

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

CP No. (IB) 3553/ MB/ 2019

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

Bank of Maharashtra

Having its Registered Office at:
“Lokmangal”, 1501 Shivajinagar, Pune-
411 005.

..... **Financial Creditor**

Vs.

**Universal Tube Accessories Private
Limited**

Having its Registered Office at: Plot
No. C- 78/2, Add MIDC Jejuri, Tal-
Purandhar, Jejuri Pune- 412 303.

..... **Corporate Debtor**

Order delivered on:- 06.01.2023

Coram:

Hon’ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon’ble Member (Technical) : Shri Shyam Babu Gautam

Appearances:

For the Financial Creditor : Ms. Rathina Maravarman, Advocate

For the Corporate Debtor : Mr. Gopalakrishnan, Advocate

ORDER

Per: Justice P.N. Deshmukh, Member Judicial

1. This Company Petition is filed by *Bank of Maharashtra* (hereinafter called “Financial Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Universal Tube Accessories Private Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate Debtor committed default in making payment to the Financial Creditor. This Petition has been filed by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called “IBC”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present Petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of an **aggregate amount of Rs. 6,24,77,842/-** (Rupees Six Crores Twenty-Four Lakhs Seventy-Seven Thousand Eight Hundred and Forty-Two Only) including the **Principal amount of Rs. 5,12,91,570/-** (Rupees Five Crores Twelve Lakhs Ninety-One Thousand Five Hundred and Seventy Only) as on 26th June 2019 and **interest amounting to Rs. 1,09,81,958/-** (Rupees One Crore Nine Lakhs Eighty-One Thousand Nine Hundred and Fifty-Eight Only) till **26th June 2019** forming part of the Financial Debt.
3. The Corporate Debtor is engaged in the business of machining and re-machining of PQF Mandrel bar and manufacturing of Thread Protector. After entering into a Joint Venture

Agreement with “Jindal Saw Limited” on 25th October 2011, the Corporate Debtor approached the Financial Creditor for availing financial facilities for the purpose of construction of factory shed, purchase of machinery etc. The Financial Creditor sanctioned a credit facility namely, a **Term Loan of Rs. 16.43 Crores** repayable by way of monthly instalments with a moratorium period of 18 months and interest capitalization up to March 2013. The first instalment of the loan was due and payable in April 2014 and the last was payable in September 2020.

4. In addition to this, a **Cash credit Facility of Rs. 68 Lakhs** was also sanctioned by the Financial Creditor 1st August 2018 against the Hypothecation of stock, mortgage of immovable property and was secured by both Personal and Corporate Guarantees. Subsequently, the Term loan was disbursed from March 2013 onwards and the Cash Credit was disbursed from August 2017 onwards. The Corporate Debtor made regular repayments until 30th **June 2018** (Date of Default) according to the Financial Creditor. Thereafter, the amounts were repaid in a staggered manner before the Corporate Debtor’s account was finally declared as **Non-Performing Asset (NPA) on 8th February 2019**. Copies of the Financial Statements from 1st January 2013 to 10th June 2019 and CRILIC Report dated 23rd September 2022 of the Corporate Debtor have been duly annexed to the Petition.
5. The Financial Creditor issued a Notice under Section 13(2) of the SARFAESI Act, 2002 on 29th April 2019 and the Financial

Creditor took over the possession of properties kept as security for the entire loan amount on 7th May 2019. As the Corporate Debtor failed to make any further repayments, the Financial Creditor filed the present Petition on 31st July 2019.

6. The Corporate Debtor filed a Reply to the Petition on **5th March 2021** stating that firstly, there was a delay of a few months in disbursing the said loan and the Financial Creditor had reviewed the Term Loan Facilities twice in the period between June 2015 and August 2016. Secondly, the Petition itself is barred by limitation as the date of default is recorded as **31st July 2016** and this Petition was filed on **31st July 2019**. The Corporate Debtor states that the Financial Creditor has wrongly declared the account of the Corporate Debtor as NPA on **8th February 2019** as the said loan was over-due for repayment since September 2014 and therefore the limitation period ought not be calculated from the date of NPA as it is erroneous. Thirdly, the Corporate Debtor alleges that since the Financial Creditor delayed the declaration of the loan account as NPA, the Corporate Debtor was rendered ineligible to participate in certain OTS Schemes that were available between 2017-18 and 2019-20. It is submitted that the Corporate Debtor had communicated their willingness to enter into an OTS vide Letters dated **6th August 2019 and 20th December 2019** to which the Financial Creditor issued no reply. Copies of the said Letters along with the Statement of Accounts of the Corporate Debtor for the period between January 2013 to March 2019 have been annexed to the Reply.

FINDINGS

7. We have heard the submissions of the Counsel appearing for the Financial Creditor and the Corporate Debtor at length. It is evident that the issue for consideration before us is whether the Petition is barred by limitation. With respect to this, the primary argument of the Corporate Debtor is that the date of default has been wrongly recorded as 8th February 2019 (date of NPA) instead of 31st July 2016 which is claimed to be the actual date of default and therefore, the limitation period expired on 31st July 2019. But it is noted that no evidence has been placed on record by the Corporate Debtor to substantiate this fact. On the other hand, the date of default as stated by the Financial Creditor is 30th June 2018 and this is duly recorded in the CRILIC Report submitted by the Financial Creditor. Even if the limitation period is calculated from the date of default as stated by the Financial Creditor instead of the NPA date, the Petition was filed within the limitation period as it was filed on 31st July 2019. In view of the above, we conclude that the Petition is not barred by limitation.

8. Further, from the Financial Statements annexed to this Petition, it is seen that the said Principal amount of debt had been disbursed and this fact is not disputed by the Corporate Debtor. In addition, the Corporate Debtor admits that there have been defaults in making repayments towards the said loan on several occasions. The Financial Creditor has thus successfully demonstrated and proved the debt and default in this case. It is noted that the Corporate Debtor admits the said outstanding

debt. Therefore, this Bench is of the view that that this Petition satisfies all the necessary requirements for **admission** under Section 7 of the Code.

9. For the foregoing reasons, the instant Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

- a. **The above Company Petition No. (IB) -3553 (MB)/2019 is hereby allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Universal Tube Accessories Private Limited.
- b. This Bench hereby appoints **Mr. Laxman Digambar Pawar**, Insolvency Professional, Registration No: IBBI/IPA-003/IP-N00015/2017-18/10104 as the Interim Resolution Professional having address at Flat No. 15 & 16, First Floor, Bhakti Complex, Behind Dr. Ambedkar Statue, Pimpri, Pune- 411 018 to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs.2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement 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.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

JUSTICE P. N. DESHMUKH
(MEMBER JUDICIAL)