

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP(IB) No. 172/10/HDB/2017
U/S 10 of IBC, 2016 R/w Rule 7 of I&B (Application to Adjudicating
Authority) Rules, 2016

In the matter of

M/s Super Agri Seeds Private Limited
5th Floor, Akash Ganga, 8-3-1503
Plot No. 144, Srinagar Colony
Hyderabad – 500073

.....Petitioner/Corporate Debtor

Versus

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

State Bank of India
Agri Commercial Branch, 3-6-291/B, Opp. Old MLA
Quarters, Main Road Hyderguda
Hyderabad

.. Respondent/Financial Creditor

Date of order: 06.09.2017

CORAM:

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

Parties/ Counsels present

For the Corporate Debtor:

Shri P.H. Arvinth Pandian, Senior
Advocate along with Dr.
S.V.Ramakrishna & M.S.V.
Vanshi Krishna, Advocates

For the Respondent

Shri G. Durga Bose, Advocate
Shri Guruprasad Deshpande, Chief
Manager, SBI (in person)
Shri P. Sriharsha Reddy, Advocate



Per: Rajeswara Rao Vittanala Member (Judicial)

ORDER

1. The present Company Petition bearing CA No. 159/2017 is filed by M/s Super Agri Seeds Private Limited, U/s 10 of IBC, 2016 R/w Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016, by seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s Super Agri Seeds Private Limited.
2. Brief facts, leading to filing of the present petition, are as follows:-
 - (a) M/s Super Agri Seeds Private Limited is a Company incorporated on 6th October 2003 as "Super Agri Seeds Private Limited" (herein after referred to as Petitioner/Corporate Debtor).
 - (b) The main objects of the Company are to take over the Assets and Liabilities of M/s Super Agro-Tech, a partnership firm including its Trade Marks, Brands, and Licenses etc.; to carry on business of producers, sellers, dealers in all types of Agricultural seed, mother seeds etc Its authorised share capital is Rs. 60,00,00,000/- divided into 1,79,00,000 equity shares of Rs. 10/- each.
 - (c) The Corporate Debtor has taken various loans from SBI/RBL/ ICICI Bank Limited, the details of which are furnished below:-



S.No.	Name of the Financial Creditor	Type of Loan	Debt O/S In crores	Amount of default /OTS
1.	SBI	CC	48.80	25.75
2.	RBL Bank Ltd	Crop Loan obtained by Farmers	6.65	4.00
3.	ICICI Bank Ltd	Crop Loan obtained by Farmers	23.99	7.20
	TOTAL			36.95

(d) When the Corporate Debtor failed to pay an amount of Rs. 46,38,03,629/- due to SBI, it has initiated SARFAESI proceedings by issuing Demand notice under Section 13(2) by demanding to pay said amount within a period 60 days from date of notice. Subsequently, a possession notice dated 02.09.2016 was issued and also E-Auction sale notice dated 31.07.2017 was published in Indian Express and in Telugu paper by giving dates as 26.08.17 to 30. 08.17 for inspection of documents for sale of movable and immovable mortgaged properties of the Company for outstanding amount of Rs. 52,64,54,508/-.

(e) Aggrieved by the e-auction of the properties of the Company, the Petitioner has filed the present Company Petition by seeking to initiate CIRP.

3. The case was initially listed for admission on 30.08.2017, and it was adjourned to 13.09.2017. However, the Learned Counsel for the Petitioner has moved CA No. 159 of 2017 U/R 11 of NCLT Rules, 2016 by seeking to advance the date of hearing the case from 13th September, 2017 to 06th September, 2017, i.e. today. Accordingly, the case is listed today.



4. We have heard Shri P.H. Arvind Pandian, Learned Senior Counsel along with Shri Dr. S.V.Rama Krishna Learned Counsels for the Petitioner and Shri P. Sriharsha Reddy, Shri G. Durga Bose Learned Counsels for SBI, with Shri Guruprasad Deshpande, Chief Manager, SBI.
5. Shri P. H.Arvind Pandian, the learned Senior Counsel for the Petitioner submits that the Company made a technology breakthrough in fine rice seed genetics such as “AMAN”, “AMIT”, “BHARATH” and many other hybrids/varieties in vegetable and cotton which helped millions of farmers across India, thus benefitting directly to the economy of the country.
6. The Learned Senior Counsel further submitted that the Corporate Debtor, with all good intents filed the instant petition particularly on the strength of the interests shown by the prospective investors like famous MURUGAPPA Group (Coromandel International Ltd.) (Term Sheet dated 1st February, 2017 shown at pages 224 to 230 of the Application) besides another company, M/s. AcsenHyVeg Pvt. Ltd. (formerly known as RasiHyVeg Pvt. Ltd.) shown at page 231 belonging to Rasi Group and other private parties. The promoter of the Company has been taking all out measures in meeting various obligations and tied up with private sources to meet One Time Settlement (OTS) dues to Banks and already spent huge amounts to Seed Growers and Farmers amounting to about Rs.395.00 lakhs (Rupees three hundred ninety five lakhs only) during the last three months.




Event to get the OTS letter also, the promoter has paid Rs.25.00 lakhs and taking steps to raise sources from every possible source. There is every possibility of revival and rehabilitation of the Company if some breathing time is available. However, the Company is going through turmoil because of the impending serious measures of the State Bank of India going for e-auction of the properties scheduled for 8th September, 2017. In that event, all the prospective investors would likely back out and there would be total wreckage and nothing can be retrieved and resolution plan would ultimately fail if the Adjudicating Authority refuse to interfere in the matter, as it is constituted to intervene in those circumstances so as to see possibility of resolution process.

7. The Learned Counsel further submit that there would be no prejudice caused to the Bankers if the resolution process is initiated under the aegis of this Hon'ble Tribunal as every measure would be reported through an independent Resolution Professional and scrutinized by the Lenders, who have direct control on the Interim Resolution Professional (IRP), who would be taking over the control of the Applicant Company. Moreover, whether to continue or not with the Interim Resolution Professional also vest with the Committee of Creditors (CoC) led by the SBI, that too for a very limited period of six months from now. Therefore, it is a last chance for survival of the



Applicant Company and thus, requests the Adjudicating Authority to exercise its power under IBC, 2016, in the interests of large number farmers, agriculture sector would be best served besides serving the interests of the lenders as well. The Company has great innate strengths of technology, well developed brand and markets across the country. The uniquely developed seeds of the Company well known brand of "SUPER SEEDS", state of art technologies are definite strengths in its favour. There is no intention of any abuse of process of law or malicious intentions on the part of the Applicant Company and may kindly be viewed as such.

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8. The Learned Senior Counsel further states that there is urgency in the matter to initiate the resolution process before the said E-Auction takes place on 8th September, 2017. Otherwise, if the SBI takes precipitate measures of auctioning the properties, it would send wrong signals to the prospective investors, who would like to withdraw their proposals to invest monies to revive the operations of the Company. Besides, the monies to come from the market/debtors into the Company would also be choked as the debtors of the Company would exploit the situation and avoid their payments due to the Company. Further, the large public interest by way of farmer's loans and benefits of seeds, farm produce etc. would be adversely affected. Therefore, there is a genuine need to initiate resolution process in right earnest to

save the interests of all stakeholders and major beneficiary would be Creditors, mainly SBI and other lenders. In any case, the interests of the Creditors (SBI mainly) would always be better protected even under the resolution process through IRP who would be at the control of the SBI and other lenders.

9. The Learned Senior Counsel for Petitioner further filed a letter bearing F.No. PPV&FRA/REG-2011-332/VCK/2017 dated 26.07.2017 issued by Dept. of Agriculture & Farmers Welfare, Govt. Of India, addressed to Dr. S.Ravi Srinivas, MD of the Company by inter-alia stating that candidate variety in question was found to be distinct for essential specified essential characters etc. They were directed to submit the required information within 15 days.

10. Shri Durga Bose, Learned Counsel for the SBI , Financial Creditor, along with Shri Guru Prasad Deshpande, chief Manager, while taking notice of case, has submitted that the Bank is the sole secured creditor for total outstanding loan amount of more than Rs. 52 Crores including interest and thus, they have already initiated case against the Corporate Debtor under SARFAESI Act and it is an advanced stage as E-Auction is slated for 8th September, 2017. And stopping the process of E-Auction at this stage would prejudice its case for recovery of public money given to them as loan. They also stated that they are not convinced of the plans/proposals of the Company as stated in their affidavit.



11. As per Section 10 (iv) of IBC, the Adjudicating Authority shall admit the Petition if it is complete or reject if the application is incomplete. As stated supra, it is not in dispute that the Petitioner/ Corporate Debtor, has committed a default and the proof in respect of the same is filed along with the Petition and IRP is also proposed to be appointed. So the petition is complete in all respect as per Section 10 of the IBC, 2016. As rightly pointed by the Learned Senior Counsel for the petitioner/Corporate Debtor, the Company is entitled to be given one final opportunity for its revival as per their efforts as detailed supra. Moreover, the interests of Financial Creditors particularly, SBI would remain intact as their securities etc remain with them. In addition, it is not the case of the Bank that they have secure prospective customer(s) to purchase mortgaged properties in question. It is one of cardinal principles for insolvency resolution process under the IBC, that Corporate Debtor/persons should be given a chance to re-organise their debt so as to promote entrepreneurship rather than putting an end for the object. Since the e-auction under the provisions of SARFAESI is at an advanced stage i.e slated to be held on 8.9.2017, we are not going to stall the e-auction process at present and we want to permit proposed e-auction to go ahead but all the proceeds of e-auction of the properties shall be kept pending till further orders in this case. We will examine proceedings of E-Auction for declaration of moratorium and appointment of IRP under Sections 13 and 14 of the Code on the next of date of hearing.



12. In the result, the Company Petition bearing CP(IB)/172/10/HDB/2017 is admitted by exercising powers conferred on this Tribunal U/s 10(4)(a) of the Code. with following directions ;

- a) We permitted SBI to go ahead with proposed E-Auction but all the proceedings with regard to e-auction should be on hold till further orders passed to be in this case by Adjudication Authority.
- b) In order to avoid gap in communication of this order, we hereby directed Shri G.Durga Bose & Shri Guruprasad Deshpande, Chief Manager, SBI, who are present in the court, to carry out above direction, which is dictated in the open court without waiting for the written communication of this order.
- c) Post the C.P. on 13.9.2017 for consideration of declaration of Moratorium and appointment of IRP as per Section 13, 14 & 15 of IBC, 2016.



Sd/-
Ravikumar Duraisamy
Member (Technical)

Sd/-
Rajeswara Rao Vittanala
Member (Judicial)

Order received by the Registry on 11/9/17

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For Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
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केस संख्या
CASE NUMBER CP(IB) No. 172/10/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT 6.9.2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON 11.9.2017