

**IN THE NATIONAL COMPANY LAW TRIBUNAL
 “CHANDIGARH BENCH, CHANDIGARH”
 (Exercising the powers of Adjudicating Authority
 under the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 128/Chd/HP/2018
 With
 CA No.380 of 2018**

**Under Section 10 of the
 Insolvency and Bankruptcy
 Code, 2016.**

In the matter of:

M/s Shaveta Golden Foods Private Limited
 HNo.31 MIG HB Colony, Rakkar Road, Una,
 District Una, Himachal Pradesh-174303

.... Petitioner-Corporate Applicant

Judgement delivered on: 13.09.2018

**Coram: Hon’ble Mr. Justice R.P.Nagrath, Member(Judicial)
 Hon’ble Mr. Pradeep R. Sethi, Member(Technical)**

For Petitioner-
 Corporate Applicant:

1. Mr. Ashok Malik, Advocate
2. Mr. Nitin Kant Setia, Advocate

For State Bank of India,
 the Financial Creditor

1. Mr. Rakesh Gupta, Advocate
2. Mr. Puneet Jain, Advocate

Per: R.P. Nagrath, Member(Judicial)

JUDGEMENT (Oral)

This petition has been filed by M/s Shaveta Golden Foods Private Limited (SGFPL) i.e. Corporate Applicant in Form 6 as prescribed under sub rule (1) of Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 (for brevity the ‘Rules’) for initiating Corporate Insolvency Resolution Process under section 10 of Insolvency & Bankruptcy Code, 2016 (for short to be referred hereinafter as the ‘Code’). The ‘Corporate Debtor’ falls within the

definition of the term 'Corporate Applicant' as defined in sub-section (5) of Section 5 of the Code.

2. The Corporate Applicant was incorporated on 11.11.2013 having been allotted CIN U15400HP2013PTC000565 and its registered office is at Una, in the State of Himachal Pradesh and therefore, the matter falls within the territorial jurisdiction of this Tribunal. The Memorandum and Articles of Association are at Annexure VII (page 171-182) and the master data is at page 194 of the paper book.

3. The authorised share capital of the Corporate Applicant is ₹10,00,00,000 (Rupees Ten Crore only) and issued subscribed and paidup capital of ₹ 200,00,000 (Rupees Two Crore only).

4. The Petition has been filed by the corporate applicant through Mr. Tushar Sharma, its Director who has been authorised to file this petition and to do all the acts necessary for the progress of the case under section 10 of the code, vide Board resolution dated 12-04-2018 as at page 196 of the paper book. The contents of the application are supported by the affidavit of Mr. Tushar Sharma which is from pages 183-A to 192 of the paper book.

5. As per Memorandum of Association of the corporate applicant (Annexure VII) the main objects of the corporate applicant are to carry on the business of mushroom growing, agro processing, to produce, mix, pack, preserve, freeze, extract, refine, manufacture, import, export, buy, sell, trade and deal in processed foods, health foods, protein foods, food products, agro foods, fast foods, packed foods, poultry products, sea foods, milk foods, health and diet drinks, extruded foods, frozen foods, dehydrated foods, precooked foods, canned foods, preserved foods, bakery products and confectionery items such as breads,

biscuits, sweets, cakes, pastries, cookies, wafers, condoles, lemon drops, chocolate, toffees, tinned fruits, chewing gum, bubble gum, tea and coffee, vegetables, fruits, jams, jelly, pickles, squashes, sausages, nutrient, health and diet foods/drinks, extruded foods, confectionery items, sweets, cereals products and any other food products in and outside India etc.

6. It is stated that the Corporate Applicant was advanced various financial facilities by State Bank of India, the only financial creditor. In amended form No.6 filed by diary No.3094 dated 21.08.2018 the complete particulars including address of the financial and operational creditors have been given. It is further stated that due to adverse climatic conditions and natural calamities the erecting of plant got delayed. The demonetisation also had severe impact on the business of the Corporate Applicant, as the supply line which consisted of farmers and unorganised mandis got chocked and remained out of business for over six months. The deficit monsoon had further impacted on increasing the input cost of material.

7. The financial status of Corporate Applicant in respect of the financial creditor is narrated as below:-

SBI SME Branch Mehatpur Main Bazar Mehatpur Distt. Una HP

Sr. No.	Nature and Description of Credit Facility	Sanctioned Amount	Balance Outstanding as on 21.02.2018
1	Cash Credit Loan	2,25,00,000	2,29,66,311
2	Adhoc Cash Credit	1,65,00,000	1,60,72,758
3	Term Loan	2,50,00,000	2,11,43,814
Total			6,01,82,883

8. The Corporate Applicant has also given the details of property against which the claim against the petitioner are secured. The list is at Annexure VI(B). For cash credit limit the petitioner has executed Hypothecation deed and registered mortgage deed dated 18.08.2015/20.09.2015. Immovable property measuring 01-38-4 hectares has been kept as collateral security. Similar details are given in respect of Term Loan in Annexure VI (B). The petitioner has also provided the particulars of the debt owed to/or by connected persons (Annexure VI-D) and the details of Guarantees (Annexure VI-E).

9. Apart from the financial creditor the corporate applicant has also furnished the details of operational debt. The list of vendors/suppliers along with their addresses is at Annexure-VI(C) and the total amount in default for this category of operational creditors is ₹3,89,00,000.00/-. As per amended Form No.6 it is disclosed that the petitioner-corporate applicant is also in default towards payment of employees due at ₹3,89,746/-, statutory dues as ₹5,275/- (TDS). The total amount of default towards operational creditors including dues towards employees and statutory dues is ₹3,92,95,021/-. This is reflected in the ledger books of the Corporate applicant copy of which is filed as Annexure A/1 with the Affidavit dated 24.07.2018.

10. When the matter was listed on 23.05.2018, it was contended on behalf of the petitioner-corporate applicant that as per the statement of affairs of the Company till 10.05.2018 Annexure VI(A), the total of equity and liabilities was tallying with the total of the assets. The petitioner was directed to furnish the total thereof within a week. The petitioner-corporate applicant filed an affidavit of Mr. Tushar Sharma the authorised signatory by diary no.1835 dated 28.05.2018 by attaching the statement of affairs containing the clubbing as per directions of this

Tribunal with separate totals of assets and liability/equity as at Annexure-XI with this affidavit.

11. Vide order dated 23.05.2018, it was also observed that the Corporate Applicant has not furnished some of the addresses of operational creditors, which is requirement as per column 2 of Part-III of the Application Form No.6. Notice of this defect was also given to the petitioner and the defect was directed to be removed within seven days. Along with the affidavit filed by diary no.1835 dated 28.05.2018 as referred to above, the petitioner filed the list of creditors with latest/complete addresses as at Annexure-XII.

12. At the same time notice of this petition was directed to be issued to the financial creditor. Mr. Rakesh Gupta, Advocate filed the Power of Attorney on behalf of State Bank of India, being the only Financial Creditor.

13. When the matter was listed on 13.07.2018, certain more defects were noticed and the following order was passed:

“Having heard the learned counsel for the petitioner, we find that the petitioner has not filed copies of the invoices in respect of the operational creditors as per Annexure II to Instructions in Form 6 as prescribed under the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016. There is also no indication as to whether there are any statutory/Government dues or employees dues as they also fall within the definition of term ‘Operational Creditors’. Notice of this defect to the petitioner and learned counsel for the petitioner accepts notice. Let the defect be removed and documents be also filed along with supporting affidavit including complete details of Government/statutory dues or employees dues at least 7 days before the date fixed.

List the matter for arguments on 03.08.2018.”

14. In Compliance with the above order, the petitioner filed affidavit dated 24.07.2018 of Mr. Tushar Sharma, Director stating therein that the State Bank of India had initially sealed the unit on 11.07.2018 under the orders of the District Magistrate, Una and the promoters/directors/employees were prohibited from entering the factory-cum-office premises of the Corporate Applicant from 11.07.2018 and hence, had no access to the records and the Invoices are not in possession of the Corporate Applicant. For reasons stated above order dated 13.07.2018 could not be complied with. It was also stated that the police guards were replaced with private security agencies deputed by SBI on 18.07.2018 when physical possession of the unit was taken over by State Bank of India. Copy of list of operational creditors amounting to ₹38,900,000.00 along with their addresses and ledger copies were filed with the affidavit. It is also stated that an amount of ₹3,89,746.00 is due towards an employee and Statutory dues of ₹5275 (Tax Deducted at Source) is due towards Government Authorities.

15. When the matter was listed on 03.08.2018, it was observed that without the additional information/documents (which were brought on record on the defects being pointed out), being entered in Form No.6, the application filed under Section 10 of the Code would be incomplete. The petitioner-corporate applicant was again directed to remove the defects within seven days by filing the amended Form No.6 along with the amended index.

16. The petitioner filed CA No.323/2018 for condoning the delay in complying with the orders dated 13.07.2018 and 03.08.2018 and CA No.318/2018 for placing on record amended Index and Amended Form 6. The application was allowed and the Amended Form No.6 with amended Index were taken on record.

17. We have heard the learned counsel for the corporate applicant/debtor, learned counsel for the financial creditor and perused the records.

18. Sub-section (4) of Section 10 of the Code says that the Adjudicating Authority by an order –

- “(a) admit the application if it is complete (and no disciplinary proceeding is pending against the proposed resolution professional); or*
- (b) reject the application, if it is incomplete (or any disciplinary proceeding is pending against the proposed resolution professional).*

Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.”

19. The defects in applications as pointed out on various dates stand removed as already discussed. So we hold the application to be complete in all respects.

20. Sub-Section (3) of Section 10 of the Code reads as under:-

“The corporate applicant shall, along with the application furnish —

- (a) the information relating to its books of account and such other documents for such period as may be specified;*
- (b) the information relating to the resolution professional proposed to be appointed as an interim resolution professional; and*
- (c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.”*

21. In order to comply with the requirement of clause (a) of Section 10(3) of the Code the petitioner has placed on record all the necessary documents to prove the existence of financial/operational debt and the amount as required in column 3 of Part-III of the Application Form. Copy of demand notice issued by the Financial Creditor i.e. SBI u/s 13(2) and 13(4) of the SARFAESI Act, 2002 are at Annexure I(C) and I(D) respectively. The details of the operational debt in default have also been provided. The petitioner has also filed its audited financial statements for the years 2016-17 and 2017-18 as at Annexure V (colly) and the provisional financial statements upto 10.05.2018 which is part of Annexure V (colly). As per instruction Annexure V attached to prescribed Form No.6, the provisional financial statements upto a date not later than 14 days from the date of the application are required to be filed. The instant petition was filed on 18.05.2018 and the provisional statements upto 10.05.2018 fulfils the requirements of the rule.

22. Under Clause (b) of Section 10(3)(b) the corporate applicant is bound to propose the name of Registered Resolution Professional proposed to be appointed as Interim Resolution Professional. We have perused the written communication in Form No.2 Annexure-III furnished by Mr. Arvind Kumar a registered Resolution Professional with IBBI. This Form contains all the particulars provided in the Form. He has furnished his written consent and stated that presently he is not serving as such in any proceedings under the Code so far. He has also certified that no disciplinary proceedings are pending against him with the IBBI or the Indian Institute of Insolvency Professionals of ICAI of which he is a member. His Registration number is IBBI/IPA-001/IP-P00178/2017-18/10357. We

find that written consent furnished by the proposed Interim Resolution Professional is in order.

23. It is now to be seen whether the petitioner has also complied with Section 10(3)(c) of the Code. It was also held by Hon'ble National Company Law Appellate Tribunal, New Delhi in **Horseshoe Entertainment & Hospitality Private Limited, Company Appeal (AT (Insolvency) No.214 of 2017)** decided on 19.07.2018 by relying upon "*Gaja Trustee Company Pvt. Ltd. & Ors. Vs. Haldia Coke and Chemicals Pvt. Ltd. & ors. – Company Appeal (AT) (Insolvency) No.137 of 2017*" that the Board of Directors is required to place the matter before the shareholders and creditors and to take its approval for filing application under Section 10 of the I&B Code, 2016.

24. When the matter was listed on 29.08.2018 the following order was passed:-

"Having heard the learned counsel for the petitioner, we find that the petitioner has not attached copy of the resolution of Extraordinary General Meeting (EOGM) deciding to initiate the proceedings under Section 10 of the Insolvency and Bankruptcy Code, 2016. The learned counsel submits that the resolution was passed in April, 2018 but the same was not made part of the record, though the notice of the EOGM along with the requisite documents were placed on record.

List the matter on 13.09.2018. The resolution of the EOGM along with supporting affidavit be filed at least seven days before the date fixed with copy advance to the counsel opposite...."

25. The petitioner has filed copy of the special resolution dated 07.04.2018 passed in the Extra Ordinary General Meeting of shareholders of the Corporate Applicant resolving to initiate the Corporate Insolvency Resolution Process under Section 10 of the Code. This resolution was filed by way of

Company application CA No.380 filed by diary no.3348 dated 06.09.2018. It is noted in the resolution that there has arisen the financial crisis in the Company as Restructuring proposal of the company has been declined by the lenders.

26. It is pertinent to mention that in column No.8 of Part-II of the Application Form, the petitioner had already relied upon the documents relating to holding of Extra-ordinary General Meeting on 07.04.2018 (Annexure VII). However, the document Annexure VII on record was Notice of EOGM proposed for 07.04.2018 as at page 181 of the paper book along with the Explanatory Statement pursuant to the provision of Section 102 of the Companies Act, 2013 as at page 183 of the paper book but the resolution of EOGM was not attached. In fact Mr. Tushar Sharma in his affidavit dated 17.05.2018 (pages 184 to 192 of the paper book) made a categorical statement in Para No.3 that he has been authorized by resolution passed in the EOGM held on 07.04.2018. With the filing of the resolution of EOGM dated 07.04.2018, the requirement of Section 10(3)(c) of the Code also stand complied.

27. Coming to the financial condition of the corporate applicant it is represented by the learned counsel for the corporate applicant that as per the financial statements filed on record, following is the status of the corporate applicant under different heads:-

I. Revenue from Operations:

Period	Revenue from Operations
10.05.2018	10,144,337
31.03.2018	47,306,202
31.03.2017	136,286,808
31.03.2016	0

II. Accumulated Profit/Loss of the Corporate Debtor:

Period	Accumulated Profit/(loss) of the Corporate Applicant
10.05.2018	-48,172,071
31.03.2018	-48,137,358
31.03.2017	5,067,035
31.03.2016	0

III. Long Term borrowing & other Liabilities:

Period	Long Term borrowing & other liabilities
10.05.2018	20,959,096
31.03.2018	20,983,878
31.03.2017	25,768,913
31.03.2016	25,511,008

IV. Current Liabilities:

Period	Current Liabilities
10.05.2018	78,198,483
31.03.2018	78,244,536
31.03.2017	51,828,263
31.03.2016	29,205,466

28. The figures extracted above indicate complete loss of net worth of the corporate applicant. It is clear from the above that the corporate applicant has failed to pay its debt and has thus committed default. In fact the learned counsel for the financial creditor has not raised any objection to the admission of the petition in view of the default committed by the petitioner-corporate applicant, nor any reply to the petition was filed. It clearly seems that the corporate applicant has fallen into debt trap and thus competent to set in motion the insolvency resolution

process under the Code to ensure maximum value of assets which is in the interest of all the stakeholders.

29. In view of the above facts the petition is admitted. While admitting the application the moratorium is declared for prohibiting all the following as provided in section 14(1) of the code:

- (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.

25. It is further directed that the supply of essential goods or services to the corporate applicant as may be specified, shall not be terminated or suspended or interrupted during moratorium period. 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 applicant.

26. 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 pass an order for liquidation of corporate debtor under Section 33 as the case may be.

The matter be listed on 20.09.2018 for passing of the formal order of appointment of the Interim Resolution Professional. CA No.380 of 2018 stands disposed of.

Copy of this order be communicated to both the parties.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Justice R.P. Nagrath)
Member (Judicial)

Sept., 13, 2018
Anchal