



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

COMPANY PETITION (IB) No. 880/MB/2021

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of

Unity Small Finance Bank Limited

[CIN: U65990DL2021PLC385568]

...Financial Creditor

v/s.

Kishore Transport Services Private Limited

[CIN: U63090MH1998PTC116335]

...Corporate Debtor

Order Delivered on: **11.01.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

CP (IB) No. 880/MB-IV/2021

For the Financial Creditor:

Mr. Maulik Chokshi, Ld. Counsel for
the Financial Creditor.

For the Corporate Debtor:

Mr. Harsh Moorjani, Ld. Counsel for
the Corporate Debtor.



ORDER

1. This is a Company Petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (“IBC, 2016”) by **Unity Small Finance Bank Limited** (“Financial Creditor”) seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) in the matter of **Kishore Transport Services Private Limited**, the Corporate Debtor.

1.1 The present petition was filed on 03.09.2021 and the total default as on 31.07.2021, per the Financial Creditor herein, amounts to INR 38,41,58,577/- (Rupees Thirty-eight crores, forty-one lakhs, fifty-eight thousand, five hundred and seventy-seven only), which is broken down into Principal outstanding of INR 31,91,72,298/-, Interest amount of INR 6,49,85,689/-, and Other charges of INR 590/-. The Date of Default as specified in Part-IV of the present petition is 31.03.2020.

Submissions of the Financial Creditor

2. The Financial Creditor submits that the Corporate Debtor was provided with various financial services, from the period of *circa* October 2007 till October 2018, which included cash credits, credit facilities including (but not limited to) term loans and commercial vehicle loans. The details of the corresponding financial facilities are as follows:

S. No.	Type of Financial Facility	Account Number	Date of Disbursal	Amount of Disbursal (INR)
01	Cash Credit Limit	• 017140100001212	24.08.2017	23,00,00,000
02	Term Loan	• 017303100000013 • 017303100000014 • 017300500000573 • 045301000000003	30.10.2013 30.10.2013 08.08.2016 08.03.2017	1,25,00,000 4,25,00,000 5,00,00,000 5,00,00,000



		• 017305600000592	28.03.2019	3,91,00,000
			Total	42,41,00,000

3. In relation to the afore-mentioned financial facilities, the requisite security documents were executed to secure their repayment. The list of securities are as follows:

- a. First exclusive charge over the Mortgaged Assets: The notices of intimation were registered with the office of Jt. Sub Registrar, bearing Registration No. 7160/2018 dated 01.11.2018 by the Corporate Debtor, in order to continue the equitable mortgages by registering the document, Annexure-1 (ADV 64) as against Office Nos. 401, 402, 403 and 404 located at Fourth Floor, Puranik Capitol, Opposite Hypercity Mall, Ghodbunder road, Kasarvadavali Naka, Thane (West) – 400615.
- b. First exclusive charge on the hypothecated assets: Deeds of Hypothecation were executed by the Corporate Debtor in ADV-70, in order to secure the cash credit facility that the Financial Creditor had provided on various occasions against the book debts of the Corporate Debtor and hypothecation of 26 vehicles of the Corporate Debtor dated 13.10.2007, 25.03.2009, 30.07.2009, 02.12.2009, 16.12.2010, 24.12.2011, 09.08.2016 and 26.10.2018. Additionally, three Deeds of Hypothecation were executed by the Corporate Debtor in ADV-70 as against Vehicle Loan A/c No. 017300500000573, Hypothecation Loan A/c No. 045301000000003 and Commercial Vehicle Loan A/c No. 017305600000592.

4. The Financial Creditor submits that owing to Corporate Debtor's continuous defaults in payment of claim amounts, as against the six-loan a/c nos. as afore-



mentioned in the table above, the Financial Creditor issued a Recall Notice to the Corporate Debtor *dated* 24.11.2020 seeking forthwith repayment of the outstanding amount along with the accrued interest.

5. The Financial Creditor submits that *via* representations to the said Recall Notice, the Corporate Debtor has duly acknowledged the due debt and that the Corporate Debtor's Financial Statements clearly reflect the liabilities thereto; Hence, the present application.

Findings

6. Heard the Learned Counsel(s) for the Financial Creditor and the Corporate Debtor.

- 6.1. Upon going through the record files, it is observed that there was no representation on behalf of the Corporate Debtor in the present petition on dates 11.05.2022, 07.07.2022, 11.08.2022, 06.12.2022 and 01.11.2023. Appearance for the Corporate Debtor was made *via* proxy counsel on 11.12.2023 and the Counsel for the Corporate Debtor appeared on 15.12.2023. However, no reply has been placed on record and thereby this case was accordingly heard.

7. Upon perusal of all records, we are of the considered view that:

- 7.1. This Petition has been filed within limitation period. Therefore, this Tribunal has jurisdiction to adjudicate the Company Petition bearing C.P. (IB) No. 880 of 2021 filed by the Financial Creditor.

- 7.2. The application made by the Financial Creditors is complete in all respects as required by law. It clearly shows that the Corporate Debtor herein is in default of a debt due and payable, and the default is more than minimum amount stipulated under section 4(1) of the IBC, 2016. The two essential qualifications, i.e., existence of 'debt' due and 'default', for admission of a petition under Section 7 of the IBC, 2016, have been met in this case.



7.3. The Financial Creditor has proposed the name of Mr. Shailesh Bhalchandra Desai, Registration No. IBBI/IPA-001/IP-P00183/2017-18/10362, as the Interim Resolution Professional of the Corporate Debtor. He has duly filed his written communication in Form 2 as required under Rule 9(1) of the I&B (Application to Adjudicating Authority) Rules, '16.

ORDER

It is accordingly hereby ordered as follows:

8. The above **Company Petition No. (IB) 880/2021** is hereby **Admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Kishore Transport Services Private Limited.
9. This Bench hereby appoints **Mr. Shailesh Bhalchandra Desai**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00183/2017-18/10362, E-mail: *ip10362.desai@gmail.com*, as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
10. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the Resolution Professional in terms of section 17 of the IBC, 2016. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
11. The Financial Creditor shall deposit a sum of INR 5,00,000/- (Rupees Five-lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on



priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

12. There shall be a moratorium under section 14 of the IBC, 2016 in regard to the following:

- (i)* 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;
- (ii)* Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii)* 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- (iv)* The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

13. Notwithstanding the above, during the period of moratorium:

- (i)* The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- (ii)* That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;



14. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the Resolution Plan under sub-section (1) of section 31 of the IBC, 2016 or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, 2016 as the case may be.
15. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
16. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, 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.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
11.01.2024

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)
