.2019. Corporate Debtor also executed a Letter of Undertaking to not alienate the hypothecated goods and a Cash Credit Bond in favour of the Financial Creditor.

7. Subsequently, in Financial Year 2016-17 the Corporate Debtor approached the Financial Creditor under the Union Liqui Property Scheme for availing an Overdraft Facility amounting to Rs.10,00,00,000/- linked to account bearing no. 732604060000001. The Financial Creditor issued the same on 15.02.2017 and the Sanction Letter for the Overdraft was issued on 23.02.2017. Further, the Corporate Debtor submitted its Due Diligence Report on 14.12.2017.

8. The Corporate Debtor again on 15.05.2018 applied for renewal of Cash Credit loan of Rs. 25 Crores applied from the Financial Creditor.

9. The Corporate Debtor changed its name from Shree Vaishnav Ispat Private Limited to Kharewali Steel Private Limited w.e.f. 04.11.2017. Subsequently, on 15.05.2018 the Financial Creditor issued a letter recognizing the sanction of Working Capital Credit Facilities aggregating to Rs.35 Crores to the Corporate Debtor with reference to change of the company name.

10. Further, the Corporate Debtor defaulted in payment of interest of loan for three consecutive months in June, July and August 2018. During this time there was no activity in the account linked to the loan and the Corporate Debtor failed to keep the account active in the aforesaid time.

11. Considering the inactivity in the accounts and the default in payment of interest for three consecutive months, Corporate Debtor's accounts were declared as NPA by the Financial Creditor on 31.08.2018.

12. The total amount due from Corporate Debtor is Rs. 36,18,03,995.89/- only and the date of default is 31.08.2018.

Sr. No.	Account Number	Transaction Details/Date of Transaction	Loan taken on date	Loan Amount	Date of Default	Interest Reversed	Amount of default
1.	732605010000103 (for 25 Cr working capital loan)	Sanction letter dated 12.02.2015	12.02.2015	25,00,00,000	31.08.2018	-	25,78,98,463.81
2.	73260060000001 (for 10 Cr O/D)	29.03.2017	15.07.2017	10,00,00,000	31.08.2018	-	10,20,34,604.66
3.	732601010050000 Current Account	_	_	_	31.08.2018	1,07,017.42	00,17,63,910.42
	Total amount due as on 31st August 2018 (A+B)						**36,18,03,995.89**

13. Thereafter, on 01st September 2018, the Financial Creditor sent a Demand Notice u/s 13(2) to the Corporate Debtor and further on 04.01.2019 again sent a notice u/s 13(4) to take possession of the Hypothecated Property and the other property under its charge.

14. The bank statements of the accounts of the Corporate Debtor from 30.08.2018 to 24.04.2019 corresponding to accounts bearing no. 732601010050003, 732604060000001, 732605010000103 and the Balance Sheet with the charges against Corporate Debtor reflects the liability of the Corporate Debtor towards repayment of the said loan amount.

Reply of the Corporate Debtor.

15. The Corporate Debtor on 10.11.2014 made an Application to the Financial Creditor for grant of Credit Facility of Rs. 25 Crores which was granted by the Financial Creditor vide a Sanction Letter dated 12.02.2015. The said facility was valid from 11.02.2015 to January 2016. The Corporate Debtor states that the Sanction Letters contained various terms and conditions under which the credit facility was granted to the Corporate Debtor. It also records that several collateral securities were given by the Corporate Debtor. In addition to the same, Personal Guarantees totalling to a sum of Rs. 178.12 Crores were given by the Directors of the Corporate Debtor.

16. The Corporate Debtor further states that in accordance with the sanction letter dated 12.02.2015 timely repayments along with the applicable interest were made and the same have been accepted by the Financial Creditor without any demur.

17. The credit facility was to expire on January 2016, and the Corporate Debtor made an application for renewal of Credit Facilities for Rs. 25 Crores.

18. The application was accepted by the Financial Creditor and credit facility of Rs.25 Crores was renewed by its letter dated 5th October 2016 on the terms and conditions mentioned in the said renewal letter. The date of sanction was 28th September, 2016 and the due date for renewal was 27th September 2017.

19. The Corporate Debtor thereafter also submitted an application/request for an overdraft facility of Rs. 10 Crores from the Financial Creditor

which was sanctioned by letter dated 23rd February 2017 under UBI Liquid Property Scheme on the terms and conditions mentioned therein.

20. As per the said renewal letter dated 05.10.2016 and sanction letter dated 23.02.2017. The Corporate Debtor made timely repayments along with applicable interest and the same was accepted by Financial Creditor without any protest or demur.

21. On several occasions, excess interest was levied on the Corporate Debtor, which had been brought to the notice of the Financial Creditor from time to time by various letters. This is clear from various letters addressed by the Corporate Debtor to the Financial Creditor dated 05.04.2016, 26.04.2016, 26.05.2016, 15.04.2017 and 24.04.2017.

22. On 30.10.2017 the Corporate Debtor sought enhancement of the Working Capital Facilities which included the Cash Credit Facility as well as the Overdraft Facility from Rs.35 Crores to Rs.50 Crores.

23. As the Cash Credit Facility granted to the Corporate Debtor had come to an end the Corporate Debtor addressed letters dated 30.10.2017 and 31.01.2018 requesting for enhancement of the said facilities. He also enclosed a letter dated 12.02.2016 issued by the Industries, Energy and Labour Department, Government of Maharashtra which mentioned that the products of Corporate Debtor were conferred the status of "Mega Project" and therefore it would get additional subsidiaries and benefits/incentives from Government of Maharashtra. Despite multiple letters sent to the Financial Creditor, it did not renew and enhance the Working Capital Facility of the Corporate Debtor.

24. The Financial Creditor thereafter purported to declare the Corporate Debtor's Working Capital Facility accounts as NPA on 31.08.2018 and

thereafter, issued a notice dated 01.09.2018 under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) claiming that an amount of Rs.36,18,03,995.89/- is outstanding and payable by the Corporate Debtor.

25. The Corporate Debtor submits that the Financial Creditor has deliberately committed breach of its commitments and obligations by neither accepting nor rejecting renewal proposal for the Working Capital Facilities requested by Corporate Debtor time and again. It further states that this is a case where working capital and overdraft facilities were essential for day to day functioning of the Corporate Debtor. Therefore, the entire modus operandi of Financial Creditor has resulted into substantial loss to the Corporate Debtor and adversely affected its growth. In its reply to the letter under Section 13 (2) of SARAFESI Act, 2002 the Corporate Debtor had called upon the Financial Creditor to withdraw the said notice for the abovementioned reasons. Therefore, the Corporate Debtor pleads that this petition be dismissed with compensatory costs.

Findings:

26. We have heard and prudently gone through the pleadings available on record. On the request of the Corporate Debtor, the Financial Creditor sanctioned/enhanced/renewed the credit facilities time to time. The Corporate Debtor availed and enjoyed the credit facilities, but failed to repay the outstanding dues, as a result of which the loan accounts of the Corporate Debtor were classified as Non-Performing Assets (N.P.A) on 31.08.2018 . The Financial Creditor issued Demand notice u/s 13 (2) of the SARFAESI Act, 2002 on 01.09.2018 demanding and recalling for

outstanding dues to tune to Rs. 36,18,03,995.89/- within a period of 60 days and further on 04.01.2019 to take possession of the hypothecated assets. Despite receipt of said demand notice, the Corporate Debtor neither repaid the outstanding amount nor replied to the notice in rebuttal.

27. The only contention of the Corporate Debtor is that the Financial Creditor charged excess rate of interest. Further, the Corporate Debtor also contended that despite repeated requests for renewal of existing credit facilities vide letters dated 05.04.2016, 26.04.2016, 26.05.2016, 15.04.2017 and 24.04.2017, the Financial Creditor chose not to reply to aforesaid letters and also did not take any action with restructuring/renewal of credit facilities.

28. This Bench is of the view that nowhere in its reply has the Corporate Debtor objected to the disbursement of the aforesaid sanctioned credit facilities.

29. Thus, it is crystal clear that there is a clear debt and default on the part of the Corporate Debtor and the debt claimed in the Petition is covered under Section 5(8) of the Code. Thus, the Petition squarely falls within the period of limitation as prescribed under Section 18 of Limitation Act, 1963.

30. In view of the above observations, this Bench is of the considered view that this petition is deserves to be admitted.

31. The Financial Creditor has proposed the name of Mr. Mahesh Sureka, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00413/2017-18/10736] as Interim Resolution Professional, to carry out the functions as mentioned under

I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

a) This Application being C.P. (IB) No. 3093/NCLT/MB/C-IV/2019 filed by Union Bank of India Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Kharewali Steel Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

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;

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

   a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
   b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

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

VI. That this Bench appoints Mr. Mahesh Sureka, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00413/2017-18/10736] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

e) 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).

f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Joint Registrar is to be submitted within 3 days from the date of uploading of the order.

Sd/-	Sd/-
Manoj Kumar Dubey	Kishore Vemulapalli
Member (Technical)	Member (Judicial)

13/12/2022