

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 72/Chd/CHD/2021

**Under Section 10 of the
Insolvency & Bankruptcy Code**

In the matter of:

Punj Security and Housekeeping Services

having its registered office at
H.O. Village Daddu Majra,
Near Daronachaarya Stadium,
Union Territory, Chandigarh

....Petitioner-Corporate Debtor

Judgment delivered on: 25.08.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing:

For the petitioner	:	Mr. Vaibhav Gupta, Advocate
For the EPFO	:	Mr. Ashish Chaudhary, Advocate
For the Income Tax Department	:	1). Mr. Yogesh Putney, Senior Standing Counsel 2). Mr. Harveet Singh Sehgal, Advocate
For the Excise and Taxation Department, U.T., Chandigarh	:	Mr. Ajay Jagga,

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

This petition has been filed by **Punj Security and Housekeeping Services Limited**, the Corporate Debtor itself in Form No.6 as prescribed under sub rule (1) of Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, the 'Rules') for initiating Corporate Insolvency Resolution Process under Section 10 of Insolvency & Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code'). The Corporate Debtor also falls within the definition of the term 'Corporate Applicant' as defined in sub-section (5) of Section 5 of the Code.

2. The Corporate Debtor (hereinafter referred to as the 'corporate applicant') was incorporated on 20.08.2009 having been allotted CIN U9300CH2009PTC031723. Its registered office is at Chandigarh in and therefore, the matter falls within the territorial jurisdiction of this Tribunal. The certificate of incorporation of the corporate debtor is at Annexure A-7.

3. The authorized share capital of the corporate debtor is ₹10,00,000/- and paid up share capital is ₹4,20,000/-.

4. The petition has been filed by the corporate- applicant through Mr. Umesh Kumar Sharma, Director, who has been authorized to file this petition under Section 10 of the 'Code' vide Board resolution dated 26.10.2020 (Annexure-1 of the petition). The petition has been filed in pursuance of resolution passed in the meeting of members of corporate applicant held on 23.11.2020 (Annexure A-2 of the petition). The contents of the application are

supported by the affidavit of Mr. Umesh Kumar Sharma, Director, which is at Page No. 13-15 of the paper book.

5. As per Memorandum of Association of the corporate applicant (Annexure A-7), the main objects of the corporate applicant are:

“i) To provide security services, placement services, detection services of every description and be appointed as security consultants for person, firms, companies and other institution established and/or to be established and to provide industrial security as well as individual and private security by employing maximum number of persons Ex-servicemen and to from security personnel to undertake security surveys, to train dogs, to form dog squad, to employ detectives, to carry on investigation, to train employed security personnel and/or to undertake all type of security work.

ii) To provide house keeping, cleaning, mechanized cleaning and maintenance services.”

6. It is stated that the Corporate applicant that the Credit and Liability Statement of the GST amounting to Rs. 1,41,68,504.44/- as downloaded from the portal of the GST showing liability of the Corporate Applicant is attached as Annexure A-8 with the application. The Corporate Applicant has been also served upon a show Cause Notice dated 11.02.2020 issued by Director General of GST Intelligence demanding Rs. 8,49,33,907/- as due towards Corporate Applicant. A copy of the said show cause notice dated 11.03.2020 is attached as Annexure A-9. The liability of the EPF qua the damages under Section 14B and interest under Section 7Q of the EPF and MP Act, 1952 determined by the EPF Organization amounting to Rs. 42,89,799/- vide letter dated 31.07.2019 is

attached as Annexure A-10 with the application. A copy of the Audited Financial Statements of the Corporate Applicant for the Financial Year 2018-19 is attached as Annexure A-11. A copy of the Audited Financial Statements of the Corporate Applicant for the Financial Year 2019-20 is attached as Annexure A-12. A copy of the Provisional Financial Statements of the Corporate Applicant for the period 01.04.2020 to 30.11.2020 is attached as Annexure A-13. A statement of affairs of the Corporate Applicant as on 30.11.2020 alongwith List of Shareholders and List of Assets and Liabilities is attached as Annexure A-14 with the application.

7. In Part-III of Form No. 6, the complete particulars including addresses of the financial and operational creditors have been given. A list of the financial and operational creditors is at Annexure A-4 and A-5 of the petition, respectively.

8. In compliance of the order dated 19.07.2022, an affidavit vide Diary No. 02028/8 dated 26.07.2022 was filed wherein the special resolution passed at EOGM signed by all the three shareholders and balance sheet of the company as on 31.03.2022 has been placed on record.

9. Notice of this petition was issued to all the financial creditors annexed at Annexure A-4 and Annexure A-5 of the petition. The petitioner has filed affidavit of service vide Diary No. 02028/1 dated 21.09.2021.

10. Pursuant to the notice issued to the Income Tax Department, it has filed report vide Diary No. 02028/2 dated 07.10.2021 where it was submitted that as of now no demand is outstanding against the applicant company as per the ITBA System nor any assessment/penalty/prosecution proceedings are

pending. The Income Tax Department does not have any reservation to the initiation of Corporate Insolvency Resolution Process under Chapter II of Part II of Insolvency and Bankruptcy Code, 2016.

11. The Excise and Taxation Department, U.T., Chandigarh has filed its reply vide Diary No. 02028/7 dated 19.07.2022, to claim GST of U.T., Chandigarh, whereby the Department has stated that the taxpayer i.e. applicant deposited Rs. 14,68,791/- on 10.02.2021 and now the total pending demand is Rs. 1,75,15,167/- and seeking indulgence of this Adjudicating Authority to adjust the outstanding amount of the applicant towards the GST of U.T., Chandigarh and further the name of the Excise and Taxation Department, U.T., Chandigarh be enlisted in the list of creditors.

12. The Employees Provident Fund Organization has filed its reply vide Diary No. 02028/4 dated 18.04.2022 stating that the EPFO being the quasi-judicial process and being a beneficial legislation, the dues of the workers under Section 7A of the EPF & MP Act, 1952 is assessed and is asked to the employer/establishment to deposit the said amount with the organization. Further, in failure of depositing the amount of PF contribution within prescribed time framed, the EPFO has been mandated by the act to levy damages and interest under Section 14B and Section 7Q of the Act, on the delayed payment of PF Contribution. It is further submitted that as per the office note dated 27.09.2021, issued by the Prosecution Cell of EPFO the total amount of EPF dues Rs. 10,00,66,551/- is due from the petitioner under different Heads. The detailed calculation sheet issued by Account Section of EPFO is attached as Annexure R/8 to R/10A of the reply. It is averred that the petitioner has

misrepresented the facts in its petition and be dismissed. Also, no interim relief i.e. stay on recovery proceedings initiated by EPFO be granted during the pendency of present petition.

13. Since, the learned counsel for the Income Tax Department submitted that it has no objection if the CIRP is initiated against the corporate applicant. The EPFO and Excise and Taxation Department, U.T., Chandigarh have filed their objection with regard to the EPFO dues and GST respectively. The same can be filed before the IRP/RP, after verification of the dues, if any, may be admitted as per the provisions of the Code. Also, the above objections does not create any hindrance in the admission of the present petition as same be can be dealt after admission by the Interim Resolution Professional during the Corporate Insolvency Resolution Process.

14. We have heard the learned counsel for the corporate applicant and learned counsel for the financial creditors and gone through the records.

15. Sub-section (4) of Section 10 of the Code says that the Adjudicating Authority by an order:-

“(a) admit the application if it is complete (and no disciplinary proceeding is pending against the proposed resolution professional); or

(b) reject the application, if it is incomplete (or any disciplinary proceeding is pending against the proposed resolution professional).

Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.”

16. In order to comply with the requirement of clause (a) of Section 10(3) of the Code the petitioner has placed on record all the necessary documents to prove the existence of financial/operational debt and the amount as required in column 3 of Part-III of the Application Form. The details of the operational debt in default have also been provided. The petitioner has also filed its audited financial statements for the years 2018-19, 2019-20 at Annexure A-11 & A-12 and the provisional financial statements upto 30.11.2020 which is at Annexure A-13. Also, in compliance affidavit vide Diary No. 02028/8 dated 26.07.2022 audited financial statements as on 31.03.2022 has been attached to the said affidavit.

17. Sub-Section (3) of Section 10 of the Code reads as under:-

“The corporate applicant shall, along with the application, furnish-

(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 maybe, approving filing of the application.”

17. Under Clause (b) of Section 10(3) the corporate applicant is bound to propose the name of Registered Resolution Professional to be appointed as Interim Resolution Professional. We have perused the written communication in Form No.II at Annexure A-3 furnished by Mr. Sanjay Mehra, a Registered Resolution Professional with IBBI. This Form contains all the particulars provided in the Form. He has furnished his written consent and stated

that currently he is not serving as an Interim Resolution Professional/Resolution Professional/Liquidation in any proceedings under IBC, 2016. 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-001/IP-P01818/2019-20/12784. We find that the written consent furnished by the proposed Interim Resolution Professional is in order.

18. It is represented by the learned counsel for the corporate applicant that as per the financial statements, following is the status of the corporate applicant under different heads:-

SI No	Financial Year	Turnover	Profit/(Loss)	
1	2021-22	0.00	(11,13,558.66)	Loss
2	2019-20	8,56,34,452.00	(1,19,11,048.27)	Loss
3	2018-19	29,89,01,468.16	53,99,874.92	Profit

19. The figures extracted above indicate complete loss of net worth of the corporate applicant for the financial year 2019-2020 & 2021-22. Also as stated above in the reply filed by the Excise and Taxation Department, EPFO clearly indicates that the corporate applicant has failed to pay its debt and has thus committed default. It is thus competent to set in motion the insolvency resolution process under the Code to ensure maximum value of assets which is in the interest of all the stakeholders. It could also be observed that the learned counsel representing financial creditors have submitted that the financial creditors have no objection if the CIRP is initiated against the corporate applicant.

20. In view of the above facts the petition is admitted. We declare the 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 applicant 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 applicant 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 applicant 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 applicant.

21. It is further directed that the supply of essential goods or services to the corporate applicant as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate applicant.

22. 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 applicant under Section 33 as the case may be.

23. The Law Research Associate of this Tribunal has checked the credentials of the proposed Interim Resolution Professional and nothing has been found adverse against Mr. Sanjay Mehra.

24. In view of the above, we appoint Mr. Sanjay Mehra, Insolvency Professional, bearing Registration No. IBBI/IPA-001/IP-P01818/2019-20/12784, email Id: sanjay.mehra64@gmail.com, Mobile No. 9871692592, address: B-11, 3rd Floor, Geetanjali Enclave, New Delhi-110017 as an Interim Resolution Professional, with the following directions:-

- i) The term of appointment of Mr. Sanjay Mehra shall be in accordance with the provisions of Section 16(5) of the Code;
- ii) 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 applicant 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 applicant has ownership

rights recorded in the balancesheet of the Corporate applicant 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 applicant;

- iii) 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;
- iv) 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 applicant;
- v) It is hereby directed that the Corporate applicant, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate applicant as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate applicant;

- vi) This Adjudicating Authority further directs the ex-management and promoters of the corporate applicant to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. The RP is directed to make a specific mention of any non-compliance in this regard in his status report filed before this Bench and move an application seeking appropriate remedy, if required. This is imperative for meeting the Code's objectives for maximising the value of the assets of the corporate debtor and by completing the resolution process in a time-bound manner.

- vii) The Interim Resolution Professional shall after collation of all the claims received against the corporate applicant and the determination of the financial position of the corporate applicant constitute a committee of creditors and shall file a report, certifying constitution 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

- viii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

25. The petitioner-corporate applicant is directed to deposit an

amount of ₹1,00,000/- (Rupees One Lakh Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner-corporate applicant to be recovered as the CIRP cost.

26. Accordingly, the present petition is allowed and admitted.

27. A copy of this order be communicated to both 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.

Sd/- 25.08.22
(Subrata Kumar Dash)
Member (Technical)

Sd/- 25.08.22
(Harnam Singh Thakur)
Member (Judicial)

August 25, 2022
YP/ASH