

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 12TH JANUARY, 2024, 10:30 A.M.

CP (IB)/32/GB/2022

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

Name of the Company	P. L. Industries Pvt. Ltd. Vs Canara Bank & 11 others
Under Section	U/s 10 of IBC, 2016

For Petitioner (s) : Mr.D.Das, Adv.

.

For Respondent (s) :

ORDER

Order Pronounced through VC *vide* separate sheets.

Sd/-

**Satya Ranjan Prasad
Member (Technical)**

Sd/-

**H.V. Subba Rao
Member (Judicial)**

Zeba (PS)

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CP (IB) 32/10/GB/2022

In the matter of:

An Application under Section 10 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (“**Rules**”), to initiate Corporate Insolvency Resolution Process;

-And-

In the matter of:

P.L Industries Private Limited, Registered Office at 29A, Cantonment, Goenka Market Shillong East Khasi Hills, Meghalaya —793001;

... Corporate Applicant

-Versus-

Canara Bank, Head office at 112, JC Road, Bangalore- 760002 and branch office at Sikh Temple Branch, S.C Goswami Road, Panbazar, Guwahati, Assam—781001;

... Respondent/Financial Creditor

-And-

M/S Mega Food Park Ltd, 3rd Floor, Parnil Complex, R.G Baruah Road, Guwahati, Assam— 781024;

... Respondent No. 2

-And-

M/S Flontal Flexipack Ltd, Laxmi Bihar Colony, Block-F, Industrial Area, Bulandshahr Road, Industrial Area, Ghaziabad, Uttar Pradesh— 201001;

... Respondent No. 3

-And-

Synchro Park, 09, B.K Pal Avenue, Kolkata, West Bengal— 700005;

... Respondent No. 4

-And-

M/S Modern Laminators Private Limited, Plot No. 108, Phase IV, Sector-57, HSIIDC, Industrial Estate, Kundili, Haryana— 131028;

... Respondent No. 5

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-And-

M/S Vitaagro Industries Private Limited, 3/24, Ajanta Compound, Site 2, Loni Road, Mohan Nagar, Ghaziabad, Uttar Pradesh— 201007;

... Respondent No. 6

-And-

Arvind Balubhai Zala, Unit 1, Plot No. 1869, Road No. L/I, Gate No.3, Metoda GIDC, Rajkot, Gujarat — 360021;

... Respondent No. 7

-And-

Girish Gupta, Foods Group of Consultants, G-17/47, Ground Floor, Sector-15, Rohini, New Delhi— 110085;

... Respondent No. 8

-And-

Employees State Insurance Corporation, Maniram Dewan Road, Bamunimaidan, Guwahati, Assam- 781021;

... Respondent No. 9

-And-

Siddharth Uday Parekh, Plot No- 1896, Gate No.3, Metoda, GIDC, Rajkot, Gujarat— 360021;

... Respondent No. 10

-And-

PL 110126 S.K Gujarat Trading 7 Co., Mangal Tirth, 1st Floor, Nirmala Convent School Road, Above SVC Bank, Rajkot, Gujarat— 360007.

... Respondent No. 11

Coram:

Shri H. V. Subba Rao : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing):

For the Petitioners : Mr. Sandeep Chamaria, Adv.

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For the Respondent : Mr. Manoj Kumar Roy, Adv.

**Order reserved on: 07.12.2023
Order pronounced on: 12.01.2024**

ORDER

1. This Application has been filed under Section 10 of the Insolvency & Bankruptcy Code, 2016 (“**IBC**”) by the Corporate Applicant (“**CA**” or **Petitioner**), namely P.L Industries Private Limited, seeking initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against itself. The present application is being filed after due approval of the shareholders of CA by way of special resolution dated 19.11.2022, in compliance with the statutory requirement of Section 10 of IBC.
2. P.L Industries Private Limited /Corporate Applicant is a private limited company (CIN: U15541ML2013PTC008551) having its registered office at 29A, Cantonment, Goenka Market Shillong East Khasi Hills, Meghalaya —793001. The Company was incorporated on 03.09.2013. The Nominal Capital of the Corporate Debtor is Rs. 3,00,00,000.00 and Paid-up Capital of Rs. 2,66,35,000.00. Presently the following are the Directors:
 - i. BIKASH GOENKA (Director);
 - ii. PAYAL GOENKA (Director).
3. The Petitioner submits that:
 - 3.1 The CA was principally engaged in operating a food processing unit, set up as an MSME Unit, at Tihu, Nalbari, Assam, in the year 2018. At the inception stage, performance of the food processing unit showed positive results and it was hoped that the said business would give considerable profit margin to the Petitioner.
 - 3.2 Due to the emergence of COVID-19 “Pandemic” and surrounding circumstances in the year 2019, the Petitioner has sustained huge financial losses and as such, it was in not in a position to maintain the profit level for the said company and as such during that period, the production activities of the abovementioned unit were completely shut down. The CA has huge

liability to be discharged and as such, the Directors of the CA are also not being able to run the company smoothly due to the unwarranted situations one after another; specifically the total halt of production for a considerable amount of time in the year 2019 and afterwards. Further, when the situation developed to a certain extent in the last part of 2021, the Petitioner on account of different reasons somehow re-started the production work of the unit for a short time, but ultimately it again booked losses only and the liability unnecessarily grown up afterwards beyond the control of the Petitioner and as such, finally closed down from the period of 2021. Subsequently, all efforts by the Corporate Applicant to revive the operations and cover losses turned into vain. Therefore, it is quite evident that from the year 2019 till the filing of this instant petition, the said production unit only sustained losses and the dues payable to the different heads could not be met due to shortage of funds and non-running of the said showroom and other reasons.

- 3.3 The cumulative period of 2022 only added to worsen the condition for the Petitioner and resultantly the capital which was invested by the Petitioner from their own sources and from the Bank and the other parties, was extinguished in due course. Again, owing to the commercial activities getting down for a considerable period of time, the other expenses like – staff, unit premises rent, electricity cost and other maintenance cost became regular burden for the Petitioner during this entire time. Further, there is no scope left as on date, wherein the losses could possibly be converted into profits on any level for different reasons etc. Under such circumstances, it is invariably required that the Petitioner would be declared as “Insolvent” as per law and for these purposes, a proper Resolution dated 07.04.2022 has also been adopted for the same.
- 3.4 The Petitioner earlier also availed loan facility from the Canara Bank and since the due amount could not be paid, the said bank has already filed recovery proceeding before the Debt Recovery Tribunal, Guwahati, for the non-payment of the agreed amount. The aforesaid proceeding is for

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realization of sum of Rs. 2,23,50,751.72 and the said case has been numbered as O.A. No. 309/2022. The Bank has also issued a Sale Notice dated 07.07.2022 under section 13(4) of the SARFAESI Act, for the sale of mortgaged property and the auction process was scheduled on 17.08.2022 for which the reserve price was fixed at Rs 92 Lakh only. Further, the NPA for the loan accounts was declared on 31.03.2022 for a sum of Rs. 1,32,56,786.34.

- 3.5 The Petitioner had set up the production unit by taking the landed property under lease from the North Eastern Development Finance Corporation (NEDFi), and due to the default on the payment of rent dues, NEDFi filed Title Suit No. 301/2022 before the Ld. Civil Judge No.2, Kamrup (M) at Guwahati for realization of Rs. 32,60,162.67 along with other reliefs.
- 3.6 The capital infused into the production and marketing segments did not show desired effects due to the cost and supply of raw materials and other exorbitant commission prices by other competitive products; The Petitioner failed to regularize production and marketing and the said capital started eating into the heads of:
- (i) Salaries of staff
 - (ii) Marketing expenses
 - (iii) Self- promotion expenses
 - (iv) Interest paid on C.C. account and
 - (v) The instalment payment made to the Bank against the sanctioned loan amount etc.
- 3.7 From the books of account, it is evident that the directors at no point of time made any personal withdrawal for self-purposes in any form or manner. But irrespective of the profits booked on any sale, the expense required in production was already significantly on the higher side and as such, the expenditure heads was always getting escalated all time. Again, the Petitioners at no point of time have diverted the fund received from the secured or unsecured creditors at any point of time and that there was consequential default on the accrued debt. Under such circumstances, there

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is no scope left as on date to revive the unit through which the profit margin of the business can be improved. Therefore, all the efforts whatever have been carried out has shown a clear picture that the revival of the business of the Petitioner is a dream with empty result.

3.8 The Corporate Applicant has not incurred any ineligibility as per Section 11 of IBC, 2016.

3.9 The Corporate Applicant incurred heavy losses in the business and the liabilities are far in excess of the assets. Hence, the Petitioner seeks resolution of its insolvency through maximization of value of its assets under provisions of IBC, 2016.

4. On the other hand, the Respondent No.1, Canara Bank submits that:

4.1 The Financial Creditor/Respondent (**“Respondent No.1”**) is a Body Corporate duly constituted under the Banking Companies(Acquisition and Transfer of Undertaking) Act, 1970 having its Head Office at Madam Cama Road, Mumbai-400021 and one of its Branch Office namely Sikh Temple Branch, S.C. Goswami Road, Panbazar, Guwahati- 781001 and carrying on the business of Banking through diverse branches.

4.2 The Corporate Applicant is a private limited company constituted under the Company Act, 1956, and had availed various credit facilities through its director and the same was sanctioned by the respondent Financial Creditor. The said credit facilities were renewed/enhanced/reviewed from time to time by executing the respective loan documents from time to time. The Directors of the Corporate Applicant also stood as the Personal Guarantors to the loan facilities availed by the Corporate Applicant by executing the Guarantee Agreement dated 22.11.2018 and moreover, Mr. Vishal Goenka (Director) also created equitable mortgage over his immovable property as security to the said loan facilities.

4.3 The present Petition under Section 10 of IBC by the Corporate Applicant is not maintainable on owing to the ground that the Petition had been prepared and sworn on affidavit by Sri Bikash Goenka (Director) for

initiating the CIRP, and he was not a Director at the time of sanctioning of loan facilities by the Financial Creditor No.1 till 27.01.2021. Further, CA manipulated and suppressed the fact that he had replaced Mr. Vishal Goenka as the Director of CA.

- 4.4 CA and its Directors repeatedly refused permission for inspection of the hypothecated properties by the officers of the Financial Creditor No.1 and further barred them from entering the unit premises.
- 4.5 The Financial Creditor vide Sanction Memorandum dated 22.11.2018, sanctioned the loan facilities in the form of Term Loan and Cash Credit amounting to Rs 1.75 Crore. In addition, a Common Hypothecation Agreement, Request for Overdraft facility were signed and executed by the Directors of the Corporate Applicant.
- 4.6 After getting hit by the COVID-19 pandemic, the Directors of the Corporate Applicant approached Financial Creditor No.1 for financial assistance under Canara Credit Support vide loan application dated 04.05.2020 and a Term Loan of Rs 8.00 Lakh was sanctioned vide Sanction Memorandum dated 04.05.2020.
- 4.7 In 2021, the Corporate Applicant through its Directors applied for Restructuring Resolution Framework 2.0 as per RBI Guidelines dated 05.05.2021 vide loan application dated 29.09.2021, which was sanctioned vide Sanction Memorandum dated 30.09.2021.
- 4.8 The account of the applicant became extremely irregular for non-payment of instalments. Despite the opportunities given to regularize the loan accounts by repeated reminders and requests, the applicant grossly failed to regularize the loan account and hence the loan accounts were classified as Non-Performing Assets (NPA) on 31.03.2022.
- 4.9 Following a Sale Notice dated 07.07.2022 under Section 13(4) of SARFAESI Act by the Respondent No. 1, the mortgaged property of Mr. Vishal Goenka (ex-Director) was sold in an E-Auction on 17.08.2022 as result of SARFAESI Act, 2002 proceedings and the sale proceeds of Rs 99.00 Lakh went to the Financial Creditor No. 1 and the said amount had

already been adjusted in the cash credit loan amount on 31.10.2022 and 14.11.2022 and accordingly a Sale Certificate dated 17.11.2022 has also been issued. Further, the CA has kept silent on this SARFAESI action in its Petition amounting to suppression of material facts for wrongful gains.

4.10 Claim by the CA of the unit being run in loss from 2019 onwards due to the pandemic is not correct as the COVID-19 pandemic started in the year 2020 and hence the CA has failed in establishing as to what happened to the credit facility i.e. public monies availed from the Financial Creditor No.1 and the various subsidies they received under various government schemes.

4.11 The instant application is not maintainable as the application is fraught with malafide, and Applicant/CD has not approached this Tribunal with clean hands, and has suppressed several material facts of the issue in question, and in order to avoid payment of the dues and get free from the liability towards the secured Financial Creditor, is taking shelter under the provisions of the IBC. Therefore, it is liable to be dismissed *in-limine* without going into other contentions of applicant.

5. It must also be noted that replies of the other Respondents, namely, Employees State Insurance Corporation (ESIC), M/S Mega Food Park Ltd, and Synchro Park are placed on record.

6. Analysis of Averments and Conclusion

6.1 Heard the Counsels for both the sides at length. This Application has been filed under Section 10 of IBC by the CA seeking initiation of CIRP against itself. The CA has enclosed a copy of Special Resolution passed by the shareholders of the company in their Extra-Ordinary General Meeting held on 19.11.2022 for initiating Corporate Insolvency Resolution Process. It is admitted on record that the Financial Creditor *vide* Demand Letters dated 04.12.2021, 15.01.2022, 03.02.2022 and 15.03.2022 demanded and requested the CA to regularize the loan accounts by paying the overdue amount in the loan accounts including the accrued interest. **After continuous failure by the CA to regularize its debt, the loan accounts were**

classified as **Non-Performing Assets (NPA)** on **31.03.2022**. Both, the Applicant/CD and the Financial Creditors (FC) - Canara Bank have confirmed that the accounts of the Applicant are NPAs and the Applicant has defaulted in making payments of interest and instalments to Canara Bank- the FC/Respondent No. 1 here. There is no dispute that the debt is not due, not payable in law and not defaulted. The CD has submitted that it has incurred cumulative losses of Rs. 21,735,204.00 and 15,440,856.00 in FY. 2020-2021 and 2021-22 respectively. The Petitioner has placed the details of the status of the Statement of Profit & Loss, and other documents. In light of appended documents, it is quite evident that the Petitioner faced heavy losses in the year 2019-2020 with continuing losses and minimal operations in the subsequent years and the light of recovery from these losses appear to be minimal.

- 6.2 Further, the Hon'ble NCLAT in "*Gaja Trustee Company Private Limited & Ors. Vs. Haldia Coke and Chemicals Private Limited- Company Appeal (AT) (Insolvency) No. 137 of 2017*" held that the Application under Section 10 of IBC cannot be filed by the Board of Directors of a Company without prior approval of the shareholders in its Extraordinary General Meeting or Annual General Meeting. This Special Resolution dated 19.11.2022 has been duly annexed to the above Petition.
- 6.3 The argument of the Respondent Financial Creditor that this present Petition is prepared and sworn on affidavit by Sri Bikash Goenka (Director) for initiating the CIRP, and he was not a Director at the time of sanctioning of loan facilities by the Financial Creditor No.1 till 27.01.2021, is untenable in law as incoming and outgoing of Directors of a body corporate is a lawful and natural process and does not hinder the ability of present Directors to represent the cause of the Corporate Applicant.
- 6.4 Also, the Corporate Applicant has also enclosed the Audited Financial Statements for the years 2019-2020, 2020-21, and 2021-22 reflecting the default of payment to the Financial Creditors. The Corporate Applicant also enclosed the financial statement for the period for the year ending 2021, list

of financial creditors (secured/unsecured), list of properties given as security for the loans availed and extract of charges registered with the Registrar of Companies taken from MCA portal. The Corporate Applicant disclosed the names and addresses of the members of the Company with details of their shareholding, details of debt owed by or to the Corporate Applicant to or by persons connected with it and details of personal guarantors of the Corporate Applicant.

- 6.5 Another argument of the Respondent No.1 i.e. Canara Bank, is that the intention of the Corporate Applicant is to get admission under Section 10 of the IBC and use the follow up imposition of moratorium to stall all present and further proceedings against the Corporate Applicant and its Directors. It is evident that the Corporate Applicant has not suppressed the fact about various judicial proceedings against it and the same has been stated in the synopsis filed along with the Petition.
- 6.6 Reliance is placed on the judicial precedents of Hon'ble Supreme Court in the matter of *M/s Innovate Industries Ltd. vs. ICICI Bank & Anr.* as well as Hon'ble NCLAT in the matter of *Unigreen Global Pvt. Ltd. vs. Punjab National Bank & Ors., Co. Appeal (AT) (Insolvency) No. 81 of 2017*, we find that the contentions/objections of the Financial Creditor have no merits as the legal position in this respect has already been settled by the Hon'ble Supreme Court as well as Hon'ble NCLAT. Therefore, pendency of SARFAESI proceedings or proceedings before the DRT cannot be a valid ground not to initiate Corporate Insolvency Resolution Process under Section 10 of the Code in respect of the Corporate Applicant/Corporate Debtor, if such application is found complete in all respects. The provisions of Section 238 of the IBC have been given overriding effect to the provisions and proceedings under any other law. Hence, such contentions of the Financial Creditor are not legally tenable.
- 6.7 Further, it was contended by Respondent No.1 that there has been diversion of funds concerning loan amount and various subsidies by the Directors of the Corporate Applicant and that the claim by the Corporate Applicant that

it has been facing losses right from the year 2019 on account of the COVID-19 pandemic is *prima facie* false because the pandemic started in early 2020. In continuation, it was alleged that the CA continued to take benefits extended by the RBI during the COVID period along with Rs 18.35 Lakh as GECL on 10.06.20 and Rs 1,71,150 as FITL loan from the Financial Creditor - Canara Bank. Also, it was alleged that there was no communication from the CA regarding the incurrence of losses during this period and that cumulative effect desired by the CA by filing this Petition is to dodge its liability towards the Financial Creditor and others by entering into insolvency via the means provided by the IBC.

6.8 Irrespective of COVID-19 not being a cause of losses in the year 2019, the *factum* of heavy losses in the year 2019 and subsequent losses and irregular/minimal operations along with the existence of default is established from the submitted records. Additionally, the Respondent Financial Creditor has not placed relevant material to establish that there exists diversion of funds by the Directors of CA and that the Petitioner has approached this Tribunal with unclean hands. Hence, this matter is fit to be admitted under Section 10 by following the statutory and underscored essentials.

7. Accordingly, this Bench admits the above CP (IB) 32/10/GB/2022 under section 10 by passing the following order:

7.1 There shall be a moratorium under Section 14 of the IBC, regarding the following:

- 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 of 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 right or beneficial interest therein.
- iii. Any action to foreclosure, recover or enforce any security interest created by the Corporate Debtor in respect of its property including

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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.

Notwithstanding the above, during the period of moratorium:

- i. 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;
- ii. The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator.

7.2 The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Applicant under Section 33 of the IBC, as the case may be.

7.3 Public announcement of the CIRP shall be made immediately as specified under Section 13 of the IBC read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

7.4 As proposed by the Corporate Applicant, **Mr. Ujwal Kumar Kalita [Reg No. IBBI/IPA-002/IP-N00952/2020-21/13157]**, having address at House No. 15, Chandra Chowdhury Path, 1st Bye Lane, Bhetapara, Beltola, Guwahati-781001, Assam, is hereby appointed, as an Interim Resolution Professional to carry out the functions as per the IBC. The IRP has to submit Assignment Declaration before the Registry within 3 working days from today.

7.5 During the CIRP Period, the management of the Corporate Applicant shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Applicant shall provide all documents in their possession and furnish every information in their

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knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- 7.6 The Corporate Applicant shall deposit an amount of Rs. 5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the IRP appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards CIRP expenses only and not towards his fees, till the same is decided by CoC. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Corporate Applicant.
- 7.7 Directions are also issued to the suspended management to provide all documents in their possession and furnish every information in the knowledge within a period of one week from the date of admission of the petition to the IRP, otherwise coercive steps to follow.
8. The Registry is hereby directed to communicate the authenticated copy of this order to the Corporate Applicant, Financial and Operational Creditors, the IRP and also to the Registrar of Companies, Guwahati immediately through speed post/registered post and e-mail, if available.
9. The commencement of Corporate Insolvency Resolution Process shall be effective from the date of this order.
10. The Interim Resolution Professional shall convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.
11. Interim Resolution Professional to file 1st Progress Report on 20.02.2024.
12. List the matter on 20.02.2024.
13. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
14. File be consigned to records.

Sd/-

Satya Ranjan Prasad
Member (Technical)

Sd/-

H.V.Subba Rao
Member (Judicial)

Signed this on 12th day of January, 2024.