

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (I.B) No. 130/KB/2021

In the matter of :

An Application under sections 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.

And

In the matter of :

Banger Tech Private Limited
(CIN: U74900WB2014PTC201262)

Having its registered office at: -
Village-Baneswarpore, P.O., Hasimnagar
24 Parganas, West Bengal - 743523

...Corporate Applicant

Coram:

Shri Rajasekhar V.K. : Member (Judicial)
Shri Harish Chander Suri : Member (Technical)

Date of hearing: 05.08.2021
Order pronounced on: 25.11.2021

Appearances (through video conference)

For Corporate Applicant : Mr. Sidhartha Sharma, Advocate
Ms. Ujjaini Chatterjee, Advocate
Mr. Arjun Asthana, Advocate
Ms. Shalini Basu, Advocate

ORDER

Per: Harish Chander Suri, Member (Technical)

1. This Court convened through video conference today.
2. The present Application has been filed by Banger Tech Private Limited, CIN: U74900WB2014PTC201262, the Corporate Applicant, under section 10 of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiation of Corporate Insolvency Resolution Process (CIRP)

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against itself. The Application has been filed through its Promoter and Director Mr. Aakash Agarwal, DIN: 06429954, duly authorised *vide* Board Resolution dated 22.03.2021, stating that the Corporate Debtor has made default of more than Rs.1,00,00,000/- (Rupees one crore only) towards the due of its creditors. A copy of the Board Resolution dated 22.03.2021 is annexed to the Application and marked as **Annexure-E on Page 149.**

3. The Corporate Applicant was incorporated on 21.03.2014 as an e-commerce start-up, duly certified by the Department of Industrial Policy and Promotion. It was involved in the business of providing digital services through a mobile application whereby it connected the local farms and dairies with customers.
4. The reasons for applying for initiation of the CIRP by the Corporate Applicant are as follows: -
 - 4.1. A sum of Rs.1.2 crore was infused by the Promoters and Directors to commence the business of the Corporate Applicant. Further funding was required by the Corporate Applicant to build operations and technology apart from footing other company expenses. Therefore, one Mr. Thomas Varkey had provided Rs.1 crore as seed investment which was followed by funding from Omnivore Partners India Fund worth Rs.14 crore.
 - 4.2. Technology was at the heart of this start-up, and a lot of money was put into building and developing a robust infrastructure for its operations. However, the volume of customers did not grow to the expected level due to which the Corporate Applicant incurred heavy losses. Whereas, more money was required to keep the company operational.

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- 4.3. The Operational Creditor has been incurring losses on account of maintenance and development of software, and out of the business transaction. The Corporate Applicant has also provided full-time employment to more than two hundred fifty people and part-time employment to around nine hundred people.
- 4.4. Due to the expected customer volume having not been received and due to sudden change in the market with big players entering the same field of business, the funding sources on which the Corporate Applicant was reliant, failed. This led to the failure of the business with no cash flow to pay the creditors.
- 4.5. The operations of the Corporate Debtor completely stopped on or around September 2019 and the defaults started occurring soon thereafter that exceeds Rs.1 crore.
- 4.6. One of the defaults occurred on 20.11.2019 when Bajaj Finance Limited issued a demand notice for repayment of monthly instalment of loan availed by the Corporate Applicant. Operational Debts started incurring from 05.09.2019 out of IT services.
5. The members of the Corporate Applicant have given their consent by way of a resolution passed in the Extra Ordinary General Meeting held on 22.03.2021 to file the application under section 10 of the Code. A copy of the Resolution dated 22.03.2021 and written consent of members are annexed to the Application and marked as **Annexure-F** and **G** respectively at **Pages 150 to 155**.
6. That Corporate Person has two Financial Creditors, Bajaj Finance Limited and ICICI Bank Limited and over 134 Operational Creditors apart from the Employees and Workmen. A list of Employees along with outstanding dues is annexed to the Application and marked as **Annexure-X** on **Pages 938 to 945**.

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7. In support of its Application, the Corporate Applicant has submitted, *inter alia*, the following documents: -

- (a) Memorandum and Articles of Association of the Corporate Applicant.
- (b) Financial statements of the Corporate Debtor for the last three Financial Years being 2017-2018, 2018-2019 and 2019-2020 and provisional Financial Statement for the Financial Year 2020-2021.
- (c) Bank account statements of the Corporate Applicant since 2018.
- (d) Shareholder and Share Subscription Agreement with Omnivore Partners India Fund and subsequent amendments.
- (e) Certificate of registration as a start-up dated 08.11.2017.
- (f) Legal notices and communications received for default from the Operational Creditors.
- (g) Statement of Affairs of the Corporate Debtor.
- (h) List of secured, unsecured, and sundry creditors and statutory liability.
- (i) Sample outstanding and unpaid invoices.
- (j) Details of OD facility from ICICI Bank and Details of Finance Facilities received from Bajaj Finance.
- (k) Ledger sheets reflecting unpaid invoices.
- (l) Proof of service to IBBI dated 15.04.2021.

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8. The Corporate Applicant has submitted the name of Mr. Aditya Kumar Tibrewal to function as the Interim Resolution Professional (IRP). Mr. Tibrewal has submitted his written communication in Form 2. The written communication is annexed to the application and marked as **Annexure-Z** on **Pages 947-948**.
9. We have heard the learned Counsel appearing for the Corporate Applicant and have perused the documents on record.
10. There is no dispute from any quarter towards the fact that the debt is due and payable by the Corporate Applicant to various creditors and that the Corporate Applicant is unable to pay the same.
11. 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 IRP who has submitted its written consent (section 10(3)(b)); the Corporate Applicant has also Special resolution passed by shareholders in Extra-Ordinary General meeting dated 22.03.2021 under section 10(3)(c).
12. 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 a 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 Application.
13. Therefore, in the light of the facts stated in the application and the evidence placed on record, this Adjudicating Authority admits this Application and orders initiation of CIRP against the Corporate Debtor under the following terms: -

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- (a) The Application bearing C.P.(IB)No.130/KB/2021 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 Banger Tech Private Limited, CIN: U74900WB2014PTC201262.
- (b) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 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 Corporate Debtor under section 33 of the IBC, as the case may be.
- (d) The IRP shall cause a public announcement of the initiation of the Corporate Insolvency Resolution Process and call for the submission of claims under section 15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016, shall be made immediately.
- (e) 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.
- (f) Necessary public announcement as per Section 15 of the Insolvency and Bankruptcy Code, 2016 may be made by the Resolution Professional upon receipt of the copy of this Order.
- (g) As per the proposal given by the Corporate Applicant, Mr. Aditya Kumar Tibrewal, having registration no. IBBI/IPA/-002/IP-P00743/2017-2018/11249, residing at 7C, Kiran Shankar Roy Road, Hastings Chambers, Basement, Kolkata, West Bengal-700001, is

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appointed as the IRP for ascertaining the particulars of Creditors and convening a Committee of Creditors for evolving a Resolution Plan.

- (h) The fee payable to IRP or, as the case may be, the RP 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 Code.
 - (i) During the CIRP period, the management of the Corporate Person shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. 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.
 - (j) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
 - (k) The Corporate Applicant to pay to IRP a sum of Rs. 1,00,000/- 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.
 - (l) 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.
14. The Registry is hereby directed to communicate the Order to the Corporate Applicant, and the Interim Resolution Professional by Speed Post and e-mail.

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15. **CP (IB) No. 130/KB/2021** to come up on 28.01.2022 for filing the periodical report.

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

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

25.11.2021

SR (LRA)