IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) - 4091/I&B/MB/2019
Under Section 7 of the I&B Code, 2016

In the matter of

Universal Digital Connect Limited
171-C, 17th Floor, Mittal Court, C-Wing, Nariman Point, Mumbai 400 021

.... Financial Creditor

Vs.

Gran Electronics Private Limited
171-C, 17th Floor, Mittal Court, C-Wing, Nariman Point, Mumbai 400 021

....Corporate Debtor

Order delivered on: 17.01.2020

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (J)
Hon'ble Shri Shyam Babu Gautam, Member (T)

For the Petitioner: Mr. Amir Arsiwala, Advocate

For the Corporate Debtor: Ms. Geeta Lundwani, Advocate

Per: Shri Bhaskara Pantula Mohan, Member (J)

ORDER

1. This is an application filed by Universal Digital Connect Limited (hereinafter called the 'Financial Creditor') seeking to set in motion the Corporate Insolvency Resolution Process of Gran Electronics Private Limited (hereinafter called the 'Corporate Debtor') 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 on the ground that the Corporate Debtor committed breach by making default in repaying of the amount taken from the Financial Creditor.

2. The Financial Creditor is a company incorporated on 29/04/2009 bearing CIN U74990MH2009PLC192124 whereas the Corporate Debtor is a company incorporated on 20/01/2004 and bearing CIN U32100MH2004PTC144083 and having Authorised Share Capital of Rs.38,00,00,000/- and Paid-Up Share Capital of Rs. 27,43,45,000/-

3. The Financial Creditor and the Corporate Debtor have been associated with each other by having deep-rooted business synergies. Both the said companies are involved in similar business of trading electric appliances. The Corporate Debtor for its manufacturing activities uses the raw material supplied by the Financial Creditor. The promoters of the two companies are well known to each other although not being related parties. Both the companies share premises of the same registered office.

4. The counsel appearing on behalf of the Financial Creditor submitted that the Corporate Debtor required funds from time to time for meeting its business requirements and without the capital assistance, their company would have suffered and consequently the business of the Financial Creditor would also have had a negative impact. Therefore, the Financial Creditor had disbursed a total amount of Rs.6,42,05,036/- to it in 17 different tranches on an ad-hoc basis which is clear from the Annexure-2 of the copy of petition which computes the outstanding amount. This said sum of Rs.6,42,05,036/- is also accepted to be due and payable by the Corporate Debtor vide their letter dated 01/04/2019 addressed to the Financial Creditor which is annexed as Annexure-3 of the petition.

5. The counsel for the Financial Creditor mentioned that the amounts advanced by them to the Corporate Debtor were meant to be in the form of short-term loans and no securities were held by them in respect of the said amount disbursed. The date of default according to the Financial Creditor is 08/11/2019 as a demand notice dated 31/10/2019 seeking the payment of the full amount within 7 days was sent to the Corporate Debtor upon receipt of which, the Corporate Debtor failed to make the payment.

6. The counsel for the Financial Creditor has annexed the copy of Bank Statements, ledger and balance confirmation certificate as on 31/03/2019 by the Corporate Debtor at Annexure-3 of the copy of petition.

7. The reply submitted by the Corporate Debtor has been taken on record wherein it is submitted that the present petition has been filed with malafide intentions insofar as the promoters of both the

companies are well-known to each other. It was further submitted that even if the Financial Creditor was aware that the Corporate Debtor is facing severe financial difficulties due to the insolvency resolution process of various Videocon group companies having been initiated yet this petition has been filed by them.

8. Later, in paragraph 7 of the reply, the Corporate Debtor has admitted their liability and default on their part by stating that they have availed financial assistance from the Financial Creditor and now they are not in a position to repay the amounts advanced to them as earlier stated that they are undergoing financial crisis due to the insolvency resolution process of the Videocon group of companies. The Corporate Debtor is seeking time of one year to repay the dues and prays for the dismissal for this present petition.

FINDINGS

9. We have heard both the parties at length, taken all their submissions into account and perused the documents and evidences placed on record by them. It has become very clear that an amount of Rs.6,42,05,036/- was disbursed by the Financial Creditor to the Corporate Debtor and the Corporate Debtor failed to make the repayment of the said amount. Therefore, it can be safely concluded that both the parties shared a Creditor-Debtor relationship.

10. Although there was not any express loan agreement entered into both the parties, the documents submitted by the Financial Creditor clearly denote that the said amount was disbursed by them to the Corporate Debtor. The objection that the petition is filed with mala fide intentions because the promoters of the company knew each other does not stand. Also, the contention that the Financial Creditor company was established to supply certain goods and materials to the Corporate Debtor was raised by them which does not stand because it cannot be a ground to set them free from their liability as to the said amount was borrowed by them from the Financial Creditor and have failed to repay it.

11. Also, the said amount was not disbursed only because the promoters shared personal relations with each other but also because the non-

disbursement of the said loan amount would have hampered the business of the Financial Creditor. It was submitted by the Corporate Debtor himself that the business of the Financial Creditor was dependent upon the business of the Corporate Debtor. Therefore, it can be said that the amount of Rs.6,42,05,036/- was raised with an object of having economic gain or commercial effect of borrowing. Therefore, the said amount does come within the purview of the meaning of the term “Financial Debt”.

12. Moreover, there has been an admission on the part of the Corporate Debtor in their reply as well as vide their letter dated 01/04/2019 addressed to the Financial Creditor that the said amount was borrowed by them but now because of the financial crisis arisen due to the initiation of CIRP of the Videocon company, they are not in a position to repay the said amount to the Financial Creditor.

13. Also, it is to be noted that this petition fulfils all the requisite conditions to admit a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 and therefore, the petition deserves to be admitted.

14. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Financial Creditor as a major constituent for admission of a petition under section 7 of the I&B Code. Therefore, the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

(I) (a) 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;

(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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);

(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.

(II) 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.

(III) 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.

(IV) That the order of moratorium shall have effect from 17.01.2020 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.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

(VI) That this Bench hereby appoints, Ms.Jovita Reema Mathias, having office at 506, Inizio, Cardinal Gracious road, Chakala, Andheri (E), Mumbai 400 099 and having Registration No. IBBI/IPA-002/IP-N000337/2017-18/1094 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

15. Accordingly, this Petition is admitted.

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

Sd/-	**Sd/-**
Shyam Babu Gautam	**Bhaskara Pantula Mohan**
Member (Technical)	**Member (Judicial)**

/SNEHA/