



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **20.09.2024** THROUGH VIDEO CONFERENCE

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Application No : -
Petition No : CP(IB)/179(CHE)/2023
Name of Petitioner : Ugro Capital Ltd
& Vs
Name of Respondent : Right Health Platter Pvt Ltd
Section : 7 Rule 4 of IBC, 2016

ORDER

Present: Ms. Bharathi, Ld. Counsel for Petitioner.
Mr. Ashwin Raman, Ld. Counsel for Respondent.

Vide separate order pronounced in Open Court, the Petition is allowed. The Corporate Debtor viz., Right Health Platter Pvt Ltd is admitted into CIRP. Ms. Rongali Sridevi is appointed as IRP.

-sd-

**[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)**

MS

-sd-

**[SANJIV JAIN]
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP(IB)/179/(CHE)2023

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

In the matter of RIGHT HEALTH PLATTER PRIVATE LIMITED

UGRO CAPITAL LIMITED

Equinox Business Park,
Tower 3, 4th Floor,
LBS Road, Kurla (West),
Mumbai – 400 070

Also at;

No.34/70, 1st Floor,
Brindavan Street,
West Mambalam,
Chennai – 600 033

... Financial Creditor

-Vs-

RIGHT HEALTH PLATTER PRIVATE LIMITED

115/63, Dr Radhakrishnan Salai,
Brown Tree Shopping Centre,
Mylapore, Chennai – 600 004

...Corporate Debtor

Order Pronounced on 20th September, 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

<i>For Financial Creditor</i>	<i>: Ms.Barathi, Advocate</i>
	<i>Elayaraj Kumar, Advocate</i>
<i>For Corporate Debtor</i>	<i>: Pawan Jhabakh, Advocate</i>



ORDER

(Heard Through Hybrid Mode)

This Application has been filed by one **UGRO CAPITAL LIMITED** (hereinafter referred to as 'Financial Creditor') on 20.09.2023 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **RIGHT HEALTH PLATTER PRIVATE LIMITED** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. In Part-I of the Application, it is stated that the Financial Creditor is a Limited Company. The registered office address of the Financial Creditor is situated at Equinox Business Park, Tower 3, Fourth Floor, Off BKC, LBS Road, Kurla, Mumbai- 400 070.

3. Part II of the Application lays down the details of the Corporate Debtor. The Corporate Debtor is a Private limited company incorporated under the Companies Act, 2013 on 09.01.2020 with CIN:



U15134TN2020PTC133700. The registered office of the Corporate Debtor is situated at No.115/63, Dr. Radhakrishnan Salai, 3rd Floor, North Flat, Mylapore, Chennai – 600 004.

4. In Part-III of the Application, the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Rongali Sridevi, Reg. No. IBBI/IPA-003/IP-N00172/2018-19/12105.

5. In Part-IV of the Application, the Financial Creditor has claimed a debt amount of Rs.5,06,34,266/-(Rupees Five Crore Six Lakhs Thirty Four Thousand Two Hundred and Sixty Six Only) which is due and payable by the Corporate Debtor. The date of default as averred in Part-IV of the Application is 05.09.2023. Part V of the application describes the particulars of Financial Debt, documents and the list of documents between the Financial Creditor and the Corporate Debtor.

FACTUAL BACKGROUND OF THE CASE:

6. It is stated that the Corporate Debtor is engaged in the trading business of Food and Dairy Products with various suppliers including one Kamadhenu Beverages Private Limited (hereinafter referred to as the



"Principal") who supplies/sells goods and/or renders services, to various customers including the Borrowers from time to time and raises invoices containing particulars of goods supplied and amounts due under such Invoice(s) ("Invoice"), in accordance with the terms of agreement between the Principal and the Borrower.

7. It is stated that the Lender and the Principal have an arrangement, in terms of which the Principal has inter alia agreed to identify and recommend buyers from its network to the Lender, for the purpose of short term financing from the Lender. The Lender will, provide the credit facility to the Borrowers, which monies shall be considered as payment towards the supply of goods to the borrower.

8. It is stated that on 26.05.2023 the Corporate Debtor executed a Demand Promissory Note and Letter of Continuity in favour of the Applicant.

9. It is stated that the Financial Creditor and the Corporate Debtor entered into a Facility Agreement dated 27.05.2023 under which the Financial Creditor granted the credit facility to the tune of Rs.



5,00,00,000/-. The Corporate Debtor agreed to repay the relevant tranche of the Facility along with applicable interest, costs and charges to the Lender within the tenor of each tranche as per clause 5 of the Facility Agreement, read with Schedule II. The amount of Rs. 4,99,95,075/- was disbursed on 30.05.2023 in multiple tranches.

10. It is stated that, in contravention to the mutually agreed terms & conditions stipulated under the Facility Agreement dated 27.05.2023 executed between the Corporate Debtor and the Financial Creditor, the Corporate Debtor failed to make repayment of the Outstanding Amounts to the Financial Creditor despite repeated requests, reminders, demands and personal follow-ups by the officials of the Financial Creditor.

11. It is stated that Under Clause 10 'Events of Default and Consequences of the Facility Agreement', provides that if any one or more fails to comply, it would constitute the Corporate Debtor an "Event of Default".

12. It is stated that Under the Clause 5 of the Facility Agreement – 'Repayment Clause', Financial Creditor is entitled to declare the Loan,



interest accrued thereupon and other amounts payable under the agreement as immediately due and payable.

13. It is stated that accordingly, the Financial Creditor issued Loan Recall Notice dated 29.08.2023 seeking a repayment of Rs. 5,06,34,266/-.

14. It is stated that the outstanding amount being the amount in default is Rs.5,06,34,266/- (Rupees Five Crores Six Lakhs Thirty Four Thousand Two Hundred Sixty Six Only) as on 29.08.2023 plus further applicable interest from 29.08.2023 till actual date of payment as per the demand notice issued to the Personal Guarantor as well as the loan recall notice dated 29.08.2023 issued by the Applicant to the Personal Guarantor as well as the Corporate Debtor namely, Right Health Platter Private Limited and its other director, Mr. Murali Babu Y V.

COUNTER FILED BY THE RESPONDENT:

15. The Respondent has filed the counter. It is stated that Financial Creditor has relied on the documents which are unsigned by both the parties. The Sanction Letter dated 27.05.2023 and the Facility Agreement



dated 27.05.2023 are unsigned documents and therefore cannot be relied upon by the Financial Creditor in the present proceedings.

16. It is stated that the Financial Creditor has miserably failed to establish as to how the alleged financial debt satisfies the basic tenets of the code. It is stated that the alleged debt is not a Financial Debt for the purposes of the code and for this reason alone the proceedings initiated by the Financial Creditor should be dismissed.

17. It is stated that Financial Creditor has failed to plead in the present application as to how monies were received by the Corporate Debtor. It is stated that no monies were ever received from the Financial Creditor, therefore, it failed to satisfy the basic tenets of the definition of a "Financial Debt" provided under section 5 (8) of the Code. It is stated that the Sanction Letter filed by the Financial Creditor dated 27.05.2023 provides that the "disbursement has been made to suppliers" and not to the Corporate Debtor herein, therefore it fails to meet the basic yardstick of a "Financial Debt" under the provisions of the Code.



18. It is stated that the recitals of the Facility Agreement dated 27.05.2023 provide that the alleged payment made by the Financial Creditor "shall be considered as payment towards the purchase of goods from the principal". It is stated that from this very fact and document relied upon by the Financial Creditor, it is established that the alleged discharge of monies by the Financial Creditor is not a loan facility but ought to be considered as payment towards purchase of goods.

19. It is stated that the Financial Creditor has failed to file any of the invoices submitted by the Corporate Debtor. It is stated that the reason as to why no invoices were filed by the Financial Creditor is to camouflage the fact that the alleged distribution does not meet the threshold or qualifications of a "Financial Debt".

20. It is stated that without prejudice to the grounds stated above, "Part 4 of Form 1" filed by the Financial Creditor does not contain a single averment as to whether monies were disbursed to the Corporate Debtor. It is stated that the Financial Creditor has failed to describe the alleged nature of disbursement as provided in the Sanction Letter dated 27.05.2023 and the Facility Agreement dated 27.05.2023.



21. It is stated that proceedings filed by the Financial Creditor are with an erroneous date of default with no evidence or bank statements evidencing any disbursement to the Corporate Debtor. It is stated that the "Commercial Credit Information Report" filed by the Financial Creditor does not evidence a single default by the Corporate Debtor but refers to irrelevant documents. It is stated that the the Corporate Debtor could not have defaulted as alleged by the Financial Creditor as no monies were ever distributed or received by the Corporate Debtor.

REJOINDER FILED BY THE APPLICANT:

22. The Applicant has filed the rejoinder. It is stated that Applicant is a non-banking financial institution. The Corporate Debtor had approached it in the year 2023 seeking for Supply-Chain facility to the tune of Rs.5,00,00,000/-(Rupees Five Crores Only).

Supply chain facility:

Supply chain finance is a process of availing financial help from financing institutions when a business urgently needs funds to carry on its operations. This process is a part of trade finance which deals with providing funds to companies to fulfill their working capital requirements. Supply chain facility operates on the basis of invoices, wherein the financier used to fund based on the invoices submitted by the borrower or supplier.



23. It is stated that on considering the said request, the applicant sanctioned the same vide sanction letter dated 27.05.2023 to the tune of Rs. 5,00,00,000/- (Rupees Five Crore Only) which was digitally signed by both the parties and the same is enclosed herein as Annexure- A1. To secure the same, the corporate Debtor executed the Demand Promissory Note dated 26.05.2023 and also executed facility agreement dated 27.05.2023 which were digitally signed by the Corporate Debtor in favour of the Applicant, wherein the Corporate Debtor duly accepted the terms and condition of the sanction of the said facility. The copy of the digitally signed facility agreement is enclosed here as Annexure-2.

24. It is stated that the Applicant disbursed the funds based on the invoices submitted by the Corporate Debtor.

25. It is stated that the assertion made in paragraph no.1 that the respondent is an operational creditor, is incorrect. The Applicant specifically denies the allegations made in paragraph No.2 of the counter stating that this application is very well maintainable as the facility agreement dated 27.05.2023 has been executed by the corporate debtor and subsequently digitally signed by both the parties. By digitally



signing the agreement, the corporate debtor acknowledged and committed to abide by the terms and conditions in the agreement.

26. The Applicant denied the averments and allegations made in paragraph no.3 of the counter, and stated that it is clearly evident that the applicant is undoubtedly a financial creditor, as it has extended financial support to the corporate debtor amounting to sum of Rs.5,00,00,000/-. The sanction letter clearly identifies the loan as a short- term working capital loan, confirming the applicant's status as a "financial creditor" categorizing the debt as "financial debt".

27. The applicant also denied the allegations made in paragraph no. 7 of the counter and stated that, the application includes the details of the invoices submitted by the debtor at page no. 100B of the application, which is the Statement of Account of the Corporate Debtor and the same would sufficiently prove that disbursement had been made at the request and on behalf of the Corporate Debtor. The copy of the invoices submitted by the Corporate Debtor are also enclosed herein as Annexue-3.



28. It is stated that the respondent who is a defaulter has ventured upon to raise untenable allegations and averments in the above counter affidavit only with a malafide intention to defeat the rights of the applicant. It is the respondent who has approached this Tribunal with unclean hands with an ulterior motive to defeat the rights of the Applicant initiating the CIRP as against the Respondent.

FINDINGS OF THIS TRIBUNAL:

29. Heard the submissions made by the Learned Counsel for both the parties and perused the documents including the pleadings placed on record.

30. The contention of the Respondent is that the Sanction Letter dated 27.05.2023 and the Facility Agreement dated 27.05.2023 filed by the Financial Creditor are the unsinged Documents and therefore cannot be relied upon.

31. The Sanction Letter and Facility Agreement Annexed as Annexure A1 and Annexure A2 clearly evidence that the Corporate Debtor had digitally signed the agreement. The same is extracted hereunder:

**Sanction Letter**

Purchase Invoice Discounting Facility (Short-Term Working Capital Facility)

Date: 27-05-2023

Applicant / Borrower	Right Health Platter Private Limited 115/63, Dr Radhakrishnan Salai Brown Tree Shopping Centre, Mylapore, Chennai-600004 Tamilnadu
Name of Applicants	Murali Babu Y V 85/33, M.S.Naidu Street, Old Wahermenpet, Chennai, Tamil Nadu-600021
Name of Co- Applicants	Ramnath Arumugam 38/33, Flat No 2A, Shivalaya Apts, Sarangapani Street, T Nagar, Chennai, Tamil Nadu-600017

Dear Sir/Ma'am,

We thank you for applying for Purchase Invoice Discounting (Short-Term Working Capital) facility from UGRO Capital Limited ("UGRO"). Based on your loan application, we are pleased to inform you that a facility has been sanctioned to you in principle as per the terms and subject to conditions mentioned below:

Facility Type	Resident Indian- Purchase Invoice Discounting (Short-Term Working Capital Loan)
Sanctioned Amount	INR 5 Crore
Availability Period	12 Months
Tenor of each Facility	90 Days
Invoice validity	21 days from the date of invoice. Not more than 21 days old invoices shall be accepted for financing/ disbursements.
Interest Type	Fixed
Rate of interest	14.50 % p.a.
Processing Charges	1% of Limit Sanctioned + applicable Government taxes
Bouncing Charges	Rs. 750/-
Security Margin	NIL
Installment Amount (Bullet Payment)	Bullet Repayment of invoice on due date
Repayment Schedule	<ul style="list-style-type: none"> Interest for tranche will be paid rear ended with monthly rest. Principal repayment by way of NACH/Wire Transfer on or before due date
Disbursement Mechanism	<ul style="list-style-type: none"> Disbursement will be made directly to Suppliers of Right health Platter Private Limited. Disbursement of loan to be done on T+1 (working day) basis where T is the date of submission of disbursement documents like Invoice, delivery proof etc. Right Health Platter Private Limited to submit Invoice to UGRO not older than 21 days on the date of loan required for Tranche of 90 days. If the Invoice is stale, GRN to be taken to calculate tenor for invoice funding
Purpose of loan	<ul style="list-style-type: none"> Disbursement will be made directly to Suppliers of Right health Platter Private Limited.
Penal Interest Rate	2% p.m.
Invoice level rejection	Not more than 5%
Facility Triggers	<ul style="list-style-type: none"> Debit Freeze > 7 DPD Facility review to be done in case overdue reaches 30 DPD
Sanction Condition prior to limit set up	<ul style="list-style-type: none"> All verification being positive Duly accepted and signed sanction letter, Facility agreement and other related documents inter-alia by Borrower ("Facility Documents") KYC for other promoters to be documented and credit checks to be carried out for them DPN along with letter of continuity being duly signed/ stamped NACH and SPDCS from key operative account of Borrower Cersai charge to be created. Latest ownership proof to be documented FLDG, CG deed, PG deed along with net worth certificate, signed term sheet, BR to be in place before limit set up Latest CA certified shareholding pattern to be documented.

For UGRO Capital Limited

For Right Health Platter Private Limited

eSigned using Aadhaar (Legality.com - 2K0P9Y1) Sunny Sahas
 Registered Office Address: Equinox Business Park, Tower 3, 4th Floor, 105 Road, Kurla (West), Mumbai - 400070
 CIN: L67120MH1993PLC070739
 Date: Sat May 27 13:55:07 IST 2023 Date: Sat May 27 18:06:50 IST Date: Sat May 27 18:15:43 IST Date: Sat May 27 18:17:29 IST 2023
 Authorised Signatory Telephone: +91 22 48918686 Email: customercare@ugrocapital.com | Website: www.ugrocapital.com

Ver. June / 2022



The schedule/ detailed list of charges is displayed on the website of UGRO Capital Limited the link of the same is: <https://www.ugrocapital.com/interest-rate-model-and-schedule-charges>.

Please note that the limit will be subject to following conditions:

1. This letter should not be construed as giving rise to any binding obligation on the part of UGRO to provide the financial assistance/s / facilities mentioned overleaf (the "Facility"), unless you have executed transaction documents, in a form and manner as may be required by UGRO in connection with the Facility.
2. The facility agreement and other transaction documents may / will contain terms and in addition to or in modification of those set out in this letter.
3. Notwithstanding anything stated elsewhere in this letter or otherwise, the Facility mentioned overleaf will be available solely at UGRO's discretion and subject to compliance of all formalities and documentation as may be specified / required by UGRO. The continuance of the Facility is subject to cancellation and / or repayment to UGRO on demand without assigning any reason for the same.
4. UGRO shall be entitled to stop any further disbursements under the Facility, at its own discretion, without any further notice if any due/ repayment of tranche under the Facility remains unpaid for a period of more than 7 days and shall remain stopped till the time all the overdue amounts are paid along with all charges, penalty etc.
5. UGRO shall be entitled to revoke the sanction of the Facility, inter alia, in any of the following circumstances:
 - a) there is any material change in the purpose(s) for which the Facility has been sanctioned ("the Purpose(s)");
 - b) in the sole judgment of UGRO, any material fact has been concealed and / or become subsequently known;
 - c) any statement made by or on your behalf in your application or otherwise, is incorrect, incomplete or misleading;
 - d) duly signed facility agreement along with other documents required for disbursement by you is not received by UGRO within the specified validity period;
 - e) there is a default under or a breach of the terms and conditions of this letter and facility agreement or any other loan / facility offered by UGRO to you / any of you;
6. UGRO is entitled to add to, delete or modify all or any of the terms and conditions for the Facility and/or the Standard Terms applicable to the Facility.
7. The Borrower shall not avail any loan / credit facility or give any guarantee or security, in respect of the invoices financed with UGRO.
8. UGRO having undertaken bureau checks and clearance of the loan/ application fees amount.
9. Any material fact concerning the Borrower's and/or any guarantor's (if any) income/ ability to repay/ any other relevant aspect should be disclosed and not suppressed or concealed in your proposal for the Facility.
10. You will create the security to the satisfaction of UGRO, as per the terms of the Facility Documents.
11. All the applicants for/ to the Facility should be residents of India.
12. Post-dated cheques from the CC a/c of the Borrower shall be furnished to UGRO, if so mandated by it, for the Facility amount. UGRO shall be entitled to present the post-dated cheques at its discretion towards the repayment obligation of the Borrower under the Facility.
13. Guarantee of the promoters of the Borrower to be obtained where mandated by UGRO at its sole discretion.
14. Insurance cover on the Security (if applicable) should be obtained to the satisfaction of UGRO, with UGRO being named as the loss payee/ beneficiary under the same.
15. Minimum tranche amount will be Rs. 10,000 and above, including taxes.
16. The undisbursed amount under the Facility shall be withdrawn without notice in case of default in repayment against invoices under the Facility.

or UGRO Capital Limited

For Right Health Platter Private Limited

Signed using Aadhaar
Legality.com - 260P9Y11
Jurney Schell

Signed using Aadhaar
Legality.com - 260P9Y11
Jurney Schell

Signed using Aadhaar
Legality.com - 260P9Y11
Jurney Schell

Signed using Aadhaar
Legality.com - 260P9Y11
Jurney Schell

UGRO CAPITAL LIMITED

Registered Office Address: Equinox Business Park, Tower 3, 4th Floor, LBS Road, Kurla (West), Mumbai - 400070

CIN: L67120MH1993PLC070739

Date: Sat May 27 13:55:07 IST 2023
authorised Signatory

Date: Sat May 27 13:06:50 IST
Telephone: +91 22 48918686

Date: Sat May 27 13:15:43 IST
Email: customercare@ugrocapital.com

Date: Sat May 27 13:17:29 IST 2023
Website: www.ugrocapital.com

Ver. June / 2022



17. Only invoices which are not stale as per UGRO policy covering sales of products/ raw materials /inventory for production purpose and sale of goods are eligible under this scheme. Invoices means the invoices which are approved and accepted as per UGRO policy. Only those invoices against which the Borrower has not availed any funding will be eligible for funding under this Facility.
18. Quarterly GST data and Bank statement (after Disbursement)
19. Other Terms and conditions as may be specified by UGRO.
20. This sanction letter supersedes any previously issued sanction letter/term sheet.
21. Please note that risk-based pricing is determined based on the risk associated with type of loan (Risk Gradation), cost of funds, tenor of the loan, collateral and quantum of loan. In addition, there is a regular review exercise of the interest rates and product features with the competition offerings. An additional risk premium may be incorporated in the pricing which is based on the credit risk associated with the customer which is a function of his credit history, bureau information, internal rating along with other factors like the borrowers income etc. While computing the interest rates, the above-mentioned factors would vector on the outcome of interest rate offered to prospect customer. Hence, it should be noted, that the interest rate applied is different from customer to customer and his/her loans/advances. The range of rates of interest and approach for gradation of risks are also available on the website of UGRO Capital Ltd. at www.ugrocapital.com.
22. The Charges, wherever specified in the Sanction Letter/Facility Documents in relation to the Facility are changeable at the discretion of UGRO, from time to time. UGRO shall endeavor to give notice of such changes and such notice, if any, provided by UGRO in the manner specified in the Facility Document or on its official website or in any other manner whatsoever, of any changes in the rate(s)/charge(s)/fee(s), mentioned above or any notice from UGRO for payment of amounts at the changed rate(s)/charge(s)/fee(s), shall be treated as sufficient and reasonable notice to the Borrower, and UGRO shall not be bound to issue any further notice of such change to the Borrower. The same can also be referred to from the website of UGRO i.e. www.ugrocapital.com

UGRO reserves the rights to anytime assign/sell/transfer or enter into co-lending arrangement regarding amount under Facility or any part thereof to/with any other financial institution or bank as maybe decided by UGRO in its absolute discretion

Any capitalized terms used, but not defined herein, shall have the meaning ascribed to the term in the Facility Documents.

This sanction letter shall be read together with the Facility Documents. In case of any inconsistency between this sanction letter and any of the other Facility Documents, the provision which is favourable to UGRO shall prevail.

We would like to inform you that issuance of this sanction letter shall not guarantee the disbursement of the limit, which is done at the sole discretion of UGRO.

As a token of acceptance of this sanction, you are requested to return a copy of this letter duly signed by you. This sanction will remain valid for a period of 30 days from the date of issue hereof.

Please note that this sanction letter is a summary of the indicative terms only. UGRO shall not be bound with the terms of this Sanction Letter and does not assume any liability till such time this letter is duly signed and accepted by you and, all credit requirements and sanction conditions as contemplated herein, execution of the Facility Documents, are fulfilled to the complete satisfaction of UGRO.

Please note that officers available at following touch points are authorized and responsible for any change in sanction letter and facility document. No manual or handwritten changes including addition of any overriding supplement shall be made on the pre-printed sanction letter and facility document and in case of any proposed change, medication and disagreement, you are advised to write us for acceptance of proposed change at:

Authorized person – Customer Service Manager

Email at Customercare@ugrocapital.com

call us at 022-48918686

write us at Equinox Business Park, Tower 3, Fourth Floor, Off BKC, LBS Road, Kurla, Mumbai, Maharashtra 400070.

In case of any query or assistance you can e-mail us at customercare@ugrocapital.com or call us at 022-48918686.

Yours Sincerely,

Authorized Signatory,
UGRO Capital Limited

I/we accept above terms and conditions

1. Name _____
2. Signature _____
3. Place _____

For UGRO Capital Limited

For Right Health Platter Private Limited

eSigned using Aadhaar
(Lasepality.com - 2K0P9Y1)
Sunny Sohal

eSigned using Aadhaar
(Lasepality.com - 2K0P9Y1)
Sunny Sohal

eSigned using Aadhaar
(Lasepality.com - 2K0P9Y1)
Sunny Sohal

eSigned using Aadhaar
(Lasepality.com - 2K0P9Y1)
Sunny Sohal

Date: Sat May 27 13:55:07 IST 2023
Authorized Signatory

Date: Sat May 27 13:04:50 IST 2023
Telephone: +91 22 48918686

Date: Sat May 27 13:13:43 IST 2023
Email: customercare@ugrocapital.com

Date: Sat May 27 13:17:29 IST 2023
Website: www.ugrocapital.com

Authorized Signatory

Telephone: +91 22 48918686

Email: customercare@ugrocapital.com

Website: www.ugrocapital.com

Ver. June / 2022



4. Date _____

*All indirect taxes, duties and levies, including but not limited to interest tax, service tax, education cess levied under the applicable laws as may be amended from time to time would be additionally charged.

Clarification on due dates and defaults

If any amount due under the Loan is not received before the Lender runs its day end process on the due date, the same shall be considered as overdue and if continued to be overdue the account will be classified as SMA-1 at 31st day, SMA-2 at 61st day and Non-performing Asset at 91st day after the day end process of the respective dates. *For example, if due date is 05-01-22 then if continuously being unpaid the same shall be classified as SMA-1 as at 04-02-22, SMA-2 as at 06-03-22 and NPA as at 05-04-22.* If there is any overdue in an account, the default/ non-repayment is reported with the credit bureau companies like CIBIL etc. and the CIBIL report of the customer will reflect defaults and its classification status and no. of days for which an account remains overdue is known as DPD (Days past due). Once an account is classified as NPAs then it shall be upgraded as 'standard' asset only if entire arrears of interest and principal are paid by the borrower. Detailed illustration and information about the same shall be available in the Loan agreement and is available at our website at "www.ugrocapital.com".

For UGRO Capital Limited

For Right Health Platter Private Limited

eSigned using Aadhaar
(Legality.com - 2019Y1)
Sunny Sohal

eSigned using Aadhaar
(Legality.com - 2019Y1)
Dr. P. S. S. S. S.

eSigned using Aadhaar
(Legality.com - 2019Y1)
Dr. P. S. S. S. S.

eSigned using Aadhaar
(Legality.com - 2019Y1)
Dr. P. S. S. S. S.

UGRO CAPITAL LIMITED

Registered Office Address: Equinox Business Park, Tower 3, 8th Floor, 198 Road, Kurla (West), Mumbai - 400070

CIN: L67120MH1993PLC070739

Date: Sat May 27 13:55:07 IST 2023
Authorised Signatory

Date: Sat May 27 18:06:50 IST
Telephone: +91 22 48918686

Date: Sat May 27 18:15:43 IST
Email: customer@ugrocapital.com

Date: Sat May 27 18:17:39 IST 2023
Website: www.ugrocapital.com

Ver. June / 2022



FACILITY AGREEMENT

THIS FACILITY AGREEMENT ("Agreement") is made at Delhi on 27th May 23 ("Execution Date"). BETWEEN (I) **UGRO CAPITAL LIMITED**, a company registered under the Companies Act, 1956, having corporate identification number L67120MH1993PLC070739, holding a license to carry on business as a non-banking financial company under license number 13.00325 issued by the Reserve Bank of India and having its registered office at Equinox Business Park, Tower 3, 4th Floor, Off BKC, LBS Road, Kurla, Mumbai – 400070 (hereinafter referred to as the "**Lender**" or "**UGRO**", which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to include its successors and assigns) of the **ONE PART**; AND (II) The person/ entity, whose details are listed in the **Schedule II** hereunder (hereinafter referred to as the "**Borrower**", which expression shall unless it be repugnant to the meaning or context thereof, be deemed to include its successors and permitted assigns) of **OTHER PART**.

WHEREAS:

- A. The Lender, being a systemically important non-deposit taking NBFC, is engaged in the business of *inter alia* lending, and is registered as a non-banking finance company (NBFC) with the Reserve Bank of India ("RBI").
- B. In the course of its business, _____ (hereinafter referred to as the "**Principal**") supplies / sells Goods and / or renders services, to various customers including the Borrower from time to time and raises invoices containing particulars of Goods supplied and amounts due under such invoice(s) ("**Invoice**"), in accordance with the terms of agreement between the Principal and the Borrower.
- C. The Lender and the Principal have an arrangement, in terms of which the Principal has *inter alia* agreed to identify and recommend buyers from its network to the Lender, for the purpose of short term financing from the Lender. The Lender will, provide the Facility (*defined below*) to the Borrower, which monies shall be considered as payment towards the purchase of Goods from the Principal
- D. Relying upon the representations and information provided by the Borrower in this Agreement, the Lender has agreed to grant the Facility to the Borrower on terms and conditions hereinafter mentioned.

NOW THEREFORE THE PARTIES AGREE AS UNDER:

1. DEFINITIONS

- 1.1 "**Additional Interest**" means the default interest charged by the Lender on the amounts not paid when due for payment by the Borrower to the Lender, at the rate as stipulated in the **Schedule II** hereto;
- 1.2 "**Business Day**" means a day of the week on which the Lender and banks are generally open for business in Mumbai;
- 1.3 "**Charges**" means the charges which may be charged by the Lender in relation to the Facility, including the charges provided in the Sanction Letter;
- 1.4 "**Credit Information Agency**" means and include TransUnion CIBIL Limited, CRIF High Mark Credit Information Services Private Limited, Equifax India and Equifax Analytics Private Limited, Experian Credit Information Company of India Private Limited or such other company or any other agency as may be notified or recognized as such by the RBI or any other regulatory authority;
- 1.5 "**Disbursement Request**" means the written request made by the Borrower, in the format set out in **Schedule I** hereto, requesting disbursement of the Facility;
- 1.6 "**Designated Account**" means a current account / virtual a/c of the Lender wherein the Borrower shall deposit monies towards the Outstanding Amounts;
- 1.7 "**Facility**" means one or more the credit facilities availed/ to be availed by the Borrower, from time to time, pursuant to a Disbursement Request, in the aggregate not exceeding the amount specified in the **Schedule of Terms**;
- 1.8 "**Facility Documents**" means, with respect to the Facility, this Agreement read with the Schedules hereto, Sanction Letter, Disbursement Request and all such other documents

For Right Health Platter Private Limited

eSigned using Aadhaar
(Legality.com - HN303AA975)
Mr. YV Murali babu

Date: Sat May 27 13:57:02 IST 2023
Authorised Signatory

eSigned using Aadhaar
(Legality.com - HN303AA975)
Mr. YV Murali babu

Date: Sat May 27 14:00:54 IST 2023

eSigned using Aadhaar
(Legality.com - HN303AA975)
Mr. Raminath Anantugam

Date: Sat May 27 14:05:16 IST 2023

eSigned using Aadhaar
(Legality.com - HN303AA975)
Mr. Raminath Anantugam

Date: Sat May 27 14:13:27 IST 2023
Authorised Signatory

Ver. April/2023



3. DISBURSEMENT OF FACILITY

- 3.1 Subject to the terms of the Facility Documents, the Borrower shall be entitled to submit a Disbursement Request for each Facility to the Lender. The Disbursement Request shall be issued by the Borrower no later than 1 (one) Business Day prior to the proposed date of disbursement.

For Right Health Platter Private Limited

For UGRO Capital Limited

eSigned using Aadhaar
(Leegality.com - HN303AA975)
Mr. YV Murali babu

Date: Sat May 27 13:57:02 IST 2023
Authorised Signatory

eSigned using Aadhaar
(Leegality.com - HN303AA975)
Mr. YV Murali babu

Date: Sat May 27 14:00:54 IST 2023

eSigned using Aadhaar
(Leegality.com - HN303AA975)
Mr. Ramnath Anumugam

Date: Sat May 27 14:05:16 IST 2023

eSigned using Aadhaar
(Leegality.com - HN303AA975)

Date: Sat May 27 14:13:27 IST 2023
Authorised Signatory

Ver. April/2023

Document ID: HN303AA975

Stamp Sr. No.: IN-DL71327051759651V

- 3.2 Disbursement of the Facility shall be made by the Lender, into the account of the Principal as per the mode of disbursement set out in the **Schedule II** in respect of the Goods having a minimum value as set out in the **Schedule II**, and the date of remittance by the Lender shall be the date of disbursement ("**Disbursement Date**").

4. INTEREST AND ADDITIONAL INTEREST

Interest shall be payable from the Disbursement Date until the Final Settlement Date. In the event all Outstanding Amounts are not received by the Lender by the end of the Tenor, the Borrower shall be liable to pay Interest to the Lender for the period from the expiry of the Tenor until the Final Settlement Date. The Borrower shall also be liable to pay Additional Interest on the Facility or Outstanding Amounts for the period after the Tenor until the Final Settlement Date, at such rate as specified in Schedule II.

5. REPAYMENT

- 5.1 The Borrower shall completely repay the relevant tranche of the Facility along with applicable interest, costs and charges as a bullet payment on the last day of the Tenor, unless extended by the Lender at its sole discretion.
- 5.2 In the event the Borrower fails to repay the Outstanding Amounts into the Designated Account on the last day of the Tenor, the Borrower shall be liable to deposit all the Outstanding Amounts (**together with Additional Interest**) into the Designated Account no later than 1 (one) Business Day from the expiry of the Tenor ("**Extended Repayment Period**"). It is clarified that no notice or reminder shall be given by the Lender to the Borrower to repay the Facility as per the agreed time lines.
- 5.3 The records maintained by the Lender in its ordinary course of business shall be the conclusive evidence for the due amounts from the Borrower in respect of a Facility.
- 5.4 The Borrower agrees that all payments to be made by the Borrower to the Lender shall be by way of Post Dated Cheques ("**PDCs**"), Undated Cheques ("**UDCs**"), Whole Amount Cheques ("**WACs**"), (collectively "**Cheques**") or National Automated Clearing House Mandate ("**NACH**") or such other instruments as may be prescribed by the Lender and issued by the Borrower for facilitating repayments during the currency of the Facility Documents.
- 5.5 Borrower understands and acknowledges that notwithstanding anything contained in this Agreement, the Facility is also repayable on demand by the Lender, the Lender in its sole discretion is entitled change the manner or form of repayment/s to be made by Borrower under this Agreement and any instruction/s in this regard as maybe issued by the Lender shall be final and binding on the Borrower. The Borrower shall ensure that it shall comply with the instructions issued by the Lender regarding facility or any matter covered under this Agreement without any delay or demur.

32. The Respondent has contended that the debt is not a financial debt.

To buttress this submission, the Corporate Debtor has relied on the

NCLAT Judgments in the cases of *Invoice Discounters of Riva Perfumes*



LLP Represented by Minion Ventures Pvt Ltd vs Riva Perfumes LLP Company Appeal (AT) (Insolvency) No.518 of 2024 and Mudraksh Investfin Pvt Ltd vs Brijesh Singh Bhaduriya Company Appeal (AT) (Insolvency) No.1671 of 2023 wherein it was held that such transactions can only be classified as an “Operational Debt” and cannot be termed as “Financial Debt”.

33. The above Judgements relate to discounting of invoices and are not applicable in the present case.

34. As regards non filing of invoices, the Financial Creditor has denied the allegations and annexed the invoices in its Rejoinder at Page No. 23-27 of the typeset. Copy of one of the Invoices is extracted hereunder:

INVOICE												
Kamadhenu Beverages Private Ltd 158/2 & Plot Number-78, Bldg. 2, Shivnagar Apartment, NH 9553 Baramati Dist, Pune, Maharashtra-413102 Pan No: AAACK2712N GSTIN: 27AAACK2712N1Z1 State Name : Maharashtra, Code : 27					Invoice No. KAMA/152		Dated 27-May-23					
RIGHT HEALTH PRODUCTS PRIVATE LIMITED Plot No 1 & 2, Sastara Mega Foods Park Pvt Ltd, 1285-2 1485-1 1490-2, Village Degson, Satara, Maharashtra, 415004 GSTIN: 27AALCRS215Q1Z0 State Name : Maharashtra, Code : 27					Delivery Note		Motor Terms of Payment Immediate					
Buyer (Bill to) Right Health Platter Pvt. Ltd 13365, NIVRUTI COLONY, PANANALA, KOLHAPUR, MAHARASHTRA - 416114 GSTIN: 27AAACG1708N1Z0 State Name : Maharashtra, Code : 27					Reference No. & Date.		Other References					
					Buyer's Order No. RHP/PL/171028-24		Dated 18-May-23					
					Dispatch Doc No.		Delivery Note Date					
					Dispatched through		Destination					
					Bill of Lading/LR-RR No.		Motor Vehicle No. MH 04 HY 6181					
					Terms of Delivery							
S/N					HSN/SAC	GST Rate	Quantity	Rate	per	Amount	Value of Supply	Total Amount
1 Raw Milk					04014000	0 %	34,651.00 Ltr	75.00	Ltr	25,98,825.00	25,98,825.00	25,98,825.00
Total							34,651.00 Ltr			₹ 25,98,825.00	25,98,825.00	
Amount Chargeable (in words): INR Twenty Five Lakh Ninety Eight Thousand Eight Hundred Twenty Five Only										E. & O.E		
										Value of Supply 25,98,825.00		
										Total: 25,98,825.00		
Tax Amount (in words) : NIL												
Declaration We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.					Company's Bank Details Bank Name : HDFC Bank Ac No. : 9820065946869 Branch & IFS Code : Daspalpuram & HDFC0000675 for Kamadhenu Beverages Private Ltd							
This is a Computer Generated Invoice												



35. With respect to this allegation of Commercial Credit Information Report, the Financial Creditor has filed the 'Record of Default' vide S.R.No.4712 dated 14.11.2023 wherein the date of default has been mentioned.

36. In the present Application, the Financial Creditor has claimed a sum of Rs.5,06,34,266/- (Rupees Five Crores Six Lakhs Thirty Four Thousand Two Hundred and Sixty Six Only) which includes the Principal amount of Rs.4,99,95,075/- (Rupees Four Crores Ninety-Nine Lakhs Ninety Five Thousand and Seventy Five Only) and Interest amount of Rs.6,39,191/- (Rupees Six Lakhs Thirty Nine Thousand One Hundred and Ninety One Only).

37. The grounds taken by the Corporate Debtor can be countenanced by the Judgment of the Hon'ble Supreme Court in the matter of *Innoventive Industries Limited v. ICICI Bank Limited*, (2018) 1 SCC 407 which is as follows;

27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment



amount. For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

38. Further, the Hon’ble Supreme Court in *Suresh Kumar Reddy v. Canara Bank in Civil Appeal No. 7121 of 2022* has laid down that the view taken in Innovative Industries still holds good, which lays down that the Adjudicating Authority has only to ascertain the existence of ‘debt’ and ‘default’ for admission of an application under Section 7 of the Code.
39. The Hon’ble NCLAT in the case of *Mr. Rajeev Kumar Jain v. Uno Minda Ltd. and Anr. (2024) ibclaw.in 72* NCLAT has held that the definition does not use the expression that disbursal should be made to the Corporate Debtor only. It can be implied that any



disbursal made on behalf of the Corporate Debtor or at the instructions of the Corporate Debtor may also tantamount to disbursal made to the Corporate Debtor.

40. In the present case, the Lender and the Principal had an arrangement, in terms of which the Principal had inter alia agreed to identify and recommend buyers from its network to the Lender, for the purpose of short term financing from the Lender. The Lender agreed to provide the Facility (defined below) to the Borrower, which monies shall be considered as payment towards the purchase of Goods from the Principal. Thus, from the nature of transaction it is clearly manifested that the transaction falls within the ambit of "Financial Debt."

41. Thus, the moment the Corporate Debtor commits default in repayment of the 'financial debt' and the due is more than Rs.1 Crore, the Code gets triggered and it is of no matter that the debt is disputed so long the debt is "due" and payable.

42. It is relevant to refer Section 5(8) of the IBC, 2016. It reads as under:



(8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes —

- (a) money borrowed against the payment of interest;
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
- (e) receivables sold or discounted other than any receivables sold on nonrecourse basis;
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

[Explanation. -For the purposes of this sub-clause, -

- (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and
- (ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;



(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

43. The Record of Default from the 'Information Utility' which was authenticated on 29.10.2023 shows the Status of Authentication as **"Deemed to be authenticated"**. Thus, in all respects, the Application filed by the Financial Creditor is complete and as such in terms of Section 7(5) of IBC, 2016, the present Application filed by the Financial Creditor is required to be admitted.

44. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' having been committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor. It is ordered accordingly.

45. As a consequence of the Application being admitted in terms of Section 7 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;



46. 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.

47. 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.

48. The Financial Creditor has proposed the name of ***Rongali Sridevi***, (*Email id:srica_2003@yahoo.co.in*), *Reg.No.IBBI/IPA-003/IP-N00172/2018-19/12105* as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 30.06.2025.

49. **Ms. Rongali Sridevi** is appointed as the IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of



this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

50. 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 IBC, 2016. 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.

51. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions.

52. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to



effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as 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 who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

53. Accordingly, the present Application stands **admitted**.

Sd/-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-

SANJIV JAIN
MEMBER (JUDICIAL)

Sriram Ananth.V