

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH,COURT-I
KOLKATA**

C.P. (I.B) No. 343/KB/2022

**A Petition under section 10 of the Insolvency and Bankruptcy Code, 2016
read with rule 7 of the Insolvency and Bankruptcy Board of India (Insolvency
Resolution Process for Corporate Persons), Regulations 2016.**

In the matter of:

Cougar Vyapaar Private Limited
(CIN:_ U51909WB1995PTC067147)
Having its registered office at: -
4, Dr. Rajendra Prasad Sarani,
3rd Floor, Room No. 303,
Kolkata-700001.

...Corporate Applicant

Coram:

Shri Rohit Kapoor : Member (Judicial)
Shri Balraj Joshi : Member (Technical)

Order pronounced on: 03 July 2023

Appearances (through hybrid mode)

For Corporate Applicant : 1. Ms. Aparijita Rao, Advocate
2. Ms. Ankana Basu, Advocate

ORDER

Per: Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode today.
2. The present Petition has been filed by Cougar Vyapaar Private Limited, CIN: U51909WB1995PTC067147, the Corporate Applicant, under section 10 of the Insolvency and Bankruptcy Code, 2016 (“Code”) for initiation of Corporate Insolvency Resolution Process (“CIRP”) against itself. The Application has been filed through its Director, Mr. Pratush Drolia, duly authorised *vide* Board Resolution dated 28 August 2021. A

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-I**

**Cougar Vyapaar Pvt. Ltd.
C.P. (I.B) No. 343/KB/2022**

copy of the Board Resolution dated 28 August 2021 is annexed to the Petition and marked as **Annexure- B** on **Page 30**.

3. The Corporate Applicant was incorporated on 06 January 1995. There are two Directors of the Corporate Applicants are Mr. Pratush Drolia and Mr. Jiban Mondal.
4. The total debt is owed to the Operational Creditors is Rs. 2,66,87,005.32/- (Rupees Two Crore Sixty-Six Lakh Eighty Seven Thousand and Five and Thirty Two Paise).
5. The reasons for applying for initiation of the CIRP by the Corporate Applicant are as follows: -
 - 5.1. The Corporate Applicant defaulted in payment to Income Tax Department, who has raised Income Tax Demand on 09 March 2015 and 29 December 2018 for the Assessment Years 2011-2012, 2012-2013, 2013-2014.
 - 5.2. The debt to Amit Hemraj Jain & Associates incurred for the Financial Year ending 31 March 2022.
6. The members of the Corporate Applicant have given their consent by way of a resolution passed in the Annual General Meeting held 25 November 2021 to file the application under section 10 of the Code. A copy of the Resolution dated 25 November 2021 is annexed to the Petition at **Pages 36-38**.
7. That the Corporate Applicant has three Operational Creditors, *viz.* Income Tax Department, Amit Hemraj Jain & Associates and OSN Realtors (OPC) Private Limited.
8. In support of its Application, the Corporate Applicant has submitted, *inter alia*, the following documents: -
 - 8.1. Memorandum and Articles of Association of the Corporate Applicant.
 - 8.2. Financial statements of the Corporate Debtor for the Financial Year being 2019-2020, 2020-2021, 2021-2022.
 - 8.3. Copy of MGT 14 filed before the Ministry of Corporate Affairs.

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9. The Corporate Applicant has proposed the name of **Ms. Payal Agarwal** (Regn. No. IBBI/IPA-001/IP-P02254/2021-2022/13571) to function as the Interim Resolution Professional (IRP). Ms. Payal Agarwal has submitted his written communication in Form 2. The written communication is annexed to the Petition and marked as **Annexure-D** on **Pages 39-41**.
10. We have heard the learned Counsel appearing for the Corporate Applicant and have perused the documents on record.
11. On perusal of the documents provided by the Corporate Applicant, it has come to our notice that the Corporate Applicant is a Non Banking Financial Company (“NBFC”) registered under section 45-IA of the Reserve Bank of India Act, 1934 which is clearly mention at page 33 of the Company Petition which also states the Corporate Applicant is primarily engaged in the business of providing Loans and Investing in securities.
12. To have a clearer picture, we perused the Memorandum of Association of the Corporate Applicant, sadly, the Corporate Applicant has not attached the first page of the Memorandum of Association that lists down the primary objects of the Company, which shows that the Corporate Applicant has not come before us with clean hands.
13. The Auditor’s Report also states that the Corporate Applicant has registered as required under section 45-IA of the Reserve Bank of India Act, 1934.
14. The Hon’ble NCLAT in *Radhiraj Thakur, Director, Mayfair Capital (P) Ltd. v. Jindal Saxena Financial Services (P) Ltd.*¹ has held that Financial Service Providers have been kept outside the purview of the Code. From the records it is clear that the Corporate Applicant herein is a financial service provider.
15. Further, it is important to clarify that the the Government has notified the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority)

¹ [2018] ibclaw.in 79 NCLAT

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-I**

**Cougar Vyapaar Pvt. Ltd.
C.P. (I.B) No. 343/KB/2022**

Rules, 2019 (“FSP Rules”) on 15 November 2019, but it is imperative to note that Rule 6 of the FSP Rules states that CIRP can be initiated against a Financial Service Provider only when an application is filed by the Appropriate Regulator. In the present case the Financial Service Provider has filed the application to initiate CIRP against itself.

16. Under the above circumstances, we hereby dismiss C.P. (IB) No. 343/KB/2022. The Corporate Applicant is at liberty to seek other remedies that may be available to it under any other law.
17. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order pronounced on the 03rd day of July 2023.

GGRB_LRA