

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

C.P. (IB) No.64/BB/2019
U/s 10 of IBC, 2016
R/w Rule 7 of I&B (AAA) Rules, 2016

In the matter of:

M/s. Vintage Foods & Industries Ltd.
Regd. Off: 21/B, KIADB Indl. Area,
Phase-II, Kumbalgodu,
Mysore Road,
Bengaluru – 560 074.

***(Represented by Mr. Narendra
Kumar Mohta, Director/
Corporate Applicant)***

- Petitioner/Corporate Debtor

Versus

1. M/s. Karnataka State Industrial
Investment and Development
Corporation Limited (KSIIDC)
'Khanija Bhavan', 4th Floor,
East Wing, No.49, Race Course Road,
Bangalore – 560 001. and others

- Respondents

Date of Order: 23rd July, 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 : Shri Mukesh Yadav with Shri Pankaj
and Shri N.K. Mohta, Director
For the Respondent No.1 : Shri Y. Sreenivasappa
For the Respondent No.2 : Shri T. P. Muthanna
For the Respondent No.5 : Shri Y.P. Gokul

ORDER

Per: Rajeswara Rao Vittanala, Member (J)



1. C.P. (IB) No.64/BB/2019 is filed by Mr. Narendra Kumar Mohta, Director/Corporate Applicant of M/s. Vintage Foods and Industries Limited ('Petitioner/Corporate Debtor') 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. Vintage Food and Industries Limited, on the ground that it has committed default for total amount of Rs.17.87 Crores etc.
2. Brief facts of the case, as mentioned in the Company Petition, are as follows:

(1) M/s. Vintage Foods & Industries Limited (herein after referred to as Petitioner/Corporate Applicant/Corporate Debtor) having CIN: L01549KA1984PLC006339 was originally incorporated on 05.09.1984 as '*Sarala Investments Private Limited*' by the Registrar of Companies, Karnataka. The Sarala Investments Company was changed as '*Vintage Foods Limited*' on 14.08.1992 and again on 25.04.1995 the name of Vintage Foods Limited was changed to '*Vintage Foods & Industries Limited*'. The Authorised Share Capital of the Company is Rs.6,66,00,000/- (Rupees Six Crore Sixty Six Lakhs Only) and Paid-up Share Capital of the Company is Rs.6,66,00,000/- (Rupees Six Crore Sixty Six Lakhs Only). The main objects of the original Company Sarala Investments was to carry on multiple businesses, and after restructuring and formation of Vintage Foods & Industries Limited, the main objects in brief were to grow, cultivate, produce, manufacture, treat, blend, render marketable and transport whether in bulk or in packed or concentrated forms, tea, coffee, cocoa or any other beverages all varieties of foods and food products, plantation crops, etc.

- (2) It is stated that the Corporate Debtor is a subsidiary of Insotex (India) Limited, since 1989 holding 50.067% of shares in the Corporate Debtor/Applicant Company. The present Board of Directors (Promoters) of the Corporate Debtor are Mr. Narendra Kumar Mohta, Mr. Gajendra Tiwari and Mrs. Lalitha Sharma. The total number of members of the Company as on date is 771.
- (3) It is stated that as per audited Financial Statements of the Corporate Debtor for the Financial Years 2016-17, 2017-18 and provisional Balance Sheet as on 10.11.2018, Corporate Debtor is not in operation for last 16 (Sixteen) years. As per the financial statements as on 10.11.2018, Corporate Debtor has financial liability of Rs.17.87 Crore due to various banks and financial institutions. The dues to government authorities are not ascertainable.
- (4) It is stated that the Corporate Debtor executed Technical Collaboration Agreement with Golden Food Products Limited, U.K. in the year 1996. With this alliance, they presumably become largest Mozzarella cheese manufacturer in the world. Golden Food provided technical assistance and also had option to invest 37.5% of the Equity Shares of the Corporate Debtor. The Corporate Debtor secured an export contract of 1500 MTS of Mozzarella cheese with Ransat PLC on 04.08.1997 and executed Indemnity Bond in favour of Exim Bank for indemnifying the bank against issue of Advance cum Performance Guarantee in favour of Ransat PLC, London, UK to fulfil export obligation. Deed of Hypothecation was executed with Exim Bank for securing the performance guarantee over movable and fixed assets of the Corporate Debtor collaterally secured by personal guarantee of Directors of the Corporate Debtor on 18.08.1997.

- (5) The Exim Bank issued Advance cum Performance Guarantee in favour of Ransat PLC, London, UK for US \$ 2,925,000 equivalent to INR 12,43,41,750/- on 08.09.1997. The Corporate Debtor imported the machinery and equipment from Denmark, Italy and Ireland by availing foreign exchange equipment finance loan of US \$ 891,390 (equivalent to INR 3,30,00,000/-) from IDBI Bank on 20.11.1997 to fulfil the export obligation. However, due to port strike in Denmark, the supply of machinery was delayed from the suppliers. This delay in supply of machinery has affected the export order as aforesaid. Ransat PLC cancelled the order and the guarantee was devolved by it. The Corporate Guarantee was invoked by CSFB to account Ransat PLC on account of cancellation of order as above on 29.08.1998. The Exim Bank crystallized the Corporate Guarantee into loan on 29.03.2000 for Rs.12.43 Crores. The accumulated interest thereon was amounting to Rs.3.11 Crores, wherein part payment of Rs.0.94 Crore was paid and Rs.2.37 Crores was converted as a funded interest to the Corporate Debtor.
- (6) The Corporate Debtor availed Rs.3.00 Crores as Corporate loan from IDBI Bank Limited against securities of Corporate Debtor's assets and personal guarantee of Mr. N.K. Mohta, Promoter and additional Guarantors for running the operations of the Corporate Debtor.
- (7) The Corporate Debtor also obtained a credit line facilities in following manner from Karnataka State Industrial Investment & Development Corporation Limited (KSIIDC):
- i. Rs.76.00 Lakhs on 17.03.1994 as term loan;
 - ii. Rs.257.24 Lakhs on 17.02.1998 as EFS loan;
 - iii. Rs.82.00 Lakhs on 31.03.1998 as Corporate Loan;
 - iv. Rs.93.00 Lakhs on 31.03.1998 as Corporate Loan;



v. Rs.200.00 Lakhs on 03.08.1998 as Corporate Loan;

vi. Rs.100.00 Lakhs on 31.03.1999 as Corporate Loan.

The total amount was Rs.833.024 Lakhs, out of which Rs.306.50 Lakhs was repaid. Hence, the total principal outstanding stands at Rs.526.74 Lakhs as on 31.03.2018.

(8) It is also stated that the Corporate Debtor obtained a Cash Credit facilities from Central Bank of India for meeting its working capital requirement against mortgage of its assets and personal guarantee of promoters and additional guarantee in the form of land as collateral from Insotex India Limited as guarantors in the following manner on 29.12.1999:

- i. Cash Credit facility of Rs.150 Lakhs;
- ii. OD facility of Rs.50 Lakhs; and
- iii. Rs.100 Lakhs as Bank Guarantee facility (non-fund based).

(9) The Corporate Debtor/Applicant Company had also taken Rs.100 Lakhs from Narendra Company Pvt. Ltd. (NCPL) and Rs.100 Lakhs from Insotex (India) Ltd., who has taken loan from KSIIDC. KSIIDC has sold the properties of guarantor, whose matter is pending before Karnataka High Court. The details of Unsecured Creditors as on date as follows:

Sr. No.	Unsecured Creditors	Outstanding Amount (Rs.)
1.	Insotex (India) Ltd.	5,80,69,112
2.	Narendra Company Pvt. Ltd.	60,00,000
TOTAL		6,40,69,112

(10) It is stated that the Corporate Debtor procured an order to supply 518 metric tons approx. of cheese to the Indian Army in the year 1999. This was a time bound order and the delivery had to be effected at over 24 centres. However, Corporate Debtor could completed half the supplies due to the inordinate delay in receiving payments from the Army as the payment procedure involved various pre-inspections and post-delivery checks which involved a lot of time, which in turn upset the



credit cycle of the Corporate Debtor. The Corporate Debtor had hitherto been supplying mozzarella cheese in bulk to various prestigious clients such as Pizza Hut, Domino's etc. The Army supply had entailed supply of cheese in 400 GM tins, and the Corporate Debtor had procured the tins from outside and probably due to improper chemical treatment of the tins by the manufacturer, certain consignments were rejected. Ultimately, the Corporate Debtor and the tins manufacturer were in court against each other. These rejections by the Army upset the ongoing supply and the time-schedule could not be met. The cascading effect this had on the Company could not be rectified on time.

(11) It is stated that the KSIIDC unilaterally took over the manufacturing unit and office of the Corporate Debtor in the year 2002, resulting in the shutdown of the plant and loss of statutory records, all movable and immovable property and records, all annual reports and accounts filed with the ROC. The Corporate Debtor requested to the KSIIDC on 13.04.2005 to release the documents lying in the office premises, but it did not bother till date. KSIIDC auctioned the property of the Promoter at price lower than the ongoing market price and realized Rs.2.37 Crore and approached DRT to delete the security from the list of security mortgaged with Exim Bank. DRT had specifically instructed them not to involve the said property in any transaction before sorting out the controversy on the right of property. But KSIIDC ignored the direction of DRT and issued the Sale Deed in favour of M/s. Salapuria Exports & Traders Pvt. Ltd. in the year 2005. The Corporate Debtor has not accounted for the above transaction in its books and has challenged the sale process with the Hon'ble High Court of Karnataka, which is still pending.



- (12) The Corporate Debtor had taken working capital loan from Central Bank of India and provided land as collateral security from Insotex (India) Ltd. as guarantor. The other Creditors like IDBI, EXIM Bank, Central Bank of India also initiated recovery proceedings under DRT Rules and Securitisation Rules. The plant was shut down and non-functioning for more than 16 years. The Corporate Debtor wrote several letters to the Creditors for revoking the shut down and allowing the Company to operate by offering OTS. In spite of enhanced OTS at their suggestion the OTS did not materialise.
- (13) The EXIM Bank had assigned loan of Rs.14.88 Crores to Edelweiss ARC on 08.01.2014, which included crystallized loan of Rs.12.43 Crore and Rs.2.37 Crores of left over interest on crystallized loan. The EXIM Bank had credited the ECGC recovery of Rs.7.94 Crores in Corporate Debtor account and pressurizes Corporate Debtor to pay for the Rs.12.43 Crores which is its original due as if they have not received the ECGC recovery. As per the statement of account received from EXIM Bank dated 12.03.2015, the actual principal amount due is Rs.4.49 Crore.
- (14) The Corporate Debtor filed W.P. No.13782 of 2016 against KSIIDC which is pending before the Hon'ble High Court of Karnataka for setting aside the sale and OS No.5048 of 2016 is pending on the file of City Civil Judge, Bangalore.
- (15) It is also stated that the Corporate Debtor had put in its efforts to try and settle its due and revive the Company. The details are as follows:
- i. On 22.12.2016, Stressed Assets Stabilization Fund (SASF) was gracious and considerate enough to accept Corporate Debtor/Applicants OTS proposal of Rs.160 Lakhs. This amount was to be split into two components:



- Cash Component : Rs.100 Lakhs
Shares of Corp. Debtor : Rs.60 Lakhs
- ii. During the course of the payment under OTS as above, Corporate Debtor had paid Rs.60 Lakhs to SASF. The balance leftover was Rs.40 Lakhs could not be paid as KSIIDC did not come on board for OTS. At this moment, the funder of Corporate Debtor backed out causing huge loss for revival of the unit.
 - iii. The shares, which were issued was to be bought back by Corporate Debtor/Applicant within 3 years at either the market value or the face value whichever was higher. This did not materialise due to the reason stated above.
 - iv. Corporate Debtor sent numerous letters to the office of the DGM-IDBI, from 24.04.2007 to 13.03.2013 for settlement of dues.
 - v. Corporate Debtor approached EXIM Bank with OTS proposal on 25.03.2006.
 - vi. On 07.12.2015, Corporate Debtor filed Writ Petition with the High Court of Karnataka to direct DRT to pass the speaking order on the counter-claim for damages of Rs.60.44 Crores against Edelweiss (on account of EXIM Bank) not accepting OTS as per RBI guidelines.
 - vii. On 08.02.2017, Corporate Debtor filed suit with the High Court of Karnataka for return of security of its agricultural land in Devanahalli as agriculture property cannot be held by Edelweiss.
 - viii. Corporate Debtor submitted an OTS proposal to Edelweiss on 31.07.2017 after the inspection of the guarantor's agricultural property by their appointed surveyor. The agricultural property is not attachable under the SARFAESI Act.
 - ix. Corporate Debtor submitted an OTS proposal to Central Bank of India many times. Corporate Debtor got orders from the Hon'ble High Court of Karnataka vide order dated 30.09.2005, in reference to Petition No.21313/2005 (GM-DRT). Hon'ble Court instructed the Central Bank of India to accept the DD of



Rs.4,50,09,712/- and payment of interest remaining for three days. The Hon'ble Court also instructed the Bank to deliver the documents and discharge the guarantee; to return the excess amount collected with the same rate of interest charged by them, and instructed DRT to allow the Company to plead the case. From 2005 to 2018, the case is going on with Central Bank of India and there is no conclusive decision.

- x. The KSIIDC auctioned and sold the property of CD in year 2004-05 at Rs.2.37 Crores, whereas the market value of property as per their own valuer in the year 1996 was Rs.5.01 Crores. That during 9 years, the market value of property appreciated but KSIIDC sold that property at around 50% lesser value.
- xi. The present market value of the assets of the Corporate Debtor as on date is approx. Rs.35 Crores, which is much higher than the value arrived by the valuer of KSIIDC.

(16) It is stated that as on date of submission of application of CIRP under the Code, various cases are pending filed by bank against the Corporate Debtor and filed by Corporate Debtor against the banks and financial institutions. As on 10.11.2018, the Corporate Debtor has outstanding amount to various stakeholders as follows:

i. Financial Creditors: Rs.17.87 Crores:

Sr. No.	Banks/ Financial Institution	Principal O/s as per books of CD	Security
1.	KSIIDC	Rs.5.27 Cr.	Pari-pasu charge on Kumbalgod land and factory.
2.	Stressed Assets Stabilisation Fund (SASF/IDBI)	Rs.6.00 Cr.	Pari-pasu charge on Kumbalgod land and factory.
3.	EXIM Bank/ Edelweiss ARC	Rs.4.49 Cr.	1. Chilling centre in Tirupathur 2. Guarantor's agricultural land in Devanahalli. 3. Shares pledged with them along with all entitlements from 2001 as below: a. 2300 Shares of Reliance Industries b. 2200 Shares of Tata Chemicals c. 30000 Shares of Binny Ltd. d. 851,000 shares of SJ Max Golden Co. Ltd. e. 50,000 shares of Fort William Industries Ltd. f. 50,000 shares of Fairgrowth Financial Services Ltd.

			g. 35,58,000 shares of VFIL
4.	Central Bank of India	Rs.2.11 Cr.	Rs.4,68,69,112/- which was given as cash security in lieu of land collateral.

- ii. Operational Creditors: Rs. Nil
- iii. Government Dues: Not ascertainable.

(17) It is stated that the Corporate Debtor has been authorised to file application for initiation of CIRP under the provisions of Section 10 of the Code R/w Rule 7 of I&B (AAA) Rules, 2016 by members of the Corporate Debtor by passing resolution in its meeting held on 06.06.2018, and authorised Mr. N.K. Mohta to submit the application under the Code.

3. The Company Petition is opposed by one of Respondents No 2 (Stressed Assets Stabilization Fund (SASF) by filing Statement of Objections dated 19.06.2019, by inter alia contending as follows:

- (1) Stressed Assets Stabilization Fund (SASF) is a Trust which has been set up by the Central Government of India as a Special Purpose Vehicle in the form of Trust by name Stressed Assets Stabilization Fund (SASF). The Trust was formed on 24.09.2004 with the object of acquiring the Stressed Assets of IDBI for the purpose of recovering the amounts due there under. Further, Central Government by notification dated September 29, 2004 has also notified SASF as Financial Institution under Section 2(h)(ii) of the Recovery of Debts due to Banks and Financial Institutions Act. 1993.
- (2) It is stated that the Industrial Development Bank of India (IDBI), then a statutory corporation established under the Industrial Development Bank of India Act, 1964, under the Transfer Deed dated 30.09.2004 executed by IDBI in favour of Respondent No.2, unconditionally and irrevocably, transferring and releasing to and up to SASF the loans/facilities sanctioned by erstwhile IDBI Bank to the



Applicant Company i.e., M/s. Vintage Foods and Industries Ltd. Further, erstwhile IDBI Bank has transferred in favour of SASF all its rights, title and interest in the Loan Agreements entered into between erstwhile IDBI Bank and Applicant Company and all other collateral and underlying security interest, pledges and/or guarantees created by Applicant Company in favour of erstwhile IDBI Bank. Hence, SASF is secured creditor of M/s. Vintage Foods and Industries Ltd., Applicant Company and is entitled to recover the debt from them.

- (3) IDBI Bank had granted financial assistance to the Applicant Company, comprising foreign currency, EFS Loan of USD 891,390 (then equivalent to Rs.330 Lakhs) in November 1997 and Corporate Loan of Rs.300 Lakhs to part finance its long term working capital requirement in March 1999 under various schemes for import of equipment in order to expand its capacity for manufacture of cheese and other dairy products on the terms & conditions contained in the loan agreement dated 20.09.1997 and loan agreement dated 31.03.1999 (for Corporate Loan) entered into by the Applicant Company with IDBI Bank and other security documents. The IDBI Bank disbursed to the Applicant Company a sum of Rs.630 Lakhs (Rupee Term Loan plus Foreign Currency Loan). In consideration of disbursing the said loan, the Applicant, created security interest in favour of IDBI inter alia hypothecation /mortgage of moveable & immovable properties.
- (4) It is also stated that the Applicant Company viz., M/s. Vintage Foods and Industries Ltd., had agreed to repay to IDBI in accordance with the amortization schedule contained in the loan agreement. However, the Applicant Company neglected



to pay to IDBI/SASF, the principal/interest/installments as per the terms & conditions of sanction and hence the loan was classified as Non-Performing Asset as per the RBI guidelines. Consequently, IDBI Bank vide its letter No.2062/CFD (VFIL) dated 04.07.2003 called up on the Applicant to pay a sum aggregating to Rs.13,12,05,326/- as on 01.07.2003 together with further interest thereon with effect from 02.07.2003 till payment at the contractual rate as stated in the said letter.

- (5) As the Applicant failed to repay the amount, the IDBI Bank filed OA No.189/2004 before the Debts Recovery Tribunal, Bengaluru to recover the amount due to them. The Respondent No.2 vide their letter dated 22.12.2006, at the request of the Applicant granted One Time Settlement (OTS) of dues for a crystallized amount of Rs.160 Lakhs (cash payment of Rs.100 Lakhs and Rs.60 Lakhs equivalent shares to be bought back by the Applicant Company within a period of 3 years) as against total dues of Rs.1936.51 Lakhs as on 01.04.2006 with waiver of balance principal term loan of Rs.5593.83 Lakhs and entire interest and other charges aggregating Rs.1376.68 Lakhs. The said OTS agreed between the parties was submitted before the Tribunal in the pending OA and accordingly OA was disposed of as per the terms & conditions agreed on. One of the conditions stated in the order was that if the default in payment persists for 30 days, SASF will have the right to reverse the waiver of dues and restore the original liability as per the terms of loan agreements entered by the Company and adjust the payment received, if any, towards the dues. As per settlement, the crystallized amount of Rs.160 Lakhs to be paid as (a) cash payment of Rs.100 Lakhs (b) allotment of Rs.6 Lakhs equity shares of VFIL having face value of Rs.10 each within 3 months from



the date of LOA and the promoters would buy back the entire equity of Rs.60 Lakhs within 3 years from the date of LOA i.e., on or before Dec. 2009. The Applicant Company made payment of only Rs.60 Lakhs towards cash component and issued Rs.6 Lakhs equity shares of Rs.10/- each. The Applicant Company failed to comply with the terms of settlement and hence the Respondent No.2 has sent reminders vide letters dated 28.02.2008, 11.07.2008 & 29.05.2009 to honor the terms of OTS. As the Applicant Company failed to honor the OTS, the Respondent No.2 had vide their letter dated 11.11.2010 revoked the OTS granted to the Company and restored the original liabilities. Further, neither the Company nor its promoters have bought back the shares of Rs.60 Lakhs as per the terms of OTS, despite expiry of due date for buy back of shares.

- (6) It is further stated, that in spite of repeated requests and demand made by Respondent No.2 to the Applicant to pay the amount due, the Applicant failed to make any payment. Hence, the Respondent No.2 issued notice under Section 13(2) of SARFAESI Act calling upon the Applicant to pay a sum of Rs.113,29,24,328/- as on 01.09.2016 within 60 days from the date of the notice together with further interest thereon with effect from 02.09.2016 at the contractual rates upon the footing of compound interest until payment/realization. However, the Applicant failed to pay the amount as demanded in the said notice. As the Applicant failed to pay the amount in spite of issuing the said demand notice, the Respondent No.2 issued possession notice dated 24.03.2017 under Section 13(4) of SARFAESI Act in respect of Plant & Machinery hypothecated to the Respondent No.2. The said notice was served on the Applicant. As the Applicant failed to repay the



amount, the Respondent No.2 issued a sale notice dated 24.09.2018 fixing the date of e-auction on the secured assets of the Company-plant & machinery hypothecated on 30.10.2018 and on the same day, the plant & machinery hypothecated was sold to M/s. Seven Star Traders, highest bidder in the e-auction for a sum of Rs.40,82,000/- and the plant & machinery were delivered to M/s. Seven Star Traders as per procedure. The sale certificate dated 17.11.2018 was issued in favour of M/s. Seven Star Traders. The Applicant filed an Application before the City Civil Court in the pending Misc. No.47/2008 filed by Respondent No.1 against the Applicant Company & Others for recovery of their dues. On contesting the matter, the Hon'ble Court dismissed the Application vide order dated 30.11.2018.

- (7) It is also stated that the Respondent No.2 issued sale notice dated 07.12.2018 for sale of immovable secured assets of the Applicant Company. Against issuance of the said notice, the Applicant filed a Writ Petition No.56657-56660/2018 seeking to quash the notice dated 07.12.2018 issued by the Respondent No.2 and also to direct the Respondent No.2 to adhere to the OTS scheme as per letter dated 12.12.2006. The Hon'ble Court after hearing the matter, disposed of the Writ Petition vide order dated 18.02.2019 by giving liberty to the Applicant Company to approach Debts Recovery Tribunal under Section 17 of the Act.
- (8) It is further stated that the Applicant Company approached the Debts Recovery Tribunal by filing an Appeal on 11.03.2019 in IR No.1113/2019 praying therein to set aside possession notice date 20.07.2017 and to quash the measures taken by Respondent No.2 under SARFAESI Act, etc., and also sought for interim stay of all further proceedings such as



conducting auction sale, confirmation of sale, etc. The Tribunal has not granted any interim order in the matter and the above SA is pending before the Tribunal.

(9) It is stated that the Respondent No.2 issued Notice for Sale of Immovable Assets dated 24.04.2019 and published Sale Notice in The Hindu (English) and Udayavani (Kannada) on 14.05.2019 fixing the date of e-auction on 31.05.2019 for sale of the mortgaged immovable property. The mortgaged property was sold on 31.05.2019 for a sum of Rs.5,70,96,000/- and the Respondent No.2 has issued the sale confirmation letter in favour of auction purchaser on 31.05.2019.

(10) Therefore, it is submitted that the Applicant Company has not made out a case for initiation of CIRP under Section 10 of Code and it has been filed to abuse the moratorium provision to prevent the secured creditors to realize their dues. Under the circumstances, it is urged the Tribunal to reject the Application, in the interest of justice.

4. Respondent No.5 i.e., Central Bank of India has also filed Statement of Objections dated 10.07.2019, by inter alia contending as follows:

(1) It is stated that the allegations contained in the Petition in so far as this Respondent is concerned viz., alleging that Rs.4,68,69,112/- was given as cash security in lieu of land collateral (vide para 35 of the Petition), is false to the very knowledge of the Corporate Debtor. This amount was paid towards the dues of this 5th Respondent Bank under the Recovery Certificate dated 02.12.2004 issued in favour of this Respondent Bank in O.A. No.151 of 2003 on the file of the Hon'ble DRT, Bengaluru. The present Petition is liable to be rejected for suppression of material facts viz. that the Respondent Bank already filed objections to the claim made

by the Corporate Debtor before DRT, Bengaluru. In view of the fact that there is false statement made in the Petition, the Deponent or signatory to the Petition has committed an act of perjury for which the Deponent has to be punished; apart from dismissing the Petition.

- (2) It is also stated that as admitted by the Corporate Debtor, the Corporate Debtor was granted certain credit facilities by way of Cash Credit Hypothecation to a limit of Rs.1.50 Crores; Overdraft against Supply bills to a limit of Rs.50.00 Lakhs and a Bank Guarantee to a limit of Rs.1.00 Crore, as per Sanction dated 29.12.1999. As security M/s. Insotex (India) Ltd. which is a subsidiary of the Corporate Debtor, mortgaged its property bearing No.273 (old Sy. Nos.3/1 and 4/2 of Kanithimmanahalli), Mysore Road, Bengaluru, on 07.01.2000. The said Company had also stood as a Guarantor. The Corporate Debtor availed the said facilities, but failed to repay the dues.
- (3) It is also stated that in view of non-payment, this Respondent No.5 Bank filed O.A. 151 of 2003 (new T.A. 1429 of 2017) on 27.12.2002 for recovery of a sum of Rs.2,97,30,283/- with interest at 17% p.a. with quarterly rests from the date of filing O.A. to date of repayment in full and for costs against the Corporate Debtor and its Guarantors. The 5th Respondent Bank sought for recovery of the amount claimed in the said O.A., by sale of Mortgaged Property.
- (4) It is also stated that a Recovery Certificate dated 02.12.2004 came to be issued by the DRT quantifying the amount due to this 5th Respondent Bank as Rs.4,11,61,197/- as of 02.12.2004. By the said Order dated 02.12.2004 and the Recovery Certificate issued, interest was also granted at 17% p.a. compounded quarterly. The DRT permitted this 5th



Respondent Bank to proceed against the Mortgaged and Hypothecated Properties also, for recovery of the dues.

- (5) During the course of execution of the Recovery Certificate and when the Mortgaged Property was brought to sale, the Corporate Debtor filed W.P.No.21313 of 2005. Pursuant to the order passed in the said W.P.21313 of 2005 dated 30.09.2005, the Corporate Debtor paid before the Hon'ble High Court two Demand Drafts, i.e., (i) for Rs.3,95,12,197/- and (ii) for Rs.54,97,515/- to this Respondent Bank, towards the dues under the said Recovery Certificate and requested for return of documents of title relating to the Mortgaged Property. As the Corporate Debtor made a further submission that they have paid excess amount, the Hon'ble High Court said this Respondent Bank has to refund the "excess", if any. In view of payment made as above towards the dues, this Respondent delivered back the documents of title relating to the Mortgaged Property.
- (6) Thereafter, the Corporate Debtor on 28.11.2016 that is after a lapse of more than 11 years from the date of order of the Hon'ble High Court, filed an Affidavit before DRT, Bengaluru, making a false claim for payment of Rs.1,93,97,184.45/- as due by this Respondent stating that the Corporate Debtor has paid excess money to this Respondent No.5 Bank. The Respondent No.5 is not due to the Corporate Debtor in any sum much less the amount claimed before the DRT. On the other hand the Corporate Debtor itself is due to this Respondent in a sum of Rs.5,88,933/- as on 03.10.2005 along with future interest.
- (7) It is further stated, that thus this Respondent Bank is not due to the Corporate Debtor in any amount and on the other hand, the Corporate Debtor is due to this Respondent Bank



in a sum of Rs.5,88,933/- along with interest at 17% p.a. compounded quarterly from 03.01.2005 to date of payment. The allegations in the Petition in this behalf are all false and denied.

5. Heard Shri Mukesh Yadav, learned Counsel along with Shri Pankaj, learned PCS for the Petitioner and Shri N.K. Mohta, Director of the Petitioner Company and Shri Y. Sreenivasappa, learned Counsel for R-1, and Shri T.P. Muthanna, learned Counsel for R-2, Shri Y.P. Gokul, learned Counsel for R-5. We have carefully perused the pleadings of the parties and the extant provisions of the Code and the law.
6. Shri Mukesh Yadav, learned Counsel for the Petitioner, while reiterating various averments made in the application and synopsis as briefly stated supra, has further submitted that Written Arguments dated 08.07.2019, inter alia contending as follows:

(1) As on date there are no business operations are being carried on by the Corporate Debtor and therefore, the Board of Directors of the Company vide its meeting held on 14th May, 2018 has resolved to initiate CIRP U/s 10 of the Code. In consensus with Board Resolution, the Members of the Corporate Debtor, in its Extraordinary General Meeting held on 6th June, 2018 resolved to initiate CIRP as the Company was unable to pay its debts in full even after realising the assets of the Company.

- (2) It is stated that the Corporate Debtor has complied with the requirement of Section 10 of the Code and has relied upon the judgment of Hon'ble Supreme Court in the case of '*Innoventive Industries Ltd. Vs. ICICI Bank and Ors.*' (MANU/SC/1063/2017). The object of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not

paid, the insolvency resolution process begins either on an application under Section 7 (filed by financial creditors) or an application under Section 10 (filed by corporate debtor). The Hon'ble Supreme Court in the above case has held, in the context of Section 7 of IBC, that the moment the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the Applicant to rectify the defect within 7 days of receipt of a notice from the Adjudicating Authority. Since the application is complete being no dispute regarding the existence of default of debt, the application should be admitted.

- (3) The Corporate Debtor has also relied upon the judgment of Hon'ble NCLAT in '*Unigreen Global Private Limited vs. Punjab National Bank and Ors.*' [2018] 145 SC L272, after comparing the provisions of Section 7 and Section 10, wherein it is inter alia held that once the Adjudicating Authority is satisfied that there is a debt and default has occurred and the Corporate Applicant is not ineligible under Section 11, the Adjudicating Authority has no option but to admit the application, unless it is incomplete, in which case the Corporate Applicant is to be granted time to rectify the defects.
- (4) It is also stated that the application under Section 10 is being filed when a default takes place, in the sense that a debt becomes due and is not paid by the Corporate Debtor. It is stated that the existence of default implies that there would be some existing litigations between the Corporate Debtor (who has defaulted) and the Financial Creditor (against whom default has taken place). It is for this very reason that the provisions of Section 14 mandates all such proceedings cannot



proceed further during the process of insolvency resolution process.

In this regard, Hon'ble NCLAT in *Unigreen Global (supra)* has held as follows:

"25. Similarly, if any actions has been taken by a 'Financial Creditor' under Section 13(4) of the SARFAESI Act, 2002 against the Corporate Debtor or a suit is pending against Corporate Debtor under Section 19 of DRT Act, 1993 before a Debt Recovery Tribunal or appeal pending before the Debt Recovery Appellate Tribunal cannot be a ground to reject an application under Section 10, if the application is complete."

- (5) They have also relied upon the judgment of Hon'ble NCLAT in '*Gemini Innovations Pvt. Ltd. Vs. State Bank of India*' (MANU/NL/0176/2018).
- (6) It is stated that as on date, only three cases are pending against the Corporate Debtor, which were being filed by the Financial Creditors. In view of decisions of the Hon'ble NCLAT in *Unigreen* case, it is stated that the pendency of these cases should not be factor for deciding the admissibility of Petition U/s 10 the Code. Hence, it is prayed that the present application should be accepted since the Corporate Debtor has complied with all the conditions of Section 10 and is not ineligible to file the present Application under Section 11 of the Code.
- (7) *The Learned Counsel for the Petitioner has also filed memo dated 17.07.2019 by inter alia stating that the SLP (C) Nos. 11924-11927/2019 filed by the Corporate Applicant against the order dated 16.01.2019 passed by the Hon'ble High court of Karnataka, was dismissed vide order dated 03.07.2019 and the issue was regarding to injunction of Company property from removing machineries, furniture etc. And thus it has no bearing*

now on the instant issue. It is also undertaken to withdraw three Writ petition filed by petitioner and pending viz. WP Nos. 55358-60/2015, 13782/2016, 6107 of 17, will be withdrawn on admission of the instant Company petition.

7. Since claims of respective parties will be considered during the process of CIRP, Respondent No.2 and 5 i.e., stressed Assets Stabilization Fund (SASF) and Central Bank of India can make their claim before the IRP, who is appointed in this case. Therefore, there would no prejudice cause to the Respondents by initiation of CIRP in the case.
8. 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.

9. As stated supra, apart from the dues of Financial Creditors for amount of Rs.17.87/- Crores, there are Unsecured Creditors for total



amount of Rs.6,40,69,112/- Crores. Admittedly, the Corporate Debtor become insolvent by facing several cases filed by its Financial Creditors as detailed supra, the instant Company Petition is filed in accordance with law, and also suggested a qualified Resolution Professional namely Shri Pankaj Khetan, with Registration No. IBBI/IPA-002/IP-N00010/2016-17/10014, who has also filed written Consent in Form-2 dated 13.11.2018, who is eligible to be appointed as IRP. The Board of Directors of the Company meeting held on 14.05.2018 passed a resolution to initiate CIRP under Section 10 of the Code, and in view of the current financial situation/circumstance and affairs of the Company, the Board is of opinion that Company is unable to pay its debt in full after realising the assets belonging to the Company subject to the approval of Shareholders at the upcoming Extra Ordinary General Meeting and subject to the approval of Adjudicating Authority, Shri Pankaj Khetan having IBBI Registration Number IBBI/IPA-002/IP-N00010/2016-17/10014, being a registered Insolvency Professional be and is hereby appointed as Interim Resolution Professional for the purpose of initiation of CIRP Process of the Company at a remuneration of Rs.6,00,000/- exclusive of applicable tax and out of pocket expenses on actual basis. Accordingly, Extra Ordinary General Meetings of the Members of the Company was also held on 06.06.2018 and passed a Resolution to file an application under Section 10 of the Code.

10. It is settled position of law by *catena* of judgments that once debt and default is proved to the satisfaction of the Adjudicating Authority, the case has to be admitted to initiate CIRP, appointed IRP. We are satisfied the reasons cited by the Petitioner to initiate CIRP.



11. In view of the above facts and circumstances of the case and the law, by exercising powers conferred on this Adjudicating Authority, U/s 10(4)(a) of the Code, C.P (IB) No.64/BB/2019 is hereby admitted by initiating Corporate Insolvency Resolution Process (CIRP) in respect of Petitioner/Corporate Applicant with the following consequential directions:

- 1) **Shri Pankaj Khetan**, bearing **Registration No. IBBI/IPA-002/IP-N00010/2016-17/10014**, who is qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Petitioner/Corporate Applicant to carry out the functions 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) Since there are hardly any chances to revive the business of Corporate Debtor as majority of property including Machines are stated to have auctioned before the initiation of instant CIRP, the IRP is directed to take expeditious steps so as to complete the process of CIRP without waiting for completion



of statutory period of 180 days as per the Code and file necessary application before the Adjudicating Authority.

- 6) Post the case for report of IRP on **23.08.2019.**



(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Puja