

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 198/Chd/Pb/2021

**Under Section 7 of the Insolvency
and Bankruptcy Code, 2016**

In the matter of :

UCO Bank

having its registered office at
No. 10, B.T. Maharaj Sarani,
Kolkata-700001

...Petitioner/Financial Creditor

Versus

M/s S.R. Industries Limited.

having its registered office at
E-217, Industrial Area, Phase-8B,
Mohali Punjab-160071
And Village Singha, Tehsil Haroli,
District. UNA (Himachal Pradesh) -177220

...Respondent/Corporate Debtor

Judgement delivered on: 21.12.2021

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing : -

For the petitioner-Financial Creditor : Mr. R.S. Bhatia, Advocate

For the respondent-corporate debtor : 1). Mr. Aalok Jagga, Advocate
2). Mr. A.P.S. Madaan, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

JUDGEMENT

The instant petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, (for short hereinafter referred to as '**Code**') read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for short hereinafter referred to as '**Rules**') by UCO Bank,

(**Petitioner**) for initiating Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s S.R. Industries Limited (**Corporate Debtor**). There is an affidavit in support of the contents of the application which is from pages 28 to 30 of the application. The application has been filed in Form 1 as prescribed in Rule 4 of the Rules.

2. M/s S.R. Industries Limited (for short hereinafter referred to as the (**corporate debtor**)) is a company incorporated under the provisions of Companies Act, 1956 with authorized share capital of ₹ 36,50,00,000/- and paid up share capital of ₹34,27,35,000/-. The CIN of the corporate debtor is L29246PB1989PLC009531 and its registered office is situated in E-217, Industrial Area, Phase 8B, Mohali Punjab which lies in the State of Punjab and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of the master data of the corporate debtor is at page no. 83 & 84 of the application.

3. The Authorized Share Capital of the Corporate Debtor is ₹36,50,00,000/- and Paid-Up Share Capital of the Company is ₹34,27,35,000/- as per the Company Master Data attached at Annexure A/4 of the application.

The facts of the case, briefly, as stated in the petition, are that the petitioner i.e. UCO Bank has sanctioned in the year 2009. The following credit facility were sanctioned to the corporate debtor vide sanctioned letter dated 05.08.2009 (Annexure A/6 of the petition).

CC Hypothecation	Rs. 0.40 crores
EPC	Rs. 2.80 crores
FBP	Rs. 0.40 crores

Term Loan	Rs. 10.74 crores
BG/LC	Rs. 0.18 crores

4. It is further submitted that the credit limits were enhanced time to time on 26.09.2021, 09.08.2012, 12.03.2013 and finally on 25.08.2015. The following limits were sanctioned vide sanction letter dated 25.08.2015 (Annexure A/7 of the petition).

Cash credit	Rs. 7.92 crores
Term Loan	Rs. 8.73 crores
NFB	Rs 1.00 crores

5. In Part IV of Form 1, the amount claim to be in default is stated to be ₹24,33,50,479.33/- with interest upto 31.03.2021. The date of default is stated to be 30.06.2017.

6. In Part V, the amount of the Corporate Debtor is secured by the way of hypothecation of stock of raw material goods in process, finish goods and of plant and machinery. The amount has also been secured by the mortgage of total land 03-64-43 Hect. situated at Mohal and Mauja Singhan @ Sukalan, Tehsil Haroli, District Una, HP. The value of hypothecation of stock is Rs. 3.44 crores as per the audited balance sheet for the financial year 2019-20. The value of plant and machinery is stated to be Rs. 2.02 crores as per valuation report dated 17.03.2021 and of land and building is valued at Rs. 7.70 crore as per valuation

report dated 15.03.2021. The ROC certificate with regard to the creation of charge on the corporate debtor is attached as Annexure A/8 of the petition.

7. In Part-III of Form 1, the Petitioner has proposed Mr. R.K. Jain, bearing Registration No. IBBI/IPA-001/IP-P00543/2017-18/10968 as Interim Resolution Professional. The consent of Mr. R.K. Jain (proposed Interim Resolution Professional) is furnished in Form 2 and the same is placed at Annexure A/5 of aforesaid application. It has been stated in Form 2 that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professional of ICAI. It is further stated that he is acting as IRP, RP and Liquidator in four other matters.

8. A short reply has been filed by the corporate debtor in which it is submitted that the company is not in a financial position to pay dues to any of its creditors as it is facing huge losses. Since the company is unable to pay its outstanding debts, the present petition can be accepted in the interest of all the stakeholders.

9. We have heard the learned counsel for the petitioner as well as corporate debtor and have also perused the records.

10. Section 7(5)(a) of the Code is as follows:-

“5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”

11. In the present case, the occurrence of default is evidenced by the copy of sanction letter dated 05.08.2009 and 25.08.2015 wherein the credit facilities were sanctioned to the corporate debtor on certain terms and conditions as imposed by the petitioner. The account of the corporate debtor was classified

as NPA on 30.06.2017 and the Petitioner has issued a demand notice dated 24.09.2018 under Section 13(2) of SARFAESI Act, 2002 which is attached as Annexure A/11 of the petition. The copy of CIBIL and CICS report is attached as Annexure A/10 of the petition. The Petitioner has also approached Debt Recovery Tribunal for the recovery of ₹16,68,88,936.38 along with pendente lite and future interest and the same is pending for adjudication. The copy of the application filed in DRT-II is attached as Annexure A/9 of the petition.

12. The other issue for consideration is whether present application is filed within limitation. The Petitioner has classified the account of the corporate debtor as NPA on 30.06.2017. However, in view of Judgement given by Hon'ble Supreme Court in **Civil Appeal No. 2734 Of 2020 Laxmi Pat Surana Versus Union Bank Of India & Anr.** It has been held that

“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. However, Section 7 comes into play when the corporate debtor commits “default”. Section 7, consciously uses the expression “default” — not the date of notifying the loan account of the corporate person as NPA. Further, the expression “default” has been defined in Section 3(12) to mean non-payment of “debt” when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be.”

13. Keeping the view taken by Hon'ble Supreme court in aforesaid mentioned case, the date of default shall be the date on which whole or any part or instalment of the amount of debt has become due and payable. In the present case, it is mentioned by the Petitioner that the corporate debtor has defaulted for the instalment of term loan on 01.04.2017. Further, it is settled proposition of law that as per Article 137 of the Limitation Act, the right to initiate action is three years from the date of default. Thus, its period of limitation of three years expired on 01.04.2020. However, the present application is filed on 26.07.2021. It is pertinent to mention that in view of orders of Hon'ble Supreme Court in **MA No.**

665 Of 2021 In Smw(C) No. 3 Of 2020 In Re: Cognizance For Extension Of Limitation, the period from 15.03.2020 till 02.10.2021 shall stand excluded in the computation of period of limitation for any suit, appeal, application or proceeding. Even if the date of default is taken as 01.04.2017, and considering the orders of Hon'ble Supreme Court, the present petition falls within limitation. Moreover, the application filed in the prescribed Form No.1 is found to be complete.

14. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- “(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 assets 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;

- (d) 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) It is further directed that 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.
- (f) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- (g) The order of moratorium shall have effect from the date of this order till 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 the corporate debtor under Section 33 as the case may be.”

15. The Law Research Associate of this Tribunal has checked the credentials of Mr. R.K. Jain and there is nothing adverse against him. In view of the above, we appoint Mr. R.K. Jain, Registration No. IBBI/IPA-001/IP-P00543/2017-18/10968, r/o House No.3698/1, First Floor, Sector 46-C, Chandigarh, Email: amicusthe@gmail.com, Mobile No.9915598862 as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, especially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

16. The Petitioner is directed to deposit an amount of ₹2,00,000/- (Rupees Two Lakhs) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the Petitioner to be recovered as the CIRP cost.

17. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

18. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/- 21.12.21
(Subrata Kumar Dash)
Member (Technical)

Sd/- 21.12.21
(Harnam Singh Thakur)
Member (Judicial)

December 21, 2021
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