

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

BENCH-III

IB-138(ND)/2020

**U/Sec. 10 of the IBC, 2016 and Rule 7 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rules, 2016.**

IN THE MATTER OF

M/s NARMADA CEREALS PVT LTD

Shop No.14, A Pock DDA Market

Sarita Vihar

New Delhi-110076

.... CORPORATE APPLICANT

VS.

1. ORIENTAL BANK OF COMMERCE

Pragati Bhawan, Indira Press Complex

M.P. Nagar, Zone-I, Bhopal-462011 (M.P.)

(Now Known as Punjab National Bank)

2. PUNAJAB NATIONAL BANK

New Market,

Bhopal-462003

.... FINANCIAL CREDITOR

Order delivered on 7th Dec. 2020.

CORAM:

**CH. MOHD SHARIEF TARIQ, HON'BLE MEMBER (JUDICIAL)
SHRI NARENDER KUMAR BHOLA, HON'BLE MEMBER (TECHNICAL)**

Appearances

For Corporate Applicant: Mr. Rajesh Bohra (Advocate)
For Financial Creditor: Mr. Ankit Raj & Piyush Beriwal
(Advocates)

ORDER

Per: Narender Kumar Bhola, Member (Technical)

1. This is an application filed under section 10 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the AAA Rules') for initiation of Corporate Insolvency process in respect of M/s Narmada Cereal Pvt. Ltd., the Corporate Debtor being the Corporate Applicant itself.
2. The Applicant M/s Narmada Cereal Pvt. Ltd. has averred that the company got itself incorporated on 28.03.2007 and engaged in processing of Basmati Rice. In order to set up rice mill, the Corporate Debtor approached to the Oriental Bank of Commerce (OBC) and OBC granted term loan for Rs. 350 lacs in 2007-08 and also granted cash credit (CC) facility for Rs. 500 lacs. In 2008-09, the Corporate Debtor

had taken fresh term loan of Rs. 400 lacs and Packing credit of Rs. 800 lacs interchangeable to CC, FDBP Rs. 200 Lacs and repaid Term Loan installments. In 2009-10 the Corporate Debtor availed WHR Loan from ICICI Bank, Bank of India (BOI), IndusInd Bank and Punjab National Bank (PNB).

3. It is submitted that in 2010-11, upon request of the Corporate Debtor, CC limit enhanced to Rs. 1400 lacs and the Corporate Debtor took further fresh term loan for Rs. 400 lacs and maintained all bankers accounts regularly. The CC limits further enhanced to Rs. 1900 lacs in 2012-13. In 2013-14, CC limit enhanced to Rs. 5000 lacs and the Corporate Debtor taken WHR loan from Axis Bank and closed the limits with ICICI Bank and IndusInd Bank. During the year 2014-15, the Corporate Debtor was sanctioned term loan for Rs. 1000 lacs and the Corporate Debtor repaid the entire term loan 1 and in 2015-16 repaid entire term loan 2 and availed WHR limit from IDBI Bank.

4. It was further submitted that in 2017-18, the Corporate Debtor had repaid term loan installments and closed WHR limit of Axis Bank. The Corporate Debtor further enhanced CC Limit to Rs. 5580 lacs and repaid the entire term loan 3 and closed WHR limit with Bank of India. During 2017-18, the Corporate Debtor closed WHR limit with IDBI Bank

and also repaid corporate loan installment amounting to Rs. 294 lacs. But due to non-payment, the Corporate Debtor's Account was declared as NPA in October, 2018, which was further regularized by the Corporate Debtor. Second time, in February, 2019, due to non-payment, its account was declared NPA, which was regularized by the Corporate Debtor but could not be maintained as per standard due to acute financial crunch, the Corporate Debtor cannot make the installments in time and as a result of which, its account was declared NPA in April, 2019 and subsequently, the bankers-initiated action under SARFAESI Act, 2002. Therefore, it is a matter of fact that the Corporate Debtor is in default of dues of financial creditors as well as some of the operational creditors.

5. The Corporate Debtor has referred to the minutes of the Extraordinary General Meeting dated 06.12.2019, wherein the members of the Corporate Debtor *inter alia* had resolved by way of Special Resolution in the said meeting to the following effect: -

RESOLVED THAT by special resolution, the members have approved for filing of application under Section 10 of the Insolvency and Bankruptcy Code, 2016 and under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules 2016 as a Corporate Debtor in view of default for payment to financial creditors and others and for the purpose, the Board is hereby authorized

to take all steps for the filing and all necessary documents and Mr. Arun Mittal, Director is authorized to prepare, sign and file the Application before the National Company Law Tribunal (NCLT) New Delhi for initiating the corporate insolvency resolution process under section 10 of Insolvency and Bankruptcy Code, 2016 in Form 6.

In addition, the Applicant company has also enclosed the extracts of the meeting of Board of Directors dated 11.12.2019 in support of the authorization for pursuing the present application.

REPLY BY RESPONDENTS

6. The Respondents being the financial creditor were given opportunity to file their observations, if any, to the initiation of Corporate Insolvency Resolution Process in relation to the Corporate Debtor. In their reply it is submitted that Respondent no. 1 (Oriental Bank of Commerce) has been amalgamated into the Punjab National Bank on 01.04.2020 pursuant to the Gazette Notification date 04.03.2020 issued by the Ministry of Finance in exercise of the powers conferred by Section 9 of the Banking Companies Acquisition and Transfer of Undertakings Act vide Gazette ID CG-DL-E-04032030-216535. Therefore, the Respondent no. 1 (erstwhile Oriental Bank of Commerce referred as e-OBC) and Respondent no. 2 (Punjab National Bank referred as PNB) are hereinafter referred as Respondent(s). It is further submitted that a

recovery suit is filed before Debt Recovery Tribunal, Jabalpur on 24.01.2020 by the Respondent No.1 for Rs. 64,76,85,336.30/- (approx. Rs. 64.77 crores).

7. It is submitted that the account of the corporate debtor was running irregular/SMA Asset since October, 2018 as well as in February, 2019, which was regularized on the assurance of the CD by the Respondent (erstwhile OBC). However, the CD failed to maintain satisfactory accounts and did not adhere to the financial discipline. It is submitted that the loan accounts of the CD were classified by the Respondent Bank (erstwhile OBC) as Non-Performing Assets with effect from 30.04.2019. Thereafter, the Authorized Officer of the Respondent Bank (erstwhile OBC) issued notice under Section 13(2) of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) on 03.05.2019. Despite service of the notice [under Section 13(2) of the SARFAESI Act] dated 03.05.2019, the CD failed to liquidate the dues as demanded by the Respondent Bank (erstwhile OBC) within the statutory period. Accordingly, the Respondent Bank (erstwhile OBC) initiated the proceedings under Section 13(4) of the SARFAESI Act. In addition to the aforesaid, the Respondent Bank (erstwhile OBC) also issued a Recall Notice dated

02.01.2020 to the CD thereby asking them to repay the outstanding dues as stipulated therein.

8. It is averred that the Corporate Applicant is declared as non-cooperative borrower and an Original Application No. 101 of 2020 under Section 19 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, was filed before the Hon'ble Debt Recovery Tribunal, Jabalpur on 24.01.2020 and symbolic possession of the mortgaged properties have been undertaken by the Respondent (erstwhile OBC). It is further averred that the provisions of the Code are being misused by the CD/Applicant herein with the intention to defraud/ delay the stakeholders, especially in the light of the Recovery Proceeding instituted against the CD, in accordance with the law, which has reached a very advanced stage.

9. It was submitted that Forensic Audit of the CD was conducted on behalf of the Respondent (erstwhile OBC) whose report was submitted on 08.02.2020, wherein it has been categorically stated as under:

"While analyzing the banking transaction with OBC since 2007 till 2019, we observed that in the initial period itself the sanctioned amount has been transferred to Related/Associate concerns in which only family members are stakeholders."

10. It is also stated that the report further suggests that the intention of the CD has been to defraud the financial creditors. It is also submitted that the CD has done transactions with the related parties; however, the same was never disclosed as a Related Party Disclosures in the financial audits. The **conclusion of the Forensic Audit Report** as follows:

“As mentioned in this report, the borrower has not co-operated for the assignment allotted by the bank. Although, the surprise visit conducted at Plot No. D2 & 3, Industrial Area Phase-II, Mandideep 462046 with the Branch Officials whereby the borrower had promised to provide all the details / documents / records and access to Accounting data but nothing has been provided till the conclusion of this report.

Based on the available details we conclude that:

a. During initial period (2007 onwards), the funds were moved out of the concern and most of the transferred happened to related concern only. In the absence of relevant data, nexus for movement of goods cannot be established between these related concerns. For e.g. Transactions of huge amounts were done with

Ishita Buildcon Pvt Ltd, AB Wave Construction Pvt Ltd, Aarohi Infocom, Ashok Anand etc.

b. Further, we need to mention that there were both inward as well as outward transactions with such concerns. However, the nexus cannot be established in the absence of books of accounts/Accounting data for such transactions.

c. Similar observations with respect to transactions with Associate Concerns were also mentioned in the Forensic Report conducted in 2015 (for NSEL trans-actions / defaults by PD Agro Processor Pvt. Ltd).

d. The borrower has not routed the entire business turnover through OBC. The details are mentioned elsewhere in this report.

e. The Stock Movement records & Stock Registers were not available at the Factory/Plant

f During our visit, we observed that the Sorting/Packing/ Repacking of the stock was carried within the factory. However, there were no corresponding entries at Gate or any.

g. Register maintained (not shown to us) within the factory premises. Based on the mentioned observations elsewhere in the report & the available records, we conclude that the intention & the

transactions carried out in the accounts may not be genuine. We cannot comment on the same in the absence of corresponding accounting entries in the books of accounts.

h. Based on the mentioned observations elsewhere in the report & the available records, the financial analysis of the available banking transactions and also the Non-Co-operation from the borrower, we conclude that the intention of borrower is to defraud the financial creditors.

i. Based on the above discussions & definition, the default of the borrower can be categorized under the above-mentioned category – WILFUL DEFAULTERS AND NON-COOPERATIVE BORROWERS – as the source of income is not routed through the bank (as agreed) and the source of income/revenue & the cash flow statement is not shared with the bank with the mala fide intentions.

11. It is submitted that proceedings are initiated by the Corporate Applicant with fraudulent or malicious intent for any purpose other than the purpose for resolution of insolvency. Therefore, the application under consideration instituted by the Applicant under Section 10 of the code is liable to be dismissed being solely motivated to defraud the

financial creditors and to thwart the recovery proceedings. It is prayed that appropriate directions under section 65(1) of the code may be issued.

REJOINDER TO REPLY

12. It is averred in the rejoinder that one of the objections and grievances of the Answering Respondent in their submissions is that the Corporate Applicant has filed the Application to defeat the SARFAESI action initiated by the Answering Respondent and DRT proceedings, the Corporate Applicant has come to this Hon'ble Authority for this purpose. In this regard, it is a settled law by various judgments of the Hon'ble NCLAT that the NCLT is to see that once the application is complete, it should be admitted. The NCLT should not look into the fact as far as admission of the case is concerned that the same has been filed despite case is pending under DRT/SARFAESI action. Regardless to the above fact, if the Application is complete, it should be admitted.
13. The Applicant has made a reference to the order dated 08.05.2017 passed in **M/s Unigreen Global Pvt. Ltd., under CP No. IB-39(PB)/2017**, by which Section 10 Application was dismissed by the Principal Bench, NCLT, New Delhi on similar grounds, against which an

Appeal No. 81 of 2017 was filed before Hon'ble NCLAT and it was allowed. The Hon'ble NCLAT while allowing Appeal has observed *Section 10 does not empower the Adjudicating Authority to go beyond the records as prescribed under Section 10 and the information as required to be submitted in form 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 subject to ineligibility prescribed under section 11. If all informations are provided by an applicant as required under Section 10 and Form 6 and if the Corporate Applicant is otherwise not ineligible under Section 11, the Adjudicating Authority is bound to admit the application and cannot reject the application on any other ground.*

Observation of this Authority:

14. The Applicant has filed the copy of audited balance sheet for the financial year 2017-18 and 2018-19 along with provisional Financial Statement for the current financial year (2019-20) made up to date not earlier than Fourteen days from the date of the application i.e., till 19th December, 2019. The Applicant has disclosed details of the financial creditor and operational creditors. In short, the material documents as required to be enclosed with Form 6 in addition to the material

particulars which are to be disclosed as contained in the prescribed format in Form 6 and towards Closer reading of Form 6 of 'AAA Rules' shows that in Part I of the said form the Applicant is required to give its own details while in Part II of the said application an onus is placed on the Applicant under section 10 of IBC, 2016 to name an Interim Resolution Professional (IRP). Further in Part III of the prescribed form details, of the Creditors both Financial and Operational along with their address, security held by the Creditors as well as record of default and documents to establish the existence of debt, have to be made available

15. Thus, keeping in view the Application and the documents submitted, it is *prima facie* evident from the Balance Sheets as well as from other details attached with the application under consideration and notice issued by OBC (now Punjab National Bank) there is a clear 'default' in relation to the payment of amount due and owed by the Corporate Debtor. The petitioner satisfies all the statutory requirements. We are satisfied that the present application is complete and the Applicant Corporate Debtor is in default in relation to its Creditors as admitted by it as well as vouched by its Financial Creditors. Therefore, we admit the application. The Corporate Insolvency Process shall commence from the date of this order under sub-section 5 of Section 10 IBC, 2016.

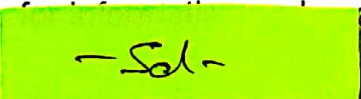
16. A moratorium in terms of section 14 of IBC, 2016 is declared forthwith prohibiting all of the following namely: -

- 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.

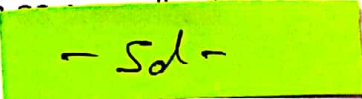
17. The order of moratorium shall have effect from the date of this order till the completion of the Corporate insolvency resolution process as per sub-section (4) of section 14 of IBC, 2016.

18. The Applicant has proposed the name of Mr. Arun Chadha, Insolvency Professional having registration no. IBBI/IPA-001/IP-P00165/2017-18/10334, for appointment as Interim Resolution Professional. Mr. Arun Chadha in his letter 18.12.2019 in Form 2 has given consent for the proposed appointment as an Interim Resolution Professional in the present matter. He has also certified that there is no disciplinary proceeding pending against him.
19. The IRP viz., Mr. Arun Chadha shall take necessary steps as envisaged under section 15, 17 and 18 of IBC, 2016 and make public announcement as prescribed with three days on receiving the copy of this order. Thereafter the IRP shall convene the first meeting of the COC and submit his report within the given period. In terms of section 17 of IBC, 2016, the Board of the Corporate Debtor stands suspended. But all Official of the Corporate Applicant shall co-operate with IRP/RP.
20. A copy of this order shall be sent by the Applicant to the Interim Resolution Professional and Registrar of Companies, Delhi & Haryana

necessary action as

 -Sd-

(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

 -Sd-

(CH. MOHD SHARIEF TARIQ)
MEMBER (JUDICIAL)