

SL. No.1

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

(PHYSICAL HEARING)

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 06.01.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/196/2021
NAME OF THE COMPANY	Pandu Ranga Rao & 3 others
NAME OF THE PETITIONER(S)	Maestria Paints India Pvt Ltd
NAME OF THE RESPONDENT(S)	Pandu Ranga Rao & 3 others
UNDER SECTION	10 of IBC

ORDER

Application is allowed vide separate orders.

Sd/-
MEMBER(T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II, HYDERABAD**

C.P. (IB) No. 196/10/HDB/2021
Under Section 10 of the IB Code, 2016 r/w
Rule 7 of the Insolvency & Bankruptcy
(Application to Adjudicating Authority) Rules, 2016.

In the matter of
M/S MAESTRIA PAINTS INDIA PRIVATE LIMITED

M/S Maestria Paints India Private Limited,
Regd. Office: H. No. 6-3-349/15/17, Flat No. 103,
Dwarakapuri Colony, Punjagutta, Hyderabad,
Telangana – 500082.

...Applicant/ Corporate Debtor

Date of Order: 06.01.2023

Coram:

Justice Telaprolu Rajani, Member, Judicial
Sri Charan Singh, Member, Technical

Appearance:

For the Applicant: Mr. M. Maharshi Viswaraj, Advocate

For the Operational Creditors:

M/S Mahaveer Chemicals & M/S Vishal Enterprises: Mr. K. Badri, Advocate

Mr. S. Srinivasa Rao: Mr. D. Amarnath Reddy, Advocate

M/S Mirra Packaging: Mr. G. Nanda Gopal, Advocate

Mr. Hansram Chaudhary & Mr. Uttam Choudhary: Mr. Lokesh Agarwal, PCS

Per : Bench

ORDER

1. This is an Application filed by the Corporate Applicant, M/S Maestria Paints India Private Limited (hereinafter referred to as the “Applicant”), under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code, 2016”), seeking for the initiation of the Corporate Insolvency Resolution Process, against itself.
2. Brief facts of the case are as follows:
 - a) The Applicant, bearing CIN: U36990TG2018PTC122698, was incorporated on 06.03.2018, under the provisions of the Companies Act, 2013 and is engaged in the business of producers, manufactures, importers, exporters, and dealers in all kinds of paints and raw materials used for the preparation of paints. The authorized share capital of the Applicant is Rs. 5,00,00,000/- and the paid-up share capital is Rs. 4,58,07,250/-.
 - b) The Applicant committed default in repaying its creditors, due to unavoidable circumstances arising in its business, particularly in view of liquidity crunch and bad market conditions.
 - c) The shareholders of the Applicant, in an Extraordinary General Meeting, dated 05.06.2021, passed a special resolution in favour of initiating the Corporate Insolvency Resolution Process against the Applicant, under Section 10 of the Code, 2016.
 - d) The Applicant obtained on lease, the premises of one Smt. Subba Lakshmi, for running its paint manufacturing unit. The Applicant has been unable to pay the monthly rents to the lessor, due to its financial crisis and the lessor had issued a legal notice, demanding that the said premises be vacated and the arrears of the lease amount be paid.

- e) One of the operational creditors of the Applicant, M/S Gautam Dyes and Chemicals Inc. initiated proceedings, bearing No.: MSEFC/CR/434/2020, before the MSME Council, Chennai Region, for recovery of amounts due to it.
- f) A certificate, dated 13.07.2021, issued by the chartered accountant, shows that the total amount that the Applicant owes to its financial creditors, as on 30.06.2021, is Rs. 5,19,20,056/- and the total amount owed to the operational creditors is Rs. 5,78,16,888/-.

Thus, the instant Application has been preferred, in the light of the fact that the Applicant is unable to pay the amounts that are due to its creditors and has defaulted on the same.

3. The operational creditors of the Applicant, viz., M/S Mahaveer Chemicals and M/S Vishal Enterprises, have opposed the prayer made in the instant Application and have filed their respective counters, stating as under:

- a) The Applicant had hardly begun its operations and the filing of the instant Application, under Section 10 of the Code, 2016, points to the fact that the Applicant-Company is a "fly by night" operator, which requires an investigation into its operations and a forensic audit to be carried out.
- b) The Applicant cannot take the cover of liquidity crunch for its default. The Applicant received enormous credit from its operational creditors for the supplies made by them. It is clear that the directors of the Applicant-Company have not run the company diligently.
- c) The Applicant does state how many directors were present in the extraordinary meeting in which the resolution for initiating the Corporate Insolvency Resolution Process, was passed and whether the consent of the major shareholder was taken, especially when the majority shareholder is a foreigner and it appears

that the resolution has been passed unilaterally, by the signatory to the instant Application.

d) Materials were supplied to the Applicant from June, 2018 to September, 2019, as per the purchase orders placed by the Applicant. Multiple efforts were made and correspondence was exchanged between the directors of the Applicant and the operational creditors herein, but the Applicant had been delaying payments on various pretexts.

e) It is clear from the conduct of the directors that from inception, there was no intention to pay for the material purchased by them from various vendors and the directors of the Applicant conspired and fraudulently induced the operational creditors herein to part with materials by issuing purchase orders and promising payments, without intending to honour the same, thereby cheating the operational creditors herein.

Thus, it is prayed that the instant Application be dismissed and a forensic audit be ordered into the affairs of the Applicant-Company.

4. Another operational creditor of the Applicant, being the owner of the godown, bearing Municipal No. 18-331, Kannuru, Vijayawada, which the Applicant had obtained on lease, filed his counter to the instant Application praying that the Official Liquidator be appointed, with directions to clear the dues of arrears of rent and to handover the vacant possession of the said property.
5. Yet another operational creditor of the Applicant, M/S Mirra Packaging, opposed the instant Application, praying that a decree for a sum of Rs. 3,66,703/- be passed in its favour. The same operational creditor filed I.A. No. 257/2022, praying for the dismissal of the instant Application, on the ground that it has preferred a suit for recovery of money, which prompted the Applicant to file the present Application in apprehension of adverse orders in the said suit.

6. Two other operational creditors, who are owners of a commercial shed located at Sy. No. 113AA, Cheriya (V), Kandi (M), Sangareddy District, Telangana, filed their counter and stated as under:
- a) The said commercial shed had been leased to the Applicant, along with the plant and machinery therein, for production of paints for a period of 5 years, vide lease deed, dated 18.05.2018, which was subsequently terminated with the mutual understanding, upon the request of the Applicant. A fresh lease deed, dated 18.05.2019, was entered into, for a period of 2 years from 01.05.2019 to 30.04.2021, at a monthly lease rental of Rs.2,75,000/- plus applicable GST. However, the Corporate Debtor stopped making the payment of monthly lease rentals after June, 2020.
 - b) In the month of March, 2020, the operational creditors herein received a part payment i.e., amount equivalent to two month's lease rentals which was adjusted for the months of July and August, 2019. After receiving the payment for 2 months, the operational creditors granted around four months of time to the Applicant, to make the payment of all pending dues, to no avail.
 - c) In the month of November, 2020, the Applicant had supplied the operational creditors herein with certain raw material and raised 4 invoices for an aggregate amount of Rs. 10,20,081/-, which was adjusted by the operational creditors against the unpaid lease rentals, despite which there were still lease rental payments of 11 ½ months, that were due to the operational creditors.
 - d) Further, there is dead stock of the raw material in the form of chemical powder weighing approximately 40 tonnes, lying in the leased premises of the operational creditors, which is unaffordable for the operational creditors to remove.

- e) The operational creditors have already suffered huge losses and business opportunities in the last couple of years for which the Applicant is solely responsible.
- f) It is clear that the Applicant-Company was never solvent and was only trying to survive on other business partners by using their name, credit, resources, etc., which is nothing but an act of cheating creditors with malafide intentions.
- g) The conduct of the Applicant-Company makes clear that the present Application itself has been filed with a malafide intention to get rid of the obligations and liabilities of the Applicant and certainly not for the purpose of resolution of the financial distress of the Applicant-Company.

Submitting thus, it is prayed that the present Application be dismissed and the Applicant be directed to clear the due of Rs. 74,52,690/- owed to the operational creditors herein.

7. We have heard the learned counsel for the Petitioner and the learned counsel who appeared for the Operational Creditors, who are the owners of the commercial shed which was taken on lease by the Applicant. The only direction that the learned counsel appearing for the owners of the commercial shed sought was to the Corporate Debtor to vacate the premises which was taken on lease. The learned counsel for the Corporate Debtor undertook to vacate the premises within one week.
8. Though the Operational Creditors who filed counters, are not parties to the present Application, their counters were taken on record. I.A. No. 257/2022 was filed by one M/S Mirra Packaging Pvt. Ltd, an Operational Creditor of the Corporate Debtor. Though the Operational Creditors, in their counters, stated that this Application is *malafide*, they also stated that the Applicant-

Company was never solvent and was only trying to survive on other business partners by using their name, credit, resources etc., which is nothing but an act of cheating the creditors with *malafide* intention. The contention of the Operational Creditors is that they have suffered huge losses because of the services that they rendered to the Corporate Debtor.

9. From the counter filed by the owners of the commercial shed, it can be understood that the Corporate Debtor has made endeavours to pay the rentals which are due to them.
10. Hence, from all the above, it can be understood that the Applicant has become insolvent and is not able to discharge the debts due to the debtors. Though, the Operational Creditors in their counters have taken an objection with regard to the Board Resolution authorizing the filing of this Application, the Board Resolution, dated 05.06.2021, is very much placed on record. So are the financial statements of the Corporate Debtor. Financial Statements, Annual Reports and Balance Sheets pertaining to the years 2018-2019, 2019-2020 and 2020-2021 are also filed. All the conditions under Section 10 of the Code, 2016, are complied with by the Corporate Debtor.
11. In view of the above, we do not find any reason to disallow this Application. Hence, this Application is allowed.
12. Accordingly, the Application is hereby 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.

13. The Applicant has proposed the name of Mr. Malireddy Ramana Reddy, as the Interim Resolution Professional (hereinafter referred to as the "IRP"). Accordingly, this Adjudicating Authority appoints Mr. Malireddy Ramana Reddy, bearing Registration No.: IBBI/IPA-003/ICAI-N-00308/2020-2021/13452, R/o 8-3191/155 (16/A), Vaishnavi Sai Saurabh Residency, Vengal Rao Nagar, Beside Sai Darshini Tiffin Centre, Hyderabad, Telangana - 500038, E-mail ID: ramanareddygrp@gmail.com, as the Interim Resolution Professional. The IRP is directed to file Authorization for Assignment within three days from the date of this order.
14. The IRP is directed to take charge of the management of the Corporate Debtor, immediately. He 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.
15. We direct the Applicant to pay a sum of Rs.2,00,000/- towards the advance fee of the IRP and expenses towards the CIRP, which shall be ratified later on by the Committee of Creditors.
16. 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.*
17. 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.

18. 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 and for discharging his functions under Section 20 of the Code, 2016.
19. The Financial Creditor as well as the Registry are directed to send the copy of this Order to the IRP, to enable him to take charge of the assets etc. of the Corporate Debtor, and comply with this order as per the provisions of the Code, 2016.
20. The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
21. 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.
22. Accordingly, this Petition is admitted.

Sd/-

(Charan Singh)
Member (Technical)

Sd/-

(Justice Telaprolu Rajani)
Member (Judicial)