

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

**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, 6<sup>th</sup> Floor, Central Plaza, 2/6 Sarat Bose Road  
Kolkata – 700020.

*... Corporate Debtor*

**Date of hearing: 12/10/2022**

**Date of Pronouncement: 12/01/2023**

**Appearances (via hybrid mode):**

***For the Financial Creditor*** : Mr. Rishav Banerji, Advocate  
: Mr. Rahul Auddy, Advocate  
: Mr. Aditya Gooptu, Advocate

**Coram:**

**Shri Rohit Kapoor** : **Member (Judicial)**  
**Shri Balraj Joshi** : **Member (Technical)**

**ORDER**

***Per: Rohit Kapoor, 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 Authority<sup>1</sup> 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 21 October, 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- FiveThousand 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<br/>(Rupees in Lakh)</i> |
|-------------------------------------|-----------------------------------|
| Cash Credit (Hypothecation Account) | 750                               |

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- 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.<sup>2</sup>
- 5.3 In order to avail the Credit Facility the Corporate Debtor on 25 November, 2014 executed the following documents<sup>3</sup>including:-
- 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***

The Corporate Debtor has filed its Reply Affidavit, and the objections taken by the Corporate Debtor are summarized hereinafter: -

- 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

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<sup>2</sup>Annexure – A of the Petition

<sup>3</sup>Annexures – C, D, E, F, G, H and I of the Petition

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23 March, 2020.<sup>4</sup> 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'*)<sup>5</sup> 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.

6.4 The Corporate Debtor also states that Sri Prasenjit Roy, who has verified and affirmed the affidavit, in support of the present petition is not properly, legally and validly authorized by UCO Bank to do so and on this ground alone the petition shall be dismissed.

**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.

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<sup>4</sup> Annexure-A of the Reply

<sup>5</sup> Annexure-B of the Reply, Letter dated 12 November, 2020 by CFM to the Corporate Debtor mentioning intimating the sale of properties.

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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.

***Analysis and Findings***

8. When the matter was taken up for hearing on 26.09.2022, no one appeared on behalf of the Corporate Debtor. On 12.10.2022 when the matter was again listed in Priority-No Adjournment List column, once again none appeared for the Corporate Debtor. Learned Counsel appearing for the Financial Creditor made his submissions and the matter was accordingly **reserved for orders**.
9. After hearing the Ld. Counsel appearing on behalf of the Financial Creditor and upon examining the records, a specific plea raised by the Corporate Debtor in para (b) at Page 5 of the Reply Affidavit has come to our notice which is reproduced herein:-

*b) After the assignment, UCO Bank, the Financial Creditor and CFM Asset Reconstruction Private Limited jointly sold the under mentioned properties belonging to the corporate debtors for a sum of Rs.18.00 crores to Wishgreen Industries Pvt Ltd.*

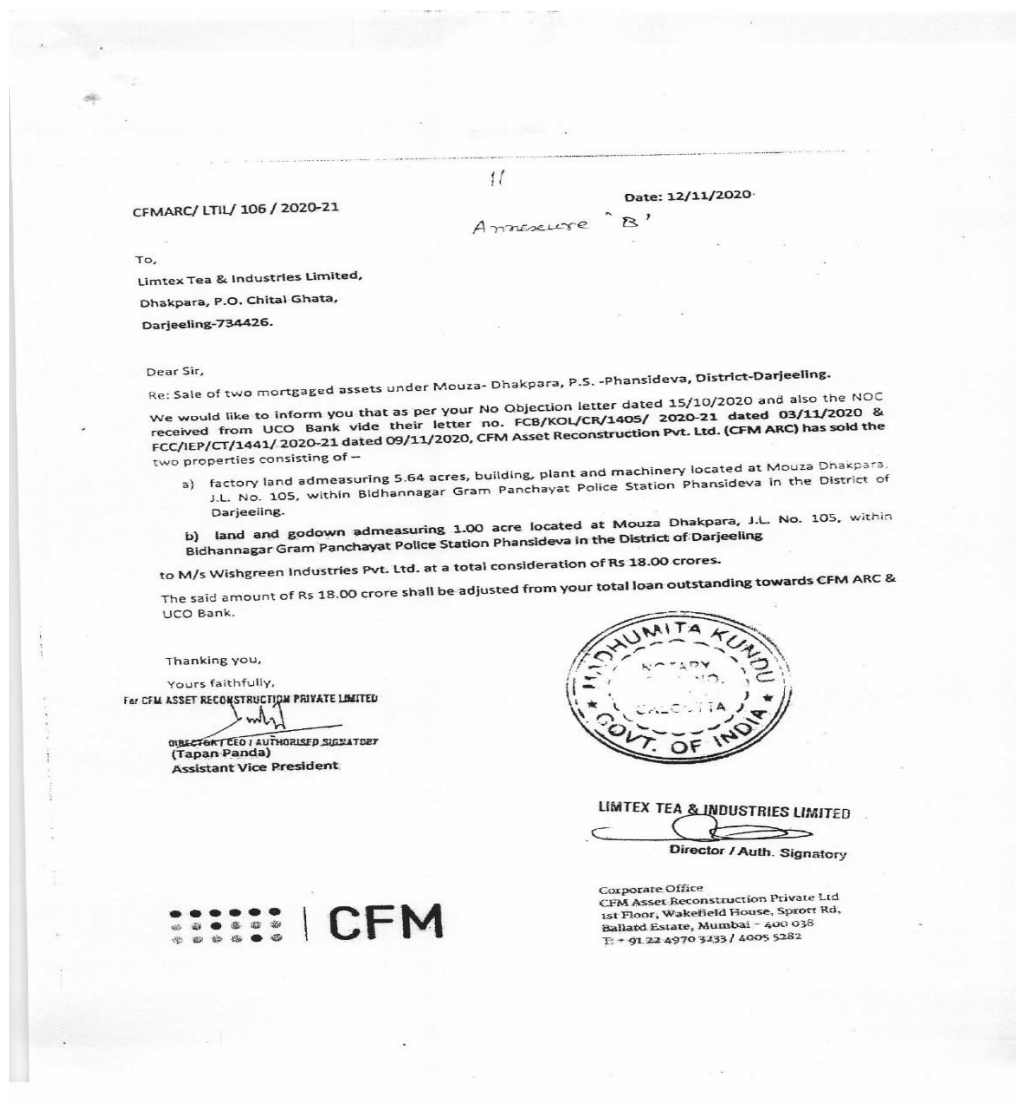
*Details of properties sold:*

- 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*

*c) A copy of the letter dated 12.11.2020 sent by CFM Asset Reconstruction Private Limited to the Corporate Debtors mentioning that the above mentioned two properties have been sold to Wishgreen Industries Pvt Ltd for a sim of Rs. 18 crore with the consent of the UCO Bank is annexed hereto and marked as Annexure- 'B'*

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10. It may be noted that this petition was filed on 21<sup>st</sup> October, 2019. Rejoinder Affidavit has been filed by the Financial Creditor and this position or the letter dated 12.11.2020 has neither been denied nor disputed.

11. In column 2 at Page 13 of the present petition, the total amount as on 30.09.2019 as the amount in default is claimed to be a sum of Rs. 11,35,20,263.07. As is forthcoming from the letter dated 12.11.2020 referred above, an amount of Rs.18 crore was to be adjusted from the total on outstanding towards CFM Asset Reconstruction Private Limited and UCO Bank. Therefore, the total amount adjusted subsequently is more than the amount claimed as earlier. Therefore, no

amount remains in default due and payable.

12. In view of the above observations, without going into any other issues raised by the Corporate Debtor, present petition shall be rejected. Hence **C.P. (I.B) No. 1929/KB/2019** stands **rejected**.
13. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
Member (Technical)

**Rohit Kapoor**  
Member (Judicial)

The order is pronounced on the 12<sup>th</sup> day of January, 2023

*FA(LRA)*