IN THE NATIONAL COMPANY LAW TRIBUNOAL HYDERABAD BENCH AT HYDERABAD

C.P. No. (IB)/128/10/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:

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

Neeta Chemicals (I) Pvt. Ltd (NCIPL) (Corporate Debtor / Corporate Applicant)
H.No 1-2- 234/13/53 To 56,
Reliance Residency
Flat No 101,
Indra Park Road, Domalguda
Hyderabad -500029

.Applicant/Corporate Debtor

Versus

State Bank of India SAM Branch (Hyderabad) Kachiguda Hyderabad- 500 027

Respondent/ Financial Creditor

Date of order: 14.08.2017

CORAM:

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

Counsels for the Corporate Debtor;

Mr. A.S.Prashanth with Mr.

G.Siva Kumar and Mr. Amir

Bavani, Advocates

Counsel for Financial Creditor:

Mr. G.Durga Bose, Advocate

Per: Rajeswara Rao Vittanala, Member (J)

ORDER

- 1. The Company petition bearing C.P. No. (IB)/128/10/HDB/2017 is filed by Neeta Chemicals (I) Pvt. Ltd, (herein after referred to as Corporate Debtor/NCIPL), under Section 10 of the Insolvency and Bankruptcy Code, 2016 ('IBC') read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules') by seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of Neeta Chemicals (I) Pvt. Ltd under IBC, 2016.
- 2. Brief facts of the case, as discerned from the pleadings of parties, which are relevant to adjudicate the present case are as follows:
 - The Corporate Debtor obtained a loan amount of Rs. 65.50 Crore vide Sanction Letter dated July 28, 2009 from the State Bank of India(herein after referred to as Respondent/Financial Creditor) and the necessary loan documentation was executed. Again the Overall Limit was enhanced to Rs.197.50 Crore vide sanction letter dated 12th November, 2010 and necessary loan documentation was executed.
 - 2) The loan account of the Corporate Debtor was classified as a Non-Performing Asset ("NPA") on September 26, 2013 for consecutive defaults in the payment of loan amount. The Financial Creditor had issued numerous default notices demanding the Corporate Debtor to make payment, and also had numerous meetings with the Corporate Debtor to discuss on the affairs of the Corporate Debtor, so as to find out any solution to the issue in question and the last meeting on this account took place in July 2017. However, the Corporate Debtor failed to come for settlement of the issue in question.

- Subsequently, the Loan Account of the Corporate Debtor has been classified as Non-Performing Asset ("NPA") on December 26, 2013 due to non-repayment of outstanding liabilities. The Bank had issued number of Default Notices to the Corporate Debtor due to default in payment of loan amount. And the first default in payment of loan amount was occurred on September 26, 2013 and continues till date.
- In view of the default on the part of the Corporate Debtor, the Financial Creditor/Bank got issued a Legal Notice dated November 22, 2016 calling upon the Corporate Debtor, and the Guarantors to pay the outstanding amount of Rs. 324,64,55,653/- including interest. However, the Corporate Debtor failed to make any payment to the Bank/Financial Creditor against the amount due.
- As on date, an amount of Rs. 374,97,50,710/- is due from the Corporate Debtor, which includes the principal amount of Rs. 180,56,93,546/- and the interest amount of Rs. 194,40,57,164/-.
- Since no payment was made against the outstanding due 6) amount, the Financial Creditor, on December 1, 2016, invoked the provisions of the SARFAESI Act by issuing a Demand Notice under Section 13(2) of the SARFAESI Act by the outstanding amount Rs. demanding that 329,71,74,696/- be paid within sixty (60) days from the date of the Demand Notice. The Demand Notice also put the Corporate Debtor and the Guarantors to notice, under Section 13(13) of the SARFAESI Act as not to dispose of any of the mortgaged properties. The Demand Notice was also got published in Deccan Chronicle, English daily newspaper, and Eenadu, Telugu daily newspaper, on 10th January 2017 and 13th January 2017.



- The loan account, the Corporate Debtor got issued a Reply Notice dated January 3, 2017 to the Demand Notice by denying the outstanding due amount, execution of the loan documents etc. In reply, the Bank got issued a Rejoinder on March 4, 2017 to the Demand Notice disputing all the allegations made in the Reply to the Demand Notice, and again called upon the Corporate Debtor and the Guarantors to discharge the outstanding due amount.
- 8) The Corporate Debtor had not made any payment of the outstanding due amount. So Financial Creditor/ the Bank got issued the Possession Notice dated April 17, 2017 under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 and has also taken possession of the properties as provided for in Section 13(4) of the SARFAESI Act on April 17, 2017. And Possession Notice was further published in Indian Express and Andhra Jyothy on April 20, 2017, English and Telugu daily news papers respectively.
- On May 3, 2017, the Financial Creditor got issued Notice <u>Prior</u> to <u>Sale</u> under Rules 8(5) and 8(6) of the Security Interest (Enforcement) Rules, 2002 to the Corporate Debtor, by intimating that the secured assets mortgaged/charged to Bank, in question, would be sold by public e-auction at any date after expiry of thirty (30) days from the date of the said notice.
- On the expiry of thirty (30) day period from the issuance of said Notice Prior to Sale, the Bank got published E-Auction Sale Notice in 'The Indian Express, English daily, and Andhra Jyothi Telugu daily newspapers on 18th July, 2017. Accordingly, the Bank issued a letter dated 21st July, 2017 to Corporate Debtor intimating it about the proposal of Bank to



conduct <u>E-AUCTION on 28.08.2017</u> for sale of some of properties in question as mentioned in the notices issued earlier.

- 11) In the above circumstances, the Company petition is filed by seeking a direction to initiate Corporate Insolvency Resolution Process respect of Neeta Chemicals (I) Pvt. Ltd.
- 3. We have heard Mr A.S.Prashanth along with Mr. Amir Ali Bavani Learned Counsels for the petitioner/Corporate Debtor and Mr G.Durga Bose Learned Counsel for the respondent/Financial Creditor. We have carefully examined all the pleadings along with supported documents filed by the respective parties and extant provisions of IBC, 2016.
 - Mr A.S. Prashanth, the Learned counsel for the petitioner has submitted that the instant application is in order, in terms of Section 10 of IBC read with Rule 7 and Form 6 of the said Rules, and stated the following in support of his contention:
 - The Application has been duly / filed in terms of Form 6 of the said Rules, the Applicant has also provided all the details / documents / records as required in Form 6.
 - Date of filing of the Application: 28.06.2017.
 - Details of Financial Creditor(s) have been duly provided by the Applicant: State Bank of India ('SBI')
 - Details of Operational Creditor and statutory dues have been provided.

The Applicant has admittedly defaulted in the payment of its debts to SBI, its Financial Creditor and other Operational Creditors and also the statutory authorities.

Details of defaults towards SBI:



- Declaration of account of the Corporate Debtor as Non-Performing Asset ('NPA') on 26.12.2013.
- o Demand Notice dated 22.11.2016 issued by SBI.
- Notice under Section 13(2) of SARFAESI Act, 2002 issued by SBI.
- Possession Notices dated 17.04.2017 and 18.04.2017 issued by SBI.
- Notice prior to sale dated 03.05.2017 issued by SBI.
- Apart from the above proof of defaults, the SBI has itself admitted / submitted in its Reply dated 03.08.2017 that the Corporate Debtor has consistently defaulted in making payments to SBI.
- Financials of the Company are supported by the following documents:
 - o Independent Auditors'for the year ending 31.03.2016. Default by the Company.
 - o Balance Sheet as at 31.03.2016.
 - o Provisional Balance Sheet as at 31.03.2017.
 - o Provisional Balance Sheet as at 15.06.2017.
- SARFAESI proceedings initiated by SBI:
 - SBI has declared the account of Corporate Debtor as Non-Performing Asset on 26.12.2013.
 - SBI has further issued notice dated 01.12.2016 under Section 13(2) of the SARFAESI Act.
 - SBI has further issued Possession Notices dated 17.04.2017 and 18.04.2017, followed by notice prior to sale dated 03.05.2017.
 - During the pendency of present Application (Application was filed on 28.06.2017), on 21.07.2017, SBI issued e-auction notices for sale of properties of the Corporate Debtor to be carried out on 28.08.2017.
 - The above facts goes on establishing that there is a Financial debt due and payable by the Corporate Debtor and the Corporate Debtor has admittedly defaulted in making the payments of the same.
- 5. The Learned counsel for the petitioner has relied upon the following judgments/decisions, in support of his case:
 - The decision/observation of the Co-ordinate Adjudicating Authority, Mumbai Bench, in the matter of *Indus Finance Ltd*.



Vs. Quantum Ltd., Company Petition No.1043/I&BP/NCLT/MB/MAH/2017

- The decision of Hon'ble Adjudicating Authority, Principal Bench, New Delhi in the matter of *Amit Spinning Industries Ltd., Company Petition No. (IB)-131(PB)/2017*,
- Further, in the matter of Alpha & Omega Diagnostics (India) Ltd.
 Vs. Asset Reconstruction Company of India Ltd. & Ors. being Company Appeal (AT) (Insol) No. 116 of 2017, the Hon'ble National Company Law Appellate Tribunal upheld the observations made by the Hon'ble Adjudicating Authority, Mumbai, wherein the Hon'ble Adjudicating Authority was of the following view:-
 - There are recognised canons of interpretation. Language of the Statute should be read as it existed. This is a trite law that no word can be added or substituted or deleted from the enacted Code duly legislated. Every word is to be read and interpreted as it exists in the statute with the natural meaning attached to the word. Rather in this Section the language is so simple that there is no scope even to supply 'casus omissus'. I hasten to add that the doctrine of 'Noscitur a Sociis' is somewhat applicable that the associated words take their meaning from one another so that common sense meaning coupled together in their cognate sense be interpreted. As a result, "its" denotes the property owned by the Corporate Debtor. The property not owned by the Corporate Debtor do not fall within the ambits of the Moratorium. Even Section 10 is confined to the Book of the Accounts of the Corporate Debtor, due to the reason that Section 10(3) has specified that the Corporate Applicant shall furnish "its" Books of Accounts. This Bench has no legislative authority to expand the meaning of the term, "its" even under the umbrella of 'Ejusdem generis'.
 - 8. The outcome of this discussion is that the Moratorium shall prohibit the action against the properties reflected in the Balance Sheet of the Corporate Debtor. The Moratorium has no application on the properties beyond the ownership of the Corporate Debtor. For the sake of completeness, it is worth to refer that the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement



of Securities Interest Act, 2002 (the SARFAESI Act) may be having different criteria for enforcement of recovery of outstanding debt, which is not the subject matter of this Bench. Before I part with it is necessary to clarify my humble view that the SARFAESI Act may come within the ambits of Moratorium if an action is to foreclose or to recover or to create any interest in respect of the property belonged to or owned by a Corporate Debtor, otherwise not.

9. To conclude the Application under Section 10 of the Code is hereby "Admitted" subject to the exception as carved out supra."

In the light of above facts, provisions of IBC and decisions on the issue, the learned counsel for petitioner has strenuously contended that the Adjudicating Authority has no other option except to admit the case, and pass all other consequential orders as per extant provisions of IBC, 2016.

- 7. Shri G.Durga Bose, the learned Counsel for the Financial Creditor/SBI, on the other hand, has strongly opposed the application itself, by filing a reply dated 3rd August, 2017. The following are his main contentions:
 - a) The application/petition is fraught with malafides, and the Corporate Debtor has not approached this Tribunal with clean hands, and has suppressed several material facts of the issue in question. Therefore, it is liable to be dismissed *in-limine* without going into other contentions of applicant.
 - b) The petition is filed only to circumvent the process already initiated by the Financial Creditor under the SARFAESI Act, 2002, and e-auction is scheduled to be held on 28th August, 2017, which is after following due process of law. After knowing everything about the issue, the Corporate Debtor has filed the petition, that too eleventh hour with malafide intention.
 - c) It is stated that as on date, an amount of Rs. 374,97,50,710/- is due from the Corporate Debtor, which includes the principal amount of Rs. 180,56,93,546/- and the interest amount of Rs.



194,40,57,164/-.The loan Account of the applicant/Corporate Debtor was already classified as a Non-Performing Asset ("NPA") on September 26, 2013.

- d) The Corporate Debtor obtained a loan amount of Rs. 65.50 Crore vide Sanction Letter dated July 28, 2009. And the Overall Limit was enhanced to Rs.197.50 Crore, and necessary documentation was also executed by the parties Concerned.
- e) It is not correct to say that the application has to be mechanically admitted subject to compliance of filing of application in prescribed form etc. The Adjudicating Authority has to verify the relevant facts, and after satisfying those facts in the light of law, has to admit and pass necessary orders under Sections 10/14 of the IBC.
 - They have also relied upon Section 60 (5) of the IBC, which clearly provides that the Tribunal shall have the jurisdiction to entertain and dispose of any petition / application / proceeding initiated by a Corporate Debtor. Therefore, it is stated that mere filing of a Petition under Section 10 of the IBC does not entail automatic admission if all the criteria laid down in that section are technically satisfied/fulfilled.
- g) It is also stated that the Tribunal has power to impose fine for malicious or fraudulent initiation of proceedings. The Corporate Debtor is very well aware of all the steps taken by Financial Creditor to recover the loan amount due, has initiated the instant CIRP with malafide intention to stifle the proceedings initiated under the SARFAESI Act and with an intention to harass Financial Creditor. Since notification has already been given for E-Auction to be held on August 28, 2017, the present petition should not be entertained by the Tribunal. It is, therefore, prayed that Tribunal may dismiss the



application with a penalty as provided for in Section 65 of the IBC, in the interest of justice.

- h) He has relied upon the decision of NCLT /Mumbai Bench passed on 22nd June, 2017 in the case of Leo Duct Engineers & Consultants Ltd. Wherein, after discussing the merits of case filed under Section 10 of IBC, the Adjudicating Authority has dismissed the case.
- In the light of above facts and circumstances of the case, the fundamental issue arise for consideration is what are the criteria for admission of a case filed under Section 10 of IBC, 2016.

In order to adjudicate any issue legally, it is necessary to read the concerned Act as a whole, and not a particular provision in isolation, in order to arrive at a judicious decision. There are fundamental judicial principle(s) for coming to such decision(s) viz principle of natural justice; party has to come to court/Tribunal with clean hands by disclosing all material issues in question, Courts/Tribunal should not allow a party to misuse/abuse the judicial process.



includes a financial and operational debt: 'Claim' means a right to payment whether or not such right is reduced to judgment etc.

- 11. There are checks and balance provided in the IBC by way of inserting sections like 60, 65 and 66 to meet ends of justice.
- 12. In the light of above provisions, we have to examine the issue in question in the instant case. As stated supra, the first element to consider a case is whether default as mentioned in section 10(1) of IBC ,2016 has occurred or not. If we go by application (Form 6) as filed by the applicant herein, under part-III (3) there is no mention of total debt raised and default occurred except referring supporting document as Annexure -6. In this regard, it is relevant to refer legal notice dated 22 November, 2016 (Annexure 8(iii) page 65) given by State Bank of India/Financial Creditor and the reply given by the Corporate applicant (M/s Neeta Chemicals) dated 14.12.2016 (Annexure -8((v) page 87 to 92).

The said legal notice 22nd November, 2016(Annexure 8(iii) page 65 to 72) issued on behalf of SBI, by giving all details of loans and various mortgages, called upon the Corporate Debtor to discharge outstanding balance of Rs. 324, 64,55,653/ together with Rs. 10,000/ towards cost of the notice within 15 days from the date of receipt of notice with a stipulation that they would initiate appropriate legal proceedings apart from invoking provisions of SARFAESI ACT, in case they failed to pay the outstanding amount.

In the reply to the said notice, a reply dated 14th December, 2016 (Annexure 8(v) page 87 to 92) got issued by the Corporate Debtor, through their counsel Mr. B. Sreenivas Reddy, Advocate. In the legal notice, all the claims of Bank with regard to outstanding amount, security assets and the declaration of account as NPA etc are totally denied, and on the contrary and surprisingly, asked the Bank to prove its claims with Corporate Debtor within seven days by furnishing all relevant documents with regard to sanction of loans,



mortgages etc made with them etc. It is further alleged that the Bank itself has collected title documents in question, from them, by assuring that they would provide FB+ NFB limited to the tune of Rs. 226.60 corers but they have failed to do so. They have further denies the execution of any loan document by deceased persons namely B.Ganapathi Rao and O.Syam Sunder Rao .Finally tries to put the Bank under defense as if the Bank has committed sin/all fraudulent action in sanction of loans and mortgaging property on behalf of Company as collateral security. These un-tenable and illegal contentions on behalf of Corporate Debtor is liable be rejected out rightly, since large amount of public money is involved, and these contentions are totally reprehensible and not all tenable on any ground whatsoever.



- 13. The Bank /Corporate Creditor, subsequently issued a notice dated 01st December, 2016 to the Corporate Debtor, under Section 13(2) of SARFAESI, Act, 2002, again calling upon the Corporate Debtor to discharge liabilities in question, within 60 days from date of receipt of notice. In pursuance to this notice, the Corporate Debtor represented by its Managing Director issued a reply dated 3rd January, 2017(Annexure 8(vi) page 93- 101 of material papers) to the Bank/Corporate Debtor by reiterating all un-tenable pleas as raised in their earlier reply dated 14th December 16. This reply starts with the following paragraph
 - "1) At the very outset, we hereby deny all the averments and allegations in the above notice except in so far as we specifically admitted hereunder. Further, the issuance of the above notice under SARFAESI Act, 2002 against us is gross misuse of process of law "

After denying the claims of Bank in toto, the letter concluded with the following paragraph;

"In the above circumstances, we hereby request you to desist from initiating any action against us as well as the alleged secured Asset mentioned in your notice dated 01.012.2016 issued under section 13(2) of SARFAESI Act, 2002 till the issue final reply on furnishing required documents by the as requested supra. In spite of this reply if you chooses to resort to speculative litigation we shall suitably defend the same holding you responsible for all the costs and consequences borne thereof."



By reading of the above replies of Corporate Debtor, there is no default at all on the part of Corporate Debtor and the entire loans extended by the Bank and assets mortgaged are disputed issues and the Bank has to prove its bonafide in extending loans to the Corporate Debtor. And top of it, they are threatening the Bank with legal consequences for initiating action under SARFAESI Act, 2002. However, the learned counsel for the Corporate Debtor, contrary to the above documentary evidence, in order to maintain the present petition under IBC, is asserting that there is an admitted debt and default in question, and the application deemed to be admitted as a matter of right.

15. As per the statement (Annexure 14, page 185-186) the sole financial Creditor is State Bank of India/Financial Creditor with total outstanding amount is Rs. 324 Crores as on 15.06.2017. The total trade liabilities are Rs. 9,25,67,891/(page 187 & 188). And the total statutory liabilities consisting of Income tax, Commercial tax, sales tax are Rs. 2,17,900,360/-(page 189) So these details of debt clearly show that there will be no purpose to initiate CIRP in question. Ultimately, it is the Bank's propriety prevails even in Insolvency process proposed to be initiated by Corporate Debtor. As stated supra, the Financial Creditor/Bank has legally initiated

action under SARFAESI Act and e-action is scheduled to be held on 28.08.2017.

- **16.** It is to be mentioned here that the loans in question were availed by the Corporate Debtor in the year 2009-10, which are collaterally secured by way of equitable mortgage by deposit of title deeds /registered mortgage. And loans in question are classified as NPA as early as on 26.12.2013. Subsequently SARFASEI proceedings as detailed supra are initiated, which are in advanced stage of E-As pointed out by the Learned Counsel for the auction. Respondent/Bank, the instant application is filed only to scuttle the proceedings of SARFAESI. The Corporate Debtor has not taken any steps to clear even a part of loan and surprisingly and mischievously trying to deny the loans in question. It is un-heard that such a stand of denial is taken where in public sector Banks and public money is involved. Financial discipline demands that there should not be denial simply for the sake of denial in case where money is taken. It is very surprising to note the attitude of the Corporate Debtor before the Bank by way of replies as stated supra and filing the instant application to misuse and abuse the process of law under IBC. This Bench will not be a party to permit the Corporate Debtor to misuse provisions of IBC for its selfish ends, and that too against public interest. It is relevant to point out here that Courts/Tribunal is ultimate custodian of public funds.
- 17. As stated supra, all the provisions of IBC have to be taken into consideration, while deciding issues raised in cases filed under provisions of IBC. Sections 60(5), 65 and 66 of IBC conferred wide powers on Adjudicating Authority to analyze the issue(s) raised in a given case, and decide it as per merits. We are not inclined to accept the contention of the learned counsel for the Corporate Debtor/Applicant that Adjudicating Authority shall admit the case, once the application is complete as averred by the applicant in the application. The Adjudicating Authority should apply law correctly,

and it cannot act mechanically in entertaining application(s) under IBC, which will have serious repercussions on the parties. In the instant case, as stated supra, the public money involved is more than Rs. 324 Corers, and the Corporate Debtor is making frivolous and un-tenable contentions. We have no doubt in our mind that the present application is filed on frivolous and mischievous grounds with a malafide intention and un-clean hands to take advantage of provisions of IBC, 2016. Therefore, it is a fit case to impose exemplary costs for invoking provisions of IBC.



As stated supra, it is not the case of Corporate Debtor that in the decisions relied upon, the Adjudicating Authority has not concluded the issue raised therein is decided mechanically without application of mind to facts and the circumstances as available in that case. The Hon'ble NCLAT has subsequently examined the legality of decision(s) rendered by the Adjudicating Authority in particular case(s). As detailed supra, we have given our anxious thought to the issue in question in the light of various provisions of IBC and come to conclusion as explained in this order.

- 19. In the above circumstances, we are of the considered view that the Corporate Debtor has failed to satisfy the Adjudicating Authority as per various provisions especially Section 10 of IBC, for admission of the case. Therefore, it is not a fit case to admit the case.
- 20. As stated supra, the account of Corporate Debtor was classified as NPA as early as 26.12.2013 and bank has spent sufficient time, money and energy to recover the debt from the Corporate Debtor, which could be seen from the pre-paras. In the interest of the case, we would like to narrate few important steps taken by the bank such as number of default notices issued to the Corporate Debtor, legal notices issued to the Corporate Debtor and also to the guarantors, demand notice issued under section 13(2) of the SARFAESI Act. The Demand notice got published in Deccan Chronicle and Eenadu

in January, 2013, rejoinder issued on 04.03.2017, Possession Notice dated 17.04.2017 got issued under Rule 8(1) of Security Interest (Enforcement) Rules, 2002 and again published in Indian Express and Andhra Jyothy in April, 2017, Notice Prior to Sale under Rule 8(5) and 8(6) of Security Interest (Enforcement) Rules in May 2017 and E-auction sale notice in July, 2017 etc, which involved substantial cost to the Financial Creditor / Bank. Therefore, we impose a cost of Rs. 10 lakhs on the Corporate Debtor.



In the result, the Company petition bearing CP (IB) No. 128/10/HDB.2017 is dismissed with a cost of Rs. Ten lakhs to be paid to SBI/Financial Creditor on or before 31st August, 2017.

Ravikumar Duraisamy
Member (Technical)

Sd/=
Rajeswara Rao Vittanala
Member (Judicial)

निर्णय का लाग्नल DATE OF JUDGEMENT: 14-08 प्रति दैयार किया गर्म सिंगाल

COFY MADE READY BY 24-08-2017

CERTIFIED TO BE TRUE COPY

OF THE ORIGINAL

V. Annapoorna V. ANNAPOORNA Asst. DIRECTOR NCLT, HYDERABAD.