



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP No.72/ALD/2022

An application under Section 10 of the Insolvency & Bankruptcy Code, 2016 read with Rule 7 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016

IN THE MATTER OF:

AGROHA PAPER INDUSTRIES PVT. LTD.

Registered office: Plot No. 2/98/F Sector F
Sitapur Road Yojana Lucknow UP. 226001
Through its Director Chetan Agarwal,
S/o Shri Umed Rana,
R/o 987, Kungar Patti, Sujru, Uttar Pradesh

... Corporate Applicant

Order pronounced on 22.08.2023

CORAM:

Sh. Praveen Gupta : Member (Judicial)

Sh. Ashish Verma : Member (Technical)

PRESENT-

Sh. Sanjeev Panda, Adv.

: For the Petitioner/Corporate Applicant

Ms. Shruti Malviya, Adv.

: For the Bank of Maharashtra



ORDER

1. The present Petition has been filed by Agroha Paper Industries Private Limited, the Corporate Applicant, under section 10 of the Insolvency and Bankruptcy Code, 2016 (the Code) read with rule 7 of Insolvency And Bankruptcy (Application to Adjudicating Authority Rules, 2016) for initiation of Corporate Insolvency Resolution Process (CIRP) against itself. The Application in Form 6, has been filed through its Authorized Representative, Mr. Chetan Agarwal, duly authorized vide Board Resolution dated 08.06.2022. A copy of the Board Resolution dated 08.06.2022 is annexed to the Application and marked as Annexure-3 on Pages 21-22.

2. The Corporate Applicant was incorporated on 06.12.2015 having CIN: U21098UP2015PTC075136 and is situated at Plot No. 2/98/F Sector F Sitapur Road Yojha Lucknow –UP-226001. The nominal Share Capital of the Company is Rs. 10,00,000 (Rupees Ten Lakhs) and Paid Share Capital of the Company is Rs. 10,00,000. The two directors namely, Shri Jay Kishan Agarwal and Shri Chetan Agarwal manage the affairs of the Company.

3. The Corporate Applicant availed the loan facility from the Bank of Maharashtra in the form of “Cash Credit Facility” & “Term



Loan”. The Bank of Maharashtra hereinafter referred as “Financial Creditor” vide sanction letter bearing No. CPC-/96/2017-18 dated 30.06.2017 sanctioned term loan of Rs. 150 lakhs and Cash Credit Limited of Rs. 50 Lakhs and vide another sanction letter bearing No. ZLCC/DEC/16/2017-18 dated and 18.12.2017 enhanced the cash credit limit of Rs. 50 Lakhs to 275 Lakhs and renewed the term loan of Rs. 150 Lakhs. The Repayment of term loan amount is of 78 months and moratorium period is of 06 months till December 2017. The total period of repayments of loan is 84 months. The rate of interest applicable on this Term Loan is MCLR+0.25%+3.00%p.a with monthly rest.

PARTICULARS OF CREDITORS ALONG WITH DEBT

PARTICULARS	NAME OF THE FINANCIAL CREDITOR	NAME OF OPERATIONAL CREDITOR	NAME OF OPERATIONAL CREDITOR
	Bank of Maharashtra	Pushkaraaksh Dry Fruit and Food Industries	B.R Enterprises
Date of Default Incurred	18.12.2017	15.11.2018	10.09.2018
Debt Amount (in Rs.)	4,39,55,214	10,8576775.90	7,43,438.00



4. However, due to the unprecedented economic scenario during COVID Period and thereafter, the net worth of the Corporate Applicant got completely eroded and now, has no money to pay to its creditors and to continue its business.

5. Accordingly, on failure to repay the loan amount, Financial Creditor declared the account of the Corporate Applicant as NPA on 28.10.2018 as per the norms of Reserve Bank of India.

6. Thereafter, the Financial Creditor issued Demand Notice dated 11.01.2019 under section 13(2) of the Securitization And Reconstruction Financial Assets Enforcement of Security Interest (SARFESI) Act, 2002 for the repayment of loan amount of Rs. 4,39,55,214 as on 11.01.2019 plus interest @11.90% & other charges and expenses within the period of 60 days from the date of receipt of this notice. Failure to repay the default amount as stated within the period of 60 days empowers the financial creditor to take possession of the secured assets as per section 13(4) of the SARFESI Act, 2002. In response to the aforesaid demand notice, corporate applicant vide letter dated 11.03.2019 sought additional funds to increase its operational capacity or additional period of 06 to 12 months to repay the debt amount. Copy of demand notice dated 11.01.2019 and Reply dated 11.03.2019 has been annexed



as **Annexure- 7 (Colly)**. However, this request of the Corporate Applicant has not been accepted by the Financial Creditor. Therefore, the Financial Creditor in terms of SARFESI Act, 2002 r/w Security interest (Enforcement) Rules, 2002 issued Possession and Pre-Sale Notice dated 25.03.2019 informing the corporate applicant that as per Section 13(4) of the said Act, the Bank has taken over the possession of properties mortgaged to the bank on 25.03.2019 for failure to comply with demand notice dated 11.01.2019. Copy of the Possession Notice dated 25.03.2019 has been annexed as **Annexure-8**. The details of the mortgaged properties are mentioned below:-

i. All parcel and pieces of land and building situated at Gata/ Khasra No. 191/497, (admeasuring 4860.00sq. Mtr.), Village Kharagpur, Pargana Karauna, Tehsil Mishrikh, Dist. Sitapur.

ii. All parcel and pieces of land and building situated at Gata/Khasra No. 191, (admeasuring 400.00sq. Mtr.), Village Kharagpur, Pargana Karauna, Tehsil Mishrikh, Dist. Sitapur.

7. Further, the Financial Creditor vide letter dated 31.03.2019 informed the Corporate Applicant that the aforesaid Possession Notice was published in the Hindi and English newspaper namely,



Hindustan and Hindustan Times on 27.03.2019. Copy of Letter dated 31.03.2019 has been annexed as **Annexure 9 (Colly)**.

8. In terms of SARFESI Act, 2002 financial creditor proceeded with publication of E-Auction Sale Notice of immovable mortgaged properties of the Corporate Applicant in “Amar Ujjala” and “Financial Express” on 15.10.2019 wherein it was stated that Sale through E-Auction is scheduled for 27.11.2019 from 11:00am to 12:00 noon through M/s E-Procurement Technologies Ltd. Auction Tiger, Ahmedabad and last date of submission of EMD is 25.11.2019. Copy of letter dated 15.10.2019 has been annexed as **Annexure 10(Colly)**.

9. Financial Creditor issued Notice of Sale/Public Auction dated 28.06.2022 of secured assets under Sec 13(4) of SARFESI Act, 2002 r/w Rule 6 and 8 of Security Interest (Enforcement) Rules, 2002 has taken the possession of All *parcel and pieces of land and building situated at Gata/Khasra No. 191/497, and 191 (admeasuring 4860.00sq. Mtr. and admeasuring 400.00sq. Mtr respectively), Village Kharagpur, Pargana Karauna, Tehsil Mishrikh, Dist. Sitapur on 14.06.2022* keeping reserve price of Rs.100 lakhs for Auction on 16.07.2022. Copy of Sale Notice has been annexed as **Annexure-12**.



10. In response to the sale notice dated 28.06.2022, the Corporate Applicant vide letter dated 02.07.2022 stated that Financial Creditor has abused the powers mentioned in the SARFESI Act, 2002 by taking the possession of the property. Thus, E-Auction notice dated 01.07.2022 is illegal and not valid in law. Copy of letter dated 02.07.2022 has been annexed as **Annexure 14 (Colly)**.

11. Being aggrieved by the actions of the Financial Creditor Corporate Applicant initiated corporate insolvency proceedings u/s 10 of the I & B Act, 2016 against the default committed by itself.

12. This Tribunal vide order dated 05.09.2022 directed the Corporate Applicant to file an affidavit with respect to the percentage of the shareholding of shareholders who have passed the special resolution. In pursuance of the said order, Corporate Applicant has filed an affidavit on 06.10.2022 for placing on record the voting sheet of the Extra Ordinary General Meeting held on 02.07.2022 which reflects the percentage of shareholding held by the members of the Company. Copy of voting sheet has been annexed as **Annexure 2** with the Affidavit. As per voting sheet, there are two shareholders having 50% shares each one and both



shareholders have voted to pass resolution to file application u/s 10 by Corporate Applicant.

13. The Corporate Applicant in pursuance of direction given by this tribunal vide order dated 22.11.2022 filed an Affidavit of compliance stating that there are no other creditors except those mentioned in Part -III of the Petition. Copy of order dated 22.11.2022 has been annexed as **Annexure A-1** with the Affidavit.

14. In the meanwhile, Corporate Applicant filed on 09.01.2023, an I.A No. 12/2023 under Rule 11 of the National Company Law Tribunal Rules, 2016 wherein it has been contended that despite providing ample opportunities to file reply in the matter by this tribunal vide order dated 05.09.2022 and 22.11.2022, respondents Financial Creditor chose not to file reply in the matter which is against the essence of Section 10 of the I & B Code, 2016. Therefore, Applicant has prayed not to grant any further time to the Respondent i.e. Bank of Maharashtra to file the reply/objections, if any in the present matter and dispose of the application under section 10 filed by the Corporate Applicant on its merits without giving any further opportunity to the respondents to file reply in the matter.



OBJECTION FILED BY THE FINANCIAL CREDITOR

15. The Financial Creditor has filed its objection on 20.02.2023 wherein it has prayed to dismiss the petition for the reasons mentioned below:-

“....

3. That vide order dated 05.09.2022 notices have been issued to the secure creditor i.e. the Bank of Maharashtra filed the affidavit as directed in the aforementioned order have not been served to the financial creditor ever. It is requested to this Hon'ble Tribunal if any affidavit has been filed by the Corporate Debtor in the present petition then the same may be served to the deponent.

4. That the matter was again listed on 07. Feb., 2023 but the IA as mentioned bearing No.12/2023 has again not been served to the Counsel for the respondent or to the bank. The applicants are playing hide and seek with the Hon'ble Tribunal as well as with the Financial Creditor the reason best known to them only. For the kind perusal of this Hon'ble Tribunal the copy of order dated 07.02.2023 is being marked and annexed as Annexure No.1 to this objection.

5. That the applicants took credit facility from the bank.

6. That the applicant failed to maintain the loan account and the account has been classified as NPA.

7. That the bank issued 13(2) notice to the petitioner/applicant under SARFAESI Act dated 11.01.2019 and directed to deposit Rs.4,39,55,214+unapplied interest thereon at contractual rate w.e.f. 11.01.2019+ Penal Interest and other charges/ expenses.

8. That to the notice served by the bank under Section 13(2) of SARFAESI Act the applicant filed a reply.



9. That the possession and presale notice dated 31.03.2019 and 15.10.2019 respectively, has been issued by the bank i.e. the secure creditor.

10. That E-auction notice dated 28.01.2020 issued by the bank the Corporate Debtor.

11. That bank took the physical possession of the property in pursuance to the order passed under Section 14 of the SARFAESI Act dated 24.05.2022 and sale has been confirmed to the successful bidder during on line auction Surendra Kumar Nigam, resident of D-258, Rajajipuram, Lucknow-226017. For the kind perusal of this Tribunal the copy of order dated 24.05.2022 along-with photograph and the communication to the successful bidder is being marked and annexed as Annexure No.2 to this objection.

12. That it is apropos to mention here that the dues of Rs.396.28 Lac + interest at contractual rate and other charges w.e.f. 20.10.2018 (date of NPA) are still due from the NPA account.

13. That after the sale of the secure assets the bank has moved an application for declaration of personal assets by borrower/Director before DRT Lucknow.

14. That it is apropos to mention here that the secure creditor having concrete information that the Director/Guarantor have sufficient net worth to repay the dues of the bank but unwilling to pay and for this specific information the secure creditor is engaging agency to find out the properties owned by the corporate debtor.

15. That it is pertinent to mention here that on perusal of order dated 05.09.2022 it is very much clear that some special resolution plan has been placed on record before the Hon'ble Tribunal but the copy of the same has not been served to the Financial Creditor ever. It is very unhappy situation that very application or any affidavit filed by the applicant is not being served to the counsel for the bank or to the bank official directly. Neither notices have been issued to the bank on those interim application or any separate affidavit, if filed. The aforesaid act of the Corporate Debtor shows the intention.



17. That in view of the above facts the petition deserves to be dismissed the applicant had not approached to the Tribunal with the clean hand and they are willingly not depositing the due amount to the secure creditor. If the time has been granted to bank for a month then the details of the other property belonging to Director/Guarantor/Borrower will be brought on record.
”

REJOINDER TO THE OBJECTIONS

16. In response to the objection filed by the Financial Creditor, the Corporate Applicant has filed Rejoinder on 27.02.2023 wherein applicant has denied the contention raised by the in the objection to the petition and, made the following submissions which are mentioned herein below:-

- i. The Corporate Applicant served to the Respondent the I.A No. 12/2023 on the given Email ID which is bom1278@mahabank.co.in and legal_luc@mahabank.co.in before filing the said I.A before the Registry of the tribunal. Copy of Email dated 09.01.2023 and receipt of e-filing dated 09.01.2023 has been annexed as **Annexure No. 4 and 5** respectively with the Rejoinder.
- ii. It is also submitted that despite providing opportunity to the financial creditor for filing reply vide order dated 05.9.2022, no reply was filed to the said application. The



Respondent Bank sold the assets of the Corporate Applicant in the e-auction at throw away prices which is in violation of Section 10 of the IBC Code, 2016.

- iii. It is further submitted that Hon'ble Debt Recovery Tribunal (DRT) in the SA No. 365 of 2019 filed by the Corporate Applicant vide order dated 22.11.2022 granted status quo in the subject properties and adjourn the matter to 19.04.2023. Copy of the order dated 22.11.2022 and status of the SA No. 365 of 2019 has been annexed as **Annexure No. 6 and 7** with the Rejoinder.
- iv. Respondent Bank has fixed common reserve price for moveable and immovable properties. The subject properties of the applicant were taken by the bank without giving any notice and punchnama in respect of the same.
- v. The application filed under section 10 of the I & B, Code, 2016 is filed for reviving the corporate applicant. Therefore, the objections filed by the respondent/ bank should be dismissed with exemplary cost.

SECOND OBJECTION REPORT OF THE FINANCIAL CREDITOR

17. The Financial Creditor has also filed second objection on 04.05.2023 wherein it is contended that as per direction by this



Hon'ble Tribunal notices issued to the respondents had never been received. Moreover the I.A No.12/2023 filed by the Corporate Applicant had not been served to the Respondent Counsel. Thus, Respondent has requested to serve any reply/affidavit filed by the corporate Applicant to the Respondent i.e. Bank of Maharashtra.

18. It is also contended by the respondent that Applicant has filed SA No. 365/2019 before the Hon'ble DRT, Lucknow which is still pending for final adjudication. It is also significant to bring into the notice of this Tribunal that Applicant had also filed Writ Petition before the Hon'ble High Court of Lucknow, Bench bearing Writ-C No. 4433 of 2022 titled as Agroha Paper Industries Pvt. Ltd. versus Debt Recovery Tribunal, Lucknow wherein the applicant challenged the proceedings initiated by the Bank of Maharashtra under section 13(4) of the SARFESI act, 2002 in SA No.365/2019. The writ petition is disposed of vide order dated 16.07.2022. Copy of order has been annexed as **Annexure-1** with the second objection. Relevant para of the order is mentioned herein below:-

“Heard learned counsel for the petitioner and Shri Vinayajit Lal Verma, who has put in appearance on behalf of opposite party No.3.

Auction in pursuance of the sale notice is fixed for today.



Petitioner has already challenged the proceedings under Section 13 (4) of the SARFEASI Act, 2002 in S.A. No.365/2019.

Auction held, if any, in the meantime, shall abide by the outcome of the application for interim relief pending before the Debt Recovery Tribunal.

The application for interim relief is fixed before the Tribunal for 20th July, 2022.

The Tribunal is expected to dispose of the application for interim relief expeditiously preferably on the date fixed in the matter.

*With the above observation and direction, the writ petition is **disposed of**.*

Order Date: - 16.7.2022”

19. It is stated that Financial Creditor/Respondent bank vide notice dated 28.02.2023 granted 2nd opportunity for personal hearing before mentioning the name of the corporate applicant in the list of willful defaulters. The personal hearing was scheduled on 15.03.2023 but the applicant did not appear for hearing. Copy of notice dated 28.02.2023 has been annexed as **Annexure-2** with the second objection. Accordingly, the Bank of Maharashtra held the Corporate Applicant as willful defaulter and contended in its reply that the Corporate Applicant is deliberately avoiding the appearance in proceeding before the Bank for settling the outstanding debts and the dues of Rs.3.96 crore + interest are still due from NPA Account.



20. It is also stated that by the Financial Creditor that respondent is running away from disbursing its liability towards the bank because Applicant proposed OTS for settling the loan amount ample of times. For ascertaining the net worth of the Respondent Bank hired a detective agency for enquiring about the assets and net worth of the applicant. Applicant has filed an application before the Hon'ble DRT, Lucknow in the aforesaid application filed by the Applicant for declaration of the personal assets of the directors of the applicant company. The applicant is liable to repay the debt of Rs. 396.28 lacs + Interest at contractual rate and other charges w.e.f 20.10.2018 (NPA). Therefore, the petition filed by the Corporate Debtor deserve to be dismissed.

21. Meanwhile I.A. No.12/2023 filed by the Corporate Applicant has been considered in the hearing held on 08.05.2023 and thereon 05.07.2023 and the Financial Creditor has been allowed to file further reply with respect to assets of the Corporate Debtor still not sold by them.

SUPPLEMENTARY AFFIDAVIT

22. The Financial Creditor has filed Supplementary Affidavit vide dairy no. 1793 dated 10.07.2023 in compliance with the order dated 08.05.2023 wherein this Tribunal directed to file the



valuation report of the properties whose possession has not been taken by the Financial Creditor. The relevant part of the said supplementary affidavit is as under:-

“2. That the Hon’ble Court after hearing the matter at length directed to file properties belonging to appellant along with valuation report wide order dated 08.05.2023.

3. That in pursuance of the aforesaid direction of the Hon’ble Tribunal the present supplementary Affidavit is being filed.

4. That the mortgage properties to the bank has already been auctioned. For the kind perusal of this Hon’ble Court copy of same is being annexed as **Annexure SA 1**.

5. That the plant and machinery is yet not been auctioned the valuation of the same as per valuation report is Rs. 68,46,000/-. The valuation report dated 22.06.2022 is being marked and annexed as **Annexure SA 2**.

6. That the bank hired confidential agency to investigate about the properties belonging to applicant the agency has submitted its report dated 06.06.2023. For the kind perusal of this Hon’ble Court copy of same is being annexed as **Annexure SA 3**.

7. That from the aforesaid fact it is clear that applicants have plant and machinery in their hand having valuation of Rs. 68,46,000/- and the residential property which is in the name of father.

8. That in view of the above facts the Securitization application deserves to be dismissed on the ground of maintainability and there is no illegality on the part of the bank in following the procedure as prescribed under the law.”

Analysis and Findings

23. We have considered all the submissions made before us by the Ld. Counsels of the Corporate Applicant and Bank of



Maharashtra which is the only Financial Creditor in this case. It was vehemently argued on behalf of the Financial Creditor that the Corporate Applicant has not come before this Tribunal with clean hands, and is guilty of suppressing vital facts as well as for misrepresentation.

24. It was contended by the Ld. Counsel representing the Financial Creditor/ Bank of Maharashtra that the Corporate Applicant has taken the credit facility from the Bank and failed to maintain the financial discipline, which was eventually classified as an NPA on 28.10.2018, and as a result thereof, even the proceedings U/s 13(2) of the SARFAESI Act, were initiated by issuing notice dated 11.01.2019, whereby the Corporate Applicant was called upon to deposit an amount of Rs.4,39,55,214/- plus unapplied interest thereon. Since the loan amount was not paid, the notice U/s 13(4) for taking possession of the property was issued on 31.03.2019, and even a presale notice was issued on 15.10.2019.

25. It was also contended by the Ld. Counsel representing the Bank of Maharashtra that in order to thwart the recovery proceedings initiated by the Financial Creditor, the Corporate Applicant even filed a writ petition before the Hon'ble High Court



at Lucknow Bench, which was however disposed of in terms of an order dated 16.07.2022, thereby observing that the Corporate Applicant/ Petitioner had already challenged the proceedings U/s 13(4) of the SARFAESI Act by moving a Securitization Application No.365/2019, and further observing that auction held, if any, shall abide by the outcome of the application for interim relief pending before the Debt Recovery Tribunal.

26. It was further vehemently argued that the Corporate Applicant is a willful defaulter, and is therefore deliberately avoiding the appearance in the said proceedings before the Financial Creditor. A notice was issued for personal hearing by the Bank, where he failed to appear, and thereafter even a second notice for personal hearing was issued on 28.02.2023, a copy of which has also been attached as Annexure 2 with the reply filed on behalf of the Bank. The personal hearing was required to be given before declaring the Corporate Applicant as a willful defaulter as the proceedings had been initiated before the Willful Defaulter Identification Committee of the Bank. Even subsequently also, such notices were issued to the Corporate Applicant, which have continuously been evaded by the Corporate Applicant/ Borrower. While on the one hand, the Corporate



Applicant/ Borrower has also been trying to make efforts for OTS and on the other hand, the present application U/s 10 has been moved with ulterior motives to stall the entire process, so as to take benefit of the moratorium which is triggered as a result of admission of Section 10 petition under IBC.

27. We find substance in the contentions raised by the Ld. Counsel representing the Financial Creditor/ Bank.

28. The applicant seems to not have come with clean hands in as much as, it has been making all out efforts to stall the process in one way or the other, by abuse of process of law. The averments made in the application filed U/s 10 as well as rejoinder filed by the Corporate Applicant to the objections raised by the Financial Creditor, do not further advance the case in its favour only by stating that the auction of assets are at undervalued prices, and would defeat the very purpose of the application filed U/s 10 of the Code. The contention raised on behalf of the Corporate Applicant that the DRT, Lucknow has granted status quo in respect of the several properties vide its order dated 22.11.2022, however it is noted that the auction already took place on 16.07.2022 as per the sale auction notice issued by the Financial Creditor/ Bank by following due procedure.



29. We have also noted that the Bank in its para no.14 of the reply/ objection has also stated that it has handed over the enquiry to the detective agency for enquiring the net worth and asset details of the applicants and the Bank have sufficient cause to believe that the applicant having sufficient means is still not ready to repay the loan. In view of this, the intentions of the Corporate Applicant to pre-empt any such similar proceedings for recovery by the Bank deserves to be deprecated.

30. The application filed U/s 10 thus lacks bonafide from all perspectives, and therefore deserves to be dismissed.

31. In view of the foregoing discussions, we are of the considered view that the instant petition filed U/s 10 by the Corporate Applicant deserves to be dismissed.

32. Accordingly, petition CP (IB) No.72/ALD/2022 is disposed off by dismissed the same.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)