

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

CP(IB) 199 /7/NCLT/AHM/2018

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL



**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 24.07.2019**

Name of the Company JM Financial Asset Reconstruction Company Pvt.
Ltd.

V/s.

Tiger Surgical Disposable Pvt. Ltd.


Section of the Companies Act: Section 7 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	A. S. Parmesan	Advocate	Petitioner	
2.	Jaimin R. Dave	ADV.	Respondent	
	Prinyank S. Dave	"		
	Shivam D. Parikh	"		

ORDER

The parties are represented through their respective learned counsels.

The Order is pronounced in the open court, vide separate sheet.


MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 24th day of July, 2019


HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH**

C.P. No.(IB) 199/7/NCLT/AHM/2018

In the matter of:

JM Financial Asset Reconstruction Company Limited
(formerly known as JM Financial Asset Reconstruction
Company Private Limited)
7th Floor, Cnerty, Appasaheb Marathe Marg
Prabhadevi
MUMBAI 400 025

:

Petitioner
[Financial Creditor]

Versus

Tiger Surgical Disposable Private Limited
80/4 GIDC Phase – I
Vatva
AHMEDABAD 382 445

:

Respondent
[Corporate Debtor]

Order delivered on 24th July, 2019

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

Appearance:

Advocate Mr. A.S. Panesar along with Senior Advocate Mr. Navin
Pahwa for financial creditor/petitioner
Advocates M/s. Jaimin R. Dave, Priyan S. Dave, Shivam D. Parikh
and Rashesh Sanjanwala for respondent

ORDER

1. JM Financial Asset Reconstruction Company Limited,
through authorised signatory, filed this petition under
section 7 of The Insolvency and Bankruptcy Code, 2016
(hereinafter referred to as "the Code") read with Rule 4 of
The Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016 (hereinafter referred to as "the
Rules") seeking reliefs under Section 7(5)(a) and Section
13(1)(a)(b)(c) of the Code.

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2. That the applicant JM Financial Asset Reconstruction Company Limited, is a limited company incorporated on 19.09.2007, registered as a Securitization Reconstruction Company with the Reserve Bank of India under Section 3 of the SARFAESI Act, 2002, having its registered office at 7th Floor, Cnergy, Appasaheb Marathe Marg, Prabhadevi, Mumbai 400 025, having identification No. U67190MH2007PLC174287.

3. M/s. Tiger Surgical Disposable Private Limited is a company incorporated under the Companies Act, 1956 on 30th June, 2003 having identification No. U33112GJ2003PTC042558 having its registered office at 80/4, GIDC Phase – I, Vatva, Ahmedabad – 382 445. That Authorised share capital of the respondent company is Rs. 3,20,00,000.00 and paid up share capital is Rs. 3,20,00,000.00.

4. It is submitted by the applicant company that, total amount of **Rs. 22,12,05,556/- (Rupees twenty-two crores twelve lacs five thousand five hundred fifty-six only)** as on 15.03.2018 is outstanding against the debts owed by the respondent company to UCO Bank which were transferred in favour of the applicant by way of a registered assignment agreement dated 26.03.2014. Details of the loan sanctioned, disbursed by the bank and outstanding thereof are placed at **Annexure - 6** to the application which is reproduced hereunder: -

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Date of default – 31.03.2013 being the date of NPA

Days of default from date of NPA – 1810 days

Nature of facility	Amount due as on 31.03.2013	Amount due as on 15.03.2018
Term loan	8,59,22,115	5,41,73,862
Cash credit	3,43,18,948	16,64,93,331
Total	12,02,41,063	22,06,67,193

Current outstanding break-up: -

Sl. No.	Facility	Principal outstanding	Dues as on 25.03.2014	Interest from 25.03.2014 to 15.03.2018	Total Dues
1	Term loan	8,25,00,000	3,19,62,092	2,22,11,770	5,41,73,862
2	Cash credit	2,75,00,000	9,89,61,746	6,75,31,585	16,64,93,331
	Total	11,00,00,000	13,09,23,838	8,97,43,355	22,06,67,193

Particulars	Amount (in Rs.)
Total dues as on 15 th March 2018	22,06,67,193
Expenses as on date	5,38,363
Total dues including expenses	22,12,05,556

5. It is further submitted by the applicant that the account has been classified as Non-Performing Asset as on 31st March, 2013.
6. In support of their claim, the applicant has submitted copy of the following documents along with the application: -

Anne-xure	Particulars	Page No.
1	New certificate of incorporation post the conversion from private company to public company	1
2	Board resolution dated 15.01.2018 inter alia authorising Mr. Varun Agarwal	2-3
3	Authorisation i.e. vakalatnama dated 25.04.2018 inter alia authorising Mr. Avtarsingh Panesar	4
4	Company's master data as available on the website of MCA	5
5	Written consent of IRP and copy of the registration certificate of IRP	6-7
6	Working for computation of amounts and days of default in tabular form	8

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7	Certificate of modification of charges issued by ROC in favour of the applicant together with form 8 and form CHG1	9-29
8	Demand promissory note for Rs. 100.00 lacs dated 1.9.2005	30-31
9	Letter of waiver for Rs. 100.00 lacs dated 01.09.2005	32
10	Letter of continuity for Rs. 100.00 lacs dated 01.09.2005	33-34
11	Agreement of term loan for Rs. 200 lacs dated 01.09.2005	35-39
12	Deed of hypothecation of plant and machinery for Rs. 22 lacs dated 01.09.2005	40-47
13	Demand promissory note for Rs. 100 lacs dated 03.11.2005	48-49
14	Letter of waiver for Rs. 100 lacs dated 03.11.2005	50
15	Letter of continuity for Rs. 100 lacs dated 03.11.2005	52-71
16	Deed of hypothecation for Rs. 100 lacs dated 03.11.2005	52-71
17	Agreement of term loan for Rs. 200 lacs dated 03.11.2005	72-74
18	Deed of hypothecation of plant & machinery for Rs. 200 lacs dated 03.11.2005	75-82
19	Agreement of term loan for Rs. 90 lacs dated 12.07.2006	83-85
20	Deed of hypothecation of plant and machinery for Rs. 290 lacs dated 12.07.2006	86-93
21	Agreement of term loan for Rs. 70 lacs dated 22.03.2007	94-100
22	Deed of hypothecation of plant & machinery for Rs. 70 lacs dated 22.03.2007	101-108
23	Demand promissory note for Rs. 30 lacs dated 20.08.2007	109
24	Letter of waiver for Rs. 30 lacs dated 20.08.2007	110
25	Letter of continuity for Rs. 30 lacs dated 20.08.2007	111
26	Deed of hypothecation of goods for Rs. 30 lacs dated 20.08.2007	112-119
27	Demand promissory note for Rs. 145 lacs dated 08.11.2007	120-121
28	Letter of waiver for Rs. 145 lacs dated 08.11.2007	122
29	Letter of continuity for Rs. 145 lacs dated 08.11.2007	123
30	Supplemental deed of hypothecation of goods, stocks & book debts for Rs. 145 lacs dated 08.11.2007	124-127
31	Agreement of term loan for Rs. 130 lacs dated 08.11.2007	128-134
32	Deed of hypothecation of plant & machinery for Rs. 130 lacs dated 8.11.2007	135-150
33	Supplemental deed of hypothecation of goods for ad hoc cash credit limit of Rs. 50 lacs dated 13.01.2009	151-154
34	Demand promissory note for Rs. 270 lacs dated 27.02.2009	155

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35	Letter of waiver for Rs. 270 lacs dated 27.02.2009	156
36	Letter of continuity for Rs. 270 lacs dated 27.02.2009	157
37	Second supplemental deed of hypothecation of goods, stocks & book debts for Rs. 270 lacs dated 27.02.2009	159-162
38	Agreement of term loan for Rs. 280 lacs dated 27.02.2009	163-169
39	Deed of hypothecation of plant and machinery for Rs.280 lacs dated 27.02.2009	170-185
40	Agreement for rescheduling of term loan II for Rs. 275.43 lacs dated 27.02.2009 signed by corporate debtor	186-191
41	Agreement for rescheduling of term loan II for Rs. 275.43 lacs dated 27.02.2009 signed by guarantors	192-193
42	Agreement for rescheduling of term loan III for Rs. 66.34 lacs dated 27.02.2009 signed by corporate debtor	194-197
43	Agreement for rescheduling of term loan III for Rs. 66.34 lacs dated 27.02.2009 signed by guarantors	198-201
44	Demand promissory note for Rs. 320 lacs dated 27.11.2009	202-203
45	Letter of waiver for Rs. 320 lacs dated 27.11.2009	204-205
46	Letter of continuity for Rs. 320 lacs dated 27.11.2009	205-206
47	Supplemental deed of hypothecation of goods stocks & book debts for Rs. 320 lacs dated 27.11.2009	207-208
48	Demand promissory note for Rs. 270 lacs dated 30.06.2011	209-210
49	Letter of waiver for Rs. 270 lacs dated 30.06.2011	211
50	Demand promissory note for Rs. 8,96,52,000 dated 30.06.2011	212-213
51	Letter of waiver for Rs. 8,96,52,000 dated 30.06.2011	214
52	Agreement of term loan of Rs. 8,96,52,000 dated 30.06.2011	215-216
53	Letter of continuing guarantee dated 1.9.2005 for aggregate limits of Rs. 300 lacs signed by Mr. Jagdishbhai Patel, Mrs. Nandiniben Patel and Mr. Karan Patel	222-228
54	Letter of continuing guarantee dated 3.1.2005 for aggregate limits of Rs. 300 lacs signed by Mr. Jagdishbhai Patel, Mrs. Nandiniben Patel and Mr. Karan Patel	229-231
55	Letter of continuing guarantee dated 19.11.2005 for aggregate limits of Rs. 300 lacs signed by Mr. Jagdishbhai Patel, Mrs. Nandiniben Patel and Mr. Karan Patel	232-239
56	Letter of continuing guarantee dated 12.07.2006 for aggregate limits of Rs. 582.32 lacs signed by Mr. Jagdishbhai Patel, Mrs. Nandiniben Patel and Mr. Karan Patel	240-245
57	Letter of continuing guarantee dated 22.03.2007 for aggregate limits of Rs. 70	246-249

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	lacs signed by Mr. Jagdishbhai Patel, Mrs. Nandiniben Patel and Mr. Karan Patel	
58	Letter of continuing guarantee dated 22.03.2007 for Rs. 70 lacs signed by Mr. Karan Patel	250-253
59	Letter of continuing guarantee dated 20.08.2007 for Rs. 30 lacs signed by Mr. Jagdishbhai Patel and Mrs. Nandiniben Patel	254-257
60	Letter of continuing guarantee dated 8.11.2007 for Rs. 145 lacs signed by Mr. Jagdishbhai Patel, Mrs. Nandiniben Patel and Mr. Dilipkumar Patel together with consent letter for disclosure of names	258-265
61	Letter of continuing guarantee dated 30.06.2011 for term loan limits of Rs. 8,96,52,000 lacs signed by Mr. Jagdishbhai Patel, Mrs. Nandiniben Patel, Mr. Kiran Patel and Mr. Dilipkumar Patel	266-274
62	Memorandum of equitable mortgager of title deeds dated November 19 2005 by guarantor	275-287
63	Memorandum of equitable mortgager of title deeds dated September 20 2006 by guarantor	288-304
64	Memorandum of deposit of title deeds dated September 25, 2007 by guarantor	305-314
65	Supplemental memorandum of equitable mortgage by deposit of title deeds dated 17 th February 2009 by guarantor	315-344
66	Registered assignment agreement dated 26 th March, 2014 between UCO Bank and JM Financial Asset Reconstruction Company Ltd. (Financial creditor) where the outstanding dues owed by the corporate debtor together with the underlying security interest and all rights, title and interest thereto are assigned to financial creditor acting in its capacity as trustee of JMFARC-UCO March 2014-Trust	345-417
67	Copies of entries in a bankers Book in accordance with the Bankers Book Evidence Act, 1891	418-439
68	Balance confirmation letter dated 27.02.2009	440
69	Letter for compromise settlement dated 28.03.2016 by corporate debtor	441
70	Rejection of aforesaid settlement dated 13.04.2016	442
71	Letter for settlement dated 10.03.2018 by corporate debtor	443
72	Rejection of aforesaid settlement dated 14.03.2018	444
73	Notice issued u/s 13 (2) of the Securitisation Act dated 29.04.2013	445-450
74	Representation and objection of the corporate debtor dated 28.06.2013	451-452
75	Reply to the representation and objection of the corporate debtor by UCO Bank	453
76	Financial statement of the corporate debtor for the year 2016-17	454-485

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77	Copy of the order of Gujarat High Court in COMP 311/2015 permitting the withdrawal of the same with the liberty to approach NCLT	486
78	Proof of dispatch/service of the present petition	487

7. On notice being issued, respondent/corporate debtor filed affidavit in reply denying the contentions raised in the application. The respondent has raised the following objections: -

(i) The petition is grossly time barred and not maintainable in view of Section 238A of the IB Code as the debt fell due on 29.04.2013 in as much as notice of default under Section 13 (2) of the SARFEASI Act was issued on 29.04.2013.

(ii) UCO Bank handed over the bill of lading and other original documents to the bankers of Pro-Pharma Corporation Limited, Moscow, Russia and on account of such negligence of the financial creditor, the respondent company has not received a payment of US \$ 31,204 from Pro-Pharma Corporation Ltd. till date. Therefore, the corporate debtor vide letter dated 19.08.2008 and 13.11.2006 had requested the UCO Bank to ensure that an amount of U \$ 31,204 is credited to the loan account of the respondent, but, the financial creditor failed to rectify its mistake and continued to be negligent.

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- iii) On or around 23.04.2010 UCO Bank lost four cheques amounting to Rs. 2,26,396/- which were issued by various customers in favour of the respondent company and deposited with the Bank. On top of that, UCO Bank unilaterally raised rate of interest from 14.5% to 18% per annum without any kind of notice, intimation and/or consent of the respondent company.
8. The respondent has further contended that vide letter dated 21.05.2010 respondent called upon UCO Bank to credit their CC account with US \$ 31,204, Rs. 2,26,396/- towards the lost cheques and excess amount that debited from the respondent company's account by unilaterally increasing the interest rate. That, similar requests were made vide letters dated 23.06.2010 and 12.07.2010, however, UCO Bank did not bother to take any action. That, pending the adjudication of the securitisation application, UCO Bank has illegally assigned the debts of the respondent company to the petitioner herein vide assignment deed dated 25.03.2014. That, the respondent company is one of the largest syringe manufacturers and employs more than 100 direct and indirect employees.

Findings

9. Heard the submissions made by the lawyers appearing for both the parties and perused the relevant provisions and the records.

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10. The first objection raised by the respondent is that the application is time barred. It is a matter of record that the UCO Bank had granted several facilities including Cash Credit Facility to the Corporate Debtor and the Corporate Debtor fully availed those facilities. Those facilities carry interest applicable from time to time as per the terms and conditions relating to the term loan executed from time to time during the period from 2005 to 2009 and thereafter entered into waivers, promissory notes and letter of continuing guarantee from 2009 to 30.06.2011. On perusal of the records it is found that, from time to time, at the instance of the respondent, the applicant bank had enhanced and rescheduled such facilities. That, due to non-payment of the debts account of the corporate debtor was classified as Non-Performing Assets on 31st March, 2013.

11. Thereafter, UCO Bank entered into registered assignment agreement dated 26th March, 2014 with J.M. Financial Asset Reconstruction Company Limited whereby the outstanding dues owed by the corporate debtor together with the underlying security interest and all rights, title and interest thereto were assigned to the instant financial creditor. On perusal of the records it is also found that, even by letter dated 10th March, 2018 marked Annexure 71 placed at page No. 443 to the application, the respondent had approached the applicant/financial creditor with a proposal of settlement which was turned down by the applicant. Notes to the financial statements, placed at page No. 463 to the

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application, under the head secured "long term borrowings" the corporate debtor has shown a sum of Rs. 8,06,77,846/- payable to UCO Bank. This itself shows that the debt is acknowledged by the respondent. On perusal of the documents/annexures so annexed with the reply of corporate debtor itself shows that during the period from August 2006 to June 2013 various communication had taken place between the respondent and UCO Bank regarding issues like non-receipt of payment, interest charged by the bank, overdue payment of cash credit limit etc. acknowledging the debt from time to time. Thus, the plea of limitation taken by the corporate debtor is not maintainable in view of the fact that before expiry of three years' period, the corporate debtor acknowledged the debts. Moreover, objection raised by the corporate debtor that the petitioner cannot be permitted to pursue two parallel proceedings is unfounded. The pendency of proceedings before any other fora as mentioned in the Code much less before the Arbitrator would not cause any impediment with regard to initiation of corporate insolvency resolution process because under Section 7 of the Code pendency of such proceedings is no bar to the admission of the petition and initiation of corporate insolvency resolution process.

12. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the Corporate Debtor committed default in paying the financial debt to the Applicant.

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13. To decide the issue, it is desirable to refer to the Judgment delivered by the Hon'ble Supreme Court, in the matter between ***M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr.***, in *Civil Appeal Nos. 8337-8338 of 2017*, in Para No. 30 has clearly held as follows;

*"30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. **It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date.** It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."*

14. There is no dispute in the case that the petitioner is the financial creditor. The application is also furnished in the prescribed form – 1 of the Rules and the prescribed fee has also been paid. Along with the application, the applicant proposed the name of the Resolution Professional namely Mr. Hiten M. Parikh, CA to act as an interim resolution professional. The Adjudicating Authority hereby appoint Mr. Hiten M. Parikh, B-303, GCP Business Centre, Opp. Memnagar Fire Station, Navrangpura, Ahmedabad 380 009 having registration number IBBI/IPA-002/IP-N00309/2017-18/10898 to act as insolvency resolution professional. Form 2 along with the certificate of registration of the proposed interim resolution professional has been annexed and placed

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at page No. 6 & 7 to the application where declaration is made that no disciplinary proceeding is pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.

15. On perusal of record and as also discussed above, it is held that there is existence of default and that the application under Section 7(2) of the Code is also complete in all respect.
16. In view of the above, the petitioner/financial creditor having fulfilled all the requirements of Section 7 of the Code, the instant petition deserves to be admitted.
17. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -
 - (i) 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;
 - (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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

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and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

18. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.
19. The order of moratorium shall have effect from the date of receipt of authenticated copy 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 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.
20. This Petition stands disposed of accordingly with no order as to costs. IA /(s) if any, pending stand infructuous and disposed of.

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22. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.



Ms. Manorama Kumari
Member (Judicial)
Adjudicating Authority

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