

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

Maxim Infra Venue Private Limited,
Una Nangal Road, Rakkar, Tehsil and District Una, Himchal Pradesh-174303

Judgement delivered on: 13.09.2018

For Petitioner/Corporate Applicant:- 1 Mr. Ashok Malik, Advocate
2 Mr. Nitin Kant Setia, Advocate

For the State Bank of India
Financial Creditor: 1 Mr. Rakesh Gupta, Advocate
2 Mr. Puneet Jain, Advocate

For Vinayak Construction: Mr. Deepankur Sharma, Advocate

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

JUDGEMENT (Oral)

This petition has been filed by M/s Maxim Infra Venues i.e. corporate applicant in Form 6 as prescribed under sub rule (1) of Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 (For brevity the 'Rules) for initiating Corporate Insolvency Resolution Process under section 10 of Insolvency & 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 applicant was incorporated on 21.04.2015 having been allotted CIN U70200HP2015PTC000927 and its registered office is at Una, in the State of Himachal Pradesh and therefore, the matter falls within the territorial jurisdiction of this Tribunal. The Memorandum and Articles of Association are at Annexure VII of the paper book.

3. The authorized share capital of the Corporate Applicant is ₹1,00,000 (Rupees One Lakh) and issued subscribed and paid up capital of ₹1,00,000 (Rupees One Lakh).

4. The petition has been filed by the Corporate Applicant through Mr. Tushar Sharma, its Director who has been authorised to file this petition under section 10 of the Code, vide Board Resolution dated 11.04.2018 (page 100 of the paper book). The contents of the application are supported by the affidavit of Mr. Tushar Sharma which is Annexure VIII (Page 90-96) of the paper book.

5. As per Memorandum of Association of the Corporate Applicant (Annexure-VII) the main objects of the Corporate Applicant are to purchase any land, plot(s) of land or immovable property or any right or interest therein and to develop and construct thereon residential, commercial complex or complex(es) comprising offices for sale or self-use or for earning rental income thereon by letting out individual units comprised in such building(s).

6. It is stated that the Corporate Applicant was advanced various financial facilities by State Bank of India, a Financial Creditor to the tune of ₹ 1,23,00,000/-. In Amended Form No.6, filed by Diary No.3097 dated 21.08.2018, the complete particulars including address of the Financial Creditor has been given. In Part-III of Amended Form No.6, it is stated that there are no Operational Creditors as on date and there are no statutory dues towards employees. It is also stated that owing to delay in erection of plant and general business slowdown coupled with non-restructuring of credit facilities by the lender the corporate applicant could not service debt obligations and the debt of corporate applicant/debtor even was declared NPA. Apart from State Bank of India, the only other financial creditor is M/s Vinayak Construction Company.

7. The financial status of Corporate applicant in respect of the Financial Creditors are narrated as below:-

SBI SME Branch Mehatpur Main Bazar Mehatpur Distt. Una HP

Sr. No.	Nature and Description of Credit Facility	Sanctioned Amount	Outstanding as on 21/02/2018 (as per notice u/s 13(2) of SARFAESI Act)
1	Term Loan	10000000	8555912
2	Term Loan (Car)	1170000	998147
3	Term Loan (Car)	1130000	964901

Vinayak Constructions Co., Una, Rakkar, Road, Una HP

Sr. No.	Nature and Description of Credit Facility	Sanctioned Amount	Outstanding as on 31/03/2018
1	Term Loan	350000	350000

8. The Corporate Applicant has also given the details of property against which the claim given against the petitioner are secured. The list is at Annexure VI(B). For cash credit limit, the petitioner executed hypothecation deed and registered mortgage deed dated 01.02.2016. Immovable property at Mohal Makrourgar Tehsil, District Una and land measuring 0-29-36 hectares has been kept as collateral security. Similar details have been given in respect of SME Car Loan I and SME Car Loan II in Annexure VI (B). The petitioner has also provided details of guarantees [Annexure VI (E)].

9. When the matter was listed on 23.05.2018, it was contended on behalf of the petitioner-corporate applicant that as per the statement of affairs of the Company till 10.05.2018 Annexure VI(A), the total of equity and liabilities was tallying with the total of the assets. The petitioner was directed to furnish the total thereof within a week. The petitioner-corporate applicant filed an affidavit of Mr. Tushar Sharma the authorized signatory by Diary no.1837 dated 28.05.2018 by attaching the statement of affairs containing the clubbing as per directions of this Tribunal with separate totals of assets and liability/equity as at Annexure-XI with this affidavit.

10. In order dated 23.05.2018, it was also observed that the Corporate Applicant has not furnished some of the addresses of operational creditors, which is requirement as per column 2 of Part-III of the Application Form No.6. Notice of this defect was also given to the petitioner and the defect was directed to be removed within seven days. Along with the affidavit

filed by diary no.1837 dated 28.05.2018 as referred to above, the petitioner has stated that the corporate applicant has no operational creditors.

11. At the same time notice of this petition was directed to be issued to the financial creditors. Mr. Rakesh Gupta, Advocate filed the Power of Attorney on behalf of State Bank of India and when the matter was listed on 29.08.2018, Mr. Deepankur Sharma, Advocate, appeared on behalf of Vinayak Construction Company.

12. The petitioner also filed affidavit dated 24.07.2018 of Mr. Tushar Sharma, Director, vide Diary No.2724 dated 27.07.2018, stating therein that there are no operational creditors and no dues towards employees or the Government Authorities.

13. The petitioner also filed Amended Form 6 with CA No.321/2018, by Diary No.3097 dated 21.08.2018 with amended Index, furnishing the detailed particulars.

14. We have heard the learned counsel for the corporate applicant/debtor, learned counsel for the financial creditors and perused the records.

15. 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 (and no disciplinary proceeding is pending against the proposed resolution professional); or*
- (b) *reject the application, if it is incomplete (or any disciplinary proceeding is pending against the proposed resolution professional).*

Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.”

16. The defects in applications as pointed out on various dates stand removed as already discussed. So we hold the application to be complete in all respects.

17. Sub-Section (3) of Section 10 of the Code reads as under:-

“The corporate applicant shall, along with the application furnish —

- (a) the information relating to its books of account and such other documents for such period as may be specified;*
- (b) the information relating to the resolution professional proposed to be appointed as an interim resolution professional; and*
- (c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.”*

18. In order to comply with the requirement of Clause (a) of Section 10 (3) of the Code, the Petitioner has placed on record all the necessary documents to prove the existence of financial debt, as required, in Column 3 of Part-III of the application form. Copy of demand notice issued by the financial creditor i.e. State Bank of India under Section 13 (2) of the SARFAESI Act, 2002, dated 21.02.2018 is at Annexure 1(C). Annexure 1(B) is the copy of the registration of charge with the petitioner of the companies. The petitioner has also filed its audited financial statements for the years 2016-17 and 2017-18, which are at Annexure V (Colly) and the provisional financial statements upto 10.05.2018, which is part of Annexure V(Colly).

19. Under Clause (b) of Section 10(3)(b) the corporate applicant is bound to propose the name of Registered Resolution Professional proposed to be appointed as Interim Resolution Professional. We have perused the written communication in Form No.2 Annexure-III furnished by Mr. Arvind Kumar a registered Resolution Professional with IBBI. This Form contains 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 proceedings are pending against him with the IBBI or the Indian Institute of Insolvency Professionals of ICAI of which he is a member. His Registration number is IBBI/IPA-001/IP-P00178/2017-18/10357. We find that written consent furnished by the proposed Interim Resolution Professional is in order.

20. It is now to be seen whether the petitioner has also complied with Section 10(3)(c) of the Code. It was held by Hon'ble National Company Law Appellate Tribunal, New Delhi in **Horseshoe Entertainment & Hospitality Private Limited, Company Appeal (AT (Insolvency) No.214 of 2017)** decided on 19.07.2018 by relying upon "*Gaja Trustee Company Pvt. Ltd. & Ors. Vs. Haldia Coke and Chemicals Pvt. Ltd. & ors. – Company Appeal (AT) (Insolvency) No.137 of 2017*" that the Board of Directors is required to place the matter before the shareholders and creditors and to take its approval for filing application under Section 10 of the I&B Code, 2016.

21. When the matter was listed on 29.08.2018 the following order was passed:-

“Having heard the learned counsel for the petitioner, we find that the petitioner has not attached copy of the resolution of Extraordinary General Meeting (EOGM) deciding to initiate the proceedings under Section 10 of the Insolvency and Bankruptcy Code, 2016. The learned counsel submits that the resolution was passed in April, 2018 but the same was not made part of the record, though the notice of the EOGM along with the requisite documents were placed on record.

When the matter was listed on 13.07.2018, it was represented that the affidavit of service has been filed in respect of all the financial creditors. However, the learned counsel for the petitioner submits that affidavit of service of M/s Vinayak Construction Company, who is a proprietorship concern, was not filed.

Mr. Deepankur Sharma further submits that M/s Vinayak Construction Company is a sole proprietorship concern, which does not want to file any objection to the admission of the present petition.”

22. The petitioner has filed copy of the special resolution dated 10.04.2018 passed in the Extra Ordinary General Meeting of shareholders of the Corporate Applicant along with the copy of notice of EOGM and the explanatory statement. The corporate applicant resolved to initiate the Corporate Insolvency Resolution Process under Section 10 of the Code. This resolution has been filed by way of Company Application, being CA No. 383, filed by diary No. 3349 dated 06.09.2018. It is noted in the resolution that there has arisen the financial crisis in the Company as Restructuring proposal of the company has been declined by the lenders.

23. It is pertinent to mention here that in Column No.8 of Part-I of the Application Form, the petitioner had already relied upon the documents relating to holding of Extra Ordinary General Meeting on 10.04.2018 (Annexure VII). However, the document (Annexure VII) on record was notice of EOGM proposed for 10.04.2018 as at Page 87 of the paper book

alongwith the explanatory statement- pursuant to the provision of Section 102 of the Companies Act, 2013 as at Page 88 of the paper book, but the resolution of EOGM was not attached. With the filing of EOGM held on 10.04.2018, the requirement of Section 10(3) (c) of the Code also stands complied.

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

I. Revenue from Operations:

Period	Revenue from Operations
10-05-2018	0
31-03-2018	0
31-03-2017	0
31-03-2016	0

II. Accumulated Profit/Loss of the Corporate Applicant:

Period	Accumulated Profit/(loss) of the Corporate Applicant
10-05-2018	-30000
31-03-2018	-30000
31-03-2017	-10000
31-03-2016	-5000

III. Long Term borrowing & other Liabilities:

Period	Long Term borrowing & other liabilities
10-05-2018	10431386
31-03-2018	10431386
31-03-2017	11459272
31-03-2016	10010932

IV. Current Liabilities:

Period	Current Liabilities
10-05-2018	395947
31-03-2018	365000
31-03-2017	5000
31-03-2016	105500

25. The figures extracted above indicate complete loss of net worth of the corporate applicant. It is clear from the above that the corporate applicant has failed to pay its debt and has thus committed default. In fact the learned counsel for the financial creditors have not raised any objection to the admission of the petition in view of the default committed by the petitioner-corporate applicant, nor any reply to the petition was filed. It clearly seems that the corporate applicant has fallen into a debt trap and thus competent to set in motion the insolvency resolution process under the Code to ensure maximum value of assets which is in the interest of all the stakeholders.

26. In view of the above facts, the petition is admitted. While admitting the application the moratorium is declared for prohibiting all 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

27. It is further directed that 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. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

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

The matter be listed on 20.09.2018 for passing of the formal order of appointment of the Interim Resolution Professional. CA No.383 of 2018 also stands disposed of.

Copy of this order be communicated to both the parties.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Justice R.P. Nagrath)
Member (Judicial)

September, 13, 2018
Mohit Kumar