

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**KOLKATA BENCH**  
**KOLKATA**

**C.P. (IB) No. 127/KB/2019**

**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:**

**UNITED BANK OF INDIA**, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act of 1970 having its Head Office at 11, Hemanta Basu Sarani, kolkata 700001 and having its Branch among others, at Champadanga Branch, Champadanga Bazar, Entrance Road, Hooghly 712 401 of the Applicant Bank and having its Recovery Branch familiarly known as Stressed Asset Management Branch, 4, N.C. Dutta Sarani, kolkata 700001.

**... Financial Creditor**

**-Versus-**

**IN THE MATTER OF:**

**M/S. MAA ANANDAMOYEE HIMGHAR PVT. LTD.**, a Company incorporated under the provisions of Companies Act, 1956 having its Registered Office at Vill: Lakshmanpur (ANSH), P.O. Lakshmanpur (ANSH), P.S. Jangipara, Dist: Hooghly, West Bengal – 712404.

**... Corporate Debtor**

**Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &  
Shri Harish Chander Suri, Hon'ble Member (Technical)**

**Counsel on Record:**

1. Mr. Mekhala Kanji, Advocate ]  
2. Mr. Shamit Sanyal, Advocate ] For Financial Creditor

1. Mr. Gaurav Singh, Advocate ] For Corporate Debtor

**Date of pronouncement of Order: 03/10/2019.**

**ORDER**

**Per Harish Chander Suri, Member (Technical).**

1. This Company Petition No. CP(IB) No. 127/kb/2019 has been filed by United Bank of India, hereinafter referred to as the "Financial Creditor", through its Authorised Representative Sri Rahul Nath, Chief Manager, United Bank of India Stressed Asset Management Branch, Kolkata vide authorization letter dated 05.01.2019, for initiation of Corporate Insolvency Resolution Process against M/s. Maa Anandamayee Himghar (P) Limited, a Corporate entity, having its registered office at Dist: Hooghly, West Bengal, hereinafter referred to as the "Corporate Debtor".
2. It is submitted that the Corporate Debtor had requested the Financial Creditor for financial assistance and an overall limit of Rs.

690.00 lacs was sanctioned to the Corporate Debtor on 1<sup>st</sup> January, 2014, subject to terms and conditions mentioned in the said sanction letter, a copy of which is annexed to the application marked as **Annexure 1-B**. The Corporate Debtor had acknowledged the said receipt of the sanction letter by its Board Resolution dated 1<sup>st</sup> January, 2014 and the same was delivered to the Financial Creditor/United Bank of India on that very day, acknowledging that –

*“the Title Deeds with intent to create a security in your favour by way of mortgage by deposit of Title Deeds as contemplated in Section 58 (1) of the Transfer of Property Act 1882 in respect of the Company’s property being the premises No., Land building of Mauza Dwarhatta, covered thereby comprising all lands and buildings, structures, erections, fixtures and fittings thereon and therein and all rights and appurtenances both present and future for repayment of all moneys now or hereafter at any time or from time to time to become due or remaining unpaid in respect of accommodations and or facilities granted and/or to be granted from time to time to the Company by you/your Champadanga Branch and/or any other branch or branches by way of Loan/Cash Credit/Overdraft/Discounting of Bills and cheques and or advances against bills and cheques. Letters of Guarantee, Letters of Credit or otherwise howsoever but so that the maximum amount to be secured by the mortgage shall for the purpose of Section 79 of the Transfer of Property Act, 1882 (but for no other purpose) be limited to Rs. 6,90,000/- and interest thereon and all other charges and costs.”*

3. In consideration of these sanction, the Corporate Debtor executed a Hypothecation Deed in respect of the movable Plant and Machinery dated 1<sup>st</sup> January, 2014 with first charge in favour of the Financial Creditor towards security for the payment to the Financial

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Creditor on demand of the balance of amount. The Corporate Debtor further executed and delivered to the Financial Creditor agreement to pledge in respect of goods to secure a demand Cash Credit/Loan dated 01.01.2014. In addition to this the Financial Creditor has got various other documents executed by the Corporate Debtor to secure its loan sanctioned to the Corporate Debtor. In continuation there-of the Corporate Debtor executed and delivered similar documents executed in favour of the Financial Creditor from time to time and submitted the original title deed in respect of the properties of the Corporate Debtor. The Financial Creditor has submitted that a sum of Rs. 11,41,94,314.31 (Rupees Eleven Crore Forty One Lac Ninety Four Thousand Three Hundred Fourteen and Paise Thirty One Only) inclusive of interest up to 31.12.2017, fell due for which the Financial Creditor issued a demand notice dated 1<sup>st</sup> February, 2018 and it is submitted that the amount of interest was recalculated on 16<sup>th</sup> December, 2018 @ 11.50% and the aggregate amount came up to Rs. 12,59,09,038.89 (Rupees Twelve Crore Fifty Nine Lac Nine Thousand Thirty Eight and Paise Eighty Nine Only).

4. It is submitted that by way of hypothecation of assets, the Corporate Debtor had hypothecated, the first and paramount charge created by hypothecation in favour of the Financial Creditor in respect of whole of the stock consisting of stocks of potato whether raw or in process of manufacture and all other products goods and moveable properties as per Schedule 'A' of any kind along with all



Plant, Machinery, engines, boilers, appliances, tools and implements etc. in favour of the Financial Creditor. The Corporate Debtor also hypothecated all present and future book debts outstanding moneys receivable claims etc. in favour of the Financial Creditor. The Financial Creditor has enclosed copies of various documents executed by the Corporate Debtor relating to title deeds of the immovable properties in its name and hypothecated the mortgaged property in the name of the Corporate Debtor as per Schedule 'B'.

5. The Financial Creditor has sent a demand notice dated 1<sup>st</sup> February, 2018 detailing therein all the facts relating to sanction of the overall limit of Rs. 690.00 lacs up to the date, till the failure of the Corporate Debtor in repaying the loan. The Corporate Debtor was therefore called upon by way of that demand notice dated 1<sup>st</sup> February, 2018 to repay the amount of Rs. 11,41,94,314.31 which was duly received by the Corporate Debtor. The Financial Creditor has also placed on record the statement of accounts to show that no amounts have been received after the service of the notice.

6. The Financial Creditor has also placed on record a statement of outstanding claim in respect of 4 (Four) Accounts which are reproduced as under:-

**1. Account No. – 0164306772312**

Outstanding balance as on 31.12.2017	Rs. 768,18,574.46
Plus int. charged upto 15.12.2018	<u>Rs. 102,33,174.05</u>
<b>Total Balance of account No. 1</b>	<b>Rs. 870,51,748.51</b>

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**2. Account No. – 0164250035273**

Otg. Balance as on 31.12.2017	Rs. 56,58,124.28
Plus int charged upto 15.12.2018	<u>Rs. 7,38,160.70</u>
<b>Total balance of account No. 2</b>	<b>Rs. 63,96,284.98</b>

**3. Account No. – 0164306774444**

Otg. Balance as on 31.12.2017	Rs. 25,13,368.01
Plus int charged upto 15.12.2018	<u>Rs. 3,43,801.28</u>
<b>Total balance of account No. 3</b>	<b>Rs. 28,57,169.29</b>

**4. Account No. – 0164306774453**

Otg. Balance as on 31.12.2017	Rs. 2,60,29,763.27
Plus net int charged upto 15.12.2018 (after adjustment of amount paid in the account)	<u>Rs. 35,74,072.84</u>
<b>Total balance of account No. 4</b>	<b>Rs. 2,96,03,836.11</b>

<b>Grand Total of all 4 accounts as on 15.12.2018 Inclusive of interest charged upto 15.12.2018 -</b>	<b><u>Rs. 12,59,09,038.89</u></b>
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7. It is submitted by the Financial Creditor that the date of default in respect of the loan is 30<sup>th</sup> September, 2017. A Certificate under Section 2A of the Bankers Book Evidence Act 1891 (as amended) is also filed on record certifying that all the print outs of the books maintained by the Bank in electronic form are correct copies. The Financial Creditor has also annexed CIBIL (Commercial Credit Information Report) in respect of the facilities availed by the Corporate Debtor for which default had been committed. The Financial Creditor has also filed a copy of the Balance Sheet of the

Corporate Debtor indicating and reflecting a loan of Rs.11,32,78,582/- under Note 5 i.e. the Long Term Borrowings, secured Term Loan in favour of the Financial Creditor.

8. In reply thereto the Corporate Debtor has submitted that the alleged claim of debt by the Financial Creditor is not admitted and disputed. It is submitted that the Bank has instituted the present proceedings without there being any 'default' as defined under Section 2 (13) of the Code. It is submitted that there are RBI Guidelines issued, which have to be followed by the Banks and that according to the Corporate Debtor the Financial Creditor has failed to comply with any of the mandatory guidelines and so the instant proceedings is premature and non-maintainable.
  
9. It is further submitted by the Corporate Debtor that at the time of sanction or before sanctioning credit facilities vide its letter dated 1<sup>st</sup> January, 2014, no Board Resolution was obtained by the Corporate Debtor therefore the Corporate Debtor cannot be held liable for any transaction between the Financial Creditor and the Corporate Debtor. The Corporate Debtor has denied the acceptance of the terms of sanction by putting endorsement on the office copy of the said sanction letter. The Corporate Debtor has denied that at the request of the Corporate Debtor made on 29<sup>th</sup> March, 2014, the Financial Creditor has sanctioned an overall limit of Rs. 975 lacs on 10<sup>th</sup> April, 2014. The Corporate Debtor has denied execution and

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delivery of the hypothecation deeds. The Corporate Debtor has raised dispute on each and every document for the sake of dispute.

10. The Financial Creditor has proposed the name of Mr. Asutosh Debata, an insolvency professional registered with Insolvency & Bankruptcy Board of India having registration number IBBI/IPA-003/IP-N000151/2018-19/11878, to work as Interim Resolution Professional, who has given his consent to this Tribunal vide his written communication dated 8<sup>th</sup> November, 2018 as per Sub rule (1) of Rule 9 and stated that there is no disciplinary proceedings pending against him with the Board of Insolvency & Bankruptcy Board of India.
11. We have gone through the application and the documents placed on record by the Financial Creditor and the reply of the Corporate Debtor. The documents placed on record clearly revealed that the Corporate Debtor has not been able to clear its debts owed to the Financial Creditor and committed default and thereafter the debt was classified as NPA and subsequently the demand notice dated 1<sup>st</sup> February, 2018 was issued by the Financial Creditor. In these circumstances, the Financial Creditor has approached this Tribunal for seeking initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor.
12. Having heard both the parties at length, we are of the considered view that the Financial Creditor has been able to prove its

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case and its prayer for initiation of CIRP of the Corporate Debtor is justified. The Corporate Debtor has not been able to take us through any documents which could convince us that there was no default or no amount was due. In these circumstances we have no hesitation to admit the petition and pass the following orders/directions:-

### **ORDERS**

- 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, **M/S MAA ANANDAMOYEE HIMGHAR PRIVATE LIMITED** is hereby **admitted**.
- ii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15.
- iii) 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 judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

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- (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.
- iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
  - v) 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.
  - vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
  - vii) 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.

- viii) **Mr. Asutosh Debata**, of Plot No. N/4-232, IRC Village, Behind Reliance Fresh, Nayapalli, Bhubaneswar – 751015, Odisha, an insolvency professional registered with Insolvency & Bankruptcy Board of India having registration number **IBBI/IPA-003/IP-N000151/2018-19/11878**, is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.
- ix) 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.
- x) The Registry is hereby directed under section 7(4) of the Insolvency and Bankruptcy Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.

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- xi) The matter be listed on **4<sup>th</sup> November, 2019** for filing of the progress report.
- xii) 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 (T)**



**(Jinan K.R.)**  
**Member (J)**

Signed on this, the 3<sup>rd</sup> day of October, 2019.

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