

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH (COURT – II)

Item No. 203
(IB)-727/ND/2023

IN THE MATTER OF:

Mycozoom Biotech India Pvt. Ltd.

Through its Director:

Mr. Amit Ashok Dhapare

Address: 23/7, Second Floor,

Old Rajender Nagar, New Delhi-110060

... Applicant/Petitioner

Under Section: 10 of IBC, 2016

Order delivered on 05.02.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. ATUL CHATURVEDI, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Abhishek Garg

For the Respondent :

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

Sans irrelevant detail, the stand taken on behalf of the Applicant (Corporate Applicant) is that it committed default in payment of an amount of Rs. 1,45,20,537/- to various operational creditors. The details of the amount defaulted to be paid is mentioned in Part-III of the application which reads thus:-

PART – III

PARTICULARS OF OPERATIONAL DEBT

1. NAME(S) OF FINANCIAL/OPERATIONAL CREDITOR(S)		
Creditors		
S.No.	Name of Operational Creditor	Amount Due (Rs.) without Interest
1.	Phoenix Supply Chain Solutions Private Limited	8,82,460
2.	Dharmik Packaging Industries	93,900

3.	Shri Rama Agro Suppliers	1,69,920
4.	Standard Pesticides Private Limited	58,92,820
5.	The Energy and Resources Institute	8,77,970
6.	Ashok Kumar Pradeep Kumar	3,97,140
7.	Systematic Chemicals and Pesticides Private Limited	21,510
Sub Total (a)		83,35,720
Employees Salary & Reimbursements		
8.	Mr. Arjun Pawar	2,74,618
9.	Mr. Balbhim Bhosale	1,95,720
10.	Mr. Pankaj Sharma	6,57,077
11.	Mr. Rajesh Kumar	1,22,472
12.	Mr. Amit Ashok Dhapare	31,80,850
Sub – Total (b)		44,30,737
Advances received from customers		
13.	Puneet Agro	7,27,790
14.	Kheti Sewa Centre	1,68,570
15.	Giriraj Krushi Agencies	2400
16.	M/S Dhaka Beej Bhandar	25,000
17.	M/S Ghanghas Beej Bhadar	7990
18.	M/S Sura Pesticides	770
19.	Sudhir Trading Company	2,09,900
20.	Mahalaxumi Seeds	960
21.	Krushival Krushi Seva Kendra	17,980
22.	Sidhu Traders	46,350
23.	Bhumiputra Agro Tech	140
24.	Jai Seeds Store	690
25.	Shri Gajanan Krushi Seva Kendra	2600

26.	M/S Agri Business & Agri Clinic Centre	3610
27.	M/S New Philkhan Khad Bhandar	2,08,050
28.	M/S Rajendra Krushi Seva Kendra	98,500
29.	Laxmi Trading Co	1580
Sub – Total (c)		15,22,880
Taxes and Duties		
30.	TDS Payable for FY 2022-23	2,31,200
Sub – Total (d)		2,31,200
Total (a) + (b) + (c) + (d)		1,45,20,537

2. According to the Ld. Counsel appearing for the Applicant, the date of default with reference to balance sheet is 31.03.2023. The facts leading to filing the present petition have been mentioned at page 10 to 16 of the application (paras 1 to 20). The averments made in said paras reads thus:-

- “1. *The Corporate Applicant is eligible to file the instant application for initiating Corporate Insolvency Resolution Process (“CIRP”) under Section 10 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) with FORM - 6 duly filled as prescribed under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.*
2. *That the Corporate Debtor is a subsidiary of Aurea Systems GmbH, Germany (“Parent Company”). Corporate Debtor was incorporated as a private limited company on 08 March 2009 and has its registered office at 23/7 , Second Floor Old Rajender Nagar New Delhi Central Delhi DL 1 10060 IN.*
3. *The Corporate Debtor is engaged in the business of supplying biofertilizers and nano nutrients. The Parent Company initiated operations in India under the brand name 'Mycozoom' with focus on efforts to help Indian farming in improving soil health and sustainable agriculture through organizing innovative and cost-effective solutions.*
4. *The Corporate Debtor has adopted ‘Direct Brand Sales’ approach to have a substantial presence in the Indian market. The Corporate Debtor is engaged in manufacturing, packing, and selling of a*

variety of products offered by the Corporate Debtor. The products are sold to various customers of the Corporate Debtor through standard supply chain under the brand names Mycozoom GR, Mycozoom L, Mycozoom Nano P and Mycozoom Nano Zn+Fe.

- 5. After production the branded goods are being shipped to clearing and forwarding agencies of respective states and from there local sales are generated.*
- 6. The Corporate Debtor entered into an agreement with The Energy and Resources Institute (“**TERI**”) for the procurement of Mycorrhiza products, Nano fertilizer products, Bacterial products which are produced by TERI. After procurement of products from TERI, the Corporate Debtor would then further sell the products in the Indian market to customers directly and would involve distributors and resellers in India for sale of the products.*
- 7. In order to be a beneficiary of the business model and to have market presence, market share and higher revenues the Corporate Debtor sought fit to adopt a model of contract manufacturing. The Corporate Debtor had entered into an agreement with a local manufacturer called Standard Pesticides Pvt. Ltd (“**SPPL**”) based in Vadodara, Gujarat to manufacture, packing and selling of their product and commodities as per specifications. Also, for completion of day-to-day activities, the Corporate Debtor and SPPL entered into an agreement wherein SPPL agreed to give on leave and license basis premises situated at Survey No. 351/352, at & Post Raniya, Tal: Savli, District Vadodara to the Corporate Debtor for a period of two years. The Corporate Debtor would pay SPPL a rent of Rs. 25,000/- per month and the same was increased by 7% per annum.*
- 8. The Corporate Debtor for the purpose of storage of Corporate Debtor’s products entered into an agreement for leave and license dated 27 August 2019 with Mrs. Seema Garg for storage of finished goods and a small office for day-to-day activities such as raising invoices, to maintain accounts. The Corporate Debtor agreed to pay a sum of Rs. 8000/- per month for utilizing of a godown at 4 - A, Shri Rama Complex, 4th Mile Stone, Sirsa Road, Hisar. The agreement was effective for a period of three years from 01 August 2019 till 31 July 2022.*
- 9. Further, the Corporate Debtor, in order to have a seamless transition of goods stored at the above mentioned godown, from one*

state to another decided to engage a clearing and forwarding agency to help the Corporate Debtor through customs formalities, coordination with various carriers and also handling all shipping and delivery related activities. After due deliberations, the Corporate Debtor entered into a 'Clearing & Forwarding Agency Agreement' with a proprietary firm namely, M/s Ashok Kumar Pardeep Kumar dated 10 September 2019 wherein M/s Ashok Kumar Pardeep Kumar would act as an agent to receive stocks of the Corporate Debtor's products and then would forward them as and when required to the customers of the Corporate Debtor within the state of Haryana. For its services the Corporate Debtor agreed to pay a sum of Rs. 20,000/- per month.

10. Similarly, the Corporate Debtor had also entered into a leave and license agreement with Mrs. Neena Rani for premises at Shagun Complex 4th Milestone, Near Krishan Complex, Sirsa Road, Hisar - 125004, Haryana which was used by the Corporate Debtor as a godown for storage of finished goods and also for a small office space in the above-mentioned premises for completion of day-to-day activities such as raising of invoices, maintaining accounts of the Corporate Debtor etc. The Corporate Debtor then entered into an agreement with M/s Systemic Chemicals and Pesticides Pvt. Ltd as a clearing and forwarding agency for the Corporate Debtor to forward the stocks and products of the Corporate Debtor from the above-mentioned godown within the state of Haryana for which the Corporate Debtor agreed to pay a sum of Rs. 35,400/- per month as service charges.
11. Similarly, to expand its operations pan India, the Corporate Debtor entered into a leave and license agreement for godown at Property No. 1251 to 1254, Gat No. 1298-79, Hiral Compounds, Pune Saswad Road, A/p Wadki Tal - Haveli District - Pune for storage of goods. The monthly rental for the same was Rs. 14,400/-. To initiate its supply in the state of Maharashtra the Corporate Debtor also entered into a clearing & forwarding agency agreement with M/s Phoenix Supply Chain Solutions Pvt. Ltd for forwarding goods from the above-mentioned godown within the state of Maharashtra.
12. As it is evident from the above the Corporate Debtor wanted to grasp a considerable market share in India and therefore the Corporate Debtor had invested financial resources in its business in order to penetrate the Indian agriculture market.

13. *In order to generate sales for their various products the Corporate Debtor had to depend on word of mouth and also on local people of various regions of states in India to make prospective customers familiar with their line of products. The Corporate Debtor had limited knowledge of the region and of the market therefore the initial generation of sales was hampered due to this.*
14. *The problems of the Corporate Debtor aggravated due to the COVID-19 pandemic and the restrictions on movement due to the lockdown restrictions. The Corporate Debtor could not implement any corrective measures that could revive the fortunes of the Corporate Debtor. The agencies engaged by the Corporate Debtor were irresponsible which caused loss of sales particularly in the state of Haryana.*
15. *The Corporate Debtor had started to purchase raw materials without credit which in turn depleted the financial resources of the Corporate Debtor which were to be utilized for marketing purposes and sales activities. All of the above hurdles created a contagion effect and in turn the Corporate Debtor had to face losses and could not form a base of customers. The Corporate Debtor failed to attract a larger customer base in any region in states of Haryana, Maharashtra, and Gujarat. Therefore, the production cost increased with the ancillary costs which could not be settled due to no new generation of sale.*
16. *To add to the financial misery of the Corporate Debtor, the customers that the Corporate Debtor had acquired after continuous effort and considerable resources in securing the orders and also in supplying the desired quantities of the various products, have defaulted in payments. This in turn had hampered the operations of the Corporate Debtor.*
17. *Due to this the cash inflow of the Corporate Debtor was affected. As a result, the net income of the Corporate Debtor was reduced to paltry sums and from which the Corporate Debtor has been unable to recover.*
18. *Due to heavy losses incurred by the Corporate Debtor' the Corporate Debtor has failed to make payments to various agencies as per the agreement. Further, due to such continuous financial issues, the Corporate Debtor is unable to pay the employees involved in various verticals of the business of the Corporate Debtor.*

19. *The corporate Debtor is facing severe liquidity crisis and financial crunch as debt has been accumulating. The said amount is divided between several operational creditors.*
20. *The perational Debt accrued has forced the Corporate Debtor to cease all operations as the Corporate Debtor is facing financial liquidity issues and has decided to initiate CIRP under section 10 of the IBC.”*

3. The Ld. Counsel for the Petitioner could point out that the resolution passed by the Board of Directors regarding filing of the petition has been placed at Annexure-5. We also find the special resolution passed in the Annual General Meeting regarding filing of the present petition is on record at Annexure-A6 to the petition. The audited balance sheet and the provisional balance sheet are on record at Annexure- 9 & 10 to the petition. The statement of affairs qua the corporate applicant is on record as Annexure-8 to the petition. The Ld. Counsel for the Applicant could draw our attention to the affidavit dated 19.12.2023, filed in compliance of order dated 18.12.2023. The relevant excerpt of the affidavit reads thus:-

*“4. It is pertinent to mention that till date only one litigation is pending against the Corporate Applicant which has been file by one operational creditor namely M/s Sudhir Trading Company vide civil suit no. 39 of 2023 before the Ld. Civil Judge, Junior Division, Sirsa (“**Hon’ble Civil Judge**”). That the said suit is filed for recovery of Rs. 1,74,587/- along with interest of 1.5% per month from the Corporate Applicant and is currently pending at the admission stage itself an no issues have been framed by the Ld. Civil Judge. Apart from the above-mentioned case no other litigation is pending on behalf of the any of the creditors in any judicial or quasi-judicial forums or any Court of law till date. It is further submitted that there is no pending litigation initiated under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) by the any of the creditor. Copy of summon issued to the director of the Corporate Applicant is annexed herewith as **Annexure A.**”*

4. The corporate applicant has also filed an affidavit dated 27.01.2024 indicating therein that the notice has been served upon the creditors by way of publication. He has also placed on record the report of publication.

5. There is no appearance on behalf of any of the creditors despite service of notice.

6. As can be seen from Section 10 of IBC 2016, where corporate debtor has committed default, it may file an application for initiating CIRP with the Adjudicating Authority. As can be seen from Section 10(3) of IBC, 2016, along with the application, the corporate applicant need to enclose: a) the information relating to its books of accounts and such other documents for such period as has been 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 the shareholders of the corporate debtor or the resolution passed by the three-fourth of available partners of the corporate debtor as the case may be. Section 10(3) of IBC, 2016 reads thus:-

“10. Initiation of corporate insolvency resolution process by corporate applicant.—

...

(3) 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.”*

7. In terms of the provisions of Section 10(4) of the IBC, 2016 this Adjudicating Authority gets 14 days from the receipt of the application to admit the application if it is complete and no proceeding is pending against the IRP or reject the same if it is incomplete. In the present case, the Applicant has placed

on record the consent of the RP which is on record at Annexure-2 of the petition. The RP has made declaration that no proceedings are pending against it. We have no reason to doubt the consent given by the IP who is proposed to be appointed as RP by the corporate applicant. We also do not see any reason to doubt the declaration given by it regarding the disciplinary proceedings.

8. As has been noted hereinabove, the Board of Directors and AGM qua the corporate applicant have already passed resolution regarding filing of the present petition. **In view of the aforementioned, the present petition is admitted and the Corporate Insolvency Resolution Process is directed to be commenced qua the corporate applicant in terms of the provisions of Section 10(5) of IBC, 2016.**

9. The Corporate Person has also proposed the name of the Interim Resolution Professional in this application, the consent letter of the IRP is annexed with the application. In view of the above, we allow this present application with the following directions:

- I. The Corporate Applicant Mycozoom Biotech India Private Limited having CIN No. U24100DL2019FTC347039 is admitted into the Corporate Insolvency Resolution Process under Section 10 of the Insolvency and Bankruptcy Code, 2016.
- II. We appoint the proposed resolution professional RR Insolvency Professionals LLP, having Registration No. IBBI/IPE-0056/IPA-1/2022-23/50009, as an IRP of the Corporate Applicant.
- III. The Moratorium under Section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Applicant under Section 33, as the case may be.
- IV. The Adjudicating Authority hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate

Applicant including the execution of any judgment, decree or order in any Court of law and further prohibits Tribunals, Arbitration Panels or other Authority(s), transferring, encumbering, alienating or disposing of any of Corporate Applicant assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Person in respect of its property including any action under the SARFAESI 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.

- V. Further, litigation or application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to the pronouncement of this order such proceedings are expected to be dealt with in accordance with law i.e., Section 14 read with Section 238 of the Insolvency & Bankruptcy Code, 2016.
- VI. The supply of essential goods or services to the Corporate Applicant, if continuing, shall not be terminated or suspended, or interrupted during the Moratorium, period. The Corporate Applicant to provide effective assistance to the IRP as and when he takes charge of assets and management of the Corporate Person.
- VII. The IRP so appointed shall make a Public announcement of the Corporate Insolvency Resolution Process (CIRP) immediately as specified under Section 13 of the Code and by calling for submissions of the claim under Section 15 of the Code.
- VIII. The IRP shall perform all the functions as contemplated under the Code. It is further made clear that all personnel connected with the Corporate Applicant, its Promoter, or any other person associated with the management of the Corporate Applicant are under legal obligation as per Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional. Where any personnel of the Corporate Applicant, its Promoter, or any other person

required to assist or co-operate with the IRP, do not assist or co-operate, the IRP is at liberty to make the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

IX. The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Applicant' and manage the operations of the Corporate Person Company as a going concern as a part of an obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

X. We direct the Applicant/ Authorized Person to pay the IRP a sum of Rs. 50,000/- (Rs. Fifty Thousand only) as fees & expenses till the COC decides about his fees/expenses.

10. The Registry is directed to communicate this order to the Corporate Applicant, the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on the website immediately after the pronouncement of the order. The commencement of the Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.

Sd/-
(ATUL CHATURVEDI)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)