

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

CP. No. 1061/I&BP/2017

In the matter of

Union Bank of India
Union Bank Bhavan
239, Vidhan Bhavan Marg,
Nariman Point, Mumbai – 400 021.
.... Petitioner/Applicant

Vs.

Guruashish Construction Pvt. Ltd.
Ground Floor, Siddharth nagar No. 1
Opp. Siddharth Nagar P.O.
Goregaon (W), Mumbai – 400 104
.... Respondent

Order delivered on: 24.07.2017

Coram:

Hon'ble Mr. B.S.V. Prakash Kumar, Member (J)
Hon'ble Mr. V. Nallasenapathy, Member (T)

For the Petitioner: 1. Mr. Nirman Sharma, Adv.
2. Ms. Ishita Advani, Adv. – i/b Desai & Diwanji

For the Respondent: 1. Mr. Arif Bookwala, Adv.
2. Mr. Piyush Raheja, Adv.
3. Mr. Sahil Gandhi, Adv. – i/b M/s. Markand Gandhi & Co.

ORDER

Per V. Nallasenapathy, Member (T)

1. Union Bank of India (hereinafter called 'UBI') has sought the Corporate Insolvency Resolution Process of Guruashish Construction Pvt. Ltd. (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default on 30.09.2014 in repayment of Rs. 254,53,85,278/- (INR Two Hundred Fifty Four Crores Fifty Three Lakhs Eighty Five Thousands Two Hundred and Seventy Eight only), 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.

2. UBI in its Petition stated that it had sanctioned a Term Loan facility to the Corporate Debtor for Rs. 200 crores under General Term Loan Agreement dated 25.03.2011 which was amended vide Supplementary Term Loan Agreement dated 30.08.2011. UBI has enclosed a copy of the Resolution of the Board of Corporate Debtor wherein it was resolved to borrow a sum of Rs. 200 crores from UBI, as per sanction letter No.: BHR:HR:1111:10 dated 11.11.2010 and the Company also authorised its Directors Mr. Rakesh Kumar Wadhawan and Mr. Waryam Singh to finalise the terms and conditions of the bank. UBI has also enclosed a letter dated 11.11.2010 sanctioning the term loan of Rs. 200/- Crores.

3. The following documents were enclosed by UBI :

- a) Term loan agreement (Hypothecation of movables) dated 13.05.2011 for Rs. 200/- Crores.
- b) Simple Mortgage deed dated 20.12.2010 executed by M/s. Privilege Power and infrastructure Pvt. Ltd. (Mortgagor) in favour of UBI as a security for the term loan of Rs. 200/- Crores sanctioned to the Corporate Debtor.
- c) Supplementary Mortgage Deed dated 27.04.2011, executed by M/s. Privilege Power and infrastructure Pvt. Ltd. (Mortgagor) in favour of UBI as a security for the term loan of Rs. 200/- Crores sanctioned to the Corporate Debtor.
- d) Escrow account agreement dated 19.05.2011 wherein the Corporate debtor agreed to deposit all the receivables in the Escrow account.
- e) Copies of certificate of Registration of Charge created by M/s. Privilege Power and Infrastructure Pvt. Ltd. in favour of UBI.
- f) General term loan agreement dated 25.03.2011 for Rs. 200/- Crores loan, repayable in 20 quarterly instalments of Rs. 10/- Crores each payable over a period of five years excluding the moratorium period of two years.
- g) Copy of CRILC report.

- h) Certificate under section 2 A(a) of the Bankers Books of Evidence Act. 1891.
- i) Certificate under the Information Technology Act, 2000.
- j) Demand promissory note dated 25.03.2011 executed by the Corporate debtor for Rs. 200/- Crores.
- k) Letter of guarantees dated 24.11.2011 executed by M/s. Privilege Power and Infrastructure Pvt. Ltd., Mr. Sarang R. Wadhawan, Mr. Rakesh Kumar Wadhawan and Housing Development and Infrastructure Ltd. in favour of UBI for Rs. 200 crores each.

4. The UBI has enclosed confirmation of balance by the Corporate Debtor on 16.02.2017 which shows that a sum of Rs. 140,68,39,089/- is due as on 31.12.2016 excluding interest from 25.12.2014.

5. UBI has sent a letter dated 02.01.2015 to the Chairman and the Managing Director of the Corporate Debtor informing that the term loan account was classified as non-performing asset as on 31.12.2014 and there is an outstanding balance of Rs. 219,30,87,004/- out of which a sum of Rs. 36/- Crores is overdue. UBI has sent another letter on 23.01.2015 informing the corporate Debtor that they will be constrained to recall the entire loan amount if the over dues are not cleared within seven days. Further UBI has issued a notice dated 27.01.2015 under Section 13(2) of the SARFAESI Act, 2002 demanding a sum of Rs. 219,30,87,004/-. The Corporate Debtor by a letter dated 19.09.2016 requested the UBI not to take any legal action for the recovery of dues since the Corporate Debtor is in the process of selling of its assets, the proceeds of which will be utilized for repaying the dues to UBI. Since no payment was made within 60 days of SARFAESI notice, UBI issued notice on 22.02.2017 for taking possession of the assets of the Corporate Debtor. The letter of the UBI dated 06.04.2017 reveals that the Corporate Debtor tried for one-time settlement of the dues for Rs. 250 crores, which was declined by the UBI.

6. This Adjudicating Authority, on perusal of the documents filed by the Creditor, it is evident that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to

act as Interim Resolution Professional, having this Bench noticed that default has occurred and there is no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of section 7 is taken as complete, accordingly this Bench hereby admits this Application declaring Moratorium with the directions as mentioned below:

- a. 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 Securitisation 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.
- b. 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.
- c. 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.
- d. That the order of moratorium shall have effect from 24.07.2017 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.

- e. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- f. That this Bench hereby appoints, Mr. C.A. Rajendra K. Bhuta, 1207, Yogi Paradise, Yogi Nagar, Borivali West, Mumbai – 400 092, Ph.: 9820026893, e-mail:rkbhuta@gmail.com, Reg. No.: IBBI/IPA-IP/00078/2016-2017/1074, as interim resolution professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.
10. Accordingly, this Petition is admitted.
11. The Registry is hereby directed to communicate a copy of this order to both parties.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B. S.V. PRAKASHKUMAR
Member (Judicial)