IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.3402/MB-IV/2019

Under Section 7 of the IBC, 2016

In the matter of

UCO Bank

…Financial Creditor

v/s.

Deegee Orchards Private Limited

[CIN: U01100MH1997PTC108323]

…Corporate Debtor

Order Delivered on: 03.03.2023

Coram:

Mr. Prabhat Kumar	Mr. Kishore Vemulapalli
Hon'ble Member (Technical)	Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:	Mr. Prakash Shinde, Ld. Counsel
For the Respondent:	Mr. Yahya Batatawala, Ld. Counsel

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) UCO Bank, ("the Financial Creditor"), seeking

initiation of Corporate Insolvency Resolution Process (CIRP) against Deegee Orchards Private Limited, ("the Corporate Debtor").

1.1. The petition is filed on 11.09.2019 claiming an outstanding amount of Rs.43,04,08,269 as principal amount and Rs.24,68,45,038.28 as interest as on 30.06.2014. The Part IV of Form 1 specify the date of default as 30.06.2014and date of NPA is 30.09.2014

2. The Financial Creditor had extended various facilities to the Corporate Debtor as follows: -

2.1. *Vide* sanction letter dated 30.05.2005; cash credit of Rs 10.35 Crore; warehouse funding of Rs.12.50 crore; Bank Guarantee of Rs.0.50 Crore.

2.2. *Vide* sanction letter dated 04.10.206; cash Credit-I of Rs.10.35 Crore; cash Credit-II of Rs 14.00 crore; bill discounting facility of Rs.5.00 crore; Bank Guarantee of Rs.0.50 Crore; Total Non-fund-based limit of Rs.0.50 Crore.

2.3. *Vide* sanction letter dated 07.03.2008; working capital fund based for existing activity under sole banking cash credit of Rs 40.00 crore; working capital (non-fund based) of Rs. 0.50 crore; bill discounting facility of Rs.5.00 crore; Bank Guarantee of Rs. 0.50 crore.

2.4. *Vide* sanction letter dated 05.11.2008; cash credit of Rs. 50.00 crore; sub limit of cash credit: Rs.10.00 Core; Bank Guarantee of Rs.1.00 Crore; Total non-fund-based limit of Rs0.50 crore.

2.5. *Vide* sanction letter dated 25.11.2011; Total fund-based limit of Rs. 40.Crore; Total Non-fund-based limit of Rs. 1.Crore.

2.6. *Vide* sanction letter dated 23.12.2013; Working capital term loan restructured limit; Rs.33.83 Crore; working capital fund based; Rs.6.17 Crore; total fund-based facility: Rs.40.00 Crore.

3. The underlying documents have been placed on record as Exhibit E-1 to Exhibit E-6 at PP.34-101. The rate of interest charged is 11.70% per annum. The total debt due and payable to the Financial Creditor is Rs.67,72,53,307.28 as mentioned at page 101-A of the petition. The other connected documents such as certificates of Registration of Charge, demand promissory notes, agreement to pledge the goods, balance confirmation letter dated 30.06.2013, etc, have also been placed on record as Exhibits H to Exhibits I-55 at pp.1703-2084 of the Paper Book.

4. The Financial Creditor has served copies of the petition on the Corporate Debtor on 29.08.2019, which was received by the Corporate Debtor on 29.08.2019. Court Notice dated 24.09.2019 was also issued, which has been served on the Corporate Debtor by registered post on 30.09.2019. Affidavit of service dated 07.10.2019 has been placed on record.

5. The Corporate Debtor has filed his reply dated 04.11.2019 and further states that

5.1. The Corporate Debtor has requested to restructure its debt vide its letter dated 07.12.2017. There were negotiations held in his behalf. In furtherance thereof, the Financial Creditor advised the Corporate Debtor to make a deposit of ₹25.00 lakh into a no-lien account for considering one-time settlement (OTS).

5.2. The Corporate Debtor arranged for the said deposit from a third party and deposited the same with the Financial Creditor on 01.08.2018, with the understanding that if the OTS was not arrived at, the Financial Creditor would return the amount deposited in the no-lien account.

5.3. Since the OTS Proposal was taking time, the Corporate Debtor requested the Financial Creditor *vide* letter dated 09.09.2019 to return the said sum of Rs.25.00 lakh and undertook to deposit the same upon hearing from the Financial Creditor. Subsequent to the filing of the present petition on 11.09.2019, the Corporate Debtor sent another letter date 25.09.2019 seeking refund of the amount of Rs 25.00 lakh.

5.4. The Financial Creditor has suppressed the factum of OTS proposals, and the petition was filed even before a decision on the OTS was communicated.

6. The Financial Creditor has filed a rejoinder, broadly stating that there is debt and default before the filing of the present petition. There was no restructuring, and there was only an OTS proposal that was being considered by the Financial Creditor. The Adjudicating Authority is only required to ascertain and record its satisfaction in a summary adjudication as to the occurrence of default, before admitting the petition.

7. The present petition was dismissed by NCLT Mumbai Bench C-IV vide its order dated 06.07.2020 on the ground of limitation. Aggrieved by the order dated 06.07.2020, the Financial Creditor M/s UCO Bank/Applicant filed a Company Appeal numbered as (AT) (Ins)No. 709 of 2020 before National Company Law Appellate Tribunal, New Delhi under Section 61 of the I&B

Code. The Hon'ble NCLAT set aside the order dated 06.07.2020 and restored the present petition to the NCLT Mumbai Bench C-IV. The relevant part of the order reads as follows:

> *"For the foregoing reasons, this Tribunal holds that 'Debt' has been duly acknowledged in the Balance Sheet for the Year 2016-17 which is also duly prepared and authenticated by the Auditors Report amounting to 'Admission of Liability' and, therefore, satisfies the requirements of liability for a valid acknowledgement under Section 18 of the Limitation Act, 1963.*
>
> *For all the aforenoted reasons, this Appeal is allowed and the impugned order is set aside and the matter is remitted back to the Adjudicating Authority to decide the admission of the Application in accordance with Law as expeditious as possible".*

8. For all the aforenoted reasons as stated by Hon'ble NCLAT in Company Appeal (AT) (Ins)No. 709 of 2020 (supra), this bench considers that this petition is within the limitation period. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Financial Creditor. The existence of debt, which is in nature of Financial debt undisputedly, and default is not in dispute and is further corroborated by the fact of OTS proposal filed by the Corporate Debtor with the Financial Creditor. The amount of debt is more than minimum threshold limit i.e. 1 Lakh, as applicable on the date of filing of present petition.

9. In view of above, we are of the considered opinion that the Application filed by the Financial Creditor deserves to be admitted for initiation of CIRP u/s 7 of the Code against the Corporate Debtor.

ORDER

The petition bearing CP(IB) filed by, UCO Bank (Financial Creditor), under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Deegee Orchards Private Limited is **admitted.**

I. That this Bench as a result of this prohibits:

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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d) the recovery of any property by an owner or lessor where such property is occupied by or in 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 the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, 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 I&B Code.

VI. The bench hereby appoints Mr. Jagdish Kumar, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P00671/2017-2018/11143. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

VII. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

VIII. The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing Public Notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

IX. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

X. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted **within seven days** from the date of receipt of a copy of this order.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
03.03.2023

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)