

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT-V, NEW DELHI

CP IB NO. 238/(ND)/2023

Order under Section 10 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

M/S CARRYCON INDIA LIMITED

A-128, Mohammadpur, Bhikaji Cama Palace,
New Delhi, 110066

...Corporate Applicant

Order Delivered on: 04.06.2024

CORAM:

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant : Mr. Vinod Chaurasia, Adv.
For the Respondent :

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The present petition has been filed by **M/s Carrycon India Limited (CIN: U60210DL1995PLC074490)**, the Corporate Applicant, on 16.02.2023 under Section 10 of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiation of Corporate Insolvency Resolution process (CIRP) against itself. The application has been filed through its Director, **Gokul Das Rao, DIN: 01177421**, duly authorized vide Board Resolution dated 07.02.2023. A copy of the Board Resolution dated 07.02.2023 is annexed to the Application and marked as Annexure- A-1 on page 23.
2. The Corporate Applicant was incorporated on 08.12.1995 vide Certificate of Incorporation issued by the Registrar of Companies, which is placed at



page no. 91 & 92 as Annexure- A-7. It was engaged in the business of laying down the cables for government authorities successfully for more than twenty-five years. Copy of Master Data, Memorandum of Association & Article of Association are placed on record.

3. During the Course of business, the Corporate Applicant has raised the financial and operational debt from different sources for running the business operations. The total debts mentioned in the Part III of the Application is Rs. 7,69,82,500/-.

4. Facts of the Case

- a) The Company was working as a contractor for government authorities and other persons for overlaying telecommunication lines & Internet optical fiber cables since 1995. but it went down after the Covid-19 Pandemic due to which the profit earning company become loss making company.
- b) The Company has taken loan not only from State Bank of India but also from its directors/related parties to support its working capital and invest the amount of loan to execute the work order received from various vendors.
- c) The Company is also under an obligation to clear the operational debt too on account of payment against gratuity, ESI, Statutory Authorities and salary etc. to its workmen and employees.
- d) Company has rendered services to MTNL, BSNL and Reliance Infocom Ltd. However, since 2007, the Corporate Application is into various litigations at all levels such as Arbitrations, High court and Supreme Court with its clients. the Company is entitled to receive an amount of Rs. 4.38 Cr. (Approx) form MTNL and despite its best effort, it could only recover 1.34 Cr after the order of Delhi High Court. The Company is also entitled to recover amount of Rs. 2.20 Cr. (Approx.) from BSNL. The Financial Statement as on 31 March 2023 is still showing Trade receivable worth More than Rs 5.24 Crores which is blocked in legal dispute since 2007.
- e) The Corporate Applicant was also into contract with Reliance Infocom Ltd. which is executed up to 2012 and till today they never paid the final payment of Rs. 50,16,293/- with interest which is Rs.



1,07,94,979/- in toto. The Company has written to PM Grievance Cell, MSME Ministry and RoC, Mumbai but did not receive any payment.

- f) The Company was continuously paying interest to SBI Bank for the money blocked under dispute @ 14% per annum. The Company was awarded with 10% interest but still waiting for realization. The management of the Corporate Applicant also applied for restructuring of loan accounts with SBI but despite repeated follow-ups SBI never restructured the loan accounts. The SBI has classified the loan accounts as NPA on 28.02.2022. This is the primary reason for gradual diminishing of the financial strength of the Company. Despite putting best of its efforts, company is unable to recover the outstanding amount thereon resulting downfall in its financial health. Due to Covid-19 Pandemic and blocked amount, the company is in acute shortage of working capital and strict & very low cash flow.
- g) Therefore, the Corporate Applicant vide its board resolution dated 07.02.2022, a board of directors resolved to file application under Section 10 of the Insolvency and Bankruptcy Code, 2016 and authorized the Applicant/director to sign the petition for initiating the Corporate Insolvency Resolution Process against itself u/s 10 of the IBC 2016. Further, the Members of the Corporate Person in its Extra-Ordinary General Meeting held on 07.02.2023 with 99.34% approved the filing of present application under Section 10 of I & B Code, 2016. The relevant Extract of the Board Resolution is reproduced below:

"RESOLVED THAT pursuant to the provisions of section 10 of the Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules 2016 and all the applicable laws and Regulations, including all other applicable provisions of Companies Act, 2013, as may be applicable, subject to the approval of National Company Law Tribunal, New Delhi Bench, Adjudicating authority designated under the Insolvency and Bankruptcy Code, 2016 and subject to the approval of shareholders of the company, the consent of the board of the directors be and is hereby unanimously accorded to initiate Corporate Insolvency Resolution Proceeding and file an application under section 10 of the Insolvency and Bankruptcy Code, 2016 to meet the ongoing crisis."



- h) The Applicant Company has placed on record audited financial statement for the year 2020-21 and 2021-22 and provisional balance sheet of the company as on 31.01.2023.
- i) This adjudicating authority vide its order dated 25.04.2023 directed the Corporate Applicant to submit a detailed affidavit with regard to “treatment of reserves, treatment of book debts, treatment of immovable and movable property, details of investment made in gold, shares, debentures, if any, and which are not yet disclosed in the application including any other tangible asset.” The Applicant has filed an affidavit dated 08.01.2024 in compliance of order dated 25.04.2023 thereby submitting litigation records with MTNL and BSNL, Loan Restructuring Request Letter to SBI and NPA & Possession notice by SBI dated 09.09.2022 & 17.09.2022 respectively.
- j) Notice was issued to State Bank of India by the Corporate Applicant in compliance of order dated 08.01.2024 but no one appeared on behalf of financial creditor, SBI. Therefore, the right to represent before this adjudicating authority of the SBI has been closed vide order dated 04.04.2024.

Analysis and findings

5. We have heard the Learned Counsel appearing for the Corporate Applicant and have perused the documents produced on record. Considering the submissions made and documents placed on record, we find that the debt is due and payable by the Corporate Applicant to various Financial and Operational Creditor as specified in Part III of the FORM 6 and the Corporate Applicant is unable to pay the same.
6. We further find that apart from Director, the app Bank of India is the only Financial Creditor of the Corporate Applicant with the debt of Rs. 7,69,82,500/-. The Corporate Applicant owes some operational dues also and the list of Operational Creditor is places on record. Also, the Corporate Applicant also placed on record Audited Financial statements of last two years and list of Operational Dues whereby Applicant have Rs. 8,90,460/- of Staff Debts (Salary), Rs. 8,46,476/- of Gratuity Debt and Rs. 23,18,300/- of other operational Debt.



7. Further in this regard we rely upon the judgment of Hon'ble NCLAT in the case of **M/s Unigreen Global Pvt. Ltd. Vs. Punjab National Bank 2017 SCC OnLine NCLAT 610** which has held that:

*“20. Under both Section 7 and Section 10, the two factors are common i.e. the debt is due and there is a default. Sub-section (4) of Section 7 is similar to that of sub-section (4) of Section 10. Therefore we, hold that the law laid down by the Hon'ble Supreme Court in **“Innoventive Industries Ltd. (Supra)** is applicable for Section 10 also, wherein the Hon'ble Supreme Court observed as **“The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.”**”*

It is therefore clear that the Applicant has proved that debt is due and there is default.

8. The Corporate Applicant has proposed the name of **Ms. Suman Kumar Verma (Regn. No. IBBI/IPA-003/IPA-N00342/2021-2022/13657)** to function as the Interim Resolution Professional (IRP). Ms. Suman Kumar Verma has submitted his written communication in FORM 2 in terms of Section 10(3)(b). the written Communication is placed on record before us.
9. The Corporate Applicant has furnished the books of accounts for the relevant period under Section 10(3)(a); the Corporate Applicant has also filed the Special Resolution passed by the shareholders in General Meeting dated 07.02.2023 under Section 10(3)(c).
10. The application is free from defects and complete in all aspects as required under the law. The Application shows that the Corporate Debtor is in default of the Debt that is due and payable, and default is more than the threshold amount as stipulated under Section 4(1) of the Code at the relevant time. The default stands established and there is no reason to deny the admission of the present application.
11. Therefore, in the light of the facts stated in the application and the documents placed on record, this Adjudicating Authority admits this Application and orders initiation of CIRP against the Corporate Applicant under the following terms: -



- a) The Application bearing **CP (IB) No. 238/ND/2023** 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 **Carrycon India Limited**.
- b) There shall be a moratorium under section 14 of the IBC.
- c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Applicant under section 33 of the IBC, as the case may be.
- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e) As per the proposal given by the Corporate Applicant, **Ms. Suman Kumar Verma (Regn. No. IBBI/IPA-003/IPA-N00342/2021-2022/13657)** having **Email Id: ipskverma@gmail.com**, is appointed as the Interim Resolution Professional (“IRP”) for ascertaining the particulars of Creditors and convening meetings of Committee of Creditors (“CoC”) for evolving a Resolution Plan
- f) During the CIRP period, the management of the Corporate Applicant shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the Code. The officers and managers of the Corporate Person shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g) The IRP/RP shall submit to this Adjudicating Authority periodical reports on quarterly basis with regard to the progress of the CIRP in respect of the Corporate Applicant.
- h) The Corporate Applicant to pay to IRP a sum of Rs. 2,00,000/- (Rupees Two Lakh only) to meet the initial costs, 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. Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.

- i) The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 and its subsequent amendments if any.
- j) The Court Officer of this Court is hereby directed to communicate this Order to the Corporate Person and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- k) Additionally, the Corporate Applicant shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Applicant. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)