

S.No.121

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
07-02-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

Company Petition IB/197/2021
U/s 10 of IBC, 2016

IN THE MATTER OF:

Greesha Laboratories Pvt Ltd

...Corporate Applicant

CORAM:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Orders in Company Petition IB/197/2021 pronounced vide separate sheets. In the result, this Company Petition is allowed and Corporate Debtor is put in Corporate Insolvency Resolution Process (CIRP).



MEMBER (T)

Srinivas



MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD**

CP (IB) No. 197/10/HDB/2021

Application under Section 10 of IBC, 2016

Filed by

M/s Greesha Laboratories Private Ltd
58/B/1, Adarsh Nagar, Hyderabad - 500463
Plot no. 16, IDA, Kothur,
Shadnagar Mandal
Hyderabad

Petitioner/
Corporate Person

Versus

APSFC (Andhra Pradesh State Financial Corporation)
Local office at : 5-9-194, Chirag Ali Lane,
Hyderabad-500001

... Financial Creditor/
Respondent

Date of order 07.02.2022

Coram:

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For Petitioner: Ms. JVL Bharti, Advocate
For Respondent: Shri R. Rajendra Prasad, Advocate

SD/-

SD/-

PER: BENCH

ORDER

1. The Corporate Person/ M/s Greesha Laboratories Private Limited has filed this Application under Section 10 of Insolvency & Bankruptcy Code, 2016, read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Process of Corporate Person, alleging default of Rs.3,79,52,265/- to the Financial Creditor/Respondent herein.
2. The Applicant is a Private Limited Company incorporated on 13.07.2017. The Respondent herein/ APSFC sanctioned term loan of Rs. 240 lakhs to the Petitioner for setting up Pharma Formulation of Tables, capsules and Liquid Unit at Plot No. 16, IDA, Kothur, Shadnagar Mandal Mahaboobnagar District vide sanction order dated 04.09.1999 with an interest @ 16% p.a. The term loan was secured by way of mortgage of land admeasuring 3241.50 sq. mts situated at Shadnagar, Mahaboobnagar District. The term loan was to be repaid in 25 equal instalments of Rs. 9.60 lakhs and repayment to commence after 2 years from the date of disbursement.
3. The Respondent sent a notice dated 12.7.2018 wherein it is stated that the loan account has become NPA w.e.f. 31.03.2018 and an amount of Rs. 14,36,24,000/- was recovered by sale of assets under Section 13 (1) of SARFAESI Act and further demanded repayment of outstanding loan amount to the tune of Rs. 3.79,52,265/- within 60 days.

SD/-

SD/-

4. The Corporate Person has filed Audited Financial Statements for the F/Y ending 31.03.2021 and 31.03.2020 and provisional financial statement as at 13.07.2021 and P/L statement as on 31.03.2021 that shows a net loss of Rs. 4,94,99,383/-.
5. Further on the date of the hearing before this Tribunal on 06.01.2022, Learned Counsel for the Respondent stated that the Respondent does not have any objection to the initiation of the Corporate Resolution Process and that they are not contesting the matter.
6. In this backdrop, the point that emerges for consideration is “whether the Corporate Person is able to prove that there is a debt and default to trigger CIRP against it?”
7. We have heard the Learned Counsel for Petitioner, perused the record and case laws.

POINT

“whether the Corporate Person is able to prove that there is a debt and default to trigger CIRP against it?”

8. In relation to the grounds for admissibility under section 10 of IBC, 2016, reference is made to the judgement rendered by Hon'ble NCLAT in Company Appeal (AT) Insolvency No. 81 of 2017 in the matter of Unigreen Global Private Limited vs PNB & Ors. It is seen that the following observations were made with respect to an application under section 10 of IBC, 2016 and the relevant paras for the purpose of the case on hand from the said judgment is extracted hereunder.

Para-20. Under both Section 7 and Section 10, the two factors are common i.e. the debt is due and there is a default. Sub-section (4) of Section 7 is similar to that of sub-section (4) of Section 10. Therefore

SD/

SD/

we, hold that the law laid down by the Hon 'ble Supreme court in "Innoventive Industries Ltd. (Supra) is applicable for Section 10 also, wherein the Hon'ble Supreme Court observed as "The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority" .

Para 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 information 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 information 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.

Para 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.

SD/-

SD/-

Para 24 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.

9. Thus keeping the said format and upon a detailed examination of the petition and the submission made by the learned counsel as well and after considering the order of the Hon'ble NCLAT in the matter of Unigreen Global (Supra), this Tribunal is satisfied and is of the view that the petitioner has disclosed to a substantial extent details as required under Section 10 of IBC, 2016 read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
10. As stated supra, the Corporate Applicant has also filed the Audited Financial Statements for two previous years prior to the filing of this petition and provisional Financial Statement for the period up to 13.07.2021.
11. The present application has been filed in the requisite Form -6 containing the requisite particulars in terms of sub-section (2) of section 10 of IBC, 2016. The petitioner satisfies all the statutory requirements. Therefore, we are inclined to admit the application and more so in view of the fact that the Respondent does not have any objection in the CIRP in relation to the Corporate Person.



12. In view of the above, we are satisfied that the present application is complete under section 10(4) (a) of IBC, 2016. Accordingly, we admit the petition and CIR Process shall commence from the date of this order under sub- section 5 of section 10 of IBC, 2016.
13. A moratorium in terms of section 14 of IBC, 2016 is being issued prohibiting the following:-
- 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.
14. The Applicant has already proposed the name of Mr. Madasa Kumar, Insolvency Professional having registration no. IBBI/IPA-001/IP-P01590/2019-2020/12465, for appointment as Interim Resolution Professional, who has given his consent for the proposed appointment. He has also certified that there is no disciplinary proceeding pending against him. He shall take necessary steps as envisaged under Section 15, 17 and 18 of IBC. 2016.

SD/-

SD/-

15. In terms of Section 17 of IBC, 2016, the powers of Board of the Corporate Debtor shall stand suspended, however, at the same time direct the personnel of the Corporate Debtor to extend all cooperation to the IRP as mandated under Section 19 of IBC, 2016.
16. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process as per sub-section (4) of Section 14 of IBC. 2016.
17. Registry of this Tribunal is directed to send a copy of this order to RoC, Hyderabad for marking appropriate remarks against the Corporate Person on MCA site as being under CIRP.



(Veera Brahma Rao Arekapudi)
Member (Technical)



(Dr. N. Venkata Ramakrishna Badarinath)
Member (Judicial)