SL No.123

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II

Video Conference

CORAM: HON'BLE BHASKARA PANTULA MOHAN–MEMBER JUDICIAL
HON'BLE DR. BINOD KUMAR SINHA- MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 04.02.2022 AT 10:30 AM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No.364/7/HDB/2020
NAME OF THE COMPANY	Timla Foods Pvt Ltd
NAME OF THE PETITIONER(S)	Grand Anicut Trust -1
NAME OF THE RESPONDENT(S)	Timla Foods Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

Orders pronounced vide separate order.

This CP No. 364/7/2020 is admitted vide separate orders.

MEMBER (T)

MEMBER (J)

Nilesh

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERBAD

CP (IB) No.364/7/HDB/2020
Under section 7 of the IB Code, 2016

In the matter of
M /s TIMLA FOODS PRIVATE LIMITED

Between:

M/s. Milestone Trusteeship Services-
Private Limited,
Having its registered office at CoWrks,
Worli, PS56, 3rd Floor, Birla Centurion,
Pandurang Budhkar Marg,
Worli, Mumbai – 400030.

...Petitioner/
Financial Creditor

And

M/s. Timla Foods Private Limited,
Having its registered office at No.120/5,
D.No.4-123/1, Dommera,
Pochampally (Village,),
Qutbullapur Mandal,
Hyderabad – 500 043.

...Respondent/
Corporate Debtor

Date of Order: 04.02.2022

Coram: Shri Bhaskara Pantula Mohan,Member Judicial
Dr. Binod Kumar Sinha, Member Technical

Parties/Counsels present:

For the Financial Creditor: Mr. Rusheek Reddy K.V, Advocate

For the Corporate Debtor: Mr. Rahul Sarella, Advocate

Per: Bench

O R D E R

1. Under consideration is a Company Application filed by M/s Grand Anicut Trust-1 (in short "*Petitioner/Financial Creditor*") under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code, 2016) for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. Timla Foods Private Limited. (in short, "*Respondent/Corporate Debtor*").
2. Brief facts as stated by Applicant are as under:
   a) That the Applicant is registered with the Securities and Exchange Board of India as a Debenture Trustee under the Securities and Exchange Board of India(Debenture Trustees) Regulations,1993.
   b) That the Corporate Debtor is engaged in the business of manufacturing and selling of branded packaged foods. Pursuant to the resolution passed by the Board of Directors of the Corporate Debtor and obtaining necessary approval from the shareholders, the Corporate Debtor proposed to issue and allot, on private placement basis, up to 120 unrated secured redeemable non-convertible debentures of the face value of Rs.10,00,000/- each, not exceeding an aggregate nominal value of Rs.12,00,00,000/- for cash, at par, on private placement basis in 2 "Debentures Tranches" in accordance with the Debenture Trust Deed and the Information Memoranda.
   c) That the aforesaid Debentures were issued by the Corporate Debtor in two tranches, namely, (i) First Tranche Debentures for an aggregate amount not exceeding Rs.8,00,00,000/- and (ii) Second Tranche for an aggregate amount not exceeding Rs.4,00,00,000/-.
   d) That the Corporate Debtor being desirous of appointing a Debenture Trustee for the benefit of the holders of Debentures has appointed the Financial Creditor herein to that effect. The initial Debenture Holder of the aforesaid Debentures is Grand Anicut Trust – 1, being the proposed initial subscriber of the Debentures and acting through its trustee, UTPL Corporate Trustees Private Limited and represented through its investment manager, Anicut Capital LLP.

Relying on the representations and warranties made by the Corporate Debtor and its Promoter, the said Debentures were issued by the Corporate Debtor and subscribed by the Debenture Holder in accordance with the Debenture Trust Deed entered between the Financial Creditor, Corporate Debtor and its Promoter on 09.06.2018.

e) That the redemption amount pertaining to the Debentures including the coupon/interest at the rate of 17.5% per annum, default interest, and all other payments, charges, fees payable by the Corporate Debtor to the Debenture Holder and the Debenture Trustee, was / is secured, *inter-alia* by issuance of a personal guarantee by Mr. Gowriraju Prasanth Kumar ("Personal Guarantor") and creation of pledge over the shares held by the Promoters in the Company, Deed of Hypothecation of movable assets of the Company and Warranty Subscription Agreement.

f) That the Corporate Debtor issued 80 Debentures having aggregate value of Rs.8,00,00,000/- in favour of the Debenture Trustee on behalf of the Debenture Holder on 11.06.2018 as per the terms of the Debenture Trust Deed on 11.06.2018, upon due receipt of the said Debenture value. Similarly, the Corporate Debtor issued another 20 Debentures having aggregate value of Rs.2,00,00,000/- in favour of Debenture Trustee on behalf of the Debenture Holder on 22.11.2018 and remaining 20 Debentures were issued by the Corporate Debtor on 14.01.2019 upon due receipt of the said Debenture value.

g) That the Corporate Debtor failed to service coupon / pay the interest on the Debenture Value, since 01.08.2019. In this regard, the outstanding coupon / interest payable by the Corporate Debtor together with Debenture Redemption Amount, along with default interest thereon, as on 12.12.2019 accrued at Rs.13,37,09,95/- net of TDS and the Financial Creditor owing to the above failure/default committed by the Corporate Debtor, got a Default Notice dated

12.12.2019 issued against the Corporate Debtor and the Personal Guarantor.

h) The Corporate Debtor having duly received the Default Notice and lapse of substantial time from the maturity date of the said Debentures, has failed to clear the above outstanding dues till date, even after repeated requests and demands made by the Financial Creditor. The total claim amount is aggregating to Rs.14,28,41,096/- (Rupees Fourteen Crores Twenty Eight Lakhs Forty One Thousand Ninety Six only), together with interest calculated @17.5% per annum.

Reiterating the above, learned counsel for the Financial Creditor prayed to admit the instant Application.

3. Learned counsel for the Respondent filed counter and written submissions, *inter-alia,* stating that the allegations made by the Financial Creditor are denied except those that are specifically admitted hereunder:

a) The Financial Creditor is the sole financial creditor of the Respondent and that there are no other financial creditors. Thus, the Financial Creditor/Applicant holds 100% share in the total Financial Debt of the Respondent/Corporate Debtor. The present Petition for initiating CIRP process under the IBC against the Respondent is not maintainable as a Committee of Creditors cannot be constituted in the circumstances of the case. That the IBC contemplates (in letter and in spirit) that the Committee of Creditors under Section 21 of the IBC would be a committee comprising at least two (2) financial creditors, which is not the case here. That the Committee of Creditors play a very important role in the CIRP process as contemplated under the IBC, including under Sections 21, 24, 27, 28, 30(4) of the IBC. Therefore, in the absence of more than one financial creditor, there cannot be a meaningful and effective CIRP process which can be undertaken under the IBC in respect of the Respondent. Therefore, this Petition is liable to be dismissed on this ground alone.

b) That without prejudice to the above contention, if the present Petition is admitted and a Committee of Creditors is constituted by this Adjudicating Authority, then the Financial Creditor would be the sole member of the Committee of Creditors and place it in an unusually advantageous position to unilaterally determine the outcome of every matter which is put to vote at meetings of the Committee of Creditors, including in relation to the choice of the Resolution applicant and approving the commercial terms of any Resolution Plan that may be submitted. This will prejudice the interest of the employees, Operational Creditors, shareholders and other stakeholders of the Respondent. Therefore, this Petition is liable to be dismissed on this ground alone.

c) That the basic ingredient under the IBC for initiation of CIRP process by a financial creditor is 'Default' in repayment of 'Debt'. In view of the facts set out above, there was a new contract which waived the default in repayment of the interest by the Respondent and rescheduled the repayments to be made and contemplated a further investment of Rs.50 lakhs by the Financial Creditor. The above agreement is recorded in email dated 05.10.2020 sent by the Respondent to the Financial Creditor.

d) That further, on account of various subsequent events, change in circumstances, negotiations and agreements between the parties, additional funding procured by the Respondent at the behest of the Financial Creditor, the Respondent acted to its detriment. Therefore, the present Petition is liable to be dismissed.

e) That the Financial Creditor has been engaged in active discussions with the Respondent since January 2020 to renegotiate the contractual terms of the debentures. The Financial Creditor, with a mala-fide intention, falsely informed the Respondent that Section 7 proceedings were initiated in January 2020 itself, whereas the present Company Petition was actually filed 8 months later on 22.09.2020. Between the period January 2020 (when the Financial Creditor falsely informed the Respondent about the filing of the Petition) and 22.09.2020 (when the Financial Creditor actually filed the Petition), the Financial Creditor forced the Respondent to undertake some activities and act to its detriment under the threat of a non-existent Petition. In fact, even after filing of the present Petition, the Financial Creditor agreed to withdraw the Petition if the Respondent raises additional funds for its business. Even though additional funds have been raised / arranged by the Respondent, the Financial Creditor has sought to renege on its explicit assurance and agreement and is continuing to prosecute the present Petition and this has harmed the reputation of the Respondent in the industry and in the financial market.

f) That the Financial Creditor, after explicitly agreeing to withdraw the present Petition, has committed a breach of the agreed terms between the parties and the principles of Promissory Estoppel apply to the facts of the present case and therefore, the Financial Creditor committed a breach of its obligation by not performing its part of the promise i.e. withdrawal of the present Petition. The present Petition is liable to be dismissed for this reason as well. In this regard, the Respondent placed reliance on the ratio laid down by the Hon'ble Supreme Court in Shakti Bhog Foods Limited Vs. Kola Shipping Limited (AIR 2009 SC 12).

g) That the Financial Creditor has approached this Adjudicating Authority without first invoking and exhausting the remedies available to it under the Debenture Trust Deed dated 09.06.2018 which reflects the contractual arrangement between the parties and this is nothing but an abuse of the process of law. For this reason alone, the present Petition is liable to be dismissed.

h) That the Financial Creditor has also wilfully and deliberately suppressed material facts and documents and for this reason alone, the present Petition is liable to be dismissed.

i) That the representative of the Financial Creditor and Corporate Debtor mutually agreed and amended the schedule for payment of interest and thus the default which is alleged to have occurred on 01.08.2019 was waived by the Financial Creditor. As per the revised terms, the Corporate Debtor raised Rs. 25 Lakhs from third parties and informed the Financial Creditor about the same by email dated 11.02.2020.

j) Reiterating above, counsel for the Corporate Debtor prayed to reject the Application.

4. Learned counsel for the Petitioner filed Rejoinder inter-alia stating that the allegations made by the Respondent are denied and further prayed to allow the application.

5. Heard and perused the record.

6. It is the case of the Applicant that the Corporate Debtor has issued various redeemable Debentures, however, the Corporate Debtor failed to service coupon / pay the interest on the Debenture Value. Now that the outstanding coupon / interest payable by the Corporate Debtor together with Debenture Redemption Amount, along with default interest thereon, as on 12.12.2019 accrued at Rs.13,37,09,95/-, the amount in claim as on date of filing of the instant Application stood at Rs.14,28,41,096/- (Rupees Fourteen Crores Twenty Eight Lakhs Forty One Thousand Ninety Six only).

7. Per contra, counsel for the Corporate Debtor prayed to reject the instant Application on following grounds:-

a) That the Applicant herein being the sole Financial Creditor, cannot file application u/s 7 of the Code, as he will be sole CoC member, and there must be at least 2 Financial Creditors to make a Committee

b) That the debenture trust deed was renegotiated and the default was waived as indicated in the email dated 05.10.2020.

c) That due to wrong advice by Financial Creditor, the Corporate Debtor has taken certain actions to its own detriment and therefore the instant application is to be dismissed.

d) That the Financial Creditor has negotiated a settlement with the Corporate Debtor and has still proceeded with filing of the instant application. That after agreeing to withdraw the application, prosecuting the same creates a 'Promissory Estoppel' in Corporate Debtor's favour.

e) That the Financial Creditor has filed this Application without exhausting the remedies available under general law as provided in the Debenture Trust Deed.

8. Upon plain reading of the contentions of the Corporate Debtor for rejection of the instant Application, it appears that the Corporate Debtor has not disputed the debt and default but sought for rejection of the instant Application on very vague grounds and any of the contentions raised does not form a valid ground for rejection of the instant application more so in the light of the Judgment of Hon'ble Supreme Court in the case of INNOVENTIVE INDUSTRIES LTD. Vs. ICICI BANK & ANR., in Civil Appeal Nos. 8337-8338 of 2017, wherein it is held as under:

"..............*The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.*

Under subsection (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

9. Upon examination of the facts of the instant case in light of the judgment of the Hon'ble supreme court *supra*, we observe that in the instant case there is undisputed existence of a financial debt of an amount exceeding the threshold as provided in Section 4 of the I B Code, 2016 and there has been a default in repayment of the same. Further, on a consideration of the facts of this case, this Adjudicating Authority is satisfied that the Financial Creditor has proved its case by placing evidence that default has occurred for which the Corporate Debtor was liable to pay. Further the Financial Creditor has fulfilled all the stipulations as required under the provisions of the IB Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process. Hence, the contentions of the Corporate Debtor are overruled.

10. In view of the above and having satisfied with the submissions made by the Petitioner/Financial Creditor, this Adjudicating Authority is inclined to admit the instant Application.

11. Accordingly, the instant application is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process (CIRP) in the case of the Corporate Debtot which shall ordinarily be completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day this order is passed.

12. The Financial Creditor proposed the name of Mr. Sripriya Kumar, Interim Resolution Professional and he has given his written consent in Form 2. Accordingly, this Authority appoints Mr. Sripriya Kumar, having Registration No. IBBI/IPA-001/IP-P00771/2017-2018/11316 e-mail id: sripriya@spka.in as Interim Resolution Professional. He is directed to file Authorization for Assignment within three days from the date of this order.

13. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submission of claims in the manner as prescribed.

14. We direct the Financial Creditor/Petitioner to pay a sum of Rs.2,00,000/- towards the advance fee of IRP and expenses towards CIRP, which shall be ratified and reimbursed later on by CoC.

15. The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP. For the purposes referred to in section 14 of the IB Code, 2016, it is hereby ordered to prohibit all of the following namely:-

    i. *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court or law, tribunal arbitration panel or other authority;*
    ii. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;*
    iii. *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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

iv. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

v. *Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*

16. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements. or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.

17. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all

assistance and co-operation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.

18. The Petitioner/Financial Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

19. The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor.

20. The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.

21. Accordingly, this Petition is admitted.

Dr. Binod Kumar Sinha
Member Technical

Bhaskara Pantula Mohan
Member Judicial

Santi/SKRathi