

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

**IVN. P (IBC) No.5/KB/2022
and
CP (IB) No.1929/KB/2019**

A 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.

In the matter of:

UCO Bank

... Financial Creditor

Versus

Limtex Tea & Industries Limited [CIN:U15491WB1995PLC074733] having its registered office at Room No 605, 6thFloor, Central Plaza, 2/6 Sarat Bose Road Kolkata – 700020.

... Corporate Debtor

**Date of hearing: 12 May, 2022
Order pronounced on: 07 June, 2022**

Coram:

Shri Rajasekhar V.K.	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

Appearances (via video-conferencing/physical):

<i>For the Financial Creditor</i>	:	Mr. Rishav Banerjee, Advocate
	:	Mr. Rahul Auddy, Advocate
	:	Mr. Aditya Gooptu, Advocate
<i>For the Corporate Debtor</i>	:	Ms. Debaleena Ganguly, Advocate
		Mr. Tapas Kumar Das, Advocate

ORDER

Rajasekhar V.K., Member (Judicial)

1. This court convened *via* hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Prasenjit Roy, Assistant General Manager, UCO Bank (*'Financial Creditor'*), duly authorised *vide* Letter of Authority¹ dated 23 September, 2019 for initiation of Corporate Insolvency Resolution Process (*'CIRP'*) against Limtex Tea and Industries Limited (*'Corporate Debtor'*).
3. The present Petition was filed on 14 November, 2019 before this Adjudicating Authority on the ground that sum of ₹11,35,20,263.07 as on 30 September, 2019 is due and outstanding from the Corporate Debtor. The first default in servicing of interest happened on 31 July, 2016.
4. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is ₹4,75,00,000/- (Rupees Four Crore Seventy Five Thousand only) with paid-up capital as ₹4,60,42,750/- (Rupees Four Crore Sixty Lakh Forty Two Thousand Seven Hundred Fifty only)
5. ***Submissions on behalf of the Financial Creditor.***
 - 5.1 The Financial Creditor under a consortium of arrangement with the State bank of India (*'SBI'*) had advanced a credit facility (*'Credit Facility'*) with a cash limit of Rs.750 Lakh to the Corporate Debtor.

<i>Nature of Facility</i>	<i>Limit (Rupees in Lakh)</i>
Cash Credit (Hypothecation Account)	750

¹Page 32 of the Petition.

- 5.2 The Credit Facility was sanctioned, *inter alia*, on the terms and conditions as mentioned in the Sanction Advice letter dated 20 November, 2014, issued by the Financial Creditor.²
- 5.3 In order to avail the Credit Facility the Corporate Debtor on 25 November, 2014 executed the following documents³:-
- i. Promissory Note for Rs.7,50,00,000/-
 - ii. Letter of waiver
 - iii. Letter of Continuity
 - iv. Agreement for Hypothecation of Goods for Rs.7,50,00,000/-
 - v. Agreement for Hypothecation of Book Debts for Rs.7,50,00,000/-
 - vi. Agreement for Hypothecation of Tea Crop & other produce *pari passu* with SBI for Rs.7,50,00,000/-
 - vii. Agreement for Hypothecation of movable Plant & Machinery, Equipments & other movable fixed assets for Rs.7,50,00,000/-
- 5.4 The hypothecation created by the Corporate Debtor in favour of the Financial Creditor along with SBI, the lead bank under the consortium arrangement have been duly registered with the office of the Registrar of Companies, West Bengal.
- 5.5 However, the Corporate Debtor failed to maintain the account as per the terms and conditions agreed between the parties and defaulted in payment of the interest as well as the principal amount. The account of the Corporate Debtor was declared as Non-Performing Assets (*'NPA'*) as on 31 October, 2016.
- 5.6 The Financial Creditor has also filed an application under section 17(1) of the Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 before the Ld. Debt Recovery Tribunal – I, Kolkata; however, the same is pending adjudication.
- 6. *Submissions on behalf of the Corporate Debtor***
- 6.1 The State Bank of India had assigned all its rights and interests in favour of CFM Asset Reconstruction Private Limited (*'CFM'*) *vide* assignment dated 23

²Annexure – A of the Petition.

³Annexures – C, D, E, F, G, H and I of the Petition

March, 2020.⁴ Thereafter, the Financial Creditor along with CFM, jointly sold the under mentioned properties of the Corporate Debtor for a sum of Rs.18.00 Crore to Wishgreen Industries Private Limited (*'Wishgreen'*).⁵ Details of the properties are as follows;

- I. Land and Godown situated at JL No. 105, Mouza: Dhakpura, Bidhannagar GP, PS: Phansidewa, District – Darjeeling.
- II. Factory land admeasuring 5.64 acres, situated under mouza: Dhakpura, Muraligachi, PO: Bidhannagar PS: Phansidewa, District – Darjeeling.

6.2 Further, the account of the Corporate Debtor was classified as the NPA on 31 October, 2016 and the Corporate Debtor defaulted in payment of loan on 31 May, 2016. However, the instant petition was filed on 24 October, 2019, hence; the petition is barred by limitation. The first default date i.e., 31 July, 2016 as stated by the Financial Creditor is false.

6.3 The loan was granted under a consortium arrangement between the Financial Creditor and the SBI, whereas, this instant petition has been filed by the Financial Creditor without the SBI being a party. The SBI for itself and on behalf of the UCO Bank had issued a possession notice dated 26 October, 2017 and 27 October, 2017 under section 13(4) of the SARFAESI Act, 2002.

7. The Rejoinder by the Financial Creditor to the reply of the Corporate Debtor.

7.1 The Corporate Debtor in its reply never raised any dispute on the dues outstanding and payable; however, on the contrary the Corporate Debtor has accepted its liability to the Financial Creditor.

7.2 The issue of assignment by the consortium member and the sale of the properties of the Corporate Debtor by the Financial Creditor have nothing to do with this instant petition. Further, the Corporate Debtor has made unequivocal admission in its balance sheet for the financial year ending on 31 March, 2018.

⁴ Annexure – A of the Reply

⁵ Annexure – B of the Reply, Letter dated 12 November, 2020 by CFM to the Corporate Debtor mentioning intimating the sale of the properties

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8. This is an intervention petition filed by CFM Asset Reconstruction Private Limited (**'Applicant'**), *inter alia*, praying for intervention in the application being **C.P (IB) No.1929/KB/2019** by the UCO Bank i.e., the Financial Creditor.

Analysis and Findings

9. We've heard the Ld. Counsel appearing on behalf of the Parties and perused the record. Upon perusal of the Master Data of the Corporate Debtor it has been observed that registered office of the Corporate Debtor is different from the address mentioned by the Financial Creditor in the petition. Nevertheless, the Corporate Debtor was represented by Counsel from time to time.
10. With respect to the issue raised by Corporate Debtor that the Financial Creditor has filed the petition by itself, even though the loan was granted under a consortium arrangement between the Financial Creditor and the SBI. On this contention, it is pertinent to mention that section 7(1) of the Code is itself conspicuous that a Financial Creditor may either by itself or jointly with other financial creditors, as may be notified by the Government, file an application for initiation of the Corporate Insolvency Resolution Process against a Corporate Debtor before the Adjudicating Authority, when a default has occurred.
11. Further, the Hon'ble NCLAT in its judgment in ***Oriental Bank of Commerce v. Ruchi Global Limited***⁶ has opined that the Corporate Debtor cannot take benefit of the Clauses of the Inter-se Agreement entered between the Banks, because such agreements are only binding on the Banks. If there is a default by any member of the Consortium, it would be a matter for the other banks to be aggrieved with and not the Corporate Debtor, neither the Corporate Debtor can take benefit of the same to raise grievance. The argument by the Corporate Debtor in this instant application is therefore, rejected.

⁶ Company Appeal (AT) (Insolvency) No. 387 of 2019 decided on 31 January, 2020

12. Before going into the merits of the case, the cardinal point that needs to be seen is ***'whether the application is within limitation or not?'***. Upon perusal of the record at page 13 of the petition we have noticed that as per the Financial Creditor, the first default in servicing of interest by the Corporate Debtor took place on 31 July, 2016, whereas, in the reply, the Corporate Debtor states that they have defaulted in payment of loan from 31 May, 2016. However, be that as it may, nothing turns on this because this instant application was filed on 14 November, 2019 which is beyond the limitation period of three years.
13. Further, as stated by the Financial Creditor in its rejoinder that the Corporate Debtor has made unequivocal admission in its balance sheet for the financial year ending on 31 March, 2018, however, there is no Balance Sheet for the financial year ending on 31 March, 2018 on record which would help us to ascertain the acknowledgment of debt and default. Nothing has been placed on record so as to attract section 18 or 19 of the Limitation Act, 1963.
14. In light of the above face and circumstances, the petition being ***C.P No.1929/KB/2019*** is barred by limitation and is ***dismissed*** as such. Resultantly, the ***IVN. P (IBC) No.5/KB/2022*** stands ***infructuous***. The Petitioner is, however, at liberty to pursue other available remedy under the law.
15. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
16. File be consigned to the record.

BALRAJ
JOSHI

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Balraj Joshi
Member (Technical)

Rajasekha
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Rajasekhar V.K.
Member (Judicial)

The Order is pronounced on 07 June, 2022

Safura A., LRA