

**In the National Company Law Tribunal
Kolkata Bench
Kolkata**

CP(IB)No.977/KB/2018

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process 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;

-And-

In the Matter of:

State Bank of India, having registered office at State Bank Bhawan, 14th Floor, Corporate Centre, Madame Cama Road, Nariman Point, Mumbai-400021, Maharashtra.

.....Financial Creditor

In the Matter of:

M/s UIC Udyog Limited, a company having its registered office at Anandlok, Block-A, 1st Floor 227, A.J.C. Bose Road, Kolkata-700020, having CIN No. U27109WB1995PLC076114, West Bengal within the jurisdiction of this Tribunal.

..... Corporate Debtor

**CORAM: Shri Jinan K.R., Member (Judicial)
Shri Harish Chander Suri, Member (Technical)**

Sd

Sd

Counsels appeared:

For Financial Creditor

1. Mr. Ajay Gaggar, Advocate
2. Mr. Ramanuj Ray Chaudhuri, Advocate

For Corporate Debtor

1. Mr. Deepak Kumar Khaitan, FCS

Date of pronouncement of order: 30th September, 2019.

ORDER

Per Shri Jinan K.R., Member (J):

1. This is an application filed by the State Bank of India/Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short "Code") read with Rule 4 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (in short "CIRP") as against the Corporate Debtor/M/s UIC Udyog Limited on the allegation that the Corporate Debtor has committed default in repayment of various cash credit facilities availed by the corporate debtor during the period from 21.11.2004 to 20.11.2012 to the tune of Rs. 203,93,20,474.66 Crores as on 25.05.2018.
2. As per the computation statement annexed in the application as **Annexure S**, it is understood that the under demonstrated amount is claimed by the financial creditor (in short FC) as the amount due upon availing various credit facilities by the Corporate Debtor. As per the table below the FC claimed an amount of Rs.1277855880.62 as the outstanding as on 25.05.2018.

Sd

Sd

A/C No.	Type	Principal Outstanding as on 25.05.2018	Accrued Intt. 25.05.2018	Penal Intt. as on 25.05.2018	Total Dues as on 25.05.2018
10402459317	CC	0	177299588.92	29384714.02	206684302.94
33756550234	WCTL	0	231786824.64	36151752.98	267938577.62
33756614133	FITL	0	81660302.66	12811008.51	94471311.17
36317003315	AUCA	595702691.62	123420840.65	17583389.59	736706921.86
37161395161	AUCA	513329207.00	41045978.87	5480421.18	559855607.05
37608401217	AUCA	162197446.00	4298012.67	541759.35	167037218.02
		1271229344.62			2032693938.66
10402465728	BG	40,00,000.00	Not invoked		40,00,000.00
33801484293	BG	26,26,536.00	Not invoked		26,26,536.00
		6626536.00			
Total		1277855880.62	659511548.41	101953045.63	2039320474.66

The total claim as per the table above comes to Rs.203,93,20,474.66. The percentage of interest added for arriving the said amount is not known from a look at the table. When exactly the default in repayment had occurred also is not mentioned in the form. When asked about the exact date of default, the Ld. Counsel was unable to convince us as to the date of default. However, he would submit that the date of declaration of the account of the CD as NPA is not the date of default but the default occurred when the CD failed to fulfill the conditions in the Master Restructuring Agreement dated 20.03.2014. When exactly was the said date of non-fulfillment of the terms of Master Restructuring agreement, no data is furnished. According to him upon default in repayment of the debt due as per the terms of the Master Restructuring Agreement, the loan was recalled. However, when it was recalled, no data also furnished. No copy of recall letter is also produced for our perusal. No such pleading in the application and no documents proving demand for repayment or recall

SD

SD

also seen annexed with the application. What is pleaded in the Form 1 Part IV, Serial No .2 read as follows:-

Rs.203,93,20,474.66 only. The total claim amount is calculated till 25.05.2018. Regarding date on which the default occurred no data furnished in the Form. What is described in the form read as under:

"Although the account was classified as NPA in CBS on 17.12.2005, since it was a CDR account, it has been classified as doubtful asset-II due to failed restructuring w.e.f 31.08.2013. The total amount of claim along with the date of disbursement is enclosed herewith and marked as Annexure S".

Annexure S is shown above only shows computation of amount with interest till 25.05.2018 and not proves date of default. The CP was seen filed on 01.06.2018. The computation is also unfair. What is the rate of interest calculated for arriving the amount is not shown. What is the penal interest shown is also not shown in it. So, no doubt the date of default is uncertain as per the pleading in the application.

3. What is submitted by the Ld. Counsel for the applicant is on the strength of rejoinder filed by the FC. It is contended that the Corporate Debtor defaulted in repaying credit facilities availed by it in violation of the terms of Master Restructuring Agreement dated 28.03.2014. The loan facilities are originally availed by the CD on 14.03.2014 and onwards. The account became NPA as on 17.12.2005. According to the Ld. Counsel for the FC, upon classification of the account of the Corporate Debtor as NPA, the account of the Corporate Debtor has been restructured at the request of the Corporate Debtor. The Corporate Debtor due to slow down of its business activities and due to certain economic setbacks applied to the consortium Banks for

Sd

Sd

restructuring debt and accordingly in the consortium of lenders held a meeting on **20.03.2014**, and the restructuring agreement was entered into.

4. According to the Id. Counsel for the FC, as per the **Master Restructuring Agreement dated 28.03.2014**, the Corporate Debtor has been given optimum facilities. However, the Corporate Debtor was very much negligent in its approach to perform its obligations that it had undertaken to comply towards the Master Restructuring Agreement. In view of non-fulfillment of the obligation on the side of the Corporate Debtor on the strength of the Master Restructuring Agreement, the Financial Creditor was compelled to recall the entire loan and a notice under Section 13(2) of the SURFAESI Act, 2002 has been issued to the Corporate Debtor and OA 630 of 2017 claiming an amount of Rs.171,04,87,823.72 Crores before the Debt Recovery Tribunal, Kolkata was filed. Pending consideration of the abovesaid application, the Financial Creditor filed this application for initiating the CIRP as against the Corporate Debtor.
5. The Corporate Debtor (CD) entered appearance and filed reply affidavit mainly contending that the application is not maintainable for the reason of winding up proceeding pending before the Hon'ble High Court at Calcutta. It is contended that the Company Petition No. 474 of 2014 filed by one **Jindal Steel and Power Limited** (an Operational Creditor) is pending before Hon'ble High Court at Calcutta wherein the Hon'ble High Court passed an order of winding up in respect of the Corporate Debtor. According to Pr.CA appearing for the CD, the Hon'ble High Court had already passed an order of liquidation in respect of the Corporate Debtor company and therefore, this application is barred under Section 11(d) of the Insolvency and Bankruptcy Code, 2016.

Sd

Sd

Secondly, he contends that the contents in the applications are incomplete and Form 1 is incomplete and material facts that ought to have been included in the Form are deliberately suppressed by the FC. According to him the Corporate Debtor has filed a Civil Suit No. 103 of 2017 as against the Financial Creditor to recover damages from the Financial Creditor and it is pending for consideration before the Hon'ble High Court. So also, there is no pleading in the application as to filing of OA before the Debt Recovery Tribunal by the Financial Creditor under Section 19 of the Recovery of Debt Due to Banks & Financial Institutions Act, 1993. Non-inclusion of details regarding pending civil suit and OA before DRT is a deliberate suppression on the side of the FC submitted by the Ld.Pr.CA. He also would submit that the FC has not come with clean hands and suppressed the material facts and therefore the application is liable to be rejected. He argued.

It is further contended that the application filed under Section 7 is not maintainable as the Financial Creditor failed to produce the record or evidence of default in terms of Clause A of Sub-Section 3(3) of Section 7 of the Code.

It is also contended on the side of the Corporate Debtor that it could not utilize the finance facilities as per the terms and conditions of Master Restructuring Agreement because of the failure on the side of the Lead Bank inclusive of the Financial Creditor herein in not granting the finance facilities as per the terms and conditions of the Master Restructuring Agreement dated 28.03.2018. According to the Pr. CA for the Corporate Debtor the company could not revive due to default in granting the financial facilities and pending revival of the company of the Corporate Debtor, the Financial Creditor recalled the loan on 19.06.2017 and thereby the revival scheme of the company was not

Sd

Sd

fulfilled. According to him therefore there is no willful default on the side of the CD and therefore this application is liable to be rejected.

6. Heard both side and perused the records.
7. Upon hearing the arguments and on perusal of the documents it has come out in evidence that the Corporate Debtor had availed various credit facilities from time to time for its expansion as well as meeting of working capital requirements. The Company had also failed to repay the finance facilities from its lenders as a result whereof the finance was enhanced and renewed from time to time. The execution of Master Restructuring Agreement on 28.03.2014 no doubt proves default in repayment of the loan.
8. The main objection on the side of the Corporate Debtor is that this application is not maintainable as per section 11(d) of the Code. So the question is whether pendency of winding up proceedings before the Hon'ble High Court at Calcutta would bar the proceedings if any to be initiated by this Bench as against the Corporate Debtor under Section 7 under section 11(d) of the Code. As per Section 11(d), "*a corporate debtor in respect of whom a liquidation order has been made*", an application of this nature is not maintainable. It is true that the Hon'ble High Court at Calcutta admitted an application filed by Jindal Steel and Power Limited against the Corporate Debtor in CP No. 474 of 2014. Various orders of the Hon'ble High Court at Calcutta have been brought to our notice and overall reading of the order dated 12.12.2017, what we understood is that the Hon'ble High Court at Calcutta had given opportunity to the Corporate Debtor to settle the dispute and passed a conditional order with a default clause. The relevant portion of the order read as follows:-

Sd

Sd

"By an order dated March 16, 2017 passed in CA 118 of 2017, it was recorded that the petitioner has already caused the advertisement in terms of the order dated June 16, 2015 and the company was restrained from dealing with or disposing or further alienating or encumbering any of its fixed assets without the express previous leave of this Court. An opportunity was also given to the company to file its affidavit-in-opposition in the winding up application by April 17, 2017. However, the company has not filed any affidavit-in-opposition. In these facts, the petitioner has filed this application for appointment of the Official Liquidator as the provisional Liquidator to take possession of all the assets and properties of the company. However, it appears that in view of the failure on the part of the company to file its affidavit-in-opposition to the main winding up application, the company should be directed to be wound up and the Official Liquidator should take possession of all the assets and properties towards its winding up. Accordingly, let this application along with CP No. 474 of 2014 appear before this Court on December 15, 2017".

9. At this juncture the Ld. Counsel appearing for the Financial Creditor brought to our notice, orders dated 06.07.2018 and 25.01.2018 passed by the Hon'ble High Court at Calcutta in CP No. 474 of 2014 wherein it is understood that the Hon'ble High Court at Calcutta has given the parties time to make its effort to settle the dues of its secured creditor as well as the petitioning creditor. The order read as follows: -

"It is submitted by the respondent company that in the meantime it will make its effort to settle the dues of it secured creditors as well as petitioning creditor"

It is the last order of the Hon'ble High Court which is brought to our notice. So, what is brought to our notice is that neither a winding up order

sd

sd

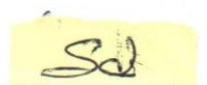
seen so far passed by the Hon'ble High court as against the Corporate Debtor nor an Official Liquidator was appointed by the Hon'ble High Court at Calcutta and no order of liquidation was passed.

10. The Hon'ble NCLAT in **Indiabulls Housing Finance Ltd v. Shree Ram Urban Infrastructure Ltd, [CA (AT) (Inso) No 252 of 2018** examined catena of judgments governing the issue to hold that the High Court of Bombay has already ordered for winding up of respondent- 'Corporate Debtor', which is the second stage of the proceeding, thus question of initiation of 'Corporate Insolvency Resolution Process' which is the first stage of resolution process against the same 'Corporate Debtor' does not arise.

While arriving at its judgment, the NCLAT heavily relied on its judgment of **Forech India Pvt. Ltd. Vs. Edelweiss Assets Reconstruction Company Ltd. &Anr. Company Appeal (AT) (Insolvency) No. 202 of 2017 dated 23rd November, 2017**, wherein the Hon'ble, NCLAT observed that if a 'Corporate Insolvency Resolution' has started or on its failure, if liquidation proceedings have been initiated against the Corporate Debtor, the question of entertaining another application under Section 7 or Section 9 against the same very 'Corporate Debtor' does not arise, as it is open to the 'Financial Creditor' and the 'Operational Creditor' to make claim before the Insolvency Resolution Professional/Official Liquidator.

Bearing in mind the proposition held in the above referred judgment, we are of the considered opinion that this application is perfectly maintainable. The said objection is therefore found devoid of any merit.

11. The next objection on the side of the Corporate Debtor is that the Financial Creditor deliberately suppressed material facts in the application regarding pendency of Civil Suit No. 103 of 2017 and pendency of OA 360 of 2017 filed before the Debt Recovery Tribunal and therefore did not come forward with clean hands and hence this application is liable to be



dismissed. Since, the pendency of a Civil Suit and OA being not a bar in proceeding in an application of this nature under the provisions of the Code, the said objection is also found not at all sustainable under law.

12. Ld. Pr.CA for the Corporate Debtor repeatedly argued that the contents to be furnished by the applicant regarding the date of default being not furnished in Form No.1 and non-production of information utility certificate is fatal in the nature of the case in hand and for the said reason alone this application is liable to be dismissed. Truly, the applicant did not produce copy of Information Utility Certificate as provided in terms of Section 7(3)(A) of the Code. However, it has produced a copy of CIBIL report **Annexure BA**, which was seen downloaded on 04.05.2018. So as on 04.05.2018, the Corporate Debtor is evidently a defaulter as per the available records.

Moreover, from the averment in the reply affidavit filed by the Corporate Debtor, it is made clear that the Corporate Debtor defaulted the facility availed by it from the Financial Creditor, but not for the reason as alleged by the Financial Creditor. So, default in repayment of the loan facility availed by the Corporate Debtor stands proved in the case in hand. However, we found some force in the submission on the side of the Corporate Debtor as to non-furnishing of enough material which ought to have been furnished by the Financial Creditor in it. Material particulars in regard to date of default and the percentage of interest claimed are not available from the contents in Form1. However, those particulars are available from the supporting documents annexed with the application. Accordingly, non-furnishing of the materials in the Form alone is not a ground for dismissal of the application as alleged by the Ld.Pr.CA.

Being satisfied that the Financial Creditor disbursed the loan as alleged and the Financial Creditor succeeded in proving that there is outstanding loan amount as claimed and there is default on the part of the Corporate Debtor the application is liable to be admitted. The Financial Creditor also

Sd
✓

Sd

proposed name of an Interim Resolution Professional and form 2, along with written communication (Annexure BE) produced proves that there is no disciplinary proceeding pending as against the proposed insolvency professional. Accordingly, we are of the view that this application is liable to be admitted.

In view of the above-said discussion, we admit this application filed by the financial creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 upon the following orders: -

ORDER

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, **M/s. UIC Udyog Ltd.**, is hereby admitted.

ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP 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:

1. 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;

SD

SD

2. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

3. 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);

4. 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 to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during 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) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

sd

sd

x) We hereby appoint **Mr.Kannan Tiruvengadam**, CA with address at Netaji Subhas Villa, Flat No. 3 C, 3rd Floor, 18 KarunamoyeeGhat Road near Dharaparattollyingung, with Registration No.IBBI/IPA-001/IP-P00253/2017-18/10482, e-mail ID. calkannan@gmail.com contact no. 9836969699 as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

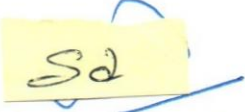
xi) The Interim Resolution Professional (IRP) should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within **105 days** from the insolvency commencement date.

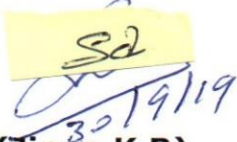
xii) The IRP is directed to see that Regulation 40A of IBBI (IRP for Corporate Persons) Regulations, 2016 is complied strictly and file progress report in terms of compliance of the Regulation.

xiii) Registry is hereby directed under Section 7(7)(a) of the I & B Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the IRP by Speed Post as well as through e-mail with in 7 days from the date of the order.

List the matter on **05.11.2019** for the filing of the progress report.

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(T)


(Jinan K.R)
Member(J)

Signed on this, the 30th day of September, 2019.