

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI
BENCH COURT I**

C.P. No. 1039/IBC/MB/2022

Under Section 10 of the Insolvency
and Bankruptcy Code, 2016.

In the matter of

**NORTH AMERICAN
MERCANTILE INDIA
PRIVATE LIMITED**

(CIN- U51505MH2002PTC134513)

Gala No.12, Jamnadas Industrial
Estate Opp.Jawahar Talkies,
Mulund-West ,Mumbai ,MH-
400080

.....Corporate Applicant

Order Pronounced on: 02.01.2024

Coram:

Hon'ble SH. Justice V.G Bisht, Member (Judicial)

Hon'ble SH. Prabhat Kumar, Member (Technical)

Appearances:

For the Applicant: Mr. Manoj Mishra , Advocate

Per: Hon'ble SH. Justice V.G Bisht, Member (Judicial)

ORDER

1. This Company petition is filed by *North American Mercantile India Private Limited* (hereinafter called “Corporate Applicant”) on 23.09.2022 seeking to initiate Corporate Insolvency Resolution Process. The said application is being preferred by the Corporate Applicant after its account was declared as Non-Performing Asset (NPA) and it is stated to be not in a position to repay the debts due to its creditors.
2. The Corporate Applicant failed to make payment of a sum of Rs. 9,59,52,261.25/- (Rupees Nine Crore Fifty-Nine Lakhs Fifty-Two Thousand Two Hundred Sixty One and Paise Twenty Five). The Account of the Applicant was declared Non-Performing Assets (NPA) on 09.12.2019. The Financial Debt was incurred on **07.08.2018**.
3. The Authorized Share Capital of Corporate Applicant is Rs. 10,00,000/- and paid up share capital is of Rs.10,00,000/-
4. The brief facts of the case are as follows: -
 - a. The Corporate Applicant was incorporated on 10.01.2002 and is primarily engaged in the business of Distribution of mobile devices and import of kitchen appliances and cookware. Subsequent to its incorporation, the Corporate Applicant entered into term loan agreement dated

07.08.2018 with Abhyudaya Co-Operative Bank Ltd. (herein after referred to as Bank) for an amount of Rs. 9,50,00,000/- along with 11.50% of interest fixed for one-year upto 31.07.2019. The Corporate Applicant and Bank executed an agreement on the same day as term loan agreement.

b. The Abhyudaya Co-Operative Bank Ltd. made further enhancement to the credit facilities, increasing the granted amount to Rs. 9,50,00,000 at an annual interest rate of 13%. This modification was documented in the sanction letter dated November 30, 2019. Subsequently, this loan was assigned by Abhyudaya Co-Operative Bank Ltd. to M/s ASREC (India) Limited, who has also filed a separate Company Petition C.P. (IB)/29(MB)2023 under Section 7 of the Code and this was reserved for Orders by this bench on 13.09.2023. Accordingly, the order in this petition shall also deal with Company Petition C.P. (IB)/29(MB)2023 and dispose of both the matters.

c. Details of the Corporate Debtor as per the Notification under section 55(2) of the code:

- Assets -Non-Current Assets total sum of Rs.31,99,284.95
- Current Assets total sum of Rs.7,52,56,929.13

d. Equity and Liabilities includes:

- Shareholder's Fund total sum of Rs.7,84,86,732.75.
- Non Current Liabilities total sum of Rs. 15,43,40,317.96

- Current Liabilities total sum of Rs.7,52,56,929.13
- e. The learned court of the Addl. Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai vide order dated 26.07.2022 has allowed the Financial Creditor to take possession of the secured assets of the Applicant.
- f. It is pertinent to mention here that the business operations of the Corporate Applicant have ceased since December 2019. The financial condition of the Corporate Applicant distinctly reflects the financial challenges it is currently facing. Despite its genuine intentions and earnest efforts to settle outstanding debts, the Applicant continues to grapple with its obligation to meet financial liabilities.
- g. On February 25, 2020, the Financial Creditor issued a Demand Notice pursuant to Section 13(2) of the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act). The notice was directed the Corporate Applicant, urging them to repay the loan amount that had been extended to them.
- h. On 24.02.2021 one of the Financial Creditor ASREC(India)Limited issued a Possession Notice under Section 13(4) of the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act), calling upon the Applicant to repay the total outstanding of Rs.9,55,69,330.25 as on 31.01.2020 together with interest.

- i. In the light of the above stated facts and circumstances, the Corporate Applicant being left with no other option is compelled to file the present application desirous of being free from its liabilities and pay off the debts owed to various creditors. The present application is being filed after the due approval of its shareholders by way of special resolution dated 19.08.2022 for initiation of Corporate Insolvency Resolution Process under Section 10 of the Code.
5. On the listing date i.e. on 08.08.2023, the Bench directed the Corporate Applicant to issue notice to the creditors and the matter was posted on 18.09.2023.
6. The Corporate Applicant has enclosed a copy of Special Resolution passed by the shareholder of the company in their Extra-Ordinary General Meeting held on 19.08.2022 for initiating Corporate Insolvency Resolution Process u/s 10 of Insolvency & Bankruptcy Code. The Board of Directors of the Corporate Applicant in their Extra ordinary General meeting held on 20.09.2022 authorized Mr. Ravi Kishinchand Matta, Director of the Company to file necessary application under the Code.
7. Owing to defaults by the Corporate Applicant in making payment under the facilities extended by the bank, demand notice was issued by the bank to the Corporate Applicant informing the default/irregularity in cash credit account and also repayment of loan amount. The bank issued a notice to corporate applicant classifying the debt as Non-Performing Asset (NPA) in accordance with the

directive/guidelines relating to asset classification issued by Reserve Bank of India consequent to default committed by Corporate Applicant in repayment of principal and debt and interest. The Corporate Applicant has enclosed the Demand Notice dated 25.02.2020 intimating the default issued by the bank. The corporate applicant also enclosed the statement of account for the above said loans.

8. Further, the Corporate Applicant has also enclosed the audited report for the years 2021-2022. The Corporate Applicant also enclosed the financial statement for the period for the year ending 2021, list of financial creditors (secured/unsecured), list of properties given as security for the loans availed and extract of charges registered with the Registrar of Companies taken from MCA portal. The Corporate Applicant disclosed the names and addresses of the members of the Company with details of their shareholding, details of debt owed by or to the Corporate Applicant to or by persons connected with it and details of personal guarantors of the Corporate Applicant.

9. After hearing the submissions and upon perusing the supporting documents annexed with the Petition, this Bench is of the view that the Corporate Applicant has committed default and the Petition contains the particulars as required u/s 10 of the Code. Thus, the present Company Petition satisfies all the necessary legal requirements for admission. Accordingly, this is fit case for initiating the CIRP. The Corporate Applicant also suggested the name of **Mr. Udaykumar Bhaskar Bhat** as Interim Resolution

Profession along with his consent letter in Form II. However, we find that the Financial Creditor in C.P. (IB)/29(MB)2023 has proposed the name of **Kanak Jani** having registration no. IBBI/IPA-001/IP-P01757/2019-2020/12685. In view of this, , the Company Petition C.P.(IB)1039/MB/2022 is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) -1039/(MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Sai Youths Agroproducts Private Limited.
- b. This Bench hereby appoints **Kanak Jani** (kanakjani.associates@gmail.com) Insolvency Professional Registration No : IBBI/IPA-001/IP-P01757/2019-2020/12685 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Corporate Applicant shall deposit an amount of Rs. 2,00,000/- towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order for meeting the CIRP cost and IRP's fees till the first meeting of CoC and such expenses shall be subject to ratification. The IRP shall be paid a considerate remuneration of Rs. 1,50,000/- for his services rendered till conclusion of first CoC meeting.
- d. 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 Securitization 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.

- e. 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.
- f. 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.
- 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. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate applicant will vest in the IRP/RP. The suspended directors and employees of the corporate applicant shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Applicant. Accordingly, the Petition C.P.(IB)1039/MB/2022 is allowed. Consequently, the Petition no. C.P. (IB)/29(MB)2023 is rendered infructuous. The Registry is hereby directed to communicate this order to Corporate Applicant and IRP immediately.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

JUSTICE V.G BISHT
MEMBER (JUDICIAL)