

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III**

C.P. No. 3728/IB/2019

In the matter of an Application
under Section 10 of the Insolvency
and Bankruptcy Code, 2016.

In the matter of

Avestra Chemical India Pvt. Ltd.
611, Reliables Business Centre
Commercial Premises Co-Op. Soc.,
Anand Nagar, Jogeshwari (West),
Mumbai- 400 102.

... **Corporate Applicant**

Order delivered on 20th July, 2022

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Ms. Bency Ramakrishnan, Advocate

Per Shri H. V. Subba Rao, Member (Judicial)

ORDER

1. This Company Petition is filed by Avestra Chemical India Private Limited (hereinafter called "Corporate Applicant"), under Section 10 of 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.
2. The Corporate Applicant submits that its registered office is at 611, Reliable Business Centre Commercial Premises Co. op., Soc., Anand Nagar, Jogeshwari (West), Mumbai- 400 102 and the Company was

incorporated on 17th November, 2009 vide CIN U51900MH2009PTC197094 on the file of Registrar of Companies Maharashtra, having paid up share capital of Rs. 2,14,97,160/-.

3. The Corporate Applicant has submitted a copy of Special Resolution passed by the shareholders in their Meeting held on 16.08.2019 for initiating Corporate Insolvency Resolution Process u/s 10 of Insolvency & Bankruptcy Code. The Board of Directors of the Corporate Applicant in their meeting also authorised Mr. Satish Kumar, Director of the Company, to file necessary application under the Code.
4. The Corporate Applicant has disclosed that a sum of ₹ 28,00,36,513.69/- is due to Operational Creditors which is in default. Following are the list of Operational Creditors:

Sr. No.	Name of the Operational Creditor	Amount of debt (INR)
1	Indian Potash Ltd.	23,03,96,621.00
2	Lux Commodities Inc	73,75,998.76
3	Rumeco Ltd.	4,22,63,893.93
	Gross total due	28,00,36,513.69

5. The Corporate Applicant has enclosed the statement of affairs of the Corporate Applicant for the period ending 30.09.2019, Copies of the Audited financial statements for the financial year ending 31.03.2018 and 31st March, 2019, ledger account statements from April 2019 to October, 2019. The Corporate Applicant disclosed the names and addresses of the members of the Company with details of their shareholding of the Corporate Applicant. The Corporate Applicant submitted that there are no Financial Creditors and there are no debts receivable by the Corporate Applicant from persons connected with it.

6. This Application has been filed by the Corporate Applicant for initiation of Insolvency Resolution Process on the ground that the financial position as well the commercial capacity of the Corporate Applicant has been underprivileged due to past losses and negative cash flow for past several years. The audited financial Statements of the Corporate Applicant also indicate rising liabilities on account of its operations remaining nonfunctional.
7. The Corporate Applicant has attached list of documents to the Petition to prove the existence of the debt, which are as follows:
 - a. Copy of Statement of affairs as on 30th September, 2019.
 - b. Copies of Audited Financial Statement of Avestra Chemical India Pvt. Ltd. for the financial Year ending 31.03.2018 and for Financial year ending 31.03.2019.
 - c. Ledger Account statements of Avestra Chemicals India Pvt. Ltd. from April 2019 to October 2019.
 - d. Certified true copy of the Special Resolution Passed at the Extra Ordinary General Meeting held on 16.08.2019.
 - e. Affidavit of Mr. Satish Kumar.
8. This bench vide an order dated 17.03.2021 directed the Corporate Applicant to file a detailed affidavit of the Ex-promotor/ director undertaking to pay CIRP and Liquidation costs. Accordingly, the authorized signatory of the Corporate applicant Mr. Chryso Ioannou Panayi, Promotor/ Director has filed an Affidavit dated 22.09.2021 on 25.02.2022 before this tribunal, undertaking to bear the full CIRP as well as full liquidation costs, that may be incurred in conducting the CIRP and Liquidation process.
9. The Corporate Applicant has proposed Mr. Vimal Kumar Agrawal, having registration No. IBBI/IPA-001/IP-P00741/2017-18/11247,

having email: vimal@vpagrawal.in, as Interim Resolution Professional (IRP) to carry the functions as mentioned under the Code.

10. Section 10 of The Insolvency and Bankruptcy Code, 2016, that reads as here under prescribes the procedure for filing an application for 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 professional 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.]”

11. We have heard the arguments made on behalf of the Corporate Applicant and perused the petition and the affidavit and the supporting documents annexed to the petition. After hearing the submissions and upon perusing papers we are of the view that the petition filed by the Corporate Applicant is complete in all respects as required by law. It clearly shows that the Corporate Applicant is in default in repaying its outstanding dues to their creditors and there is no reason to deny admission of this petition. In view of this, the

Adjudicating Authority admits the petition and orders initiation of CIRP against the Corporate Applicant by passing the following:

ORDER

- a. The above Company Petition No. 3728 of 2019 filed by the Corporate Applicant under section 10 of the Insolvency and Bankruptcy Code, 2016, is hereby admitted for initiation of Corporate Insolvency Resolution Process (CIRP) in respect of Avestra Chemicals India Pvt. Ltd.

- b. That this 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 the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Applicant.

- c. 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.

- d. 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.

- e. That this Bench hereby appoints **Mr. Vimal Kumar Agrawal**, having registration No. IBBI/IPA-001/IP-P00741/2017-18/11247, having address at Office No. 11, Krishna Kunj Building, Above HDFE Bank, 150ft Road, Bhyander (W), Thane- 401101 and having e-mail: **vimal@vpagrawal.in** as Interim Resolution Professional to carry the functions as mentioned under the Code.
- f. The Corporate Applicant shall deposit an amount of Rs.10 Lakhs (ten) towards the initial CIRP cost by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee, till his fee is decided by COC.
- g. That the order of moratorium shall have effect from the date of pronouncement of this 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, as the case may be.
- h. The IRP/RP shall submit to this Adjudicating Authority periodical reports on a quarterly basis with regard to the progress of the CIRP in respect of the Corporate Debtor.

- i. That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of the Code.
- j. Accordingly, CP No. 3728 of 2019 is **admitted**.
- k. The Registry is hereby directed to communicate this order to the Corporate Applicant and the IRP immediately.

Sd/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-
H. V. SUBBA RAO
MEMBER (JUDICIAL)