

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

PRESENT: CHIEF JUSTICE M.M. KUMAR, HON'BLE PRESIDENT &

SHRI R. VARADHARAJAN, HON'BLE MEMBER (JUDICIAL)

COMPANY PETITION NO.IB-39 (PB)/ 2017

BETWEEN

UNIGREEN GLOBAL PRIVATE LIMITED,
Regd. Office : 467-468,
Katra Ishwar Bhavan, Khari Baoli,
Delhi – 110 006.

....APPLICANT COMPANY

Advocate for the Applicant

: Mr. Dhruv Gupta,
Mr. Sanskar Agarwal,
Ms. Shuchi Sejwar

ORDER

1. On 1.12.2016, the provisions of Insolvency & Bankruptcy Code, 2016 have been notified by the Central Government for the objects as can be gleaned from the statement of objects and reasons as given below :

"An act to consolidate and amend the laws relating to reorganization and in-solvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental

thereto".

2. A perusal of the above objects discloses that the provisions of IBC, 2016 has predominantly been brought into force for the re-organization and insolvency resolution of corporate persons and that too in a time bound manner for the maximization of value of assets of such persons to promote entrepreneurship and balance the interest of all stake holders involved in relation to the insolvent.

3. The scheme of the Act provides for triggering the insolvency resolution process of corporate persons under Chapter II of IBC,2016 by three categories of persons, namely,

- a) Financial creditor
- b) Operational creditor, and
- c) by the corporate debtor itself

The procedure in relation to the initiation of corporate insolvency resolution process by the corporate debtor is delineated under Section 10 of IBC, 2016 wherein the corporate debtor is required to furnish information in accordance with Form-6 of the Insolvency & Bankruptcy (Adjudicating Authority) Rules, 2016 (hereinafter referred as AA) Rules, 2016. Under Form-6, the corporate debtor is required to disclose as amongst others, the details of the corporate debtor including the date of incorporation as well as the details

of financial creditor and operational creditors to whom the corporate debtor owes money including their address for correspondence. It is also pertinent to note that in relation to the debts owed by the corporate debtor, corporate debtor is required to furnish the total amount of debt and the amount in default and also in particular as to when the financial or operational debt was incurred and the details of the security held, if any, by the creditors and its estimated value. The corporate debtor, in addition, is also required to furnish the documents evidencing the existence of financial/operational debt and the amount in default. All the above informations are required to be furnished before the Adjudicating Authority i.e. NCLT in order to provide sufficient background material to the Adjudicating Authority to initiate corporate insolvency resolution process by the corporate debtor itself. Since the corporate debtor itself is initiating the process of insolvency, it is incumbent on the corporate debtor to disclose all the above facts including in relation to the debts owed by it to its creditors as well as securities offered to the creditors as well as of assets of the corporate debtor. Since the process is self initiated in so far as the corporate debtor is concerned, all the disclosures must be true and correct and must not be made solely to scour for any concession it may get in the process, including moratorium, with a view to deny the recovery of bona fide and lawful debt owed to its creditors, including financial and operational.

4. The above paragraphs give the broad guidelines, as enunciated to the initiation of the Corporate Insolvency Resolution Process (CIRP) by the corporate debtor itself as in the instant case, where the petition has been filed by the corporate debtor itself.

5. Keeping in above the broad parameters in mind and looking at the petition as filed in Form-6 by the corporate debtor along with other documents, it is seen that the corporate debtor was incorporated on 13th June, 2008 as a Private Limited Company with the Registrar of Companies, N.C.T. Delhi & Haryana.

6. It is also further noticed that by virtue of Annexure-III, the details of the financial creditors and the operational creditors have been furnished which discloses the following to be the financial creditors to whom the company owes and the details of the said financial creditor are furnished hereinbelow along with the total debt raised and the amount in default as admitted by the corporate debtor itself.

List of Financial Creditors :

Name of the Financial Creditors	Address of the Financial Creditors	Total debt raised and amount in default (In Rs.)	Date when the financial debt was incurred
Punjab National Bank	Tolstoy House New Delhi	25,33,00,000.00+ 5,23,00,000.00+ 13,40,00,00.00+	19.09.2015

		6,56,,00,000.00= Total:54,76,79,460.00	
Oriental Bank of Commerce	M-1/2/3, Connaught Circus, New Delhi	9,15,39,596.94+ 1,67,73,666.00+ 1,70,00,000.39+ 4,79,99,725.92= Total: 17,68,76,921.01	10.06.2015
Corporation Bank	M 3-4, Shopping Centre, GK-I, New Delhi-110048	2,39,84,999.00+ 51,76,753.00+ 47,96,9852.00+ 1,63,29,704.00= Total : 5,32,16,457.00	11.06.2015
Vijaya Bank	N-17, Ground Floor, Barakhamba Road, New Delhi	11,49,70,876.08+ 0.00+ 2,04,81,758.00+ 4,23,76,051.00+ 31,66,658.00+ 88,35,022.00= Total : 18,98,30,365.08	10.06.2015

7. It is evident from the above details that the corporate debtor owes sum in excess of Rs.100 crores to the above said four financial creditors itself.

8. A perusal of Annexure-4 as filed along with the petition by the corporate debtor discloses the immoveable property securities held by these four financial creditors, the details of which are given hereunder :

- a. Single storied house at 83, Defence Enclave, Vivek Marg, Delhi-110092, measuring 242 sq. yards in the name of Directors (for brevity referred as 'Defence Enclave' property).
- b. Plot No.31, Nirman Vihar, Delhi-110092, measuring 360 sq. yards in the name of Ritu Garg. (for brevity referred as 'Nirman Vihar' property)





c. H.No.D-3A, Dayanand Block, Delhi-110092, Plot area 164.50 sq. yards in the name of Mr. Anurag Garg (for brevity referred as 'Dayanand Block' property).

d. Shop No.467-468, Ground and First floor, Katra Ishwar Bhavan, Khari Baoli, Delhi-110006, measuring 17 sq. mtrs on the ground floor and 13 sq. mtrs on the 1st floor (for brevity referred as 'Khari Baoli' property) .

9. In view of the heavy amounts involved and also taking into consideration various factors an opportunity was given to the financial creditors to whom the corporate debtor owes more than Rs. 100 crores. Accordingly, the petitioner was directed to serve a notice of the application as filed before this Tribunal to the above-mentioned financial creditors so that it can be ascertained if they have any objection in relation to the initiation of Corporate Insolvency Resolution Process (CIRP), as prayed for by the petitioner. After due notice of the application and service of the same on the above-mentioned financial creditors, objections have been received from the Bank, namely, Punjab National Bank as well as from Oriental Bank of Commerce in relation to the petition.

10. A perusal of the objections and upon hearing of the representations made by the Learned Counsel for Punjab National Bank demonstrated before us that the petitioners have not come with disclosure of full facts before this Tribunal as they have not furnished full particulars in relation to the assets mortgaged or the securities furnished to above financial creditors and the

legal web in which it has been entangled by the owners themselves of the above said properties who are none other than the directors of the petitioner and a case in point is that in relation to the Khari Baoli property.

11. In relation to the above property, it is the contention of the financial creditor, namely, Punjab National Bank that civil suits deliberately engineered and instigated with a view to remove the properties mortgaged from the accountability of the creditors the petitioner have kept pending the Civil Courts, the details of one such suit titled as "Mayank Maheshwari v. Anurag Garg, csdj/0000/947/2017" pending before the Learned Addl. District and Sessions Judge, Tis Hazari District Courts, Delhi. This suit has been filed seeking for a declaration and mandatory and permanent injunction against one of the Director of the Company, namely, Mr. Anurag Garg. Subsequent to the above suit, it is submitted by the Learned Counsel appearing for the Punjab National Bank that in collusion with the plaintiff in the above suit, the plaintiff in the above suit has filed a S.A. before DRT III alleging that two sale deeds dated 21.10.2016 with respect to basement and mazannine floor of the said property as well as two un-registered agreements to sell dated 01.9.2011 had been executed by the said Director in the capacity as owner of the property under Section 17 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) in diary

No.146/2017 /DRT-III, thereby seeking for recall of order dated 21.1.2017 wherein the Learned CMM, Tis Hazari Court, was pleased to pass an order dated 21.1.2017 in favour PNB in the case of Punjab National Bank vs. M/s. Unigreen Global Private Limited appointing a Court receiver to take the possession of the property and in pursuance to the said order, the financial creditor, namely, Punjab National Bank has also taken over the possession of the said property and in the circumstances, initiation of the CIRP is only an abuse of process of law, and hence, this petition as filed by the corporate debtor is liable to be dismissed in limini.

12. In addition to the above details which have not been fully disclosed in the petition, Learned Counsel also contends that in relation to the Defence Enclave property) of its objection statement, which property is also in the personal name of the Directors of the company, is also caught in the web of legal entanglement deliberately created by the directors of the petitioner in relation to the said property, as a civil suit again for permanent and mandatory injunction bearing No.9398/2016 , titled as Sh. Jagat Nath Mahto vs. Vedika Overseas Tradex (P) Ltd. & Ors. is pending consideration before the Learned ASCJ, Karkardooma Court, Delhi and that the next date of hearing is fixed for 12.5.2017 and incidentally, it is pointed by the Financial Creditor that the plaintiff in the above said suit allegedly also happens to be someone close

to the directors/promoters of the petitioner company, namely, a driver working in one of the sister concerns in which both Ms. Ritu Garg and Mr. Anurag Garg, being the Directors of the petitioner company are also involved. The claim of the said person who happens to be a driver as stated above is that he is occupying the said Defence Enclave property on tenancy and that he has also been paying rent in relation to the same and in the circumstances, his possession should not be disturbed except under due process of law. Learned Counsel for the Bank also points out that the above said suit came to be filed in collusion with the Directors of the applicant company on 10.5.2016 after the issue of notice under Section 13 (2) of the SARFAESI Act, 2002 by the bank to the corporate debtor and its Directors and guarantors.

13. A similar strategy in relation to the above Defence Enclave property too as was done as described in the earlier portion of the property at Khari Baoli in which the Bankers / Financial creditors had obtained the physical possession also seems to have been adopted, in the sense that the plaintiff in the above suit has also approached the D.R.T. in SA No.48 of 2017 under Section 17 of the SARFAESI Act, 2002 and it is submitted that the same is also pending consideration and posted for hearing on 01.5.2017. The Bank being the financial creditor also narrates a similar set of facts in relation to property, as detailed in 3 (c) of the objection statement, namely, House No.D-3A, Dayanand

Block, Delhi-110092 wherein it is alleged that the corporate debtor managed by its Director have not come with clean hands in the legal proceedings in which the property is entangled deliberately by the actions or at the instigation of the said Directors of the corporate debtor in order to have the properties removed from the clutches of law. The further submission of Punjab National bank , being the Lead Banker, in relation to the consortium of Banks and all of whom have made available finances detailed in the paragraphs above is that the directors of the Corporate debtor have manipulated the business of the company by dealing directly with the buyers, thereby, by-passing the objection of Bank and engaging in the trading of raw-material instead of regular process, which action on the part of the corporate debtor and the Directors of the company is a deliberate fraud and which made the accounts of Corporate debtor an NPA despite sanction by the Joint Lender Forum in relation to the approval and re-structuring of credit facilities vide another letter dated 31.3.2015. All the actions of the financial creditors, namely, Punjab National bank, according to its submission, has been made only in line with the RBI guidelines and the Corporate debtor has come to this sorry state of affairs only due to the deliberate actions of the Directors of the corporate debtor and the way in which the Directors have managed the company. This situation has not arisen out of the business cycle as contended by the Corporate debtor. It is

also averred by the objector Bank that the Corporate Debtor is under enquiry by Department of Revenue Intelligence (DRI).

14. From the above facts, it is averred by the Banks that it is clear that the Corporate debtor and directors also being guarantors are trying to avoid making lawful payments of the dues owed to the Bank and also thwarting the Bankers from realizing the securities by initiating several legal proceedings in different courts and Forums with the sole motive of removing their personal properties from the clutches of law and that the instant action before this Tribunal is yet another attempt in the same direction.

15. Learned Counsel for the corporate debtor was confronted with the above facts and also the statements on oath by way of an affidavit, made by both Mr. Anurag Garg and Ms. Ritu Garg, before this Tribunal in relation to their personal properties numbering in four as detailed in the earlier paragraphs and offering them unconditionally for liquidating the purpose of revival of the Corporate debtor despite the properties being embroiled in litigation. However, apart from pointing out certain instances of legal proceedings being disclosed in relation to Financial Creditors were not able to demonstrate that the petitioners have come clean in relation to the pertinent allegations made by the financial creditors, namely, Punjab National bank as





well as Oriental Bank of Commerce, who vehemently objects to the admission of the petition for CIRP.

16. We have considered the pleadings of the petitioner as well as the averments made by the financial creditors, to whom the notices were issued by this Tribunal and we find great merit in the objections as filed by the financial creditors. It is also pertinent to note that once the petition as titled by the Corporate Debtor is admitted, then following consequences by way of moratorium under Section 14 automatically arises, namely,

- a. institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 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 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 corporate debtor.

17. The admission goes without saying will have a serious impact in relation to the objectors, namely, the financial creditors as whatever action which has culminated into taking physical possession of the secured assets will be automatically 'stayed' for a period of atleast six months or even more depending upon the circumstances of the process and seems to be the motivation for the petitioner to approach this Tribunal under IBC, 2016 rather

than put into to effect the avowed objects for which IBC, 2016 has been enacted as given in the preface of this order. We cannot be a party to such mala fide actions on the part of the corporate debtor and this is a clear case of abuse of process of law which should be discouraged at the threshold.


18. Taking into consideration the above position and as the petitioners have not come with clean hands before this Tribunal in bringing out the necessary facts, we are constrained to dismiss this petition. With a view to discourage the parties from abusing the process of IBC, 2016 and this Tribunal, we deem it as a fit case to impose costs as contemplated under Section 65 of IBC, 2016.

Section-65 :

65.(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 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”.

19. Taking into consideration the above facts and the provisions of IBC, 2016, we impose a penalty of Rs.10,00,000/-(Rupees Ten Lacs) on the Corporate

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M/s. Unigreen Global Pvt. Ltd.

Surjit – 04.5.2017

Debtor and Mr. Anurag Garg and Ms. Ritu Garg who shall deposit the same either jointly or severally within a period of one month from the date of this order. The proceeds of the penalty imposed shall be shared equally by the Bankers with a view to defray their costs in defending their positions before this Tribunal. The Registry is directed to serve a copy of this order upon the concerned persons ~~and~~ as well as a copy to be dispatched to the four Bankers named in paragraph 6 of this order.

08.05.2017

Sd/-
(CHIEF JUSTICE M.M. KUMAR)
PRESIDENT

Sd/-
(R. VARADHARAJAN)
MEMBER (JUDICIAL)