IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

CP (IB) NO.61/ALD/2023

(Application by Corporate Applicant to initiate Corporate Insolvency Resolution Process u/s 10 of Insolvency and Bankruptcy Code, 2016 read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

Shandong Chunlong Group India Private Limited

G-074, Site 5, Kasna Industrial Area,
Greater NOIDA,
Gautam Budh Nagar,
Uttar Pradesh- 201308

..... Corporate Applicant

Order pronounced on 24th July, 2024

Coram:

Mr. Praveen Gupta	:	Member (Judicial)
Mr. Ashish Verma	:	Member (Technical)

Appearances:

Sh. Sarwar Raza with Sh. Kashif Raza, Advs.	:	*For Corporate Applicant*
Ms. Tanvi Luhariwala, Adv.	:	*For the Creditor/ Maniram Exports Pvt. Ltd.*

ORDER

1. The present Petition has been filed by Shandong Chunlong Group India Pvt. Ltd., the Corporate Applicant, under section 10 of the Insolvency and Bankruptcy Code,

2016 (the Code) read with rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority Rules, 2016) for initiation of Corporate Insolvency Resolution Process (CIRP) against itself. The Application in Form 6, has been filed through its Authorized Representative, Mr. Mohammad Arif Zafar duly authorized vide Board Resolution dated 24.07.2023. A certified copy of the said resolution has been annexed as Annexure A-5 with the petition.

2. The Corporate Applicant was incorporated on 29.05.2017 having CIN: U74999UP2017FTC093576 having its registered address at G-074, Site 5, Kasna Industrial Area, Greater Noida, Gautam Budh Nagar, Uttar Pradesh- 201308. The nominal Share Capital of the Company is Rs. 5,85,00,000/-and the Paid Share Capital of the Company is Rs. 5,83,17,500/-. Mr. Mohammad Arif Zafar manages the financial affairs of the Corporate Debtor.

3. The Corporate Applicant is primarily engaged in the manufacturing of detergent powder and is also duly registered with the Department of Goods and Services

tax, MSME and has a valid Import and Export Certificate for carrying out its business operations.

4. The Corporate Applicant, due to the rejection of Foreign Direct Investment (FDI) proposals on two occasions coupled with a significant reduction in business operations during the COVID-19 pandemic, experienced a substantial decline in its operations and, consequently, incurred financial losses.

5. The Corporate Applicant has no financial creditors and has only operational creditors with whom dealings had started immediately after the incorporation of the Applicant on a regular basis. That a contract/agreement dated 29.05.2017 was executed between the Corporate Applicant and the largest Operational Creditors namely Shandong Chunlong Group Co. Ltd and Topseller Chemicals Company Limited. Further, the Corporate Applicant entered into various agreements with its other operational creditors as well for operating its business.

6. It is submitted that the Corporate Applicant is actively pursuing legal means to recover outstanding debts from certain debtors. However, the company is facing pressure

from its creditors to settle their outstanding amounts, which the company is currently incapable of fulfilling. As per the current scenario, the financial health of the company is under severe financial stress and its Board of Directors and promoters do not foresee any viable business opportunity to recover from this financial distress.

7. Accordingly, on failure to repay the loan amount, a special resolution was passed on 16.07.2023 at the meeting of the shareholders for initiating CIRP. Thereafter, a Board Resolution was passed on 24.07.2023 to file the present application for and on behalf of the Corporate Applicant.

8. Notices were issued to the Operational Creditors, which numbered 20, as per the order dated 30.10.2023. These notices were sent via email as well as postal delivery. An affidavit of service has been filed, vide diary no. 3094 dated 06.12.2023, which includes a communication issuing notice of the present petition. This affidavit, attached as Annexure-1, shows the email addresses for 17 of the creditors, and confirms that postal

communication was made to all 20 Operational Creditors. The affidavit also includes the postal communications/tracking report, which reflects the service being completed.

9. One creditor namely Maniram Exports Pvt. Ltd. filed its objection, however, the said objection is with respect to the quantum of default, which according to the said Operational Creditor is higher than what has been reflected by the Corporate Applicant.

10. In response to the above-mentioned objection, the Corporate Applicant filed a rejoinder and submitted that the creditors' debts were calculated based on the financial data available as per the audited balance sheet as on 31.03.2023. The Corporate Applicant acknowledged that the creditor, Maniram Exports has a monthly rental due of Rs. 4,34,000/- as per the executed agreement, however, the rightful claims can only be presented before the Interim Resolution Professional as and when appointed by this Tribunal. Therefore, the proposed IRP (Insolvency Resolution Professional) should be entrusted with the responsibility of verifying the

calculation of the claim. No other objections were received from the remaining Operational Creditors.

11. We have heard the Learned Counsel on behalf of the Corporate Applicant and examined the application in terms of provision of Section 10.

12. As per Section 10 of Insolvency and Bankruptcy Code, 2016 a Corporate Applicant can file an application before the Adjudicating Authority, seeking initiation of Corporate Insolvency Resolution Process of the Corporate Debtor that has committed a default, for initiating Corporate Insolvency Resolution Process with the Adjudicating Authority, in a prescribed form by enclosing the following:

a) The information relating to its books of account and such other documents for such period as may be specified;

b) The information relating to the resolution professional proposed to be appointed as an interim resolution professional; and

c) The Special resolution passed by shareholders of the Corporate Debtor or the resolution passed by at

least three-fourth of the total number of partners of the Corporate Debtor, as the case may be, approving filing of the application.

As per 10(4) the Adjudicating Authority can admit an application if the same is complete and no disciplinary proceedings are pending against the proposed Resolution Professional.

13. It is also relevant to note down certain legal principles decided by the Hon'ble NCLAT, New Delhi with regard to the Petitions filed u/S.10 of the IBC, 2016 and the same are as under:

(i) *M/s. Unigreen Global Private Limited Vs. Punjab National Bank & 3 Ors., in Company Appeal (AT) (Insolvency) No.81 of 2017* dated 01.12.2017, it was observed as under:

"…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".

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. Non-disclosure 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 hand.

Moreover, the Hon'ble NCLAT in *Vyomit Shares Stock & Investments Pvt. Ltd. vs. Securities and Exchange Board of India (SEBI) in Company Appeal (AT) (Insolvency) No.258* of 2019 dated 15.05.2019, held that an Application filed under Section 10 of the IBC, 2016, can be rejected on the ground that the 'Corporate Debtor' is earning sufficient profit.

14. The Corporate Applicant has submitted in Part III that there is a total debt of Rs. 17,31,35,204 as on 10.09.2023 and it is in default. Further, it is submitted that the Corporate Applicant is under severe financial stress and its Board of Directors do not foresee any viable business opportunity to recover from this financial stress. Therefore, the Corporate Applicant satisfies the conditions for initiating an Application U/s 10 of the Code viz., there is an existence of debt, there is a default and the Corporate Debtor is not disqualified U/s 11 of the Code. The shareholders of the Corporate Debtor also unanimously passed a Special Resolution in the Extraordinary General meeting held on 16.07.2023 for

initiation of Corporate Insolvency Resolution Process against the Corporate Applicant.

15. The Corporate Applicant has furnished the Statement 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 as per Section 10(3)(b) and the Corporate Applicant has also filed the copy of Board Resolution passed by board of directors in the meeting held on 24.07.2023 under Section 10(3)(c).

16. The application is free from defects and complete in all aspects as required under the law. The Application shows that the Corporate Applicant is in default of a debt that is due and payable, and the default of Rs. 17,31,35,204/- 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. The Law Research Associate of this Tribunal, Mr. Sarim Husain, has checked the credentials of Ms. Aakriti Sood, and there is nothing adverse heard against her. In view of the above, we appoint Ms. Aakriti Sood, Registration No. IBBI/IPA-

002/IP-N01224/2022-2023/14221, having office address 1A, Ground Floor, Sanskriti Engineer's Apartment, GH-22, Sector - 56, Gurugram, Gurgaon, Haryana,122011, Email: contactaakritisood@gmail.com, as the Interim Resolution Professional.

17. 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:

a) The Application bearing CP IB No. 61/ALD/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 Shandong Chunlong Group India Pvt. Ltd. (CIN: U74999UP2017FTC093576).

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 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, Ms. Aakriti Sood, Registration No. IBBI/IPA-002/IP-N01224/2022-2023/14221 is appointed as the IRP for ascertaining the particulars of Creditors and convening a Committee of Creditors for evolving a Resolution Plan.

f) 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.

g) The IRP/RP shall submit to this Adjudicating Authority periodical progress reports on a quarterly basis with regard to the progress of the CIRP in respect of the Corporate Debtor.

h) The Corporate Applicant to pay to IRP a sum of Rs. 1,00,000 /- (Rupees One 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.

i) The Interim Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

j) The Registry of this Court is hereby directed to communicate this Order to the Corporate Person and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

k) Additionally, the Corporate Person shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kanpur by all available means for updating the Master Data of the Corporate Person. 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.

18. CP IB No. 61/ALD/2023 to come up on 30.08.2024 for filing the first progress report.

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

-Sd-	-Sd-
(Ashish Verma)	**(Praveen Gupta)**
Member (Technical)	**Member (Judicial)**

Date: 24th July, 2024