

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH,
KOLKATA**

C.P (IB) No.882/KB/2019

In the matter of

An application 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

Union Bank of India, having its Registered office at Union Bank Bhavan, 239 Vidhan Bhavan Marg, Nariman Point, Mumbai-400021, Maharashtra and carrying on Banking business on and from its branches amongst others at, 8, Dharamtalla Street, Kolkata-700013, under P.S. New Market commonly known as "ARMB Branch.

... Financial Creditor

Versus

In the matter of:

Bansal Oil Extraction Pvt. Ltd, CIN: U15141WB1994PTC063075, having its Registered office at Poddar Point, 113, Park Street, 7th Floor, Block-B, Kolkata-700016 .

...Corporate Debtor

Date of hearing : 28/03/2022

Order Pronounced on : 10/05/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

- | | | |
|-------------------------------|---|----------------------------|
| 1. Mr. Vikram Wadehra, Adv | } | For the Financial Creditor |
| 2. Ms. Vidushi Chokhani, Adv. | | |

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has been filed by **Union Bank of India**, having its Registered office at Union Bank Bhavan, 239 Vidhan Bhavan Marg, Nariman Point, Mumbai-400021, though its Chief Manager, Mr. Rajiv Kumar Verma, (hereinafter referred as the Financial Creditor), who seeks initiation of Corporate Insolvency Resolution Process in respect of **Bansal Oil Extraction Pvt. Ltd**, a corporate entity having CIN: U15141WB1994PTC063075, having its Registered office at Poddar Point, 113, Park Street, 7th Floor, Block-B, Kolkata-700016 (hereinafter referred as the Corporate Debtor).
3. It is submitted that on 3rd March,2010, the Financial Creditor sanctioned term loan account in favour of the Corporate Debtor to the tune of Rs.4.30 Crores on the terms and conditions and necessary documents being executed between the parties. It is submitted that the Financial Creditor has further enhanced the credit facilities in respect of the cash credit limit of Rs.16 Crore on 24th March, 2010.The said facilities were renewed and enhanced from time to time and the last sanction was made on 29th March, 2014 and the fresh loan was disbursed on 31st March, 2014. It is submitted that the Corporate Debtor failed and neglected to maintain the aforesaid accounts on regular manner as per the terms and conditions of the sanction and thus the account of the Corporate Debtor was classified as NPA as per the RBI guidelines.
4. It is stated in the petition that total amount claimed to be in default is Rs.72,98,02,641.37 as on the 30th November, 2018 which is stated to be the date of default in the petition.

5. It is submitted that the Corporate Debtor failed and neglected to regularize the said cash credit (stock) Account, Term Loan Account-I, Term Loan Account-II , Working Capital Term Loan Account and Funded Interest Term Loan Account and accordingly the applicant through its Advocate issued legal notice dated 19th June, 2015 upon the Corporate Debtor and recalled the entire credit facility with a demand of legitimate dues of the Financial Creditor. It is submitted that thereafter the Financial Creditor filed an application under section 19 of the Recovery of Debts due to the Banking and Financial Institution Act, 1993 before the Learned DRT-III Kolkata and the same was numbered as OA 771/2015 inter alia praying for recovery of sum of Rs.42,42,07,913.05 along with interest beyond 30th September, 2015 @ 18.15% p.a. in respect of the Cash Credit Account, Term Loan Account No.I, Term Loan Account No.II, Working Capital Term Loan Account and Funded Interest Term Loan Account till realization.

6. It is submitted that by way of **supplementary affidavit** dated 10th May, 2021, the Financial Creditor submitted that the Financial Creditor had filed an IA. being IA No. 366/2021 to bring on record certain documents that are necessary and imperative in adjudication of the instant application. The Financial Creditor brought on record the standalone financial statements for the Financial year 2014-2015, 2016-2017 and 2017-2018 as available with the Registrar of Companies under the Ministry of Corporate affairs. A copy whereof are annexed as Annexure A,B&C respectively.

7. It is submitted that the Corporate Debtor has periodically acknowledged and admitted its liability towards the Financial Creditor (erstwhile Corporate Bank) in each of the said Financial Statements. It is submitted that the aforesaid financial statements of the Corporate Debtor have been placed on record and might be considered by this Adjudicating Authority to effectively adjudicate upon the claim of the Financial Creditor and pass necessary directions for initiating CIRP in respect of the Corporate Debtor.

8. It is submitted that a copy of the letter dated 14th December, 2015 sent by the Corporate Debtor to the Financial Creditor (erstwhile Corporate Bank), acknowledging the debts due and payable on account of various facilities and proposing One Time Settlement. The said proposal of the Corporate Debtor was rejected vide letter dated 19th December, 2015. It is submitted that another letter dated 4th January, 2016 was received from the Corporate Debtor once again stating that the Corporate Debtor had paid interest portion to the tune of Rs.27.15 crore and that it was unable to pay its entire dues on account of the financial conditions and therefore requesting for One Time Settlement proposal. It is submitted that this proposal was also rejected by the Financial Creditor and conveyed to the Corporate Debtor on 11th January, 2016. Similarly, another letter dated 15th February, 2016 was again written by the Corporate Debtor for One Time Settlement. It is submitted that a letter issued by the Learned Advocate on behalf of the Corporate Debtor on 19th July, 2017 submitting a One Time Settlement proposal together with the letter on behalf of the Financial Creditor dated 27th July, 2017 rejecting such proposal was sent on behalf of the Corporate Debtor.
9. It is submitted that the Corporate Debtor has periodically acknowledged and admitted its liability towards the Financial Creditor and that the supplementary affidavit be treated as part of the application filed by the Financial Creditor under section 7 of the IBC.
10. The notice of this petition was directed to be served by Speed Post and Email on 22nd August, 2019, when the Financial Creditor filed affidavit of service of notice on 18th October, 2019. The affidavit of service of notice was found without track report and, therefore, the Financial Creditor was directed to file track report and affidavit of service of notice by Email by way of additional affidavit. This Adjudicating Authority thereafter directed the Financial Creditor to publish notice in the Newspaper on 18th December, 2019. When none appeared for the Corporate Debtor even on 10th February, 2020, the Corporate Debtor was directed to be proceeded

ex parte.

11. According to the Financial Creditor's own contentions, the account of the Corporate Debtor was declared as NPA as per the RBI guidelines as on 16th October, 2014. The subsequent proceedings filed before the DRT-III Kolkata praying for recovery of the said outstanding debt was filed in October, 2015. Therefore, the date of default for the present proceedings would be 19th July, 2014 as submitted during the course of arguments by Ld. Counsel for the Financial Creditor. The Financial Creditor further submitted that a loan recall notice was issued on 19/06/2015 but there was no reply forthcoming from the Corporate Debtor. Ld. Counsel for the Financial Creditor has submitted that for the purposes of limitation, the date of default is 19th July, 2014 but the Financial Creditor has filed a supplementary affidavit enclosing therewith balance sheet of the Corporate Debtor for the years 2016-2017 and for the years 2017-2018 acknowledgment at page 200, where the Corporate Debtor has admitted its debt due to the Financial Creditor (erstwhile Corporation Bank). The Ld. Counsel for the Financial Creditor has placed a reliance upon the judgment of **Dena Bank Vs. C. Sivakumar Reddy (Civil Appeal No. 1650/2020) at paragraph nos. 141 and 144, where it has been held that Balance Sheets and Financial Statements constitute acknowledgement of liability which extends limitation by three (3) years.** The applicant has further enclosed One Time Settlement offer vide letters dated 14.12.2015 and 19.12.2015 issued by the Corporate Debtor (Pages 266 & 267 to the Supplementary Affidavit) which constitute acknowledgement of liability on the part of the Corporate Debtor.
12. The Financial Creditor proposed the name of **Mr. Yogesh Gupta**, to act as an IRP having Registration No. **IBBI/IPA-001/IP-P00349/2017-18/10650**, who has consented vide his affidavit and Form-2, and submitted that he has agreed to accept the appointment as IRP if an order admitting the present application is passed by this Adjudicating Authority. He has further submitted

that no disciplinary proceedings are pending against him with the Board or Institute of Insolvency Professionals of ICAI.

13. After going through the petition and all other documents placed by the Financial Creditor, before this Adjudicating Authority, we are convinced that the disbursement as stated in the petition was duly made and the account of the Corporate Debtor was declared as an NPA as on 16th October, 2014. The Corporate Debtor in its balance sheet has been acknowledging the liability of the outstanding debt owed to the Financial Creditor from year to year which tantamounts to acknowledgement of liability. The Financial Creditor has placed on record the standalone Financial Statements for the period 01/04/2016 to 31/03/2017 (Page 106 of the supplementary affidavit filed by the Financial Creditor Vol.I), has stated: “ **On the basis of the records examined by us and the information and explanations given to us, the Company has defaulted in repayment of its dues to Corporation Bank and Religare Finvest Limited**” . The details of default as per notice received from the secured lenders is under :

Name of Lender	Amount Outstanding (Rs.)	Uncharged Interest (Rs)	Total (Rs.)	Forum where pending
Corporation Bank (Details as on 31.05.16 as per last notice received from Bank's Advocate)	34,83,65,488/-	4,84,62,378/-	39,68,27.666/-	Debts Recovery Tribunal I Kolkata

14. Similarly, the Financial Creditor in his supplementary affidavit V-II page 200 in the Standalone Financial Statements for the period 01/04/2017 to 31/03/2018, has stated: “ **On the basis of the records examined by us and the information and explanations given to us, the Company has defaulted in repayment of its dues to Corporation**

Bank and Religare Finvest Limited. The details of default as per notice received from the secured lenders is under :

Name of Lender	Amount Outstanding (Rs.)	Uncharged Interest (Rs)	Total (Rs.)	Forum where pending
Corporation Bank (Details as on 31.05.16 as per last notice received from Bank's Advocate)	34,83,65,488/-	4,84,62,378/-	39,68,27.666/-	Debts Recovery Tribunal I Kolkata

.....”

15. Since there is an explicit and clear cut admission of outstanding financial debt by the Corporate Debtor, we have no doubt that the petition deserves to be admitted. We, therefore, feel that the petition filed by the Financial Creditor satisfies and fulfills the requirement of Section 7 of the Insolvency and Bankruptcy Code, 2016
16. In view of the aforesaid pleadings of the parties, and document placed on record, we are satisfied and consider it to be a fit case for admission of the petition, we, therefore, 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 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 Securitization 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.

- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) 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.
- ix) **Mr. Yogesh Gupta, IRP** registered with Insolvency and Bankruptcy Board of India, having Registration No. **IBBI/IPA-001/IP-P00349/2017-18/10650**, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) 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.
- xi) The Financial Creditor/Applicant is directed to deposit **Rs 3,00,000/- (Rupees Three Lac 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.

- xii) Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii) List the matter on 01/07/2022 for the filing of the progress report.
- xiv) 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)

(Rohit Kapoor)
Member (Judicial)

Order signed on, this 10th day of May, 2022

Pj