



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V**

CP No. 1330/(IB)-MB-V/2020

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

Unity Small Finance Bank Limited

(Formerly known as Punjab & Maharashtra Co-operative Bank Ltd)

Office No. 4 & 5, 3rd Floor, Dreams Mall, Bhandup (w), Mumbai – 400078

... Petitioner/Financial Creditor

V/s

Privilege Industries Ltd.

A wing, 3rd Floor, HDIL Tower, Anant Kanekar Marg, Bandra (E), Mumbai- 400051

... Respondent/Corporate Debtor

Order Reserved on: 22.12.2022

Order Pronounced on: 15.02.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via Video Conferencing):

For the Petitioner : Mr. Rohit Gupta, Advocate

For the Corporate Debtor : Mr. Mustafa Doctor, Senior Advocate



Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. This Company Petition is filed by Punjab & Maharashtra Co-operative Bank Ltd (hereinafter called "**Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**), against Privilege Industries Ltd. (hereinafter called "**Corporate Debtor**") alleging that the Corporate Debtor committed default on 30.06.2012 to the extent of Rs. 103,52,99,832.53/- inclusive of interest and charges. This Petition has been filed by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called "**Code**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The captioned Petition was originally filed through the Administrator of Punjab and Maharashtra Co-operative Bank Limited ("**PMC**") which has now merged with Unity Small Finance Bank by way of a scheme of amalgamation approved and notified by the Reserve Bank of India (**RBI**) on 25th January 2022. Pursuant thereto, an Interim Application being 624 of 2022 was preferred before this Hon'ble Tribunal to bring Unity Small Finance Bank on record. The said Application has been allowed by this Tribunal vide its Order dated 11th March 2022. Pursuant thereto, the name of Unity Small Finance Bank ("**Applicant**") has been substituted in place of PMC.
3. In the requisite Form-1, under the head "Particulars of Financial Debt" the amount claimed to be in default is Rs. 103,52,99,832.53/- inclusive of interest and charges. The details of the same are as follows:



Particulars	Amount (Rs.)
Principal and Interest	103,46,42,917.15
Legal charges	3,33,000.00
Valuation Charges	3,22,140.00
Other Charges	1,775.38
Charges not being part of Bank Statement	6,56,915.38
Total Outstanding	103,52,99,832.53

4. The listed documents annexed by the Petitioner on which the Petitioner relied are as follows:

- a. A copy of the Bank Sanction Letter dated 04.11.2011 for Bank Overdraft limit upto Rs. 35 Crores
- b. A Copy of the Sanction Letter dated 07.01.2013 for Bank Overdraft limit of additional Rs. 10 Crores.
- c. A Copy of the Certificate of the Financial Creditor under the Banker's Book Evidence Act.
- d. A copy of the final notice to the Corporate Debtor dated 07.10.2019 before taking action under SERFAESI.
- e. A copy of the letter from the Corporate Debtor dated 23.10.2019 for request of One Time Settlement.
- f. A copy of the letter from the Financial Creditor dated 04.11.2019 for refusal of One Time Settlement.
- g. A copy of the record of default registered with NESL.
- h. A Copy of the Bank Statements of overdraft account from 15.01.2009 to 31.03.2015.
- i. A Copy of the Bank Statements of overdraft account from 01.04.2015 to 30.06.2020.
- j. A Copy of balance confirmation letter dated 07.08.2019 and 11.07.2018

**BRIEF FACTS**

5. The Petition reveals that the Corporate Debtor is in the business of manufacturing of beverages and had approached the Petitioner with the request for the overdraft facility. The Petitioner had opened the overdraft account having **overdraft account number 002140700010307** and had started extending the overdraft facility with effect from 15.01.2009. The sanction letter, issued on 04.11.2011 for Rs. 35 crores and an enhancement of Rs. 10 crores, issued on 17.01.2013, totalling to a total sanction of Rs. 45 crores were placed before us. The enhanced sanction amount of Rs 10 crores were secured by a mortgage deed dated 07.02.2013. The Petitioner submitted that a substantial amount of overdraft facility in form of overdraft was extended from 15.01.2009 to 31.03.2012, to the extent of Rs. 35.49 crores. The Corporate Debtor defaulted on 30.06.2012 breaching the overdraft sanction limit of 35 crores and had consistently failed to service the account. Subsequently, the overdraft account of the Corporate Debtor become Non-Performing Asset (NPA) on 30.09.2012.
6. Initially, the captioned Petition was filed by the Administrator of Punjab and Maharashtra Cooperative Bank (PMC). Thereafter, the Reserve Bank of India (RBI) vide Order dated 25th January 2022 sanctioned the scheme of amalgamation of PMC with Unity Small Finance Bank Limited. Accordingly, Application was preferred before this Hon'ble Tribunal for amendment, and Order allowing the amendment of cause title was passed by this Hon'ble Tribunal on 21st April 2022.
7. Applicant submits that the default occurred on 30th June 2012. It is also submitted that the claim is well within the period of limitation.
8. In order to substantiate the claim in the Petition, the Applicant has placed reliance on Sanction letters dated 04th November 2011 and 17th January 2013, Demand Promissory Note dated 04th November 2011, letter of continuing security for Rs. 35 Crores dated 04th November 2011 and



Letter of Guarantee dated 04th November 2011. The Applicant has also placed reliance on registered mortgage deed dated 17th February 2013. It is also contended that there was disbursement made as late as on 6th March 2013 by PMC to the Corporate Debtor.

9. The Applicant has also placed reliance on the Balance Sheets of the Corporate Debtor for the financial years 2014-2015 and 2016-2017. These balance sheets record admission of part of the liability of the Corporate Debtor as claimed in the Petition. It is further submitted that between 12th September 2018 to 17th September 2018 payment of Rs. 33 Crores was made by the Corporate Debtor to PMC.
10. In addition to the above the Corporate Debtor has addressed letters confirming the balance due to PMC from time to time. Applicant places reliance on Balance confirmation letters dated 11th July 2018, for Rs. 106.75 Cr. and 07th August 2019 for Rs. 85.67 Cr. as issued by the Corporate Debtor. It is in view of the aforesaid documents that it is submitted that the claim is acknowledged from time to time.
11. Moreover, PMC had issued a notice dated 7th October 2019 to the Applicant. The Applicant places reliance on the reply given by the Corporate Debtor to this notice whereunder the Corporate Debtor has admitted that the loan is reflecting in the Balance Sheets and that the same is duly secured. Relevant extract of the letter is reproduced hereinbelow-

“Without prejudice to the aforesaid, it appears from the balance sheets of the Company filed from time to time that the loan referred to in the Notice is duly secured against mortgage of an immovable property.”
12. Since the Corporate Debtor had failed to make the payments of the debt, hence this petition is filed to initiate the CIRP against the Corporate Debtor.

**REPLY OF THE CORPORATE DEBTOR:**

13. The Corporate Debtor vide its Affidavit in reply (“**Reply**”) dated 25.08.2021 had denied each and every contention, allegation and averment contained in the Petition.
14. The Corporate Debtor submits that the Petitioner had failed to place on record a copy of the first sanction letter for sanctioning an overdraft limit of Rs. 30,00,00,000/-, which is not acceptable given that the Petitioner is a financial institution, required to have all necessary records.
15. The Corporate Debtor further submits that the said Overdraft loan account of the Respondent was declared NPA as on 30.09.2012, Hence, this petition is not maintainable.
16. The Corporate Debtor submits that in the additional affidavit filed by the Petitioner it is stated that there were payments made on regular basis by the Respondent and the last payment was made on 17.09.2018, is vague and does not specify when these ‘regular payments’ were made. The Corporate Debtor further submits that no payments were made at all between July 2012 and September 2018. While certain payments were made between 12.09.2018 and 17.09.2018, which would not have the effect of reviving the claim in accordance with the provisions of Section 19 of the Limitation Act, 1963.
17. The Corporate Debtor submits the tabulation chart of the ‘regular payments’ made from July 2012 and September 2018 as below:

Sr. No.	Date	Particulars	Cr. Amount
1.	02.05.2013	Reversal of wrongly charged interest	1,12,84,338.00



2.	10.08.2013	PMC DIV @12% 2012-13	3,00,000.00
3.	16.08.2014	PMC DIV @12% 2013-14	3,00,000.00
4.	18.06.2015	Interest Reversal	2,94,817.00
5.	16.08.2015	PMC DIV @12% 2014-15	3,00,000.00
6.	28.08.2016	PMC DIV @12% 2015-16	3,00,000.00
7.	19.08.2017	PMC DIV @11% 2016-17	2,75,000.00
8.	08.09.2018	PMC DIV @11% 2017-18	2,75,000.00

18. Additionally, as per the contents of Part IV of Form 1 filed by the Petitioner, the principal amount/sanctioned amount is mentioned as Rs. 45,00,00,000/-, however, the Bank Statement/ Ledger annexed to the Petition shows that the sanction amount as on 23rd February 2013 is Rs. 42,00,00,000/- which demonstrates that there are discrepancies pertaining to the amount of the purported financial debt and that the same is not crystallized.

19. In light of the above-mentioned facts and circumstances, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the captioned Petition.

FINDINGS:

20. Upon perusal of the Petition and after hearing both the parties, it is an undisputed fact that the Petitioner had sanctioned an overdraft facility to the Corporate Debtor vide sanction letter dated 04.11.2011 and 17.01.2013, for an amount of Rs. 35 crores and 10 crores respectively. However, the Corporate Debtor was not able to repay the amount and an amount of Rs. 103,52,99,832.53/- (Including Interest) is due and outstanding.

21. In the light of above pleading, the substantial issue that needs to be decided by this Bench, in the matter, is whether the Financial Debt is barred by the limitation.



22. The learned counsel of the Petitioner has placed reliance on Sanction letters dated 04th November 2011 and 17th January 2013, Demand Promissory Note dated 04th November 2011, Letter of continuing security for Rs. 35 Crores dated 04th November 2011 and Letter of Guarantee dated 04th November 2011. The learned counsel of the Petitioner has also placed reliance on registered mortgage deed dated 17th February 2013. It is also contended that there was disbursement made as late as on 6th March 2013 by PMC to the Corporate Debtor.
23. The Petitioner has further placed reliance on the Balance Sheets of the Corporate Debtor for the Financial Years 2014-2015 and 2016-2017. These balance sheets record admission of part of the liability of the Corporate Debtor as claimed in the Petition. **It is further submitted that between 12.09.2018 to 17.09.2018 payment of Rs. 33 Crores was made by the Respondent.**
24. The learned counsel of the Petitioner has placed reliance on the reply given by the Corporate Debtor, to the notice dated 07.10.2019, issued by PMC Bank. In its reply dated 23.10.2019, the Corporate Debtor has admitted that the loan is reflecting in the Balance Sheet and same is duly secured. Relevant extract of the letter is reproduced below-
- “Without prejudice to the aforesaid, it appears from the balance sheets of the Company filed from time to time that the loan referred to in the Notice is duly secured against mortgage of an immovable property.”*
25. The learned counsel of the Petitioner relied on following table to substantiate that the claim is within limitation and there is extension from time to time –



Particulars	Date
Sanction Letter for enhancement of mortgage overdraft limit from Rs. 30 crores to Rs.35 crores	4.11.2011
Demand Promissory Note for Rs.35 crores	4.11.2011
Letter of continuing security for Rs. 35 crores	4.11.2011
Letter of guarantee for Rs. 35 crores	4.11.2011
Date of default	30.06.2012
Last Sanction executed by the Corporate Debtor.	17.01.2013
Registered Mortgage Deed executed.	07.02.2013
Last Disbursement made of Rs.1,45,00,000/-	06.03.2013
Balance Sheet for the financial year 2014-15 acknowledges the debt	31.03.2014 - 31.03.2015
Balance Sheet for the financial year 2016-17 acknowledges the debt	31.03.2016 -31.03.2017



Payment of Rs. 33 Crores was made by the Respondent. <i>Note: The payment of dividend is not pleaded as acknowledgement by the Petitioner.</i>	12.09.2018- 17.09.2018
Respondent issued balance confirmation for Rs. 106.75 Crores	11.07.2018
Respondent issued balance confirmation for Rs. 85.67 Crores	07.08.2019
Final Notice before taking action under SARFAESI Act for Rs.91,86,47,823.53	7.10.2019
Letter in reply to Notice dated 7.10.19 whereby the Respondent has agreed to make the efforts for OTS (Refers to acknowledgment in balance sheet.)	23.10.2019
Recall letter for Rs.102,31,79,284.53	12.06.2020
Date of filing of the Petition	2.07.2020

26. The learned counsel for the Petitioner further submits that even if there is no acknowledgment of liability, there is promise to pay the debt by executing various documents in the subsequent years i.e., acknowledgment of debt in the form of balance confirmation letters, dated 11.07.2018 and 07.08.2019. These documents executed between the Petitioner and the Respondent are in the nature of contract between the parties to pay a time barred debt under Section 25(3) of Indian Contract Act, 1872 which is reproduced hereinbelow –



“25. Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law.—An agreement made without consideration is void, unless—

(1) ...

(2) ...

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. In any of these cases, such an agreement is a contract.”

27. The Petitioner has relied on the judgment of Hon’ble NCLAT ***Edelweiss Assets Reconstruction Company Limited Versus Nishiland Park Limited, Company Appeal (AT) (Insolvency) No. 528 of 2021***, Relevant extract is reproduced hereunder-

“14. There are two issues in this appeal. The first issue is as to what is the import of Section 25(3) of the Indian Contract Act, 1872 and the second issue is as to whether the period of limitation has been extended in view of Section 18 of the Limitation Act, 1961 with the time-to-time partial payment and admission of debt by the Corporate Debtor?

15. It is an admitted fact that the period of three years had expired from the alleged date of default occurred in the year 1998 but there is no denial to the fact also that the Assignment Agreement was executed on 27.09.2013 between TFCI and the Appellant, assigning their entire debt of the Corporate Debtor and in the said agreement the Corporate Debtor and one Mr.



Paresh Shah (as mortgagor) were confirming parties to the Assignment Agreement. As a matter fact, with the execution of the Assignment Agreement dated 27.09.2013, a fresh agreement for the payment of dues came into being and a period of three years began from the said date.

28. It is thus the Petitioner's case that in view of the judgment of Hon'ble NCLAT even if there is default and no acknowledgment, promise to pay time barred debt as explained hereinabove is sufficient to pass order of admission.
29. The date stated in the Petition is correct date of default. However, this default was declared in 2019. Corporate Debtor who has availed the facility, has signed documents after 2012 and has also given acknowledgments after 2012, cannot be now permitted to contend that the default took place in 2012 and therefore the Petition is barred by limitation.
30. The Petition even otherwise satisfies that there were acknowledgments from time to time. There are acknowledgments in balance sheets as well as balance confirmation letters. Balance Sheet acknowledgment is also admitted in the letter dated 23rd October 2019 addressed by the Corporate Debtor. It is therefore now not open for the Corporate Debtor to contend that the liability is not admitted or the same is time barred.
31. As far as argument of the Corporate Debtor that different stands are taken at different points in time is concerned, the same has no bearing. There are no inconsistent stands which are taken. Initially when the Petition came to be filed it was contended by the Applicant that it is well within the period of limitation. Then Corporate Debtor filed its objection contending that it is barred by limitation and in response to the same, it was initially contended that it is not barred as though the default occurred in 2012 it came to knowledge only in 2019. Thereafter, on Applicant having found the Balance Sheets, placed the same on record



and contended that in any case there are acknowledgments from time to time, accordingly it is not barred by limitation. Further, the Applicant contended in light of the recent judgment in the matter of Nishiland Park that even Section 25 of the Contract Act comes to the rescue of Applicant. These are not inconsistent stands but alternate arguments to demonstrate that the Petition is maintainable.

32. In so far as the objection to filing of additional documents by the Applicant after filing of the Petition is concerned, it is submitted that it is well settled by the Hon'ble Supreme Court in the matter **of Dena Bank (now Bank of Baroda) v. C. Shivakumar Reddy and Another, (2021) 10 SCC 330** that there is neither any bar in law to the amendment of pleadings in an Application under Section 7 or the filing of additional documents, nor is there any prescribed time limit for the same. Therefore, the Applicant was at liberty to place the documents on record by way of an additional Affidavit.
33. The Petitioner has relied on **S.S. Ghulam Mohiuddin Vs. S.S. Ahmed Mohiuddind, 1971 (1) SCC 597** wherein the Hon'ble Apex Court has held that the period of limitation ought to be calculated from the date of discovery of the fraud by the Person affected by the fraud. Therefore, in view of the above judgement and perusal of Section 17 of the Limitation Act, 1953, coupled with the fact that the transaction documents executed between the parties and the fraud came to be discovered by the Petitioner in the year 2019. Along with this the execution of the transaction documents also obligates the Respondent to pay a time-barred debt as per provisions of Section 25 (3) of the Indian Contracts Act, 1872. In view of the above, the Ld. Counsel for the Petitioner has satisfied this Bench that the present Petition is not hit by the bar of limitation. The relevant extract is below –

“19. Section 18 of the Limitation Act, 1908 provides that when a person having a right to institute a suit has by means of fraud been kept from the knowledge of such right or of the title on which



*it is founded, the time limited for instituting a suit against the person guilty of the fraud shall be computed from the time when the fraud first became known to the person affected thereby. In *Rahimboy v. Turner* Lord Hobhouse said “When a man has committed a fraud and has got property thereby it is for him to show that the person injured by his fraud and suing to recover the property has had clear and definite knowledge of those facts which constitute the fraud, at a time which is too remote to allow him to bring the suit”.”*

34. The Petitioner has also produced the Bank Statements at Annexures 11 and 12 of the company petition 1330 of 2020, substantiating the claim. These statements of the accounts are further supported by certificate annexed at Annexure 13 the company petition 1330 of 2020. NESL Report is placed at Annexure 27 the company petition 1330 of 2020. This Petition is therefore complete in all aspects and the same shall be admitted.
35. The Bench further notes that Section 18 of the Limitation Act 1963 mentions the following: -

(18.1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

Further, the explanation of this section mentions

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or



permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

36. Therefore, this Bench is of view of that the there is an acknowledgement of liability by the Corporate Debtor vide **balance confirmation certificate dated 07.08.2019 and 11.07.2018**, which were duly signed by the Corporate Debtor. Further, the Corporate Debtor in its reply has also provided a tabulation chart of the **‘regular payments’** made by it from July 2012 till September 2018, confirming the payments made on account of the outstanding debt and also issued a **letter dated 23.10.2019 for the request of One Time Settlement (OTS)** with the Petitioner however the same was rejected by the Petitioner vide letter dated 04.11.2019.
37. Considering the above facts, we come to conclusion that the nature of Debt is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of **‘debt’** and **‘default’**, for admission of a petition under section 7 of the I&B Code, have been met in this case. The Petitioners have also suggested the name of proposed Interim Resolution Professional in Part-3 of the Petition along with his consent letter in Form-2.
38. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Corporate



Debtor and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the considered view that this Petition deserves 'Admission' by passing the following:

ORDER

- a. The above Company Petition No. 1330/IBC/MB/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Privilege Industries Ltd.**
- b. The IRP proposed by the Financial Creditor, **Mr. Devendra Prasad**, having registration No. IBBI/IPA-002/IP-N00436/2017-2018/11271, having address at Flat-1304. A Wing, Raheja Ridgewood, Near Nesco, Goregaon (East), Mumbai -400063, having email id - dp195709@gmail.com is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d. That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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 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; 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 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.
- f. 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.
- g. 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.
- 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 board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the 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 Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P. No. 1330/IBC/MB/2020 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

Anuradha Sanjay Bhatia
Member (Technical)

Sd/-

Kuldip Kumar Kareer
Member (Judicial)