

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH (Court – I)
KOLKATA**

CP(IB)/281(KB)2022

In the matter of:

A petition 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;

And

In the matter of:

Orbit Financial Consultants Private Limited (CIN: U74140WB2009PTC136173),
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 Rahul Bhatnagar	:	Member (Technical)

Date of Hearing: 17/03/2023
Order Pronounced on: 19/07/2023

Appearance through videoconferencing/physically:

For petitioner	:	Ms. Aparajita Rao, Adv. Ms. Ankana Basu, Adv.
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ORDER

Per: Rohit Kapoor, Member (Judicial)

1. This Court convened through hybrid mode.

2. The present petition has been filed by **Orbit Financial Consultants Private Limited, CIN: U74140WB2009PTC136173**, the Corporate Applicant, under section 10 of the Insolvency and Bankruptcy Code, 2016 (“**the Code**”) read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (“**Adjudicating Authority Rules**”) for initiation of Corporate Insolvency Resolution Process (“**the CIRP**”) against itself. The application has been filed through its Director Mr. Pratush Drolia, DIN: 01912602, duly authorised *vide* Board Resolution dated 29/06/2021, which is annexed as **Annexure “B” at page 40** of the petition. The petition is supported by an affidavit duly affirmed by Mr. Pratush Drolia, Director of the Corporate Applicant, which is placed at pages 144 and 145 of the petition.
3. The Corporate Applicant was incorporated on 23/06/2009 vide Certificate of Incorporation issued by the Registrar of Companies, which is placed at page 18 of the petition (Annexure “A”). It was mainly involved in the business of consultancy in the field of management, financial, investment, project, direct and indirect tax, etc. and allied businesses. The Corporate Applicant has duly annexed copy of PAN Card, Master Data and Memorandum and Articles of Association as **Annexure “A” at pages 15 to 39** of the petition.
4. The reasons for applying for initiation of the CIRP by the Corporate Applicant are as follows: -
 - (a) After the initial success, the Corporate Applicant was saddled with dead and unsaleable stock due to market downturn. This impairment of assets of the Corporate Applicant led to the loss in its Capital. As on 31/03/2022, the Corporate Applicant has a negative net worth of Rs.164,441,021.63;
 - (b) The total debt owed to the Operational Creditor (Income Tax Department) to the tune of is as follows Rs.7,12,17,594/-; and
 - (c) In view of the negative worth, continued cash losses, inability to meet the financial obligations, this present application under section 10 of the IBC has been filed.

5. The total debt owed to the Operational Creditors (Income Tax Department) is Rs.7,12,17,594.00 (Rupees Seven Crores Twelve Lakhs Seventeen Thousand Five Hundred Ninety-Four).
6. The members of the Corporate Applicant have given their consent by way of a special resolution passed in the Annual General Meeting held on 30/11/2021 (**Annexure “C” at pages 41 and 42 of the petition**) to file an application under section 10 of the Code, which is as follows:-

“RESOLVED THAT pursuant to section 10 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) regulations made thereunder (including any statutory modifications or re-enactment thereof for the time being in force), and the provisions of the Companies Act, 2013, as may be applicable, consent of the members of the Company be and is hereby accorded to initiate corporate insolvency resolution process against the company, with effect from the date hereof.”

A copy of the resolution dated 30/11/2021 along with notice and voting results are annexed as **Annexure “C” at pages 41 to 48** of the petition.

7. The Corporate Applicant has proposed the name of **Mr. Pankaj Kumar Kedia (Registration No. IBBI/IPA-001/IP-P01037/2017-2018/11710)** to function as the Interim Resolution Professional and has also annexed his Consent dated 18/07/2022 in Form 2, along with AFA issued by the Indian Institute of Insolvency Professionals of ICAI, which are annexed as **Annexure “D” at pages 49 to 51** of the petition.
8. The Corporate Applicant has duly filed **MGT 14** before the Registrar of Companies, West Bengal, which is annexed as **Annexure “E” at pages 52 to 55** of the petition.
9. In support of its Application, the Corporate Applicant has submitted, *inter alia*, the following documents with the petition: -
 - (a) Memorandum and Articles of Association of the Corporate Applicant (**Annexure “A” at pages 17 to 39**);

- (b) Audited Balance Sheets of the Corporate Debtor for the Financial Years ended 31/03/2020, 31/03/2021 and 31/03/2022 (**Annexure “F” at pages 56 to 119**);
 - (c) Statement of Affairs of the Corporate Debtor for the period 01/04/2022 to 31/07/2022 (**Annexure “G” at pages 120 and 121**);
 - (d) Copy of the Assessment Order dated 22/03/2015 issued by the Office of the Income Tax Officer under section 144 of the Income Tax Act, 1961 in favour of the Corporate Debtor (**Annexure “H” at pages 122 to 126**);
 - (e) Copy of the Appeal filed by the Corporate Debtor before the Learned C.I.T. (Appeals) – 4, Kolkata in respect of assessment order dated 22/03/2015 (**Annexure “I” at pages 127 to 132**);
 - (f) Assessment Order under section 143(3) and read with section 147 of the Income Tax Act, 1961 dated 27/12/2019 along with Demand Notice (**Annexure “J” at pages 133 to 139**);
 - (g) List of Shareholder as on 31/07/2022 (**Annexure “K” at page 140**);
 - (h) List of Assets of the Corporate Applicant (**Annexure “L” at page 141**);
 - (i) Affidavit under section 11 of the IBC, 2016 **at pages 142 and 143.**
10. In compliance of the order dated 07/11/2022, the Corporate Applicant has placed on record publications made on 17/11/2022 in “*Financial Express*” (English) and “*Aajkal*” (Bengali) by way of an affidavit affirmed on 26/11/2022. In terms of this publication next date of hearing before this Adjudicating Authority was notified. None has come forward before this Adjudicating Authority with any objection.
11. We have heard the Learned Counsel appearing for the Corporate Applicant and have perused the documents on record.

12. There is no dispute from any quarter that the debt is due and payable by the Corporate Applicant to various creditors and the Corporate Applicant is unable to pay the same.
13. The Corporate Applicant has furnished the books of accounts for the relevant period under section 10(3)(a); the Corporate Applicant has proposed the name of the Interim Resolution Professional (IRP), who has submitted his written consent (section 10(3)(b)); the Corporate Applicant has also filed the Special Resolution passed by shareholders in Annual General Meeting dated 30/11/2021 under section 10(3)(c).
14. The petition is free from defects and complete in all aspects as required under the law. The Petition shows that the Corporate Applicant is in default of debt that is due and payable, and the 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 Petition.
15. Therefore, in the light of the facts stated in the application and the evidence placed on records, this Adjudicating Authority admits this Petition and orders initiation of Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Applicant (Corporate Debtor) under the following terms: -
 - (a) The Petition bearing **CP(IB)/281(KB)2022** filed by the Corporate Applicant under section 10 of the Insolvency and Bankruptcy Code, 2016, is hereby admitted for initiating the Corporate Insolvency Resolution Process in respect of **Orbit Financial Consultants Private Limited, [CIN: U74140WB2009PTC136173]**;
 - (b) There shall be a moratorium under section 14 of the IBC, 2016;
 - (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 the Corporate Debtor 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, **Mr. Pankaj Kumar Kedia (Registration No. IBBI/IPA-001/IP-P01037/2017-2018/11710)** of 1, R. N. Mukherjee Road, 5th Floor, Room No.4, Kolkata 700001 is appointed as the Interim Resolution Professional (“**IRP**”), subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of Regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019, 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 progress report periodically with regard to the progress of the CIRP in respect of the Corporate Debtor;
- (h) The Corporate Applicant shall pay to IRP a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) to meet the initial costs, as per regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which shall be subject adjusted against the 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) Regulations, 2016;
 - (j) The Court Officer of this Court is hereby directed to communicate this Order to the Corporate Person and the IRP by Speed Post, e-mail and WhatsApp immediately, and in any case, not later than two days from the date of this order. A copy of this order shall also be served on the IBBI for information;
 - (k) Additionally, the Corporate Person shall serve a copy of this Order on the IRP, on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Applicant. The 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.
16. **CP(IB)/281(KB)2022** to come up on **18.08.2023** for filing First Progress Report.
17. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Rahul Bhatnagar
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 19th day of July, 2023.

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