

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
"CHANDIGARH BENCH, CHANDIGARH"**

**CP (IB) No.10/Chd/Hry/2018  
with  
CA No.87/2018**

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

**In the matter of:**

M/s Educomp Infrastructure &  
School Management Ltd.  
514, Udyog Vihar, Phase-III,  
Gurgaon, Haryana-122001.

...Corporate Applicant.

Vs.

1. Andhra Bank,  
R-3, Green Park,  
New Delhi-110016.
2. Axis Bank,  
Axis House, 4<sup>th</sup> Floor,  
Tower-1; Plot No.1-4,  
Sector-218, Noida,  
Uttar Pradesh-201304.
3. Bank of India,  
New Delhi Large Corporate Branch,  
Chandralok Building,  
36, Janpath,  
New Delhi-110001.
4. Corporation Bank,  
101, American Street,  
Chennai-600001.
5. Karnataka Bank,  
Corporate Finance Branch,  
K-13, Chaudhary Building,  
Connought Circus,  
New Delhi-110001.
6. Punjab National Bank,  
LCB, 781-785, Rayala Tower,  
Anna Salai,  
Chennai-600002.

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7. State Bank of India (e-SBOP),  
Stressed Assets Management Branch,  
6<sup>th</sup> Floor, Mohan Singh Place,  
Baba Kharak Singh Marg,  
Connaught Place,  
New Delhi-110001.
8. Yes Bank Ltd.,  
48 Nyay Marg,  
Chankya Puri,  
Delhi-110021.

...Financial Creditors.

**Judgement delivered on: 25.04.2018**

**Coram: Hon'ble Mr. Justice R.P.Nagrath, Member(Judicial).  
Hon'ble Mr. Pradeep R. Sethi, Member(Technical)**

For the petitioner-  
Corporate Debtor:

1. Mr. Ajay Kumar Jain, Advocate.
2. Mr. Krishan Vrind Jain, CA.

For the respondents-  
Consortium of Financial  
Creditors.

1. Mr. Sanjay Bhatt, Advocate.
2. Mr. Jogendra Singh, Legal Manager of  
Axis Bank.

**Per: R.P. Nagrath, Member(Judicial)**

### **JUDGEMENT**

This petition has been filed by M/s Educomp Infrastructure & School Management Limited ("**EISML**") i.e. the Corporate Debtor in Form No. 6 as prescribed under 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 under section 10 of Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code'). The Corporate Debtor falls within the definition of the term 'Corporate Applicant' as defined in sub-section (5) of section 5 of the Code.

2. The Corporate Debtor was incorporated on 02.09.2006, having been allotted CIN U70104HR2006PLC045915 and its registered office is at

*Pradeep R. Sethi*  
*for respondent*



Gurugram in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal. The Memorandum and Articles of Association alongwith Certificate of Incorporation are at Annexure –A.

3. The authorised share capital of the Corporate Debtor is ₹75,00,00,000/- (Rupees Seventy Five Crores only) and issued, subscribed and paid up share capital is ₹67,45,20,400/- (Rupees Sixty Seven Crores Forty Five Lakhs Twenty Thousand and Four Hundred only). The Memorandum and Articles of Association are at Annexure-A.

4. This petition has been filed by the corporate debtor through Mr. Shantanu Prakash, its Director who has been authorised to file this petition under section 10 of the 'Code' vide resolution dated 26.12.2017 [Annexure B]. The contents of the application are supported by the affidavit of Mr. Shantanu Prakash which is at page 11 of the Paper Book. There were five Directors of the corporate debtor as on date of filing of the instant petition. Three of them are Mr. Shantanu Prakash, Jagdish Prakash and Mr. Vinod Kumar Dandona.

5. During pendency of this petition CA No.87 of 2018 has been filed by the corporate debtor Shri Vinod Kumar Dandona, director to bring on record the subsequent event that Mr. Shantanu Prakash and Jagdish Prakash Directors have resigned from the Board of Directors on 15.02.2018. Copy of the resignation letters are at Annexure A-1 and A-2 respectively attached with the application. The ground taken in the resignation letters are that due to non-cooperation of banks/financial institutions and that the ex-employees of the company have initiated criminal litigation for recovery of their dues. Therefore, there is possibility of fixing personal liability. Another

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Jagdish Prakash*

reason given is that the holding company is proceeding under the Code and these Directors were the representatives of the holding company and the ownership of holding company will change.

6. In view of the aforesaid resignation letters, the Board of Directors of corporate debtor vide resolution dated 15.03.2018 which is at Annexure A-3 of CA 87 of 2018 authorised Mr. Vinod Kumar Dandona Director to proceed with the instant application/petition under Section 10 of the Code.

7. Notice of this application was issued to the learned counsel of Consortium of lenders and the same was opposed. It was contended that the Directors of the corporate debtor after initiation of the proceedings under Section 10 of the Code cannot be permitted to set up such a case as the sole purpose is to avoid serious consequences which flow from commencement of insolvency resolution process. We are however, of the view that this question need not detain the Adjudicating Authority for a detailed discussion as the consequences of the above contention may always be raised at the appropriate stage or Forum. This Tribunal, however is not according any such approval.

8. It is stated that the main object of the corporate debtor was for developing and managing quality school assets across the country. However, the corporate debtor acquires land and constructs entire infrastructure/building required for a school and leases these school assets to 'Educational Trust' for a minimum of 30 years period. Trusts are in turn responsible for running the schools.

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9. The corporate debtor was providing various services to independent Schools/Trusts. In lieu of the aforesaid services, the corporate debtor charges monthly fee on per student basis.

10. The corporate debtor availed term loan of ₹625 crores from various banks on 25.05.2009 and financial assistance to the tune of ₹200 crores from the State Bank of India (erstwhile State Bank of Patiala) on 14.06.2011. Despite the fact that revenue generation was below the projections/assumptions, the corporate debtor started servicing its debt wherein the rate of interest was as high as 15% resulting in financial crunch. The petitioner-corporate debtor was admitted for debt restructuring under CDR mechanism w.e.f. 01.04.2013. The corporate debtor falls under "Infrastructure Lending" and hence upto 15 years door-to-door repayment of loans under restructuring scheme was permissible under the CDR.

11. Despite the CDR package being sanctioned in favour of the corporate debtor, the income/revenue of the corporate debtor kept on falling from the Financial Year 2013 to 2015 which had an adverse impact on EBITDA and profitability of the corporate debtor. The corporate debtor thus approached the banks for refinancing under the "Flexible Structuring of Long Term Project Loans.

12. Due to failure on the part of the corporate debtor to comply with the repayment schedule as per the 5/25 '*Flexible structuring scheme*' in the Joint Lenders Meeting held on 22.11.2017, majority of the lenders discussed and agreed to explore the best possible legal action for recovery of their dues including action under the Code.

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13. In Part-III of the Application Form the corporate debtor has stated that the total amount in default on the date of application was ₹788.38 crores by specifying the amounts in default in respect of each of the financial creditor. Apart from that the corporate debtor has also furnished the details of the operational debt. The list of the vendors/suppliers alongwith their addresses is at Annexure-D and the amount in default for this category of operational creditors is ₹46,232,155/-. Annexure-E is the list of employees and the amount in default towards employees is ₹2,178,917/-. With regard to the statutory dues of Government Departments the amount in default is ₹114,543/- as per the list Annexure-F.

14. The corporate debtor has also given the details of the immoveable property mortgaged with banks/financial institutions and regarding creation of first pari passu charge on the fixed assets, as per the details mentioned in the list Annexures G-1. First pari passu charge on the bank accounts, pledge of 45.5% fully paid up unencumbered shares; irrevocable corporate guarantee; pledge of shares of land owning companies; unconditional etc. and irrevocable personal guarantees furnished by Mr. Shantanu Prakash and Mr. Jagdish Prakash and creation of other charges. These charges are created in favour of the respondents No.1 to 6. The corporate debtor has also created second charge over the immoveable/moveable fixed assets of the corporate debtor; second charge over immovable/movable fixed assets of land owning companies and Trusts; irrevocable corporate guarantee of Educomp Solutions Ltd. and personal guarantee of Mr. Shantanu Prakash etc.

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15. The corporate debtor has also named Mr. Ramit Rastogi as the Resolution Professional proposed to be appointed as the Interim Resolution Professional in case the petition is admitted. The communication in Form No.2 as prescribed in Rule 9(1) of the Rules in the nature of the consent given by the proposed Resolution Professional has also been annexed as per the information furnished in Part-II of the application form.

16. Notice of this petition was issued to the respondents-financial creditors. Affidavit of service was filed by the authorised representative of the petitioner. Consortium of the banks have filed objections jointly, to the instant petition. It is admitted that the respondents are the only financial creditors of the corporate debtor. In view of the default committed by the petitioner-corporate debtor the respondents have not opposed the admission of the application filed under Section 10 of the Code but they have opposed name of proposed Interim Resolution Professional and proposed another Registered Resolution Professional to be appointed as such; by filing written communication in Form No.2.

17. It is further stated that the corporate debtor has not cured the defect with regard to percentage of shareholding of Mr. Jagdish Parkash promoter of the company. It is further stated that certificate of registration issued by the Insolvency and Bankruptcy Board of India in favour of Ramit Rastogi has not been attached. It was further averred that the application is incomplete as particulars of the employees of the corporate debtor have not been furnished. With regard to the amount of default it is alleged that the amount raised and the amount in default in respect of the respondents does not tally with the actual debt raised and the amount in default as per the

*Sanjay Ram*  
*Jagdish Parkash*

books of account. However, later the objection was not pressed upon during course of arguments on behalf of the respondents. It was submitted that there being admitted default the petition deserves to be admitted.

18. The respondents have also alleged that the corporate debtor was required to provide particulars of any debt owned by the corporate debtor or by the persons connected with it, for which the corporate debtor has mentioned against the relevant column of the form as not applicable. Such information is required as per Annexure-VI of instructions appended to Form No.6 of the Rules under which this application has been filed. Reference is made to pages 132 to 150 of the Paper Book being the Audited Balance Sheets as on 31.03.2016 and also to pages 209 to 228 relating to Audited Balance Sheet up to 31.03.2017 whole lot of related party transactions have been mentioned which raise doubt about the correctness of the statement.

19. We are however, of the view that these aspects may always be raised by the financial creditors during the course of insolvency resolution process because Adjudicating Authority cannot enter into the exercise of probing these transactions. Otherwise on merits it is admitted that respondent No.2 bank vide notice dated 03.02.2018 to the corporate debtor has called upon to make payment of the entire loan. Some of the other banks have also issued recall notices.

20. The respondents being ultimately the members of the Committee of Creditors with 100% of voting rights have proposed Mr. Manoj Maheshwari to be appointed as the Resolution Professional by filing the written consent

*Manoj Maheshwari*  
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furnished by him in Form No.2 attached as Annexure R-1 with the objection petition alongwith the copy of registration certificate.

21. The corporate debtor in the rejoinder has filed the certificate of registration (Annexure-A) of Mr. Ramit Rastogi as Resolution Professional. It is clarified that Educomp Solution Ltd. which is the holding company has 83.38% of the shareholding of the corporate debtor and Mr. Shantanu Prakash has 11.71% of its shareholding. So far as Mr. Jagadish Prakash is concerned he is father of Mr. Shantanu Prakash but does not hold any shareholding in the corporate debtor.

22. With regard to the main objection on which learned counsel for the parties have confined their arguments relates to the appointment of Interim Resolution Professional. It is averred that there is nothing to debar the appointment of named Resolution Professional as mandatory required in Part II of the prescribed Application Form. Even Section 16 (2) of the Code mandates the appointment of Resolution Professional proposed by the corporate debtor as the Interim Resolution Professional, though the Committee of Creditors may later on decide to replace him or to continue with the same Resolution Professional in terms of sub-sections (3) and (4) of Section 22 of the Code.

23. When the matter was listed on 02.04.2018 and having heard learned counsel for the parties, the only defect pointed out in the application by the learned counsel representing the respondents, other than the issue of appointment of the Interim Resolution Professional, was that addresses for correspondence of all workers and employees and those of the statutory authorities have not been furnished.

*Approved  
Jagadish Prakash*

24. The aforesaid compliance was made by the petitioner by filing CA No.101/2018 with which the list of employees with their addresses and the amount in default was furnished as at Annexure A-1. Similarly the addresses and the amount in default in respect of the statutory authorities were also furnished as at Annexure A-2. There is supporting affidavit of Mr. Vinod Kumar Dandona, the authorised representative of the petitioner in support of these documents which were taken on record as observed in the order dated 16.04.2018.

25. We have heard the learned counsel for the corporate debtor and learned counsel representing 100% financial creditors and perused the records.

26. Sub-section (4) of Section 10 of the Code says that the Adjudicating Authority by an order –

- (a) admit the application if it is complete or
- (b) reject the application if it is incomplete.

27. The defects in applications as pointed out by the financial creditors stand removed as already discussed. So we hold the application to be complete in all respects.

28. Sub-section (3) of Section 10 makes it mandatory for the corporate debtor to propose the name of the Resolution Professional to be appointed as the Interim Resolution Professional which has also been complied. The perusal of the written communication at page 63 of the Paper Book shows that the complete particulars and disclosures have been made by the Resolution Professional. It is also disclosed that there are no disciplinary proceedings pending against the said Resolution Professional

*As per  
provision*



with the IBBI or ICSI Insolvency Professionals Agency. He is currently not servicing as IRP/RP/Liquidator in any proceedings so far.

29. Learned counsel for the respondents however, referred to the judgement of Hon'ble Principal Bench of National Company Law Tribunal, New Delhi reported in the matter of **Energio Engineering Projects Limited, New Delhi and others 2017 Indlaw NCLT 1452**. Four petitions for initiation of resolution process in respect of the same corporate debtor were disposed of by a common order. One of the application was filed by the Corporate Debtor under Section 10 and the other three applications by the operational creditors under Section 9 of the Code. It was held that in such cases appointment of Interim Resolution Professional as named by the corporate debtor in preference to that of the creditors will go against the spirit of the Code, as purpose of the Code is to shift the control of business or management from the hands of the promoter or the management to that of the creditors who will be in possession to take a call as whether the company and resolution plan can be put in place or the corporate debtor needs to go through the liquidation process. The Adjudicating Authority in Energio Engineering Projects (supra) relied upon the observation of Hon'ble Supreme Court of India in **M/s Innoventive Industries Ltd. Vs. ICICI Bank & Anr 2017 Indlaw SC661 in Civil Appeal No.(s)8339/2017** in paragraph 34 is to the following effect:-

*"The scheme of the Code, therefore is to make an attempt, by divesting the erstwhile management of its powers and vesting it in a professional agency, to continue the business of the corporate body as a going concern until a resolution plan is drawn up, in which event the management is handed over under the plan so that corporate body is able to pay its debts and get*

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*back on its feet. All this is to be done within period 6 months with a maximum extension of another 90 days or else the chopper comes down and the liquidation process begins."*

30. It was further observed by the Adjudicating Authority in the said case that the State Bank of India the financial creditor of the corporate debtor also vehemently objected to the appointment of the proposed Resolution Professional named by the corporate debtor to be appointed as the Interim Resolution Professional in view of which the corporate debtor without prejudice withdrew the name of the proposed Resolution Professional and left the matter to the choice of the Tribunal.

31. Another judgement cited by the learned counsel for the respondents is reported in **Standard Chartered Bank vs. Essar Steel India Ltd. CP(IB) No.39/7/NCLT/AHM/2017**, in which the Adjudicating Authority preferred the appointment of the Resolution Professional proposed by the financial creditor in place of the one proposed by the corporate debtor.

32. Learned counsel for the petitioner tried to distinguish these judgements on the basis that there were separate petitions pending in respect of the same Corporate Debtor but in the instant case none of the respondents have so far taken recourse to Section 7 of the Code. Moreover in **Standard Chartered Bank case** (supra) the Adjudicating Authority also found that the petition filed by the financial creditor was prior in time for preferring the Resolution Professional nominated by Standard Chartered Bank.

33. Learned counsel for the petitioner vehemently contended that the provisions of Section 10 (3) (b) of the Code mandates the corporate

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debtor to name the Resolution Professional to be appointed as Interim Resolution Professional and it is obligatory for the Adjudicating Authority to appoint the same Resolution Professional as Interim Resolution Professional in terms of sub-section (2) of Section 16 of the Code.

34. We have given thoughtful consideration to the above controversy and find that the Resolution Professional proposed by the respondents should be preferred to be appointed as Interim Resolution Professional. The provisions of Sections 7, 9 and 10 have been enacted with a view to initiate the insolvency resolution process by distinct category of creditors and to enable the petitions to be disposed of expeditiously. In the scheme of the Code there was no requirement of issuing notice of the petitions under Section 7 and 10 the Code. It is now a settled principle that the Adjudicating Authority has to comply with the principles of natural justice. In the instant petition, the corporate debtor itself impleaded all the financial creditors as respondents and it is also admitted that the respondents constitute 100% of the voting rights in the formation of Committee of Creditors. If that be the situation it does not stand to reason why the petitioner would insist upon the appointment of the named Resolution Professional as Interim Resolution Professional particularly when the object of the Code is to shift the Management from the Corporate Debtor to the Creditors.

35. We have perused the written communication in Form No.2 Annexure R-1 furnished by Mr. Manoj Maheshwari filed with objections that it discloses all the particulars provided in the Form. He has furnished his written consent and stated that presently he is not serving as such in any proceedings under the Code so far. He has also certified that no disciplinary

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proceedings are pending against him. So we hold that in the event of admission of this petition the Resolution Professional proposed by the Financial Creditors would be preferred.

36. Coming to the financial condition of the corporate debtor it was represented by the learned counsel for the corporate debtor that as per the financial statements filed on record, following is the status of the corporate debtor under different heads:-

I. Revenue from Operations:

Period	Revenue from Operations
31.12. 2017	158,441,667
31.03.2017	370,548,964
31.03.2016	472,346,067
31.03.2015	706,889,925

II. Accumulated Profit/Loss of the Corporate Debtor:

Period	Accumulated Profit/(loss) of the Corporate Debtor
31.12. 2017	(10,352,043,560)
31.03.2017	(6,670,484,544)
31.03.2016	(5,266,036,673)
31.03.2015	(3,945,949,388)

III. Long Term borrowing & other Liabilities:

Period	Long Term borrowing & other liabilities
31.12. 2017	7,856,312,523
31.03.2017	7,857,323,708
31.03.2016	7,050,691,410
31.03.2015	7,151,238,455

IV. Current Liabilities:

Period	Current Liabilities
31.12. 2017	843,930,203

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31.03.2017	338,826,351
31.03.2016	1,795,718,595
31.03.2015	3,350,326,703

37. The figures extracted above indicate the losses with continued fall in the revenue, therefore, 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'.

38. The petition is admitted. While admitting the application the moratorium is declared for prohibiting all of the following as provided in Section 14(1) of the Code:-

- 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 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;
- 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.

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39. It is further directed that the supply of essential goods or services to the corporate-debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) of Section 14 of the Code shall however not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

40. The moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section(1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

41. We further issue the following directions:-

- (i) Appoint Mr. Manoj Maheshwari, bearing IP Regn. No.IBBI/IPA-003/IP-N00023/2017-18/10173, address: 552, Abhinav Apartment, Vasundhra Enclave, Delhi-110096 as proposed by the respondent-financial creditors as Interim Resolution Professional;
- (ii) The term of appointment of Mr. Manoj Maheshwari shall be for a period of 30 days from the date of his appointment as Interim Resolution Professional or as may be determined by the financial creditors whichever is earlier;
- (iii) In terms of Section 17 of 'the Code', from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the

*Manoj Maheshwari*  
*for signature*



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';

- (iv) 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 standards of ethics and moral;
- (v) 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. It is hereby directed that the 'Corporate Debtor', its properties, personnel and the 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 co-operation in accessing

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books and records as well as assets of the 'Corporate Debtor';

- (vi) The Interim Resolution Professional shall cause a public announcement within three days 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 the 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 'Corporate Debtor'.

42. It is further directed that the Interim Insolvency Resolution Professional shall positively file a report of events before this Tribunal every week in relation to the 'Corporate Debtor'.

43. A copy of this order be also supplied to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

CA No.87 of 2018 stands disposed of.

Sd/-

(Pradeep R. Sethi)  
Member (Technical)

Honoured in  
open court

Sd/-

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

April 25, 2018  
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