

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

CP (IB) NO. 16/Chd/Pb/2017

Date of Order: 02.05.2017

Coram: HON'BLE MR. JUSTICE R.P. NAGRATH, MEMBER(JUDICIAL).

In the matter of:

Dunn Foods Private Limited
Plot No. 469, Industrial Area, Phase VIII-B
Mohali (Punjab).

... Applicant/Corporate Debtor

Application for initiating Corporate Insolvency Resolution Process u/s 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and u/s 13 and 14 of the Code.

Present: Mr. G.S. Sarin, Practising Company Secretary and Mr. J.K. Grover, CA, Authorised Representatives for Applicant/Corporate Debtor.
Mr. Krishan Vrind Jain, Proposed Insolvency Resolution Professional.

ORDER

Justice R.P.Nagrath, Member (Judicial) (ORAL) :

This is an application filed by M/s. Dunn Foods Private Limited a 'Corporate Debtor' itself in Form 6 as prescribed by sub rule (1) of Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, 'the Rules') for initiating corporate insolvency resolution process under Sections 10, 13 and 14 of the Insolvency and Bankruptcy Code, 2016 (for brevity, 'the Code') at the instance of the 'Applicant/Corporate Debtor'. The 'Applicant/Corporate Debtor' also falls within the term 'Corporate Applicant' as defined in sub-section (5) of Section 5 of 'the Code'.

2. It is represented by Mr. G.S. Sarin, Practising Company Secretary the Authorised Representative of the 'Applicant/Corporate Debtor' that the 'Applicant Company' was incorporated on 17.04.2003 with the Registrar of Companies, Punjab & Chandigarh. This is part of Annexure VII-B containing the Memorandum & Articles of Association of the 'Applicant/Corporate Debtor'. The 'Applicant/Corporate Debtor' has been allotted CIN No. U15419PB2003PTC025934.

3. The authorised share capital of the 'Applicant/Corporate Debtor' is ₹ 13,50,00,000 and its paid up capital is ₹ 13,42,00,000/-. There are presently three Directors of the 'Applicant/Corporate Debtor' with distinct DIN numbers as per list at page 501 and six shareholders as per Annexure VI (F) of the Paper Book with major shareholding belonging to :-

i)	Mr. Sunil Guglani	54.09%
ii)	Mr. Suhail Guglani	21.97%
iii)	Mrs. Suman Guglani	16.39%

It is also represented that the 'Applicant/Corporate Debtor' passed resolution dated 30.03.2017 Annexure 'VII-A' authorising Mr. Sunil Guglani, Director of the Company to file an application under Section 10 of Insolvency and Bankruptcy Code, 2016 and Rules made thereunder to initiate Corporate Insolvency Resolution process of the Company before NCLT.

4. It is further represented that the 'Applicant Company' has the following financial creditors:-

A. Sarin

Sl. No.	Name of the Bank	Address	Total debt raised.	Amount in default
SECURED CREDITORS				
1.	Punjab National Bank.	Large Corporate Branch, Sector 17-B, Chandigarh-160017.	Debt raised as per sanction letter dated 28.03.2015 (Annexure -I (A) : CC Limit: 02.95 Cr. WCTL-I: 7.79 Cr WCTL II: 2.34 Cr Total: ₹ 13.08 crores. Amount outstanding as per books- ₹ 14.81 Cr	₹ 14.81 crores
2.	Canara Bank	Mid Corporate Branch, Plot No-01, Sector-34A Chandigarh-160034	Debt raised as per sanction letter dated 08.06.2015 (Annexure -I (F) : CC Limit: 2.63 Cr. FITL: 4.82 Cr TL: 9.37 Cr WCTL: 10.98 Cr LC/BG: 0.71 Cr Total: ₹ 28.51 crores. Amount outstanding as per books- ₹ 30.52 Cr	₹ 29.99 crores
3.	Central Bank of India	SCO 68-69, Bank Square, Sector 17-B, Chandigarh-160017	Debt raised as per sanction letter dated 27.02.2015 (Annexure -I (J): CC Limit: 01.07 Cr. FITL: 3.82 Cr TL: 13.05 Cr WCTL: 2.83 Cr Total ₹ 20.77 crores. Amount outstanding as per books- ₹ 20.95 Cr	₹ 21.82 crores.
4.	State Bank of India.	SCO 109-110, SAM Branch, Sector 17-B, Chandigarh-160017	Debt raised as per sanction letter dated 19.03.2015 (Annexure -I (N) : CC Limit: 0.71 Cr. FITL: 2.57 Cr	₹ 15.85 crores

			TL: 9.24 Cr WCTL: 1.78 Cr NFBWC: 0.08 Cr Total: ₹ 14.38 crores. Amount outstanding as per books- ₹ 13.64 Cr	
	TOTAL DEBT RAISED (FINANCIAL CREDITORS- SECURED)			₹ 76.74 Cr
	Amount as per books (Financial Creditors)			₹ 79.93 Cr
	Total Amount in Default			₹ 82.47 Cr

5. When the matter was fixed for 25.04.2017, it was noticed that the list and addresses of 'Operational Creditors' was not complete for which time was granted to remove the defects. The Authorised Representative of 'Corporate Debtor' has filed the complete list of creditors along with all the invoices supported with the affidavit of Sunil Guglani. As per the case set up by the 'Applicant/Corporate Debtor' there are 39 employees/ex-employees as on 28.03.2017 among the 'Operational Creditors'; 76 'Operational Creditors' (raw material) as on 28.03.2017; and 14 'Operational Creditors' (service providers) as on 28.03.2017. The list of 'Operational Creditors' is attached as Annexure-II in the original petition as well as the additional documents. It is also represented that in respect of the Government Departments the amount of debt raised is 00.12 Crores and amount in default is 12.93 Crores (contingent liability DGFT). The details of default of the Government Department is at Annexure II(A). The amount of default in respect of raw material supply is stated to be ₹00.16 Crores; in respect of workers it is ₹00.06

Crores (as per books it is ₹00.19 Crores); in respect of service providers the default is Nil though as per books it is stated to ₹00.22 Crores. It is represented that the total amount of default Financial and Operational creditors is ₹79.61 Crores and as per books the same is ₹82.80 Crores. The default, however, is mentioned as ₹95.62 Crores by including contingent liability DGFT.

6. Mr. G.S.Sarin, the Authorised Representative of the 'Applicant/Corporate Debtor' further represents that due to default in making payment to the financial institutions, Punjab National Bank issued notice dated 02.11.2016 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act, 2002) attached at Annexure I (C). Similarly, copies of notices issued by the other Banks of different dates under Section 13 (2) of the said Act have also been attached. Along with the additional documents as per directions issued by the Tribunal on 25.04.2017, the 'Applicant/Corporate Debtor' has also attached notice Annexure -3 served by Punjab National Bank under Section 13(4) of the SARFAESI Act, 2002 detailing therein the total amount of default in respect of the financial institutions i.e. consortium of banks. Outstanding amount as per the notices under Section 13(2) of the SARFAESI Act, 2002 issued by all the four banks was to the tune of ₹ 82,47,04,012.64. Vide this notice dated 27.03.2017 the 'Applicant/Corporate Debtor' has been called upon to deliver the secured assets before 29.04.2017 failing which the authorised officer of Punjab National Bank, as the leader of Consortium will take possession of the assets mortgaged/hypothecated with the bank. In this notice it is represented that pari passu charge in respect of the entire current

assets of the company and the mortgaged property with the consortium banks was created.

7. In the application in Form No.6 the details of the immoveable property mortgaged was given below:-

(i) Equitable mortgage of the entire land and building, plant and machinery and other fixed assets of the 'Corporate Debtor' in respect of :-

(a) Khata No.290/327, Khasra No.1491 (3-3)1494(1-16), 1495 (6-3), 1496 (1-2), 1499(6-18), Kite5, 19 Bigha 2 Biswa (17284 Sq Yds.).

(b) Khata No.371/425, Khasra No.1492 (1-8), 1493 (1-2)364(1-8), 1501/1(0-3) Kite 3,2 Bigha 13 biswa and khata No.372/426, Khasra No.500(5-16) Kite 1,5 Bigha 16 Biswa Total 8 bigha 9 Biswa (7691 sq.yds.).

(c) Leasehold rights in respect of land measuring 01-10 Bigha (1350 sq.yds) Khasra No.2032/1741/1 situated at Mauja Thanna, Nalagarh. (Leasehold rights in favour of company for 95 years by DIC, Solan).

The estimated value of the land and building is stated to be ₹24.10 Crores and that of plant and machinery to be ₹38.81 Crores as per the valuation report by the valuer of the creditor dated 31.01.2015. Copy of the valuer's report is Annexure I (R).

(ii) Sunil Guglani, Suman Guglani, Suhail Guglani and Sahil Arora have also furnished personal guarantees in respect of the immoveable properties on 28.03.2015. Net worth of their immoveable property has also been detailed in the application.

8. The 'Applicant/Corporate Debtor' proposed the name of Mr. Prakash Dev Sharma as the Insolvency Resolution Professional but when the matter was listed on 25.04.2017, it was pointed out that Mr. Prakash Dev Sharma has already been appointed as IRP in the case of another company whose promoters are the same as that of the 'Applicant Company' and therefore, time was requested to propose the name of another IRP. The 'Applicant/Corporate Debtor' has filed fresh communication in Form No.2 of the proposed IRP with the documents filed on 27.04.2017 which is at Annexure- 4. The 'Applicant' has now proposed the name of Mr. Krishan Vrind Jain as the IRP who is registered with IBBI under Registration No.IBBI/IPA-001/IP-00619/2016-2017/1396. Mr. Jain has agreed to accept the appointment as IRP if an order admitting the instant petition is passed. He has, however, disclosed that he is serving as IRP of another company in which he has since been appointed a Resolution Professional.

9. In this regard the Authorised Representative of the Applicant submits that as per Regulation 22 of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulation, 2016 "an Insolvency Professional must refrain from accepting too many assignments, if he is unlikely to be able to devote adequate time to each of his assignments". It is thus submitted that there is no bar in accepting more than one assignment either under the 'Code' or the Rules and Regulations framed thereunder. Mr. Krishan Vrind Jain has also declared that no disciplinary proceedings are pending against him with the Board or Indian Institute of Insolvency Professional of ICAI. He has given complete information with regard to paragraph (vi) of Form No.2 giving declaration(s) that he is eligible to be appointed as an Insolvency Resolution



Professional as per Regulation (3) of the IBBI (Insolvency Resolution Process for Corporate Persons), Regulations 2016. He has even stated that he is independent of the 'Corporate Debtor' and he fulfills the conditions mentioned in Regulation 3 with complete details. He has undertaken to abide by the Code of Conduct set out in the Regulations.

10. The instant application has been filed in Form 6 in terms of Section 10 of 'the Code' by the 'Corporate Debtor'. Section 10 of 'the Code' is extracted hereunder:-

(1) Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.

(3) The corporate applicant shall, along with the application furnish the information relating to—

- (a) Its books of account and such other documents relating to such period as may be specified; and*
- (b) the resolution professional proposed to be appointed as an interim resolution professional.*

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order—

- (a) admit the application, if it is complete; or*
- (b) reject the application, if it is incomplete.*

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.

(5) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4) of this section.

11. The above provision of 'the Code' discloses that the following procedures are required to be completed by a 'Corporate Debtor' for initiating the process of insolvency:

- (i) Existence of a 'Corporate Debtor'
- (ii) Such a 'Corporate Debtor' must have committed a default.
- (iii) On the satisfaction of (i) and (ii) above, a 'Corporate Applicant' may file an application for initiating Corporate Insolvency Resolution Process.
- (iv) Such an application as contemplated in (iii) above shall be filed in such forms, containing such particulars and in such manner and accompanied with such fee as may be prescribed.
- (v) Along with the application as in (iv) above, information relating to books of accounts and other documents relating to such period as may be specified.
- (vi) The Applicant to name the Resolution Professional proposed to be appointed as Interim Resolution Professional.

12. Section 10 of 'the Code' confers a discretion on this Tribunal to either admit or reject the application and in case of rejection, to give an opportunity to the applicant before such rejection, to rectify the defects within seven days from the date of receipt of such notice from the Adjudicating Authority. The term 'Corporate Debtor' has been defined under Section 3 (8) of Part-I of 'the Code' to mean a Corporate Person, who owes a debt to any person and 'default' is defined under Section 3 (12) of Part-I of 'the Code' to



mean "non-payment of debt when whole or any part or instalment of the amount of debt has become payable and is not repaid by the debtor or the 'Corporate Debtor', as the case may be".

13. As provided in Rule 7 (1) of the Rules, the 'Corporate Applicant' has to make an application under Section 10 of 'the Code' in Form 6 accompanied with documents and records required therein and as specified in IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Since I have already dealt in detail in the opening paragraphs supra of this order relating to information furnished, the same is not being repeated for the sake of brevity, as the essential particulars as contemplated, have been provided by the 'Applicant'.

14. In relation to the information relating to books of accounts, audited financial statements have been filed for preceding two years ending 31.03.2015 and 31.03.2016 and unaudited provisional balance sheet for the period from 01.04.2016 to 28.03.2017 relating to the Financial Year 2016-17 are at Annexure 'V' (colly). The un-audited provisional financial statement up to 28.03.2017 Annexure- J has been duly signed by two Directors of the Company and not by the Chartered Accountant. When the matter was taken up today in the morning Mr. Sarin, PCS requested sometime to file the provisional financial statement up to 28.03.2017 duly certified by the Chartered Accountant. The compliance has been made. The provisional statement upto 28.03.2017 authenticated by the Chartered Accountant and attested by two

Directors of the 'Corporate Debtor' has been filed along with an application to take the same on record. The request is allowed.

15. It is represented by the learned counsel for the 'Applicant' that as per these financial statements, following is the status of the 'Applicant Company' under different heads:-

Accumulated profit/loss of the 'corporate debtor'

As on 28.03.2017	-	₹ (28,88,88,860)/-
As on 31.03.2016	-	₹ (19,13,33,667)/-
As on 31.03.2015	-	₹ (4,06,06,090)/-

Long Term Borrowings and other liabilities discloses the following for the above years:

As on 28.03.2017	-	₹ 74,16,88,008/-
As on 31.03.2016	-	₹ 69,80,23,748/-
As on 31.03.2015	-	₹ 51,74,67,126/-

Current Liabilities

As on 28.03.2017	-	₹ 11,45,05,198/-
As on 31.03.2016	-	₹ 11,40,71,600/-
As on 31.03.2015	-	₹ 22,23,25,560/-

Revenue from Operations and other income:

As on 28.03.2017	-	₹ 5,04,49,019/-
As on 31.03.2016	-	₹ 29,66,47,809/-
As on 31.03.2015	-	₹ 1,10,16,60,676/-

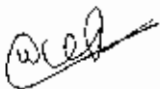
16. The figures extracted above would indicate the losses and fall in revenue considerably. The 'Applicant Company' is facing the notice under

SARFAESI Act, 2002, and there is huge amount of default committed in respect of creditors.

17. In view of the aforesaid discussion, the instant petition deserves to be admitted. It is, however, observed that the 'Applicant Company' save some sketchy particulars has not given any road map as to how it is going to keep itself afloat as a going concern. However, keeping in perspective the objects for which 'the Code' has been brought into force and to balance the interest of all stakeholders, I am satisfied that the instant application warrants to be admitted to prevent further erosion of capital and to safeguard the assets of the 'Applicant/Corporate Debtor'. For the reasons aforementioned while admitting the application, the following directions are issued:-

(i) Appoint Mr. Krishan Vrind Jain, Mobile No-9417009490 SCO 345-346, 2nd Floor, Sector 35 -B, Chandigarh, 160035, e-mail-jainkv@gmail.com, Registration No.IBBI/PA-001/IP-00619/2016-2017/1396, a Registered Insolvency Professional (IRP) as the Interim Resolution Professional as contemplated under Section 16 of 'the Code' and his term of appointment shall be for a period of thirty days from the date of this order or as may be determined by the Committee of Creditors whichever is earlier;

(ii) In terms of Section 17 of the 'Code', from the date of his appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the 'Corporate Debtor' shall report to the Interim Resolution Professional, who shall be enjoined



to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the 'Code', including taking control and custody of the assets over which the 'Corporate Debtor' has ownership rights recorded in the balance sheet of the 'Corporate Debtor' etc. as provided in Section 18 (1) (f) of the 'Code'. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the 'Corporate Debtor'

(iii) The Interim Resolution Professional shall strictly act in accordance with the 'Code', all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standard of ethics and moral.

(iv) The Interim Resolution Professional shall endeavour to constitute the Committee of Creditors at the earliest but not later than three weeks from the date of this Order.

(v) It is hereby directed that the 'Corporate Debtor', its properties, personnel and persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the 'Corporate Debtor' as a going concern and extend all cooperation in accessing books and records as well as assets of the 'Corporate Debtor'.

18. I further declare a moratorium in relation to the following matters as contemplated under Section 14 of the 'Code' as under:-




- (a) The institution of suits or continuation of pending suits or proceedings against the 'Corporate Debtor' including execution of any judgement, 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 (54 of 2002);
- (d) The recovery of any property by any owner or lessor or where such property is occupied by or in the possession of the 'Corporate Debtor'.

19. It is, however, directed that supply of essential goods or services to the 'Corporate Debtor' shall not be terminated or suspended or interrupted during moratorium period. The direction with regard to the moratorium shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sectoral regulator. The moratorium shall have effect from the date of passing of this order i.e. 02.05.2017 till completion of the Corporate Insolvency Resolution Process.

20. The Interim Resolution Professional appointed by this Tribunal is also directed to cause a public announcement within **three days** from the date of this order as contemplated under Regulation 6 of the Insolvency and

Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the 'Code' read with Section 15 calling for the submission of claims against the 'Corporate Debtor'.

21. It is further directed that the Interim Resolution Professional shall positively file a report of events before this Tribunal every week in relation to the 'Corporate Debtor'. Copy of this order be supplied to the Authorised Representative of applicant immediately who shall deliver a copy instantly to the Interim Resolution Professional.


(Justice R.P. Nagrath)
Member (Judicial)

May 02, 2017
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