



S.No.10

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
05-11-2024 AT 10:30 AM**

**CP (IB) No. 273/10/HDB/2022**  
u/s. 10 of IBC, 2016

**IN THE MATTER OF:**

M/s. Urban Farmart India Private Limited

**...Petitioner**

**C O R A M:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Learned PCS Mr.Shaik Gouse for the Petitioner and Learned Counsel Ms.R.Prem Rajakumari for the Operational Creditor present through VC.

**Orders pronounced. In the result, this Petition is admitted, subject to conditions mentioned in the order. No costs.**

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**



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

**CP (IB) No.273/10/ HDB/2022**

UNDER SECTION 10 OF THE  
INSOLVENCY AND BANKRUPTCY  
CODE, 2016.

**In the matter of:**

**M/s Urban Farmart India Private Limited**

CIN: U74999TG2021PTC147740

Flat No.501, 5<sup>th</sup> Floor, Plot No.13

Cyberheights Road No.2

Banjara Hills

Hyderabad – 500034

Telangana.

... **Petitioner  
Corporate Applicant**

**DATE OF ORDER: 05.11.2024**

**Coram:**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA  
HON'BLE MEMBER (JUDICIAL)**

**SHRI CHARAN SINGH,  
HON'BLE MEMBER (TECHNICAL)**

**Parties/Counsels present:**

For Corporate Applicant : Mr. Shaik Gouse, PCS

For others/ creditors :

Ms. M.V. Padmaja Kalyani, Advocate (for Heritage Foods Limited).

Ms. Sandhya Rani, Advocate (for Prabhu Enterprises).

Ms. R. Prem Raja Kumari, Advocate (for Creamline Dairy Products)



**PER BENCH**

**ORDER**

M/s Urban Farmart India Private Limited (hereinafter referred to as ‘Corporate Applicant’) has filed the present application under Section 10 of the Insolvency and Bankruptcy Code, 2016, through Shri Kamal Kishore Agarwal, Director, duly authorised by Board Resolution dated 13.08.2022 (ANNEXURE-10), with a prayer to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.

II. Vide MEMO dated 07.09.2022, the petitioner has produced certain documents in compliance of defects raised by the Registry. Copy of the defects raised by the Registry is at Annexure-1 (page 3) of the Memo. The



petitioner has cured the said defects by producing the following documents:

- (i) Form-B (Authorisation for Assignment/ AFA) dated 08.12.2021 (page 4, Annexure 2 of Memo dated 07.09.2022) issued by Institute of Insolvency Professionals in favour of Mr. Manjeet Bucha as a professional member of ICSI Institute of Insolvency Professionals with Professional Membership No.IP- 15011/1/2019-IBBI and registered with IBBI as Insolvency Professional with registration No.IBBI/ IPA-002/ IP-N00808/2019-2020/ 12551 under the IBC, 2016; and
- (ii) Certificate of Registration dated 24.05.2019 (page 5, Annexure-2 of MEMO dated 07.09.2022) issued by Deputy General Manager, IBBI.

Said documents are taken on record.



III. The Corporate Applicant is a Company incorporated on 14.01.2021 under the Companies Act, 2013 with CIN: CIN: U74999TG2021PTC147740, having its registered office at the address mentioned above. Authorized and paid-up share capital of the Company is Rs.15,00,000/-. Copy of Master Data of the Corporate Debtor as obtained from MCA web portal is at ANNEXURE-1.

IV. Averments made in the application by the Corporate Applicant are:

(i) The Corporate Debtor is registered as MSME. It has commenced commercial operations in 2021 and opened its first retail store on 13.02.2021 at Lanco Hills, Hyderabad and subsequently it has opened another 10 retail stores at different locations across Hyderabad. Copy of certificate



of registration of the Corporate Debtor as MSME is at ANNEXURE-2.

(ii) The Corporate Applicant states that it has also opened Distribution Centre at Kompally, Hyderabad to cater to the needs of 11 retail stores opened at different locations across Hyderabad. All such stores were obtained on lease basis from respective landlords. Copies of lease agreements of retail stores are at ANNEXURE-3.

(iii) The Corporate Applicant states that the Corporate Debtor procures fresh fruits and vegetables from farmers/traders on credit basis, process the same at distribution centre and sell the same to consumers at its retail stores. Lease agreement of Distribution Centre is at ANNEXURE-4.



(iv) Having opened retail stores on 13.02.2021, business has grown till May 2021, viz. during the first four months of operations.

(v) Corporate Debtor has obtained unsecured loans from directors amounting to Rs.2,75,63,680/- on 31.07.2022. Most of the said amount was utilised for capital expenditure for retail stores/ distribution centre; a meagre amount has been used for working capital purpose.

(vi) In May 2021, post second wave of COVID pandemic, slump in sales has started gradually across all the stores in Hyderabad; by the end of January 2022, post third wave of COVID pandemic the sales has come down drastically.

(vii) In May 2021, slowdown in sales led to continuous losses because of constant fixed operating expenses, which will not be sufficient to meet out of the



sale of product margins and lack of operating money available with the Corporate Debtor. The Corporate Debtor made all efforts to reduce fixed costs and tried to increase sales. However, the Corporate Debtor was not able to succeed due to huge competition in the retail business and for want of operating money.

(viii) Such continuous losses plunged the Corporate Debtor into default in payment to operational creditors amounting to:

- Rs.4,70,46,533 as on 31.03.2022
- Rs.5,33,49,831 as on 31.07.2022.

List of Operational Creditors as on 31.07.2022 is at ANNEXURE-5. This list also shows the amount of debt and the dates on which the operational debt was incurred.

(ix) The Corporate Debtor has committed default against unsecured Financial Creditors amounting to:



- Rs.2,55,23,680 as on 31.03.2022
- Rs.2,75,63,680 as on 31.07.2022.

List of Unsecured Financial Creditors as on 31.07.2022 is at ANNEXURE-6. This list also shows the amount of debt and the dates on which the financial debt was incurred.

(x) The applicant submits that the Board of Directors in Meeting dated 11.08.2022 have unanimously passed Resolution recommending to put the Corporate Debtor into Corporate Insolvency Resolution Process. Copy of said Resolution dated 11.08.2022 is at ANNEXURE-7. Even shareholders of the Corporate Debtor in Annual General Meeting dated 13.08.2022 adopted special resolution by giving their consent unanimously for initiating CIRP against the Corporate Debtor under section 10 of the Insolvency & Bankruptcy Code, 2016, and also



authorising Manjeet Bucha to be IRP. Copy of Special Resolution dated 13.08.2022 of the Shareholders along with Notice of AGM is at ANNEXURE-8. Copy of Consent (Form-2) dated 12.08.2022 given by Shri Manjeet Bucha to be IRP is at ANNEXURE-9. Ironically consent is preceded by Resolution by one day.

(xi) Particulars of total unpaid financial debt and operational debt and date of default are mentioned by the Corporate Applicant in Part-III of the application, which are reproduced below:

“PART- III

PARTICULARS OF FINANCIAL/ OPERATIONAL DEBT ( Creditor wise as applicable)		
1	Name(s) of Financial Creditor(s)/	A. Financial Creditors: Secured Creditors- NIL Unsecured Creditors – List of Financial Creditors is available in Annexure 6



		B. Operational Creditors: List of Operational Creditors is available in Annexure 5
2	Addresses of correspondence of the Financial/ Operational Creditors	Lists of addresses of Financial Creditors and Operational Creditors are given in Annexure 6 and Annexure 5 respectively
3	Total Debt raised and amount in Default	<p><u>Total Debt raised:</u> The Corporate Debtor availed Unsecured Loan from Related Parties / Creditors for an amount of Rs 2,75,63,680/- (Two Crores Seventy Five Lakhs Sixty Three Thousand Six Hundred and Eighty Only) as on 31 July 2022, and The Corporate Debtor availed Operational Debts from Operational Creditors for an amount of Rs. 5,33,49,831/- (Rupees Five Crores Thirty Three Lakhs Forty Nine Thousand Eight Hundred and Thirty One Only) as on 31 July 2022.</p> <p><u>Amount of Default:</u> The Total Amount of Default by the Corporate Debtor is Rs.8,47,42,875/- (Eight Crores Forty Seven Lakhs Forty Two Thousand Eight Hundred and Seventy Five Only) as on 31 July 2022.</p>
4	Date when the Financial/ Operational Debt was incurred	Details of the dates, on which the Financial and Operational debts were incurred, are given in Annexure 6 and Annexure 5 respectively
5	Particulars of security held, the date of its creation, its estimated value as per the creditor. Attach a copy of the Certificate of Registration of Charge issued by the Registrar of	Not Applicable



	Companies (if the Corporate Debtor is a Company)	
6	Details of retentions of title arrangements (if any) in respect of goods to which the operational debt refers.	Not Applicable
7	Record of default with the information utility, if any.	NIL
8	List of documents attached to this application in order to prove the existence of financial debt/ Operational debt and the amount in default	<ol style="list-style-type: none"><li>1. The copy of Independent Auditor's report i.e., Audited Financial Statements of the Corporate Debtor for the Financial Year 2020-21 is enclosed as Annexure 12.</li><li>2. Provisional Balance Sheet of Corporate Debtors as on 31 July 2022 is enclosed as Annexure 13</li><li>3. Bank Statement of the Corporate Debtor from 01 April 2022 to till the date of filing Application is enclosed as Annexure-14</li><li>4. Notices issued by Operational Creditors (Mail Correspondence received from creditors demanding the payment) are enclosed as Annexure-15</li><li>5. PAN and Income Tax Filings of petitioner for the FY 2020-21 are enclosed as Annexure-16</li></ol>

(xii) In order to prove the financial debt/ operational debt and the amount in default the petitioner has enclosed the following documents:



<b>Document</b>	<b>Annexure</b>
	<b>Page</b>
Independent Auditor's Report dated 11.08.2022 (Balance Sheet as on 31.03.2022)	12
	160-202
Provisional Balance Sheet as on 31.07.2022	13
	203-215
Bank Statement of the Corporate Debtor from 01.04.2022 till the date of filing of application.	14
	216-456
Notices issued by the Operational Creditors (e-mail correspondence from creditors demanding payment).	15
	457-464
Copy of PAN Card and Income Tax Return for the Assessment Year 2020-21.	16
	467-468

V. WRITTEN SUBMISSIONS dated 28.04.2023 is filed by the petitioner/ Corporate Applicant contending that:

(i) The Corporate Debtor was engaged in the business of buying and selling farm-based products, such as, fruits and dairy products in wholesale as well as retail. MSME Registration Certificate dated 08.07.2021 issued by



Ministry of Micro, Small and Medium Enterprises is at page 17 (Volume-I, page 17) of the petition.

The amounts borrowed by way of loans and default thereof as mentioned in paras 2 to 4 are already mentioned in Part-III of the petition. Other averments too have also been mentioned in the main Company Petition.

**VI. OBJECTIONS/ COUNTER DATED 28.06.2023  
FILED BY OPERATIONAL CREDITOR/  
HERITAGE FOODS LTD.**

The contentions are summarized below:

- (i) The deponent contending that the facts as narrated in the Company Petition are not exhaustive, has furnished the facts in the following manner:
- (ii) Urban Farmart India Pvt Ltd had approached Heritage Foods Limited and placed orders for supply of milk, milk



products vide various Purchase Orders with the Operational Creditor/ deponent herein. Such products were delivered to the Corporate Debtor on different dates. Invoices raised by the Operational Creditor. Copy of ledger statement is at ANNEXURE-A/1 of this Counter. Out of the amount of said invoices the Corporate Debtor has failed to pay an amount of Rs.17,92,943/-. Communication sent by the answering respondent to the petitioner through e-mail dated 30.12.2021 is at ANNEXURE A/2 of this Counter.

(iii) The Operational Creditor had sent letter dated 10.11.2022 by Registered Post to Directors of the petitioner asking for clearance of outstanding amount. The Corporate Debtor responded saying that they are in financial crisis and would not be able to pay. Consequently



the Corporate Debtor has filed the present petition under section 10 of the Insolvency & Bankruptcy Code, 2016.

(iv) The answering respondent has challenged the Company Petition on the following grounds:

**GROUND (A)**

The Corporate Debtor / company was incorporated on 14.01.2021 by five promoter-directors. Its Annual General Meeting was held on 13.08.2022 for FY ended on 31.03.2022. Revenue of the Corporate Debtor as on 31.03.2021 was Rs.1.16 crores and it had purchased stock worth of rs.14.81 crores during 2021-22. Extract of Statement of Profit and Loss for FY ended on 31.03.2021 and 31.03.2022 are at ANNEXURE A/3 of this Counter.

**GROUND (B):**



It is stated by the answering respondent that the Directors have admitted in the Board's Report as on 31.03.2021 that the company has made remarkable turnover in the first year of inception and the Directors are optimistic about company's business and hopeful of good performance and revenues in the next year. However, the net loss in the company is only due to heavy initial administrative and set up expenses.

**GROUND (C):**

This application is filed by the Corporate Debtor for initiation of CIRP under section 10 of IBC based on cash losses as reflected in the financials. However, the financials show growth in the company. Thus, this application is malicious intended to derive advantage of moratorium that may be imposed under IBC.



## GROUND (D)

The answering respondent submits that section 10 of IBC must be read with sections 65 and 66 of IBC. Said section reads that:

***“65. Fraudulent or malicious initiation of proceedings. –***

*(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.” 78 impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*

*(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.*

*(3) If any person initiates the pre-packaged insolvency resolution process— (a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or (b) with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.”*

***“66. Fraudulent trading or wrongful trading. - (1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.”***

(v) The answering respondent relied on the following decisions, however, without quoting the case number/



name of court or publisher's/ reporter's name, etc. Nor any copy of such decision is provided for our perusal and appreciation.

- (a) Hon'ble NCLAT in *Innoventive Industries Ltd v. ICICI Bank*, held that the NCLT has discretion to reject the debtor's application u/s 10 of IBC if the Corporate Debtor has made such application for CIRP with malicious intent.
  
- (b) In *Unigreen Global Pvt Ltd. v. Punjab National Bank & others, Company Appeal (AT) (Insolvency) No.81 of 2017*, judgement dated 01.12.2017 rendered by the Hon'ble NCLAT, New Delhi, it was held that if the Corporate Debtor does not disclose all the facts including facts in relation to the debts owed by it to its creditors and were trying to misuse the provisions of IBC for only taking benefit of moratorium on actions against the Corporate Debtor and its creditors, the application for CIRP would be rejected.



(c) In Leo Duct Engineers and Consultants Ltd., NCLT, Mumbai held that for admission of CIRP by corporate applicant including Corporate Debtor under section 10, the Adjudicating Authority has to consider merits of each case and to see beyond what meets the eye.

VII. REJOINDER DATED 29.09.2023 filed by the petitioner in response to Counter dated 28.06.2023 filed by Heritage Foods Ltd.

Para 3 of Counter:

In due course of business an amount of Rs.17,93,943 has remained outstanding from December 2021. Despite reminders the Corporate Debtor failed and neglected to pay. Relevant e-mail is at ANNEXURE-2 of this Counter.

Response given by the Corporate Applicant:

As the Corporate Debtor was not in a position to clear the dues of Rs.17,93,943, the said amount remained



outstanding. There was no negligence on the part of Corporate Debtor, but it was inability to pay.

Paras 7 and 8 of the Counter:

Revenue of Corporate Debtor as on 31.03.2021 was Rs.1.16 crores and as on 31.03.2022 was Rs.16.67 crores. Stock purchased during 2021-22 by the Corporate Debtor was worth Rs.14.81 crores. It signifies good business done by the Corporate Debtor. Copy of Profit and loss is at ANNEXURE-3 of the Counter. The Directors have admitted remarkable turnover in first year. However, net loss in the company is due to heavy initial administrative and set up expenses.

Response given by the Corporate Applicant:

On one hand the respondent contends that the Corporate Applicant is doing good business and on the other admits



that the Corporate Applicant incurred losses during two financial years. That implies that if the Corporate applicant continues another two financial years, losses would mount further. Therefore, the Board of Directors recommend to shareholders to pass resolution to initiate CIRP. The allegations levelled by the respondent are not supported by any evidence.

Para 9 of the Counter:

CD was incorporated on 14.01.2021. Within two years, the cd has decided to test its solvency by filing application under section 10 of the Insolvency & Bankruptcy Code, 2016.

Response given by the Corporate Applicant:

On occurrence of default this application is filed. No evidence is produced by the respondent to prove malicious intent on the part of the petitioner.



Para 10 of the Counter:

The operational creditor relied on three decisions in support of its allegations of malicious intent, misuse of provisions of law, etc.

Response given by the Corporate Applicant:

Except merely quoting a few case laws, no evidence is submitted by the respondent in its Counter in support of the allegations. Ironically the petitioner itself has quoted decision in Go Airlines (India) Limited. The petitioner has quoted the same decision and reproduced certain paras therefrom in its Rejoinder filed in response to Counter filed by Prabhu Enterprises (another purported operational creditor). The same will be discussed in succeeding paras hereafter.



VIII. COUNTER DATED 07.08.2023 FILED BY OPERATIONAL CREDITOR/ PRABHU ENTERPRISES.

(i) Even Prabhu Enterprise, another purported creditor too followed the same rhetoric that the applicant is misusing section 10 of IBC. The Operational Creditor submitted that on 14.01.2021, the Corporate Applicant was incorporated. On 08.07.2021 it was recognized as MSME. On 29.11.2021 the Corporate Applicant had conducted AGM. It had filed Balance Sheet till 31.03.2021. The Corporate Applicant has commenced its business operations from July 2021.

(ii) For its business operations the Corporate Applicant had procured goods amounting to Rs.5.9 crores from Operational Creditor. However, it failed to file Annual Returns for FY 2021-22 and 2022-23 with RoC.



(iii) The Operational Creditor has referred to List of Operational Creditors which is produced at Annexure-5, page 49 of the Company Petition, wherein this Operational Creditor was placed at serial no.93 (page 144 of the Company Petition).

	<u>Rupees</u>
• Total amount payable to all the creditors ..	5,33,49,830.33
• Amount payable to this creditor ..	0,06,71,989.94

The Operational Creditor further says that –

- the Corporate Applicant has not filed Annual Returns for the FY 2021-22 and 2022-23 with the RoC or any other statutory body.
- the Corporate Applicant has not given any reason how it became insolvent.
- Corporate Applicant is not in a position to clear the amount due to its creditors.



- Financial Creditors are none other than the persons who passed Resolution to move the present petition.
  - Individual claim of each Operational Creditor is less than threshold limit of Rs.1 crore.
  
  - Corporate Applicant did not prove that the present petition is not filed in abuse of process of law and the same is filed within the approved legal parameters.
- (iv) The answering respondent states that Sachin Agarwal was director of the Corporate Applicant. He did not discharge his duties in the interest of the Corporate Applicant. Rather, he has joined another company carrying on business similar on the lines of Corporate Applicant, where said Sachin Agarwal received best achiever's award for 2021. Copy of the said award is at ANNEXURE-I of



this Counter. Even other directors of the Corporate Applicant followed path similar to that of Sachin Agarwal.

(v) The Corporate Applicant had received goods from this Operational Creditor till second quarter of 2022. The Corporate Applicant has filed provisional Balance Sheet as on 31<sup>st</sup> July 2022, which is enclosed as Annexure 13. The Operational Creditor submits that the said Balance Sheet is false and it does not correlate with the facts of the case. The Corporate Applicant confirmed vide e-mail dated 24.08.2022 (Annexure-II of this Counter) that it owes a sum of Rs.6,71,990.38 to this Operational Creditor.

IX. REJOINDER DATED 29.09.2023 filed by the petitioner in response to Counter DATED 07.08.2023 filed by Prabhu Enterprises giving parawise reply as under:

Para 1 of Counter:

Corporate Applicant is misusing provisions of IBC.



Response of the Corporate Applicant:

The application u/s 10 of IBC has made all the disclosures including the details of operational and financial creditors, amount payable to said creditors. Audited financial statements for the year ended on 31.03.2022 was furnished.

By way of this petition, the Corporate Applicant does not intend to defraud any of the creditors. The Corporate Applicant has not misused the provisions of IBC.

Directors being shareholders have lost their entire investment in the Corporate Applicant.

Para 2 of Counter:

Corporate Applicant failed to pay to creditors. Corporate Applicant failed to file Annual Returns.

Response by the Corporate Applicant:



Corporate Applicant has enclosed Audited Financial Statements for FY 2021-22 dated 11.08.2022 as Annexure-12, page 160 of the CP; and Financial Statement for FY 2021-22 has been filed with the MCA and the same is enclosed as Annexure-1, page 13 of this Rejoinder. Besides, Annual Financial Statements for FY 2021-22 in Form AoC-4 and MGT-7A were filed on 13.08.2022. Copy of e-filing acknowledgement of the same is at ANNEXURE-2 of this Rejoinder.

Para 3 of Counter:

Board of Directors have failed to perform their fiduciary duties in running the affairs of Corporate Application.

Annual Returns for FY 2021-22 is not filed with RoC.

Response by the Corporate Applicant:



Financial Statements were filed with RoC upto FY 2021-22. Copies of the same can be found with this application, which would reflect how the cd has become insolvent. The Corporate Applicant has disclosed in the application in respect of creditors to who the amount is due and payable and filed upto date audited financial statements. The allegation of the respondent that the Corporate Applicant has not filed Financial Statements is baseless. The Corporate Applicant has filed Financial Statements upto FY 2021-22. Filing of Financial Statement for FY 2022-23 is not yet due.

Para 4 of Counter:

Corporate Applicant shall prove beyond reasonable doubt that the subject relief of CIRP sought under the present petition is neither malicious nor fraudulent or filed the same to escape from subject prosecution u/s 66 of IBC.



Response by the Corporate Applicant:

Filing of this application is not an abuse of process of law. Onus lies on the respondent to prove that there is any malicious or fraudulent intent or wrongful or fraudulent trading, if any.

Para 5 of Counter:

Sachin Agarwal, Director has left the Corporate Applicant to its fate and joined as another organisation where he received Best Achiever's Award, 2021 (copy enclosed as Annexure-I of this Counter). Even other directors did the same.

Response by the Corporate Applicant:

Directors of Corporate applicant have discharged their duties under Companies Act, 2013, but the business of the



Corporate Applicant is not profitable one coupled with adverse market conditions.

Para of 6 Counter:

While purchasing goods from this Operational Creditor, at no point of time it was disclosed that the Corporate Applicant has sustained losses. Thus, the provisional Balance Sheet does not correlate with the facts of the case.

The Corporate Applicant confirmed vide e-mail dated 24.08.2022 (ANNEXURE-II) that the outstanding amount payable to Operational Creditor is Rs.6,71,990.38/-.

Response by the Corporate Applicant:

Losses sustained by the CD is evident not only from the provisional Financial Statements but also from Financial Statements filed with the RoC for earlier periods.

Para of 7 Counter:



Section 10 of IBC entitles only those Corporate Applicants to seek relief who come with clean hands. Any fraud in moving application u/s 10 of IBC will have adverse impact on all creditors.

Response by the Corporate Applicant:

The Corporate Applicant has not only defaulted on operational debt payable to operational creditors but also defaulted on financial debt due and payable to directors/ shareholders of the Corporate Applicant.

Para of 8 Counter:

Initiation of CIRP would cause irreparable loss and injury to Operational Creditors alone inasmuch as the Financial Creditors cited in the present petition are none other than the persons who passed resolution. Individual claim of



Operational Creditors is less than threshold limit of Rs.1 crore. Thus, remedy lies before civil court.

Response by the Corporate Applicant:

There is no ulterior motive on the part of the Corporate Applicant in moving this application. The petitioner relied on the following decisions:

- Order dated 10.05.2023 passed by the NCLT, New Delhi, Special Bench in Company Petition No. (IB)-264(PB)/2023 in Go Airlines (India) Limited, wherein it was held that:

*“43. We observe that Section 65 only uses the word “initiates”, and does not make any distinction like the stage of pre-admission or post admission of CIRP, and from the reading of Sub-section (1), it transpires that the provision is applicable not only on the date on which a financial creditor / operational creditor or corporate applicant, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process but certainly, not limited to and may extend to the period of Liquidation, as the case may be. Needless to say, that fraud vitiates all acts. There could be instances where the fraudulent act is detected much after the commencement of CIRP. If a narrow interpretation of Section 65 of IBC 2016 is taken i.e., limiting its applicability to the pre-admission stage, then Section 65 will have no relevance. Therefore, Section 65 of Company Petition No. (IB)-264/(PB)/2023 Go Airlines (India) Limited Page 32 | 37 IBC can be resorted by an aggrieved party at any stage, be it pre admission or post-admission. Accordingly, we conclude that there is no bar in*



*entertaining/considering/adjudicating a Section 65 Application after the initiation of the CIR Process.”*

- Order dated 01.12.2017 of Hon’ble NCLAT in M/s Unigreen global Pvt Ltd Vs. Punjab National Bank & others, Company Appeal (AT) (Insolvency) No.81 of 2017, wherein it was held that:

*“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 Comp. App. (AT) (Insolvency) No. 81/2017 2 1 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.”*

X. MEMO/ APPLICATION DATED 29.09.2023 FILED BY THE PETITIONER seeking condonation of delay occurred in filing Rejoinder in response to Counter dated 28.06.2023 filed by Heritage Foods Limited.

The applicant, by way of this Memo, seeks condonation of delay of about 11 days in filing rejoinders in response to Counters filed by two different creditors. It is explained



that the authorised representative of the petitioner in the present Company Petition was out of station in connection with illness of a family member.

XI. COUNTER/ OBJECTIONS dated 06.03.2024 filed by Operational Creditor/ Creamline Dairy Products Limited.

(i) One N. Sandeep Varma, Manager (Legal) duly authorized by Board Resolution dated 20.06.2023 (page 14 of this Counter) has filed this Counter on behalf of Creamline Dairy Products Limited, purported operational creditor.

(ii) This company was incorporated in 1986 and registered under the Companies Act, 1956. The Operational Creditor has elaborately discussed about the concept of Pre-packaged Insolvency Resolution Process (PPIRP) for Corporate Persons, classified as Micro, Small



and Medium Enterprises (MSMEs), which was introduced vide IBC (Amendment) Act, 2021 on 04.04.2021.

(iii) Contending that the cd ought to have initiated pre-packaged resolution process under section 54A of the I&B Code, 2016, which is more effective than the conventional process under section 10 of the I&B Code, 2016.

(iv) To drive home its contention the Operational Creditor relied on Report dated 31.10.2020 submitted by the Sub-Committee of Insolvency Law Committee to Ministry of Corporate Affairs and quoted the following paras of the Report.

Relevant part of Para 1.44 of the said Report reads as under:

*“1.44. .. .. The sub-committee took note of global literature and best practices followed in other countries, to better understand the kinds of challenges that have and may come up, in pre-packaged insolvency proceedings. It delineated the three principles that should guide the design of pre-pack framework. These are: (i) the basic structure of the Code should be retained; (ii) there should be no compromise of rights of any party; and (iii) the framework*



*should have adequate checks and balances to prevent any abuse. It identified three features, namely, creditor in control, moratorium during resolution and binding nature of an approved resolution plan, which could be considered as part of basic structure of the Code. It envisaged a pre-pack framework that provides a level playing field and does not disturb the balance of power too much to preserve the credit discipline that has been achieved with implementation of the Code in the last three years.”*

Relevant part of Para 2.14 of the said Report reads as under:

*“2.14. .. .. Since the process prior to commencement of formal proceeding is informal, pre-pack provides the stakeholders flexibility in working out a consensual, but efficient, strategy for effective resolution and value maximisation that may be difficult under the formal insolvency procedure. It takes less time because a substantial part of the proceedings is undertaken before the commencement of the formal proceeding by the court. The sub-committee took note of benefits of a typical pre-pack process.”*

Relevant part of Para 3.19 of the said Report reads as under:

*“3.19. .. .. the pre-pack framework in every other jurisdiction allows only the CD to initiate the process voluntarily and obtain consent of key stakeholders before approaching the Court. When it does so voluntarily with consent of stakeholders, the threat of losing company or the possibility of liquidation reduces considerably.”*

In view of the above the Operational Creditor laments as to why the cd has opted a cumbersome and time-consuming process when more effective process under



section 54A of the I&B Code is available. Section 54A(1) reads as below:

*“54A. Corporate debtors eligible for pre-packaged insolvency resolution process -- (1) An application for initiating pre-packaged insolvency resolution process may be made in respect of a corporate debtor classified as a micro, small or medium enterprise under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006.”*

(v) The Operational Creditor, therefore, submitted that in view of the above, the application under section 10 of the I&B Code, 2016 is liable to be rejected.

(vi) The Operational Creditor (Creamline Dairy Products Ltd) has made submissions on the points that the petitioner has no genuine intentions of business, has malicious intent of taking advantage of the moratorium, resignation of two directors of the petitioner/ company, Sachin Agarwal, Director, resigning from the petitioner/ company joining another company and winning Achiever’s Award there, etc, similar to the submissions made by other Operational



Creditor (Prabhu Enterprises). Those submissions are taken note of.

(vii) The Operational Creditor/ Creamline Dairy Products limited has relied on the following decisions:

- M/s Neesa Infrastructure Limited v. State Bank of India & others, Company Appeal (At) (Insolvency) No.946 of 2020, order dated 23.12.2020, delivered by the Hon'ble NCLAT, New Delhi, wherein it was observed:

*“19. .. .. It is also pertinent to note that if the company is really insolvent why it has not opted for winding up application. .. ..”*

- Innoventive Industries Ltd v. ICICI Bank, Company Appeal (AT) (Insolvency) No.1 and 2 of 2017, wherein it was observed that the NCLT has discretion to reject the debtor's application u/s 10 of Insolvency & Bankruptcy Code, 2016 on the ground that where



the debtor has made an application for CIRP with malicious intent to take advantage of the moratorium under the provisions of the Insolvency & Bankruptcy Code, 2016.

- Wave Megacity Centre Pvt Ltd v. Rakesh Taneja and others, Company Appeal (AT) (Insolvency) No.918 of 2022, order dated 05.01.2023, rendered by the Hon'ble NCLAT, New Delhi.

*“15. When finding recorded by the Adjudicating Authority is that Section 10 Application has been initiated fraudulently and maliciously, even if there is debt and default, the Adjudicating Authority is not obliged to admit Section 10 Application. Section 10 and Section 65, which are part of the same statutory scheme needs to be read together to give effect to the legislative scheme of the Code. In event CIRP is initiated by a corporate applicant fraudulently with malicious intent for any purpose other than the resolution of insolvency, holding it that it is obligatory for the Adjudicating Authority to admit Section 10 Application, will be contrary to the statutory scheme under Section 65. In event conditions under Section 65 are fulfilled, Section 10 Application can be rejected, even if debt and default is proved. Thus, Section 65 has to be read as enabling provision to reject an application even on proving of debt and default Section 10 Application is not to be obligatorily admitted. The present is a case where it has been held that Application under Section 10 has been maliciously and fraudulently initiated for the purpose other than for the resolution of insolvency.*

.. ..”



- Ramjas Foundation & another v. Union of India & others, (2010) 14 SCC 38, wherein the Hon'ble Apex

Court has observed that:

*“ .. .. The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the issue(s) arising in the case. .. .. ”*

(viii) The petitioner/ company having capital of Rs.15,00,000 and paid-up capital 15,00,000, in a span of about 18 months from inception accrues debt of Rs. 8,47,42,875. It is beyond imagination. This shows that the accounts showing losses are fabricated.

(ix) As regards revenue generated by the petitioner/ company by way of sale of goods, as averred at page 167 of the Company Petition:



- As on 31.03.2021 .. Rs.01,15,92,194
- As on 31.03.2022 .. Rs.16,67,52,095

The Operational Creditor submitted that how sale of goods increased from Rs.1 crore plus to Rs.16 crores plus and yet the company filed application for CIRP.

- Losses incurred and .. Rs.08,47,42,875  
default amounting to  
(Part-III, Column-3 of the application)

(x) The Operational Creditor has submitted that if the revenue as shown above is true then the petitioner could have paid debts. If the losses incurred are true, then the revenue figures are fabricated.

(xi) The Operational Creditor further submitted that dues to the unsecured financial creditors as per Annexure-6 (page no.147 of the petition) amount to Rs.2,75,63,680 as claimed by the cd. Unsecured financial creditors are none other than the directors of the cd, who are the shareholders in the cd. If the application is allowed, unsecured financial



creditors will be placed above operational creditors and operational creditors would be put loss. This shows mala fide intent of the cd in seeking CIRP process.

XII. WRITTEN SUBMISSIONS dated 18.10.2023 filed by the petitioner/ Corporate Applicant.

(i) These submissions are reiteration of what has been stated in the application and Rejoinders. However, some of the contentions are relooked as below:

(ii) If it is the contention of the Heritage Foods Limited (Operational Creditor) that the applicant/ Corporate Applicant is doing good business and earning revenues, then how losses are incurred. The petitioner/ Corporate Applicant submits that if the Corporate Applicant continues another two financial years in business it may incur further losses causing irreparable damage not only to



the existing shareholders but also to the stakeholders including the operational creditors and financial creditors.

(iii) Decisions in Go Airlines (India) Limited, order dated 10.05.2023 passed by the NCLT, New Delhi, Special Bench in Company Petition No. (IB)-264(PB)/2023 in Go Airlines (India) Limited, and Unigreen Global Pvt Ltd. v. Punjab National Bank & others, Company Appeal (AT) (Insolvency) No.81 of 2017, judgement dated 01.12.2017 rendered by the Hon'ble NCLAT, New Delhi, have already been discussed in the preceding paras.

XIII. WRITTEN SUBMISSIONS dated 20.12.2023 is filed by the Operational Creditor/ Heritage Foods.

Perused the same. It is reiteration of what has been submitted by the Operational Creditor in its Counter.



XIV. WRITTEN SUBMISSIONS dated 08.04.2024 is filed by the Operational Creditor/ Creamline Dairy Products Ltd. The same are perused.

It is found that the contents of this Written submission is reiteration of what has been submitted in Counter/ Objections dated 06.03.2024 filed by Operational Creditor/ Creamline Dairy Products Limited.

XV. On perusal of the application we find that there is no respondent impleaded in the petition, unlike petition under section 7 and 9 of the Insolvency & Bankruptcy Code, 2016, which are preferred against a specific corporate debtor. However, while hearing the case before admission, three operational creditors, namely, Heritage Foods Limited, Prabhu Enterprises and Creamline Dairy Products Ltd. have appeared before the Tribunal and opposed admission of this petition.



XVI. In light of the *contest* put forth as above, the following point emerges for consideration of this Tribunal:

**The Point.**

**Whether there is a debt and default of a sum of Rs.1 crore and above and does this application satisfy the requirements as laid down under section 10 of the Insolvency & Bankruptcy Code, 2016 for filing and admitting the application under section 10 of the I&B Code, 2016?**

XVII. We have heard Mr. Shaik Gouse, learned PCS for the Corporate Applicant; Ms. M.V. Padmaja Kalyani, learned advocate for Heritage Foods Limited, Ms. Sandhya Rani, learned advocate for Prabhu Enterprises, and Ms. R. Prem Raja Kumari, learned advocate for Creamline Dairy Products. Perused the record, written submissions and the case law.



## **The Point.**

**Whether there is a debt and default of a sum of Rs.1 crore and above and does this application satisfy the requirements as laid down under section 10 of the Insolvency & Bankruptcy Code, 2016 for filing and admitting the application under section 10 of the I&B Code, 2016?**

### *The submissions.*

XVIII. Mr. Shaik Gouse, learned PCS for the Corporate Applicant has submitted that the applicant is a registered MSME and is in the business of retail stores. Learned PCS for the Corporate Applicant further submitted that these stores were obtained on lease basis from the respective landlords for selling fresh fruits and vegetables. Learned PCS for the Corporate Applicant further submits that post second wave of COVID-2019 sales at the retail stores started declining and post third wave of COVID-2019, sales had come down drastically, which has resulted in



continuous losses to the Corporate Applicant because of constant fixed operating expenses. Learned PCS for the Corporate Applicant further submitted that such continuous losses compelled the Corporate Applicant into committing default of amounting to Rs.5,33,49,831 as on 31.07.2022 towards operational creditors. Learned PCS for the Corporate Applicant further submitted that the Corporate Applicant had also committed default against the unsecured creditors amounting to Rs.2,75,63,680/- as on 31.07.2022.

XIX. Learned PCS for the Corporate Applicant submitted that in view of the mounting losses, the Board of Directors in its meeting dated 11.08.2022 had unanimously passed resolution to put the Corporate Applicant into Corporate Insolvency Resolution Process. Further the shareholders of the Corporate Applicant have also adopted



a special resolution by giving their consent unanimously for initiating Corporate Insolvency Resolution Process against the Corporate Applicant under section 10 of the Insolvency & Bankruptcy Code, 2016 and authorising Mr. Manjeet Bucha as Insolvency Resolution Professional for the same.

XX. Learned PCS for the Corporate Applicant has replied the objections raised by M/s Heritage Foods Limited/ Operational Creditor and submitted that there was no negligence or malafide intention on the part of the Corporate Applicant and default occurred because of its inability to pay the debt. In response to the objections raised by M/s Prabhu Enterprises, learned PCS for the Corporate Applicant represented that it is true that the unsecured creditors are none other than the promoters of the Corporate Applicant , but the contention of the



Operational Creditor that unsecured creditors will be placed above the Operational Creditors in distribution of liquidation proceeds under section 53 of the Insolvency & Bankruptcy Code, 2016, is unfounded, as firstly the directors being related to the Corporate Applicant shall not be part of the CoC to be constituted after admission of the Corporate Applicant and only the Operational Creditors shall be part of the CoC and secondly all the directors have collectively waived their right to repayment of debt before payment to the Operational Creditors. Thus, the unsecured creditors will not be submitting claim against the company in Corporate Insolvency Resolution Process.

XXI. Learned PCS for the Corporate Applicant further submitted that the Corporate Applicant has made all the disclosures including the details of the Operational Creditors and financial creditors, audited financial



statement for the Financial Year ending on 31.03.2022 and the financial statement as on 31.07.2022. Learned PCS submitted that the Corporate Applicant did not intend to defraud any of the creditors and the Board of Directors being shareholders have also lost their entire investment in the corporate applicant.

XXII. Learned PCS for the Corporate Applicant further submitted that in view of the above facts the petition under section 10 of the Insolvency & Bankruptcy Code, 2016 may be allowed and Corporate Insolvency Resolution Process may be initiated against the Corporate Applicant.

#### SUBMISSION OF OPERATIONAL CREDITORS:

XXIII. Learned counsel for M/s Heritage Foods Limited/ Operational Creditor contended that in the first year of inception the company had remarkable turnover but



the company sustained losses because of heavy administration/ set up expenses for which the promoters are liable. Learned counsel for the Operational Creditor further submitted that section 10 of the Insolvency & Bankruptcy Code, 2016 must be read with sections 65 and 66 of the Insolvency & Bankruptcy Code, 2016. Therefore, before allowing admission of the Corporate Applicant into Corporate Insolvency Resolution Process, the Tribunal ought to examine fraudulent and malicious aspects of initiation of Corporate Insolvency Resolution Process. Learned counsel for the Operational Creditor relied on the following case laws:

- Unigreen Global Pvt Ltd. v. Punjab National Bank & others, Company Appeal (AT) (Insolvency) No.81 of 2017, judgement dated 01.12.2017 rendered by the Hon'ble NCLAT, New Delhi.



- Order of NCLT, Mumbai in Leo Duct Engineers and Consultants Ltd.

XXIV. Learned counsel for another Operational Creditor, namely, M/s Prabhu Enterprises submitted that the creditors in this case are none other than the promoters, who too passed resolutions to move the present petition. Learned counsel for the Operational Creditor further contended that individual claim of each Operational Creditor is lesser than the threshold limit of Rs.1 crore, hence this application cannot be admitted on this ground alone.

XXV. Learned counsel for another Operational Creditor, namely, M/s Creamline Dairy Products Limited contended that the Corporate Applicant could have initiated Corporate Insolvency Resolution Process under section



54A of the Insolvency & Bankruptcy Code, 2016, 2016, which is more effective than the process of section 10 of the Insolvency & Bankruptcy Code, 2016. Learned counsel for the Operational Creditor also referred to Report dated 31.10.2020 submitted by the Sub-Committee of Insolvency Law Committee to Ministry of Corporate Affairs in this respect. Learned counsel contended that in view of the above this application under section 10 of the IBC is liable to be rejected. Learned counsel for the Operational Creditor also contended that the unsecured creditors, who are none other than promoters will be placed above the Operational Creditor in settlement of claims under section 53 of the IBC and thus, it will be loss to the Operational Creditors.

**OUR OBSERVATIONS AND FINDINGS:**



XXVI. Before we proceed to decide the point, we feel it useful to refer to sections 10 and 11 of the Insolvency & Bankruptcy Code, 2016, which is reproduced below:

Section 10 of IBC:

*“Initiation of corporate insolvency resolution process by corporate applicant.*

*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-*

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

*(b) the information relating to the resolution proposed to be appointed as an interim resolution professional; and*

*(c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.*

*(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.*

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



## Section 11 of IBC:

*“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. Explanation 2 [I]. - For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor. 3 [Explanation II.- For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor.”*

XXVII. On perusal of section 10 of the Insolvency & Bankruptcy Code, 2016, we find that the first requirement is that there should be debt and default of a sum of Rs.1 crore and above for initiation of Corporate Insolvency Resolution Process under section 10 of the Insolvency & Bankruptcy Code, 2016.

XXVIII. When we examine this application on this issue of debt and default, we observe on perusal of audited financial statements of the Corporate Applicant as on



31.03.2022 and unaudited financial statement as on 31.07.2022, that financial statements are showing Operational Creditors of Rs.5,33,49,831 as on 31.07.2022.

The contention of corporate applicant is that it is not able to meet payment commitments to these operational creditors and thus it has defaulted in making payment amounting to Rs.5,33,49,831 towards these Operational Creditors. We have also perused e-mail correspondences exchanged between the Operational Creditors and directors of Corporate Applicant which is produced at pages 457 to 464 (Annexure-15) of the petition. This email correspondence between the parties clearly establishes that some of the operational creditors have demanded payment of their dues and Corporate Applicant has defaulted in payment of these operational debts. We further find that even the three operational creditors who are contesting this



case, have not refuted the submission of Corporate Applicant that it owes a sum of Rs 5,33,49,831 to the operational creditors and has defaulted in making payment to them. The only contention made by one of the operational creditors is that individual claim of each Operational Creditor is lesser than the threshold limit of Rs.1 crore, hence this application cannot be admitted. We are of the view that this condition of any creditor having a claim beyond threshold limit of Rs 1.00 crore is applicable for filing Section 7 and Section 9 applications by creditors but since this application is filed by the Corporate Debtor itself under Section 10, the debt owed by Corporate Debtor and default thereon should be more than the threshold limit of Rs.1 crore. Therefore, this contention of one of the Operational Creditors that since the debt of any individual Operational Creditor is not meeting the threshold



requirement of Rs.1 crore and above for filing this application under section 10 of the Insolvency & Bankruptcy Code, 2016, is not tenable, inasmuch as the amount of debt and default will be adjudged on the basis of debt and default committed by the corporate applicant and not the individual debt owed to creditors.

XXIX. We further find that though balance sheet of corporate debtor also shows an amount of Rs Rs.2,75,63,680 as on 31.07.2022 as unsecured creditors but we could neither find any document elaborating the terms of payment of these unsecured creditors, nor we could find any document evidencing demand for payment raised by these unsecured creditors on Corporate Applicant. In view of the same, we hold that though amount is owed to unsecured creditors as per balance sheet of corporate debtor but it cannot be considered as amount



in default or amount due for payment in the absence of any evidence or proof submitted to this Tribunal that it has fallen due for payment.

XXX. But, since the amount of operational debt alone is more than the threshold limit, we feel that the present application fulfils the condition of debt and default. Hence it cannot be dismissed on this ground.

XXXI. We have carefully perused the application and find that Corporate Applicant has furnished information as required to be furnished in compliance of sub-section (a), (b) and (c) of Section 10(3), Supra, of IBC, 2016. In view of the above, we find that application is complete and no disciplinary proceedings are pending against the proposed resolution professional, thus application in our view is in



compliance of Section 10(4)(a) , supra and can be admitted.

XXXII. We have perused the application and on the basis of information provided in the application, we hold that Corporate Applicant does not attract any provision of Section 11 of IBC, 2016, *Supra*, which disentitle it for making an application under Section 10 of the Insolvency & Bankruptcy Code, 2016

XXXIII. The other objection raised by the Operational Creditors is about fraudulent intent of the Corporate Applicant in initiating Corporate Insolvency Resolution Process under section 10 of the IBC. In order to examine this issue, we have perused the Balance Sheet of the Corporate Applicant and prima facie on the basis of the financial statements, certain queries were raised vide our



order dated 10.06.2024. The clarifications to these points were filed by the Corporate Applicant vide Memo dated 21.06.2024. The clarifications sought by the Tribunal and explanations given by Corporate Applicant through the above said memorandum are summarized as under:

**Clarification (1) asked for vide order dated 10.06.2024:**

In the year 2020-2021 the purchases from the Companies in which Directors are interested is Rs.28.03 Lacs and the payment due to these Companies was 14.57 lacs, whereas, in the year 2020-2021, the purchases from these companies went up to Rs.2.73 crores but amount due to these Companies came down to Rs.10.96 lacks. From the above, it appears that some preferential treatment was given to these companies by the corporate debtor while making the payments. Petitioner to submit clarification on the same.

**Clarification provided vide Memo dated 21.06.2024 :**



Purchases from the Companies in which directors are interested as under:

M/s Traditions Event Management and Marketing Pvt Ltd.  
M/s Urban Foodmart India Pvt Ltd.

The same were disclosed in the Financial Statements for FY 2021-22.

(Refer page no.175 and para no.18.2 under heading 'Related party Disclosures' of the application).

Sales were also made to these Companies from CD during the years 2020-21 and 2021-22.

Therefore, there was Barter System, where Corporate Applicant sent goods in exchange for the goods received from such creditors at an arm's length price. No cash or bank payment has been done with respect to such transactions and only goods have been transferred between these parties just like a proper barter exchange system. Any surplus or deficit in the process of such exchange has been adjusted accordingly in the books of accounts. So, no preferential treatment has been given to the companies in which the directors are interested.



Copies of relevant ledgers of Books of Accounts evidencing these transactions are at Annexure-1 of Memo dated 21.06.2024 (pages 5-47).

**Clarification (2) asked for vide order dated 10.06.2024:**

All un-secured loans on the balance sheet of Corporate Debtor are from Directors which will have priority over operational creditors under Section 53 of Insolvency & Bankruptcy Code, 2016. No details of Board Resolutions and minutes for raising these loans from Directors was submitted with the petition.

**Clarification provided vide Memo dated 21.06.2024 :**

All the directors of the company have agreed together to clear outside liabilities which include operational creditors keeping in view a humanitarian perspective that no outside party should suffer for receiving their payment. And so, all directors have collectively waived off their right to repayment of the loans before payment to the operational



creditors and this is the very reason, director loans were not repaid before operational creditors.

Directors being the related party to the Corporate Applicant, shall not form part of the CoC constituted after admission of the CP and only operational creditors shall be part of the CoC and any how the directors are not submitting their claims and they have waived off their claim against the company.

**Clarification (3) asked for vide order dated 10.06.2024:**

The petitioner is directed to submit age wise profile of operational creditors bucketing them into three buckets.

- a. Upto six months.
- b. More than six months upto one year.
- c. More than one year.

**Clarification provided vide Memo dated 21.06.2024 :**



Creditors ageing for 3 years of company's operation. (FY 2020-21. FY 2021-22, FY 2022-23) is enclosed at Annexure-2 of Memo dated 21.06.2024 (page 48 to 50).

XXXIV. On perusal of the above answers to the clarifications asked for by the Tribunal, we are satisfied on point no 2&3. Particularly on perusal of clarification on point no 2, we find that contention raised by the operational creditors, M/s Prabhu Enterprises, that unsecured creditors will be placed above the Operational Creditors in distribution of liquidation proceeds under section 53 of the Insolvency & Bankruptcy Code, 2016, is unfounded. But we find that clarification given on the first point regarding payment of outstanding dues to the Operational Creditors who are related parties, is not very convincing and needs further inquiry in the matter.



XXXV. However, after perusal of all the documents and facts before us, we are convinced that the application for initiation of Corporate Insolvency Resolution Process under section 10 of the Insolvency & Bankruptcy Code, 2016 does not amount to a fraudulent act and hence this application cannot be rejected on this ground. The Operational Creditors also could not place on record any such fact before us, which prima facie points out any fraudulent motive of the corporate applicant in initiation of Corporate Insolvency Resolution Process under section 10 of Insolvency & Bankruptcy Code, 2016.

XXXVI. Be as it may, but even if there is any ulterior motive on the part of the Corporate Applicant in moving this application which is not discernible at this stage, there is no bar in entertaining/considering/adjudicating a Section 65 Application after the initiation of the CIR Process as decided by NCLT, New Delhi, Special Bench in Company Petition No. (IB)-264(PB)/2023 in Go Airlines (India) Limited, wherein it was held that:



*“43. We observe that Section 65 only uses the word “initiates”, and does not make any distinction like the stage of pre-admission or post admission of CIRP, and from the reading of Sub-section (1), it transpires that the provision is applicable not only on the date on which a financial creditor / operational creditor or corporate applicant, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process but certainly, not limited to and may extend to the period of Liquidation, as the case may be. Needless to say, that fraud vitiates all acts. There could be instances where the fraudulent act is detected much after the commencement of CIRP. If a narrow interpretation of Section 65 of IBC 2016 is taken i.e., limiting its applicability to the pre-admission stage, then Section 65 will have no relevance. Therefore, Section 65 of Company Petition No. (IB)-264/(PB)/2023 Go Airlines (India) Limited Page 32 | 37 IBC can be resorted by an aggrieved party at any stage, be it pre admission or post-admission. Accordingly, we conclude that there is no bar in entertaining/considering/adjudicating a Section 65 Application after the initiation of the CIR Process.”*

XXXVII. In view of the above facts and considering the fact that the unpaid debt by the corporate applicant is above Rs.1 crore and default has been committed by the corporate applicant towards the same and the corporate applicant being not disqualified under section 11 of the Insolvency & Bankruptcy Code, 2016, we have no option but to admit this application filed under section 10 of the IBC.

XXXVIII. Accordingly, the Point is decided that there is a debt and default of a sum of Rs.1 crore and above and the application satisfy the requirements as laid down under section 10 & 11 of the Insolvency & Bankruptcy Code.



XXXIX. The application of the corporate applicant is admitted.

XXXX . Hence, the Adjudicating Authority admits this Petition under Section 10 of Insolvency & Bankruptcy Code, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:

- (a) The Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Applicant including execution of any judgment, decree or order in any court of law, Tribunal, arbitration panel or other authority; transferring , encumbering, alienating or disposing of by the Corporate Applicant any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Applicant in respect of its property including any action under Securitization and Reconstruction of Financial



Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Applicant;

- (b) That the supply of essential goods or services to the Corporate Applicant, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) That the order of moratorium shall have effect from the date of the Order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Applicant under Section 33, whichever is earlier.



- (e) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.
- (f) That this Bench hereby appoints Mr. Manjeet Bucha, *Insolvency Professional* having registration number IBBI/IPA-002/IP-N00808/2019-2020/12551 as Interim Resolution Professional to carry on the functions as mentioned under the Insolvency and Bankruptcy Code, 2016.

Learned Counsel has filed Memo dated 07.09.2022 enclosing therewith FORM-B dated 08.12.2021 and Certificate of Registration dated 24.05.2019 issued by IBBI in his favour.

- (g) Accordingly, this Petition is admitted.
- (h) Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate



Applicant herein on the MCA-21 site of Ministry of Corporate Affairs.

- (i) Accordingly, this petition is allowed and stands disposed of.

XXXXI. Since, the Tribunal is not satisfied with the explanation provided by the Corporate Applicant in respect of clarifications sought for by this Tribunal, we direct the IRP to examine avoidance of transactions in accordance with Chapter-III, if any and file application with this Adjudicating Authority in terms of section 24(2)(j) of Insolvency & Bankruptcy Code, 2016.

**SD**

**CHARAN SINGH**  
**MEMBER TECHNICAL**

**SD**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA**  
**MEMBER JUDICIAL**

*Karim*



*CP IB No.273/10/HDB/2022. Urban Farmart India Pvt Ltd. Order dated 05.11.2024*