

SL. No.40

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 12.01.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition No. 98/10/HDB/2023
NAME OF THE COMPANY	Mithra Yarns Private Limited
NAME OF THE PETITIONER(S)	
NAME OF THE RESPONDENT(S)	
UNDER SECTION	10

ORDER

Orders pronounced, recorded vide separate sheets. In the result, this petition is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II**

C.P. (IB) No.98/10/HDB/2023

Under Section 10 of IBC, 2016

In the matter of:

M/s. Mithra Yarns Private Limited,
H.No.19-8, P.No.41/A,
Chandulalbowli, Sikh Village,
Tirumalgiri, Manovikas Nagar,
Secunderabad – 500 009.

... Corporate Applicant/
Corporate Debtor

Date of Order: 12.01.2024

Coram:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel Present:

For the Applicant : Mr. Shaik Gouse, PCS

Heard on : 08.01.2024

Per : Sanjay Puri, Member (Technical)

ORDER

1. This Application is filed by the Corporate Applicant Under Section 10 of IBC for initiating the Corporate Insolvency Resolution Process (CIRP) in the case of M/s. Mithra Yarns Private Limited, the Corporate Debtor (CD).

Brief facts of the Application:

2. The CD was incorporated on 22.05.2017 under the provisions of the Companies Act, 2013 with its Registered Office in Hyderabad,

Telangana. It was also Registered as Small Enterprise with Ministry of Micro, Small and Medium Enterprises vide Registration Certificate¹ dated 17.03.2018.

3. After being incorporated, the CD entered into a Lease Agreement² on 31.08.2017 with M/s. Sai Damodhar Spinners, whose partners are also Promoter Shareholders of the CD. Under the Lease Agreement, the land of Ac 3-20¼ Gts, situated at Sy.No.314, 315, 316 and 317, Thangapally Mandal, Rajanna Siricilla District, Telangana, was taken on lease for setting up of a Spinning Unit. The period of the lease was stipulated to be 15 years at the rentals of Rs.10,000 per month starting from 31.08.2017.
4. It is stated in the Application that, the Spinning Unit was established by the CD on the leased land and the business of manufacturing of cotton yarn spinning kitted and crocheted fabrics commenced.
5. It is also stated that in order to fund the machinery required for manufacturing purposes, the CD had approached the Financial Creditor (FC), Union Bank of India (earlier Andhra Bank) and made an application for sanction of Term Loan and the Working Capital Loan. The FC after appraisal of the project, sanctioned the Term Loan³ of Rs.4.5 Crores and Rs.1.0 Crore as Open Cash Credit (OCC) on 07.04.2018.
6. While sanctioning the loan, the FC created Security Interest by way of Hypothecation of stock, finished goods and receivables of the CD in respect of the OCC limits, and Hypothecation of Plant and Machinery and other fixed assets in respect of the Term Loan. Apart from the aforesaid, the FC also obtained the Security Interest by way of equitable mortgage of Industrial Land and Buildings to the Promoter Shareholders of the CD on which the Factory was situated.

¹ Pg 52 of the Application.

² Pg 53-68 of the Application.

³ Pg 99-110 of the Application.

7. As per the Application, the CD commenced its commercial production in January 2020, but due to onset of COVID in March 2020, the Plant could not be run in full capacity. It is further submitted that; the CD was affected adversely by huge fluctuation in cotton prices in the recent past and also did not get the State subsidy amounting to approximately Rs.3.5 Crores which it was entitled to. These combined factors led to financial losses, preventing the CD from breaking-even.
8. Due to continuous losses and non receipt of the interest Subsidy from the Government of Telangana, the CD committed default in payment of EMI to the FC and its account became Non Performing Asset (NPA) on 28.11.2022.
9. It is stated that, the FC issued the Demand Notice⁴ on 03.12.2022 under Section 13(2) of the SARFAESI Act⁵, 2002 to the CD and followed up with another Notice on 27.02.2023 under Section 13(4) for taking over the possession of the Assets of the CD.
10. It is asserted by the CD that, the FC instead of approaching NCLT for initiation of CIRP, has resorted to proceed under SARFAESI Act, to sell the Assets and kill the CD without any resolution and without bothering about the employees and their families whose livelihood is depended on the CD. It is emphasized that, at present there are about 50 employees working at the Factory premises and about 20 families have been employed indirectly.
11. Under these facts and circumstances, the Corporate Applicant has prayed that the present Application be admitted and CIRP initiated against the CD for which the unanimous resolution⁶ has been passed by the Board of Directors of the CD.

⁴ Pg 116-119 of the Application.

⁵ Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act

⁶ Pg 132-135 of the Application.

Reply by the FC:

12. In their reply, the FC (Union Bank of India) has opposed admitting the CD into CIRP. It is claimed that the Corporate Applicant is seeking admission into CIRP only to delay the realisation of bank dues. It is submitted that, the continuous losses of the CD are self inflicted and not caused by any outside agents.
13. It is further asserted that, as the Loan Accounts of the CD having been categorized as NPA, the FC is left with no option but to initiate action under SARFAESI Act. With these submissions, the FC has prayed for the dismissal of this Application.

Decision on the Application:

14. During the course of hearing on 30.08.2023, the Corporate Applicant was asked to provide the following:
 - Latest audited financial results for the year ending 31.03.2023 containing position of loans & advances, debtors and inventory along with auditor's report.
 - Financial/Books of accounts in a pen drive.
 - Provide for the fee of the IRP/RP for a period of 6 months.
 - An affidavit to the effect that the Applicant has not received SARFAESI Notice and if any SARFAESI Notice has been received and provide details.
 - An affidavit to the effect that this Application is not a defeat the purposes of law.
15. On 05.10.2023, Compliance Memo was submitted which include copy of Audited Financial Statements for the year ending 31.03.2023 and the details of Notice received under SARFAESI Act. Also enclosed was the Affidavit stating that the Application is not for defeating the purpose of the Law.

16. Going through the Financial Statements which have been provided by the Corporate Applicant for the year ending 31.03.2023, we find that the CD has been managed by two persons i.e. Mr. Sandeep Kumar Karampuri and Ms. Jyothi Karampuri, who are the Shareholders in their individual capacity and also as Partners in the firm M/s. Sai Damodhar Spinners.
17. The Auditor's Report attached to the Audited Financial Statements,⁷ identifies several irregularities in managing the CD such as;
- Trade Payables and Trade Receivables are routed through Personal Accounts of Directors and Director relatives.
 - No proper Document for the Expenses Incurred by the Directors and relatives on behalf of company.
 - There were no confirmations for the interest due on loans and loan outstanding as at 31.03.2023 for loans availed from bank after November, hence Interest due payable was calculated by the company on the basis of Interest Rate available.
 - Proper Stock Records and stock accounting was not maintained by the company
 - Confirmation from Trade receivables and Trade Payables were not produced as there is a lot of ambiguity since the same was also routed through the personal accounts of the directors and their relatives.
18. The Auditors have repeatedly mentioned in their Report that the proper books of accounts have not been kept by the CD. No proper records have been maintained showing full particulars including quantitative details, situation of Property and Plant & Equipment. The Company has also not been regular in depositing undisputed Statutory dues as applicable with the appropriate Authorities.

⁷ Pg 28-35 of the Application.

19. Clearly, the affairs of the CD have been mismanaged, which is perhaps the reason why the CD has not been able to discharge its obligations in relation to the loans taken by it.
20. Under the circumstances, while the actions taken by the FC under SARFAESI Act cannot be faulted upon. It is also a fact that, after issuing the Notice under that Act in February 2023, it has not been followed through.
21. We also noticed from the Audited Financial Statements, which even though cannot be fully relied upon in view of the Auditor's observation, show a substantial expenditure towards Factory Salaries, Daily Wages, Worker's welfare. For the year ending March 2023 a sum of approximately Rs.53 lakhs has been spent in this regard, and about Rs.70 lakhs for the year ending March 2022.
22. Considering these figures coupled with the uncontroverted assertion of the Corporate Applicant that, there are approximately 50 employees working in CD's Factory, we are of the view that, the resolution of the CD's insolvency needs to be given a chance. Therefore, we are inclined to admit this Application under Section 10 of IBC and direct as follows:
 - a) The Application is admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process, which shall ordinarily be completed within the timelines stipulated in the Code, 2016 (as amended), reckoning from the date on which this order is passed.
 - b) Ms. Azra Banu,⁸ is appointed as the Interim Resolution Professional (hereinafter referred to as the "IRP"). The IRP is

⁸ Having Registration No: IBBI/IPA-001/IP-P00955/2017-2018/11576, R/o. 12-13-377, Street No.2 , Flat 302, Gayatri Garden Apartments,Tarnaka ,Secunderabad ,Telangana ,500017, E-mail ID: caazra27@gmail.com , Phone No.8555058841.

directed to file Authorization for Assignment within three days from the date of this order.

- c) The IRP is directed to take charge of the management of the Corporate Debtor, immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the Code, 2016, within three days from the date of receipt of this order, and call for submissions of claim in the manner as prescribed.
- d) We direct the Corporate Applicant to pay a sum of **Rs.2.0 lakhs** towards the advance fee of IRP and expenses towards CIRP, which shall be ratified later on by CoC.
- e) Moratorium is, hereby, declared and shall have effect from the date of this order till the completion of the CIRP, for the purposes referred to in Section 14 of the Code, 2016. It is hereby ordered that all of the following are prohibited:
- i. *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court or law, tribunal arbitration panel or other authority;*
 - ii. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;*
 - iii. *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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
 - iv. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

- v. *Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*
- f) The supply of essential goods or services to the Corporate Debtor shall not be terminated, suspended or interrupted during the moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.
- g) The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code, 2016. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 for discharging his functions under Section 20 of the Code, 2016.

- h) The Corporate Applicant as well as the Registry is directed to send the copy of this Order to the IRP, to enable IRP to take charge of the assets etc. of the Corporate Debtor, and comply with this order as per the provisions of the Code, 2016.
- i) The Registry is directed to communicate this Order to the Corporate Applicant.
- j) The Registry shall also communicate this Order to the Registrar of Companies, Hyderabad, for updating the status of the Corporate Debtor in the website of the Ministry of Corporate Affairs.

Accordingly, this **C.P. No. 98/10/HDB/2023** is allowed and stands disposed of.

Sd/-

**(SANJAY PURI)
MEMBER (TECHNICAL)**

Sd/-

**(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)**

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