IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT- 5, MUMBAI BENCH

C.P. No. 411/MB/I&B/2021

Under section 7 of the IBC, 2016

In the matter of

Unity Small Finance Bank Limited,
Having their registered office at,
Office No. 4 & 5, 3rd floor, Dreams Mall,
LBS Marg, Bhandup (West)
Mumbai 400 078.

... Financial Creditor/
Petitioner

V/s.

Shah Steel Impex Private Limited
Having their registered office at 101, Joshi Chamber, Ahmedabad Street, Carnac Bunder, Masjid (East), Mumbai 400 009.

.... Corporate Debtor/
Respondent

Order pronounced on: **12.05.2023**

Coram:
Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)
Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearance (through Video conferencing):
For the Petitioner : Adv. Vikranti Rao
For the Respondent: Rajani Associates, Advocate

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The Petitioner viz. **'Unity Small Finance Bank Limited'** (hereinafter as Petitioner) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "**Financial Creditor**" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against **'Shah Steel Impex Private Limited'** (hereinafter as 'Corporate Debtor). This Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the '**Code'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 109,85,95,526/- inclusive of interest and penal interest.

2. Initially petition was filed by Financial Creditor namely Punjab & Maharashtra Co-operative Bank Limited on 14.10.2021. Meanwhile, Punjab & Maharashtra Co-operative Bank is amalgamated with Unity Small Finance Bank Limited vide Government notification dated 25.01.2022.

3. The following documents have been annexed and relied upon by the Petitioner:
    i. A copy of the certificate of incorporate of the petitioner.
    ii. A copy of deed of hypothecation as on 08.01.2008.
    iii. A copy of the sanction letter dated 27.09.2017 issued by the petitioner to the respondent along with supporting documents dated 29.09.2017.
    iv. A copy of sanction letter for renewal of the letter of Credit limit dated 30.03.2019.
    v. A copy of recall notice dated 18.09.2020.
    vi. A copy of reply sent by the respondent on 30.09.2020.

vii. A copy of Demand Notice dated 03.10.2020.

viii. A copy of reply dated 22.10.2020 to demand notice dated 03.10.2020.

ix. Copies of demand notice dated 06.11.2020, 07.12.2020, 19.12.2020.

BRIEF FACTS:

4. The Corporate debtor had availed financial services in the form of Letter of Credit from the Financial Creditor/petitioner herein. Upon request made by the Corporate Debtor, the Financial Creditor increased LC limit (limit with conversion of non-fund-based limit to fund based limit and vice versa) from Rs. 85,00,00,000/- to Rs. 95,00,00,000/-.

5. The Petitioner submits that accordingly, the sanction letter dated 27.09.2017 along with other necessary documents dated 29.09.2017 were executed between the Financial Creditor, the Corporate Debtor and other personal guarantors for the credit facilities of Rs. 95,00,00,000/-.

6. The Petitioner submits that the Bank had taken the hypothecation of stocks and book debts as the primary security by way of Hypothecation Deed. Charge on movable assets was registered with the ROC, Mumbai under charge ID 10085753 and certificate of registration of charge was issued.

7. The Petitioner submits that it had entered into an agreement of Mortgage with Shree Uttam Steel & Power Limited (one of the Corporate guarantors) in respect of the land which was located in Village Satarda, Taluka Sawantwadi, Sindhurg, Maharashtra measuring 142.7090 Acres, as a collateral for the said LC limit that was provided as on 29.09.2017 and duly registered on 06.01.2018. Charge on mortgaged asset was also registered with the ROC, Mumbai under Charge ID 10623098 and certificate of registration of charge was issued on 22.01.2018.

8. The petitioner further submits that on 03.10.2018, the Bank further extended period of the credit facilities of the LC (with conversion of non-fund based limit to fund based limit and vice versa) of Rs. 95,00,00,000/- which is executed by the Corporate Debtor wherein the said primary security and the collateral security along with the respective charges were taken forward.

9. A Board Resolution was passed by the Corporate Debtor as on 29.03.2019 in order to renew the LC limit (with conversion of non-fund-based limit to fund based limit and vice versa) of Rs. 95,00,00,000/-. Accordingly, the petitioner had on 30.03.2019 renewed the said letter of Credit (LC limit with conversion of non-fund based limit to fund based limit and vice versa) of Rs. 95,00,00,000.

10. The sanction letter along with other documents including ADV 67-Acknowledgement of Debt were executed between the parties in order to continue the credit facilities of Rs. 95 Crore.

11. As on 31.03.2019, default had occurred due to non-payment by the Corporate Debtor and the petitioner declared the said account as NPA.

12. The Petitioner submits that bank issued recall notice dated 18.09.2020 was issued to the Corporate Debtor along with the personal and Corporate guarantor demanding the outstanding amount.

13. After receiving the demand notice, reply dated 30.09.2020 was sent by the representative of the Corporate Debtor stating that it would submit repayment plan in order to pay the outstanding amount. The Corporate Debtor's representative not only failed on its commitment to make the payment but also failed to come for a meeting to submit the repayment plan, as stated in the reply to the said notice.

14. Another demand notice dated 03.10.2020 was issued to the Corporate Debtor by the petitioner under SARFAESI Act, 2002 along with personal

and corporate guarantors. Reply dated 22.10.2020 was sent by the representative of the Corporate Debtor to the demand notice u/s 13(2) of the SARFAESI Act, 2002 dated 03.10.2020. The Corporate Debtor failed on its commitment to come up with the repayment plan and thus committed the default.

15. Subsequently, another demand notice dated 07.12.2020 was issued by the petitioner to the Corporate Debtor u/s 13(4) of the SARFAESI Act, 2002, to take over the possession of the property.

16. Since the Corporate Debtor has failed to repay the outstanding and committed the default in repayment of the claim amount of petitioner, this necessitated the filing of the present petition.

REPLY OF THE CORPORATE DEBTOR:

17. The Corporate Debtor vide its Affidavit in reply (**"Reply"**) dated 25.03.2023 has submitted that the petition is not maintainable and further the Petitioner had concealed and supressed material facts from this Tribunal.

18. The Corporate Debtor in its reply submits that prior to 31.03.2019, there were no disputes between the Corporate debtor and the Bank, rather by renewing the facility vide sanction letter dated 30.03.2019, the Bank has acknowledged that the Corporate Debtor was making timely payments.

19. The Corporate Debtor further submits that the Bank on 16.07.2019 refunded Rs. 4,21,73,141.63 on account of excess interest charged by it.

20. The Corporate Debtor further submits that the default declared by the Bank is unjust, erroneous and bad in law as there were sufficient repayments made by the Corporate Debtor in accordance with the

terms and conditions of the facility extended in favour of the Corporate Debtor. Moreover, the bank had refunded certain interest component to the Corporate Debtor as the Bank had wrongly charged interest. It is further submitted that since the amounts paid by the Corporate Debtor were refunded by the Bank, the question of default committed by it does not arise.

21. The Corporate Debtor further submits that in view of the renewal sanction letter dated 30.03.2019, tenure of the facility had not expired and was very much valid and subsisting as on 31.03.2019. Hence, there is no possibility of Corporate Debtor defaulting on 31.03.2019 and the petition is liable to be dismissed on this ground alone.

22. The Corporate Debtor further submits that in the year 2019, the Bank was undergoing investigations over certain alleged irregularities of some of its loan accounts. Pursuant to such investigations, the Bank was placed under an All-inclusive Directions by RBI vide Directive DCBS.CO.BSD-1/D-1/12.22.183/19-20.

23. The Corporate Debtor submits that an Administrator was appointed to manage the affairs of the Bank. The appointment of an Administrator adversely impacted the business operations of the Bank which came to a halt.

24. The Corporate Debtor further submits that there has been no default by the Corporate Debtor as alleged by the Bank and the classification of its accounts as NPA on 30.09.2019 is unwarranted and illegal since the Bank itself was facing several operational issues.

25. The Corporate Debtor submits that as on 31.03.2019, as the outstanding amount due was within sanctioned limit as per the renewal letter dated 30.03.2019, there was no overdue payment payable by Corporate Debtor to the Bank.

26. The Corporate Debtor further submits that no notice of default was issued by the Bank to the Corporate Debtor. Furthermore, the Bank having been placed under the administration of the RBI appointed Administrator, had abruptly and without following due procedure classified the loan account of the Corporate Debtor as Non-Performing Asset (NPA) despite the facilities under letter of credit having been extended vide Sanction Letter dated 30.03.2019 which were validly subsisting at that time. It is further submitted that while the present petition provides the date of default as 31.03.2019, the bank classified the loan account of Corporate Debtor as NPA in the month of September 2020, i.e., three months later than the time period prescribed under applicable laws. As such, it is very clear that Bank has made wrong statement before this Bench and on this ground itself, the petition filed deserves to be dismissed with costs.

27. The Corporate Debtor further submits that the issue with the Bank's operations had a direct impact on the Corporate Debtor's operations. Also, the erroneous and wrongful claim of default and subsequent classification of Corporate Debtor's loan account as NPA has adversely impacted its business operations. The unwarranted total recall of facilities extended and the discontinuation of grant of loans abruptly halted the operations of Corporate Debtor, causing loss of business and reputation in the market. It has consequently derailed the business operations of the Corporate Debtor.

28. The Corporate Debtor further submits that the facilities extended by Bank on 31.03.2019 had ought to be renewed in the month of March, 2020, but the same was not renewed due to internal management and structural issues in the affairs of the bank. The recall of facilities extended by the Bank is an error in its part as there has been no default by the Corporate Debtor.

29. The Corporate Debtor submits that the default amount of Rs. 109,85,95,526/- as claimed by the Bank in the petition and

statement of account relied upon by it is erroneous and exaggerated. The Bank has failed to provide a detailed computation of total debt alleged to be due by the Corporate Debtor and has only provided a vague composite computation of the amount in default.

30. The Corporate Debtor further submits that the unsigned balance confirmation of Rs. 109,85,95,526/- by the Bank cannot be treated as a reliable piece of evidence for the purpose of acknowledgement.

31. The Corporate Debtor submits that the Corporate Debtor vide correspondence dated 30.09.2020 and 22.10.2020, has communicated its intention to arrive at an amicable solution by preparing and presenting the Bank with a suitable repayment plan for the amount in default.

32. The Corporate Debtor further submits that the onset of COVID-19 pandemic and consequent lockdowns across the nation in addition to the abrupt recall of facilities by the Bank had caused unanticipated limitations and delays in carrying out the day to day functions of the Corporate Debtor. In the end, the Corporate Debtor has prayed for the dismissal of the petition.

FINDINGS:

33. We have heard counsel for the parties and have gone through the record.

34. During the course of arguments, it has been contended by the counsel for the petitioner that it is a fit case for admission under section 7 of the code has all the ingredients such as financial debt and default are being fulfilled in this case. The counsel for the petitioners has referred to the NeSL report which is annexed as exhibit M The petition and the said report clearly states the date of default as 31.03.2019. The NeSL report is Per se admissible in evidence and is also an authentic piece of evidence so far the date of default is concerned.

35. The counsel for the petitioner has further referred to the letter dated 30.11.2020 whereby, the Corporate Debtor has acknowledged its liability while requesting for an amicable settlement. Counsel for the petitioner has further referred to the audited report of the Corporate Debtor wherein also the outstanding dues of Rs.102.68 Crores is stated to be outstanding towards the bank. According to the counsel for the petitioner, there is enough evidence of the financial liability of the Corporate Debtor and also the default committed by it and therefore the instant petition deserves to be admitted.

36. On the other hand, the Counsel for the perpetrator has argued that there is no document on record to prove that the default occurred on 31.03.2019. He has further contended that since the sanction was granted on 30.03.2019 itself, the possibility of any default having been committed by the Corporate Debtor after just one day i.e. on 31.03.2019 does not arise. The default cannot be said to have been committed within a period of one day after the credit facility was renewed on 30.03.2019.

37. The counsel for the Corporate Debtor has further contended that the petition is hit by section 10(A) of the code. In this regard, the Counsel for the Corporate Debtor has referred to letter dated 18.09.2020 whereby, the Corporate Debtor was asked to repay the amount of Rs.106.02CR on or before 17.09.2020. According to the counsel for the Corporate Debtor, if the letter/notice dated 18.09.2020 is taken into consideration, the default, if any, occurred only on 17.09.2020 which clearly falls within the period excluded under section 10 A of the code and, therefore, the instant petition is barred under the said section.

38. The Corporate Debtor has further argued that even the SARFAESI notice was issued by the petitioner bank on 03.10.2020 which further

proves that the default took place within the period covered under section 10(A) of the Code.

39. We have weighed the rival contentions raised by the counsel for the parties and have carefully gone through the records.

40. In our considered view, there can be no dispute about the date of default. In this regard, it is pertinent to point out that in the NeSL report, the date of default is clearly mentioned as 31.03.2019. On the basis of the NeSL report, it can be unequivocally held that the default in repayment of the loan facility took place in the month of March 2019. It is well settled that only the initial date of default is to be taken into consideration for the purposes of section 7 of the Code. Therefore, the fact that the notice was issued to the Corporate Debtor on 18.09.2020 or a notice under section 13 (2) of the SARFAESI Act was given on 03.10.2020 would not shift the date of default from 31.03.2019 to the dates of the aforesaid notices. Therefore, it cannot be successfully argued on the basis of these notices that the default took place during the period which is covered under section 10(A) of the Code nor a conclusion can be arrived at that the petition is barred under section 10(A) of the Code.

41. Another argument put forward by the Counsel for the Corporate Debtor that the statement of account relied upon by the petitioner is not as per the provisions of the Bankers Book of Evidence Act is also not tenable. In this regard it is worth pointing out that in its letter dated 30.09.2020 Exhibit-“T”, the corporate debtor has unequivocally admitted its liability and offered for an amicable settlement and settle the subsisting dues with the bank. Even otherwise, as pointed out above, in the audited balance sheet of the Corporate Debtor the amount of Rs.102 odd crores stand admitted. Therefore, any discrepancy in the statement of account relied upon by the Petitioner is hardly of any sequence. In addition to this, in the letter Exhibit-E annexed– with the reply, the Corporate Debtor has admitted its

liability and sought time up to March 2021 to prepare a repayment plan. Thus, there is not even an out of doubt about the fact that there was default in repayment which the corporate debtor wanted to settle.

42. Lastly, it has been argued on behalf of the Corporate Debtor that the present petition under section 7 of the code has been filed without valid authorisation. In this regard the Counsel for the petitioner has referred to the letter at exhibit- “B” dated 19.12.2020 whereby, the an Administrator appointed by the Reserve Bank of India authorised Shri. Manbir Singh, Chief Manager to file the presentation. Here it is pertinent to mention that admittedly due to allegations of fraud surfacing in the management of the petitioner bank, the controlling authority i.e. the Reserve Bank of India appointed an Administrator to look into the affairs of the Bank and the Administrator was competent as well as entitled to do authorise the Chief Manager to file the present petition. Therefore, it cannot be said that the petition has not been filed by a duly authorised person.

43. As a corollary to the foregoing discussion, we are of the considered view that the petitioner has been able to establish the necessary ingredients i.e. the existence of a financial debt and the default committed by the Corporate Debtor in its payment. It also stands established that the present petition has been filed within the period of limitation therefore the petition under section 7 of the Code deserves to be Admitted. It is ordered accordingly in the following terms:-

ORDER

a. The above Company Petition No. 411/IBC/MB/2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Shah Steel Impex Private Limited.

b. The Petitioner has proposed the name of Insolvency Professional. The IRP proposed by the Petitioner, Mr. Hetal Gaurang Kothari, having Email ID- iphetalkothari@gmail.com having Address – 306, Krishna Kunj, 1B, Tambe Nagar, SN Road, Mulund (West), Mumbai 400 008 and having registration No. IBBI/IPA-001/IP-P01610/2019-20/12500, 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 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 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 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 Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

k. Accordingly, C.P. No. 411/IBC/MB/2021 is **admitted**.

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

Sd/-	Sd/-
MADHU SINHA	KULDIP KUMAR KAREER
Member (Technical)	Member (Judicial)