

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT-III (SPECIAL BENCH)
IB – 809/ND/2021**

Order under Section 10 of the Insolvency and Bankruptcy Code, 2016
r/w Rule 7 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

METALITE ECO FUTURE LABS (P) LTD

Having Its Registered Office at:

**4417/7, ANSARI ROAD, DARYAGANJ,
NEW DELHI, DELHI – 110002.**

CIN: U731OODL201OPTC206820

..... Corporate Applicant

Order Pronounced On: 14.03.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

APPEARANCES

For the Applicant : Mr. Dhruv Gupta, Advocate

For the Respondent :

ORDER

PER: BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (J)

1. **IB – 809/ND/2021** is an Application filed by **M/s METALITE ECO FUTURE LABS (P) LTD**, the Corporate Applicant on *06.12.2021*, before this Adjudicating Authority, under Section 10 of the

**METALITE ECO FUTURE LABS (P) LTD
IB – 809/ND/2021
Date of Order : 14.03.2023**

Insolvency and Bankruptcy Code, 2016 (“**IBC**” or “**Code**”) r/w Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“**Adjudicating Authority Rules**”), for initiating the Corporate Insolvency Resolution Process (“**CIRP**”) and declaring moratorium and for appointment of Interim Resolution Professional (“**IRP**”), against itself. The Application has been filed through its Director **MR. VIKAS JALAN, DIN: 00470484** duly authorized *vide* Board Resolution dated 20.10.2021 which is filed along with the Application and *vide* Extra-Ordinary General Meeting (“**EOGM**”) dated 22.11.2021 with 100% of the consent which is filed along with the Application.

2. The Corporate Applicant was incorporated on 09.08.2010, as a Company Limited by Share (Non- govt. Company) having CIN: U731OODL201OPTC206820, under the Companies Act, 1956. The Authorised Share Capital of the Corporate Applicant is Rs.15,00,000/- (*Rupees Fifteen Lakhs only*) and the Paid-up Share Capital of the Corporate Applicant is Rs. 10,64,700/- (*Rupees Ten Lakhs Sixty Four Thousands Seven Hundred only*). On the date of application, the Corporate Applicant is involved in the business of manufacturing of high quality retro-reflective thermoplastic paints, thermoplastic based crack sealing materials and coloured high friction anti-skid surfacing products. The Registered Office Address of the Corporate Applicant is 4417/7, ANSARI ROAD, DARYAGANJ, NEW DELHI, DELHI – 110002. Therefore, this Bench has jurisdiction to deal with this application. A copy of the Company Details/Master Data of the Corporate Applicant which is filed along with the Application.

3. **Facts of the Case:**

- i. As on 30.11.2021, there are two Directors in the Corporate Applicant Company, details of whom are provided as hereunder:

| Name of Directors | Address | DIN No. |
|--------------------------|---|----------------|
| Vikas Jalan | 16, Anand Lok, August Kranti Marg, New Delhi-110049. | 00470484 |
| Sushil Daga | House No. 4268-B/3, 1 st Floor, Ansari Road, Daryaganj, Delhi-110002. | 03036549 |

A copy of the List of Directors of the Corporate Applicant Company as on 30.11.2021 which is filed along with the Application.

- ii.** As on 30.11.2021, there are two Shareholders in the Corporate Applicant Company, details of whom are provided as hereunder:

| Name of Shareholders | Address | No. of Shares |
|-----------------------------|--|----------------------|
| Vikas Jalan | 16, Anand Lok, August Kranti Marg, New Delhi-110049. | 76470 |
| Sushil Daga | House No. 4268-B/3, 1 st Floor, Ansari Road, Daryaganj, Delhi-110002. | 30000 |
| | Total | 106470 |

A copy of the List of Shareholders of the Corporate Applicant Company as on 30.11.2021 which is filed along with the Application.

- iii.** In the F.Y. 01.04.2018-31.03.2019, the Corporate Applicant made a revenue of almost Rs. 1,17,06,226/- out of operations with other income of Rs. 6,34,81,607/- thus making a total revenue of Rs. 7,51,87,833/-. The amount of Rs. 6,34,81,607/- was through writing back the amounts of rebate and discount once the Joint Venture Agreement ("**JVA**") dated 21.06.2014 was terminated vide MOU/Agreement dated 15.03.2019 with "Hitex Group and Tuskar", as exited the Project on "as is where is basis". It is pertinent to mention here that in the year ending 31.03.2019, the Corporate Applicant paid towards the Employee

Benefit Expenses to the tune of Rs. 84,43,971/- and also made a total profit after tax for a sum of Rs. 2,41,06,778/-

- iv.** In the F.Y. 01.04.2019-31.03.2020, the Corporate Applicant made a revenue of almost Rs. 6,76,83,200/- out of operations with other income of Rs. 7,05,019/- thus making a total revenue of Rs. 6,83,88,219/-. The amount of Rs. 6,76,83,200/- was through local and export sales. It is pertinent to mention here that in the year ending 31.03.2020, the Corporate Applicant paid towards the Employee Benefit Expenses to the tune of Rs. 90,57,560/- and also made a total profit after tax for a sum of Rs. 3,37,139/-. It is pertinent to note here that due to the failure in the business model of the Corporate Applicant and the termination of the JVA vide MOU dated 15.03.2019, the Corporate Applicant's profit dropped from Rs. 2,41,06,778/- as on 31.03.2019 to Rs. 3,37,139/- as on 31.03.2020. A copy of the Audited Financial Statements of the Corporate Applicant for the Financial Years ending 31.03.2019 and 31.03.2020 which are filed along with the Application.
- v.** In the F.Y. 01.04.2020-31.03.2021, the Corporate Applicant made a total Loss after tax for a sum of Rs. 3,72,93,063/-. The Total Outstanding dues to Operational Creditors as on 31.03.2021 was Rs. 3,40,49,034/-. A copy of the Audited Financial Statements of the Corporate Applicant for the Financial Year ending 31.03.2021 which is filed along with the Application.
- vi.** The Total Outstanding dues to Operational Creditors as on 30.11.2021 was Rs. 3,40,49,034/- and other Current Liabilities including Bills payable are amounting to a sum of Rs. 11,39,272/-. A copy of the latest Audited Provisional Financial Statement of the Corporate Applicant as on 30.11.2021 which is filed along with the Application.

- vii.** The main reason behind the failure was due to the repeated failure of formulations since the foreign collaboration was towards the materials/products which were developed by the foreign collaborator and was manufactured by them according to their respective weather and climate standards. Most of the trials failed. Even after trying various changes for tropical weather, the materials/products still did not work well. After a year, when after a series of research and developments, when the solution was found to improve the material/product as per the tropical weather of India and there was a correction in the formulations, thereafter, the pricing of the materials/ products was not competitive enough to survive in a highly price sensitive Indian Market.
- viii.** The Corporate Applicant had issued certain invoices during October-November, 2019 for a total amount of Rs. 5,60,00,000/- (Rupees Five Crores Sixty Lacs Only), against the orders placed by a Company namely M/s Gulf Mark General Trading LLC, based in Dubai, United Arab, Emirates, in the year 2019. However, due to the lockdown, the same could not materialize since the exports were not being done in the particular phase. Thus the aforesaid transaction failed and all the material manufactured could not be exported. The Corporate Applicant Company received a compensation of USD 2,04,480/- (US Dollars Two Lacs Four Thousand Four Hundred and Eighty Only) vide Export Invoice dated 22.07.2020. The said amount was approximately Rs. 1,52,00,000/- (Rupees One Crores Fifty Two Lacs Only). The same was used by the Corporate Applicant to pay towards the outstanding dues of Creditors and hence the amount of Rs. 4,92,51,614/- payable towards the Operational creditors as on 31.03.2020 was reduced to a sum of Rs. 3,40,49,034/- payable to Operational Creditors as on 31.03.2021. The same is well reflected in the Audited Financial

Statement of the Corporate Applicant Company. A copy of the Export Invoices raised duly October-November, 2019 along with the Export Invoice for Compensation towards the cancellation of order dated 22.07.2020 which is filed along with the Application.

- ix.** Due to the failures in the business model of the Corporate Applicant, the Corporate Applicant was not able to clear the outstanding debts of various Operational Creditors of the Corporate Debtor Company. It is a matter of fact that there was no Financial Debt undertaken by the Corporate Applicant. A copy of the Certificate issued by the Statutory Auditor of the Corporate Applicant confirming the status of the Financial Creditor as on 30.11.2021 which is filed along with the Application.
- x.** The Operational Creditors as on 30.11.2021 along with their details are reproduced here as:

| Name of Operational Creditor | Total Amount Outstanding (Rs.) |
|-------------------------------------|---------------------------------------|
| Meva Lal Traders | 48,20,620/- |
| Satya Traders | 1,30,87,500/- |
| S. D. Engineers | 14,600/- |
| Vishnu Traders | 1,60,85,186/- |
| Yuvraj Traders | 41,127/- |
| Total | 3,40,49,033/- |

The Other Current Liabilities including the Bills payable by the Corporate Applicant as on 30.11.2021 along with their details are as under:

| Name of Creditor | Total Amount Outstanding (Rs.) |
|-------------------------------|---------------------------------------|
| A Perival & Co. | 6,54,920/- |
| Chandrabala Jain & Associates | 5,900/- |
| R. N. Sharma & Co. | 18,000/- |
| Mukesh Sharma Imprest | 68,335/- |
| Trans Metalite India Ltd. | 3,92,117/- |
| Total | 11,39,272/- |

A copy of the Corporate Applicant Certified status of the Operational Creditors and the Details of the Bills payable as on 30.11.2021 which is filed along with the Application.

- xi.** The Total Outstanding Due & Payable Operational Debt including the Sundry Creditors and the Bills Payable by the Corporate Applicant as on 30.11.2021 amounts of Rs. 3,51,88,305/- (Rupees Three Crores Fifty One Lacs Eighty Eight Thousand Three Hundred and Five Only).
- xii.** The Corporate Applicant has been trying to run its operations, however to no avail. Till the year 2019, the Corporate Applicant was having almost 16 Employees. However, by the year 2021, there are no employees left in the Corporate Applicant Company. A copy of the List of Employees of the Corporate Applicant which is filed along with the Application.
- xiii.** As on date there is only one (1) pending litigation against the Corporate Applicant Company, filed by one of the employees of the Corporate Applicant Company. A copy of the details of the Pending litigations against the Corporate Applicant Company as on date of filing of the present Application which is filed along with the Application.
- xiv.** The Bank Account Statements of the Corporate Applicant Company for the last three financial years maintained with Vijaya Bank (Bank of Baroda), ICICI Bank and Punjab National Bank which are filed along with the Application.
- xv.** It is believed that the business model prepared by the Corporate Applicant Company holds massive potential and can be a very successful model. However, due to insufficiency of liquid funds and heavy investments in the business activity undertaken by the Corporate Applicant, the Corporate Applicant is not able to pursue the same at the optimum wavelength. Hence a resolution if proposed by a prospective Resolution Applicant to revive the business model of the Corporate Applicant, the same can be

largely beneficial to not only the Creditors of the Corporate Applicant Company but to the public at large, since it aims to improve the quality relating to the Indian Road Infrastructure.

4. **This Adjudicating Authority had raised a specific query regarding payment of CIRP cost in the absence of the Financial Creditor. In reply, the Corporate Applicant has filed an affidavit in compliance of the order dated 08.04.2022 of this Adjudicating Authority, extracted hereunder:**

i. *“This Adjudicating Authority vide order dated 08.04.2022 has observed following, the relevant extract is as follows:*

“...Further, in the present case, there are no Financial Creditors, hence, only Operational Creditors shall form part of COC. As per present structure of IBC, the Operational Creditors are unsecured creditors and they may not get anything. Therefore the question which arises is to who will bear the cost of conducting insolvency proceedings. In this regard, the Corporate Person is directed to file affidavit to this effect as to how the CIRP cost would be paid in case of lack of funds and no realization from the assets of the Corporate Person.”

ii. *As per the Regulation 16(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, where the Corporate Debtor has no financial debt, as in the present case, the Committee shall be set up and shall consist of the 18 (eighteen) largest Operational Creditors by value. It is further provided that if the number of Operational Creditors is less than 18 (eighteen), the Committee shall include all such Operational Creditors.*

iii. *Regulation 16(4) further clarifies that a Committee formed under this regulation and its members shall have the same rights,*

powers, duties and obligations as a committee comprising Financial Creditors and its members, as the case may be.

- iv.** *In compliance to the order dated 08.04.2022 passed by this Adjudicating Authority, I (Vikas Jalan) state that the Corporate Applicant shall bear all the costs as per the directions of this Adjudicating Authority.*
- v.** *The Corporate Applicant company has certain fixed assets including plant & machineries having liquidation value, cash and balance in bank and certain other current assets as evident from the Provisional Balance Sheet as on 30.11.2021 as filed along with the main Company Petition.*
- vi.** *As per the Regulation 33(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Corporate Applicant shall bear the expenses which shall be reimbursed by the Committee to the extent it ratifies.*
- vii.** *Similarly, as per Regulation 34 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, for the Resolution Professional Costs, the Committee shall fix the expenses to be incurred on or by the Resolution Professional and the expenses shall constitute CIRP Costs.*
- viii.** *It is further submitted that as per the waterfall mechanism provided under Section 53 of the Code, the proceeds from the sale of the liquidation of assets shall be distributed in the order of priority with the CIRP Costs and the Liquidation Cost to be paid in full in utmost priority.”*

5. **Analysis and Findings**

- i. We have heard the Ld. Counsel for the Corporate Applicant and perused the documents submitted by them. Considering the submissions made and documents placed on record, we find that the debt is due and payable by the Corporate Applicant to Operational Creditors.
- ii. Further in this regard we rely upon the judgment of Hon'ble NCLAT in the case of **M/s Unigreen Global Pvt Ltd. Vs. Punjab National Bar 2017 SCC Online NCLAT 610** which has held that:

“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. (Supre) 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"”.

It is therefore clear that once the Corporate Applicant has proved that it is in default in respect of the debts due and payable, the application is required to be admitted.

- iii. An Affidavit under Section 65B of the Evidence Act, 1872 has been filed by the Corporate Applicant stating that *“the information contained in the computer print known as the Ledger Account Statement and the Emails and other electronic documents annexed hereto in the present Application under Section 10 of the Insolvency and Bankruptcy Code, 2016 was*

recorded on the 'hard disk of the computer system of the Applicant which is regularly recorded in the ordinary course of activities of it" and the same has been taken on record.


- iv.** 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 is more than the threshold amount as stipulated under section 4(1) of the Code at the relevant time. We hold that the default stands established and there is no reason to deny the admission of the present application. Hence, we are inclined to **admit this application.**

6. **Order**

In light of the above facts and circumstances, it is ordered as follows:-

- i.** The Application bearing **IB-809/ND/2021** filed by the Corporate Applicant under under Section 10 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**" or "**Code**") r/w Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("**Adjudicating Authority Rules**"), in respect of **METALITE ECO FUTURE LABS (P) LTD**, the Corporate Applicant is **admitted.**
- ii.** We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

"(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

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- (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.*

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

- iii.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium

shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

- iv.** As per the proposal given by the Corporate Applicant, **MR. SUNIL KUMAR AGRAWAL** (Registration No. IBBI/IPA-002/IP-N00081/2017-2018/10222) is appointed as the IRP for ascertaining the particulars of Creditors and convening a Committee of Creditors for evolving a Resolution Plan. The Written Consent in **Form-2** dated 06.12.2021 and the Registration Certificate of the proposed IRP which is filed along with the Application. The ICSI Institute of Insolvency Professionals had issued the Authorization for Assignment dated 15.01.2021 which was valid from 15.01.2021 to 14.01.2022 only as reflected which is filed along with the Application.

Therefore, the IRP shall file a valid Authorization for Assignment within 3 days of the pronouncement of this order.

- v.** We direct that public announcement in pursuance of Section 13 (2) of the Code shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to the admission of this application under Section 10 of the Insolvency & Bankruptcy Code, 2016.
- vi.** The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend

every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing a appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

- vii.** The IRP/RP shall submit to this Adjudicating Authority periodical reports on a quarterly basis with regard to the progress of the CIRP in respect of the Corporate Applicant.
- viii.** The Corporate Applicant to pay to IRP a sum of **Rs.2,00,000/- (Rupees Two 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.
- ix.** The IRP/RP shall conduct CIRP in a time- bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- x.** Additionally, the Corporate Applicant shall serve a copy of this Order on the IRP and on the Registrar of Companies, Delhi by all available means for updating the Master Data of the Corporate Applicant. 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.



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

No order as to costs.

-SD-

**(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**