



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-201
(IB)-253(PB)/2021

IN THE MATTER OF:

SSA Traders Pvt. Ltd.

....Applicant

SECTION

U/s 10 IBC

Order delivered on 30.10.2023

CORAM:

SHRI MAHENDRA KHANDELWAL,
HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. (IB)-
253(PB)/2021 is **admitted.**

Sd/-
(RAHUL BHATNAGAR)
MEMBER (T)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (J)



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-V

COMPANY PETITION NO. (IB)-253/PB/2021

Under Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016

IN THE MATTER OF:

SSA TRADERS PRIVATE LIMITED

Registered Office: 2, Press Enclave Road,
Saket, New Delhi-110017

Authorised Person: Mr. Vinod Sharma

Address: 3152/16, Gali No. 3, Ranjeet Nagar
South Patel Nagar, New Delhi- 110008

.... CORPORATE APPLICANT

Order Pronounced on: 30.10.2023

CORAM

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Applicant : Adv. Mr. Gautam Singh

For the Respondent:



ORDER

PER: SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

1. This is an application filed under Section 10 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC') r/w rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the AAA Rules') by Mr. Mr Vinod Sharma, being the Director authorized for initiation of Corporate Insolvency process in respect of SSA Traders Private Limited (for brevity 'Corporate Applicant/Applicant Company'), the Corporate Debtor being the Corporate Applicant itself.

Averments of the Corporate Applicant:

2. The Corporate Applicant submitted that he has received the approval of his shareholders by way of Special Resolution for filing of the instant application for Corporate Insolvency Resolution Process under Section 10 of Insolvency and Bankruptcy Code, 2016. A copy of Board Resolution dated 14.12.2020 and thereafter of 05.04.2021 and special resolution passed at the meeting of the shareholders held on 31.12.2020 are attached as annexure -A6 (Colly) and annexure A7 with the present Application.
3. Further the Corporate Applicant submitted that the Corporate Applicant was engaged in the business of showcasing and exporting premium arts and handicrafts produce of India and for supplying authentic and unique Indian



handicrafts to the world. It is submitted by the Corporate Applicant that after the recession period from 2008-2010; the demand for Indian Handicrafts supplied by the Company dropped and the depreciation of Rupees vs Dollar further led to losses being suffered by the Company which led to decline in the operations of the Corporate Applicant.

4. Corporate Applicant submitted that the financial health of the company is under severe stress and the company is not in the position to repay its creditors despite the bona-fide intention of the company to meet its obligations.
5. Further the Applicant submitted that as per the financial statements of the Applicant Company from the Financial years 2018-2019 to 2019-2020 and provisional financial statement as on 15.04.2021, the total debt of the Applicant Company is Rs.18,76,80,930 and the total default is 6,07,47,090, wherein total default against the Financial Creditors is Rs. 6,00,00,000 and against the various Operational Creditors is Rs.7,47,090. A certified copy of detailed list of Financial Creditors and Operational Creditors of the Corporate Applicant containing the amount of debt & amount of default is attached as ANNEXURE-A-13 with the present Application, as shown below:



DETAILED CALCULATION SHEET OF OUTSTANDING AMOUNT

1. Debt Due and in default as on 31.12.2019

S. No.	Name of Creditor	Debt Due	Amount in Default
1	VRJ Traders Private Limited	18,69,53,150	2,00,00,000
2	Balaji Contractors	5,00,000	5,00,000
3	Vandana Pankaj & Co.	1,685	1,685
4	Luthra & Luthra LLP	1,73,310	1,73,310
5	Sunil Kumar Tyagi	52,785	52,785
	TOTAL	18,76,80,930	2,07,27,780

2. Debt Due and in default as on 25.03.2020

S. No.	Name of Creditor	Debt Due	Amount in Default
1	VRJ Traders Private Limited	18,70,09,349	2,00,00,000
2	Balaji Contractors	5,00,000	5,00,000
3	Vandana Pankaj & Co.	13,125	13,125
4	Luthra & Luthra LLP	1,81,180	1,81,180
5	Sunil Kumar Tyagi	52,785	52,785
	TOTAL	18,77,56,439	2,07,47,090

3. Debt Due and in default as on 14.12.2020

S. No.	Name of Creditor	Debt Due	Amount in Default
1	VRJ Traders Private Limited	18,71,16,414	4,00,00,000
2	Balaji Contractors	5,00,000	5,00,000
3	Vandana Pankaj & Co.	13,125	13,125
4	Luthra & Luthra LLP	1,81,180	1,81,180
5	Sunil Kumar Tyagi	52,785	52,785
	TOTAL	18,78,63,504	4,07,47,090

4. Debt Due and in default as on 31.03.2021

S. No.	Name of Creditor	Debt Due	Amount in Default
1	VRJ Traders Private Limited	18,72,43,239	6,00,00,000
2	Balaji Contractors	5,00,000	5,00,000
3	Vandana Pankaj & Co.	13,125	13,125
4	Luthra & Luthra LLP	1,81,180	1,81,180
5	Sunil Kumar Tyagi	52,785	52,785
	TOTAL	18,79,90,329	6,07,47,090

6. Further the Corporate Applicant submitted that if the instant application is not admitted by this Hon'ble Tribunal, it will cause serious and irreparable loss and injury to the whole system of operations of the corporate applicant.



7. This Adjudicating Authority vide order dated 11.03.2022 directed the Ld. Counsel for the Corporate Applicant to serve the notice to all the Stakeholders of the Applicant Company. The Corporate Applicant has complied with the aforesaid direction and submitted an affidavit of service dated 14.04.2022.

Analysis and Findings

8. We have heard Ld. Counsel for the Corporate Applicant and perused the averments made in the application as well as in affidavits filed by the Corporate Applicant. The relevant documents annexed with the respective submissions have been examined.
9. The notice of the present application was issued to all the Stakeholders and the shareholders of the Applicant Company. However, no objector had come forward and neither any document is available on record to show any objection raised by any Stakeholders, shareholders or statutory authorities.
10. It is relevant to note legal principles decided by the Hon^{ble} NCLAT, New Delhi with regard to the Petitions filed u/S.10 in the matter of *Unigreen Global Pvt. Ltd. VS. Punjab National Bank & Ors. CA (AT) (Ins. 81/2017)* wherein it was 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. Subsection (4) of Section 7 is similar to that of subsection (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”.

21. In an application under Section 10, the „financial creditor“ or „operational creditor“, may dispute that there is no default or that debt is not due and is not payable in law or in fact. They may also oppose admission on the ground that the Corporate Applicant is not eligible to make application in view of ineligibility under Section 11 of the I & B Code. The Adjudicating Authority on hearing the parties and on perusal of record, if satisfied that there is a debt and default has occurred and the Corporate Applicant is not ineligible under Section 11, the Adjudicating Authority has no option but to admit the application, unless it is incomplete, in which case the Corporate Applicant is to be granted time to rectify the defects. 22. Section 10 does not empower the Adjudicating Authority to go beyond the records as prescribed under Section 10 and the information as required to be submitted in Form 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 subject to ineligibility prescribed under Section 11. If all information are provided by an applicant as required under Section 10 and Form 6 and if the Corporate Applicant is otherwise not ineligible under Section 11, the Adjudicating Authority is bound to admit the application and cannot reject the application on any other ground. 23. Any fact unrelated or



beyond the requirement under I & B Code or Forms prescribed under Adjudicating Authority Rules (Form 6 in the present case) are not required to be stated or pleaded. Non-disclosure of any fact, unrelated to Section 10 and Form 6 cannot be termed to be suppression of facts or to hold that the Corporate Applicant has not come with clean hand except the application where the „Corporate Applicant“ has not disclosed disqualification, if any, under Section 11. Nondisclosure of facts, such as that the „Corporate Debtor“ is undergoing a corporate insolvency resolution process; or that the „Corporate Debtor“ has completed corporate insolvency resolution process twelve months preceding the date of making of the application; or that the corporate debtor has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under the said Chapter; or that the corporate debtor is one in respect of whom a liquidation order has already been made can be a ground to reject the application under Section 10 on the ground of suppression of fact/not come with clean hands. xxx xxx xxx 25. Similarly, if any action has been taken by a „Financial Creditor“ under Section 13(4) of SARFAESI Act, 2002 against the Corporate Debtor or a suit is pending against Corporate Debtor under Section 19 of DRT Act, 1993 before a Debt Recovery Tribunal or appeal pending before the Debt Recovery Appellate Tribunal cannot be a ground to reject an application under Section 10, if the application is complete.



- 11.** After a careful examination of the facts of the case, it is evident that there was a debt due which is above the pecuniary threshold limit as envisaged under Section 4 of the Code, 2016 and there was a default of the same. It is also observed that the Corporate Applicant was not earning sufficient profit to repay its debts and its net worth is eroded. The present Company Application was supported with the special resolution passed by the shareholders of the corporate applicant.
- 12.** As a sequel of the above discussion and in terms of Section 10(4) of the Code, 2016, we hereby admit the instant Company Application (C.P.(IB)/253/(PB)/2021) in terms of Section 10 of the Code and CIRP is initiated against SSA Traders Private Limited.
- 13.** Section 16(1) and Section 16 (2) of the Code mandate that the Resolution Professional proposed in the Application u/s 7 or 10 of the Code shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional Ms. Anjali Yadav has submitted the declaration in Form 2 dated 28.04.2021. The proposed Interim Resolution Professional Ms. Anjali Yadav



has valid Authorisation for Assignment which is valid upto 12.02.2024. Hence we appoint Ms. Anjali Yadav having registration number IBBI/IPA-002/IP-N00691/2019-2020/12690 as the IRP of the Corporate Applicant.

- 14.** We direct that public announcement in pursuance of Section 13 (2) of the Code shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 10 of the Insolvency & Bankruptcy Code, 2016.
- 15.** Keeping the spirit of Regulation 6 of IBBI (IRP for CP) Regulations, 2016 we hereby direct the Corporate Applicant to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Ms. Anjali Yadav to meet out the expenses to perform the functions assigned to him for a period of 6 months i.e. 12 lakhs rupees. The needful shall be done within five days from the date of receipt of this order by the Corporate Applicant. The said amount however is subject to adjustment towards Resolution Process cost as per applicable rules.
- 16.** We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed: “(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.” (e) Notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

- 17.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the



surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

18. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the „Corporate Debtor“. In case there is any violation committed by the exmanagement or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the „Corporate Debtor“ as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

19. The office is directed to communicate a copy of the order to the Corporate Debtor/ Corporate Applicant, Financial Creditors, the Interim Resolution Professional and



the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from the pronouncement of this order.

- 20.** Copies of this order may also be sent to Registrar of Companies as well as the IBBI for information and update.
- 21.** The present Company Application i.e., C.P.(IB)/18/ND/2023 stands admitted on the presumption that the applicant has not received any SARFAESI notice and that this application is not to defeat the purposes of law.

Sd/-

(RAHUL BHATNAGAR)

MEMBER (TECHNICAL)

Sd/-

(MAHENDRA KHANDELWAL)

MEMBER (JUDICIAL)