



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, (Court II)  
KOLKATA**

**CP (IB)/164(KB)2023**

*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:*

**Ashoka Designs LLP  
(LLPIN-AAL-7509)**

**...Corporate Applicant**

**Order reserved on: 21/11/2023**

**Order pronounced on: 29/11/2023**

*Coram:*

**Smt. Bidisha Banerjee** : **Member (Judicial)**  
**Shri Arvind Devanathan** : **Member (Technical)**

*Appearances (through hybrid mode):*

For Corporate Applicant : Mr. Rahul Parasrampurua, PCS.

**ORDER**

***Per: Arvind Devanathan, Member (Technical)***

1. This Adjudicating Authority convened through hybrid mode.
2. **Brief facts of the case**
  - (a) This application has been filed by Ashoka Designs LLP (hereinafter called as the “**Corporate Applicant / Corporate Debtor**”) for initiations of Corporate Insolvency Resolution Process (hereinafter called as the “**CIRP**”) under section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as the “**IBC**”).
  - (b) The Corporate Debtor is engaged in the business of trading of textile fabrics and allied products. The Corporate Debtor has obtained loans from Union Bank of India, Axis Bank, HDFC Bank and YES Bank, apart from private financial creditors in the form of unsecured loans.

The Corporate Debtor went into severe financial stress due to COVID Pandemic, consequent to which the Corporate Debtor is unable to pay its debt to its Financial Creditors as well as to its Operational Creditors.

- (c) The Corporate Debtor has made a default in payment to the Financial Creditors an amount of Rs.3,66,80,026/- and to the Operational Creditors an amount of Rs.4,44,68,484/-. The Corporate Debtor started defaulting payments from December, 2022 and hence filed this application under section 10 of the IBC for initiation of CIRP.

**3. Submissions of the Ld. Counsel for the Corporate Applicant**

- (a) Ld. Counsel for the Corporate Applicant has furnished details of Financial Creditors appearing in page 20 of this application and details of Operational Creditor in page 21 of the application.
- (b) Unaudited financial statement of assets and liabilities as on 15/07/2023 has been attached to demonstrate the existence of liabilities. The Ld. Counsel also took us through the audited financial statement as on 31/03/2022 to state that default existed as on 31/03/2022 and the same could not be paid till date and this has been demonstrated with the unaudited financial statement as on 15/07/2023. He submits that the financial creditors have initiated recovery proceeding and issued notice under section 13(2) of the SARFAESI Act, 2002 and the matter is pending before the DRT, Kolkata. In view of the above, the Corporate Debtor has no other alternative but to seek resolution through section 10 of the IBC.

**3. Analysis and Findings**

- (a) We have gone through the financial statement of the Corporate Debtor and found that Corporate Debtor has been making loss in the past one

year. In the previous year ended on 31/03/2022 the profit made was negligible Rs.1,55,321/- as against turnover of Rs.12,11,44,454/-.

- (b) We have perused the cash flow statement of the Corporate Debtor and found that significant amount has been locked up as inventories and trade receivable. Nearly 50% of the turnover is locked up in current assets. When queries made by the Bench, the Ld. Counsel for the Corporate Debtor submits that the Corporate Debtor is in garment business and most of the garments held as inventories have become outdated/out-fashioned. Therefore, the Corporate Debtor may have to write off most of the inventories. The same is the case with trade receivable, where most of which cannot be recoverable and consequently will have to be written off.
- (c) Under the above circumstances, there is no way the company is in a position to pay back the loans. Therefore, CIRP is the only option to resolve it by admitting the Corporate Debtor under section 10 of the IBC.

#### 4. **Inference**

We found that the application has been filed within the prescribed time limit. We also found that the amount of default is far in excess of threshold limit mentioned in section 4 of the IBC. In view of the above, we admit this petition under section 10 of the IBC and order for initiation of CIRP of the Corporate Applicant (Corporate Debtor) and pass the following orders:

- (i) The application filed by **Ashoka Designs LLP**, 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 **the Corporate Applicant**.

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- (ii) As a consequence of this application being admitted in terms of Section 10 of the IBC, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Corporate Applicant (Corporate Debtor) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- (iii) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:

(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 asset 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 (54 of 2002);*

(d) *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

*[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances 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*



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*the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]*

- (iv) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- (v) The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (vi) The Applicant has proposed the name of **Mr. Udit Agarwal** of “Shyam Lake Garden”, Block – C, Flat No. 519(G), 202, Jessore Road, Kolkata 700089, West Bengal having **e-mail id: [uditagarwal15@gmail.com](mailto:uditagarwal15@gmail.com)** and **Registration No. IBBI/IPA-001/IP-P-02799/2023-2024/14290**, as the Interim Resolution Professional (“IRP”). We have perused the written communication<sup>1</sup> in Form 2 submitted by Mr. Udit Agarwal under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with Authorisation for Assignment in Form B certifying that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by **Mr. Udit Agrawal** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of the section 10(3)(b) of the IBC. Hence, we appoint **Mr. Udit Agrawal** as the **Interim Resolution Professional** (“IRP”) of the Corporate Debtor to carry out the functions as per the IBC

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<sup>1</sup> Annexure ‘F’ at pages 55 to 57 of the application

subject to submission of a valid Authorisation For Assignment (“AFA”) in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2019. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (“IBBI”). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

- (vii) In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case may be, shall cause a public announcement immediately with regard to the admission of this application under Section 10 of the IBC and **call for submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression ‘*immediately*’ means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (viii) During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor 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. There shall be no future opportunities in this regard.

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- (ix) The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned Police Authorities and/or the Officer-in-Charge of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- (x) The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) The Corporate Applicant shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, 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. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (“CoC”).
- (xii) The **Registry** is hereby directed to communicate this Order to the Corporate Applicant (Corporate Debtor) and the Interim Resolution Professional by Speed Post and through e-mail immediately, and in any case, not later than two days from the date of this Order.
- (xiii) Additionally, the **Registry** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the



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Registry of this Court within seven days from the date of receipt of a copy of this order.

- (xiv) The Resolution Professional shall conduct CIRP in time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- (xv) The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority time to time.
- (xvi) The order of moratorium shall cease to have effect as per Section 14(4) of the IBC.
4. Urgent certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.
5. Post the matter on **09/01/2024** for filing the Periodical Progress Report by the IRP/RP.

**Arvind Devanathan**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Technical)**

Signed on this, the 29<sup>th</sup> day of November, 2023

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