

**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. 129/Chd/HP/2018
With
CA No.381 of 2018

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

IN THE MATTER OF:

M/s Tanishka Agro Ventures Private Limited,
Main Chandigarh Una Road, Una District, Himchal 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 the 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 Tanishka Agro Ventures Private Limited 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 20.11.2013 having been allotted CIN U01403HP2013PTC000580 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 of the paper book.

3. The authorized share capital of the Corporate Applicant is ₹75,00,000 (Rupees Seventy Five Lakh) and issued subscribed and paid up capital of ₹1,00,000 (Rupees One Lakh).

4. The petition has been filed by the Corporate Applicant through Mr. Tushar Sharma, its Director who has been authorised to file this petition under section 10 of the Code, vide Board Resolution dated 14.04.2018 (page 106 of the paper book). The contents of the application are supported by the affidavit of Mr. Tushar Sharma which is Annexure VIII (Page 95-102) 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 construct, build, equip, own and maintain and to carry on business as keepers of cold storage, storage chambers, ice plants, godowns, warehouses, refrigerators, freezing houses and cold chain solutions and also to carry on the business of producing, growing, dealing exporting, importing, stocking, trading, distributing, storing and preserving of potatoes, fresh vegetables, agricultural products, fruits, dry fruits, oil seeds, spices, fruit juices, ice candy, ice cream and other ice products, carbonated, aerated mineral water, dairy products,

wines, liquor and other alcoholic and synthetic drinks, bardana, hessians in cold storage etc.

6. It is stated that the Corporate Applicant was advanced various financial facilities by State Bank of India, one of the Financial Creditor. In Amended Form No.6, filed by Diary No.3095 dated 21.08.2018, the complete particulars including address of the Financial Creditor has been given. In Part-III of Amended Form No.6, it is stated that there are no Operational Creditors as on date and there are no statutory dues towards employees. It is further stated that due to changed requirements of plant location and ban on sale of plastic bottles the plant could not be set up at the designated place. The applicant-corporate debtor could not find a suitable alternative location for setting up the plant within the given cost. The main buyer for the company's product i.e. M/s Shaveta Golden Foods Private Limited, a group company could not achieve the expected operational levels and hence, the demand for the corporate applicant's product remained at a subdued level.

7. The financial status of Corporate Applicant in respect of the loan from State Bank of India, the Financial Creditor, is stated below:-

SBI SME Branch Mehatpur Main Bazar Mehatpur Distt. Una HP

Sr. No.	Nature and Description of Credit Facility	Sanctioned Amount	Outstanding as on 21/02/2018 (as per notice u/s 13(2) of SARFAESI Act)
1	Term Loan	20000000	17784025
2	Cash Credit Loan	15000000	15194423
3	Car Loan	1100000	963937
4	Car Loan	1100000	998152
Total			34940537

8. M/s HDB Financial Services was also disclosed as one of the Financial Creditor, but the amount in default for this creditor as on 31.03.2018 was stated to be only ₹2,68,650/- which is very small as compared to the amount in default towards State Bank of India.

9. The Corporate Applicant has also given the details of property against which the claim given against the petitioner are secured. The list is at Annexure VI(B). For cash credit limit, the petitioner has hypothecated stocks and receivables, (entire) current assets of the firm present and future as primary security. Immovable property at Mahal, Tehsil Harouli, District Una and land measuring 04-41-02 hectares has been kept as collateral security. Similar details have been given in respect of JCB (equipment loan) by HDB Financial Services and Car Loan in Annexure VI (B). The petitioner has also provided details of guarantees [Annexure VI (E)].

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 authorized signatory by diary no.1836 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. With the Amended Form-6 filed by Diary No.3095 dated 21.08.2018, it is stated that the petitioner has no operational creditor as on

date and even there are no statutory dues or dues towards the employees. The statement was also made in the affidavit filed by Diary No.1836 dated 28.05.2018. Notice of this petition was also directed to be issued to the financial creditor. Mr. Rakesh Gupta, Advocate filed the Power of Attorney on behalf of State Bank of India.

12. We have heard the learned counsel for the corporate applicant, learned counsel for the State Bank of India, financial creditor and perused the records.

13. 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.”

14. 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.

15. 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.”*

16. 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 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. State Bank of India under Section 13 (2) and 13 (4) of the SARFAESI Act, 2002 are at Annexure 1(C) and Annexure 1(D) respectively. The notice under Section 13(2) of the SARFAESI Act, 2002, is dated 12.02.2018 and the possession notice issued by the State Bank of India is at page No. 292 of the paper book. The petitioner has also filed its audited financial statements for the years 2016-17 and 2017-18, which are 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 statement upto 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 fulfills the requirement of the Rule.

17. 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.

18. 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.

19. 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....”

20. The petitioner has filed copy of the special resolution dated 09.04.2018 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, being CA No. 381, filed by diary No. 3349 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.

21. It is pertinent to mention here that in Column No.8 of Part-I of the Application Form, the petitioner had already relied upon the documents relating to holding of Extra Ordinary General Meeting on 09.04.2018 (Annexure VII). However, the document (Annexure VII) on record was notice of EOGM proposed for 09.04.2018 as at Page 92 of the paper book alongwith the explanatory statement- pursuant to the provision of Section 102 of the Companies Act, 2013 as at Page 94 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 95-102 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 09.04.2018. With the filing of EOGM held on

09.04.2018, the requirement of Section 10(3) (c) of the Code also stands complied.

22. Coming to the financial condition of the corporate applicant it was 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	0
31-03-2018	0
31-03-2017	0
31-03-2016	0

II. Accumulated Profit/Loss of the Corporate Applicant:

Period	Accumulated Profit/(loss) of the Corporate Applicant
10-05-2018	-30000
31-03-2018	-30000
31-03-2017	-10000
31-03-2016	-5000

III. Long Term borrowing & other Liabilities:

Period	Long Term borrowing & other liabilities
10-05-2018	19622690
31-03-2018	19622690
31-03-2017	21757267
31-03-2016	22220334

IV. Current Liabilities:

Period	Current Liabilities
10-05-2018	15128529
31-03-2018	15075117
31-03-2017	15393900
31-03-2016	221975

23. 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.

24. 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 applicant 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 applicant 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 applicant 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 applicant.

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 applicant 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.381 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)

September 13, 2018
Mohit Kumar