

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

CP (IB) - 1963/I&B/MB/2019
Under Section 7 of the I&B Code, 2016

In the matter of

United Bank of India
11, Hemanata Basu Sarani, Kolkata- 700
001

.....Petitioner

Vs.

Punjab Biomass Power Limited
D-73/1, TTC Industrial Area, MIDC Turbhe,
Navi Mumbai- 400 705

....Respondent/Corporate
Debtor

Order delivered on: 14.10.2019

Coram:

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

For the Petitioner: Mr. Hasmit Trivedi and Ms. Khushboo Bhayani,
Orbit Law Services, Advocates

For the Corporate Debtor: None present

Per: Shri Shyam Babu Gautam, Member (Technical)

ORDER

1. This is an application filed under Section 7 of the Insolvency and Bankruptcy (I&B) Code, 2016 by United Bank of India (hereinafter called the 'Petitioner') seeking the Corporate Insolvency Resolution Process of Punjab Biomass Power Limited (hereinafter called the 'Corporate Debtor') on the ground that the Corporate Debtor committed breach of credit facilities by making default in payment of the monthly instalments in loan agreements entered into the Corporate Debtor and the Financial Creditor.

2. The Petitioner is a bank incorporated on 19/07/1969 and has filed this petition through its authorised person named Mr. Nandula Srinivasa Rao, Assistant General Manager whereas the Corporate Debtor is a company incorporated on 18/12/2005 and bearing CIN 40200MH2005PLC157917, having Authorised Capital of Rs. 40,00,00,000/- and Paid-Up Capital of Rs. 39,46,88,348/-

3. The counsel for the petitioner submits that a total amount of Rs. 39,50,00,000/- was granted as Term Loan Facility on 24/04/2008 whereas Cash Credit Facility of Rs. 11,95,00,000/- was disbursed on 24/04/2008 to the Corporate Debtor by the Petitioner.

4. The petitioner submitted that the total principal outstanding amount is Rs. 12,62,15,663.27/- and together with Interest and penal interest aggregating to Rs. 3,69,87,620.97 as on 30/04/2019 amounts to Rs. 16,32,03,284.24/-

5. According to the petitioner, proposals for restructuring of the overall fund based limit of Rs. 51,45,00,000/- comprising term loan of Rs. 39,50,00,000/- dated 13/06/2009 and 17/06/2009 were made which are annexed at Exhibit M23 & Exhibit M24 respectively. Letters regarding overdue in the companies loan account with the bank dated 21/01/2014 and 07/02/2014 are annexed at Exhibit M51 and Exhibit M53 respectively. There were several requests for fresh credit facilities made by the corporate debtor on 20/02/2014, 11/08/2015, 12/05/2016 wherein they have reiterated for servicing of their debt liabilities.

6. According to the contentions made by the petitioner, the credit facilities have been availed by the corporate debtor since the past eight years. The facilities were also secured by Mortgage and Hypothecation of assets and the charge was duly filed with respective Registrar of Companies which is attached at Annexure I of the copy of petition. The said Credit facilities were enhanced from time to time by them in favour of the corporate debtor and the documents were executed in respect thereof. The counsel for the petitioner also has placed on record the copy of details of Financial Contracts under the heading Annexure II which comprises of Exhibit M1 to Exhibit M69.

7. The counsel for the petitioner further submits that the corporate debtor has acknowledged the availment of facilities and execution of Documents from time to time and also liabilities from time to time. The corporate debtor by its Balance Confirmation Letters & Revival Letters dated 02/11/2011, 04/05/2012, 31/10/2012, 06/05/2016 & 06/05/2017 has confirmed the availing of facilities, execution of security documents and balance

outstandings in respect of the facilities availed. The documents in support of this have been annexed by the petitioner under Exhibit G to Exhibit K.

8. The petitioner further mentioned that there was Deed of Hypothecation, Term Loan Agreement and Demand Promissory Note all dated 24/06/2016 which are annexed at Exhibit M62, M64 and M65 respectively. The petitioner had also called for payment of overdues in the company's loans vide two letters dated 28/08/2017 and 27/09/2017 annexed at Exhibit M68 and M69 respectively.

9. The said Term Loan Agreement contained the following details:

The corporate debtor had executed Agreement for Term Loan dated 12/11/2008 in favour of the petitioner wherein they had agreed to repay the amount of Term Loan with interest in 156 monthly instalments commenced from April 2009 and ending in March 2022 as described in the agreement. Later the petitioner, upon the request of the corporate debtor had approved restructuring of overall fund based limit of Rs. 51,45,00,000/- and revision of repayment schedule on the various terms mentioned in the sanction letter dated 30/06/2009 whereby the petitioner had sanctioned repayment of Term Loan of Rs. 39,15,00,000/- in 146 monthly instalments starting from February 2010 and ending on March 2022 for the total period of 13 years and 3 months subject to other terms mentioned there in. Again, at the request of the corporate debtor, the petitioner sanctioned review of overall limit from Rs. 37,07,00,000/- to Rs. 31,88,00,000/- wherein the cash credit limit was reduced from the existing limit of Rs. 11,95,00,000/- to Rs. 9,97,00,000/- and Term Loan had been re-fixed from the existing Rundown DP limit Rs. 21,91,00,000/- on the terms contained in Sanction Letter dated 11/08/2015.

10. The counsel appearing on behalf of the petitioner submitted that the corporate debtor slipped into NPA on 31st October, 2018 as

per the RBI Guidelines owing to the default in payment of interest and principal amount.

11. The petitioners also mentioned that vide their advocate's letter dated 21/12/2018 addressed to the corporate debtor, they had recalled the entire advances and called upon the corporate debtor to make the outstanding payments. This notice is annexed at Exhibit "L" of the copy of petition.

12. The CIBIL Report dated 03/05/2019 has also been placed on record by the petitioner and also annexed at Exhibit C of the copy of petition.

13. The counsel for the petitioner mentioned that despite of several communications made, the corporate debtor failed in making the payments and therefore, this petition under Section 7 was preferred by them.

14. Also, there were several instances where the petitioner had served a notice on the corporate debtor but in vain. The petitioner was also directed by this Bench to make publication in two daily newspapers one in English and another one in Vernacular language and accordingly it was done. Therefore, this bench has given ample opportunity to the corporate debtor to present his case yet the corporate debtor did not tender their presence and hence we had to proceed ex-parte and pass the following order:

ORDER

15. We have heard the petitioner at length and after having perused the documents and evidences placed on record, this Bench finds that there were express Loan Agreements entered between both the parties and a total amount of Rs. 51,45,00,000/- Crores was disbursed by the petitioner in favour of the corporate debtor from time to time, the detailed description of which is provided by the petitioner. Therefore, both the parties shared a relationship of creditor and debtor.

16. According to the contentions made by the petitioner, the amount payable to the financial creditor amounts to Rs.

16,32,03,284.24/- including the interest agreed by both the parties and payable by the corporate debtor. The corporate debtor was also declared NPA on 31/10/2018.

17. Sufficient documents including Loan Agreements, Deed of Hypothecation, Demand Promissory Note, all the letters of communication made between both the parties, the account statements, etc. have been produced by the petitioner to prove the default on the part of the corporate debtor. Moreover, time and again request was made by the corporate debtor for reconstruction of the Term Loan Agreement and therefore the petitioner contended that they have accepted the default on their part. Therefore, the petition deserves to be admitted.

18. There were several attempts made by the petitioners to realise the amount to be paid by the corporate debtor and even several chances were given to them by this Bench. Despite this, there was lenient approach on the part of the corporate debtor and they did not appear before this Bench. Therefore, this ex-parte order is being passed in the absence of the corporate debtor.

19. 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 14.10.2019 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, Mr. Om Prakash Kanoongo, having office at 3, Manhar Apartment, Poddar Park, Malad (East), Mumbai- 400097 and having Registration No. IBBI/IPA-001/IP-P00410/2017-18/10726 as Interim Resolution Professional to carry out the functions as mentioned under Insolvency & Bankruptcy Code.

20. Accordingly, this Petition is admitted.

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

Sd/-
Shyam Babu Gautam
Member (Technical)

Sd/-
Bhaskara Pantula Mohan
Member (Judicial)

/SSB/