



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform)

CP (IB) No.52/BB/2021
U/s. 10 of the IBC, 2016
R/w Rule 7 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

M/s KPR Silks Limited,
Registered Office at:
No. 117, 1st Cross,
RRMR Extension,
4th Cross, Labagh Road
Bangalore – 560 027.

... Petitioner/Corporate Applicant

Order delivered on: 25th November, 2022

Coram: Hon'ble Shri. Kishore Vemulapalli, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For Petitioner Company: Shri Hemanth Rao

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition, CP(IB) 52/BB/2021, is filed by M/s KPR Silks Limited ('Petitioner/Corporate Applicant') under section 10 of IBC, 2016, R/w. Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of itself, M/s KPR Silks Limited. The total amount of default committed as per the Corporate Applicant is Rs.10,55,67,090/- (Rupees Ten Crore, Fifty Five Lakhs, Sixty Seven Thousand and Ninety Only).
2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

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- (i) M/s KPR Silks Limited (herein after referred to as Petitioner/Corporate Applicant) is a Public Company and was incorporated on 12.10.1994, having CIN: U85110KA1994PLC016399. The registered office of the company is situated at No. 117, 1st Cross, RRMR Extension, 4th Cross Lalbagh Road Bangalore- 560 027. The Nominal Capital of the Petitioner Company is Rs. 1,00,00,000/- and Paid up Share Capital is Rs. 56,55,000/-. The main business of the Corporate Applicant is trading of silk materials.
- (ii) It is submitted that the Company is in the business of trading of silk materials, and the company was a regular importer of raw silk from China and selling the same locally in India. It is further submitted that in the recent years 2017-18 and 2018-19, the silk sector in the country has undergone many problems such as Price fluctuations, Absence of proper market, lack of transport, competition from synthetic fibres. It is submitted that the stocks procured from china at the peak prices could not be sold in the local market and the material got deteriorated due to time lapse and storage condition.
- (iii) The company also incurred heavy losses and Covid- 19 Pandemic has become the added fuel to the negative cash flows and adverse growth of the Company. It is submitted that the company is unable to serve the debt of the financial creditors and CC limit has reached the peak. With this backdrop, the company is not only unable to pay the debts due to financial and operational creditors but also unable to continue its business operations in future.
- (iv) It is further submitted that the members of the company are already aware that company's financial for the financial performance for the year ending 31.03.2020 reveals a net margin of 0.77% as against 0.62% of the year ending 31.03.2019. And the draft financial for the year ended

31.03.2021 which reveals a net loss Rs. 3.29 Crores and the net worth has been completely eroded. The details of the Financial Creditors Secured and unsecured to whom payments have been defaulted are as follows:

Memo Dy No 3315: Names of Financial Creditors as on 31.03.2021

Sl. No	Name of Creditor (Secured Financial Creditors)	Sanctioned Amount (in lakhs)	Amount in default	Date of default
1	ICICI Bank Ltd	70,000,000	71,364,470	19.07.2019 to 31.03.2021
2	ICICI Bank Ltd	900,000	907,797	19.07.2019 to 31.03.2021
3	ICICI Bank Ltd	300,000	299,798	19.07.2019 to 31.03.2021
4	ICICI Bank Ltd	13,500,000	13,668,962	19.07.2019 to 31.03.2021
5	HDFC Car Loan	380,000	98,042	28.10.2019
6	HDFC Car Loan	390,000	112,620	30.08.2019
	Total	85,080,000	86,451,689	

Sl. No	Name of Creditor (Unsecured Financial Creditors)	Sanctioned Amounts	Amount in default	Date of default
1	Pushpa Devi Rathi	4,990,364	4,990,364	28.01.2019
2	ECL Finance Ltd (Edelweiss)	2,000,000	394,672	28.02.2019
	ECL Finance Ltd- ECLGS	220,000	234,353	29.07.2020
3	Fullerton India Credit Co Ltd	1,565,018	150,776	04.04.2019
	Fullerton India Credit Co Ltd	135,880	135,880	03.08.2020
4	Aditya Birla Finance Limited	3,535,000	1,081,473	02.11.2018
	Aditya Birla Finance Limited	474,168	474,168	19.08.2020
5	Bajaj Finserve	1,600,000	1,600,000	01.02.2021
6	Tata Capital Financial Services Limited	3,500,000	816,660	28.02.1029
	Tata Capital Financial Services Limited- ECLGS	448,200	450,000	29.09.2020
7	Capital First IDFC Bank Ltd	1,420,000	356,833	27.12.2018
8	Capital First IDFC Bank Ltd	2,550,000	309,195	07.11.2017

	Capital First IDFC Bank Ltd	366,794	366,794	17.08.2020
9	CLIX Capital	2,013,168	837,360	08.11.2019
10	India Bulls	2,500,00	390,568	28.07.2018
11	Indostar Capital Finance Ltd	1,368.428	951,327	12.12.2019
12	Kotak Bank	2,400,000	479,355	30.12.2018
13	Shriram City Union Finance	2,500,000	758,840	24.01.2019
14	Poonawalla Finance	2,500,000	1,355,374	10.07.2019
15	Poonawalla Finance-ECLGS	432,307	432,307	30.08.2020
16	American Express Credit Card	1,200,000	1,267,692	
	Total	37,719,327	17,833,991	

The details of Operational Creditors are attached as Annexure 1 to the Memo (Dy No 3315 dated 02.12.2021). The total Trade payables in default is Rs 1,281,409/-.

In the above circumstances, the Corporate Applicant has applied before this Tribunal to initiate proceedings under Section 10 of the IBC, 2016 for commencing Corporate Insolvency Resolution Process.

3. Capital First IDFC Bank Limited (Respondents 11,12,& 13) now IDFC First Bank Limited, Unsecured Financial Creditor filed its objections, inter alia, stating as follows:

- (i) The Respondents submits that the Corporate Debtor has misrepresented the actual dues payable to the Respondents Nos. 11, 12, 13 and same is evident as per Annexure- E of the Petition/Application filed by the Corporate Debtor. It is submitted that the same is false and misleading. The sum due to the Respondents mentioned in Annexure -E is contrary to the 3 Loan Accounts which is due to an extent of Rs. 2,020,259.46 as on 13.07.2022.
- (ii) It is further submitted that according to the Corporate Debtor, it is unable to service its debts on account of huge losses in the business of trading of silk materials due to lack of finance, High Cost of Production along with effects of Covid-19 Pandemic. Therefore, the Corporate Debtor has decided to close

out all its financial obligation at the earliest with the available resources at the Company's disposal. However, the said stand is contrary to actual facts and circumstances. Hence it is submitted that the Corporate Debtor is not entitled for any relief sought for in the Application.

(iii) Respondent submits that Corporate Debtor is financially capable of repaying the outstanding amount with Respondents, whereas, there is no intention to clear the outstanding amount. It is submitted that the Corporate Debtor cannot maintain the present Application for Insolvency Resolution Process.

4. Clix Capital Pvt Ltd one of the objectors/financial creditors filed its objection inter alia stating as follows:

a. The Respondent, Financial creditor submits that the Petitioner has approached this Respondent for obtaining business loan, after acceding to the request place by the Petitioner, The Respondent had sanctioned a Loan amount to the tune of Rs 20,12,168/-. It is submitted that as per the terms stipulated in the loan agreement, the Petitioner agreed to repay the loan amount with rate of Interest @ 19% P.A, on the basis of 36 monthly instalments. Further, the Petitioner after making few instalments failed to adhere to the terms of the loan agreement.

b. It is submitted that the Petitioner's statement of accounts and balance sheets annexed with the present Application reflected that the Company is not incurring losses, but rather is making profits on yearly basis.

c. Further, the financial data shows huge amount of receivables are excepted to be received by the debtors who had taken a goods on credit from the Corporate Applicant. It is submitted that the Corporate Applicant may not be declared insolvent as the Corporate Applicant does not fulfil the criteria of Insolvency. As per the financial data the Corporate Applicant has stable financials and is in a position, to pay off the debts.

5. The learned Counsel for the Petitioner has filed common rejoinder to the objection filed by the Unsecured Financial Creditor, Capital First



IDFC Bank Limited now IDFC First Bank Limited and Clix Capital Pvt Ltd inter alia stating as follows:

- (i) Petitioner submits that more than 90% of the Creditors of the Applicant have not objected to the captioned Application. The Respondent No. 11 to 14 are less than 5% of the total creditors of the Corporate Applicant. Hence, when the majority of the Financial as well as Operational Creditors have consented to initiation of corporate insolvency resolution process, the objections of the said Respondent cannot be considered. It is further submitted that none of the above respondent deny the existence of debt and default.
- (ii) It is further submitted that once debt and default is admitted and the Corporate Applicant satisfies the procedural requirements stipulated under Section 10 & 11, the Adjudicating authority has no option but to initiate CIRP.
- (iii) It is submitted that the largest Financial Creditor of the Applicant, ICICI Bank has initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 against the Applicant and its Guarantors. ICICI Bank has issued Demand Notice dated 03.08.2021 for a sum of Rs. 8,92,94,886/- under Section 13(2) of the Act. Further, ICICI Bank has taken symbolic possession of the mortgaged property belonging to the erstwhile Directors/Guarantors of the Corporate Applicant vide Possession Notice dated 28.02.2022 issued under Section 13(4) of the Act.
- (iv) It is further submitted that from the proceedings initiated by the ICICI Bank under SARFAESI Act, it is evident that the Applicant has availed debts and defaulted in repaying the same because of which the Bank has taken symbolic possession u/s 13(4) of the house belonging to the Directors of the Applicant. Thus, when the largest financial creditor has initiated proceedings for realizing its dues under the SARFAESI Act, the

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contention of the respondents that the Applicant Company is a profit making company is facile and contrary to the facts.

- (v) Further, it is clarified that most of the receivables shown in the Balance sheet are not “assets” but bad debts which the Applicant is unable to recover till date and have to be written off.
6. After a careful examination of the facts of the case it clearly shows that, there was a debt due and there was a default of the same. The Financial Creditors who opposed the Petition failed to contradict the same. The Respondent failed to substantiate the claim that the Petitioner Company was earning sufficient profit to repay its debts. It is also not their case that the Petition was not supported with the special resolution passed by the shareholders of the corporate applicant.
 7. The Respondents who opposed the Company Petition, also failed to show that the petitioner/Corporate Debtor is in any way disqualified to file the Company Petition under Section 11 of the IBC, 2016.
 8. On 19.09.2022, the matter was reserved for orders. However, on perusal of the documents filed with the C.P. by the Petitioner Company it is noticed that the Provisional Balance Sheet is attached for the year ending 31.03.2021, at Page No. 116. However, though the Provisional Profit and Loss a/c mentions “for the year ended 31.03.2021”, the details given in that are for the year ended 31.03.2019. And the matter was listed for being mentioned on 14.11.2022 and the Counsel for the Petitioner was directed to file proper Audited Profit and Loss a/c and Balance Sheet for the year ending 31.03.2021. The said directed was compiled vide diary No. 4899 dated 16.11.2022 and the same is taken on record.
 9. Heard Shri Hemanth Rao, Learned Counsel for the Petitioner Company and we have carefully perused the pleadings of the party and the extant provisions of the Code and the law.
 10. 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.

11. 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 informations 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.*

- (ii) *In Armada Singapore Pte. Ltd. Vs. Ashapura Minechem Ltd., in I.A.No.3052 of 2019 in Company Appeal (AT) (Insolvency)No.350 of 2019 and batch order dated 30.09.2019, the Hon'ble NCLAT held that a Petition filed under Section 10 of IBC, 2016 is not maintainable without the approval of the shareholders of the Corporate Debtor in its 'Annual General Meeting'/'Extra-Ordinary General Meeting'.*
- (iii) *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.

12. Further, the audited financials for the year 2018-2019, 2019-2020 and provisional financials for 2020- 2021 were attached along with the petition. However, due to the error in the Provisional financials for 2020-2021, they have filed the Audited financials for 2020-2021 on 16.11.2022 on the direction of this Court. It is seen from the financials of the Petitioner Company for the year ending 31.03.2021 that the company has reported huge Loss.
13. 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 unanimously passed a Special Resolution in the Extraordinary General meeting held on 31.03.2021 for initiation of Corporate Insolvency Resolution Process against the Corporate Applicant.
14. The Applicant has suggested a qualified Resolution Professional namely Mr. M V Sudarshan, with Registration No. IBBI/IPA-002/IP-NO0561/2017-18/11707, who has also filed his written Consent in Form-2 dated 08.04.2020, by inter alia declaring that he is eligible to be appointed as resolution professional in respect of the corporate applicant and there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.
15. In view of the above facts and circumstances of the case, and the settled position of law on the issue; and by exercising powers conferred on this Adjudicating Authority, U/s 10 (4)(a) of the Code, we do hereby admit CP(IB) 52/BB/2021 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s KPR Silks Limited. We declare Moratorium in terms of sub-section (1) of Section 14 of the Code as under:-
 - a. the institution of suits or continuation of pending suits or proceedings against the corporate debtor including

- execution of any judgement, 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.
16. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 as the case may be.
 17. Under Clause (b) of Section 10(3) of the Corporate Applicant is bound to propose the name of the Registered Resolution Professional to be appointed as Interim Resolution Professional. We have perused the written communication in Form No.2, Annexure IV furnished by Shri MV Sudarshan, a registered Insolvency Professional with IBBI. He has furnished his written consent and stated that presently he is serving as Liquidator in three other proceeding under the Code so far. He has also certified that no disciplinary proceedings are pending against him with the IBBI or the Indian Institute of Insolvency Professionals of ICAI of which he is a member. His Registration number is IBBI/IPA-002/IP-N00561/2017-2018/11707. We find that written consent furnished by the proposed Interim Resolution Professional is in order.
 18. In view of the above, we appoint Shri MV Sudarshan, Insolvency Professional, bearing Registration No. IBBI/IPA-002/IP-N0056/2017-2018/11707 email Id sudarshan.mv@outlook.com Mobile No.



9620300691, address: No. 984/13, 8TH Main, Girinagar II Phase, Bangalore- 560085as Interim Resolution Professional, with the following directions:-

- a. The term of appointment of Shri MV Sudarshan shall be in accordance with the provisions of Section 16(5) of the Code;
- b. In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;
- c. The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral
- d. The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

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- e. It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- f. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a committee of creditors and shall file a report, certifying of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee; and
- g. The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight
19. A copy of this order be communicated to all the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(KISHORE VEMULAPALLI)
MEMBER (JUDICIAL)