

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 571/IBC/MB/2022

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 LIMITED

Having registered office at: F.C. Road
Branch, Shreenath Plaza,
Dnyaneshwar Paduka Chowk,
Shivajinagar Pune - 411005,
Maharashtra.

.....Financial Creditor

Vs

PERI NITRATES PRIVATE LIMITED

(CIN: U24119MH1197PTC109786)
S No. 296, First Floor, Village -
Bhandgaon, Tal - Daund
Dist : Pune - 412214, Maharashtra

..... Corporate Debtor

Order Reserved on : 01.08.2022

Order Pronounced on : 06.09.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt Anuradha Sanjay Bhatia, Member (Technical)

For the Petitioner : Mr. Prakhar Tandon, Adv.

For the Respondent : Mr. Vyas & Bhalwal, Adv.

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

ORDER

1. This Company petition is filed by **Union Bank Of India Limited** (hereinafter called “Financial Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Peri Nitrates Private Limited** (hereinafter called “Corporate Debtor”) alleging that the Corporate debtor committed default in making payment to the Financial Creditor. This petition has been filed 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 a resolution of an unreserved financial debt of **Rs. 26,94,51,864.44/-** along with interest.

2. **Brief facts leading to filing the above Company Petition by the Financial Creditor are as follows:**

The **UNION BANK OF INDIA** (Hereinafter called or referred to as the “Financial Creditor” or “FC”) is a bank registered under the Companies Act, 1956 and having PAN AAACU0564G.

3. **M/s. PERI NITRATES PRIVATE LIMITED** (Hereinafter called or referred to as the **Corporate Debtor” or “CD”**) a Private Limited Company incorporated on 01.08.1997 and having its registered office at S. No. 296, First Floor Village Bhandgaon Tal. Daund, Pune-412214, Maharashtra, India.

4. The Corporate Debtor earlier had bank account with HDFC Bank Limited and it was enjoying various credit facilities with HDFC Bank Limited.

5. Thereafter, the Corporate Debtor vide letter dated 10.09.2009 requested the Financial Creditor to take over the existing Term Loan amounting to Rs.67.90 lakhs and to sanction Cash Credit/LC/BG amounting to Rs. 650 Lakhs and sanction new Term Loan amounting to Rs. 56 Lakhs also agreed to create simple mortgage on the properties offered as primary as well as collateral securities.

6. The Financial Creditor took over the creditor facilities sanctioned by HDFC Bank Limited and sanctioned following facilities to the Corporate Debtor in aggregate amounting to Rs.7,73,98,000/- :-
- | | |
|--|--------------------|
| a. <u>CC Limit</u> – | Rs. 4,00,00,000/-; |
| b. <u>Letter of Credit (“LC or LC’s)</u> - | Rs. 2,50,00,000/- |
| c. <u>Term Loan I</u> – | Rs. 16,33,000/- |
| d. <u>Term Loan II</u> – | Rs. 51,65,000/- |
| e. <u>Term Loan III</u> – | Rs. 56,00,000/- |
7. Pursuant to the same, a Simple Mortgage Deed dated 23.09.2009 was executed between the Financial Creditor, mortgagers and the Corporate Debtor to create mortgage on the properties of the Corporate Debtor and the mortgagers. The Charge in the name and favour of the Financial Creditor was created bearing **Charge ID- 10183560** (Hereinafter called or referred to as the “**Charge**”) in the records of the Registrar of Companies (Hereinafter “**ROC**”), Pune and the amount of Rs. 7,73,98,000/- was secured by way of creation of charge.
8. Thereafter, a Composite Hypothecation Deed dated 29.09.2009 was executed between the Corporate Debtor and the Financial Creditor for creating Hypothecation by way of First Charge on the Book Debts and Moveable Property (not being pledge) of the Corporate Debtor. Pursuant to the same, the Charge modified in the records of the ROC, Pune.
9. The Financial Creditor later enhanced the existing limits of facilities on the request of the Corporate Debtor from Rs. 7,73,98,000/- to Rs. 10,21,93,000/-. A Supplementary Simple Mortgage Deed dated 16.10.2010 and a Supplemental Deed to the Composite Hypothecation Deed dated 19.11.2010 was executed between the Corporate Debtor and the Financial Creditor pursuant to which the said Charge was modified on 16.10.2010 (*creating charge over the Immovable Property*) and 19.11.2010 (*creating Hypothecation by way of First Charge in the Book Debts and Assets / Plant & Machinery of the Corporate Debtor*).

10. Thereafter, the Financial Creditor again upon requisition of the Corporate Debtor enhanced the credit limits from Rs. 10,21,93,000/- to Rs. 11,11,93,000/- and charge was suitably modified on 31.03.2011 and 30.04.2011 respectively.
11. The Corporate Debtor later increased manufacturing capacity for Ammonium Nitrate and the same was not supported by increase in working capital limit. Thus, on the request of the Corporate Debtor, the Financial Creditor further increased the existing limits of facilities from Rs. 11,11,93,000/- to Rs. 12,40,79,000/- and pursuant to the same, the charge was further modified on 05.06.2012 and 14.06.2012 respectively.
12. Due to reduction in credit period of 60 days of the Corporate Debtor which was not line with their working capital cycle of 140-160 days, it led to tight working capital situation which resulted into devolvement of LCs. Hence, the Corporate Debtor was unable to utilize non-fund based limit to the extent of Rs. 3,00,00,000/- (Rupees Three Crore only.) Thus, the Limits of the Corporate Debtor were revised again upon its request. The Corporate Debtor thereafter modified the said Charge with ROC, Pune.
13. Later on, to overcome the tight working capital position the Corporate Debtor had planned to:
 - (i) To start a new manufacturing unit at Bharuch, Gujarat. The new investor was invest in the land and building and plant and machinery. The Corporate Debtor decided to lend technology and management support.
 - (ii) Besides this the Corporate decided to lease out existing machineries on monthly rental of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) from April 2014.

For this, the Corporate Debtor had requested the Financial Creditor to sanction Term Loan of Rs. **5,50,00,000/-**. Pursuant to which a Hypothecation Agreement dated 03.12.2013 was executed between the Corporate Debtor and the Financial Creditor and the said charge was again modified,

and the amount secured stands increased to Rs. 16,84,81,000/-.

14. The Corporate Debtor defaulted a repay outstanding dues/interests from October 2016 onwards, as such the account of the Corporate Debtor was declared as Non-Performing Asset (“NPA”) Amount on 28.01.2016 by the Financial Creditor. Further, there are various dates on which default has occurred. i.e.
- 30.10.2015 i.e. 90 days prior to the declaration of CD’s Account as NPA
 - On 02.05.2017 the CD in a letter acknowledged the debts due/outstanding of Rs. 18,11,22,000/-;
 - The CD also acknowledged the debt in Audited Financial Statement for the Financial Year 2015-16, 2016-17, 2017-18 and 2018-19.

As such we are considering 31.03.2019 as date of default wherein debt is acknowledged by the CD.

15. The Financial Creditor after declaration of Corporate Debtor’s account as NPA recovered money from February 2016 to July, 2020. However, the Corporate Debtor did not made any further payment(s) thereafter.
16. The Financial Creditor issued an Enforcement of Security Interest Action Notice against the Corporate Debtor and its Directors who are also the Personal Guarantors of the Corporate Debtor under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“**SARFAESI Act**”) vide letter dated 18.02.2016 demanding the Corporate Debtor to pay the outstanding dues amounting to Rs. 17,49,21,463/- as on 18.02.2016 within 60 days of the receipt of the notice.
17. The Corporate Debtor vide its letter dated 02.05.2017 offered for restructuring of the limits held with the Financial Creditor. The Corporate Debtor in the same letter acknowledged the debts due/outstanding of Rs.18,11,22,000/-.

18. Even after issuance of the Enforcement of Security Interest Action Notice, the Corporate Debtor failed to discharge whole of its liabilities pursuant to the notice issued under Section 13(2) of SARFAESI Act, thus the Financial Creditor issued a notice intimating the Corporate Debtor about taking over of the possession of the secured assets of the Corporate Debtor under section 13(4) of the SARFAESI Act for realisation of the outstanding dues.
19. The Financial Creditor later after taking the possession of the assets sold that flat having address – *“Flat No.24 Maithali Orion, 46 C, Aundh Road, Pune”* in the month of July, 2017 recovering an amount of Rs. 40,00,000/- and the recovery amount was adjusted to the Cash Credit Limit of the Corporate Debtor.
20. Further, the Financial Creditor also filed a suit before the District Magistrate/ Collector of Pune at Pune vide Securitisation Application No. 76 of 2018 on 19th January, 2018 for taking the possession of the Factory bearing address GAT No. 296, admeasuring about 00H 80R+Pot Kharaba 0H 16 R situated at village Bhandgaon, Taluka Daund, District Pune and situated within the Registration District of Pune, Sub Registration Taluka Daund together with factory shed and building constructed thereon from the Corporate Debtor.
21. Thereafter the Financial Creditor again sold the Flat having address – *Flat No. 6 Meghali Orion, 46 C Aundh Road, Pune”* on 24.12.2019 recovering an amount of Rs. 61,37,000/- and the recovery amount was adjusted to the Loan Account of the Corporate Debtor.
22. The Possession order for the Securitisation Application No. 76 of 2018 on 19.01.2018 was passed in the name and favour of the Financial Creditor on 05.01.2019.
23. Aggrieved by the order dated 05.01.2019, the Corporate Debtor filed an Interim Application bearing No. 954/19 on 10.06.2019 for injunction to the order dated 05.01.2019. The Corporate Debtor had also acknowledged the debt due from the Financial Creditor (*Refer Para 4 of the said Interim*

Application) and also acknowledged the payment(s) made by the Corporate Debtor to the Financial Creditor (*Refer Para 8 and 9 of the said Interim Application*).

24. The Corporate Debtor in its Audited Financial Statement for the Financial year 2015-16, 2016-17, 2017-18 and 2018-19 have been acknowledged the debt due by them to the Financial Creditor.
25. The Corporate Debtor vide letter dated 16.07.2020 requested the Financial Creditor to carry out One Time Settlement for an amount of Rs. 8,25,00,000/- against removal of its properties from E-Auction dated 17.07.2020.
26. The total outstanding dues against the Corporate Debtor as on 31.03.2021 is **Rs. 26,94,51,864.44/-** (Rupees Twenty Six Crore Ninety Four lacks Fifty One Thousand Eight Hundred and Sixty Four Only) which includes **Principal** sum amounting to **Rs. 14,55,85,654.04/-** (Rupees Fourteen Crore Fifty Five Lacks Eighty Five Thousand Six Hundred and Fifty Four Only) **and Interest** amounting to **Rs. 12,39,28,563.9** (Rupees Twelve Crore Thirty Nine Lacs Twenty Eight Thousand Five Hundred and Sixty Three Only).

Observations and Findings

- i. The Corporate Debtor filed affidavit in reply of Shri. Tatipatri Sarveswararao Sastry, and also annexed various letters addressed by the Corporate Debtor to the Financial Creditor requesting them to accept the settlement proposal submitted by the Corporate Debtor. The Corporate Debtor also annexed letter dated 29.06.2022, addressed by M/s. Iris Chemicals to the Managing Director of the Corporate Debtor confirming payment of Rs. 5,00,000/- with the Financial Creditor under no lien account as per the instructions of the Corporate Debtor for considering the OTS proposal of the Corporate Debtor by the Financial Creditor.
- ii. Heard the submissions on both sides and perused the material available on record. The corporate Debtor has admitted the liability and also the default committed by them

in the affidavit in reply as well as through various letters addressed to the Bank requesting them for considering their OTS proposal. The Corporate Debtor did not raise any substantial legal pleas in opposing the above Company Petition. Similarly, this Bench has no power to issue any directions to the Financial Creditor to accept the OTS proposal submitted by the Corporate Debtor as per the law laid down by the Hon'ble Supreme Court.

- iii. Since, the Corporate Debtor is admitting the liability and the default, this Bench has no option except to admit the Petition. The Financial Creditor has also suggested the name of the proposed Interim Resolution Professional in part-3 of the Petition along with his consent letter in Form-2. The above Company Petition is also within limitation and thus satisfies all the necessary requirement for admission.
- iv. Accordingly, the above Company Petition is admitted by passing the following:

ORDER

- a. The above Company Petition No. C.P. (IB)-571(MB)/2022 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against ***PERI NITRATES PRIVATE LIMITED***.
- b. This Bench hereby appoints **Mr. Mahesh G. Bagla** as Insolvency Professional, Registration No. IBBI/IPA-002/IP-N00689/2018-19/12207 residing at 304, Gera Junction, Lulla Nagar Signal, Kondhwa Road – 411040, E-mail id: maheshgbagla@gmail.com 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. The IRP shall spend the above amount only towards

expenses and not towards fee till his fee is decided by COC.

- 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.

k. Accordingly, this Petition is admitted.

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

SD/-
ANURADHA SANJAY BHATIYA
MEMBER (TECHNICAL)

SD/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)

//Vitthal //