

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

C.P (IB) No. 18/GB/2021

Coram: Hon'ble SHRI H. V. SUBBA RAO, MEMBER (JUDICIAL)

Hon'ble SHRI PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY LAW TRIBUNAL, GUWAHATI BENCH ON 23.11.2021

Name of the Company: M/S R.S.H Agro Products Limited Corporate Debtor
&
Punjab National Bank (PNB) & others Financial Creditor

Section: Section 10 of Insolvency and Bankruptcy Code, 2016

S.No.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. B. R. PRASAD	Advocate	Petitioner	Present in Video
2.	MR. S. DUTTA	Advocate	Respondents	Conference

ORDER

The Applicant is represented through respective Learned Counsel(s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.

Sd/-

**[PRASANTA KUMAR MOHANTY]
MEMBER (TECHNICAL)
& Adjudicating Authority**

Sd/-

**[HARI VENKATA SUBBA RAO]
MEMBER (JUDICIAL)
& Adjudicating Authority**

Dated this 23rd day of November, 2021

ORDER
Date of Order: 23.11.2021
[Per se: Prasanta Kumar Mohanty, Member (T)]

1. This application under Section 10 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "Code of 2016") has been filed by the Corporate Debtor/applicant, namely M/s RSH Agro Products Ltd., seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against itself.

2. It is submitted that the company i.e. RSH Agro Products Limited (**CIN: U15132AS2012PLC012193**) is an unlisted Public Limited Company. The Company was originally incorporated as a Private Limited Company at Kolkata in West Bengal on June 26, 2012 and subsequently converted into Public Limited Company on September 6, 2017. The Petitioner is in the business of manufacturing and supplying Edible Oils, especially Mustard Oil and Multi-Source Vegetable Oil (seed crushing capacity of 23,000 MTPA and blending capacity of 20,325 MTPA).

3. The Nominal/Authorized Share Capital of the Corporate Debtor (CD) Company i.e. RSH Agro Products Limited is Rs.25,00,00,000.00 and the Paid-Up Share Capital is Rs.13,88,00,000.00. The Registered office is situated at Village Ambher, 12th Mile, Jorabat, Guwahati, Kamrup (M) Assam- 781023.

4. It is further submitted that the Applicant Company majorly serves the North Eastern states of India, as this region has the highest consumption of Mustard and Palm Oil in India.

6. The Petitioner has incurred substantial loss of Rs.16.63 crores, Rs.26.05 Crores and Rs.2.04 crores during the FY's 2019-20 and 2021-22 (up to 31.07.2021) respectively as per the audited/ provisional balance sheets. The cumulative losses mounted to Rs.28.39 crores as on 31.07.2021 eroding the entire paid up share capital and reserves.

7. It is submitted that the petitioner availed various credit facilities from PNB from time to time and the total dues payable to PNB as on 31.07.2021 are Rs.46.95 Crores (Rupees Forty-Six Crores and Ninety-Five Lakhs only) as per the books of accounts maintained by the petitioner. As the Petitioner failed to service interest and/installment from time to time, PNB classified the Petitioner's facilities as non-performing assets (NPA) as on 31.03.2021 and issued 13 (2) notice under SARFAESI Act on 05.05.2021.

8. It is also submitted that the Petitioner availed credit facilities from ICICI Bank from time to time and the total dues payable as on 31.07.2021 are Rs.2.11 (Rupees Two Crores and Eleven Lakhs) as per the books of accounts maintained by the Petitioner. As the Petitioner failed to service interest and/installment from time to time, ICICI Bank classified the Petitioner's facilities as non-performing assets (NPA) as on 31.01.2021 and issued 13 (2) notice under SARFAESI Act on 23.06.2021.

9. It is again submitted that the petitioner also availed credit facilities from HDFC Bank. As the petitioner defaulted in payment of interest and/instalments. HDFC Bank issued demand notices on 26.06.2021. That the table below depicts the Major Financial Creditors (Unrelated), Debts Due, Payable and Date of Default.

Sl. No	Financial Creditor name	Type of facility	Account number	Sanctioned limit (Amt. in Rupees)	Outstanding balance as on 31.7.2021 (Amt. in crore)	Date of NPA declared by bank	13 (2) Notice under SARFAESI Act issued by Bank
1.	Punjab National Bank (PNB)	CC	0189008700009183	33,89,00,000	34.58	31.03.2021	05.05.2021
		TL	018900SG00000042	5,00,00,000	1.69		

		GECL	018900IL00000 348	7,40,00,000	7.77		
		CFITL	018900CF00000 519	2,58,62,112	2.82		
		Car Loan	018900NG00131 806	11,00,000	0.09		
			Sub-total	48,98,62,112	46.95		
2.	HDFC Bank	DLOD	5050003522829	5,00,00,000	3.45	Notice dtd. 26.6.2021 issued for GECL and CFITL acs. through Advocate	Not yet issued by bank
		GECL	9336018	88,27,023	0.92		
		CFITL	851770724	21,19,598	0.23		
		Business Loan	59646884	35,00,000	0.18		
			Sub total	6,44,46,621	4.78		
3.	ICICI Bank	LAP	LBGUW0000510 9677	78,00,000	0.85	31.01.2021	23.06.2021
		LAP	LBGUW0000510 9698	78,00,000	0.88		
		GECL	LBGUW0000547 0642	30,60,000	0.32		
		other	UPGUW0003775 9597	30,00,000	0.06		
			Sub total	2,16,60,000	2.11		
4.	IIFL	Business loan	SL1415207	35,12,431	0.24	23.07.2018	Not yet issued by bank
			Sub total	35,12,431	0.24		
TOTAL				57,94,81,164	54.08		

10. The Petitioner has submitted the details of securities for Bank Credit facilities. The same are mentioned as below:

Sr. No	Name of the Bank	Details of Security (Description and value)
1	PNB- CC,TL, GECL,CFITL	<p>A. Primary security</p> <ol style="list-style-type: none"> 1) Plant & Machinery for Unit-I valued at Rs.2.79 Crore (Written Down Value (WDV) as per Prov. Balance sheet as on 31.07.2021) 2) Building at leased land Dag No. 72 & 74 consisting of Main Factory Building, Office cum lab bldg., Sheds, Staff qtrs., Godown, (Unit-I), Written Down Value (WDV): Rs.2.42 Crore (as per Prov. Balance sheet as on 31.07.2021) As per valuation report dated 30.01.2018, Unit I assets are valued as under: Plant & Machinery- Rs.6.34 crore Super structures on the above land- Rs.3.99 crore 3) Stocks of Unit-I Rs.13.61 Cr (all 12 months old and obsolete. Hence the value as on 31.03.2021 is continued as it is and exact residual value can be known only on sale) and Debtors of Unit-I Rs.7.81 Cr. (out of which Rs.5.13 Cr. are unsecured and may anytime transfer to doubtful category) (as per Prov. Balance sheet of Unit-I as on 31.07.2021) hypothecated to the bank <p>Total primary security value: Rs.18.14 crores (excluding inventory value)</p> <p>B. Collateral Security:</p> <ol style="list-style-type: none"> 1) Plot of Land situated at Dag no. 88 of K P patta no. 1, measuring 6 Bigha 1 Katha 18 Lecha, at 12th Mile, Revenue Village- Ambher, Deed no. 9806 Dt. 11.11.11 in the name of Mrs. Nanda R marak Realizable value: Rs.4.20 Crore. (Date of valuation 15.02.2020 done by Er. Dipak Borgohain) (Unit-II) 2) Plot of Land Situated at Dag No. 72 of Patta No. 6 measuring 4B and dag No. 74 of Patta No. 06 measuring 3B *L at Village: Ambher, 12th Mile Jorabat, Deed No. 59814, Dt. 25.06.12 in the name of Mr. Amiyo Ishlary. Realizable Value: Rs.5.73 Crore (Date of valuation 30.01.2018 by Er. Pranjal Bhagawati) (Unit-I) 3) Plot of land Situated at Dag no 99 of K P Patta no 42, Village Ambher, 12th Mile, Jorabat, Deed No. 5823 dt. 20.06.12 in the name of Mr. Amiyo Ishlary Realizable Value: Rs.4.28 Crore (Date of valuation 27.11.2019 by Er. Borgohain) 4) Liquid Securities: FDR for Rs.50 Lac & Rs.63 Lac Value NIL, already adjusted by the PNB. <p>Total collateral value: Rs.14.21 Crores</p>

	PNB- Car loan	Car Honda City- WDV Rs. 0.05 Crore
2	ICICI Bank-LAP (1&2), GECL	<p>1) One residential Unit/Space No. A at First floor measuring more or less 1200 Sq. Ft super built up area, on a plot of land measuring 2.25 Katha's, situated at F.A Road, Kumarpara, Guwahati, Kamrup (M) in the name of R.S.H. Agro Products Ltd. Written Down Value (WDV): Rs 0.21 Crores (as per Prov. BS as on 31.07.2021)</p> <p>2) One residential Unit/ Space No. B at 2nd Floor measuring approx. 1200 Sq. Ft super built up area, on land of 2.25 Kathas, in the name of R.S.H Agro Products Ltd. situated at F.A Road, Kumarpara, Guwahati, Kamrup (M) Written Down Value (WDV): Rs.0.16 Crores (as per Prov. BS as on 31.07.2021) Total : Rs.0.37 Crores</p>
3.	HDFC Bank-DLOD, GECL, CFITL	<p>1) A plot of land measuring 5 Bigha 3 Katha 1 Lessa covered by Dag no. 27, Patta no. 24 of Village Guimara Pathar Pacharia, Mouza- Pub Bangshar, in the district of Kamrup, SRO- Kamrup (Sadar) belonging to Mrs. Anupriya Harlalka Realizable Value: Rs.1.67 Crore, (Date of Valuation 23.01.2019 done by Er. Kandarpa Kumar Kalita)</p> <p>2) A plot of land measuring 8 Bigha 16.5 Lessa covered by Dag No- 29, Patta no. 24 of Village Guimara Pathar Pacharia, Mouza- Pub Bangshar, in the district of Kamrup, SRO- Kamrup (Sadar) belonging to Mrs. Anupriya Harlalka Realizable Value: Rs.2.42 Crore, (Date of valuation 23.01.2019 by Er. Kandarpa Kumar Kalita)</p> <p>3) Residential Flat Located at "Shree Sadan", Unit No- 3B, Third Floor, Block A, B.R. Phukan Road, Near Railway Gate No. 7, Kumarpara Panchali, P.S- Bharalumukh, Guwahati, District- Kamrup (Metro), Assam 781009 belonging to Mrs. Nisha Harlalka & Mr. Kamal Harlalka Realizable Value: Rs.1.34 Crore, (Date of valuation 18.01.2019 by Er. S.K Chakravarty)</p> <p>4) Plot of land measuring 4 Kathas 11 Lechas at BP Road New Panigoan Chariali Nagoan Rev Village Town Nartan, Mouza Town (Nagoan) Dist. Nagoan under Dag no. 1264 of Patta no. 746 and Dag no. 1265 belonging to Pradeep Singh Deka Realizable Value: Rs.2.43 Crore, (Date of Valuation 03.11.2018 by Er. Kandarpa Kumar Kalita)</p> <p>Total: Rs.7.86 Crore</p>

11. The Petitioner has submitted the Reasons for acute financial stress of the Corporate Debtor and the same are mentioned as below:

A. Key Financials of the CD:

F.Y	Share Capital	Reserves	Turnover	Net Profit/Loss
2015-16	9.10	0.65	38.28	0.80
2016-17	10.90	4.32	117.55	4.66
2017-18	13.42	17.34	226.47	10.64
2018-19	13.88	16.33	166.49	-1.50
2019-20	13.88	-0.30	59.16	-16.35
2020-21	13.88	-26.35	66.79	-26.05

(Rupees in Crore)

B. Applicant has submitted that the stress in the Company is attributable to both internal and external factors such as

- i. Non-disbursement of sanctioned limits for the refinery project.**
- ii. Interest Loss.**
- iii. Fixed expenditure in Unit-II.**
- iv. Large quantity of raw materials purchased in anticipation of refinery completion.**
- v. Constraint on Profitability faced due to lack of adequate need based Working Capital.**
- vi. Continuous losses since FY 2018-19**
- vii. Restrictions on import of Refined Palm Oil.**

12. It is further submitted that the Corporate Debtor/Corporate Applicant has not incurred any ineligibility as per Section 11 of IBC, 2016. Section 11 of IBC, 2016 reads as under-

"Section 11. Persons not entitled to make application- The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely: -

- (a) a corporate debtor undergoing a corporate insolvency resolution process; or**
- (b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or**
- (c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or**
- (d) a corporate debtor in respect of whom a liquidation order has been made."**

13. It is further submitted by the Applicant that the Corporate Debtor incurred heavy losses in the business and the liabilities are far in excess of the assets, the Petitioner seeks resolution of its insolvency through maximization of value of its assets under provisions of IBC, 2016. The application filed by the Corporate Debtor shall be admitted by the Adjudicating Authority as per section 10, sub-section 4 of IBC, 2016 which read as follows:

"(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 and no disciplinary proceeding is pending against the proposed resolution professional; or**
- (b) reject the application, if it is incomplete or any disciplinary proceeding is pending against the proposed resolution professional:**

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."

14. The Petitioner has made the below mentioned prayers in its application:

- i) Order/s admitting the Section 10 application filed by the Petitioner to initiate Corporate Insolvency Resolution Process against the Corporate Debtor**
- ii) Any other Order/s as this Hon'ble Tribunal may deem fit and proper in circumstances of the case.**

15. On the other hand, the Financial Creditor No. 1/Respondent No. 1 i.e. Punjab National Bank has submitted that:

15.1 The Financial Creditor No. 1 (PNB) had initially sanctioned a term loan facility of Rs.500.00 Lacs (Rupees Five Hundred Lacs) and Cash Credit Limit of Rs.500.00 Lacs (Rupees Five Hundred Lacs) to the Corporate Applicant vide Sanction Letter dated 29.09.2014 and the same was accepted by the Board of Directors vide Board Resolution dated 10.09.2014. Thereafter vide Sanction Letter dated 28.09.2015, the Financial Creditor No. 1 had enhanced the Cash Credit Limit to Rs.1000.00 Lacs (Rupees One Thousand Lacs) to the Corporate Applicant and the same was accepted by the Corporate Applicant vide Board Resolution dated 28.09.2015. Again vide Sanction Letter dated 29.02.2016, the term loan was reviewed and the Cash Credit Loan -1 stood renewed and fresh Cash Credit Loan of Rs.1000.00 Lacs (Rupees One Thousand Lacs) stood sanctioned. Apart from that bank Guarantee Limit of Rs.200.00 Lacs (Rupees Two Thousand Lacs) also stood sanctioned. The total exposure stood as Rs.2,700.00 Lacs (Rupees Twenty-Seven Thousand Lacs) which amount was sanctioned to the Corporate Applicant and subsequently disbursed to the Corporate Applicant and the same was duly accepted vide Board Resolution dated 01.03.2016. Again, vide Sanction Letter dated 28.03.2017, the Financial Creditor No. 1 had reviewed the term loan at the existing level of Rs.4.24 Crores, enhanced the Cash Credit Limits to Rs.25.00 Crores, sanctioned Inland Letter of Credit of Rs.17.70 Crores and reduced the BG Limit to Rs.30.00 Lacs. The total exposure stood at

Rs.47.24 Crores which was sanctioned and disbursed to the Corporate Applicant. The Corporate Applicant had shown their acceptance vide Letter of Acknowledgement cum Acceptance dated 29.03.2017. Thereafter, the Financial Creditor No. 1 had sanctioned a new adhoc limit of Rs.300.00 Lacs (Rupees Three Hundred lacs) to the Corporate Applicant and the same was duly accepted by the Corporate Applicant vide Board Resolution dated 21.09.2017. Again vide Sanction Letter dated 29.12.2018, the Financial Creditor No. 1 reviewed the Term Loan-1 at the existing limit of Rs.1.84 Crores (O/S), Sanctioned a fresh term loan of Rs.25.34 Crores (for unit-2 refinery), renewed the Cash Credit Limit (Unit-1) of Rs.25.00 Crores, Sanctioned a fresh Cash Credit Limit (unit-2 refinery) for Rs.30.00 Crores and renewed the BG of Rs.18.00 Crores. The total exposure therefore stood at Rs.98.34 crores to the Corporate Applicant. On the basis of Application for sanction of a Car loan in the name of the Corporate Applicant, the Defendant No. 5 in his capacity as the Director of the Corporate Applicant, the Financial Creditor No. 1 had sanctioned a car loan of Rs.11.00 Lacs vide Sanction Letter dated 31.08.2018 and a Board Resolution dated 03.09.2018 was passed by the Board of Directors of the Corporate Applicant according accepting the sanction letter as well as the terms and conditions thereof. However, the Fresh Sanctions for the unit-2 refinery could not be disbursed by the Financial Creditor No. 1 due to non-compliance of the terms and conditions of the sanction though the Corporate Applicant not only accepted the Sanction Letter dated 29.12.2018 but also the terms and conditions therein. Lastly, the Corporate Applicant had applied for the benefits under the GECL scheme vide Application dated 09.10.2020 and vide Sanction Letter dated 31.10.2020, the appropriate authority of the Financial Creditor No. 1 sanctioned a WCTL of Rs.7.40 Crores under GECL and the Corporate Applicant had accepted the same vide Board Resolution dated 31.10.2020. It is pertinent to mention herein that vide Sanction

Letter dated 30.12.2020, the appropriate Authority of the Financial Creditor No. 1 had renewed the credit facility sanctioned to the Corporate Applicant for a period of 4 months till the period 29.04.2021 and the same was duly accepted by the Corporate Applicant. It is pertinent to mention herein that the Corporate Applicant had registered the modification of charges before the ROC, NER.

15.2 It is stated by the R-1/FC -1 that the following grievances and allegations made by the Corporate Applicant against the Financial Creditor No. 1 are not correct:

- a) Non disbursement of sanctioned Limit to the Corporate Applicant for its refinery project.
- b) The consequent delay in the commissioning of the refinery resulting in huge interest loss and non-servicing of the debt.
- c) Increase in fixed expenditure in Unit-II.
- d) Cash out flow from the Corporate Applicant owing to purchase of large quantity of raw materials in anticipation of completion of the 2nd Refinery (Unit-II).
- e) Decay and deterioration in the quality of raw materials
- f) Utilization of the loans sanctioned under GECL, Scheme towards payment of the overdue amount of the company by Punjab National Bank.
- g) Continuous losses since Financial Year 2018-19 due to intrinsic stress due to above factors
- h) External reasons owing to restrictions on import of refined Palm oil by Govt. of India and also decline in capacity utilization for the mustard seeds milling and

manufacturing to 22% and blending to 18% in Financial Year 2020.

- 15.3 It is absolutely incorrect to put the entire blame on the Financial Creditor. The Financial Creditor No. 1 has sanctioned the facilities and amounts as applied for but the Corporate Applicant could not fulfill the terms of the sanction under Sanction Letter dated 29.12.2018.
- 15.4 The Corporate Applicant had diverted the income accruals from the credit facilities which the Corporate Applicant had been enjoying with respect to the Refinery Unit-I to the Refinery Unit-II without servicing the interest on the credit facilities already disbursed. The Financial Creditor No. 1 had raised the issue from time to time with the Corporate Applicant but it continued with the diversions. Ultimately the Financial Creditor No. 1 was compelled to issue Show Cause Notice dated 05.06.2021 to the Corporate Applicant asking it to show cause as to why the Corporate Applicant shall not be declared a Willful Defaulter on the ground of the diversion of fund, non-servicing of interest of the loan accounts and non-payment of installments leading to the classification of the loan accounts as NPA, even when the Corporate Applicant had sufficient capacity to honor the contractual obligation towards the Financial Creditor No. 1.

The Financial Creditor No. 1 had also issued Caution Letter dated 20.08.2019 to the Corporate Applicant about the violations of the terms and conditions of the sanction and requested it to rectify the same but the Corporate Applicant did not pay any head to the same. Thereafter, the Financial Creditor No. 1 issued a Demand Notice 17.09.2019 to the Corporate Applicant and its Directors and Personal Guarantors on the Section 13 (2) of the SARFAESI Act, 2002 recalling the entire loan facilities invoking the guarantees and demanding the entire outstanding dues. The loan accounts moved to default finally on 28.11.2020 and thereafter taking into consideration, entire status of the loan accounts the same were ultimately classified as NPA

31.03.2021. The CRILIC Report generated on 28.09.2021 proves the default.

- 15.5 The Corporate Applicant clearly understood the writing on the wall that having not complied with the terms and conditions of the last sanction but at the same time having accepted the same by its Board Resolution and thereafter failing to service interest in the Loan accounts and defaulting on the payment of the installments in the term loan account and further diverting the Income accruals/funds from refinery Unit-I to Refinery Unit-II and pushing the claim on the Financial Creditor No. 1 and also taking shelter on the sudden change in the government policy/restrictions in import of Palm oil when the core business was extraction of mustard oil from mustard seeds, are all diversionary tactics in the part of the Corporate Applicant and it was clear to the Corporate Applicant that the Punjab National Bank as one of the many Financial Creditor No. 1 likewise are on the verge of taking steps for the recovery of the outstanding dues in the Loan accounts as they were already classified as NPA.

In order to avoid such situation, the Corporate Applicant had very craftily and shrewdly filed the Petition under Section 10 of the IBC, 2016 for initiation of Insolvency Resolution Process and declare himself as insolvent. Further the Corporate Applicant is also well aware of the fact that the Financial Creditor No. 1 had already initiated the process for declaring the Corporate Applicant and its Directors as willful defaulters and very soon forensic audit of the accounts of the Corporate Applicant shall take place and there is every possibility that fraudulent transactions and diversion of funds shall surely come into light and establish the claim of the Financial Creditor No. 1 so far the diversion of funds are concerned and as such the Corporate Applicant is in a tearing hurry to get through the insolvency process at the earliest. The Financial Creditor No. 1 further states that though the Corporate Applicant had sufficient means to service the interest and

repay the debts but it is intentionally avoiding such repayments to the Financial Creditors.

15.6 It is stated that the Corporate Applicant has a total outstanding dues in the 5 (five) Loan accounts for an amount of Rs.47,93,80,954.39 (Rupees Forty-Seven Crores Ninety-Three Lacs Eighty Thousand Nine Hundred Fifty-Four and Thirty-Nine Paisa) as on 31.08.2021 to the Financial Creditor No. 1 and the said amount remains payable to the Financial Creditor No. 1 and the said amounts in the Loan Accounts as on 31.08.2021 are also bifurcated below-

a) 0189008700009183 (CC A/c)	Rs.35,36,46,556.61
b) 018900CF00000519 (COVID Interest A/c)	Rs.2,87,69,963.00
c) 018900IL00000348 (GECL/WCTL A/c)	Rs.7,87,35,694.00
d) 018900NG00131806 (vehicle loan A/c)	Rs.9,93,969.32
e) 018900SG00000042 (TL A/c)	Rs.1,72,34,771.46

15.7 The total amount remains to be paid by the Corporate Debtor/Corporate Applicant to the Financial Creditor No. 1 stands at Rs.47,93,80,954.39 (Rupees Forty-Seven Crores Ninety-Three Lacs Eighty Thousand Nine Hundred Fifty-Four and Thirty-Nine Paisa) only as on 31.07.2021 and which amount is reflected in the statements of accounts plus pendentelite and future interest at contractual rate with costs and charges etc.

15.8 Since the Corporate Applicant failed to service the debt of the Financial Creditor No. 1, the FDRs deposited with the Financial Creditor No. 1 as security (8 Nos.) against the LCs/BGs stood adjusted and appropriated in the loan accounts of the Corporate Debtor/Corporate Applicant for a total

amount of Rs.2,44,87,071.00 (Rupees Two Crores Forty-Four Lacs Eighty-Seven Thousand and Seventy-One) only as on 20.09.2019.

- 15.9 The entire loan facilities as per Sanction Letter dated 28.03.2017 was also secured by the Personal Guarantees signed and executed by Smt. Anupriya Harlalka, Sri. Nobel Sangma, Sri Amiyo Ishlary, Sri Kamal Kumar Harlalka, Sri Naresh Kumar Harlalka, Sri Santosh Kumar Harlalka, Sri Ram Swaroop Harlalka and Sri Rohit B Marak by virtue of Agreements of Guarantee all dated 29.03.2017. Further, M/S RSH Agro Products had provided Corporate Guarantee by virtue of Agreements of Guarantee all dated 29.03.2017 which were executed by the Directors for and on behalf of the Corporate Guarantors. The said Corporate Guarantors had vide Board Resolutions both dated 29.03.2017 had agreed to provide necessary Corporate Guarantees.
- 15.10 **It is submitted that considering the above, it is respectfully prayed that since the debt is over the threshold and within the jurisdiction of this Hon'ble Tribunal, it would be proper and appropriate that the Hon'ble Adjudicating Authority may be pleased to adjudicate the debt and the petition as per law protecting the entire claim and interest of the Financial Creditor No. 1.**
- 15.11 **It is submitted that the Hon'ble Adjudicating Authority would be pleased to pierce the corporate veil by appointing an independent auditor, giving access to all transactions and accounts of the Corporate Applicant so that an independent Audit of the transactions pertaining to their loan accounts maintained with the financial creditors more specifically of the Financial Creditor No. 1 as a Show Cause Notice for Willful Defaulter has already been issued by the Financial Creditor No. 1 on the basis of fund diversion and fraudulent transactions. In the event of this Hon'ble Adjudicating Authority admitting the instant petition, it**

is respectfully submitted that in order to maintain the neutrality, a new Resolution Professional may be appointed by this Hon'ble Tribunal.

16 The Respondent No. 3 i.e. HDFC Bank has submitted that:

16.1 The Respondent Bank HDFC Bank Ltd. is a company registered under the Companies Act, 1956 carrying on banking business under License granted by Reserve Bank of India and registered under Banking Regulation Act, 1949, having its registered office at HDFC Bank House, Senapati Bapat Marg, Lower Parel (W), Mumbai- 400013.

16.2 The purported Company Application has been filed to mislead and suppress material facts whereby the cash flow and amount utilized with utilization certificate against loan amount has not been placed before this Hon'ble Tribunal and as such the deponent strongly disputes the admission of this instant application.

16.3 The Corporate Applicant had approached the applicant Bank for financial assistance for its business by submitting a loan application dated nil and after considering the said application, the Financial Creditor No. 2 (HDFC Bank Ltd.) vide Initial Sanction Letter dated 14.02.2019 had sanctioned a Dropline Overdraft facility of Rs.500.00 Lacs (Rupees Five Crores) only with rate of interest @ 10.55 % (MCLR+1.80) (MCLR 8.75%) per annum with monthly rests. In the event of default in payment or any irregularity in account the bank reserved the right to charge additional interest @ 18.00% per annum on the overdue/delays/default of any monies payable.

16.4 The Corporate Debtor Company had accepted the Sanction of Rs.500.00 Lacs (Rupees Five Crores) only and acknowledged the same by subscribing its common seal and signature through its Directors. That the Corporate Debtor has submitted a Board Resolution dated 14.02.2019

whereby it was authorized to Defendant No. 2 and 3 to sign, execute all documents on behalf of Defendant No. 1 Company.

- 16.5** In connection with the sanction of Term Loan facility of Rs.500.00 (Rupees Five Crores) only as aforesaid, the Corporate Debtor in order to avail and in order to secure the said loan in favour of the Financial Creditor Bank, had executed a Supplementary Letter of Continuing Guarantee dated 27.02.2019, by the said letter, the **KAMAL KUMAR HARLALKA** and **ANUPRIYA HARLALKA** had, inter-alia, guaranteed the due repayment to the applicant bank at any branch of applicant bank on demand and without demur, protest and/or contestation in any manner whatsoever and notwithstanding any dispute between Corporate Debtor applicant and Financial Creditor of all the amounts . The said guarantee is a continuing guarantee.
- 16.6** That NISHA HARLALKA, D/O Kamal Kumar Harlalka had executed a Deed of Indemnity dated 27.02.2019 accepting to the terms and conditions contained therein.
- 16.7** That further the Term Loan facility was secured by creation of equitable mortgaged of the immovable property being all that piece and parcel of land measuring 5 Bigha 3 Katha 1 Lecha covered by Dag No. 27, Patta No. 24 Village-Guimara Pathar Pacharia, PP. Pancharia, P.S Hajo, Mouza- Pub Bhangsar, Revenue Circle, District-Kamrup Assam, PIN- 781104 owned by Anupriya Harlalka, and all that piece and parcel of land measuring 6 Katha Dag No. 556 (old) 1000 (New), Patta No. 6 (old) 131 (new) situated at Revenue Village, Sahar Guwahati Part-I, Under Mouza- Guwahati, District Kamrup (Metro), Assam-781009 owned by Mrs. Nisha Harlalka and Kamal Harlalka. And in compliance with the terms and conditions of the sanction and in order to assure repayment of the said loan with interest, KAMAL KUMAR HARLALKA and ANUPRIYA HARLALKA had signed and executed a Memorandum Recording Past Transactions dated 27.02.2019 in connection with creation of security by equitable mortgage by deposit of

title deeds as security and also executed a Declaration cum indemnity dated 27.02.2019. Accordingly, the KAMAL KUMAR HARLALKA delivered to the Financial Creditor bank, all the title deeds in respect of the immovable property as mentioned herein before.

16.8 The Corporate Debtor along with all its guarantor, mortgagor being **KAMAL KUMAR HARLALKA, ANUPRIYA HARLALKA, NISHA HARLALKA, AMYIO ISHLARY, ARINDAM SINGH DEKA, NOBEL SANGMA, PRATAP SINGH DEKA** and **PRADIP SINGH DEKA** have agreed to comply with the terms and conditions of the Sanction Letter and other relevant agreements and documents executed in connection with the aforesaid loan facility sanctioned by the Financial Creditor Bank and have accepted the same by executing the said documents as mentioned in the forgoing paragraphs and as such, the defendants are liable to repay the entire loan amount.

16.9 The account of the Corporate Debtor was declared Non Performing Assets as per Reserve bank of India Guidelines on 26.06.2021.

16.10 The statements of account maintained by the Applicant in the usual and ordinary course of business shows that there is an outstanding balance of Rs.52959909.15 (Rupees Five Crores Twenty-Nine Lakhs Fifty-Nine Thousand Nine Hundred Nine and Fifteen paisa only) and as such Corporate Debtors and its mortgagor and guarantors are legally bound, jointly and severally liable to repay the said amounts to the applicant bank.

17. On the other hand the petitioner further submits before this Hon'ble Tribunal that:

17.1 There was no diversion of funds from income accruals from the credit facilities. The respondent bank was very well aware from the very first day when we submitted our proposal in October

2017 that internal accruals form the part of promoter's contribution. The respondent PNB is trying to mislead the Hon'ble Tribunal.

17.2 The PNB has not cautioned or asked us to stop investment in Unit-II and neither have they alleged any diversion of fund. Also the petitioner humbly submits that till 27.08.2019, it had already invested Rs. 2,172.49 Lakhs in the project and there was no way to reverse the investment as it was a *fait accompli* by then. That the respondent PNB is making all these allegations to cover up their wrong doing and killing a promising business and all its associated and allied concerns with all the dependent labors, employees, agriculturists and vendors.

That the respondent PNB is investing the theory and concept of diversion of funds, non-compliance of Equitable Mortgage of Leasehold Rights etc. so as to clean its image which, however, cannot be done as there are hundreds of correspondences since October 2017 which proves bank's complicity in the matter.

17.3 If the Hon'ble Tribunal decides to admit the insolvency petition of the petitioner, the present management/board of directors get suspended and the management of the CD goes into the hands of Resolution Professional whom the Hon'ble Tribunal may appoint. The Resolution Professional so appointed will have full authority to conduct transaction audit of the CD and file application for avoidance of transactions, if any, in accordance with Chapter III of Part II of IBC, 2016.

17.4 The petitioner's early move in filing the present petition is wrongfully construed by the respondent FC No. 1 as a hurry move to get through the insolvency process at the earliest. The Corporate Applicant had incurred heavy losses in the past two years (Loss of Rs.16.63 crores and loss of Rs.26.05 crores during FY 2019-20 and FY 2020-21 respectively, and only wants that the value of the CD to be preserved which can only happen with a speedy insolvency resolution process.

17.5 It is pertinent to mention here that the respondent PNB merely issued a Show Cause Notice without mentioning any specific instances and without attaching any documentary proof and in violation of RBI guidelines issued in this regard.

The respondent No. 1 is blatantly trying to mislead this Hon'ble Tribunal to appoint a new Resolution Professional whereas a Resolution Professional is already proposed in the petition to be appointed as Interim Resolution Professional, as provided in IBC, 2016.

17.6 The Respondent, HDFC Bank, in Para 2 (ii), page no 2 of its reply filed on 01.10.2021 states that the company application had been filed to mislead and suppress facts whereby the cash flow and amount utilized with utilization certificate against loan amount has not been placed before this Hon'ble Tribunal and as such the it strongly disputes the admission of this application. But the petitioner strongly objects to the contention of the respondent as it failed to show any relevant section/regulation/rule of IBC, 2016 for such allegation.

17.7 The present application is well within the limitation period as the Respondent No. 1 declared the facilities of the petitioner as NPA with effect from 31.03.2021.

17.8 The Respondents have not disputed the existence of the debt due and default in repayment of the debt by the petitioner in their replies on affidavit filed with Hon'ble NCLT. That the Respondents did not also bring out any instances of ineligibility, as per Section 11 of IBC, incurred by the petitioner to file application under IBC.

17.9 The following paras are from some of the judgments pronounced by Hon'ble Supreme Court/NCLAT pertaining to applications filed under section 10 of IBC, 2016:

(i) National Company Law Appellate Tribunal (NCLAT) in "***M/S. Unigreen Global Private Limited vs. Punjab National Bank and others***"—Company Appeal (AT) (Insolvency) 81/2017, 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. 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 the 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 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 the 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 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 is 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.

25. Similarly, if any action had 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.

(ii) Hon'ble NCLAT in its judgment dated 13.12.2017 in ***Leo Duct Engineers & Consultants Limited v/s Canara Bank & Standard Chartered Bank***, in CA (AT) Insolvency No. 100 of 2017, held as follows:

7. For the reasons aforesaid and as the case of the appellant is covered by the decision of this Appellate

Tribunal in "M/s. Unigreen Global Private Limited" (Supra), we have no option but to set aside the order dated 22nd June, 2017 passed in CP No. 1103/I & BP/2017 and the same is accordingly set aside. The case is remitted back to the Adjudicating Authority, Mumbai Bench to admit the application under Section 10 after notice to the parties if there is no defect. In case of any defect, appellant be allowed time to remove the defects. The appeal is allowed with the aforesaid observations. However, there shall be no order as to costs.

18. The Applicant has further stated that:

- 18.1 On 12.08.2021, an application being C.P. (IB) No. 18/GB/2021 was filed by the Corporate Debtor for initiating Corporate Insolvency Resolution Process (CIRP) against RSH Agro Products Limited, the Corporate Debtor under Section 10 of the IBC 2016, with Hon'ble NCLT, in accordance with the relevant provisions of the IBC.
- 18.2 That, the Corporate Applicant had proposed Mr. Vakati Balasubramanyam Reddy as Interim Resolution Professional (IRP) in the aforesaid Application. Since Mr. Vakati Balasubramanyam Reddy has been proposed as an IRP/RP in at least 4 other assignments and serving as an RP in 1 assignment, he wishes to withdraw the Form 2 consent given by him in the aforesaid Application.
- 18.3 That, the Corporate Applicant thus proposes to appoint Mr. Krishna Mohan Gollamudi, an Insolvency Professional, registered with Insolvency Professional Agency of Institute of Cost Accountants of India, having Registration No. IBBI/IPA-003/IP-N000161/2018-2019/11952 to be the Interim Resolution Professional if the said application is admitted in to CIRP by this Hon'ble Bench. The form 2 Consent of Mr. Krishna Mohan

Gollamudi, IBBI Registration Certificate and Authorization for Assignment certificate of Mr. Krishna Mohan Gollamudi are annexed.

- 18.4 That, to the best of Applicant's knowledge, Mr. Krishna Mohan Gollamudi is fully qualified and permitted to act as an insolvency professional in accordance with the Code and the associated rules and regulations.
- 18.5 **That, the amendment prayed for will not change the cause of action and the nature of the Company Petition No. 18/2021.**

ORDER

19. Heard the Counsels for both the sides at length.

20. This Application has been filed under section 10 of IBC by the CD seeking initiation of CIRP against itself. Both, the Applicant - CD here and all three Financial Creditors (FC) have confirmed that the accounts of the Applicant are NPAs and the Applicant has defaulted in making payments of interest and installments to all the three FCs/Respondents 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 loss of Rs.28.39 crores eroding the entire paid up share capital and reserves

The R1 - PNB, a major Financial Creditor for the CD has some apprehension relating to a Resolution Professional suggested by the Applicant -CD to be appointed as IRP. Hence it is submitted that a new Resolution Professional may be appointed along with an Independent Auditor to look into alleged Diversion of Funds and fraudulent transactions undertaken by the CD.

We do not find any merit in this apprehension of the R1 ,when sufficient provisions are available under the Codes of IBC to address the issues, if at all, of the replacement of an IRP, Preferential, Undervalued, Fraudulent Transactions, Corporate Guarantee and Personal Guarantees to the Corporate Debtor. It

shall be dealt by the IRP/RP/CoC/FC at the appropriate time under relevant Sections of I&B Code.

On the other hand, the learned Counsel appearing for the Applicant has prayed for admission of the Application. Both the sides have submitted that they do not want further arguments on the matter.

21. 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 Creditors/Objectors (Punjab National Bank and HDFC) 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 Creditors/Objectors are not legally tenable.

22. Considering the materials, papers filed by both the Petitioner and the Respondents, this Adjudicating Authority is satisfied that:

22.1 The Corporate Debtor availed the loan/credit facilities from the Financial Creditors/Respondents;

22.2 The Applicant CD has furnished:

- i. The information relating to its books of account and such other documents,**
- ii. The information relating to the resolution professional proposed to be appointed as an interim resolution Professional; and**

iii. The special resolution passed by shareholders of the Corporate Debtor approving the filing of the application under Section 10 of IBC.

iv. Applicant is not ineligible to make an Application to initiate Corporate Insolvency Resolution Process

22.3 Existence of debt is above Rupees One Crore;

22.4 Debt is due, payable in law and defaulted;

22.5 Default has occurred on 31.03.2021 with the major Financial Creditor to CD R1- PNB;

22.6 Application has been filed within the limitation period, as the existence of the debt due, payable in law and is defaulted on 31.03.2021 with the PNB; when the Application under Section 10 of the IBC has been filed by one of the Directors Mr. Kamal Kumar Harlalka of the CD on 12.08.2021;

22.7 Copy of the Application filed before this Bench has been sent to the Financial Creditors and the application filed by the Corporate Debtor under Section 10 of the IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process against itself;

Hence, the present IB Petition is admitted with the following directions/observations. The date of admission of this Application is 23.11.2021.

23. As per the provisions of Section 13 and 14 of the IB Code on the date of commencement of insolvency, this Adjudicating Authority declares moratorium with effect from today for prohibiting all of the following, namely:

23.1 (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 foreclosure, 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).

(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.

23.2 Supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

23.3 The provisions of sub-section (I) shall not apply to-

(a) Such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

23.4 The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.

24. This Adjudicating Authority hereby appoints, as proposed by the FC, Mr. Krishna Mohan Gollamudi, Flat No. 107, 1-9-648/107, Maurya Towers, Adikmet Road, Vidyanagar, Hyderabad, Telangana, 500044 having IP Registration no. IBBI/IPA-003/IP-N00161/2018-2019/11952 as an Interim Resolution Professional. The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor soon after receipt of an authenticated copy of this order and to act further as per the order/directions issued by this Adjudicating Authority and to follow the provisions under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code. The IRP has to submit Assignment Declaration before the Registry within 2 days from today.

25. The IRP is **hereby advised to adhere to the time limit as stipulated for completion of the Corporate Insolvency Resolution Process** ("CIRP") and perform the duties as specified under Section 17, 18, 20 and 21 of I&B Code. The IRP shall perform all his functions contemplated, inter-alia, in 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 persons 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 IRP as may be required by him in managing the day-to-day affairs of the Corporate Debtor. In case there is any violation, the IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor as a part of its obligations imposed by Section 20 of the Code, Rules and Regulations.

26. One of the prime objectives of the Insolvency and Bankruptcy Code, 2016 is to quickly find out a viable Insolvency Resolution Plan for the Corporate Debtor and in order to have a Resolution Plan Viable, feasible and implementation successful, in the era of Minimum Cost of funds-based Lending Rate ("MCLR")/Repo Linked Interest rate/Interest rate falling regime and competitive market condition, the Committee of Creditors (CoC) may explore, while finalizing the Resolution Plan for the Corporate Debtor, the possibility of loading maximum interest at the Respondent Bank's One Year MCLR or One Year MCLR+ 1% without any penal/overdue interest.

27. **The Registry is hereby directed to communicate the authenticated copy of this order to the Financial Creditor, Corporate Debtor, the IRP and also to the Registrar of Companies, Guwahati immediately through speed post/registered post and e-mail, if available.**

28. **The commencement of Corporate Insolvency Resolution Process shall be effective from the date of this order.**

29. **Thus, the present IB Petition filed under Section 10 of the IBC stands admitted today i.e. 23.11.2021 with the above observations and directions.**

Sd/-

**(Prasanta Kumar Mohanty)
Member (Technical)
Adjudicating Authority**

Sd/-

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