

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – II, CHENNAI  
CP(IB)/84(CHE)/2021**

*(Filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 r/w  
Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating  
Authority) Rules, 2016)*

*In the matter of **JR Foods Limited***

**JR Foods Limited**

CIN NO.: L15142PY1993PLC000911

J K Towers,  
100 Feet Road,  
Pondicherry – 605 013.

*... Corporate Applicant*

*Order Pronounced on 11<sup>th</sup> February 2022*

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**JUSTICE (RETD) S.RAMATHILAGAM, MEMBER (JUDICIAL)  
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Corporate Applicant: Mr.A.S.Sathish Kumar, PCS  
For Respondent : Mr.R.Imayavaramban, Advocate*

**ORDER**

**Per: JUSTICE (RETD) S.RAMATHILAGAM, MEMBER (JUDICIAL)**

Under Consideration is an Insolvency & Bankruptcy Application filed u/s 10 of the Insolvency & Bankruptcy Code, 2016 ("the Code") by one **JR Foods Limited** (in short, "**the Corporate Applicant**") for initiation of Corporate Insolvency Resolution Process (CIRP) under Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, '**I&B Rules 2016**'), following a default in meeting the financial obligations to its Financial Creditors (Secured/Unsecured Creditors) and



Operational Creditors and other Creditors as shown in the Company Petition filed in Form-6.

2. From Part-I of the application, it is seen that the Corporate Applicant is a Private Limited company incorporated on 20.08.1993 bearing CIN: L15142PY1993PLC000911 and the Registered Office of the Corporate Applicant as per the application is stated to be situated at J K Towers, 100 Feet Road, Pondicherry – 605 013.

3. From Part-II of the application, it is seen that the Operational Creditor has proposed one Mr.B.Ramanakumar as the Interim Resolution Professional and has also filed his written consent in Form-2.

4. Part-III of the application, discloses the details of the total amount of default of Rs.53,38,06,704/- as on 02.01.2019. The list of documents to prove the existence of debt as follows:

a) Copy of certificate of modification of Charge in favour of Vijaya Bank (Now Bank of Baroda) dated 07.10.2018 for Rs.55.18 crore.

b) Copy of letter dated 30.03.2019 issued by Vijaya Bank, Pondicherry Branch intimating default of Rs.35,88,73,191.65/- under Section 13(2) of SARFAESI Act, 2002.

5. The Applicant has filed audited financial statements for the year ended 2019-2020 and audited provisional financial statements for the period 01.04.2020 to 31.01.2021 reflecting the default of payment to the Financial Creditor.

6. The Applicant Company has also placed, the special resolution passed by the Shareholders of the Corporate Applicant in the Extra-Ordinary General Meeting held on 03.12.2021 for initiating a Corporate Insolvency Resolution process under Section 10 of the Code.

7. The documents filed along with the typed-set of the document, more particularly the notice dated 30.03.2019 caused by the Vijaya Bank it is evident that the Corporate Debtor has committed default in repayment of the amount to the Vijaya Bank.

8. At this instance Learned Counsel appeared on behalf of the Vijaya Bank (Now Bank of Baroda) objected that the present application is filed only to side-step the process already initiated by the Bank of Baroda under the SARFASEI Act, 2002, which is at an advanced stage and further submitted that the Applicant herein had already filed Company Petition CP/989/(IB)/CB/2019 under Section 10 of IBC, 2016 and the same was dismissed by this Tribunal vide order dated 08.05.2020 and the Applicant herein had not yet challenged the above-said order before the Appellate



Tribunal instead filed this fresh application before this Tribunal and sought rejection of the Application

9. In reply, the Learned Authorised Representative for the Corporate Applicant submitted that the Corporate Applicant had not suppressed the facts about the earlier dismissal order of this Tribunal dated 08.05.2020 in IBA/989/2019 and the pending SARFASEI proceedings against the Corporate Applicant and it has been stated in the synopsis filed along with the application.

10. It was further submitted that the above-said dismissal order was communicated beyond 30 days from the date of pronouncement of the order and the Corporate Applicant was unable to prefer an appeal before the Appellate Tribunal and further argued that the pending SARFASEI proceedings would not prevent the Applicant to file the present application under Section 10 before this Tribunal. In support of his argument, he relied on decisions of the Hon'ble Appellate Tribunal in "**Leo Duct Engineers & Consultants Limited Vs. Canara Bank and Standard Chartered Bank**" and "**Unigreen Global Private Limited Vs. Punjab National Bank and others.**"

11. Having heard learned counsel for the parties, on a perusal of the documents placed on record, we see that order dated 08.05.2020 passed by this Tribunal in IBA/989/2019 was dismissed



on the technical ground that the material particulars were not disclosed in the application and same would not prevent the Corporate Applicant to file a fresh application under Section 10 of IBC, 2016.

12. Coming to the next argument that regarding the pending SARFAESI proceedings is an extraneous factor and not required to be considered with respect to the application filed under Section 10 of IBC, 2016. We may also refer to a decision of Hon'ble Appellate Tribunal in "**Unigreen Global Private Limited Vs. Punjab National Bank and others**" which is extracted hereunder

*"20. 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.*

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*25. Similarly, if any action has been taken by a 'Financial Creditor' under Section 13(4) of the SARFAESI Act, 2002 against the Corporate Debtor or a suit is pending against Corporate Debtor under Section 19 of DRT Act, 1993 before a Debt Recovery Tribunal or appeal pending before the Debt Recovery Appellate Tribunal cannot be a Company Appeal (AT) (Insolvency) No. 100 of 2017 7 ground to reject an application under Section 10, if the application is complete.*

*26. Any proceeding under Section 13(4) of the SARFAESI Act, 2002 or suit under Section 19 of the DRT Act, 1993 pending before Debt Recovery Tribunal or appeal pending before Debt Recovery Appellate Tribunal cannot proceed in view of the order of moratorium as may be passed.*

*27. It is also desirable to refer to Section 238 of the I & B Code, as quoted below:*

*"238. Provisions of this Code to override other laws - The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

*In view of the aforesaid provision also, I & B Code shall have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force including DRT Act, 1993; SARFAESI Act, 2002; money suit etc."*

13. Applying the aforesaid judgment to the facts of this case, we are of the view that this Company application is required to be admitted under Section 10 of the Code.

14. The Corporate Applicant has proposed the name of **Mr.B.Ramana Kumar having Registration No. IBBI/IPA-001/IP-P00657/2017-2018/11140 (Mob:9841113024) (e-mail: ramanakumar@ovopaxlegal.com)** as the Interim Resolution Professional (IRP) who has also filed his written consent in Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 which is placed at page 26 to 27 of the typed set filed along with the Application. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the





initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

15. As a consequence of the Application being admitted in terms of Section 10 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. *The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- b. *Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;*
- c. *Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- d. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.*

*Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;*

16. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

- (2) *The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*
- (2A) *Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.*
- (3) *The provisions of sub-section (1) shall not apply to*
- (a) *such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;*
  - (b) *a surety in a contract of guarantee to a corporate debtor.*

17. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference:

*(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:*

*Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.*

18. Based on the above terms, the Petition stands **admitted** in terms of Section 10 of the Code and the Moratorium shall come



into effect as of this date. A copy of the Order shall be communicated to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-  
**B. ANIL KUMAR**  
MEMBER (TECHNICAL)

-Sd-  
**Justice (Retd.) S. RAMATHILAGAM**  
MEMBER (JUDICIAL)

*Gopishankar D*