

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

**C.P. (IB) No. 109/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.

**-And-**

**IN THE MATTER OF:**

**United Bank of India**, a Body Corporate, constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having its Head Office at 11, Hemanta Basu Sarani (Formerly known as 16, Old Court House Street), Kolkata – 700 001, and having its Stressed Asset Management Branch, commonly known as SAMB Branch at 4, N.C. Dutta Sarani, 2<sup>nd</sup> Floor, Kolkata – 700 001, in the State of West Bengal, within the aforesaid jurisdiction.

**...Applicant / Financial Creditor**

**-Versus-**

**IN THE MATTER OF:**

**Adyama Rice Mill Private Limited**, a Company registered under the provisions of the Companies Act, 1956, having CIN:

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U15312WB1985PTC039827, and having its registered office at 29, Kalna Road (Badamtola), Post Office and District – Burdwan, West Bengal, within the aforesaid jurisdiction.

**...Respondent / Corporate Debtor**

**Coram:**

1. Shri. Jinan K.R., Hon'ble Member (Judicial)
2. Shri. Harish Chander Suri, Hon'ble Member (Technical)

**Counsel on Record:**

1. Mr. Basudeb Mukherjee, Advocate } – For the Financial Creditor

**Order pronounced on: 6<sup>th</sup> August, 2019.**

**ORDER**

**Per Shri. Jinan K.R., Hon'ble Member (J):**

1. This is an application filed by the Financial Creditor / United Bank of India under Section 7 of the Insolvency and Bankruptcy Code 2016 (I&B Code in short) for initiating Corporate Insolvency Resolution Process (CIRP) as against the **Corporate Debtor / Adyama Rice Mill Pvt. Ltd.** alleging that the Corporate Debtor has failed to make repayment of the credit facilities which was availed by the Corporate Debtor and granted by the Financial Creditor, in pursuance of three Sanction Letters dated 31.05.2006, 23.10.2009 and 18.04.2011 and the Corporate Debtor has therefore, committed default, and the amount claimed to be in default is to

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the tune of Rs. **16,61,51,559.78/- (Rupees Sixteen Crores Sixty One Lakhs Fifty One Thousand Five Hundred Fifty Nine and Paise Seventy Eight only)** as on 31.12.2018, and so, the Financial Creditor has filed this application under Section 7 of the I & B Code.

2. Brief facts for the consideration of the application are as follows:-

- The Financial Creditor enhanced the existing limit of credit facilities from Rs. 270.72 lakhs to Rs. 358.78 lakhs in favour of the Corporate Debtor, on its request, by issuing a Sanction Letter dated 31.05.2006, pursuant to which the Corporate Debtor executed various documents in favour of the Financial Creditor. Further, upon request from the Corporate Debtor, the Financial Creditor issued a Sanction Letter dated 23.10.2009 in favour of the Corporate Debtor enhancing the existing credit limit, in pursuance of which, the Corporate Debtor on 28.10.2009, had mortgaged the property by deposit of title deeds, and executed certain banking documents in favour of the Financial Creditor and executed a letter of Guarantee through its authorised directors in favour of the Financial Creditor. Thereafter, the Financial Creditor, upon request from the Corporate Debtor, further enhanced the credit limit vide Sanction Letter dated 18.04.2011, pursuant to which certain banking documents as well as extension of equitable mortgage of the property were executed in favour of the Financial Creditor. The Sanction Letters dated 23.10.2009 and 18.04.2011 are annexed with the application and marked as “**Annexure D**” and

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**“Annexure K”**, respectively. Upon execution of the abovementioned documents, the Corporate Debtor availed the said credit facilities in full.

- The Corporate Debtor confirmed the balance in the loan account, as on 31.12.2012, by executing acknowledgment of debt, signed by the Corporate Debtor on 26.02.2013, a copy of which is annexed and marked as **“Annexure O”**. The Corporate Debtor, therefore committed default in repayment of the Credit facilities and continued with the default consequent to which, the loan account was declared as Non – Performing Asset (NPA) on 31.08.2013. The Financial Creditor wrote various letters to the Corporate Debtor for non-servicing of instalments and thereafter, issued a Recall Notice dated 01.10.2013 recalling the entire dues inclusive of interest as on 31.08.2013, and the Corporate Debtor issued a reply to the said letter on 21.10.2013, however, it did not pay any amount as demanded in the Recall notice.
- The United Bank of India on 17.10.2013, issued notice under Section 13(2) of the SARFAESI Act, 2002 calling upon the Corporate Debtor to pay the outstanding amount, a copy of which is annexed as **“Annexure S”**. The Corporate Debtor made a representation against the said Notice on 18.11.2013 wherein it admitted the dues of the Financial Creditor. The United Bank of India has also initiated proceedings before the Ld. Debts Recovery Tribunal – II, Kolkata against the Corporate Debtor and its guarantors on 10.02.2015 by filing application under Section 19 of the Recovery of Debts Due to

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Banks and Financial Institutions Act, 1993 bearing O.A. No. 63 of 2015 wherein the proceeding is pending final adjudication.

- As on 31.12.2018, the total outstanding amount under the various credit facilities granted by the Applicant to the Corporate Debtor is Rs. 16,61,51,559.78/-, which the Corporate Debtor has failed and neglected to repay. Therefore, the Financial Creditor has filed this application under Section 7 of the I & B Code, 2016 and prays for passing an order for admission of the application.
3. The Financial Creditor produced proof of lending loans to the Corporate Debtor and following are the documents relevant for the consideration of the case in hand:-
- (a) Copy of Sanction Letters dated 23.10.2009 and 18.04.2011 are annexed with the application and marked as **"Annexure D"** and **"Annexure K"**, respectively.
  - (b) Copy of the Recall Notice dated 01.10.2013, and reply of the Corporate Debtor dated 21.10.2013, annexed and marked as **"Annexure Q"**.
  - (c) Copy of the Statement of Account, annexed and marked as **"Annexure R"**.
  - (d) Copy of the Notice dated 17.10.2013, issued by the Bank to the Corporate Debtor under Section 13(2) of the SARFAESI Act,

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2002, and the reply of the Corporate Debtor dated 18.11.2013, annexed as “**Annexure S**” and “**Annexure T**”, respectively.

(e) Copy of the Balance Confirmation dated 31.12.2012, duly signed by the Corporate Debtor, annexed and marked as “**Annexure O**”.

(f) Statement of Accounts of the Cash Credit and Term Loan, marked and annexed as “**Annexure U**”.

4. The applicant has also proposed the name of Resolution Professional to act as Interim Resolution Professional, and produced Form 2 and written communication from Mr. Balaknath Bhattacharyya, with address at Sahabagan, Salua, Post Office – R. Gopalpur, Dist – North 24 Parganas, Kolkata - 700 136 with **Registration No. IBBI/IPA-003/IP-N00096/2017-18/10971** with e-mail id: bhattacharyyabn@yahoo.com. Upon the abovementioned contentions, the applicant prays for admitting the application under Section 7 of the I & B Code.

5. The Applicant filed an affidavit of service proving delivery of notice to the Corporate Debtor by way of publication as well as by e-mail. So, delivery of notice to the Corporate Debtor is declared sufficient. Since nobody on the side of the Corporate Debtor appeared and thereby, the Corporate Debtor was called absent and declared *ex-parte* vide order dated 29.07.2019.

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6. Heard the Ld. Counsel appearing for the Financial Creditor and perused the records.
7. This is an application filed by the Financial Creditor for initiating Corporate Insolvency Resolution Process as against the Corporate Debtor alleging that the Corporate Debtor committed default in repayment of the credit facilities availed by it to the tune of Rs. 16,61,51,559.78/- (Rupees Sixteen Crores Sixty One Lakhs Fifty One Thousand Five Hundred Fifty Nine and Paise Seventy Eight only) as on 31.12.2018 as per three Sanction Letters executed with the Financial Creditor. The copies of two of the Sanction Letters have been produced along with the application and marked as "**Annexure D**" and "**Annexure K**". According to the Ld. Counsel for the Financial Creditor, the requirement to be meted out to file an application of this nature has been complied with by the applicant and since the Corporate Debtor did not repay the debt, the application deserves to be allowed. It is submitted that the Corporate Debtor availed the credit facilities under the Sanction Letters in full and thereafter, committed default in repayment of the said credit facilities, as a result of which the loan account was declared as NPA on 31.08.2013. A balance confirmation dated 31.12.2012, is also seen produced on side of the Financial Creditor (annexed and marked as "**Annexure O**") which is signed by the Corporate Debtor on 26.02.2013 acknowledging that a balance of Rs. 9,19,82,677.78/- is due to the

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Financial Creditor. It is further contended that despite several reminders and letters sent to the Corporate Debtor, and issuing the loan recall notice dated 01.10.2013 ("**Annexure Q**"), the Corporate Debtor failed to repay the loan amount and, thereafter, the applicant issued notice dated 17.10.2013 under Section 13(2) of the SARFAESI Act, 2002 calling upon the Corporate Debtor to pay the outstanding amounts. The Corporate Debtor replied to the said notice vide letter dated 18.11.2013 by requesting for restructuring the loan account and admitting the dues of the Financial Creditor. Copies of the Section 13(2) Notice and the reply of the Corporate Debtor are annexed with application and marked as "**Annexure S**" and "**Annexure T**", respectively. The Corporate Debtor, however did not pay the outstanding amount, and further, the Financial Creditor initiated proceedings before the Ld. Debts Recovery Tribunal - II, Kolkata against the Corporate Debtor and its guarantors by filing application being O.A. No. 63 of 2015 which is pending final adjudication, and hence, the Financial Creditor has filed this application under Section 7 of the I & B Code, 2016 to initiate CIRP against the Corporate Debtor.

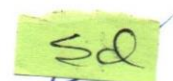
8. The Ld. Counsel on behalf of the Financial Creditor also submits that a copy of the statement of accounts is produced to prove that the above said amount is due and the document is marked as "**Annexure R**" and "**Annexure U**". Therefore, being

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proved that the loan amount as claimed is due, and that the Corporate Debtor has committed default in repaying the outstanding dues despite recalling of the loan, issuing notice under SARFAESI Act, 2002, and initiating proceedings before the Ld. Debts Recovery Tribunal, and hence it appears to us that the Financial Creditor here, in the instant case, has succeeded in proving the existence of default on part of the Corporate Debtor.

9. The applicant has also proposed the name of Resolution Professional to act as Interim Resolution Professional, Mr. Balaknath Bhattacharyya, with address at Sahabagan, Salua, Post Office – R. Gopalpur, Dist – North 24 Parganas, Kolkata - 700 136 with **Registration No. IBBI/IPA-003/IP-N00096/2017-18/10971** with e-mail id: bhattacharyyabn@yahoo.com. A reference to the Form 2 produced on side of the applicant proves that there are no disciplinary proceedings pending against him. Therefore, the applicant has succeeded in meeting with all the requirements to be satisfied under Section 7 (3) of the I & B Code 2016 and so it appears to us that the application is complete as per the statutory provisions. Accordingly, this application deserves to be admitted.
10. In the light of the above said discussions, we hereby admit the application under Section 7 of the I & B Code, upon the following orders: -



**ORDER**

(i) The petition filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process in respect of **Adyama Rice Mill Pvt. Ltd.**

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

(iii) The 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 the 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 judgement, 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;

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- 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.
- (v) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or 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 Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the

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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.

(x) **Mr. Balaknath Bhattacharyya**, with address at Sahabagan, Salua, Post Office – R. Gopalpur, Dist – North 24 Parganas, Kolkata – 700 136 with **Registration No. IBBI/IPA-003/IP-N00096/2017-18/10971** with **e-mail id: bhattacharyyabn@yahoo.com** is hereby appointed 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 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) 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 Interim Resolution Professional by Speed Post as well as through e-mail.

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(xiii) List the matter on **16<sup>th</sup> September, 2019**, 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 (T)**



**(Jinan K.R.)**  
**Member (J)**

*Signed on this, the 6<sup>th</sup> day of August, 2019.*

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