

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 09.08.2019

PRIORITY CAUSE LIST – 1

PRESENT: 1. Hon'ble Member (J) Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T) Dr Ashok Kumar Mishra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB)No. 171/BB/2018	For Final hearing	Sec 10 of I&B code 2016	M/s Cryo-Save (India) Pvt Ltd	M S Viswanathan, K S Vadivelu Advocate		S A Associates R7, MGC & Co., for R-10

ADVOCATE FOR PETITIONER/s:

K.S. VADIVELU.
94483-55070
Ganapathy Nagarajai Director
9845094686
K. PALANI
CEO.

T. T. Indri

ADVOCATE FOR RESPONDENT/s:

V. Suresh
U. SURESH
9845116116
Res No-7

Palani

5355adkto
SUDHIR BISS
9036022988
Respondent No 10

ORDER

Heard Shri K.S. Vadivelu, learned Counsel for the Petitioner and Shri U. Suresh, learned Counsel for M/s.Capital First Ltd.-2 and Shri Sudhir B.S., learned Counsel for M/s.Deutsche Bank A.G.

C.P.(IB)No.171/BB/2018 is admitted by separate order. Post the case for report of IRP on **05.09.2019.**



MEMBER(T)

Puja



MEMBER(J)

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

C.P.(IB) No.171/BB/2018
U/s 10 of IBC, 2016
R/w Rule 7 of I&B (AAA) Rules, 2016

In the matter of:

M/s.Cyro-Save (India) Private Limited
No.183, Gayathri Tech Park,
Road 1B, EPIP, KIADB, White Field,
Bangalore – 560 066.

***(Represented by Mr. Ganapathy
Nagarajan, Director)***

- Petitioner/Corporate
Applicant

Versus

1. M/s.Kotak Mahindra Bank
501-3, 5th Floor, Raheja Towers,
26, 27, MG Road,
Bangalore- 560 001 & 285 Others

- Financial/Operational
Creditors

Date of Order: 9th August, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : K.S. Vadivelu with
Shri Ganapathy Nagarajan, Director
Shri K.Palani (CEO)

For the Capital First Ltd.-2 : Shri U. Suresh

For the Deutsche Bank : Shri Sudhir B.S.

ORDER

Per: Rajeswara Rao Vittanala, Member (J)


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1. C.P.(IB)No.171/BB/2018 is filed by M/s.Cryo-Save (India) Private Limited ('Petitioner/Corporate Applicant') under Section 10 of the IBC, 2016 read with Rule 7 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s.Cyro-Save (India) Private Limited, on the ground that it has committed default for total amount of Rs.9,04,74,545/-(Rupees Nine Crores Four Lakhs Seventy Four Thousand Five Hundred and Forty Five Only) which includes Financial Creditors (Rs.3,79,85,868/-) and Operational Creditors (Rs.5,24,88,677/-).
2. Brief facts of the case, as mentioned in the Company Petition, are as follows:
 - (1) M/s.Cyro-Save (India) Private Limited (herein after referred to as Petitioner/Corporate Applicant) having CIN: U85100KA2008PTC060530 was incorporated on 29.02.2008 under the Companies Act, 1956. The Nominal Share Capital of the Company is Rs.30,00,00,000/- (Rupees Thirty Crores Only) and Paid-up Share Capital of Rs.25,35,53,800/- (Rupees Twenty Five Crores Thirty Five Lakhs Fifty Three Thousand and Eight Hundred Only). The main objects of the Company in brief are to carry on in the business of stem cells banking secured from the umbilical cord blood from the new born babies at the time of child birth etc.
 - (2) The Corporate Applicant had operated with 8 branches in the major cities of India and through its franchisees models in the additional 45 locations in the country. The Corporate Applicant's business activities was being licenced by the Drug Controller General of India under Ministry of Health and Welfare and the Corporate Applicant's Lab was accredited for its activities by National Accreditation Board for Testing and



Standardization (ISO), Good Manufacturing Practices (GMP) and American Association of Blood Bank (AABB). It is stated that the Corporate Debtors is managed by its Board of Directors comprising of Mr.Roderick M. Stuart (DIN-06423535) and Mr.Ganapathy Nagarajan (DIN- 00196769).

- (3) It is stated that the Corporate Applicant secured around 18,000 stem cells including 6800 stem cells from the old management across India. The Corporate Applicant's business was profitable in the initially and had availed business loans from various NBFC's for its business. The Corporate Applicant started its operation in India as 100% subsidiary of their parent Company (Cryo-Save AG, Belgium) in 2008. During October 2013, the Current Management Team made a Management buyout form the Parent Company. After 2014, the Industry players slashed their market prices substantially which posed a great challenge for the Corporate Applicant to maintain its profitability and cash flow due to which it started suffering huge losses is given as under:

2016-17	Rs.462.48 Lakhs
2017-18	Rs.268.31 Lakhs
2018-19 as on 31-07-2018	Rs.34.82 Lakhs

- (4) It is also stated that they were not able to mobilize additional cash flow to sustain the mounting operating losses, they were not able to continue its operations and forced to suspend their operations from October 2017. As the Corporate Applicant was responsible for preservation of the stem cells for the contractual period with their clients, they signed an Agreement with another service provider to maintain their stem cell samples for the remaining period of the Contract. In order to provide the committed storage services to the client, the Corporate Applicant had no other option but to transfer the



stem cells along with the equipment under an Asset Purchase Agreement and discharged its financial commitments to the extent of the consideration received.

- (5) It is also stated that the Corporate Applicant has convened an Extraordinary General Meeting of its shareholders on 28.07.2018 to submit itself to CIRP proceedings and the shareholders have accorded their consent by passing a Special Resolution, has been filed with the Ministry of Corporate Affairs on 13.08.2018.
 - (6) It is further stated that the Corporate Applicant is presently undergoing severe financial crunch and is unable to meet even its fixed costs and repay the debts to its 15 Financial Creditors (comprising of 13 NBFC's and 2 individuals who are Directors) amounting to Rs.379.85 Lakhs. There are 159 Operational Creditors who are Vendors (including its 108 employees) amounting to Rs.350.37 Lakhs; the liabilities towards Statutory Authorities is Rs.133.40 Lakhs thus totalling in all to Rs.863.62 Lakhs. The Corporate Applicant is unable to collect its receivables to the tune of Rs.495.75 Lakhs as against its debts of Rs.863.62 Lakhs and has committed a default.
3. The Company Petition is opposed by M/s.Deutsche Bank A.G. by filing Statement of Objections dated 03.04.2019, by inter alia contending as follows:
- (1) It is a Corporate Creditor, which is a Banking Company duly registered under the provisions of Banking Regulation Act, 1949 as also under Companies Act, 1956 (as amended up to date). The M/s.Deutsche Bank A.G. is represented by its manager and Power of Attorney Holder Mr.Pankaj Gotawat.
 - (2) It is stated that Corporate Applicant has approached the Corporate Creditor during the year 2017 for the purpose of



availing Unsecured Business Loan based on its turnover and accordingly, furnished requisite document such as Board Resolution authorizing to avail the loan on behalf of the Corporate Applicant, Memorandum of Association and Articles of Association, Balance Sheets and such other and further documents so as to prove its eligibility for availing the loan amount. In this regard, the Corporate Applicant had requested for a sum of Rs.40,00,000/-(Rupees Forty Lakhs Only) towards the unsecured business loan and the Corporate Creditor after satisfying the documents produced by the Corporate Applicant was pleased to sanction the said sum of Rs.40,00,000/-(Rupees Forty Lakhs Only) under Sanction Letter dated 28.02.2017.

- (3) It is also stated that at the time of availing the said loan facility, the Corporate Applicant had executed the Agreement dated 28.02.2017 agreeing to abide by the terms and conditions for repayment of the principle amount along with interest. It is alleged that the business carried out by the Corporate Applicant is doubtful and dubious and it was only with an intention to cheat it. Therefore, to assess the real intention of the Corporate Applicant, a Financial Forensic Expert is required to see the fraud played upon by the Corporate Applicant. Immediately after availing the loan and adjusting the said amounts towards the remuneration, the Corporate Applicant is before this Adjudicating Authority with a prayer to declare them as insolvent.
4. Heard Shri K.S. Vadivelu, learned Counsel for the Petitioner along with Shri Ganapathy Nagarajan, Director of the Company, Shri K.Palani, CEO of the Company and Shri U. Suresh, learned Counsel for M/s.Capital First Limited-2 and Shri Sudhir B.S., learned Counsel for M/s.Deutsche Bank A.G. We have carefully perused the

pleadings of the parties and the extant provisions of the Code and the law.

5. By perusal of pleadings of both the parties, as briefly stated supra, it is established that even though the Company started its operation in India as 100% subsidiary of their parent Company (Cyro-Save AG, Belgium) in 2008. Subsequently, during 2013, the current management team made a Management buyout from the Parent Company. After 2014, the industry slashed their market prices substantially which in turn has caused huge losses during 2016-17-Rs.468.48 Lakhs, 2017-18-Rs.286.31 Lakhs, 2018-19 as on 31-07-2018 – Rs.34.82Lakhs. Therefore, they were not able to continue its operations and forced to suspend their operations from October, 2017. Therefore, the Corporate Applicant has convened an Extraordinary General Meeting of its shareholders on 28th July 2018 to submit the Company to CIRP proceedings and the shareholders have accorded their consent by passing a Special Resolution, has been filed with the Ministry of Corporate Affairs on 13th August 2018. The total liabilities of the Company is given as under:

15 Financial Creditors including 2 Directors (2 Directors Rs.133.00 Lakhs)	Rs.379.85 Lakhs
159 Operating Creditors	Rs.350.37Lakhs
Statutory Authorities	Rs.133.40 Lakhs
Total Creditors	Rs.863.62 Lakhs
Receivables	Rs.495.75 Lakhs

Therefore, the Company is not able to pay its liabilities.

6. As per Section 10 of the IBC, a Corporate Applicant can file an application if Corporate Debtor has committed a default, for initiating Corporate Insolvency Resolution Process with the Adjudication Authority, in a prescribed form by enclosing the following:

- 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.*

As per Section 10(4) the Adjudication Authority can admit application if the application is complete and no disciplinary proceedings are pending against the proposed Resolution Professional.

7. As stated supra, apart from the dues of Financial Creditors for amount of Rs.3,79,85,868/-, there are Operational Creditors for total amount of Rs.5,24,88,677/-. Admittedly, the Corporate Applicant become insolvent by facing several losses, as detailed supra and the instant Company Petition is filed in accordance with law and also suggested a qualified Resolution Professional namely Shri Subramaniam Aneetha, with Registration No. IBBI/IPA-001/IP-P00376/2017-18/10633, who has also filed written Consent in Form-2 dated 13.08.2018, who is prima facie eligible to be appointed as IRP. The Extraordinary General Meeting of its shareholders held on 28.07.2018 passed a Special Resolution and it was filed with the Ministry of Corporate Affairs on 13.08.2018.
8. It is settled position of law that once debt and default is proved to the satisfaction of the Adjudicating Authority, the case has to be admitted to initiate CIRP, and appoint IRP, etc. We are satisfied with the reasons cited by the Petitioner to initiate CIRP. So far as grievance of M/s.Deutsche Bank A.G. is concerned, Interim Resolution professional appointed in the case, can look into the



allegation and will take appropriate action as deemed fit and just in the circumstances of case.

9. In view of the above facts and circumstances of the case and the settled position of law on the issue, and by exercising powers conferred on this Adjudicating Authority, U/s 10(4)(a) of the Code, we hereby admitted C.P(IB)No.171/BB/2018 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of Petitioner/Corporate Applicant with the following consequential directions:

- 1) **Shri Subramaniam Aneetha**, bearing **Registration No. IBBI/IPA-001/IP-P00376/2017-18/10633**, who is qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Petitioner/Corporate Applicant namely M/s.Cryo-Save (India) Private Limited to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
- 2) The following moratorium is declared prohibiting all of the following, namely:
 - a) the institution of suits or continuation of pending suits or proceedings against the Petitioner/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 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 Securitisation



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) 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 sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
 - h) The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file his report in the Tribunal from time to time.
 - i) However, this moratorium would not apply to cases pending against the applicant Company before the Hon'ble High court and Hon'ble Supreme Court.
- 3) The IRP is directed to follow all extant provisions of the IBC, 2016 and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Tribunal from time to time.
 - 4) The Board of Directors and all the staff of Petitioner/ Corporate Applicant are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.



5) Post the case for report of IRP on 05.09.2019.



**(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL**



**(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL**

Puja