



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-II**

CP (IB) No.398/10/NCLT/AHM/2020

(Application for initiating Corporate Insolvency Resolution Process under Section 10 of the Insolvency & Bankruptcy Code, 2016)

In the matter of :

ABP Apparels Pvt. Ltd.
(CIN No. U18209GJ2016PTC091999)
Registered Office at:
97, Gayatri Chambers Near Railway
Station, Vadodara- Gujarat -390007

...Applicant/
Corporate Applicant

Order Pronounced on 15/06/2023

**Coram: DEEP CHANDRA JOSHI, HON'BLE MEMBER(J)
AJAI DAS MEHROTRA ,HON'BLE MEMBER (T)**



Appearance:

Mr. Manan Bhatt, Advocate for the Applicant

Mr. Kunal Vaishnav, Advocate for the Respondent

Ms. Pankti Shah, Advocate for Income Tax Department

ORDER

1. The present application has been filed by the Corporate Applicant- ABP Apparels Private Limited, through its Director – Mr. Pratik Agarwal, authorised through Special Resolution passed by the Members on 31.10.2020 and also passed resolution by the Board of Directors dated 7.11.2020 under Section 10 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as the “IBC 2016”) read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect to the Corporate Applicant i.e ABP Apparels Private Limited (hereinafter referred to as



“Corporate Applicant”) on the ground that the Corporate Applicant has committed a default more than threshold limit prescribed under Section 4 of the IBC.

2. The averments made by the Corporate Applicant are summarised as under:
 - i. The Corporate Applicant was incorporated on 14/05/2016 to carry out business of apparels and was involved in business of designing, manufacturing and sale of wide range of apparels etc. and for that purpose, to operate the business, the Company availed loans from various banks and started stores on franchisee model. The authorised share capital of Company is Rs. 2,00,000/- & paid up share capital of the Company is Rs. 1,29,180/-.
 - ii. In the year 2019-20 the Company used to purchase raw materials for the purpose of manufacturing of goods and used to supply finished goods in the ordinary course of business. The manufacturing (stitching job) was



outsourced. For that purpose, the Company used to purchase raw materials and accordingly invoices were raised on the Company by creditors. The copy of MoA & AoA are annexed with the application.

- iii. The Corporate Applicant used to make timely payments to the entities from whom the corporate applicant used to purchase raw materials for the purpose of operating its business. However, since last one year the Company started facing financial hardships. Thereafter, on account of lockdown imposed by Govt. of India, the entire stock manufactured in last year became unsaleable and profits could not be generated. Corporate applicant tried its best to settle the issues. However, on account of the continued failure of the retail sector and on account of mounting liabilities, the corporate applicant could not generate enough revenues to keep its operations running. That any continuation of business would have required a fresh investment in the tune of crores of rupees with no certainty of revenues from the market.



- iv. The Corporate applicant was unable to pay monthly instalments due towards financial creditors. The rentals for the franchisee stores, which were paid either in the form of rental or commission to the franchisees, were mounting and further affecting the reputation of the company. Continuation of operations would only lead to further loss to the company and its creditors.

- v. Aware of the financial conditions of the corporate applicant, an Extra Ordinary General Meeting (hereinafter referred to as “EOGM”) of the shareholders was called upon on 31st October, 2020 to discuss and deliberate upon the issue, whether to apply for and file the resolution application u/s 10 of the Insolvency & Bankruptcy Code, 2016. A copy of the minutes of the meeting of EOGM is annexed with the application.

- vi. The Corporate Applicant failed to pay the amount towards outstanding dues, hence, the members of the Corporate applicant resolved to apply for Resolution u/s



10 of the Insolvency & Bankruptcy Code, 2016 in their EOGM dated 31/10/2020. The Special Resolution was also passed unanimously by the members of the corporate applicant as under:

“ RESOLVED FURTHER THAT consent of members of the Company be and is hereby accorded to the Board of Directors to take any decisions in the best interest of the Company/stakeholders and further to consider such other issues and pass required resolution to facilitate the filing of application under Section 10 of Insolvency and Bankruptcy Code, 2016”

- vii. It is submitted by the Corporate Applicant that as per the part-III of the application, there are 34 Operational Creditors and 7 Financial Creditors in the Corporate Applicant and the amounts owed to them is as under :

Sr. No	Operational Creditors	Invoices dates	Date of default	Amount in Default (Rs.)
1	Aakash Fashions	11/11/2019-02/12/2019 (total in no. 4)	02/12/2019	8,43,385/-
2	B.I. Group of Industries	29/08/2019-25/11/2019 (total in no. 53)	28/01/2020	12,77,771/-
3	Comboz Industries	01/09/2019-01/02/2020 (total in no. 26)	01/02/2020	17,18,394/-
4	Dress Well	11/10/2019-29/02/2020 (total in no. 7)	30/03/2020	3,74,569/-
5	Gala's	05/10/2019-10/01/2020 (total in no. 4)	10/04/2020	6,51,671/-
6	Jayantilal Jivraj & Co.	14/10/2019-07/03/2020 (total in no. 24)	06/04/2020	12,31,175/-



7	J.M. D International	19/10/2019-05/02/2020 (total in no. 3)	06/03/2020	77,169/-
8	Kalash	14/09/2019-29/02/2020 (total in no. 9)	29/02/2020	8,72,663/-
9	Mayur Art	13/01/2020-28/01/2020 (total in no. 2)	28/01/2020	41,600/-
10	Nanaji Raviji & Co.	14/11/2019-06/02/2020 (total in no. 5)	21/04/2020	63,026/-
11	N.K. Tex Fab (India) LLP	01/11/2019-16/03/2020 (total in no. 37)	16/03/2020	7,67,323/-
12	Paridhan	30/10/2019-17/03/2020 (total in no. 40)	02/04/2020	23,83,773/-
13	P.D. Traders	13/10/2019-13/01/2020 (total in no. 23)	13/01/2020	12,76,089.74
14	RikhabTex Creation Pvt. Ltd	19/10/2019-06/03/2020 (total in no. 38)	11/06/2020	6,61,875.60
15	Sarvpriya Fashion	19/10/2019-06/03/2020 (total in no. 22)	06/03/2020	24,35,137/-
16	Satyam Knitwears	14/11/2019 (total in no. 1)	13/12/2019	60,680/-
17	Shah Pukhraj Mohanraj	12/10/2019-28/05/2020 (total in no. 36)	28/02/2020	25,93,299/-
18	S K Textiles	01/02/2020-28/02/2020 (total in no. 4)	28/02/2020	23,082/-
19	Sonu Lining	22/10/2019-10/02/2020 (total in no. 3)	10/02/2020	91,492/-
20	Sumangal	10/10/2019 (total in no. 1)	09/11/2020	79,272/-
21	Vikram Industries	02/09/2018-16/03/2020 (total in no. 16)	22/04/2020	2,87,842/-
22	Aditya International	12/06/2020-14/09/2020 (total in no. 4)	09/10/2020	78,920/-
23	Capillary Technologies India Pvt. Ltd	27/01/2020-31/03/2020 (total in no. 6)	30/04/2020	3,08,026/-
24	D'zine Display Systems	06/08/2019-04/10/2019	01/11/2019	5,79,008/-



		(total in no. 13)		
25	Hans Air Express	01/10/2019-15/12/2019 (total in no. 12)	22/12/2019	3,93,981/-
26	L&T Metro Rail (Hyderabad Limited)	01/12/2019-14/05/2020 (total in no. 16)	30/07/2020	1,72,470.03/-
27	Laqshya Assets	09/01/2020-21/01/2020 (total in no. 2)	20/02/2020	1,04,883/-
28	Mituj Marketing Pvt. Ltd	16/10/2019-16/09/2020 (total in no. 4)	16/09/2020	3,32,125/-
29	Ojha Apparels	16/12/2019-17/02/2020 (total in no. 6)	01/07/2020	1,64,353/-
30	Parvati Print	12/02/2020-03/09/2020 (total in no. 7)	03/09/2020	98,250/-
31	Prakash Chadra Jain & Co.	14/09/2019 (total in no. 2)	14/09/2020	91,800/-
32	SA Enterprises	28/01/2020 (total in no. 1)	28/01/2020	1,72,628/-
33	Shree Siddhivinayak Process	10/12/2019-05/03/2020 (total in no. 12)	05/04/2020	2,04,559/-
34	Umed Creation	31/01/2020-31/03/2020 (total in no. 3)	31/03/2020	2,26,719/-
Sr. No	Financial Creditors	Date of sanction	Date of default	Amount in Default (Rs.)
1	HDFC Bank	29/06/2019 08/11/2019	08/11/2019 (Overdraft) 29/06/2019 (term Loan)	24,92,048.34 (Term Loan) 96,80,176/-
2	Standard Chartered	27.09.2019	27/09/2019	41,44,503/-
3	Tata Capital	21/11/2019 to 29/02/2020	21/11/2019	35,35,000/-
4	Axis Bank	02/12/2019	02/12/2019	25,07,943/-
5	Federal Bank	02/12/2019	02/12/2019	25,75,386/-
6	Magma Fincorp Limited Corp(now Poonawalla Fincorp Ltd)	05/03/2020	05/03/2020	27,86,084/-
7	IIFL	Currently not available for want of documents		31,50,572/-



3. It is submitted that the Corporate Applicant has proposed the name of IRP as per Section 10(30 9(b) of the IBC, 2016, Mr. Santanu Bhattacharjee, having Reg. No. IBBI/IPA-001/IP-P01443/2018-2019/12194, email id : santanub100@gmail.com, having address at : Godrej Central Tower D, Flat No. 1001, Shell Colony, Chembur (East) Mumbai City- Maharashtra- 400071 to act as an Interim Resolution Professionals (“IRP”) and the proposed IRP has also given his consent to act as an IRP wherein the proposed IRP has stated that no disciplinary proceedings are pending against him. Copy of the consent form is annexed with the application.
4. The Corporate Applicant has also served a copy of this application to the IBBI in Form 1A. The Corporate person also filed the affidavit of service to IBBI on 25.08.2022.
5. As per the requirement of Form -6 under rule 7 of the Insolvency & Bankruptcy (application to Adjudicating Authority) Rules, 2016, the Corporate applicant annexed



the copies of audited financial statement of the company for the last four years i.e. 2016-17, 2017-18, 2018-19 & 2019-20 and copy of statement of affairs as on 24.11.2020 which are also annexed with the application.

6. The Corporate applicant filed instant application through e-portal on 07.12.2020 & physically filed it on 27.12.2020. The instant matter was first time listed on 07.01.2021, and on the same day directions were issued to Corporate person to issue notices to all the shareholders. In compliance of said order. the corporate person served the notice to all shareholders & affidavit of service also filed on 25.02.2021 by the corporate applicant.

7. Further, vide order dated 25.02.2021, direction was issued to Registry to issue notice to all the shareholders & ROC. Notice was served by registry through speed post. Subsequently, notices were issued to all operational and financial creditors, ROC and Income Tax Department.



8. It is recorded in daily order dated 01.04.2022, that Counsel for the Income Tax Department appeared and stated that they have filed report and that there is no demand pending against the company.

9. It is recorded in order dated 21.04.2023 that the Learned Counsel Mr. Manan Bhatt appeared for the Corporate Applicant and stated that no investigation is pending against the company and none of the operational creditor or financial creditor has filed any objection to the instant application.

It is seen that Counsels for following parties had attended the hearing :

1. Ms. Neelam Yadav, Advocate appeared for the Financial Creditor/Laqshya Assets.
2. Mr. Kunal Vaishnav, Advocate appeared for the Fed Bank Financial Services.
3. Mr. Devendra Dhanesh, CA appeared for the Akash Fashions, B.I. Group of Industries,



Jayantilal Jivraj & Co., Kalash, Rikab Tex
Creation Pvt. Ltd., Sha Pukhraj Mohanraj.

4. Mr. Pratik Thakkar, Advocate appeared for M/s.
Magma Fincorp Ltd. (now Poonawalla Fincorp
Limited)

However, only two financial creditors attended the subsequent proceedings to confirm their no objection to the present application. Learned Counsel appearing for the Federal Bank Ltd., submitted that they have no objection to the admission of this application, which was duly recorded in the order dated 24.08.2021. Learned Counsel for M/s. Magma Fincorp Limited had also stated that they do not have objection if the application is admitted, which was duly recorded in daily order dtd. 25.04.2022. Objection was not received from any of the Creditors.

- 10.1 We have gone through the material available on record. In this application we find that the Corporate applicant has produced the copy of Accounts & statement of affairs



of the Corporate Person, the Special Resolution dated 30.10.2020 passed by the Directors and Shareholder of the Company resolving to file this Application for initiation of Corporate Insolvency Resolution Process (CIRP) of the Corporate Person i.e. **“ABP Apparels Private Limited”** which annexed with the application.

10.02 The requirement of Section 10 of the IB Code & rules framed thereunder are fulfilled and notice was served to all the Respondents and some of the Respondents have given no objection. More opportunity was given Respondents, who neither appeared nor filed any reply in the instant matter. Till date, no objection is received from any person to initiation of CIRP against the corporate applicant.

10.03 The written consent of Mr. Santanu Bhattacharjee, Resolution Professional , having Reg. No. IBBI/IPA-001/IP-P01443/2018-2019/12194, email id : santanub100@gmail.com, having address at : Godrej Central Tower D, Flat No. 1001, Shell Colony, Chembur (East) Mumbai City- Maharashtra- 400071 affirming his



No Objection for his appointment as the Interim Resolution Professional of the Corporate applicant is annexed with the application at page no. 106, also confirming that no disciplinary proceeding(s) are pending against him.

11. In short, the Corporate Applicant has complied with all the Statutory requirement(s). This Application is defect free and Corporate Person does not suffer from any limitation as specified in Section 11 of the Insolvency & Bankruptcy Code, 2016. Hence, we admit the Petition filed under Section 10 of the Insolvency & Bankruptcy Code, 2016, for initiation of Corporate Insolvency Resolution Process (CIRP), in respect of the Corporate Person by following order :

- I. This Adjudicating Authority hereby appoints Mr. Mr. Santanu Bhattacharjee, having Reg. No. IBBI/IPA-001/IP-P01443/2018-2019/12194, email id : santanub100@gmail.com, having



address at : Godrej Central Tower D, Flat No. 1001, Shell Colony, Chembur (East) Mumbai City- Maharashtra- 400071, as the “Interim Resolution Professional (IRP)” under Section 13(1) (c) of the Code.

- II. That the order of Moratorium under Section 14 of the Code shall come to effect from the date of this order, till the completion of the Corporate Insolvency Resolution Process (CIRP) or until this Bench approves the Resolution Plan under Sub-section (1) of Section 31 or passes an order for ‘Liquidation’ of the Corporate applicant under Section 33 as, the case may be.

- III. The moratorium prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Applicant including execution of any judgment, decree or order in any Court of law. Tribunal, Arbitration Panel or other Authority(s),



transferring, encumbering, alienating or disposing of by the Corporate applicant any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Applicant in respect of its property occupied by or in current possession of the Corporate Debtor.

IV. Further, litigation or any application, if any, pending before any competent Court of law under the provisions of the SARFEASI Act and RDB Act, prior to pronouncement of this order, such proceedings are expected to be dealt with in accordance with law r.w. Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.

V. That the Supply of essential goods or services to Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period. The Corporate Applicant to



provide effective assistance to the IRP as and when he takes charge of the Corporate applicant.

- VI. That the Provisions of Section 14 sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- VII. The IRP so appointed shall make Public announcement of Corporate Insolvency Resolution Process (CIRP) immediately as specified under Section 13 of the Code and will call for submissions of claims under Section 15 of the Code.
- VIII. The IRP shall perform all his functions which are contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Applicant, its Promoter or any other person associated with management of the Corporate applicant are under



legal obligation under Section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Applicant, its Promoters or any other person required to assist or co-operate with IRP, does not assist or Co-operate, IRP is at liberty to make application to this Tribunal with a prayer for passing an appropriate order.

- IX. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate applicant' and manage the operations of the Corporate Applicant as a going as a part of its obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

- X. The Corporate Person shall pay to IRP sum of Rs. 2,00,000/- by Demand Draft/Cheque towards part of fees & advance for initial expenses etc.



- XI. The Petitioner-Corporate Applicant, is directed to communicate a copy of this order to the IRP, the Corporate applicant and the Registrar of Companies (MP).
- XII. The Registry is directed to communicate a copy of this order to the Petitioner-Corporate Applicant, all the concerned parties including Statutory Authorities namely, Income Tax Department and Registrar of Companies, IBBI and to the Interim Resolution Professional, Mr. Santanu Bhattacharjee for completion of necessary formalities.
- XIII. The commencement of Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.

SD/-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

SD/-

DEEP CHADRA JOSHI
MEMBER (JUDICIAL)

Vaishali PS/Abhishek LRA



IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD

COURT - 2

ITEM No. 305

CP(IB) 398 of 2020

Proceedings under Section 10 IBC

IN THE MATTER OF:

ABP Apparels Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 15/06/2023

Coram:

Mr. Deep Chandra Joshi, Hon'ble Member(J)

Mr. Ajai Das Mehrotra, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

**-SD-
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

**-SD-
DEEP CHANDRA JOSHI
MEMBER (JUDICIAL)**