

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,

KOLKATA

CP No.1246/KB/2019

In the matter of:

An application under 7 of the Insolvency & Bankruptcy Code, 2016.

And

In the matter of:

Union Bank of India, having its Head Office at Union Bank Bhavan, 239, Vidhan Bhavan Marg, Nariman Point, Mumbai-400021, Maharashtra and its regional office at 8 Lenin Sarani, Kolkata-700013.

... Financial Creditor

Versus

In the matter of:

M M Agro Ventures Private Limited, a company incorporated under the provisions of Companies Act, 1956, having its Registered Office at House No. 6B/26, Tilak Marg, North S.K. Puri Patna, Bihar- 800013.

...Corporate Debtor

Date of hearing : 22/02/2021

Order Pronounced on : 18.03.2021

Coram:

Mr. Rajasekhar V.K., Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsel appeared through Video Conference

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| 1. Mr. Vikram Wadehra, Advocate | } | For the Financial Creditor |
| 2. Ms. Vidushi Chokhani, Advocate | } | |
| 3. Mr. Soumava Ghosh, Advocate | } | |

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| 1. Mr. Arnab Chakrabarti, Advocate | } | For the Corporate Debtor |
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ORDER

Per: Harish Chander Suri, Member (T)

1. The Court convened by video conference today.
2. This application under section 7 of Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has been filed by **Union Bank of India** (earlier known as Corporation Bank) (hereinafter referred to as the Financial Creditor), through one of its Officers Mr. Dipak Kumar Tiwari, who was authorised to file this Petition before this Adjudicating Authority vide GPA dated 18th September, 2010 along with circular resolution dated 12th December 2017 and Authority Letter dated 25th July, 2019, thereby seeking initiation of Corporate Insolvency Resolution Process in respect of **M M Agro Ventures Private Limited**, a corporate entity having its registered office at House No. 6B/26, Tilak Marg, North S.K. Puri Patna Bihar- 800013, CIN No. U63022BR2012PTC018144 (hereinafter referred as the Corporate Debtor).
3. It is submitted in the Petition that on the request of the Corporate Debtor, a sum of Rs.6,65,00,000/- (Rupees Six Crore Sixty Five Lakhs only) had been sanctioned vide sanction reference no. ZO: PAT: CCPC: CSI: 63:2014-15 dated 4th March, 2015, under different Accounting heads as mentioned in 'Annexure-D' in tabular form. It is further submitted that the amount claimed to be in default as on 1st July 2019 was Rs.6,92,19,480.50 (Rupees Six Crore Ninety Two Lakhs Nineteen Thousand Four Hundred Eighty and fifty paisa only)and, therefore, the account of the Corporate Debtor was declared as NPA on 29th July, 2017, as per the computation sheet annexed with the petition as 'Annexure-E' .
4. It is stated that to secure the loan of the Bank, the Corporate Debtor had mortgaged various immovable properties owned and mortgaged by the

Corporate Debtor with the Financial Creditor and the same are enumerated in Part -V of the Petition.

5. It is further stated that the DRT in OA No. 754/2018 passed judgement dated 30th March, 2019, pursuant to which, a Recovery Certificate for a sum of Rs.6,15,67,529.50 (Rupees Six Crores Fifteen Lakhs Sixty Seven Thousand Five Hundred Twenty Nine and Fifty Paise) was issued on 30th March,2019.
6. The Financial Creditor had further secured its loan by accepting the property of Personal Guarantors Sri Mitesh Kumar and Smt. Manju Sinha, details whereof have been mentioned in Part-B of the petition. Similarly property of Personal Guarantor Sri Subesh Kumar and Sri Nitesh Kumar were mortgage by the Bank by execution of equitable mortgage by deposit of Registered Sale Deed No. 4499 dated 20th November, 2012. A letter of continuing Guarantee dated 9th June, 2015 was also executed by Personal Guarantors for Cash Credit Loan of Rs.95,00,000/- (Rupees Ninety Five Lakhs) and for Term Loan of Rs. 5,70,00,000/- (Rupees Five Crore Seventy Lakhs only) on behalf of the Corporate Debtor.
7. The Financial Creditor has also placed on record various documents annexed with the petition from 'Annexure-G to Annexure-Q'. The Financial Creditor has also placed on record statement of Accounts maintained by the Financial Creditor along with the certificate under Banker's Book Evidence Act 'Annexure-R'. The Financial Creditor has also placed on record a copy of notice issued to the Corporate Debtor, its Directors and Guarantors dated 11th June 2018 'Annexure-V' calling upon all of them to discharge their liability to the tune of Rs. 6,04,57,981/- (Rupees Six Crore Four Lakhs Fifty Seven Thousand Eight Hundred and Eighty One Only) together with interest, costs, charges etc. within 60 days from the date of the said notice. It is stated that the Corporate Debtor failed to discharge its liability thereby compelling the

Financial Creditor to file these proceedings.

8. The Corporate Debtor was duly served with notice and was afforded opportunity to file reply.
9. Further in its reply affidavit, the Corporate Debtor through one of its Directors Sri Mitesh Kumar, submitted that the application filed by the Financial Creditor is an abuse of law, not maintainable under section 7 of the Code, and that the applicant Bank had not made disbursement of the loan amount on Scheduled date and time, due to which, the construction of its proposed unit had been stopped and large number of raw materials lying on the site was destroyed. It is further submitted that due to non-providing of the fund in time, the Corporate Debtor had suffered various problems at the construction site. It is stated that the project got delayed due to situations beyond their control like acute fund problem and non-availability of fund in time, cost of the construction materials going very high. It is submitted that the Corporate Debtor had obtained certified copy of judgement and order dated 30.03.2019 passed by the DRT, Patna, Bihar and was contemplating to prefer an Appeal against the said order before the DRAT, Allahabad, Uttar Pradesh.
10. We have carefully gone through the pleadings filed by the parties. The reply submitted by the Corporate Debtor has no substance at all. It does not give any valid or plausible ground or reason for not making the payment.
11. We have also been taken through the contents of the Petition and each and every relevant portion of the pleadings filed by the Financial Creditor along with Annexures, and the reply of the Corporate Debtor. We are fully convinced that the loan amount was duly disbursed to the Corporate Debtor and the documents of mortgage/ guarantee/ hypothecation were duly executed by the Corporate Debtor through their

authorized representative. The requisites of an application under section 7 of IBC are available on record and duly proved. The date of default the account of the Corporate Debtor having been declared as NPA on 29th July 2017 is also proved, which is the date of default as per Annexure 'E' at page 61 of the petition.

12. A submission was made on the date of hearing (22.02.2021), that time be granted for filing a detailed reply. The IBC does not envisage two stages of reply. An opportunity was afforded to the Corporate Debtor to file a reply, and it has done so. This is a petition pertaining to the year 2019 and it cannot be kept pending.
13. The Financial Creditor has proposed the name of the IRP CA Sonu Jain, [**Reg. No. IBBI /IPA-001/P-00575/2017-18/11016**] Email Id: casonuajain@gmail.com., who has vide letter dated 17th April 2019 in Form-2 agreed to accept the appointment as IRP if an order of admission is passed in the present application. She has further disclosed that she is currently served as IRP /RP/ Liquidator in 6 proceedings and that no disciplinary proceedings are pending against her with the Board or IIPICA.
14. We, therefore, consider it a fit case for admitting the petition, and for initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor.
15. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders:-

O R D E R S

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor **M M Agro Ventures Private Limited** is hereby **admitted**.

- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - 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 (54 of 2002);
 - 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.

- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period, otherwise than in accordance with section 14 of the Code.
- vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- vii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- viii) **CA Sonu Jain**, registered with Insolvency and Bankruptcy Board of India, having Registration No. [**Reg. No. IBBI /IPA-001/P-00575/2017-18/11016**] Email Id: casonuajain@gmail.com is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- ix) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- x) The Financial Creditor/Applicant is directed to deposit **Rs. 2,00,000/- (Rupees Two Lakhs only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the

preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

- xi) Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xii) List the matter on **04.05. 2021** for filing of the **Progress Report**.
- xiii) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rajasekhar V.K.)
Member (Judicial)

Signed on this, the 18th day of March, 2021

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