

**IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

CP (IB) NO. 38/Chd/Pb/2018

**Under Section 10 of the
Insolvency and Bankruptcy Code, 2016.**

In the matter of :

Julka Rice & Oil Mills Ltd
having registered Office
at A-Block , Julka Nagar ,
Qadian , District Gurdaspur.
Punjab.

...Applicant-Corporate Debtor.

Judgment delivered on: 05.04.2018

**Coram: Hon'ble Mr. Justice R.P. Nagrath, Member (Judicial)
Hon'ble Mr. Pradeep R. Sethi, Member(Technical)**

For Petitioner- : Ms.Jyoti Sareen, Advocate
Corporate Debtor
For Financial
Creditor : Mr.Pulkit Goyal, Advocate for Mr.Harsh Garg,
(PNB) Advocate

Per: R.P. Nagrath, Member(Judicial).

JUDGMENT (Oral)

This petition has been filed by M/s Julka Rice & Oil Mills Ltd., the corporate debtor itself in form no.6 as prescribed under sub-rule (1) of Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, the 'Rules') for initiating Corporate Insolvency Resolution Process under Section 10 of the Insolvency and Bankruptcy Code, 2016 (for short, to be referred hereinafter as the 'Code'). The corporate debtor also falls within the definition of the term 'Corporate Applicant' as defined in sub-section (5) of Section 5 of the Code.

2. The corporate debtor was incorporated on 05.06.1987, having been allotted CIN UI5312PB1987PLCOO7497. Its registered office is at Gurdaspur (Punjab) and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

3. The authorized share capital of the corporate debtor is ₹2.00 crore and the issued, subscribed and paid up share capital is ₹1,44,59,730/-. The Certificate of Incorporation of the corporate debtor is at Enclosure-3, (Page No 27 to 65A) with which the Memorandum and Articles of Association of the company have also been annexed. The instant petition has been filed by the corporate-debtor through Mr. Jatinder Mohan Julka, Managing Director, who has been authorized to file this petition under Section 10 of the 'Code' vide resolution of Board of Directors dated 15.12.2018 (Enclosure-5) authorising him to file the petition before NCLT, Chandigarh and to do all the acts necessary for progress of the case. The contents of the application are supported by the affidavit of Mr. Jatinder Mohan Julka as at Page No.17 . There are four shareholders of the company, the details of which are given at Page No 210 and the Board of Directors comprises three Directors; namely Mr. Jatinder Mohan, Mr.Palwinder Singh & Mr. Dilbagh Singh.

4. Punjab National Bank is the only secured financial creditor of the corporate debtor and represented by Mr.Pulkit Goel, Advocate. There is one related unsecured financial creditors allegedly forming part of the list of financial creditors namely, Bharti Julka and another unrelated unsecured creditor namely, Indiano Institutes of Technical Studies (IITS). There are 21 Trade Creditors of the corporate debtor for which the list is at Enclosure-10 (Page 141) of the paper book. Apart from this, the other operational creditors are statutory dues in respect of Punjab State Power Corporation Limited (PSPCL) and the Income Tax Department. So far as the

employees are concerned, there is no amount in default. The corporate-debtor has furnished the names and addresses of all the financial creditors.

5. The amount of debt in default in respect of Punjab National Bank as on 30.09.2017 is stated to be ₹5,24,51,244/- and the sanction letter and other documents of the Bank are at Enclosure-8. The amount in default in respect of other unsecured financial creditors as named above is ₹4,87,889.61/- and ₹1,15,85,974/- respectively. For the operational creditors, the total amount in default is ₹43,55,451.10; in respect of statutory dues, the corporate debtor is in default to the tune of ₹21,18,543/- and towards Income Tax Department, the amount due is ₹4,531/-.

6. It is further stated that Punjab National Bank sanctioned a loan of ₹75 lacs initially on 10.10.1998 which was enhanced from time to time. The dates of default of each payment of debt have also been mentioned.

7. It may be observed here that Punjab National Bank disputed the correctness of the above claims in respect of unsecured creditors who are related parties or the promoter-directors but that is the question which will be considered by the Interim Resolution Professional or the Resolution Professional as the case may be whenever such a question arises and will of course depend on the accounts books maintained by the corporate-debtor and other relevant information which may be required by the Interim Resolution Professional/Resolution Professional, as the case may be.

8. The corporate debtor also furnished security by way of mortgage of Rice Sheller land & building measuring 15 Kanal 12.25 Marla by depositing title deed dated 14.04.1981 and other sale deeds dated 7.4.1981, 24.04.1981 and 08.09.1988,

all in the name of corporate debtor. Value of land & building has been described as ₹5,76,96,154/-. The other property mortgaged is Sortex Plant ₹1,89,62,941/-; Rice Mill, Sela Plant & Boiler worth ₹1,99,00,000/-. The total amount of securities is mentioned as ₹9,65,59,068/-. Details of calculation is mentioned as Enclosure-17 at page 338 of the paper book. The charge of these securities were created on 31.03.2012.

9. Apart from the aforesaid securities, the corporate debtor had also hypothecated stocks and Book Debts on the same date and value of stocks is mentioned as ₹6,01,526/- and value of Book Debts as ₹87,19,009.83 for which documents are annexed at Enclosure-13 at page 193 of the paper book.

10. Admittedly, Punjab National Bank declared the account of the corporate debtor as NPA on 09.10.2017 due to the default in making the payment of the instalments/interest/principle amount. The Bank-financial creditor also started proceedings against the corporate debtor and issued notice dated 24.10.2017 under Section 13 (2) of the SARFAESI Act at page 129 of the paper book. The total amount in default as on 30.09.2017 is stated to be ₹5,84,60,965/- but it is contended by the learned counsel for petitioner that this amount also includes the Housing Loan to the tune of ₹60,09,721/- as mentioned in the notice which is to be excluded from the outstanding debt of the corporate debtor. Different facilities for which the corporate debtor has defaulted are CC (H), Term Loan-1 and Term Loan-2 and the bifurcation of amount under each of these heads has also been described in the aforesaid notice.

11. The petitioner company had earlier filed CP(IB) No.65/Chd/Pb/2017 under Section 10 of the Code, but the same was withdrawn on account of incomplete particulars furnished in Form 6, with liberty to file fresh petition on the same cause of

action. That order of this Tribunal dated 31.08.2017 is at page 389 of the paper book. The petitioner-corporate debtor filed CP(IB) No.74/Chd/Pb/2017. That petition was also withdrawn due to certain technical defects in the petition, with liberty to file fresh petition on the same cause of action. The order of this Tribunal dated 05.12.2017 in the said petition is at page 391 of the paper book.

12. Notice of this petition was issued to the Punjab National Bank, the only secured financial creditor as well as IITS. Affidavit of service was filed. One Mr. Babu Ram, stated to be the Secretary of IITS marked his presence on 26.03.2018, but he did not file any authority on behalf of the Institute for putting in presence. In any case, no objection has been filed by the unrelated unsecured creditor.

13. The Punjab National Bank has filed reply to the petition. The bank has stated in its reply that the corporate debtor did not include the amount of ₹60,09,721/- towards the total outstanding which was granted to Mr. Jatinder Mohan Julka, the promoter and in that loan account, the corporate debtor is one of the guarantor. Also Mr. Jatinder Mohan Julka, Managing Director has taken loan to purchase a flat at Emaar MGF Project, Mohali. The bank had extended the financial facilities to the aforesaid Jatinder Mohan Julka in which the corporate debtor is the guarantor. He also filed a consumer complaint before the Hon'ble NCDRC, New Delhi for the refund of the entire amount. As per the decision of the Hon'ble NCDRC, New Delhi the amount was ordered to be refunded to the aforesaid Jatinder Mohan Julka. However, the aforesaid Jatinder Mohan Julka has fraudulently misrepresented that he had adjusted the housing loan with the answering financial creditor and as such took the entire amount refunded in his own name. When the Bank made inquiries from Emaar

MGF, then Emaar MGF filed a police complaint against aforesaid Jatinder Mohan Julka. Copy of the Police complaint dated 08.09.2017 is annexed at Annexure R-1.

14. When the matter was listed on 06.03.2018, learned counsel for the Bank submitted that the only objection to the admission of this petition was on account of default of the housing loan obtained by Mr. Jatinder Mohan Julka. The learned counsel submitted that the balance amount of Housing Loan would be deposited by 03.04.2018 and therefore, the matter was adjourned for today. Learned counsel for petitioner has handed over certificate dated 04.04.2018 issued by the Punjab National Bank to the effect that the Housing Loan has been cleared and the outstanding amount is Nil in the said account. Learned counsel for the Bank, on instructions, has not disputed this contention. The certificate issued by the Punjab National Bank is taken on record.

15. We have heard learned counsel for the parties and examined their record of the case with their able assistance.

16. Hon'ble Appellate Tribunal in **M/s Unigreen Global Private Ltd. Vs. Punjab National Bank & Ors.**, while taking into consideration provisions of Section 10 of the Code, by its judgement dated 01.12.2017 observed and held as under:-

"21. In an application under Section 10, the 'financial creditor' or 'operational creditor', may dispute that there is no default or that debt is not due and is not payable in law or in fact. They may also oppose admission on the ground that the Corporate Applicant is not eligible to make application in view of ineligibility under Section 11 of the I&B Code. The Adjudicating Authority on hearing the parties and on perusal of record, if satisfied that there is a debt and default has occurred and the Corporate Applicant is not ineligible under Section 11, the Adjudicating Authority has no option but to admit the application, unless it is

incomplete, in which case the Corporate Applicant is to be granted time to rectify the defects.

22. *Section 10 does not empower the Adjudicating Authority to go beyond the records as prescribed under Section 10 and the informations as required to be submitted in Form 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) rules, 2016 subject to ineligibility prescribed under Section 11. If all informations are provided by an applicant as required under Section 10 and Form 6 and if the Corporate Applicant is otherwise not ineligible under Section 11, the Adjudicating Authority is bound to admit the application and cannot reject the application on any other ground.*

23. *Any fact unrelated or beyond the requirement under I&B Code or Forms prescribed under Adjudicating Authority Rules (Form 6 in the present case) are not required to be stated or pleaded. Non-disclosure of any fact, unrelated to Section 10 and Form 6 cannot be termed to be suppression of facts or to hold that the Corporate Applicant has not come with clean hand except the application where the 'Corporate Applicant' has not disclosed disqualification, if any, under Section 11. Non-disclosure of facts, such as that the 'corporate debtor' is undergoing a corporate insolvency resolution process; or that the 'Corporate Debtor' has completed corporate insolvency resolution process twelve months preceding the date of making of the application; or that the corporate debtor has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under the said Chapter; or that the corporate debtor is one in respect of whom a liquidation order has already been made can be a ground to reject the application under Section 10 on the ground of suppression of fact/not come with clean hand."*

"25. Similarly, if any action has been taken by a 'Financial Creditor' under Section 13(4) of the SARFAESI Act, 2002 against the Corporate Debtor or a suit is pending against Corporate Debtor under Section 19 of DRT Act, 1993 before a Debt Recovery Tribunal or appeal pending

before the Debt Recovery Appellate Tribunal cannot be a ground to reject an application under Section 10, if the application is complete.”

17. We have perused the instant application filed in Form No.6 in terms of Section 10 of the Code and it is found complete in all respects. Section 10 of the Code reads as under : -

“10. (1) Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.

(3) The corporate applicant shall, along with the application furnish the information relating to—

(a) its books of account and such other documents relating to such period as may be specified; and

(b) the resolution professional proposed to be appointed as an interim resolution professional.

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order—

(a) admit the application, if it is complete; or

(b) reject the application, if it is incomplete:

Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.

(5) The corporate insolvency resolution process shall commence from the date of admission of the application under subsection (4) of this section.”

18. The above provision of the 'Code' discloses that the following procedures are required to be completed by a 'Corporate Debtor' for initiating the process of insolvency:-

(i) Existence of a 'Corporate Debtor',

- (ii) Such a Corporate Debtor must have committed a default.
- (iii) On the satisfaction of (i) and (ii) above a Corporate Applicant may file an application for initiating Corporate Insolvency Resolution Process. Such an application as contemplated in (iii) above shall be filed in such forms, containing such particulars and in such manner and accompanied with such fee as may be prescribed.
- (iv) Along with the application information relating to books of accounts and other documents relating to such period as may be specified.
- (v) The Applicant to name the Resolution Professional proposed to be appointed as an Interim Resolution Professional.

19. Section 10 of the 'Code' confers a discretion on this Tribunal to either admit or reject the application and in case of rejection to give an opportunity to the applicant before such rejection to rectify the defects within seven days from the date of receipt of such notice from the Adjudicating Authority. The term 'Corporate Debtor' has been defined under Section 3 (8) of Part-1 of the 'Code' to mean a Corporate Person, who owes a debt to any person and 'default' is defined under Section 3 (12) of Part-I of the Code to mean "non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be."

20. As provided in Rule 7(1) of the Rules, the Corporate Applicant has to make an application under Section 10 of the 'Code' in Form 6 accompanied with documents and records required therein and as specified in IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Since we have already dealt in detail in the opening paragraphs supra of this order relating to

information furnished, we are not repeating the same for sake of brevity, as the essential particulars as contemplated, have been provided by the Applicant.

21. The corporate debtor has filed financial statements for the years 2015-16 and 2016-17 and also the provisional statement for the period from 01.04.2017 to 10.01.2018 and these are at Enclosure-13 (page 191). All these statements are attested by Chartered Accountant and Managing Director and Director of the corporate debtor. It is represented by the learned counsel for the corporate debtor that as per the financial statements, following is the status of the corporate debtor under different heads:-

REVENUE FROM OPERATIONS

As on 10.01.2018	₹7,87,026.22
As on 31.03.2017	₹80,980,257.00
As on 31.03.2016	₹111,611,915.00

Net Profit/Loss of corporate debtor:

As on 10.01.2018	(₹7,489,079.21)
As on 31.03.2017	(₹58,910,122.00)
As on 31.03.2016	(₹510,773.00)

Accumulated Profits/Loss of the Corporate:

As on 10.01.2018	(₹62,478,192.21)
As on 31.03.2017	(₹54,989,113.00)
As on 31.03.2016	₹3,921,009.85

Long Term Borrowing & Other Liabilities:

As on 10.01.2018	(₹14424609.61)
As on 31.03.2017	₹14217871.61
As on 31.03.2016	₹8,205,359.00

Current Liabilities:

As on 10.01.2018	(₹7025003.78)
As on 31.03.2017	₹58724754.00
As on 31.03.2016	₹123,006,687.92

22. From the figures extracted above, it seems that the revenue as well as the accumulated loss and liability of the corporate debtor as compared to revenue receipts is much more for which there is need for initiation of resolution process. So this is a fit case for setting in motion the insolvency resolution process as contemplated under the Code.

23. As per sub-section 3(b) of Section 10 of the Code, the corporate debtor is bound to propose the name of the Resolution Professional to be appointed as the Interim Resolution Professional. The applicant-corporate debtor has proposed the name of Mr. Ashutosh Mishra having Registration No. IBBI/IPA-001/IP-P00522/2017-2018/10947 to act as Interim Resolution Professional which the corporate debtor is mandatorily required to propose in accordance with clause (b) of Section 10 (3) of the Code. Mr. Ashutosh Mishra has furnished the requisite particulars and the declaration to the effect that no proceedings are pending against him and he is not working as Interim Resolution Professional/Resolution Professional/Liquidator in any other case. On perusal of the written communication in Form 2 at page 18 of the paper book, furnished by the proposed Interim Resolution Professional, the same is found to be in order.

24. It is further observed that the applicant-company save some sketchy particulars and has not given any road map as to how it is going to keep itself afloat as a going concern. However, keeping in perspective the objects for which the Code

has been brought into force and to balance the interest of all stakeholders, we are satisfied that the instant application warrants to be admitted to prevent further erosion of capital and to safeguard the assets of the Applicant Company/Corporate Debtor.

25. In view of the above, the instant petition is admitted. While admitting the application the moratorium is declared for prohibiting all of the following as provided in Section 14(1) of the Code:-

(a) 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;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) 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;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

26. It is further directed that the supply of essential goods or services to the Corporate Debtor, as specified in Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall not be terminated or suspended or interrupted during moratorium period. This, however, shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

27. The order of admission shall, however, be without prejudice to the right of the Financial Creditor to proceed against the guarantors other than the corporate guarantee furnished by the applicant-corporate debtor.

28. The matter be now listed on 11.04.2018 for passing formal order of appointment of Interim Resolution Professional. Copy of the order be communicated to the applicant-corporate debtor as well as to the Punjab National Bank, the respondent-financial creditor.

Sd/-

(Pradeep R. Sethi)
Member(Technical)

Sd/-

(Justice R.P. Nagrath)
Member(Judicial)

April 05, 2018
subbu