

IN THE NATIONAL COMPANY LAW TRIBUNAL HYDERABAD BENCH,
HYDERABAD

CP (IB) No.195/10/HDB/2017
U/s 10 of IBC, 2016 R/w Rule 7 of
I&B (AAA) Rules, 2016

In the matter of:

Empee Sugars and Chemicals Limited
A Company incorporated under the Companies
Act, 1956, and having Registered Office at
Ayyapareddipalemnaidupet Mandal
Nellore District
Andhra Pradesh -524126
Represented by its Director
Ms.Nisha Purushothaman

...Petitioner/Corporate Debtor

Versus

1. Andhra bank
Mount Road Branch
95, Anna Salai
Chennai -600 002
2. Bank of India
Chennai Large Corporate Branch
Tarapore Towers, 826 Anna Salai
Chennai-600 002
3. Federal Bank
Branch Mount Road
SVS Club Building, 61
Anna Salai, Chennai- 600 002
4. Indian Bank
Ethiraj Salai Branch
#26, (Fagun Chamber)
Ethiraj Salai, Chennai - 600 008
5. Indian Overseas Bank
Cathedral Branch, 762
Annasalai, Chennai-600 002
6. Oriental Bank of Commerce
D.No.63, Dr.Rathakrishnan Salai
Mylapore, Chennai -600 004
7. Punjab National Bank
Large Corporate Branch
Rayala Towers, 3rd Floor
781-785, Annasalai,
Chennai - 600 002

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8. Sugar Development Fund Loan
Dept of Food & Public Distribution
M/o Consumer Affair, Food & Public
Distribution, Govt of India
Krishi Bhavan, New Delhi
9. Union Bank of India
Industrial Finance Branch
No.139, 1st Floor, Union Bank Bhavan
Broadway, Chennai -600 108
10. Pahorpur Cooling Tower Pvt Ltd
11. R.R.Thulasi Builders (1) Pvt Ltd
12. Isgec Heavy Engineering Ltd
Yamuna Nagar, Haryana
Corporate Office at A-4, Sector-24
Noida-301, Uttar Pradesh

...Financial Creditors/
Operational Creditors

Date of order: 16.10.2017

CORAM

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

Parties / Counsels Present

- For the Petitioner : Mr. Pullela S Shastry,
Advocate
- For the Pahorpur Cooling Tower Pvt Ltd
(Respondent No.10) : Mr.Deepak
Bhattacharjee along
with Dishit
Bhattacharjee &
Raghunath Ghose,
Advocates
- For the R.R.Thulasi Builders Pvt Ltd
(Respondent No.11) : Mr.U.Barani Dharan,
Advocate
- For the Respondent No.8 : Mr.V.K.Sajith, Advocate
- For the Isgec Heavy Engineering Ltd
(Respondent No.12) : Ms.Divya Dattla,
Advocate



Per: Rajeswara Rao Vittalana, Member (Judicial)

ORDER

1. The present Company Petition bearing No. CP(IB) No.195/10/HDB/2017 is filed by Empee Sugars and Chemicals Limited (Petitioner/Corporate Debtor), under section 10 of Insolvency and Bankruptcy Code, 2016 r/w Rule 7 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by seeking initiate Corporate Insolvency Resolution Process in respect of Empee Sugar and Chemicals Limited.
2. Brief facts, as mentioned in the present company petition, are as follows:-
 - i. Empee Sugars & Chemicals Limited was incorporated as Raghava Sugars Private Limited in the year 1988 and later got converted into Raghava Sugars Limited, which was further name changed to Empee Sugars and Chemicals Limited vide fresh incorporation certificate dated 03.05.1990. The Company is currently listed in BSE Limited. The main objects of the company is briefly are: to plant, cultivate, produce and raise or purchase Sugar-Cane, Sugar-Beet, etc.
 - ii. The Petitioner Company in the second half of the year 1991 came out with a public issue to commission a Sugar plant at Naidupet, in Nellore District and was also planning to commence the production at the above sugar Project with capacity of 2500 TCD by January 1992. However, due to inordinate delay in disbursal of loans by IDBI, IFCI, ICICI and due to supply, erection and commissioning of the plant and severe effect of a cyclone that had severely affected the Nellore District the commencement of production got delayed and stretched to April 1992.



The Petitioner Company also had plans to expand the crushing capacity of the sugarcane from 2500 TCD to 3500 TCD. Concurrently, during March 2010, the Applicant through its wholly owned subsidiary company commissioned a co-generation power plant of 20 MW which was adjacent to the Sugar factory at Nellore to meet the captive requirement of power and steam for the sugar plant.

- iii. As on date, the Petitioner Company has two sugar plants one at Naidupet and another at Ambasamudram, Tamil Nadu. The Applicant Company had borrowed for both the units from various banks viz: Andhra Bank, Indian Overseas Bank, Bank of India, Indian Bank, Federal Bank, United Bank of India, Oriental Bank of Commerce and Punjab National Bank under consortium arrangements with Indian Bank as lead banker for Naidupet unit and with Bank of India as lead banker for Ambasamudram unit. Besides this the Company has availed funds to the tune of around Rs. 55 Crores from Sugar Development Fund of Government of India.
- iv. During the year 2010 the Petitioner Company commissioned its second plant in Ambasamudram, Thirunelveli District, Tamil Nadu, funded by a consortium of banks namely, Bank of India, United Bank of India, Andhra Bank, Oriental Bank of Commerce, Indian Bank, Indian Overseas Bank, and Punjab National, along with Sugar Development Fund-GOI. The modernized sugar complex had a sugarcane crushing capacity of 5000 TCD along with 50 MW co-generation power plant.
- v. However, the Petitioner Company could not perform well in terms of revenues and profits since it commenced production at Ambasamudram and as a result Applicant registered a net sales of Rs. 390.71 Crores from September 2011 to 31st March 2013 (18 months) as against Rs.400.90 Crores from 01.04.2010 to 30.09.2011 (18 months) and ending with a loss of Rs. 35.50 Crores and Rs. 38.54 Crores respectively and there was a great fall in the revenues for the years ended 31st March 2014



and 31st March 2015, as the Company's revenue from operations reduced to Rs. 279.85 Crores and 125.40 Crores respectively and the Company had incurred a net loss of Rs.54.58 Crores and Rs.289.98 Crores respectively for the same period. The reason for the fall in revenues and losses were on account of non-availability of sugar cane, poor monsoon, increase in cane prices, depression in Sugar Industry, vagaries of nature and commodity cycle among other reasons. The overall production of sugarcane in the area in an around the Nellore and Ambasamudram Unit were drastically reduced as the farmers had either chosen to cultivate other short term crops which gives them periodical income or they demanded exorbitant price for the sugarcane cultivated and it was becoming more difficult as the Industry had to depend solely and wholly on the sugar cane cultivators who started dictating terms. Consequently, these factors led to erosion of entire net worth of the Petitioner/ Corporate Debtor.

- vi. The Petitioner Company had no other choice but to witness the sugar cane crushing unit become inoperative in Ambasamudram due to non-availability of sugar cane thereon resulting in a huge net loss consecutively, year after year.
- vii. The Global Phenomena of recession and economic slowdown also had an impeccable adverse impact on the most of Industries across the globe and in particular to the agri-based industries like that of the applicant. The applicant had invested huge monies on the Plant and Machineries by adopting the best technology which would bridge the huge gap between the procurement, production and sales of the end product.
- viii. The Company has taken various loans from Bank of India, United Bank of India, Andhra Bank, Oriental Bank of Commerce, Indian Bank, Indian Overseas Bank, Punjab National Bank and Federal Bank.



- ix. Subsequently, when the Company failed to pay the amount due to financial institutions, they have started initiating proceedings under section 13 (2) of SARFAESI Act, 2002.
- x. Ultimately, the Company has become a Sick Industrial Company within the meaning of Section 3(1) (o) of the Sick Industrial Companies (Special Provisions) Act, 1985 and filed an application with Board for Industrial and Financial Reconstruction. The application was registered under case no. 69/2014 within BIFR in November 2014. As the company's case was very much in progress under SICA, 1985, the Insolvency and Bankruptcy Code, 2016 came into force with effect from November 2016. Being Corporate Debtor, as per the provisions of Insolvency and Bankruptcy Code, 2016, the Corporate Debtor was necessitated to move an application under Section 10 of the Code read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The reference made under section 15(1) of Sick Industrial Companies (Special Provisions) Act, 1985 and summary record of the proceedings of the hearing held on 18.11.2014, 09.07.2015 and 18.11.2016 before BIFR are enclosed herewith as Annexure A12, Annexure A13 and Annexure A14.
- xi. The Company is depended mainly on in agricultural produce for its survival and it is still making all earnest efforts to regard the .Company and is trying to beets the election, yield of sugar cane. It is further stated that the reviews of the Company are constantly falling year on year while the amount of loans substantial.
- xii. In the above circumstances, the Board of Directors of the Company at its meeting held on 29th May 2017 approved the proposal to file an application with the NCLT, Hyderabad Bench, Hyderabad to commence CIRP under section 10 of IBC, 2016. Accordingly the present CP is filed.



3. The Company Petition is filed on 24.08.2017 before the Registry of NCLT. Then, the Registry has raised an objection, vide letter No. CP (IB)/IND-3038/Empee Sugars & Chemicals/HDB/2017/2621-2622, dated 15.09.2017. Subsequently the case was listed for admission on 20.09.2017. Shri. Pullela S. Shastry, the learned counsel for the Petitioner/Corporate Debtor, submitted that he would comply with the objections raised by the Registry, and thus requested time. Accordingly the case was listed for admission on 25.09.2017, 09.10.2017 & 16.10.2017. When the case was taken up for admission today, Shri. Deepak Bhattacharjee, learned senior counsel for the respondent, he is submit that the present company petition is incomplete, and it cannot be admitted.
4. Shri. Pullela S Shastry, learned counsel for the petitioner/corporate debtor has filed affidavit dated 12.10.2017 by stating as follows:

- i. *I am the Director of Empee Sugars & Chemicals Ltd and also well acquainted with the facts of the case and I am duly authorized to make this affidavit on behalf of the said Company.*
- ii. *I state that the said Company has filed an Insolvency and Bankruptcy Application under section 10 of the Insolvency & Bankruptcy Code, 2016, read along with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.*
- iii. *I state that after filing the application last month, the Assets Reconstruction Company (ARC), viz. Edelweiss Assets Reconstruction Company Limited, Mumbai, had discussion with secured lenders, i.e. Bank of India and Indian Overseas Bank to assign their outstanding loans in respect of the said Company. I state that Bank of India had already assigned the entire debts in favour of the said ARC, Mumbai, and final documents are being executed. In the case of Indian Overseas Bank, the said*



M
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. 195/10/HDB/2017*
निर्णय का तारीख
DATE OF JUDGEMENT *16.10.2017*
प्रति तैयार किया गया तारीख
COPY MADE READY ON *17.10.2017*

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Bank had already initiated action to assign the debts to the said ARC and the process is expected to be completed soon.

- iv. *With the assignment of the debts of Bank of India and Indian Overseas Bank, Edelweiss Assets Reconstruction Company Ltd, Mumbai shall be the lone secured financial creditor holding 100% of the said Company's total secured debts.*
- v. *I state that barring the secured creditors, the Company has few unsecured creditors and their dues will be restructured with the approval of the said ARC (100% secured financial creditors).*
- vi. *I further state that the Company contemplates to revive the production of sugar at Naidupet Unit (Andhra Pradesh) and also generation of Power at Ambasamudram Unit (Tamil Nadu) and arrangements are being made for the same.*
- vii. *In view of the above, I state that the said Company would like to withdraw the Application filed before the Adjudicating Authority in the best interest of all the stakeholders.*



Therefore the learned counsel submit that he may be permitted to withdraw the above Company Petition. All the learned counsels appearing for the respondents have not opposed the withdrawal of the Company Petition.

6. In view of the above facts and circumstances of the case, the Company Petition bearing CP (IB)/195/10/HDB/2017 is disposed as withdrawn. No order as to costs.

Sd/-
RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

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