



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) No. 372/KB/2021

*An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read  
with Rule 4 of the Insolvency and Bankruptcy (Application to the Adjudicating  
Authority) Rules, 2016.*

**IN THE MATTER OF:**

**UCO BANK**

... Applicant/ Financial Creditor.

**Verses**

**M/S ROYSONS CERAMICS PRIVATE LIMITED**

**(CIN: U26100WB2016PTC216993)**

... Respondent/ Corporate Debtor.

**Date of Hearing: November 06, 2023.**

**Date of Pronouncement: November 09, 2023.**

**CORAM:**

**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)**

**SHRI ARVIND DEVANATHAN, MEMBER (TECHNICAL)**

**APPEARANCE:**

**For the Applicant: Mr. S. K. Roy, Adv.; Ms. R. Sanyal, Adv. and Ms. Swastika Sengupta, Adv.**

**For the Respondent: Mr. Aditya Mondal, Adv. and Mr. D. Kar, Adv.**

**ORDER**

**PER: Bidisha Banerjee, Member (Judicial)**

1. This Court is congregated through hybrid mode.
2. **Brief Facts of the Case:**
  - 2.1. This instant application has been filed by **UCO Bank** (hereinafter referred to as the **Financial Creditor** or **FC**) under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity "**IBC**") seeking Corporate Insolvency Resolution Process of **M/S Roysons Ceramics Private Limited** (hereinafter referred to as the **Corporate Debtor** or **CD**).
  - 2.2. It is claimed that the **outstanding sums dues and payable by the Corporate Debtor to the Financial Creditor amounts to Rs.**

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23,95,66,541.81/- as on 30/09/2021 including unapplied interest and thereafter plus accrued interest and other charges from 30/09/2021 in respect of the credit facilities granted by the Financial Creditor.

- 2.3.** The Financial Creditor has lent Term Loan of Rs.12.50 Crores, Cash Credit of Rs.6 Crores apart from Letter of Credit to the tune of Rs.1 Crore. The Corporate Debtor started defaulting and the **first default in servicing interest was on 19/01/2019 and consequently the Corporate Debtor was declared as “NPA” on 19/04/2019.** Proof of declaration of the account as “NPA” has been communicated by the Financial Creditor to the Corporate Debtor.
- 2.4.** Notice under section 13(2) of the SARFAESI Act, 2002 was issued on 22/08/2019 recalling the entire amount along with accrued interest as on 22/08/2019. Notice was also issued to the Guarantors under the SARFAESI Act, 2002. Copy of Statement of Accounts and interest calculation sheet has been annexed in the application. Since the Corporate Debtor has not paid the amount due to the Financial Creditor, this application has been filed to initiate Corporate Insolvency Resolution Process of the Corporate Debtor under section 7 of the IBC.
- 3. Submissions made by the Ld. Counsel for the Applicant:**
- 3.1.** Ld. Counsel for the applicant submitted that a sum of Rs.18.50 Crores has been advanced to the Corporate Debtor in the form of Term Loan, Cash Credit Facility, Bank Guarantee, etc. The Applicant took us through the Agreements made between the Financial Creditor and the Corporate Debtor in relation to the above financial accommodation extended by the Financial Creditor. The Applicant further took us through documents of disbursement and copy of Statement of Accounts as per Banker’s Record. The Ld. Counsel for the Applicant is relying upon the documents and/or records to substantiate its claims as under:
- (a) The Copy of the sanction letter dated 19/11/2018 is annexed at pages 56-71 as Annexure “A-3” to the Application.**

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- (b) The Copy of the Agreement relating to term loan and hypothecation agreement of Rs. 12,50,00,000/- dated 24/02/2017 is annexed at page 72-98 as Annexure "A-4" to the Application.
- (c) The Copy of the Demand Promissory Note of Rs. 12,50,00,000/- executed on 24/02/2017 as Annexure "A-5" at Page 99 to the Application.
- (d) The Copy of the Demand promissory note of Rs. 6,00,00,000/- executed on 20/11/2018 is annexed as Annexure "A-6" at Page 100 to the Application.
- (e) The Copy of Letter of Extension of equitable mortgage dated 20/11/2018 is annexed as Annexure "A-7" at Pages 101-112 to the Application.
- (f) The Copy of Composite Deed hypothecation for 18,50,00,000/- is annexed to the Application at Page 113-135 as Annexure "A-8".
- (g) The Copy of the Statement of Account and interest calculation chart is annexed at Page 182-188 as Annexure "A-14" to the Application.

3.2. The Applicant further contended that in view of non-payment by the Corporate Debtor default had occurred and the defaulted amount as on 30/09/2021 which includes interest up to that date is **Rs. 23,95,66,541.81/-**, which is far in excess of the threshold limit prescribed for filing an application under section 7 of the IBC. He submits that the application has been filed within the time limit prescribed and, therefore, prayed for admission of the application.

3.3. Ld. Counsel for the Financial Creditor proposed the name of **Mr. Rajesh Kumar Agrawal**, address: 1 Ganesh Chandra Avenue, 3<sup>rd</sup> Floor, Room No. 301, Kolkata - 700013, Email ID: [rajesh521@yahoo.com](mailto:rajesh521@yahoo.com), Registration No. IBBI/IPR-001/IP-P01023/2017-18/11722 for the appointment of **Interim Resolution Professional (IRP)**.

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**4. Submissions made by the Ld. Counsel for the Corporate Debtor:**

**4.1.** While the Ld. Counsel for the Corporate Debtor did not dispute the default in payment of the debt. The Corporate Debtor only mentioned that discussion regarding the restructuring of the loan is under way and therefore, requested to defer the matter, so that settlement can be arrived between the parties. The Ld. Counsel for the Respondent was advised to file written notes of argument within three days.

**5. Analysis and Findings:**

**5.1.** To admit a petition under section 7 of the IBC, the Adjudicating Authority is required to verify whether the Financial Debt has been defaulted, whether the debt amount is in excess of threshold limit prescribed under the IBC, whether the application is filed within the time limit prescribed and the application is complete in all respects. We are supported by the judgment passed by the Hon'ble NCLAT in the case of *Drip Capital Inc. v. Concord Creations (India) P. Ltd.* reported in MANU/NL/0484/2021 that:

*“13. It is relevantly pointed out that the 'Adjudicating Authority' is not a 'Court of Law' and that 'CIRP' is not a litigation. As a matter of fact, if the 'Adjudicating Authority' is subjectively satisfied as to the existence of default and arrive at a conclusion that the application is a complete one and further that no disciplinary proceedings are pending against the proposed 'Resolution Professional' it is incumbent upon it to admit the application. In reality, no other 'yardstick' is required to look into any other requirement for admission of the application.”*

**(Emphasis Added)**

**5.2.** It is evident that the Ld. Counsel for the Financial Creditor has supplied the Statement of Account annexed at **Pages 182-188 to this Application** that shows the disbursement of the loan amount by the Financial Creditor to the Corporate Debtor's Account. It is also a settled position of law that to establish a “financial debt”, the statement of the disbursement of money is essential. In this context, we would refer Section 5(8) of the I&B Code, reproduced verbatim as:

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(8) “*financial debt*” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes

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5.3. Further, we would rely upon the judgment of the Hon’ble Apex Court in the case of *Anuj Jain v. Axis Bank Limited* reported in (2020) 8 SCC 401: MANU/SC/0228/2020 that:

**“The essentials for financial debt and financial creditor”**

**“43. Applying the aforementioned fundamental principles to the definition occurring in Section 5(8) of the Code, we have not an iota of doubt that for a debt to become ‘financial debt’ for the purpose of Part II of the Code, the basic elements are that it ought to be a disbursement against the consideration for time value of money. .... In any case, the definition, by its very frame, cannot be read so expansive, rather infinitely wide, that the root requirements of ‘disbursement’ against ‘the consideration for the time value of money’ could be forsaken in the manner that any transaction could stand alone to become a financial debt. ...”**

(Emphasis Added)

5.4. Further, we would rely upon the decision passed by this Tribunal in the matter of *Kesoram Industries Ltd. v. Pratim Bayal, RP of Birla Tyres Ltd.* [I.A. (I.B.C) No. 957/KB/2023 In CP (IB) No. 250/KB/2021] reported in (2023) ibclaw.in 734 NCLT that:

**“6.8. Thus, from the statutory provisions and decisions supra, it is clear that to bring any existence of debt within the ambit of the definition of “Financial Debt”, disbursement of money is sine qua non ...”**

(Emphasis Added)

5.5. We find that the default of financial debt has occurred and **the date of default is the date of declaration of the account of the CD as NPA, which is on 19/04/2019.** The amount of default, on the date of default, as on 30/09/2021 is **Rs. 23,95,66,541.81/-.** We are supported by the judgment passed by the Hon’ble Apex Court in *Laxmi Pat Surana vs. Union Bank of India* reported in (2021) 8 SCC 481: MANU/SC/0221/2021, at Para 37; that:

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*“37. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action Under Section 7 of the Code.”*

**(Emphasis Added)**

- 5.6. The application has been filed on 02/12/2021, which is well within the time limit prescribed. We have examined the application for its completeness and we found that the same in order.
- 5.7. The Respondent/Corporate Debtor wanted to settle with the Bank and is in talk with the Bank for restructuring of the loan, as submitted by the Ld. Counsel for both the parties. However, the Ld. Counsel for the applicant submitted that talks of settlement have been going on for some time with no possibility of amicable settlement and therefore, press for admission of this application.
- 5.8. In view of the discussions made above, we find that all requirements for entertaining a section 7 of the IBC application are met in this case and, therefore, we allow the application filed by the applicant and admit the Corporate Debtor under the Corporate Insolvency Resolution Process.
6. In the light of the facts stated in the application bearing Company Petition (IB) No. 372/KB/2021, and the evidence placed on record and the discussion hereinabove, we **allow** this application filed under **Section 7 of I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:
- i. The Application filed by **UCO BANK (Financial Creditor)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution Process** in respect of **M/S ROYSONS CERAMICS PRIVATE LIMITED (Corporate Debtor)**.
  - ii. As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the

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pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

**iii.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:

- 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 asset 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 possession of the Corporate Debtor.*

*[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]*

- iv.** The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- v.** The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi.** The Applicant has proposed the name of **Mr. Rajesh Kumar Agrawal**, address: **1 Ganesh Chandra Avenue, 3<sup>rd</sup> Floor, Room No. 301, Kolkata 700013**, Email ID: [rajesh521@yahoo.com](mailto:rajesh521@yahoo.com), Registration No. **IBBI/IPR-001/IP-P01023/2017-18/11722**, as the "IRP". We have perused that there is

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a written communication, annexed at **Page 198-201**, to this Application as per the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or in the ICAI (Institute of Chartered Accountants of India).

In addition, further necessary disclosures have been made by **Mr. Rajesh Kumar Agrawal** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of the Section 7(3)(b) of the code. Hence, we appoint **Mr. Rajesh Kumar Agrawal** as the **Interim Resolution Professional (IRP)** of the Corporate Debtor to carry out the functions as per the I&B 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 I&B Code.

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- viii.** During the CIRP period, the management of affairs 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 CD shall provide all documents in their possession and furnish every information in their knowledge to the

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IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.

- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned Police Authorities and/or the Officer-in-Charge of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), 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.

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- xiv.** The Resolution Professional shall conduct CIRP in time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
  - xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority time to time.
  - xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 7.** Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.
- 8.** Post the matter on **22/12/2023** for filing the Periodical Progress Report by the IRP/RP.

**Arvind Devanathan**  
Member (Technical)

**Bidisha Banerjee**  
Member (Technical)

**This Order is signed on 09th Day of November, 2023.**

hb.  
Bose, R. K. [LRA]