

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

CP (IB) NO. 124/Chd/Pb/2018

**Under Section 10 of Insolvency and
Bankruptcy Code, 2016**

In the matter of:

Satnam Agri Products Ltd., Registered Office: Village Partap Pura, Jansher Road, Near Lambra, Jalandhar, Punjab- 144026, Correspondence Address: Nirmal Cold Storage, Nakodar Road, Opposite UCO Bank, Jalandhar, Punjab- 144003

...Petitioner-Corporate Debtor

Judgment delivered on 05.10.2018

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

For the Petitioner : Ms. Jyoti Sareen with Ms. Parmeet Kaur, Advocates
For the Respondents : Mr. Rakesh Gupta with Mr. Puneet Jain, Advocates

Per: R.P.Nagrath, Member (Judicial):

JUDGMENT

This petition has been filed by Satnam Agri Products Ltd. i.e. the corporate debtor itself in Form No.6 as prescribed under sub-rule (1) of Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, the 'Rules') for initiating Corporate Insolvency Resolution Process under Section 10 of the Insolvency and Bankruptcy Code, 2016 (for short, to be referred hereinafter as the 'Code'). The 'corporate debtor' falls within the definition of the term 'Corporate Applicant' as defined in sub-section (5) of Section 5 of the Code.

2. The corporate debtor was incorporated on 14.07.2003, having been allotted CIN U15138PB2003PLC26185. Its registered office is at Jalandhar, in the State of Punjab and therefore, the matter falls within the territorial jurisdiction of this Tribunal. The certificate of incorporation of the company is at Annexure-3.

3. The authorized share capital of the corporate debtor is ₹1,67,50,000/- divided into 1675 lacs equity shares of ₹10/- each. The issued, subscribed and paid up share capital is ₹1,67,30,000/- comprising of 1673 lacs equity shares of ₹10/- each.

4. The petition has been filed by the corporate-debtor through Mr. Harbans Singh, Chief Finance Officer, who has been authorized to file this petition under Section 10 of the 'Code' vide resolution of Board of Directors dated 16.04.2018 (Annexure-5). The letter of authorization is at Annexure-6. The contents of the application are supported by the affidavit of Mr. Harbans Singh which is at Page No.15 of the paper book.

5. As per Memorandum of Association of the corporate applicant (Annexure 15) the main objects of the corporate applicant are to carry on the business of manufacture of integrated Potato products including French Fries/ potato flakes , wedges and all other products by processing potato and to carry on the business of manufacturers, producers, growers, importers, exporters, traders, buyers, sellers or otherwise deals in Frozen vegetables/fruits/snacks and in all kinds of agro based products and food products etc.

6. It is stated that the Corporate Applicant was advanced various financial facilities by State Bank of India, Indian Overseas Bank and NABARD. In Part III

of Form No.6, the complete particulars including addresses of the financial and operational creditors have been given. It is also stated that despite of assurances by the financial creditors, enhanced working capital was not provided to the Corporate Debtor, as a result of which the project of the Corporate Debtor failed and had to be closed due to lack of working capital.

7. The financial status of Corporate Applicant in respect of the Financial creditors as per the tabulated information (Annexure-8) is narrated as below:-

SBI, CIVIL LINE JALANDHAR CITY- 144001 (PUNJAB)

| Sr.No | Nature of Debt | Amount of Debt Raised | Amount in default |
|-------|--|-----------------------|-------------------|
| 1 | Cash Credit Limit (C/C) A/c No. 30119597259 and Book Debt A/c No. 30171931768 | 3,60,00,000 | 3,70,00,124 |
| 2 | Term Loan (A/c No. 10993133479) | 6,50,00,000 | 7,35,13,733 |
| 3 | Term Loan (A/c No. 30425665552) | 90,00,000 | 99,89,037 |
| 4 | Term Loan (A/c No. 30425577437) | 32,00,000 | 35,66,410 |
| | Total | 11,32,00,000 | 12,40,69,304 |

INDIAN OVERSEAS BANK, LALLY NIWAS, G.T ROAD, JALANDHAR CITY- 144001, (PUNJAB)

| Sr.No | Nature of Debt | Total Debt Raised | Amount in default |
|-------|---|-------------------|-------------------|
| 1 | Cash Credit Limit (C/C) A/C No. 019002000010277) | 2,40,00,000 | 2,40,00,000 |
| 2 | Term Loan (A/c No. 019003380600001) | 6,00,00,000 | 6,00,00,000 |

| | | | |
|---|--|-------------|-------------|
| 3 | Term Loan (A/c No. 109003380800002) | 29,00,000 | 29,00,000 |
| 4 | Term Loan (A/c No.019003380800003) | 82,50,000 | 82,50,000 |
| | Total | 9,51,50,000 | 9,51,50,000 |

NABARD, PLOT NO 3, SECTOR, 34-A CHANDIGARH

| Sr.No | Nature of Debt | Amount of Debt Raised | Amount in default |
|-------|-------------------|-----------------------|-------------------|
| 1 | Term Loan (1+2+3) | 7,11,50,000 | 10,42,94,789 |
| | Total | 7,11,50,000 | 10,42,94,789 |

| | | | |
|--|---------------------|--|-------------|
| | Memorandum Interest | | 1,06,30,067 |
|--|---------------------|--|-------------|

| | | | |
|--|--|--------------|--------------|
| | Total Debt raised | 27,95,00,000 | |
| | Total amount in default (Financial Debt) | | 33,41,44,160 |

The particulars of the dates of default, security held, dates of creation of charge and estimated value of the assets, as per Creditors, have also been given in this chart.

8. The Corporate Applicant has also given the details of property against which the claim against the petitioner are secured. The list is at Annexure -10. Term loan consortium agreement dated 09.09.2005; Joint Deed of Hypothecation dated 09.09.2005; letters dated 09.09.2005 for deposit of title

deeds for the properties situated at Pratap Pura (Jalandhar); properties situated at Nirmal Cold Storage Nikodar Road, Jalandhar and properties situated at Flat No.13, G F Guru Amardass Nagar Jalandhar; Advances Agreement letter dated 09.09.2005 and inter se Agreement dated 09.09.2005 etc., among State Bank of India, Indian Overseas Bank and NABARD. The particulars of unsecured creditors (related party) and other unsecured creditors have also been provided. The total amount in default is ₹33,42,32,110/- (Annexure -8, Page 28) out of which unsecured loan from related parties is ₹87,950/- (Page 110 of the paper book.)

9. Apart from the financial creditors, the corporate applicant has also furnished the details of operational debtors. The list of vendors/suppliers along with their addresses is at Annexure-II and the total amount in default for this category of operational creditors is ₹3,97,981/-. As per Form No.6 it is disclosed that the petitioner-corporate applicant is in default towards payment of statutory dues as ₹6,090/-. There are no dues of the employees. The total amount of default towards operational creditors including dues, statutory dues is ₹4,04,071/-. This is reflected in the provisional balance sheets the Corporate Applicant copy of which is filed as Annexure A-12.

10. Notice of this petition was directed to be issued to the secured financial creditors of the corporate debtor and Shri Rakesh Gupta, Advocate, appeared for all of them.

11. When the matter was listed on 16.07.2018, learned counsel representing the financial creditors submitted that the financial creditors do not intend to file reply.

12. We have heard the learned counsel for the corporate applicant, learned counsel for the financial creditors and perused the records.

13. Sub-section (4) of Section 10 of the Code says that the Adjudicating Authority by an order:-

“(a) admit the application if it is complete (and no disciplinary proceeding is pending against the proposed resolution professional); or

(b) reject the application, if it is incomplete (or any disciplinary proceeding is pending against the proposed resolution professional).

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.”

14. Sub-Section (3) of Section 10 of the Code reads as under:-

“The corporate applicant shall, along with the application furnish —

(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.”

15. In order to comply with the requirement of clause (a) of Section 10(3) of the Code the petitioner has placed on record all the necessary documents to prove the existence of financial/operational debt and the amount as required in column 3 of Part-III of the Application Form. Copy of demand notice issued by the Financial Creditor i.e. SBI u/s 13(2) and 13(4) of the SARFAESI Act, 2002 are at Annexure 9, Page No. 50 & 57 respectively. The details of the operational debt in default have also been provided. The certificates of registration and modification of charges with the Registrar of Companies are at Annexure 10 Page no.74 respectively. The petitioner has also filed its audited financial statements for the years 2015-2016, 2016-17 as at Annexure 14-14A Page No.129 and the provisional financial statements upto 21.04.2018 which is at Annexure 12, Page No.93. As per instruction Annexure 12 attached to prescribed Form No.6, the provisional financial statements up to a date not later than 14 days from the date of the application are required to be filed. The instant petition was filed on 02.05.2018 and the provisional statements up to 21.04.2018 fulfil the requirements of the rule. We thus, find that the application is complete in all respects.

16. In order to justify that the corporate debtor committed the default, it is the version of the corporate applicant that the net worth of the company was fully eroded as per the audited balance sheet ending 31.03.2012 and it filed a reference with the BIFR on 07.09.2012. The reference was registered as Case No.52/2012 by the BIFR. However, the proceedings before BIFR abated as per

3rd proviso to sub-section (1) of Section 15 of Sick Industries Companies Act, 1985 by an order dated 30.09.2014 by considering the fact that action has been taken under Section 13 (4) of the SARFAESI Act, 2002.

17. It is further stated that the company filed an appeal, being Appeal No. 16/2015 before AAIFR, which was decided on 11.12.2015. The order of AAIFR was further challenged by the company before the Hon'ble High Court of Punjab and Haryana, vide WP (Civil) No.1183 of 2016. With the repeal of SICA, 1985, vide Sick Industrial Companies (Special Provisions) Repeal Act, 2003, w.e.f. 01.12.2016, with the enforcement of the Code, all these proceedings abated. Copies of the orders of BIFR, AAIFR and the Hon'ble High Court are at Annexure 23.

18. Under Clause (b) of Section 10(3) the corporate applicant is bound to propose the name of Registered Resolution Professional proposed to be appointed as Interim Resolution Professional. We have perused the written communication in Form No.2, Page no.16 furnished by Mr. Yogender Pal Singhal, a Registered Resolution Professional with IBBI. This Form contains all the particulars provided in the Form. He has furnished his written consent and stated that presently he is not serving as such in any proceedings under the Code so far. He has also certified that no disciplinary proceedings are pending against him with the IBBI or the Indian Institute of Insolvency Professionals of ICAI of which he is a member. His Registration number is IBBI/IPA-001/IP-P00492/2017-18/10880. We find that the written consent furnished by the proposed Interim Resolution Professional is in order.

19. It is now to be seen whether the petitioner has also complied with Section 10(3)(c) of the Code. It was also held by Hon'ble National Company Law Appellate Tribunal, New Delhi in **Horseshoe Entertainment & Hospitality Private Limited, Company Appeal (AT (Insolvency) No.214 of 2017)** decided on 19.07.2018 by relying upon "*Gaja Trustee Company Pvt. Ltd. & Ors. Vs. Haldia Coke and Chemicals Pvt. Ltd. & ors. – Company Appeal (AT (Insolvency) No.137 of 2017*" that the Board of Directors is required to place the matter before the shareholders and creditors and to take its approval for filing application under Section 10 of the I&B Code, 2016.

20. When the matter was listed on 16.07.2018 the following order was passed:-

"Learned counsel for the petitioner seeks more time to file a special resolution of the company ratifying the factum of filing of this petition, as it is submitted that EOGM has been fixed for 15.09.2018.

List the matter on 27.09.2018. The requisite documents with supporting affidavit be filed at least three days before the date fixed."

21. The petitioner has filed copy of the special resolution dated 15.09.2018 passed in the Extra Ordinary General Meeting of shareholders of the Corporate Applicant resolving to initiate the Corporate Insolvency Resolution Process under Section 10 of the Code. This resolution along with the affidavit of Mr. Harbans Singh, Authorized Representative, was filed vide Diary No. 3616 dated 24.09.2018. It is noted in the resolution that due to financial crisis, the Company is not in a position to make payments of secured creditors and due to shortage

of working capital, the production was badly affected, therefore, company has filed application for the revival of the unit.

22. It is represented by the learned counsel for the corporate debtor that as per the financial statements, following is the status of the corporate debtor under different heads:-

| PARTICULARS | AMOUNT (RS.) |
|---|---------------------|
| REVENUE FROM OPERATIONS | |
| As on 21.04.2018 | NIL |
| As on 31.03.2018 | 1,00,75,541 |
| As on 31.03.2017 | 3,14,56,163 |
| As on 31.03.2016 | 2,20,18,171 |
| NET PROFIT/LOSS OF CORPORATE DEBTORS | |
| As on 21.04.2018 | 19,550 |
| As on 31.03.2018 | -19,05,230 |
| As on 31.03.2017 | -2,00,761 |
| As on 31.03.2016 | -69,57,026 |
| ACCUMULATED PROFIT/LOSS OF THE CORPORATE DEBTORS | |
| As on 21.04.2018 | -24,09,46,963 |
| As on 31.03.2018 | -24,09,27,413 |
| As on 31.03.2017 | -22,18,75,183 |
| As on 31.03.2016 | -22,16,74,285 |
| LONG TERM BORROWINGS AND OTHER LIABILITIES | |
| As on 21.04.2018 | 27,32,31,986 |
| As on 31.03.2018 | 27,31,44,036 |
| As on 31.03.2017 | 27,46,44,036 |
| As on 31.03.2016 | 27,46,44,036 |

| CURRENT LIABILITIES | |
|----------------------------|-------------|
| As on 21.04.2018 | 6,14,93,412 |
| As on 31.03.2018 | 6,96,45,943 |
| As on 31.03.2017 | 6,29,99,838 |
| As on 31.03.2016 | 6,24,88,813 |

23. The figures extracted above indicate complete loss of net worth of the corporate applicant. It is clear from the above that the corporate applicant has failed to pay its debt and has thus committed default. In fact the learned counsel for the financial creditors have not raised any objection to the admission of the petition in view of the default committed by the petitioner-corporate applicant, nor was any reply to the petition filed. It clearly seems that the corporate applicant has fallen into debt trap and thus competent to set in motion the insolvency resolution process under the Code to ensure maximum value of assets which is in the interest of all the stakeholders.

24. In view of the above facts the petition is admitted. While admitting the application the moratorium is declared for prohibiting all the following as provided in section 14(1) of the code:

- (a) the institution of suits or continuation of pending suits or proceedings against the 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 applicant 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 applicant in respect of its property including any action under the Securitization 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 applicant.

25. It is further directed that the supply of essential goods or services to the corporate applicant as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate applicant.

26. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or pass an order for liquidation of corporate applicant under Section 33 as the case may be.

27. We also appoint Mr. Yogender Pal Singhal, 51, (2nd Floor), Rani Jhansi Road, New Delhi- 110055, having Registration No. IBBI/IPA-001/IP-P00492/2017-18/10880 and email address as info@ypsinghalassociates.com, as an Interim Resolution Professional with the following directions:

- (i) The term of appointment of Mr. Yogender Pal Singhal, shall be in accordance with the provisions of Section 16(5) of the Code.
- (ii) In terms of Section 17 of 'the Code', from the date of this 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 standards of ethics and moral;
- (iv) The Interim Resolution Professional shall cause a public announcement within three days 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 the 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 'Corporate Debtor';
- (v) It is hereby directed that the 'Corporate Debtor', its Directors, personnel and the 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';

- (vi) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee; and
- (vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

A copy of this judgment be also supplied to both the parties. The learned counsel for the petitioner shall deliver copy of this judgment to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this judgment to the Interim Resolution Professional at his email address forthwith.

Pronounced in open Court.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Justice R.P. Nagrath)
Member (Judicial)

October 5, 2018
Mohit Kumar