



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-202
IB- 38/ND/2020

IN THE MATTER OF:

M/s Jain Timber Pvt. Ltd.

....Applicant

SECTION

U/s 10 IBC

Order delivered on 04.08.2023

CORAM:

SHRI P.S.N PRASAD,
HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets. CP IB No.
38/ND/2020 stands **admitted**.

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(P.S.N PRASAD)
MEMBER (J)



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-V)

Company Petition No. (IB)-38 (ND) 2020

Under Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016

IN THE MATTER OF:

M/S JAIN TIMBER CO. PRIVATE LIMITED

74/1/2. RAJDHANI PARK ROHTAK ROAD,
NANGLOI

NEW DELHI – 110011

CIN: U74899DL1991PTC044061

...Corporate Debtor/Corporate Applicant

Order Delivered on: 04.08.2023

APPEARANCES:

FOR THE APPLICANT : Mr. Abhishek Nahta, PCA, Adv Rishabh Sachdeva

FOR THE RESPONDENT : Ms. Easha, Standing Counsel

FOR THE UBI : Adv Vishnu

CORAM:

SHRI P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

ORDER

PER: DR. BINOD KUMAR SINHA, MEMBER(TECHNICAL)

1. The instant application is filed by M/s Jain Timber Co. Private Limited ('Corporate Applicant') under Section 10 of the Insolvency and Bankruptcy Code, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process as the Corporate Debtor being the Corporate Applicant itself, has committed the default in paying the debt of Rs.9,02,05,041/- owed to the



Financial Creditors including Employees and Statutory Authorities.

2. The Corporate Applicant is a private limited company incorporated on 23.04.1991 under the provisions of the erstwhile Companies Act, 1956 having CIN: U74899DL1991PTC044061 and registered office situated at 74/1/2, Rajdhani Park, Rohtak Road, Nangloi, New Delhi- 110041 IN.
3. The averments made by the Corporate Applicant in the application, which are necessary for adjudicating the matter are summarized as under:-

- i. The Corporate Applicant availed a loan in the year 2002 from Corporation Bank- L/c Liability (including buyers credit) for the Principal Amount of INR 5,38,98,331.00 (Five Crores Thirty-eight Lakhs Ninety-eight Thousand Three hundred thirty-one) and again in 2014, a loan was availed from Corporation Bank C/C A/C 140006 for the Principal Amount of INR 3,27,63,550.89 (Three Crores Twenty-Seven Lakhs Sixty-three Thousand Five Hundred Fifty). In the subsequent years, the Corporate Applicant approached the Union Bank of India (Formerly known as Corporation Bank or herein after referred as "Financial Creditor") for the enhancement and renewal of said loans.
- ii. That, from June 2016 onwards due to the downfall in the business operations of the Corporate Applicant, the company was unable to repay the loan amount and pending instalments and therefore, the account of Corporate Applicant was classified as Non- Performing Assets (NPA) on 30.09.2016 in the books of Union Bank of India (Formerly known as Corporation Bank). Thus, the company approached this Hon'ble Tribunal to file an application under Section 10 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process.
- iii. That the Corporate Applicant is eligible to file an application under Section 10 of the Insolvency and Bankruptcy Code, 2016 which is quoted as below;

"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;

(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 sub-section (4) of this section.”

- iv. That the updated current amount of debt in default is Rs. 9,02,05,041 (Rupees Nine Crore Two Lakhs Five Thousand Forty-one) which is mentioned in the application. The Corporate Applicant has paid off Rs. 3,33,725.00 which is reflected under the head Trade Payables in the Balance Sheet for the financial year 2017 and the “No dues” certificate obtained from operational creditors is annexed with this Application.
- v. That by the court of Ms. Charu Aggarwal, Hon’ble CMM, West Delhi vide order dated 01.06.2017 the Financial Creditor i.e. Union Bank of India took physical possession of immovable properties/secured assets i.e. Plot no. 14 and 15 out of Khasra No. 586 and 74/1/2, Village Mundka, Delhi area measuring 200 sq. yards and 650 sq. yards and land at Khasra no. 74/1/31, Village Mundka, Delhi area measuring 660 sq. yards. The seizure memo specifying the possession of immovable properties along with the list of articles found on the spot is mentioned in the application.
- vi. Furthermore, in the matter “M/s Unigreen Global Private Limited Vs. Punjab National Bank and others”- Company Appeal (AT) (Insolvency) 81/2017, the Appellate Tribunal by its judgment dated 1st December 2017 held as follows:

“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, 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”.

Further, it was observed as under: -

“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 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.”

vii. It is pertinent to mention that there are various applications, appeals etc. filed and initiated by and between Corporate Applicant and Financial Creditor before the different fora, and the pendency of such litigations cannot be a ground to deny admission of an application under Section 10 provided all the information in terms of Section 10 of the I & B Code and Form 6 has been supplied by a Corporate Applicant, and the application is otherwise complete. The Hon’ble National Company Law Appellate Tribunal in the matter of M/s. Unigreen Global Private Limited Vs. Punjab National Bank and others”- Company Appeal (AT) (Insolvency) 81/2017 observed as below:

“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”.

viii. In view of the above, the present application shall be admitted by this Hon’ble Tribunal under Section 10 of I & B Code for initiation of CIRP.

4. In the present Section 10 application the Objector Bank (Union Bank of India) i.e. the Financial Creditor has appeared before us and the brief submissions made by the Objector Bank are as stated below: -



- i. That the present petition is not maintainable as the same has been filed on frivolous ground just to mislead this Hon'ble Tribunal in order to defeat the legitimate recovery of Objector Bank. That the brief facts of the case are that the Applicant Company through its director along with guarantor approached the Objector Bank for Cash Credit Facility of Rs. 225 Lacs to meet out working capital requirement & Import/inland LC cum BCR of Rs. 500 Lacs for Bank Guarantee to mitigate exchange risks involved in imports, subsequently the said request of Applicant company was considered by the objector Bank and it sanctioned the facility.
- ii. Thereafter the Applicant company through its director further approached the objector Bank for enhancement of cash credit Facility to Rs. 325 Lacs to meet out working capital requirement & Import/Inland LC cum BCR of Rs. 600 Lacs for Bank Guarantee to mitigate exchange risks involved in imports & review of Vehicle Loan Facility of Rs. 2.07 Lacs. Subsequently the said request of Applicant Company was considered by the Objector Bank and it sanctioned the facility vide CSI dated 31.10.2014. The Applicant Company had agreed to repay the aforesaid loan amount along with floating rate of interest i.e. 11.75% (Base Rate + 1.50) per annum compounded monthly. It was also stipulated that in case of default in payment equated monthly instalments on the due date penal interest @ 2% per annum shall be charged over the normal rate of interest and recovered separately. The said Applicant Company has agreed with terms and condition and acknowledged/signed the CSI 31.10.2014 and also executed the documents dated 03.11.2014 respectively in favour of the Objector Bank.
- iii. Thereafter the account of Applicant Company was renewed and the same was sanctioned vide CSI dated 05.08.2016. That in view of the various defaults committed by the Applicant Company in payment of principal, interest and other monies due



under the said Loan Agreements and also in performance of the terms and conditions of the said Loan Agreements, as aforesaid, the Objector Bank became entitled to recall the entire amounts of its said Loans together with all interest and other monies thereon under the said Loan Agreements as due and payable forthwith and accordingly. It is further submitted that the Objector Bank submits that in accordance with the directives of the Reserve Bank of India by way of prudent accounting norms/ the Objector Bank classified the above loan account of the Applicant company as Non-performing asset on 30.09.2016 and as per the said directives discontinued the debiting interest to the said account with effect from 02.07.2016 (for CTTCC facility) and different dates (for LC/BG Facility). However, the Objector Bank is entitled to recover the interest accrued but not debited compounded monthly with effect from respective dates to which forms part of the principal and interest for the Subsequent period from which the interests had been ceased to be charged.

- iv. That after paving all the possibilities to recover the outstanding dues, the Objector Bank has issued a Demand Notice dated 09.12.2016 under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 whereby the Applicant Company were asked to pay the outstanding dues of Rs. 9,23,55,669.00 the balance as on 09.12.2016 (Rupees Nine Crores Twenty-Three Lacs Fifty-Five Thousand Six Hundred Sixty-Nine Only) within 60 days of the receipt of the said notice and the same was served dasti on 14.12.2016.
- v. That the Applicant Company only raised the belated objections dated 06.02.2017 sent on 11.03.2017 received on 14.03.2019 by the Objector Bank beyond the statutory period of sixty days, and the same was rejected by the Objector Bank vide detailed reply dated 16.03.2017 being not tenable. That consequent to non-payment of the dues the Objector Bank admittedly issued the



symbolic possession notice dated 30.03.2017 for the present mortgage properties i.e property commercial land & building at Plot No. 14 & 15, out of Khasra No. 586 and 74/1/2, admeasuring 200 Sq. yards and 650 Sq. yards Village Mundaka, Delhi owned by Petitioner Company No.3 & commercial land & building at admeasuring 660 Sq, yads, Khasra No. 74/1/31, Village Mundaka, Delhi.

- vi. That consequent to non-payment the Objector Bank had filed an Original Application No.27/19 for the recovery of Rs. 9, 30, 79, 868.00/- (Rupees Nine Crores Thirty Lacs Seventy-Nine Thousand Eight Hundred Sixty-Eight Only) due as on 30.11.2016 before the Ld. DRT-I, New Delhi and the Ld. DRT-I, New Delhi vide its order dated 05.09.2022 allowed the original application in favour of Objector Bank. That the Applicant Company through its Company against the measures of the Objector Bank approached the Ld. DRT-I, Lucknow in SA No. 279/2017 whereby the Ld. DRT, Lucknow vide its order dated 12.03.2018 allowed the SA No.279/17 and quashed the Demand Notice dated 09.12.2016 Possession Notice dated 30.03.2017 and Sale Notice dated 28.12.2017 despite the said relief qua quashing of sale notice dated 28.12.2017 was not asked in the Securitisation Application and simultaneously directed the Objector Bank to restore the possession within 30 days.
- vii. It is further submitted that the Objector Bank preferred an Appeal No. 52/2018 before Ld. DRAT, Allahabad whereby Ld. DRAT, Allahabad vide its order dated 10.04.2018 granted status quo qua the mortgage properties in question and subsequently allowed the Appeal of Objector Bank. Thereafter, the Applicant Company through its director had preferred a writ petition before the Hon'ble Allahabad High Court, where by Hon'ble Allahabad High Court vide its order dated 01.08.2017 ordered as "In the interest of justice in case the petitioners deposit a sum of Rs. 4.50 Crores within two weeks from today, the interim protection



so accorded by the DRT, Lucknow will continue to operate in favour of petitioners till the next date of listing and adjourn the case for 23.08.2017. Thereafter the Hon'ble Allahabad High Court vide its order dated 23.08.2017 dismissed the writ petition "The court has proceeded to examine the record in question and find that while passing the interim order dated 01.08.2017 the court had directed the petitioners to deposit RS. 4.50 crores within two weeks' time and interim protection so accorded by the DRT, Lucknow was directed to continue to operate till the next date of listing. Once the statement of fact has been made by Sh. P.N. Saxena, Senior Advocate and the same has also been accepted by Ld Counsel appearing for Petitioners, then no relief can be accorded in favour of the Petitioners. The Court is also of the opinion that the forum of this Court has been misused by the Petitioners and as such, the writ petition is liable to be dismissed with symbolic cost.

viii. In view of aforesaid facts and circumstances the interim order dated 01.08.2017 is vacated and the writ petition is dismissed with a cost of Rs. 25,000/-, which shall be deposited in the legal cell of the Allahabad High Court within two months from today. In case the amount is not deposited then the District Magistrate, Allahabad shall recover the same from the petitioners as arrears of land revenue within two months thereafter and shall send the same to the legal aid of High Court at Allahabad. Thereafter the Objector Bank put the properties on sale through e-auction dated 28.12.2017 which was materialized on deposit of 25% percent, but due to multiple litigation the Auction Purchaser fails to deposit the rest 75%, consequently the sale was not concluded and the money was forfeited as per rules.

ix. It is most respectfully submitted that Applicant Company has sufficient means to pay the entire dues of the Objector Bank. It is submitted that as per the minutes of meeting dated 24.03



.2017 are as follows: - 2nd meeting of revival & rehabilitation virtue underlined minutes assigning the following reasons:

a). It is reported that there is no turn over during FY -2016-17 completed up to the month of February 2017.

b). There is reportedly no stock available with borrower Company.

c). Audited Financial Statements for FY 2015-16 have not been submitted by the Company,

d). The company has submitted provisional financials for FY 2015-16 showing negative net worth.

e). No Commercial operation is going on, hence projected sales would not be sufficient to set off losses.

f). The Company is reluctant to submit CA certified book debts statement as on date and also has not provided the details of realization from the debtors, which seems that the funds have been diverted.

g). The company has not given concrete action plan for revival of the business activity. The Company has not submitted the quantum/details of promoter's contribution in the business activity.

h). On evaluation of the account statement for last two years, it is observed that the most of the high value transactions were with associate concerns and to few outside parties from whom funds are re-routed back from one associate to another. From this, it may be opined that the company has inflated the sales for getting additional funds from the bank.

i). The ratio of collateral security coverage for the outstanding under various limits has come down.

With the above deep deliberations, the proposal of revival and rehabilitation was rejected. Here it is clear cut case of diversion of funds. Hence the present Applicant is liable to be rejected on this sole ground.



- x. That Government of India vide Gazette Notification dated 04.03.2020 notified the amalgamation of Corporation Bank with Union Bank of India and the amalgamated entity would be known as Union Bank of India (Erstwhile Corporation Bank). It is further respectfully submitted that despite the best efforts of Respondent Bank, the first minutes of meeting could not be traced yet and the present matter has never been listed on or after 20.04.2020 due to pandemic COVID-19 till 15.01.2021, when the matter was taken up on the Application of Petitioner Company. The delay qua filing of present documents and submissions are not intentional and deliberate. That the Applicant herein instead of paying the dues to the Objector Bank filed numerous litigation against the Bank and the details of the same has been annexed with the petition.
- xi. That the Applicant Company who is under default of huge public dues which quantum is more than Rs. 120.00 Cr, instead of paying a single penny or any viable plan to repay filed different petitions one after another to derail the recovery measures initiated by the Objector Bank. That the Applicant Company since the date of classification of account as NPA on 30.09.2016 failed to pay a penny against the dues of more than Rs. 20.00 Cr and rather created all sorts of hindrance to derail the recovery measures.
- xii. That the Applicant Company has also filed writ petition No.10148/18 before the Hon'ble Delhi High Court which is pending adjudication. That the Objector bank with utmost respect and faith filed the present Application praying for dismissal of the present petition and for necessary and appropriate directions in the present circumstances of the case.
5. We have heard Ld. Counsel for the Corporate Applicant and the Objector Bank and perused the averments made in the application, affidavits filed by the Corporate Applicant and the Objector Bank. The relevant



documents annexed with the respective submissions have been examined.

6. From the submissions made by the Corporate Applicant it is stated that the Corporate Applicant availed a loan in the year 2002 from the Corporation Bank L/c Liability (including buyers credit) for the Principal Amount of INR 5,38,98,331.00 (Five Crores Thirty-eight Lakhs Ninety-eight Thousand Three hundred thirty-one) and again in 2014, a loan was availed from Corporation Bank C/C A/C 140006 for the Principal Amount of INR 3,27,63,550.89 (Three Crores Twenty-Seven Lakhs Sixty-three Thousand Five Hundred Fifty). In the subsequent years, the Corporate Applicant approached the Union Bank of India (Formerly known as Corporation Bank or herein after referred as “Financial Creditor”) for the enhancement and renewal of said loans.
7. That, from June 2016 onwards due to the downfall in the business operations of the Corporate Applicant, the company was unable to repay the loan amount and pending instalments and therefore, the account of Corporate Applicant was classified as Non- Performing Assets (NPA) on 30.09.2016 in the books of Union Bank of India (Formerly known as Corporation Bank). Thus, the company approached this Adjudicating Authority by filing an application under Section 10 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process.
8. That the updated current amount of debt in default is Rs. 9,02,05,041 (Rupees Nine Crore Two Lakhs Five Thousand Forty-one) which is mentioned in the application. The Corporate Applicant has paid off Rs. 3,33,725.00 which is reflected under the head Trade Payables in the Balance Sheet for the financial year 2017 and the “No dues” certificate obtained from operational creditors is annexed with this Application. By the Court of Ms Charu Aggarwal, Hon’ble CMM, West Delhi vide order dated 01.06.2017 the Financial Creditor i.e. Union Bank of India took physical possession of immovable properties/secured assets i.e. Union Bank of India took physical possession of immovable properties/secured assets i.e. Plot no. 14 and 15 out of Khasra No. 586 and 74/1/2, Village



Mundka, Delhi area measuring 200 sq. yards and 650 sq. yards and land at Khasra no. 74/1/31, Village Mundka, Delhi area measuring 660 sq. yards. The seizure memo specifying the possession of immovable properties along with the list of articles found on the spot is mentioned in the application.

9. On the other hand, the Objector Bank (Financial Creditor) in the present application i.e. Union Bank of India (Formerly known as Corporation Bank) submits that the Corporate Applicant instead of paying the dues to the Objector Bank filed numerous litigation against the Bank and the details of the same has been attached with the application.
10. At this juncture, it will be advantageous to consider what are the requirements for admitting an application under section 10 of the Code, 2016. For this purpose, it is useful to refer the judgment of the **Hon'ble NCLAT in Unigreen Global Pvt. Ltd. VS. Punjab National Bank & Ors. CA (AT) (Ins. 81/2017)** wherein it was held that:

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

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 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. Nondisclosure 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.

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25. Similarly, if any action has been taken by a 'Financial Creditor' under Section 13(4) of 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."

11. In the present application, it is clear from the facts that there has been a loan amount of Rs. 5,38,98,331.00 (Five Crores Thirty-eight Lakhs Ninety-eight Thousand Three hundred thirty-one) and Rs. 3,27,63,550.89 (Three Crores Twenty-Seven Lakhs Sixty-three Thousand Five hundred fifty) availed by the Corporate Applicant from the Financial Creditor. Later due to the downfall of the business operations of the Corporate Applicant, the Corporate Applicant was unable to repay the loan amount and



pending instalments. Therefore, the first essential ingredient of Section 10 that there is a debt, stands substantiated.

12. Thereafter, the Corporate Applicant was classified as Non-Performing Assets (NPA) on 30.09.2016 in the books of Union Bank of India i.e. the Financial Creditor in the present application. The updated current amount of debt in default is Rs. 9,02,05,041 (Rupees Nine Crore Two Lakhs Five Thousand Forty-one). That the Corporate Applicant has paid off Rs. 3,33,725.00 which is reflected under the head Trade Payables in the Balance Sheet for the financial year 2017 and the “No dues” certificate obtained from operational creditors is annexed with this Application. Further, the claim amount is well above the pecuniary threshold limit of Rs.1 Crore as envisaged in Section 4 of Code, 2016 to initiate the CIRP. Therefore, the essential requirement for an application to be admitted under Section 10 i.e. the debt and default with respect to such debt, stands substantiated.

13. Further, the claims of the Financial Creditor in the present case will not affect the present petition, because there are various applications, appeals etc. filed and initiated by and between the Corporate Applicant and Financial Creditor before different fora, and the pendency of such litigations cannot be a ground to deny admission of an application under Section 10 provided all the information in terms of Section 10 of the I & B Code and Form 6 has been supplied by a Corporate Applicant, and the application is otherwise complete. Therefore, in light of the above circumstances the claims of the Financial Creditor do not hold ground.

The *Hon’ble National Company Law Appellate Tribunal in the matter of M/s. Unigreen Global Private Limited Vs. Punjab National Bank and others*”- Company Appeal (AT) (Insolvency) 81/2017 observed as below:

“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”.

14. The Corporate Applicant, vide its Board resolution dated 08.07.2019, had resolved to file application under Section 10 of the Code, 2016. The members of the Corporate Applicant after due discussions and deliberation had resolved by way of Special Resolution to file an application under Section 10 of the Code, 2016 in their General Meeting dated 02.11.2019. The certified true copy of the Board Resolution dated 08.07.2019 and Special Resolution dated 02.11.2019 is annexed as Annexure of the Company Application.

15. We are of the view that the existence of debt and default is established and no winding up proceedings are pending against the Corporate Applicant and Corporate Applicant is not covered by the ineligibilities provided under Section 11 of the Code, 2016. We are satisfied that the Corporate Applicant is entitled to move an application under Section 10 of the Code in view of the admitted outstanding operational debt and default of the same by the Corporate Applicant. As a sequel of the above discussion and in terms of Section 10(4) of the Code, 2016, we hereby **admit the instant Petition (C.P.(IB)/38/(ND)/2020)** in terms of Section 10 of the Code and CIRP is initiated against M/s. Jain Timber Co. Private Limited.
 - a) The Corporate Person in Part-II of Form-6 of the Company Application has proposed the name of the Interim Resolution Professional in this application, the registration certificate and written consent of the Proposed IRP in Form-2 is annexed with the application. This Adjudicating Authority hereby appoints Mr. Rajeev Lochan, having registration number IBBI/IPA-002/IP-N0060/2018-19/11885, office at 243, 1st Floor, AGCR Enclave, Delhi -110092 with email – id- csrajeevlochan@gmail.com as the Interim Resolution Professional for Corporate Debtor. The appointed IRP is



directed to place on record valid Authorisation for Assignment (AFA) within 5 days of the pronouncement of this order.

- b) We direct that public announcement in pursuance of Section 13 (2) of the Code shall be made by the Interim Resolution Professional within 3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016 with regard to admission of this application under Section 10 of the Insolvency & Bankruptcy Code, 2016.
- c) We direct the Corporate Applicant to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Rajeev Lochan to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Corporate Applicant. The said amount however is subject to adjustment towards Resolution Process cost as per applicable rules.
- d) We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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.”

(e) Notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, concession, clearances or a similar grant or right during the moratorium period.

16. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
17. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.



18. The office is directed to communicate a copy of the order to the Corporate Debtor/ Corporate Applicant, Financial Creditors, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from the pronouncement of this order.

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(SH. P.S.N. PRASAD)
MEMBER (J)