



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

CP (IB) 1157/MB/2022

Under section 10 of the Insolvency and
Bankruptcy Code, 2016

(Application to Adjudicating Authority)
Rules, 2016

In the matter of

Tricom Fruit Products Limited

CIN No. :- L67120PN1995PLC139099

Having its registered office at: Gut No. 336-
341, Village Andori Taluka Khandale,
Shirval, Pandarpur Road, Pune – 415521..

...Corporate Applicant

Order Delivered on : 13.08.2024

Coram:

**Mr. Anil Raj Chellan
Member (Technical)**

**Mr. Kuldip Kumar Kareer
Member (Judicial)**

Appearances:

For the Corporate Applicant: Mr. Nithish Bangera, PCS.



ORDER

Per: Coram

1. The present Company Petition is filed by Tricom Fruit Products Limited (hereinafter referred to as “Corporate Applicant”) under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") seeking to initiate Corporate Insolvency Resolution Process (CIRP) as the Corporate Applicant has committed the default in paying the debt of the Financial Creditors to the tune of Rs. 65,34,89,891/- (Rupees Sixty-Five Crores Thirty-Four Lakhs Eighty-Nine Thousand Eight Hundred and Ninety -One Only), that of the Operational Creditors to the tune of Rs. 18,22,26,491/- (Rupees Eighteen Crores Twenty-Two Lakhs Twenty-Six Thousand Four Hundred and Ninety-One Only) and Statutory Dues to the tune of Rs. 2,40,26,616/- (Rupees Two Crores Forty Lakhs Twenty-Six Thousand Six Hundred and Sixteen Only) aggregating to Rs. 85,97,42,998/- (Rupees Eighty-Five Crores Ninety-Seven Lakhs Forty-Two Thousand Nine Hundred and Ninety-Eight Only) as on 30.09.2022. The date on which the amount was in default is 30.09.2012.

2. The averments made by the Corporate Applicant are summarised as under:
 - i. The Corporate Applicant is a Company limited by shares incorporated on 20.01.1995 bearing CIN: L67120PN1995PLC139099 and the Registered Office of the

Corporate Applicant is Gut No. 336-341, Village Andori Taluka Khandale, Shirval, Pandarpur Road, Pune – 415521.

- ii. The Corporate Applicant defaulted in paying an amount of Rs. 85,97,42,998/- (Rupees Eighty-Five Crores Ninety-Seven Lakhs Forty-Two Thousand Nine Hundred and Ninety-Eight Only) to the Creditors and hence owing to financial stress faced and inability to repay the debts to its creditors, the Corporate Applicant has preferred the said Petition. The list of the Financial Creditors, Operational Creditors, and dues of the Statutory Authorities are annexed to the Petition.
- iii. The Bank of India had extended certain credit facilities for an amount of Rs. 29,25,00,000/- to the Corporate Applicant. As the Corporate Applicant defaulted in repayment of the loan, the account of the Corporate Applicant was classified as NPA on 30.06.2012. The Bank had created a charge over the assets of the Corporate Applicant as well as the guarantors of the Corporate Applicant to secure the aforesaid debt. The aforesaid credit facilities were secured by the following assets :-

a.	Pari passu first charge on Land and Building/Fixed assets of the company situated at Gat No. 336,338 to 341, Village Andori, Tal. Shirval-Lonand Road, Tal : Khandala, Dist : Satara, Maharashtra.
b.	Pari passu first charge on Stocks and Book debts and other current assets of the company.
c.	Margin money held in Term Deposits.



d.	Pari passu first charge on pledged equity shares of the company.
e.	Pari passu first charge on the residential flat area. Approx. 2000sq. ft. at Prithvi Villa, Row House No. 5, H Wing, Link Road, Kandarpada, Dahisar (W), Mumbai – 400068 in the name of Tricom Infotech (India) Pvt. Ltd (Guarantor).
f.	Pari passu first charge on land and building farmhouse area approx. 20000 sq. ft. situated at plot no. 33 and 41 at Vanashri Dugdha Vyavasahik Coop. Society Limited 37, Ganesh Nagar, Monda, Titwala, Tal. Kalyan, Dist: Thane in the name of Mr. Chetan S. Kothari and Mrs. Chetana C. Kothari (Guarantors)
g.	Pari passu first charge on the pledge of shares of listed companies in the name of promoters/guarantors.


A copy of the charge and modification of the charge certificate is annexed to the Petition at “Exhibit 19”.

- iv. Due to non-payment of the loan amount by the Corporate Applicant, Bank of India issued a Notice dated 03.08.2012 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) wherein an amount of Rs. 29,06,10,498.30/- was demanded by the Bank.
- v. It is pertinent to mention that vide Deed of Assignment dated 26.03.2014, the Financial Creditor i.e. Bank of India (“the assignor”) assigned all its rights, title, and interest in the financing documents, all agreements, all collateral, and underlying security interests and/or pledges created to secure



and/or guarantees in respect of the said loan facilities to Edelweiss Asset Reconstruction Company Limited (“the assignee”). Hence, the due amount stands assigned to Edelweiss Asset Reconstruction Company.

- vi. A Letter of Intimation dated 27.04.2020 received from Edelweiss Asset Reconstruction to the Corporate Applicant for the sale of secured assets of Tricom Fruit Products Limited to Easybuild Infra Private Limited.
- vii. The Corporate Applicant has enclosed the Certificate of Registration of Charge dated 30.05.2013 and Certificates of Modification of Charge between the Corporate Applicant and Edelweiss Asset Reconstruction Company Limited, for the above said facilities issued by Registrar of Companies (RoC), Pune.
- viii. The Board of Directors of the Corporate Applicant in its meeting held on 25.04.2022 passed a Resolution to file an Application under Section 10 of the Code for initiation of the CIRP.
- ix. The Corporate Applicant has placed on record the Special Resolution passed by the members at the Extra Ordinary General Meeting of the Corporate Applicant dated 25.05.2022 to file an Application under Section 10 of the Code.
- x. The Applicant in its Additional Affidavit dated 24.01.2024 has placed on record notice dated 17.01.2024 received from Assistant Commissioner of State Tax to the Corporate Applicant



wherein an amount of Rs. 1,75,92,114/- was pending against the MVAT and CST dues.

- xi. The Corporate Applicant has placed on record the Audited Balance Sheet for the Financial Year 2020-2021 and 2021-2022 and the Provisional Balance Sheet for the years till 30.09.2022.
- xii. The Applicant in its Additional Affidavit dated 09.07.2024 has placed on record an Assessment Order dated 27.12.2018 for AY 2010-11 received from the Office of the Deputy Commissioner of Income Tax.
- xiii. A demand notice under Section 156 of the Income Tax Act, 1961 dated 27.12.2018 also received from the Office of the Deputy Commissioner of Income Tax to the Corporate Applicant for the AY 2013-14 for an amount of Rs. 11,43,26,960.
- xiv. Further, a demand notice under Section 156 of the Income Tax Act, 1961 dated 28.12.2016 was received from the Office of the Asstt. Commissioner of Income Tax to the Corporate Applicant for the AY 2014-15.
- xv. The Corporate Applicant received a notice dated 28.12.2016 under Section 274 r/w Section 271 of the Income Tax Act, 1961 from the Office of the Asstt. Commissioner of Income Tax for the AY 2014-15.



- xvi. The Corporate Applicant received a notice dated 29.03.2014 from the Deputy Commissioner of Income Tax for the AY 2011-12 for an amount of Rs. 4,80,32,960/-

FINDINGS

4. We have heard the counsel appearing for the Corporate Applicant and perused the documents placed on record.
5. This Bench vide Order dated 16.08.2023 directed the Registry as well as the Corporate Applicant to serve notice to the Financial Creditors of the Corporate Applicant and directed to file an Affidavit of Service before the adjourned date. The Corporate Applicant has complied with the same and has filed Affidavit of Service dated 08.09.2023 thereby enclosing therewith proof of service, postal receipts, and track consignment status.
6. The Bench perused the Affidavit of Service dated 08.09.2023 filed by the Corporate Applicant and it was observed that some of the notices were not served upon the Creditors. Hence, this Bench vide order dated 27.09.2023 directed the Corporate Applicant to effect the paper publication in two newspapers. The Corporate Applicant complied with the aforesaid direction and published the notices in “Business Standard” in English language and other in “Nav Shakti” in Marathi vernacular language. The Corporate Applicant has filed an Affidavit with respect to the paper publication on 07.10.2023. Despite the issuance of notices and publication in newspapers, none of the



Creditors has filed any submissions to oppose the present Petition and the same was noted by this Bench in its Order dated 10.11.2023.

7. We have gone through the petition and documents on record. It is noted that the Bank of India had granted various credit limits aggregating to the tune of Rs. 29,25,00,000/- to the Corporate Applicant. Due to non-payment of the said loan amount, the Bank classified the account of the Corporate Applicant as NPA on 30.06.2012. Thereafter, the Bank on 03.08.2012 issued notice under section 13(2) of the SARFAESI Act, 2002 demanding an amount of Rs. 29,06,10,498.30/-. The Bank also issued notice dated 03.08.2012 to the guarantors of the said loan.
8. Further, vide Deed of Assignment dated 26.03.2014, Edelweiss Asset Reconstruction Company Limited stepped into the shoes of the Original Financial Creditor i.e. Bank of India who had originally granted credit facilities to the Corporate Applicant. It is relevant to refer to the definition of Financial Creditor provided in clause 5(7) of the Code, a *“Financial Creditor”* means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned to transferred to. Hence, the Corporate Applicant has defaulted in repayment of the loan amount as assigned to Edelweiss Asset Reconstruction Company Limited by Bank of India through a valid Deed of Assignment dated 26.03.2014.
9. It is also worth mentioning that an amount of Rs. 84,32,15,048/- as borrowing liability is also reflected in the Audited Balance Sheet for the year ended March 2020 and as per the Balance Sheet for the year ended



March 2021 under the head of borrowings an amount of Rs. 65,12,98,187/- reflects as a liability. The Corporate Applicant has filed an Audited Balance Sheet for the year ended March 2023 wherein an amount of Rs. 6,54,426/- reflects as long-term borrowings.

10. Thus, the Corporate Applicant has acknowledged the outstanding due amount in its Balance Sheets and in view of the Judgement passed by the Hon'ble Supreme Court in the matter of *Asset Reconstruction (India) Limited versus Bishal Jaiswal and Ors, Manu/SC/0279/2021*, Balance Sheet annexed to the Petition is considered as an acknowledgment under Section 18 of the Limitation Act, 1961. Hence, the claim amount is well within the limitation period to initiate CIRP proceedings against the Corporate Applicant.

11. Further, as per Section 10(4) of the Code, the Adjudicating Authority can admit the Petition under Section 10 of the Code if the same is complete and no disciplinary proceedings are pending against the proposed Resolution Professional. Further, in the matter of *M/s Unigreen Global Private Limited Vs. Punjab National Bank & 3 Ors. In Company Appeal (AT) (Insolvency) No. 81 of 2017 dated 01.12.2017* Hon'ble NCLAT has observed that:

“...20. Under both Section 7 and Section 10, the two factors are common i.e. the debt is due and there is a default. sub-section (4) of Section 7 is similar to that of sub -section (4) of Section 10. Therefore we, hold that the law laid down by the Hon'ble Supreme Court in “Innoventive Industries Ltd. (Supra) is applicable for Section 10 also, wherein the Hon'ble Supreme Court observed as “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”.



22. Section 10 does not empower the Adjudicating Authority to go beyond the records as prescribed under Section 10 and the information as required to be submitted in Form 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 subject to ineligibility prescribed under section 11. If all information as provided by an Applicant as required under Section 10 and Form 6 and if the Corporate Applicant is otherwise not ineligible under Section 11, the Adjudicating Authority is bound to admit the application and cannot reject the application on any other ground.

12. The Petition shows that the Corporate Applicant is in default of debt and that the Corporate Applicant has no income and is also having substantial losses. The Corporate Applicant vide its Additional Affidavit dated 05.01.2024 has filed the list of pending litigations against the Corporate Applicant.

13. We have perused the list of Creditors, the list of properties given as security for the loans availed, and extracts of charges registered with the RoC, Pune. The Corporate Applicant has also disclosed the names and addresses of the members of the Company with the details of their shareholding. The Corporate Applicant has also enclosed a copy of the resolution passed by the Board of Directors and also the Special Resolution passed by the members of the Company in their Extra-Ordinary General Meeting held on 25.05.2022, wherein it was resolved that the Corporate Applicant is not in a position to repay the debts and, therefore, the Corporate Insolvency Resolution Process under Section 10 of the IBC needs to be initiated. We are satisfied that the Corporate Applicant has made out a case for initiation of the CIRP under Section 10 of the IBC. The Corporate Applicant has proposed the name of **Mr.**



Prakash Naringrekar, Company Secretary, having Registration No: IBBI/IPA-002/IP-N-00270/2017-18/10783. The Corporate Applicant has also placed on record the written consent of the IRP in Form-2 along with the registration certificate

14. In view of the above facts and circumstances of the case, and by exercising the powers conferred on this Adjudicating Authority under Section 10(4) (a) of the Code, we hereby admit CP 1157 of 2022 by initiating Corporate Insolvency Resolution Process (CIRP) against Tricom Fruit Products Limited in the following terms :

ORDER

- a. **The above Company Petition No. (IB) 1157 (MB)/2022 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Tricom Fruit Products Limited.**
- b. This Bench hereby **appoints Mr. Prakash Naringrekar, Registration No: IBBI/IPA-002/IP-N-00270/2017-18/10783 having email id as prakash03041956@gmail.com as the Interim Resolution Professional** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Corporate Applicant shall deposit an amount of Rs. Five Lakhs towards the initial CIRP cost by way of



a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Applicant.

e. That the supply of essential goods or services to the Corporate Applicant, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That the provisions of sub-section (1) of Section 14 shall



not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under subsection (1) of section 31 or passes an order for liquidation of corporate applicant under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the Corporate Applicant will vest in the IRP/RP. The suspended directors and employees of the Corporate Applicant shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Applicant.

Accordingly, this Petition is admitted.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II

CP (IB) 1157/MB/2022



The Registry is hereby directed to communicate this order
to both the parties and to IRP immediately.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)