IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.304

C.P. (IB)/232(AHM)2024

Proceedings under Section 10 IBC

IN THE MATTER OF:

Surya Bakery And Confectionery Private Limited ....**Applicant**

........**Respondent**

Order delivered on: 31/08/2026

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

This case is fixed for pronouncement of order

The order is pronounced in open court vide separate sheet

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

SJ/AD/AP

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

CP (IB)/232/NCLT/AHM/2024

(Under Section 10 of the Insolvency & Bankruptcy Code, 2016)

In the Matter of:

Surya Bakery and Confectionary Pvt. Ltd.

...Petitioner/Corporate Debtor

MEMO OF PARTIES

Surya Bakery and Confectionary Pvt. Ltd.
Plot No. 204, Off Baroda-Jamusar
National Highway Near Jewel Bursh
Company Luna Gam Road,
Village Luna, Vadodara, Padra,
Gujarat, India 391 440
EmailID:dharmendra@ovenmagick.com

...Petitioner/Corporate Debtor

Order Pronounced on: 31.08.2026

Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Presence:

For the Petitioner : Mr. Manoj Kumar Mishra, Adv.

JUDGEMENT

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1. The instant application has been filed by Surya Bakery and Confectionary Pvt. Ltd. ('Corporate Applicant') under Section 10 of the Insolvency and Bankruptcy Code, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process as the Corporate Debtor being the Corporate Applicant itself. The Corporate Applicant has committed the default in paying the debt as mentioned in the Part -III of the Application is financial debt of 17,85,81,0401- consisting of five financial creditors and certain operational creditors.

2. The averments made by the Corporate Applicant in the application, which are necessary for adjudicating the matter are summarized as under: -

i. The Applicant submitted that the Corporate Debtor was unable to repay the outstanding dues owed to the Financial Creditors due to severe business disruptions, particularly during the COVID-19 pandemic. It was stated that the Corporate Debtor, being engaged in the bakery and confectionery business, suffered substantial losses as the food and hospitality sector was severely affected during the pandemic. The employees and

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workmen remained idle while their wages continued to be paid, and subsequently, many of them left for their hometowns and did not return when the factory operations resumed, resulting in further operational losses and adversely affecting the viability of the business.

ii. The Applicant further submitted that soon after the COVID-19 restrictions were lifted, the Financial Creditor by the Indian bank on April, 2022, auctioned and sold the plant and machinery of the Corporate Debtor within a year, thereby severely crippling its business operations.

iii. It was further submitted that the Corporate Debtor had been incurring continuous losses, namely, Rs. 1.03 Crores in FY 2018-19, Rs. 0.03 Crores in FY 2019-20, Rs. 1.88 Crores in FY 2020-21 and Rs. 2.91 Crores in FY 2021-22. The Applicant contended that such persistent losses adversely affected the operations and rendered the business unsustainable.

iv. As on the date of this application the liability of the Corporate Debtor towards financial creditors stood as follows:

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Type of Creditor	Name of Creditor	Amount
Secured Creditor Financial	Indian Bank	15,68,85,224/
Secured Financial Creditors	Cholamandalam Investment and Finance Limited Company	10,62,723/-
Secured Financial Creditor	HDFC Bank Ltd.	27,67,851/-
Total Secured Financial Creditors (A)		16,07,15,798/-
Unsecured Financial Creditor	Bajaj Finserve	35,00,000/-
Unsecured Financial Creditor	IDFC First Bank	51,455/-
Total Unsecured Financial Creditor (B)		35,51,455/-
Total Financial Creditor (A+B)		**16,42,67,253/**

v. It is submitted that total Operational Creditors for the company is an amount of Rs. 1,43,13,787/-

vi. Therefore, the Corporate Applicant *vide* its special resolution dated 16.05.2024 board of directors resolved to file application under Section 10 of the Insolvency and Bankruptcy Code, 2016 and authorized the Board to sign the petition for initiating the Corporate Insolvency Resolution Process against itself under Section 10 of the IBC, 2016. The relevant Extract of the Board Resolution is reproduced below:

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"RESOLVED THAT in view of the company not performing satisfactorily as is clear from the last three years Balance Sheet, Audit Report and working of the company, the company be and is hereby approved for initiation of Corporate Insolvency Resolution Process by the Corporate Applicant pursuant to section 10 of the Insolvency and Bankruptcy Code, 2016 by applying to the National Company Law Tribunal, Ahmedabad.

vii. The Corporate Applicant submits the below mentioned documents to prove the existence of default of the debt: -

a. List of names of Financial Creditors along with their respective addresses and amounts outstanding.

b. Copy of the audited Financial Statements for the financial years 2019-2020, 2020-2021, and 2021-2022 and provisional Financial Statement for the FY 2022-2023

c. Copy of notice under section 13(2) of SARFAESI dated 16/0212022

d. Copy of Sanction Letter dated 24.09.2015

e. Copy of Revised Sanction Letter dated 31.03.2022

3. The corporate applicant proposed the name of Mr. Ajay Amrutlal Mutha, to act as an IRP. Consent Form 2 dated 28.05.2024 is filed. The letter of Authorization for Assignment dated 18.01.2024 is also placed on record.

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4. It is submitted that as per direction of this Tribunal dated 06.01.2025, applicant submitted an affidavit giving chart wherein complete status of delivery to the creditors were given. Service to seven creditors was not completed, which had been returned back. The affidavit dated 27% March 2025 showed that out of seven unserved creditors, service to five creditors was completed and two creditors namely Janani Foodtek (I) Pvt. Ltd. and United Enterprises could not be done as the item returned back.

5. In compliance of Tribunal order dated 18.07.2025 the applicant served notice upon all 36 respondents through paper publication. However, no one has appeared from the responded sides.

6. The Applicant submitted that, pursuant to the order dated 29.09.2025, it visited the factory premises for taking inventory of the assets of the Corporate Debtor to comply with the said order. However, upon inspection, it was found that all the assets of the Corporate Debtor had already been sold by the Bank in favour of a purchaser and, therefore, no longer constituted assets of the Corporate Debtor. Consequently, obtaining a certificate

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from a Chartered Engineer in respect of such assets was not possible. It was further submitted that the Directors are presently in possession of only three vehicles belonging to the Corporate Debtor, which are mortgaged with HDFC Bank. The Applicant stated that a Chartered Engineer's certificate in respect of the said vehicles has been obtained and placed on record.

7. The corporate applicant filed its Audited Financial Statements for the FY 2022-23 and 2023-2024 in compliance of order dated 25.09.2024

8. Heard the Counsel for the applicant and the financial creditors. Perused material available on record.

9. **OBSERVATION**

a. Even though there are multiple creditors (15), the financial creditors are and the account of the CD has turned NPA of one of the FC Indian Bank on 11.2.2022. It also appears as per submissions that the factory has been sold off in 2022. This application filed on 28.05.2024 is within the limitation period.

b. The sole secured financial creditor who has substantial exposure to the applicant CD has filed his objections by

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written statements dated 17.08.2026 after the order has been reserved. The objections are that the properties of the CD which are mortgaged are already auctioned, and there is only a sole house property of one of the Directors and the CD has filed this application to gain moratorium. However, the respondent FC who did not appear after repeated notices, has also filed and proceeded against one of the personal guarantors who is under personal insolvency and a repayment plan submitted before the RP. The objections raised in the written statement under Sec 65 of IBC 2026 of fraudulent intentions are not observed to be recorded with requisite documents as the CD was already declared NPA in 2022.

c. It is also submitted that the CD is not doing any business since long. Even though service was made to 36 creditors, many returned. The Applicant was directed to place paper publication which was complied. We have the reply of one of the major financial creditors whose debt is more than 90% of total liabilities. Even after paper publication by CD none of the financial creditors appeared before this tribunal. The conclusion is that the financial creditor who

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subsequently filed written submissions after our directions in PG matter, cannot prevent an insolvent CD whose assets are already sold off under auction and there are no assets left/business and the Sec 10 of IBC 2016 is exercised with due process and the CD has to be admitted to CIRP for due process of insolvency.

10. In view of the above, we pass the following order:

ORDER

i. The Corporate Person, viz., Surya Bakery and Confectionary Pvt. Ltd. is admitted in Corporate Insolvency Resolution Process under Section 10 of the Insolvency and Bankruptcy Code, 2016.

ii. The suspended management is directed to file affidavit to the Resolution Professional that they will provide all documents and extend cooperation within 7 days of this order.

iii. The moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

a. the institution of suits or continuation of pending suits or proceedings against the corporate debtor

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b. transferring, encumbering, alienating or disposing of by the corporate debtor 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 debtor in respect of its property including any action under the Securitisation 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 debtor.

iv. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate

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Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

v. We hereby appoint Mr. Chirag Rajendra Kumar Shah, having Registration No IBBI/IPA-001/IP-P01169/2018-2019/11837, (E-mail ID chirag.irp@gmail.com) to act as an IRP under Section 13(1)(c) of the Code. He shall conduct the Corporation Insolvency Resolution Process as per the provision of Insolvency and Bankruptcy Code, 2016 r.w Regulation made thereunder:

vi. The IRP shall perform all his functions as contemplated, interalia, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make appropriate

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application to this Adjudicating Authority with a prayer for passing an appropriate order.

vii. This Adjudicating Authority directs the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

viii. It is further directed that the supply of goods/service to the Corporate Debtor Company, it continuing, shall not be terminated or suspended or interrupted during moratorium period. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Applicant is directed to pay an advance of Rs. 2,00,000/- (Rupees Two Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating

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Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules by CoC Constitution.

ix. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

11. Accordingly, CP (IB) No. 232/NCLT/AHM/2024 is allowed and disposed of.

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DR. V. G. VEN KATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

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