

**IN THE NATIONAL COMPANY LAW TRIBUNAL
 “CHANDIGARH BENCH, CHANDIGARH”
 (Exercising the powers of Adjudicating Authority
 under the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.340/Chd/Pb/2018

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

In the matter of:

Punjab Basmati Rice Limited

Registered Office at
 Sangrana Sahib,
 Amritsar, Punjab-143001

.... Petitioner-Corporate Debtor

Judgement delivered on: 18.02.2019

**Coram: Hon’ble Mr. Justice R.P.Nagrath, Member (Judicial)
 Hon’ble Mr. Pradeep R. Sethi, Member (Technical)**

For Petitioner-
 Corporate Debtor : 1. Ms. Jyoti Sareen, Advocate
 2. Ms. Parmeet Kaur, Advocate

For Financial Creditors

(i) Canara Bank	:	Mr. Yogesh Kumar, Advocate
(ii) IDBI Bank	:	Mr. D.P. Garg, Advocate
(iii) Oriental Bank of Commerce	:	Mr. Pulkit Goyal, Advocate
(iv) UCO Bank	:	Mr. R.S. Bhatia, Advocate
(v) Union Bank of India	:	Mr. Arvind Rajotia, Advocate

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

JUDGEMENT (ORAL)

This petition has been filed by Punjab Basmati Rice Limited, 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 Insolvency & Bankruptcy Code, 2016 (for short to be referred hereinafter as the ‘Code’). The Corporate Debtor also 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 04.01.1995 having been allotted CIN U15312PB1995PLC015550. Its registered office is at Amritsar, in the State of Punjab and therefore, the matter falls within the territorial jurisdiction of this Tribunal. The certificate of incorporation of the corporate debtor is at Annexure-3.

3. The authorized share capital of the corporate debtor is ₹25,00,00,000/- divided into 2,50,00,000/- equity shares of ₹10/- each. The issued, subscribed and paid up share capital is ₹14,88,52,260/- comprising of 1,48,85,226/- equity shares of ₹10/- each.

4. The petition has been filed by the corporate-debtor through Mr. Kulwinder Singh Makhni , Managing Director , who has been authorized to file this petition under Section 10 of the 'Code' vide resolution of Board of Directors dated 07.09.2018 (Annexure-5). The letter of authorisation is at Annexure-6. The petition has been filed in pursuance of resolution passed by majority shareholders of corporate debtor in EOGM held on 24.08.2018(Annexure -7). The contents of the application are supported by the affidavit of Mr. Kulwinder Singh Makhni, Managing Director-cum-Shareholder which is at Page No.25 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 establish, install, acquire, own, take on lease and carry on the business of Rice Sheller, Flour Mills and vegetable oil Extraction plants and to store, buy, sell, import, export, act as commission agents, or deal in food grains of all kinds, rice, cereals, edible oils and other products of similar description.

6. It is stated that the Corporate Applicant was advanced various financial facilities by consortium of banks namely Canara Bank as lead bank , Andhra Bank, IDBI Bank, Oriental Bank of Commerce, UCO Bank and Union Bank Of India. In Part-III Form No.6, the complete particulars including address of the financial and operational creditors have been given.

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

Canara Bank, 18-20, Dharam Singh Market, Amritsar

S. No.	Nature and Description of Credit Facility	Amount of Debt Raised (in ₹)	Amount in Default (in ₹)
1.	Packing Credit Limit	67,00,00,000.00	64,95,50,064.87
2.	Cash Credit (CC/ 10323)	53,00,00,000.00	59,36,81,401.50
3.	Bank Overdraft (C/A-0166201008860)	-	30,47,715.04
4.	Term Loan A/C (0166773000090)	7,50,00,000.00	7,37,10,869.50
5.	Term Loan A/C (0166773000087)	12,50,00,000.00	10,23,56,237.00
6.	Car Loan A/C	68,00,000.00	47,59,944.80
7.	Car Loan A/C	10,00,000.00	3,37,601.00
	TOTAL	1,40,78,00,000.00	1,42,74,43,833.71

Andhra Bank, 1st Floor, Kundan Plaza, Hall Gate, Amritsar

S. No.	Nature and Description of Credit Facility	Amount of Debt Raised (in ₹)	Amount in Default (in ₹)
1.	Bank Overdraft (C/A No. 109111100002333)	-	2,01,66,419.07
2.	Packing Credit Limit (A/C No. 10911510PC00001)	38,62,00,000.00	38,61,38,107.00
	TOTAL	38,62,00,000.00	40,63,04,526.07

IDBI Bank, Courts Road, Adjacent Hotel Raj Continental, Amritsar

S. No.	Nature and Description of Credit Facility	Amount of Debt Raised (in ₹)	Amount in Default (in ₹)
1.	Cash Credit (A/C No. 0072651100001946)	10,80,00,000.00	11,91,67,818.41
	TOTAL	10,80,00,000.00	11,91,67,818.41

Oriental Bank Of Commerce, Plot No. 10, Distt. Shopping Complex, Ranjit Avenue, Amritsar

S. No.	Nature and Description of Credit Facility	Amount of Debt Raised (in ₹)	Amount in Default (in ₹)
1.	Cash Credit (CC A/C No. 01304011000820)	12,00,00,000.00	12,86,68,845.30
2.	Packing Credit Limit (CC A/C No. 01308511000045)	8,00,00,000.00	7,98,66,400.21
	TOTAL	20,00,00,000.00	20,85,35,245.51

UCO Bank, Civil Lines, Court Road, INA Colony, Amritsar

S. No.	Nature and Description of Credit Facility	Amount of Debt Raised (in ₹)	Amount in Default (in ₹)
1.	Cash Credit (CC A/C No. 03190510000793)	4,89,00,000.00	4,92,77,451.82
2.	Packing Credit Limit (CC A/C No. 03190710000014)	26,00,00,000.00	26,00,00,000.00
	TOTAL	30,89,00,000.00	30,92,77,451.82

Union Bank of India, Fawwara Chowk, Main Branch, Amritsar

S. No.	Nature and Description of Credit Facility	Amount of Debt Raised (in ₹)	Amount in Default (in ₹)
1.	Bank Overdraft (C/A No. 308201010036431)	-	34,31,548.39

2.	Cash Credit (CC A/C No. 308205010029862)	13,00,00,000.00	15,28,99,691.10
3.	Packing Credit Limit (CC A/C No. 308207220000002)	20,00,00,000.00	19,95,73,364.99
	TOTAL	33,00,00,000.00	35,59,04,604.48

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 at Annexure-8.

8. The Corporate Applicant has also given the details of properties against which the claim against the corporate debtor are secured. The list of assets is at Annexure -19. The details of securities held both primary and collateral securities by the consortium of banks by hypothecation of stocks and books debts and all other moveable and fixed assets (including plant & machinery) are given in Column 5 of Part-III.

9. Apart from the financial creditors, the corporate applicant has also furnished the details of operational debt. The list of vendors/suppliers along with their addresses is at Annexure-11 and the total amount in default for this category of operational creditors is ₹1,78,47,750.23/-. As per Form No.6 it is disclosed that the petitioner-corporate applicant is in default towards payment of statutory dues as ₹54,17,950/-(TDS) and employees due as ₹67,787. The total amount of default towards operational creditors including statutory dues and employee dues are ₹ 4,56,13,798.48.

10. Notice of this petition was issued to all the six financial creditors. The petitioner has filed affidavit of service vide Diary No.4480 dated 16.11.2018. There was no representation from the Andhra Bank. UCO Bank and Union Bank of India and have not filed the reply but the details of the outstanding debt has

already been mentioned by the petitioner in the application if there is any incorrect calculation of the outstanding dues it is for the Interim Resolution Professional/ Resolution Professional as the case may be to look into, in case the petition is admitted.

11. In the reply by Canara Bank, it is stated that this Bank is the lead bank holding 43% of the amount due out of the total outstanding amount claimed to be in default by the corporate debtor. It is further stated that Canara Bank has already filed an OA for recovery of amount before the Debt Recovery Tribunal-I, Chandigarh which is still pending. The bone of contention of this Bank is that the corporate debtor has disposed of the hypothecated stock worth ₹291 crores in a period of 2 months without routing the sale proceeds through the objector bank. The last stock statement was submitted by the company on 09.02.2018 showing the stock worth ₹291.00 crores duly signed by Sh. Kulwinder Singh Makhni. But when a joint inspection was conducted by all the members of the consortium including the objector bank, they found that no stock of rice and paddy is lying in the factory or godown. The directors of the corporate debtor informed that all the stock has been sold off and they assured to provide the list of the debtors to whom the stock has been sold along with invoices within couple of days, but even on repeated requests till date no response has been received. The objector bank has also filed a complaint with the Commissioner of Police, Amritsar specifically alleging for misappropriation of stock and that the corporate debtor has opened an account with the Amritsar Central Co-operative Bank, without the approval of the members of consortium which tantamount to diversion of funds only with the objective to defeat the recovery rights of the objector bank as well as other members of the consortium. It is also stated that the corporate debtor has filed

another petition CP No.132/Chd/Pb/2018 before this Tribunal for changing the balance sheet in which the bank is not a party. The Bank has prayed that the petition may be dismissed.

12. In the reply filed by Oriental Bank of Commerce, no objection to the admission of the petition has been taken. The IDBI Bank has stated in the reply that the corporate debtor has concealed the factum of filing of the recovery of dues by the financial creditors in the Debt Recovery Tribunal. The Promoters/Directors have misused and diverted the funds availed by the corporate debtor from the financial creditors and cannot now take advantage of its own misdeeds.

13. Mr. R.S. Bhatia, Advocate for UCO Bank filed his Power of Attorney and the same be taken on record. He has submitted that UCO Bank has also adopted the same reply as filed by the Canara Bank.

14. We have heard the learned counsel for the corporate debtor/applicant and learned counsel for the financial creditors and gone through the records.

15. 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.”

16. 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. Canara Bank u/s 13(2) and 13(4) of the SARFAESI Act, 2002 is at Page No. 114 of the paper book. The details of the operational debt in default have also been provided. The petitioner has also filed its audited financial statements for the years 2015-2016, 2016-17 and 2017-18 as at Annexure 13 and 14 Page No.216 onwards and the provisional financial statements upto 22.09.2018 which is at Annexure 12, Page No.205. 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 03.10.2018 and the provisional statements up to 22.09.2018 fulfil the requirements of the rule. We thus, find that the application is complete in all respects.

17. The learned counsel for Canara Bank and Mr. R.S. Bhatia, Advocate for UCO Bank submits that the corporate debtor has filed the application and the same may be rejected as the corporate debtor concealed the factum of filing of the OA and there are also allegations of the removal of the stock without routing the same through the banking channel which was the term of the agreement. We are of the considered view that the corporate debtor/applicant is only obliged to make the disclosures as required in Form No.6 as provided in Rule 7 of the Rules. In any case the factum that the corporate debtor being in default of the debt is not disputed. If there are certain fraudulent or related party transactions the same can in any case be assailed on the various grounds under the provisions of the Code, it is for the Resolution Professional to go into those aspects and move the

Adjudicating Authority for appropriate relief at the relevant stage. For the application to be admitted, the Adjudicating Authority is required to be satisfied that there is a default committed by the corporate debtor in paying obligations of the creditors either the financial or operational creditors.

18. The Financial Creditor, Canara Bank as lead bank issued two demand notices dated 26.07.2018 to the corporate debtor under Section 13(2) of the SARFAESI Act in respect of Cash Credit and Term Loan facilities respectively.

19. Under Clause (b) of Section 10(3) the corporate applicant is bound to propose the name of Registered Resolution Professional to be appointed as Interim Resolution Professional. We have perused the written communication in Form No.2, Page No.26 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 serving as Liquidator in Vinayak Advertising vs. Rajesh Gems and Jewels Pvt. Ltd. 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.

20. 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.”

21. 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:-

S.No.	Particulars	Amount (₹)
1.	REVENUE FROM OPERATIONS As on 22.09.2018 As on 31.03.2018 As on 31.03.2017 As on 31.03.2016	15,44,64,809 9,85,26,40,236 6,29,52,92,330 5,73,97,26,154
2.	NET PROFIT/ LOSS OF CORPORATE DEBTORS As on 22.09.2018 As on 31.03.2018 As on 31.03.2017 As on 31.03.2016	-8,76,79,899 -86,06,19,241 2,50,28,424 69,00,538
3.	ACCUMULATED PROFIT/ LOSS OF CORPORATE DEBTORS As on 22.09.2018 As on 31.03.2018 As on 31.03.2017 As on 31.03.2016	-50,33,03,846 -41,56,23,944 44,49,95,299 48,91,54,945
4.	LONG TERM BORROWINGS AND OTHER LIABILITIES As on 22.09.2018 As on 31.03.2018 As on 31.03.2017 As on 31.03.2016	48,59,12,232 45,38,06,223 44,58,55,905 18,16,49,302
5.	CURRENT LIABILITIES As on 22.09.2018 As on 31.03.2018 As on 31.03.2017 As on 31.03.2016	26,99,38,02,961 2,74,56,43,534 28,17,71,37,067 2,72,16,55,198

22. 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. It is 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.

23. In view of the above facts the petition is admitted.

24. The matter be listed now on 26.02.2019 for passing the formal order of declaring moratorium under Section 14(1) of the Code and for appointment of Interim Resolution Professional.

Copy of this order be communicated to both the parties.

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

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

Feb., 18, 2019
Anchal