

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

C.P. (I.B) No. 1374/KB/2020
IA/73/KB/2021
IA/455/KB/2021
IA/506/KB/2021

In the matter of :

Sections 10 of the Insolvency and Bankruptcy Code, read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules), 2016

And

In the matter of :

BIL Infratech Limited, having its registered Office at 37/2, Chinarpark, New Town, Rajarhat Main Road, P.O. – Hatiara, Kolkata, 24- Parganas North, West Bengal – 700 157.

.... Corporate Applicant

Coram: Mr. Rajasekhar VK, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

COUNSELS APPEARED THROUGH VIDEO CONFERENCE :

Mr. Shaunak Mitra, Advocate	-For the Applicant
Mr. Rohit Kumar Keshri, PCS	
Mr. Udit Agarwal, Advocate	
Ms. Amani Kayan, Advocate	
Mr. Arnab Chakraborty, Advocate-	- For Respondent No. 4, Mackintosh
Mrs. Pragya Bhowmick, Advocate	Burn Ltd,
Ms. Aparajita Rao, Advocate	-For Punjab National Bank

Date of Hearing : 9th July, 2021

Date of pronouncement of the Order : 28/07/2021

O R D E R

Per: **Harish Chander Suri, Member (Technical)**

1. The Corporate Applicant, BIL Infratech Limited, (CIN: U45400WB2010PLC151807) has filed this Application, bearing CP(IB) No. 1374/KB/2020, under Section 10 of the Insolvency & Bankruptcy Code, 2016, praying for initiation of Corporate Insolvency Resolution Process against the Corporate Applicant, through its Managing Director Mr. Rajesh Kumar Bagri (DIN 00191709) duly authorized vide Board Resolution dated 26/11/2020, stating that it has committed default in paying its debts (financial as well as operational).

2. The Corporate Debtor, BIL Infratech Limited, was incorporated on 29th July, 2010. It is an MSME and is engaged in the business of construction activities, including infrastructural projects. The Authorized capital of the Corporate Applicant is Rs 30 crores and paid-up share capital is Rs. 25 crores, comprising of shares of face value Rs. 10/- each.

3. **The reasons for applying for initiation of the Corporate Insolvency Resolution Process, under section 10, by the Corporate Applicant, are briefly, stated below :**

4. It is submitted that since NBCC had illegally and arbitrarily invoked Bank Guarantees worth Rs. 27 Crores, which impacted the Corporate Applicant negatively and created a liability for the Corporate Applicant, which subsequently pushed the Corporate Applicant towards default of payment of Bank loans, which was further driven to distress by the Bankers of the Corporate Applicant by freezing the accounts

of the Corporate Applicant. It, therefore, became more difficult for the Corporate Applicant to manage the affairs of the Company.

5. It is further submitted that two Applications under Section 9 had been filed in the year 2019, being CP(IB) No. 1682/KB/2019, filed by Action Construction Equipment Ltd., and CP(IB) No. 1991/KB./2019, filed by RDC Concrete (India) Pvt. Ltd., under the Insolvency and Bankruptcy Code, 2016, filed by the two different Operational Creditors, as mentioned above, against the same Corporate Applicant.

6. On 21st October, 2019, the credit account of the Corporate Applicant, maintained with the Central Bank of India, had slipped into NPA as per the email received by the Corporate Applicant, resulting the Corporate Applicant in becoming a defaulter. Simultaneously, the other credit account of the Applicant held with Punjab National Bank was frozen by the said Bank, in April, 2020 effectively bringing all the operations of the Applicant to a standstill. The Company was unable to make any payments to its Creditors and the staff/ labourers, resulting into numerous threat calls and picketing by the Creditors at the Registered Office. The Corporate Applicant still desired to complete the said projects, as it holds importance with respect to Public Interest, till 31st March, 2021, until the Projects' Accounts were frozen by PNB, through a notice dated 31st March, 2021.

7. One of the Clients of the Corporate Applicant, namely, Mackintosh Burn Limited, also threatened to cancel the Project. The Paradip Port Trust (one of the Clients of the Corporate Applicant) further terminated the Contract, vide its termination letter dated 30th April, 2021, and 17th May, 2021. The Punjab National Bank further sent a notice under SARFEASI Act, 2002 and declared the Bank Accounts as Non-Performing Assets, vide its letter dated 10th May, 2021. The Applicant was unable to conduct any business since April, 2020 and further the Fixed Cost, Overhead expense, Labour Expenses of Rs. 8-10 lakhs per day, aggravated the situation from bad to worse, leading to total insolvency and a complete deadlock in every aspect. To protect the interest of the various stakeholders and to allow the

Applicant to continue as a going concern, the Applicant has pleaded before this Tribunal to appoint an Interim Resolution Professional, without any further delay.

8. The Corporate Applicant has submitted that it had huge loan liabilities and had defaulted in repayment due to the freeze imposed on the Bank accounts of the Company. It was further submitted by the Ld. Counsel for the Corporate Applicant that during Financial Year 2019-2020, it has not been able to get any new business and has been working hard to complete the existing projects. It is further stated that the pandemic and the resultant lockdown imposed by the Government has gradually impacted the business of the Corporate Applicant. It has been stated that the clients of the Corporate Applicant had threatened that the Bank guarantees would be encashed. In view of the aforesaid submissions of the Corporate Applicant, this Adjudicating Authority issued notice to the various entities mentioned in Annexure 'A-1' at page 7 of the application and interim orders were also issued as per the prayers made in para 5(a) & (b) of the application being I.A. No. 73/KB/2021.

9. It is stated that at present the Applicant is unable to complete even pending projects due to paucity of funds and is facing imminent termination of contracts and imposition of penalties by customers.

10. It is stated that if the prayer of the Applicant for admission into CIRP and appointment of IRP gets further delayed, the liabilities of the Applicant would increase vastly, forcing the Applicant into liquidation, rather than getting its resolution.

11. It is submitted that the MGT-14 has already been filed with Registrar of Companies, along with the copy of Special Resolution dated 26th November, 2020, passed at an EOGM of the Corporate Applicant, to apply under section 10 of the Insolvency & Bankruptcy Code, 2016.

12 The extract of the Resolution passed at the Extra Ordinary General Meeting of the Shareholders of BIL Infratech Limited held on 26th November, 2020, is reproduced below :

“Special Resolution passed unanimously:

To initiate Corporate Insolvency Resolution Process under Section 10 of the Insolvency and Bankruptcy Code, 2016 – Special Resolution

“RESOLVED THAT THE Company take necessary steps to file an application under Section 10 of the Insolvency and Bankruptcy Code to initiate Corporate Insolvency and Resolution Process for Corporate Applicant and ensure that a resolution is arrived at.”

“RESOLVED THAT a Petition be filed by the Company, under Section 10 of Insolvency and Bankruptcy Code, 2016 and other applicable Provisions, in relation to the Initiation of Corporate Insolvency Resolution Process by Corporate Applicant before the National Company Law Tribunal, Kolkata Bench in the prescribed Form 6 (under Rule 7 of IBC Rules).”

“RESOLVED FURTHER that the Company engages a professional legal consultant/lawyer and nominate an Interim Resolution Professional (IRP) for initiating the process of Corporate Insolvency and filing an application with the National Company Law Tribunal, Kolkata in the prescribed Form 6 (under Rule 7 of the IBC Rules).”

“FURTHER RESOLVED THAT Mr. Subodh Kumar Agrawal an Insolvency Professional having IBBI Registration No. IBBI/IPA-001/IP-P00087/2017-18/10183 is hereby appointed as an Interim Resolution Professional (IRP) registered with the Insolvency and Bankruptcy Board of India based on the in-principle consent received from him.”

13. The Corporate Applicant has proposed the name of the IRP, as Mr. Subodh Kumar Agarwal, who has submitted his consent in Form 2 and also his Authorisation for taking up the Assignment.

14. As stated above, the Corporate Debtor has two Financial Creditors, Punjab National Bank (PNB) and Central Bank of India (CBoI). The amounts in default to Punjab National Bank and Central Bank of India, were Rs. 54.61 crores and 23.73

crores, respectively. The financial debt was incurred lastly on 1st October, 2018, in case of PNB, being date of renewal of working capital credit facilities; and in case of CBoI, the date is April 4, 2019, being also the date of renewal of facilities.

15. In support of the Petition, the Corporate Applicant has submitted the following documents along with the Company Petition:

- i) The copy of the ledger /relevant books of accounts of the Corporate Debtor, evidencing the default to creditors as on 20.11.2020, is attached with the Application.
- ii) The Audited Financial statements for the years ended 31.03.2019 and 31.03.2020 of the Corporate Applicant are also attached with the Application. The provisional unaudited financial statement as on 20.11.2020, is also attached with the Application.
- iii) The list of Assets and Liabilities of the Corporate Debtor, as on 20.11.2020, is attached with the Application.
- iv) The particulars of security held by the Financial Creditors, the copy of Inter-se Agreement and Facility Agreement dated 26.10.2013 and the copies of the charge forms uploaded on MCA portal are annexed with the Application.
- v) Details of property, Plant and Equipment on which mortgage has been created, as on 20.11.2020, has also been annexed with the Application.
- vi) The list of Financial Creditors as on 20.11.20, with amounts sanctioned by them and the list of Operational Creditors as on 20.11.20 with amounts due, are annexed with the Application.
- vii) Particulars of any debts owed by or to the Corporate Debtor to or by persons connected with it as on 20.11.20 and the details

of debts owed to Megha Mercantile Pvt. Ltd., a related party to the Applicant, are mentioned at **page 73 of Supplementary Affidavit. Details of related party transactions as on 31.3.2020 are at page 131 of Company Petition.**

- viii) The details of guarantee given in relation to debts of the Applicant viz. Corporate Guarantee by the holding Company, Binani Industries Limited are at page. **112 - 121 of Supplementary Affidavit.**
- ix) The Shareholder details as on 20.11.2020 are at page **22 of the Supplementary Affidavit.**
- x) The Affidavit in support of petition is at **pages 1004-1006 of the Petition.**
- xi) The proof of filing the Petition, submitted with IBBI is at pages **125 - 126 of the Supplementary Affidavit.**
- xii) The copy of the email from CBI dated 21st October, 2019, declaring the accounts NPA is at pages **of the Supplementary.**

16. In terms of Order dated 15.01.2021 and 22nd April, 2021, notices were issued to all the parties concerned.

17. In this case, there is absolutely no dispute about facts that the debts due and payable by the Corporate Applicant to the various Creditors and Corporate persons, could not be paid by the Corporate Applicant.

18. In these proceedings, Corporate Applicant submitted information relating to its books of accounts for the relevant period (Section 10(3)(a) of IBC). The Corporate Applicant has proposed the name of the IRP, as Mr. Subodh Kumar Agarwal, who has submitted his consent in Form 2 and also his Authorisation for taking up the Assignment. The Corporate Person produced on record Special resolution passed by

shareholders in Extra Ordinary General meeting dated 26th November, 2020 (Section 10(3) (c) of IBC).

19. The Application is defect-free and complete in all respects.

20. We have heard Ld. Counsel for the Corporate Applicant, Ld. Counsel for the Respondent No.1/Punjab National Bank, Respondent No.2 /Central Bank of India, Respondent No.3/Paradip Port Trust and Respondent No.4/ Mackintosh Burn Ltd. at length. We have also perused the records placed before us and the citations referred before us i.e.; Decision dated 13.12.2017 of Hon'ble NCLAT in Leo Duct Engineers v. Canara Bank in Company Appeal (AT) (Insolvency) No.100 of 2017 and Decision dated 20.01.2021 of Hon'ble NCLAT in JKS The Banyaan v. Bank of Baroda in Company Appeal (AT) (Insolvency) No. 472 of 2020.

21. In the light of the facts stated in the application and the evidence placed on record, we have no hesitation in admitting the petition and ordering initiation of CIRP in respect of the corporate applicant by the following Orders :

ORDERS

- (i) The Application filed by the Corporate Applicant under Section 10 of the Insolvency & Bankruptcy Code, 2016, is hereby, admitted for initiating the Corporate Insolvency Resolution Process in respect of BIL Infratech Limited. Moratorium Order is passed for a public announcement as stated in Section 13 of the Insolvency & Bankruptcy Code, 2016.
- (ii) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency resolution process and call for the submission of claims under Section 15. The public announcement referred to in Clause (b) of sub-section

- (1) of Insolvency & Bankruptcy Code, 2016, shall be made immediately.
- (iii) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following :
- a) The 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 asset 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 (54 of 2002) ;
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (iv) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.

- vii) 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.
 - viii) Necessary public announcement as per Section 15 of the Insolvency & Nankruptcy Code, 2016 may be made by the Resolution Professional upon receipt of the copy of this Order.
 - ix) As per proposal given by the Corporate applicant, Mr. Subodh Kumar Agarwal, 1, Ganesh Chandra Avenue, 3rd Floor, Room No. 301, Kolkata – 700 013, E-mail – subodhka@yahoo.com , Registration No. IBBI/IPA-001/IP-P00087/2017-18/10813, for appointment as the IRP, is appointed as the Interim Resolution Professional for ascertaining the particulars of Creditors and convening a Committee of Creditors for evolving a Resolution Plan.
 - x) The Corporate applicant to pay to IRP a sum of Rs. 1,00,000/- as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.
 - xi) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
 - xii) The Registry is hereby directed to communicate the Order to the Corporate Applicant, and to the Interim Resolution Professional by Speed Post and also by e-mail.
22. Let the certified copy of the Order be issued upon compliance with requisite formalities.

23.IA.No.73/KB/2021,I.A.No.455KB/2021 and I.A.No.506/KB/2021 were also filed by the Applicant for seeking Interim Orders/Directions. In view of the order of Admission of the main C.P. being C.P. (IB) No. 1374/KB/2020, these three applications are also disposed of.

24. List the matter on 30th August, 2021 for filing progress report.

(Harish Chander Suri)
Member (Technical)

(Rajasekhar VK)
Member (Judicial)

Order signed on this, 28th July, 2021

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