



IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH: C-IV

**C.P.(IB)-966/MB/2021**

Under Section 10 of the IBC, 2016

*In the matter of*

**Dhruvi Foods & Beverages Limited**

...Corporate Debtor/Applicant

***Order Pronounced on: 30.08.2023***

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Corporate Applicant : Mr. Uttam Hathi a/w Mr. Smit Shah, Advocate

For the Financial Creditor : Mr. Harsha Sharma, Advocate

For the Operational Creditor : Ms. Apoorva, Advocate

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This is a Company Petition filed on 19.08.2021 by **Dhruvi Foods & Beverages Limited**, ("Corporate Applicant") under Section 10 of the Insolvency & Bankruptcy Code, 2016 ("the Code") read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) of the Corporate Applicant company.


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2. The Corporate Applicant submits that the Corporate Applicant was incorporated on 08.07.2021 vide CIN: U15137MH2011PLC219607, its paid up share capital is Rs.5,00,000/-, and its registered office is situated at Vidya Bhushan Tutorials, Shree Tulaji Building, Plot No. 13 & 15, Sector 19, Road No. 12, New Panvel (E) 410206.
3. The Shareholders of the Corporate Debtor passed a resolution approving for initiation of CIRP u/s 10 of IBC in their AGM held on 28.06.2021 and authorised Mr. Ganesh Damodar Gaikwad, Director of the Company, to represent the Company before the NCLT or any other authority and to sign, execute any documents, engage any professional and file necessary application before NCLT under the Code.
4. The Corporate Applicant has disclosed that a sum of ₹12,99,37,484.46 is due to the Financial Creditor which is in default.
5. The Corporate Applicant has enclosed the financial statements for the years from 2016-17, 2017-18 & 2018-19. The Corporate Applicant has disclosed assets. The Corporate Applicant also disclosed the names and addresses of the members of the Company. The Corporate Applicant have total outstanding to the tune of Rs.5,50,08,598/- from one financial creditor amounting to Rs. 3,18,10,149.62 and the remaining from 19 operational creditors.


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6. The Corporate Debtor has enclosed Demand Notice dated 07.04.2021 received u/s 13(2) of SARFAESI from its Financial Creditor.
  7. On 03.06.2022, Ld. Counsel for Union Bank of India, present and objected to the admission of this Petition. On 21.12.2022, the Objector Union Bank of India, submits that the Corporate Applicant has submitted an OTS proposal, which is under consideration.
  8. On hearing the Counsel and perusal of the Petition and the supporting documents annexed with the petition, this Bench is of the considered view that the Corporate Debtor's account was classified as NPA on has committed default on 31.03.2021 as revealed from notice dated 07.04.2021 u/s 13(2) of SARFAESI Act issued by Union Bank of India. It implies therefrom that default would have occurred somewhere in December, 2020 because a account is classified as NPA by a Scheduled Bank after 90 days of the default, if such default persists in terms of Income Recognition and Asset Classification (IRAC) guidelines notified by the RBI. Section 10A of the Code provides that notwithstanding anything contained in sections 7, 9 and 10 no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25<sup>th</sup> March, 2020 for a period of one year. In view of this, this bench is of the considered view that present application qua default in payment of financial debt to the bank is barred by section 10A of the Code.
  9. In so far as, the debt due to Operational Creditor, detailed at Page 24 of the petition is concerned, the Corporate Applicant

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has enclosed one legal notice dated 03.02.2021 received from the advocate of one of Operational Creditor i.e. Kedarling Enterprises asking the Corporate Applicant to pay the amount of Rs.55,74,201/-, due against supply of goods in default since 2019, within 10 days from the receipt of the notice. However, the Corporate Applicant has stated only a sum of Rs.16,01,223/-. The present application has been filed on 19.08.2021. This bench finds that vide notification No. S.O. 1543(E) dated 09.04.2021, the Central Government has notified the minimum amount of default u/s 4 as Rs.1 Crore. Accordingly, this bench feels that this application cannot be maintained on the basis of this default alone.

10. The Corporate Applicant has not place on record any evidence suggesting the date of default in repayment of debt due to other Operational Creditors Or Statutory Authorities. Neither, the notes to account forming part of audited financial statement for the financial year ended 31.03.2019 and as well as 31.03.2018 nor the auditors report thereon discloses fact of any default in payment of dues of MSME Creditors as well as Statutory Authorities.
11. In the absence of the date of default in relation to debt due to other Operational Creditors Or Statutory Authorities and petition barred u/s 4 or 10A of the Code as explained in para 8 and 9 above, this bench is of the considered view that the present petition deserve to be dismissed as not maintainable.
12. From the facts stated in the petition, this bench is of the view that present petition has been filed to thwart the proceedings under SARFAESI Act. In the absence of material facts to arrive

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at final finding in this relation, this bench does not consider it appropriate to pass any order u/s 65 of the Code.

13. Accordingly, C.P.(IB) 966/2021 is **dismissed**.

Sd/-  
**PRABHAT KUMAR**  
**Member (Technical)**  
/NP/

Sd/-  
**KISHORE VEMULAPALLI**  
**Member (Judicial)**