

**In the National Company Law Tribunal
"Chandigarh Bench, Chandigarh"
(Exercising the powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) NO. 30/Chd/Pb/2017

In the matter of:

F.M. Hammerie Textiles Ltd.
Vardhman Park, 341K-1, Mundian Khurd,
PO Sahabana, Chandigarh Road,
Ludhiana-141123

...Corporate Applicant/Debtor

Order delivered on 27.06.2017.

Coram: HON'BLE MR.JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL).

**Application for initiating Corporate Insolvency Resolution
Process u/s 10,13 and 14 of the Insolvency and Bankruptcy
Code, 2016 read with Rule 7 of the Insolvency and
Bankruptcy (Application to Adjudicating Authority) Rules,
2016.**

For the petitioner/Corporate Applicant: Mr. G.P. Madaan and Mr. Ishaan
Madaan, Advocates.

Per: R.P.NAGRATH J. MEMBER (JUDICIAL) (Oral).

ORDER

This is an application filed by F.M. Hammerie Textiles Limited a
'Corporate Debtor' itself in Form 6 as prescribed by sub rule (1) of Rule 7 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016
(for brevity, 'the Rules') for initiating corporate insolvency resolution process.

This form is filed with the application under Sections 10, 13 and 14 of the

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Insolvency and Bankruptcy Code, 2016 (for brevity, 'the Code') at the instance of the 'Corporate Applicant'. The 'Corporate Debtor' also falls within the term "Corporate Applicant" as defined in sub-section (5) of Section 5 of 'the Code'.

2. It is represented by Mr. Madaan learned counsel for Applicant/corporate debtor that the Applicant Company was incorporated in the name and style of M/s Oswal F.M. Hammerle Textiles Limited on 12.01.2006 with the Registrar of Companies, Punjab, Himachal Pradesh and Chandigarh. Thereafter, the name of the applicant company was changed to F.M. Hammerle Textiles Limited on 15.09.2014. The certificate of incorporation along with the Memorandum & Articles of Association of the Applicant Company is part of Annexure-1. The Applicant Company has been allotted Corporate Identity Number (CIN- U17110PB2006PLC029518). The authorised share capital of the Company is ₹1,33,00,00,000 consisting of 11,80,00,000 equity shares of ₹10/- each and 15,00,000 6% Non- Cumulative Convertible Redeemable Preference Shares of ₹100 each. Its subscribed and paid up share capital is ₹1,23,86,75,000/- divided into 11,16,60,000 equity shares of ₹10 each and 12,20,750 6% Non- Cumulative Convertible Redeemable Preference Shares of ₹100 each. There are presently six Directors of the Applicant Company viz. Ashok Kumar Oswal, Manju Oswal, Josef Hahn, Ajay Chaudhary, Parvinder Singh and Jayant Kumar Goel, having separate DIN numbers. It is further represented that as per Annexure 17, there are in all 18 equity shareholders of the corporate debtor with major shareholding of M/s Vardhman Polytex Limited; M/s MUT Maschinen Umwelttechnik- transportanlagen-GmbH. Even M/s Ashok Kumar & HUF is having 3,80,000 equity shares and 10,00,000 equity

shares are held by Alfort Merchants (P) Ltd. Rest of the shareholders have only 1 equity share each. Apart from the equity shareholders, there are 4 shareholders having 6% Non-Cumulative Convertible Redeemable Preference Shares of ₹100 each. The total number of such preference shares are 12,20,750

3. Annexure 2 is the extract of Board of Directors Resolution dated 23.05.2017, authorising Mr. Ashok Kumar Oswal, Director Chairman and Managing Director; Mr. Parvinder Singh, Director; Mr. Sanjeev Sinha, Unit Head; Mr. Sushil Sharma, Authorised Signatory and Ms. Avnee, Company Secretary to file application under Section 10 of 'the Code' and Rules framed thereunder to initiate insolvency resolution process of the Company before the Tribunal. They have also been authorised to accept service of process under 'the Code' on behalf of the 'Corporate Debtor'. The application in Form No.6 is filed by the corporate debtor through Mr. Parvinder Singh, Director one of the Authorised signatory and the contents of the application are supported by the affidavit of aforesaid Parvinder Singh. At serial No. 7 of the application form the name and address of Mr. Parvinder Singh is given as the person authorised to accept service of process on behalf of the corporate debtor.

4. It is represented that the Applicant Company has the following financial creditors as on 17.05.2017 :-

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Sl. No.	Name of the Bank / Unsecured Creditors	Address	Total debt	Amount in default
SECURED CREDITORS				
1.	State Bank Of India	IFB, Golden Tower, Dholewal Chowk, Ludhiana	Debt raised as per sanction letter dt.18.03.2011. CC Limits: ₹7.50 crs. TL : ₹71 crs. NFB: ₹2 crs FITL: ₹5.96 crs New TL: ₹3 crs NFB: ₹1 cr Total ₹90.46 crs. Amount o/s as per books: ₹58.91 crs	₹58.91crs.
2.	State Bank Of Patiala	Commercial Branch, Aarti Complex, Ludhiana	Debt raised as per sanction letter dt.18.03.2011. CC Limits: ₹5 crs. TL : ₹49.33 crs. NFB: ₹1.33crs Total ₹55.66 crs. Amount o/s as per books : ₹42.96 crs.	₹42.96 crs.

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3.	State Bank Of Mysore	CAB, East Of Kailash, New Delhi	Debt raised as per sanction letter dt.18.03.2011. CC Limits: ₹2.50 crs. TL : ₹24.05 crs. FITL: ₹1.98 crs New Loan: ₹1 cr Total ₹29.53 crs. Amount o/s as per books : ₹21.28 crs.	₹21.28 crs
	TOTAL DEBT RAISED (FINANCIAL CREDITORS-SECURED)			₹175.65 crs.
	Principal outstanding as on 17.05.2017 towards financial debt			₹123.15 Crs.

It is also represented that State Bank of Mysore and State Bank of Patiala have amalgamated into State Bank of India vide notification no. GSR 158(E) GSR 159(E) dated 22.02.2017 as per Annexure 4 (colly). So the financial creditor would be State Bank of India with the same addresses as mentioned in three different columns as described above.

5. It is further represented that the corporate debtor has a total of 245 operational creditors of which 243 are vendors and suppliers to which the current outstanding owed (without interest) is ₹11,35,95,506/-, one electricity and water provider to whom ₹52,20,670/- is outstanding. List of operational creditors along with their addresses, the amounts due and certified copies of

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respective ledger accounts as on 17.05.2017 is annexed as Annexure-6 (colly). The total amount due to operational creditors as on 17.05.2017 is ₹11,88,16,176.

6. The applicant has also proposed the name of Interim Resolution Professional (IRP) as Mr. Mohan Lal Jain resident of House No. F-2/28, Sector 15, Rohini, Delhi- 110089, Mobile No. 9910332188/7042773564, email:jain_ml@yahoo.com having Registration No. IBBI/IPA-002/IPN-00006/2016-17/10006. Mr. Mohan Lal Jain has also filed written communication in Form 2 of the 'Rules' to act as Insolvency Resolution Professional, if an order admitting the application, is passed. He has also declared that he is eligible to be appointed as Resolution Professional in respect of 'Corporate Debtor' in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Mr. Mohan Lal Jain has also declared that no disciplinary proceedings are pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI. It is also declared that Mr. Mohan Lal Jain is not presently serving as Interim Resolution Professional/Resolution Professional/Liquidator in any proceedings. Mr. Mohan Lal Jain in his declaration has furnished complete information with regard to the paragraph (vi) of Form 2 to the effect that (a) he is eligible to be appointed as an Insolvency Resolution Professional of the applicant in terms of Regulation 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations 2016; (b) he is not a related party of the Applicant Company; and (c) he is not an employee or promotor or a partner etc. of the Applicant Company. He further undertakes to abide by the

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Code of Conduct set out by Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations 2016.

7. Learned counsel for the 'Applicant Company' stated that the applicant/corporate debtor has provided following securities to the financial creditors details of which are given in the tabulated form hereunder:-

S.no	Particulars	Nature of Charge	Details of Assets/securities
1.	Term Loans	1st charge	Entire fixed assets of the company including land, building, plant and machinery and other fixed assets.
		Equitable Mortgage of leasehold rights	Factory land measuring 1.64,000 sq mtrs (40 acres) bearing plot no.T-5+T-5/part1/situated at MITC Kagal Kolhapur.
		2nd charge	Current assets on pari-passu basis
2.	Working Capital	1st charge	Entire current assets of the company including raw material, consumable stores and spares, stock in progress, finishes goods, bills, book debts and receivables etc present and future on pari- passu basis
		2nd charge	Entire fixed assets both present and future on pari- passu basis
3.	Collateral	Equitable mortgage	Factory land and building of all units
			Residential flat situated at B 1/20, second floor, vasant vihar, New Delhi in the name of Mr. Ashok Oswal.
			Residential plot situated at South City Ludhiana in the name of Mrs. Rakhi Oswal.
4.	Pledging		51% of 11,16,60,000 equity shares i.e. 4,65,44,677 and 51% of 12,20,750 preference shares of the company i.e. 6,77,250.

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8. Apart from the above, corporate guarantee and personal guarantees were also given by four persons details of which are tabulated hereunder :-

Sr. No.	Name	Nature of guarantee	Address	Relation with the Company	Given in capacity of
1.	Mr. Ashok Oswal	Personal Guarantee		Director	Chairman & Managing Director
2.	Mr. Adish Oswal	Personal Guarantee		Shareholder	Son of CMD
3.	Mrs. Rakhi Oswal	Personal Guarantee		Shareholder	Daughter in law of CMD
4.	M/s Vardhman Polytex Limited	Corporate Guarantee	Vardhman Park, Chandigarh Road, Ludhiana	Holding Company	

9. When the matter was listed on 09.06.2017 the corporate debtor was directed to file fresh Form No.6 by removing the following defects:-

- (i) Fill serial No. 6 of Part-III of application in Form 6.
- (ii) Against serial No.5 of Part-III, the applicant is required to give particulars of the securities held, if any, the date of its creation and estimated value. Against this column the applicant has simply mentioned the amount and the date of creation without disclosing the particulars of the securities, more particularly, the details of immovable property or whether it was equitable mortgage by way of deposit of title deed and also the particulars of the sale deed and these details are required to be given against serial No.5, itself instead of making a reference elsewhere or stating that these are as per Annexures attached with the petition.

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(iii) Similar flaw has been noticed while giving particulars at serial No.8 of Part-III of application by similarly referring to the Annexures instead of giving detailed particulars.

10. Fresh Form 6 was filed in this regard on 15.06.2017 giving the required details along with additional affidavit of Mr. Sushil Sharma, authorised signatory. The additional documents with regard to personal guarantees (Annexure 25 (colly), corporate guarantee (Annexure 26 (colly), transaction statement of pledging of equity shares (Annexure 27), letter issued by applicant to State Bank of India regarding pledging of equity shares (Annexure 28(colly), Electricity Bill (Annexure 29) and Water Bill (Annexure 30) have also been filed. The matter was listed for the first time after the vacations on 27.06.2017.

11 The 'Corporate Debtor' has also attached the Certificate of charge issued by Registrar of Companies as a part of Annexure 7 (colly). As per this document the charge was created on 23.04.2013 in favour of State Bank of India; on 09.10.2013 in favour of State Bank of Patiala; on 18.03.2011 in favour of State Bank of Mysore. The documents of loan and securities are part of Annexure 7 (Colly).

12. I have heard the learned counsel for the applicant and perused the record of the case quite extensively.

13. The instant application has been filed in Form 6 in terms of Section 10 of 'the Code' by the 'Corporate Debtor'. Section 10 of 'the Code' is extracted hereunder:-

(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 the information relating to—*

(a) *Its books of account and such other documents relating to such period as may be specified; and*

(b) *the resolution professional proposed to be appointed as an interim resolution professional.*

(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; or*

(b) *reject the application, if it is incomplete.*

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.*

14. The above provision of 'the Code' discloses that the following procedures are required to be completed by a 'Corporate Debtor' for initiating the process of insolvency:

(i) Existence of a 'Corporate Debtor'

(ii) Such a 'Corporate Debtor' must have committed a default.

(iii) On the satisfaction of (i) and (ii) above, a "Corporate Applicant" may file an application for initiating Corporate Insolvency Resolution Process.

(iv) Such an application as contemplated in (iii) above shall be filed in such forms, containing such particulars and in such manner and accompanied with such fee as may be prescribed.

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- (v) Along with the application as in (iv) above, information relating to books of accounts and other documents relating to such period as may be specified.
- (vi) The Applicant to name the Resolution Professional proposed to be appointed as Interim Resolution Professional.

15. Section 10 of 'the Code' confers a discretion on this Tribunal to either admit or reject the application and in case of rejection, to give an opportunity to the applicant before such rejection, to rectify the defects within seven days from the date of receipt of such notice from the Adjudicating Authority. The term 'Corporate Debtor' has been defined under Section 3 (8) of Part-I of 'the Code' to mean a Corporate Person, who owes a debt to any person and 'default' is defined under Section 3 (12) of Part-I of 'the Code' to mean "non-payment of debt when whole or any part or instalment of the amount of debt has become payable and is not repaid by the debtor or the 'Corporate Debtor', as the case may be"

16. As provided in Rule 7 (1) of the Rules, the "Corporate Applicant" has to make an application under Section 10 of 'the Code' in Form 6 accompanied with documents and records required therein and as specified in IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Since I have already dealt in detail in the opening paragraphs supra of this order relating to information furnished, I am not repeating the same for sake of brevity, as the essential particulars as contemplated, have been provided by the Applicant.

17. Regarding the information relating to books of accounts, audited financial statements have been filed for years ending 31.03.2016 and

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31.03.2017 and unaudited provisional balance sheet as on 17.05.2017 is also attached. These are Annexures 12 (colly) and 13, respectively. All the statements are attested by authorised signatory of the "Corporate Applicant".

18. It is represented by the learned counsel for applicant/corporate debtor that as per financial statement, following is the status of the Applicant Company under different heads:-

Revenue	Amount in ₹.(In lakhs)
As on 17.05.2017	427.47
As on 31.03.2017	6785.52
As on 31.03.2016	8067.72
Accumulated Profit & Loss of the Corporate Debtor	Amount in ₹.(In lakhs)
As on 17.05.2017	-19208.25
As on 31.03.2017	-18811.87
As on 31.03.2016	-15452.51
Long Term Borrowings and other liabilities	Amount in ₹.
As on 17.05.2017	10879.75
As on 31.03.2017	10862.10
As on 31.03.2016	11180.63
Current Liabilities	Amount in ₹.
As on 17.05.2017	9649.29
As on 31.03.2017	7578.86
As on 31.03.2016	6196.60

19. The figures extracted above indicate the losses and fall in revenue. It seems that the applicant has fallen into debt trap and is competent to set in motion the insolvency resolution process as contemplated under 'the Code'. On the basis of the aforesaid statements the total debt raised by the 'Corporate Applicant' with regard to the financial and operational creditors is

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about ₹135.03 crores. The fact that the corporate debtor has committed default in payment of the debt would be apparent from the aforesaid figures. It is represented by the learned counsel for the applicant that the corporate debtor had made a reference to BIFR under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 ('SICA'). That reference was registered by BIFR as case No 91/2015 as evident from the letter dated 17.07.2015 (Annexure 10). The proceedings before the BIFR have however abated in view of the enforcement of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 with effect from 01.12.2016.

20. The petitioner also placed on record letter dated 02.06.2017 (Annexure-24 (colly) from State Bank of India intimating to the corporate debtor, that the account of applicant has been restructured four times including CDR restructuring. Every time, unfortunately, restructuring has failed. The bank thus intimated the corporate debtor for payment of the outstanding dues within 15 days' failing which the Bank would be forced to initiate legal action against the company and its promoters/guarantors for recovery of the dues. It was further stated that any action against the company shall have adverse impact on the account of the parent company.

21. In view of the aforesaid discussion, the instant petition deserves to be admitted. It is, however, observed that the Applicant Company save some sketchy particulars has not given any road map as to how it is going to keep itself afloat as a going concern. However, keeping in perspective the objects for which 'the Code' has been brought into force and to balance the interest of all stakeholders, I am satisfied that the instant application warrants to be admitted to prevent further erosion of capital and to safeguard the assets of the

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Applicant Company/Corporate Debtor. For the reasons aforementioned while admitting the application, I issue the following directions:-

(i) Appoint Mr. Mohan Lal Jain resident of House No.F-2/28 , Sector 15, Rohini, Delhi- 110089, Mobile No. 9910332188/ 7042773564 , email:jain_ml@yahoo.com, Registration No. IBBI/IPA-002/IPN-00006/2016-17/10006, a Registered Insolvency Professional (IRP) as the Interim Resolution Professional as contemplated under Section 16 of 'the Code' and his term of appointment shall be for a period of thirty days from the date of this order or as may be determined by the Committee of Creditors whichever is earlier;

(ii) In terms of Section 17 of 'the Code', from the date of his appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the 'Corporate Debtor' shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of 'the Code', including taking control and custody of the assets over which the 'Corporate Debtor' has ownership rights recorded in the balance sheet of the 'Corporate Debtor' etc. as provided in Section 18 (1) (f) of 'the Code'. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the 'Corporate Debtor' ;

(iii) The Interim Resolution Professional shall strictly act in accordance with 'the Code', all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standard of ethics and moral;



(iv) The Interim Resolution Professional shall endeavour to constitute the Committee of Creditors at the earliest but not later than three weeks from the date of this Order; and

(v) The 'Corporate Debtor', its properties, personnel and persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the 'Corporate Debtor' as a going concern and extend all cooperation in accessing books and records as well as assets of the 'Corporate Debtor'.

22. I further declare a moratorium in relation to the following matters as contemplated under Section 14 of 'the Code' as under:-

(a) The institution of suits or continuation of pending suits or proceedings against the 'Corporate Debtor' including execution of any judgement, decree or order in any Court of Law, Tribunal, Arbitration panel or other Authority;

(b) Transferring, encumbering, alienating or disposing of by the 'Corporate Debtor' any of its assets or any legal right or beneficial interest therein,

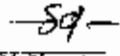
(c) Any action to foreclose, recover or enforce any security interest created by the 'Corporate Debtor' in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); and

(d) The recovery of any property by any owner or lessor or where such property is occupied by or in the possession of the 'Corporate Debtor'.

23. It is further directed that the supply of essential goods or services to the corporate debtor as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall not be terminated or suspended or interrupted during moratorium period.

24. The Interim Resolution Professional appointed by this Tribunal is also directed to cause a public announcement within 3 days from the date of this order as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of 'the Code' read with Section 15 calling for the submission of claims against the 'Corporate Debtor'. It is also directed that the Interim Resolution Professional shall positively file a report of events before this Tribunal every week in relation to the 'Corporate Debtor'.

25. Copy of this order be supplied to the Authorised Representative of applicant/corporate debtor immediately who shall deliver a copy instantly to the Interim Resolution Professional.



(Justice R.P. Nagrath)
Member (Judicial)
Adjudicating Authority

June 27, 2017.
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