

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH - I
KOLKATA**

C.P (IB) No. 249/KB/2019

A Petition 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.

In the matter of:

United Bank of India (now Punjab National Bank)

...Financial Creditor

Versus

Progress Cultivation Limited [CIN U01400WB2009PLC134240], a company incorporated under the Companies Act, 1956 having its registered office at Plot No.55, Fakir Bagan Lane, Golabari, Howrah – 711101.

...Corporate Debtor

Date of Hearing: 29.04.2022

Date of pronouncing the order: 12.05.2022

Coram:

Shri Rajasekhar V.K. : *Member (Judicial)*

Shri Balraj Joshi : *Member (Technical)*

Appearances (through Video Conferencing/Physical)

For Financial Creditor : Ms. Jayshree Saha, Advocate

For Corporate Debtor : None

ORDER

Balraj Joshi, Member (Technical)

1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by Mr. M. K. Zama, General Manager of United Bank of India (*'Financial Creditor'*), duly authorised *vide* Authorization Letter dated 08 February, 2019¹ for initiation of Corporate Insolvency Resolution Process (*'CIRP'*) against Progress Cultivation Limited (*'Corporate Debtor'*).
3. The present Petition was filed on 12 February, 2019 before this Adjudicating Authority on the ground that a sum of Rs.5,00,00,000/- (Rupees Five Crore only), was advanced by the Financial Creditor to the Corporate Debtor, as a Credit Facility (*'Credit facility' or 'Loan'*), and the Corporate Debtor has defaulted in repayment.
4. The total amount to be claimed in default by the Financial Creditor is Rs.6,38,96,634.33/- (Rupees Six Crore Thirty Eight Lakh Ninety Six Thousand Six Hundred Thirty Four and Thirty Three Paise) including interest as on 31 December, 2018. The date of default is stated to be **19 July, 2014**.
5. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is Rs.16,35,00,000/- (Rupees Sixteen Crores Thirty Five Lakh only) with paid up Capital as Rs.2,67,64,100/- (Rupees Two Crore Sixty Seven Lakh Sixty Four Thousand One Hundred only).
6. ***Submissions by the Ld. Counsel appearing on behalf of the Financial Creditor***
 - 6.1 The Corporate Debtor approached the Financial Creditor for a loan of Rs. Rs.5,00,00,000/- (Rupees Five Crore only). In pursuance of their Loan Application dated 03 June, 2013², the Financial Creditor *vide* sanction letter being Ref. No.

¹ Annexure – A, page 23 of the Petition.

² Pages 191 – 194 of the Petition.

- 15/13-14, dated 22 June, 2013,³ sanctioned the said loan amount. Upon completion of all the formalities the loan amount was disbursed on 22 June, 2013.⁴
- 6.2 In order to secure the loan amount, the Corporate Debtor created a Security Interest on the Factory Premises; by depositing the Original Title Deeds of the Factory Premises in favor of the Financial Creditor [broadly classified in Part – V of the Petition]. Further, securities were also created against movable property by executing financial contracts like Hypothecation of Goods, Hypothecation of Debts and Plant and Machineries.⁵
- 6.3 The Statements of Accounts of the Financial Creditor reflects deposit of interest by the Corporate Debtor but the same were not enough to meet the monthly outstanding amount. Hence, the Corporate Debtor failed to maintain its financial account in terms of the banking guideline and the account of the Corporate Debtor was classified as Non Performing Asset (‘*NPA*’) on 31 December, 2014.
- 6.4 The Financial Creditor has also filed an application under Section 19(1) of the Recovery of Debts due to Banks & Financial Institutions Act, 1993 against the Corporate Debtor, before the Ld. Debt Recovery Tribunal – III, Kolkata. The said Application is still pending for adjudication before the Debt Recovery Tribunal.
- 6.5 Further, the Financial Creditor pursuant to an Order of the Ld. District Magistrate, Hooghly pronounced *vide* Memo No. 733/JM. HUG/16 dated 09 August, 2016, under section 14 of the SARFAESI Act, 2002; has taken the possession of the secured assets of the Corporate Debtor.⁶
- 6.6 From 01 January, 2015 till 31 January, 2017, the Corporate Debtor deposited the cash towards the loan outstanding but all such deposits were not sufficient enough to clear the outstanding debt and revive the NPA Account of the Corporate Debtor. The Corporate Debtor is legally and morally duty bound to repay the outstanding

³ Pages 194-198 of the Petition.

⁴ Pages 12 and 18 of the Petition

⁵ Annexure - I, J & K of the Petition.

⁶ Annexure – Y , Z & AA of the Petition.

financial debt in terms of the sanction letter and the financial contracts between the parties.

Analysis and Findings

7. We have heard the Ld. Counsel appearing on behalf of the Financial Creditor and perused the record.
8. On several failed attempts of physical service and service by post by the Financial Creditor, this Adjudicating Authority *vide* order dated 23 February, 2022, directed service on the Corporate Debtor by way of newspaper publication, in the district in which the registered Office of the Corporate Debtor is situated. In pursuance of such order, the publications were made in '*Indian Express*' and '*Aajkal*' on 17 March, 2022, however, none appeared on behalf of the Corporate Debtor.
9. Further, upon perusal of the record it is apparent that transaction held between the parties squarely falls under the definition of financial transaction and the default subsists. Further, the date of default is stated to be 19 July, 2014 but the Corporate Debtor paid a sum of Rs.24,700/- (Rupees Twenty Four Thousand Seven Hundred only) on 31 January, 2017, which is within the period of limitation. It is also pertinent to mention that there have been a series of cash deposits in the loan account on earlier occasions also and as such, this is not construed as an isolated event. The payment by the Corporate Debtor before expiration of the prescribed period of limitation would attract the '*Acknowledgement*' under the limitation Act, 1963 and would result into a fresh period of limitation. [*Laxmi Pat Surana vs Union Bank of India & Anr*]⁷
10. In view of the above facts and circumstances, we are satisfied that the present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.

⁷ Civil Appeal No. 2734 of 2020 decided on 26 March, 2021

11. Accordingly, it is, hereby ordered as follows:-

- (a) The application bearing CP (IB) No. 249/KB/2019 filed by United Bank of India, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Progress Cultivation Limited, the Corporate Debtor, is ***admitted***.
- (b) There shall be a moratorium under section 14 of the IBC.
- (c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (e) ***Mr. Pankaj Kumar Kedia***, registration number ***IBBI/IPA-001/IP-P01037/2017-2018/11710***, email: ***pkkedia2@rediffmail.com***, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- (f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 information in their knowledge to the IRP within

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one week from the date of receipt of this Order, in default of which coercive steps will follow. No separate notice for cooperation by the suspended management should be expected.

- (g) The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
 - (h) 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).
 - (i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
 - (j) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- 12. CP (IB) No. 249/KB/2019** to come up on **21 July, 2022** for filing the periodical report
- 13.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**BALRAJ
JOSHI**

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BALRAJ JOSHI
Date: 2022.05.12
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Balraj Joshi
Member (Technical)

**Rajasekhar
V K**

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

The Order is pronounced on 12th day of May, 2022

Safura A., LRA