IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT- 3, MUMBAI BENCH

C.P. No.4277/MB/I&B/2018

Under section 7 of the IBC, 2016

In the matter of
Phoenix ARC Private Limited,
Trustee of Phoenix Trust FY 15-14
5th Floor, Dani Corporate Park 158, CST Road,
Kalina, Santacruz (East), Mumbai -400098

....Applicant/Financial Creditor

v/s.

Ajanta Paper and General Products Limited,
Village Vadavali, Taluka Kalyan, Kalyan,
Thane, Maharashtra-421301.

....Corporate Debtor

Order pronounced on: **07.10.2021**

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

For the Petitioner : Ms. Manaswi Agarwal, Advocate.

For the Respondent : Mr. Gautam Ankhad, Advocate a/w Ms. Pavitra Pillay, Advocate, i/b Kanga & Company.

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This Company Petition is filed by Phoenix ARC Private Limited, Trustee of Phoenix Trust FY 15-14, (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Ajanta Paper and General Products Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default on 30.09.2002 in making payment to the extent of Rs. 96,01,67,024/- by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 4 of the Insolvency and Bankruptcy (AAA) Rules, 2016.

<u>Contentions of Petitioner:</u>

2. The Petitioner submits that the Unit Trust of India (UTI) (Assignor) advanced a financial assistance to the Corporate Debtor in the form of a subscription of 5,00,000 Secured Redeemable Non-Convertible Debentures of face value of Rs. 100 (Rupees One Hundred Only) along with all interest and charges payable under the financial facility. The terms and conditions of the Financial Facility were set out in the Sanction letter dated 16th February, 1998 and Letter of Modification dated 4th May, 1998 issued by UTI to Corporate Debtor and Subscription Agreement dated 15th June, 1998 executed between the Corporate Debtor and UTI. Subsequently, the terms and conditions of the sanction were modified on May, 1998, *inter alia,* reducing the rate of interest from 19% to 17.5%.

3. The Petitioner further submits that Bank of Maharashtra was appointed as the Debenture Trustee vide a Debenture Trust cum Mortgage Deed dated 14th October, 1998 in respect of the Debentures subscribed by the UTI. In the same deed, the Corporate Debtor, *inter alia,* mortgaged its properties situated at Kalyan, Mumbai, to secure the repayment of financial facility. The Corporate Debtor also created a charge in favour

of the Debenture Trustee *inter alia* over the movable properties situated at Jhagadia Property.

4. Pursuant to the execution of various documents in respect of the Financial Facility, UTI disbursed the Financial Facility to the Corporate Debtor and the Debentures are as follows:

Date of subscription/Allotment	Number of Debentures issued	Amount subscribed
July 16, 1998	3,00,000	Rs. 3,00,00,000
February 22, 1999	1,00,000	Rs. 1,00,000
October 5, 1999	1,00,000	Rs. 1,00,000

5. The Petitioner further submits that vide an Assignment Agreement dated 04th December, 2014, UTI (Assignor) assigned all the rights, title and interest in the Financial Facility in favour of the Petitioner. Thus, the Petitioner acted in favour of UTI in respect of the debt owned by the Corporate Debtor to UTI. Further, as per the Subscription Agreement dated 15th June, 1998 executed by the Corporate Debtor in favour of the Assignor, the Corporate Debtor was liable to repay the Financial Facility in 6 annual instalments after the expiry of the second year from the respective dates of allotments.

6. But the Corporate Debtor failed to repay the Financial Facility as per the agreed terms and conditions. Thus, UTI issued a Recall Notice dated 10th October, 2002 to the Corporate Debtor calling upon them to repay the entire outstanding amounts under the Financial Facility as on 30th September, 2002.

7. Despite receipt of the Recall Notice, the Corporate Debtor failed to repay the outstanding amounts. Therefore, the Petitioner filed this Petition praying for the admission of the Petition and commencement of CIRP against the Corporate Debtor.

Contentions of the Corporate Debtor:

8. The Corporate Debtor in its reply contended that on a careful perusal of the Balance sheets from 2011 onwards shows that Corporate Debtor has never admitted and acknowledged the alleged debt payable to the Petitioner. But it merely records that the Corporate Debtor has defaulted in paying outstanding dues to UTI and a recall notice was issued in relation to the same.

9. Further, the Corporate Debtor contended that the Petitioner cannot take shelter under Section 18 of the Limitation Act to revive a hopelessly time barred debt as under Section 18 of the Limitation Act a fresh period of limitation shall be computed only before the expiration of the period of limitation, a party in writing acknowledges the debt. But in this Petition, the Petitioner has failed to prove or produce any document to show that Corporate Debtor had acknowledged the alleged debt in writing.

10. In the present case, the right to sue accrued in 2004 when UTI issued Recall Notice but the Petition was filed only on 6th November, 2018. Thus, the Corporate Debtor states that the present petition is based on a time barred debt.

11. The Corporate Debtor has relied upon the judgment of Supreme Court in the case of *B. K. Educational Services (P) Limited Vs. Parag Gupta and Associates (2019) 11 SCC 633.*

12. In view of the above, the Corporate Debtor prays that the Present petition to be dismissed with cost.

Findings:

13. This Petition has been filed by Phoenic ARC Private Limited (hereinafter referred as "Applicant/Financial Creditor") against the Ajanta Paper and General Products Limited and Ors. (hereinafter referred as

"Respondent/Corporate Debtor") for 5,00,000 (five Lakhs) 19% Secured Redeemable Non-Convertible Debentures of face value of Rs. 100 (Rupees One Hundred Only) each aggregating to total amount of Rs. 5 crores. The interest due initially was at the rate of 19 % per annum which was in May 1998 modified /reduced to 17 % per annum.

14. This financial facility has been assigned to Phoenic ARC Private Limited by the Assignee of the Unit Trust of India vide assignment agreement dated 4th December, 2014. As on 31st October, 2018, the total outstanding amount as per the Petition is Rs. 97,01,67,024/- and the date of default as per the Petition is 30th September, 2002.

15. The facility recall notice was given by the Petitioner to the Respondent on 10.10.2002. The Bench notes that Pari passu charge has also been created on the ownership rights of the Corporate Debtor on 14th October, 1998. In addition, charge has also been created on all the movable properties of the Corporate Debtor including Plant and Machinery both present and future. The Bench notes that it is admitted position that a Secured Redeemable Non-Convertible Debentures of Rs. 5 crores along with interest has been provided by way of financial facility to the Corporate Debtor. However, the only point of defence raised by the Corporate Debtor is that the Petition is time barred and therefore, should be dismissed.

16. The Corporate Debtor in his reply mentions that records in the balance sheet does not amount to unequivocal acknowledgment as per provisions of the Section 18 of the Limitation Act.

17. Since the Corporate Debtor admitted its liabilities towards the financial facilities, the Bench would not dwell on the debt and disbursal aspect of the facility. However, only aspect to be seen by this Bench relates to the limitation aspect and whether the Petition which has been filed on 6th November, 2018 is as barred by time.

18. In order to deal with the issue of limitation, the Petitioners have submitted an additional affidavit to the Petition, financial documents of several years where there has been clear cut admission of liability regarding the Financial facility availed the Corporate Debtor from time to time since 2003. Here, it is pertinent to note that the date of default as per the Petition is 30th September, 2002 and the Bench, based on the submissions made by the Petitioner has tried to arrive at the fact that whether within every three years since the date of default, the Corporate Debtor has admitted to its liability towards the financial facility in its various financial documents filed with the Statutory authorities.

19. It is on record that the Corporate Debtor was referred to BIFR under Sick Industrial Companies (Special Provisions) Act, 1986 (SICA). The reference of the Corporate Debtor to BIFR was pending until 19th June, 2008. When, as mentioned by the Petitioner, the reference to BIFR in SICA was abated and accordingly ordered by BIFR. Therefore, the Bench is of the view that as per Section 22 of the SICA, 2003, the Petitioner could not have instituted or prosecuted any proceedings against Corporate Debtor from 2003, when the company was referred to BIFR and till June, 2008 when the said reference was abated by BIFR. Thus, the time period between 2003 to 19th June, 2008 as per law would stand excluded while computing the period of limitation for filing the petition.

20. The Petitioner has produced before the Bench the annual returns and the balance sheet filed by the Corporate Debtor before RoC for the financial year ending 31st March, 2009 where it has been clearly shown the Corporate Debtor who has 5 lakh debentures of the face value of Rs. 100 each of Unit Trust of India. The Snapshot of the same is as follows:

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Ledger Folio of Shares/Debenture Holder	: 001	Address	: 13-Sir Vithldas : Thakersy Marg
Share/Debenture Holder's Name	: UNIT TRUST OF INDIA	Town/City State	: Mumbai : MAHARASHTRA
Father's/Husband's Name	:	Pin Code	: 400 020
Type of Share/debenture	: 3		
Number of Shares/Debentures held	: 500000	Amt.Per Debenture	: Rs.100/-

For [illegible]

Director

Director

21. Similarly, in the balance sheet for the period 01st April, 2011 to 31st March, 2012 filed by the Corporate Debtor to RoC, the following has been mentioned:

"*9. The following Secured Loans have become due to the Lenders alongwith the interest and other charges, since the Lenders have recalled the said Loans for repayment.*
S. R. No. Name of the Lenders Nature of Loans
a) Unit Trust of India 17.5% Secured redeemable
Non-Convertible Debentures 106,29,521."

22. The Petitioner has submitted balance sheet for the year ended 31st March, 2015 which shows that during the FY 2014-15 (end March), there is a mention of the debentures issued by Unit Trust of India which

stood subsequently transferred to Phoenic ARC Private Limited. It clearly mentions amount as on 31st March, 2017 stands at Rs. 10,62,92,521/- along with Interest. The Snapshot of the same is as follows:

The Company has not accepted any deposits from the public to which the directives issued by the Reserve Bank of India and the provisions of section 73 to 76 and any other relevant provision of the Companies Act, 2013 and the rules framed there under apply.

6. The Central Government of India has not prescribed the Maintenance of cost records under section 148 (1) of the Companies Act, 2013 for any of the Product of the Company and accordingly Maintenance of cost records under section 148 (1) of the Companies Act, 2013 is not applicable to the Company.

7 a. According to the information and explination given to us and the records of the Company examined by us, the Company have generally been regular in depositing provident fund dues, state insurance, income tax, sales tax, wealth tax, service tax, custom duty, excise duty, cess and any other statutory dues with the appropriate authorities and there are no undisputed amounts payable for the same were outstanding as at 31st March, 2017, for a year exceeding six months from the date they became payable.

7 b. According to the information and explanation given to us and the records of the Company examined by us, there are no disputed amount payable for Income Tax, Wealth Tax, Sales Tax, Excise Duty Custom Duty and Cess, except the following:-

Name of the Statute	Nature of dues	Amount (In Rs.)	Period to Which Amount Relates	Forum where dispute is pending
1. Thane Minor Irrigation Div. (Thane)	Water charges Demand	179,799	1.4.2003 to 31.3.2009	Civil Suit Pending with Bombay High Court
2. Gujarat Sales Tax Department	Sales Tax	20,101,167	F.Y 2004-2006	Joint Commissioner (Appeals) of Sales Tax Department

8. According to information & explanations given to us and the books and records examined by us, the Company has defaulted in repayment of dues to Banks and other Institution in respect of Term Loans, Cash Credit, Debenture Holders and Bank Guarantee Accounts as at the Balance sheet date are as follows:-

S. No	NAME OF THE INSTITUTIONS/BANKS	DEFAULT IN REPAYMENT OF	PERIOD OF DEFAULT	AMOUNT (Rs.) (As on 31.03.2015*
1.	Unit Trust of India (Transfer to Phoenix ARC)	Debentures	Recalled in F.Y. 02-03	10,62,92,521
2.	Asset Reconstruction Co. (India) Ltd.	Term Loan	Recalled in F.Y. 03-04	27,54,23,805
3.	Gujarat Industrial Investment Corp. Ltd.	Term Loan	Recalled in F.Y. 03-04	7,92,54,417

23. Again, in the balance sheet for the year ended 31st March, 2017, there is a mention of the outstanding non-convertible debentures of Rs. 5,00,000 having face value of Rs. 100 each outstanding at the end of the year. The snapshot of the same is as follows:

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(iv) *Indebtedness including debentures (Outstanding as at the end of financial year)

Particulars	Number of units	Nominal value per unit	Total value
Non-convertible debentures	500,000	100	50,000,000
Partly convertible debentures	0	0	0
Fully convertible debentures	0	0	0
Secured Loans (including interest outstanding/accrued but not due for payment) excluding deposits			0
Unsecured Loans (including interest outstanding/accrued but not due for payment) excluding deposits			326,000
Deposit			0
Total			50,326,000

Details of debentures

Class of debentures	Outstanding as at the beginning of the year	Increase during the year	Decrease during the year	Outstanding as at the end of the year
Non-convertible debentures	50,000,000	0	0	50,000,000
Partly convertible debentures	0	0	0	0
Fully convertible debentures	0	0	0	0

(v) Securities (other than shares and debentures) 0

Type of Securities	Number of Securities	Nominal Value of each Unit	Total Nominal Value	Paid up Value of each Unit	Total Paid up Value
Total					

V. *Turnover and net worth of the company (as defined in the Companies Act, 2013)

(i) Turnover 163,434,921

(ii) Net worth of the Company -260,177,541

VI. (a) *SHARE HOLDING PATTERN - Promoters

S. No.	Category	Equity	Preference

24. Similarly, for the financial year 1st April, 2018 to 31st March, 2019, the details of debentures issued by UTI is mentioned along with the fact that the same was recalled in the Financial Year 2002-2003. Here, the Bench would like to reiterate that the Petition was filed on 6th November, 2018.

25. This Bench would like to refer to recent judgement of Hon'ble Supreme Court in the *Dena Bank vs. C. Shivakumar Reddy on 4 August, 2021* wherein the Hon'ble Supreme Court has mentioned the following:

"141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act. In Gaurav Hargovindbhai Dave (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. <u>Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019.</u>"

26. This Bench would also like to refer to recent judgement of Hon'ble Supreme Court in the *Asset Reconstruction Company vs Bishal Jaiswal on 15 April, 2021* wherein the Hon'ble Supreme Court has mentioned the following:

"14. Several judgments of this Court have indicated that an entry made in the books of accounts, including the balance sheet, can amount to an acknowledgement of liability within the meaning of Section 18 of the Limitation Act.."

27. In view of the above facts and the judgements of Hon'ble Supreme Court, it is clear that there has been acknowledgement of debt as per the financial filings of the Corporate Debtor with RoC regularly and year after year and thus it would fairly constitute as the acknowledgement under Section 18 of the Limitation Act, 1963.

28. 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) -4277(MB)/2018 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Ajanta Paper and General Products Limited.

b. This Bench hereby appoints **Mr. Rajesh Kumar Mittal**, having registered office at 204/A, Navjyoti Darshan CHS, Near Purnima Talkies, Murbad Road, Kalyan (W)- 421301, Email:- csrajeshmittal@gmail.com, having Registration No. IBBI/IPA-002/IP-N00083/2017-18/10224 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.

29. Accordingly, CP 4277 of 2018 is admitted.

30. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

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