

THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
AT NEW DELHI

Company Petition No. (IB)-1154(ND)/2019

Under Section 10 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

M/s Gulati Retails India Limited

.....Applicant/ Corporate Debtor

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

MR. L.N GUPTA, MEMBER (TECHNICAL)

Judgment delivered on: 30.07.2019

ORDER

Per Ms. Ina Malhotra, Member (J)

1. Unable to liquidate its outstanding debts, the Corporate Debtor has filed this petition under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') by the Corporate Debtor for initiation of its Insolvency Resolution Process.

2. The Applicant company, 'M/s Gulati Retails India Limited' was incorporated on 18.12.2006 under the companies Act, 1956 bearing CIN No. U52599 DL2006 PLC156654. The Applicant Company has its

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registered office at F-66, Rajouri Garden, New Delhi-110027 which lies within the territorial jurisdiction of this Tribunal.

3. The present application has been filed by Mr. Manmohan Singh Gulati duly authorised vide a Board Resolution dated 30th April, 2018 to initiate the proceedings for a Corporate Insolvency Resolution Process to overcome the distressed situation and also to restructure the business if possible.
4. As per averments, the corporate applicant has 2 secured creditors, namely Punjab and Sind Bank and ICICI Bank Ltd who had extended financial facilities in the form of cash credit limit and Term Loans. Due to acute financial constraints, the Corporate Debtor has not been able to regularise the accounts, as a result of which the Corporate Debtor's account were declared NPA.
5. The financial creditors, in view to recover their debts had initiated the notice under section 13(2) of SARFAESI Act 2002 against the corporate applicant.

Despite service on Punjab and Sind Bank, none appeared to resist the prayer.

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6. There is no dispute that the applicant company has admittedly defaulted in liquidating its debts and is unable to meet its financial obligations and therefore seeks to file the present application in terms of sub section (1) of Section 10 of the Code.

7. The Applicant has affirmed that it is not disqualified in terms of provisions of Section 11 of the Code to file the present petition. As per the affidavit annexed alongwith, it has been deposed that no CIRP has ever been initiated nor any liquidation order or winding up order been passed against it.

8. In compliance of the requirements of Section 10 (3) (a) of the Code read with Annex-V of Form 6 of the Rules, the applicant company has filed copies of its audited financial statements for the financial years i.e. 2016-17 and 2017-18 and the provisional statements upto 14 days prior to the date of filing this petition.

9. Further in compliance of Section 10 (3) (b) of the Code the applicant has proposed the name of Mr. Arun Chadha, registration no. IBBI/IPA-001/IP-P00165/2017-2018/10334 as the Interim Resolution Professional. The applicant company has obtained a written communication in Form-2 from the Insolvency Professional for



appointment as an IRP. In the Form-2 filed along with the application it has been affirmed by the Proposed IRP that he is a registered Insolvency Professional and qualified to practice as an Insolvency Professional. Further it has been affirmed that there are no disciplinary proceedings pending against the proposed him.

10. In terms of the amended provisions of Sec 10, the Corporate Debtor has also placed on record the special resolution passed by the shareholders, ratifying the decision to file the present petition. The particulars of the debts owed by the Corporate Debtor, with amounts due to each of them have also been furnished.

11. In view of the above it is clear that a default has occurred and the present application under Section 10 is complete and that the applicant is not ineligible under Section 11 of the Code. Further all requirements prescribed under sub-section 3 (a) and (b) of Section 10 of the Code have also been complied with.

12. The Insolvency and Bankruptcy Code, 2016 is a complete Code in itself. The provisions of the Code are to be mandatorily followed. Adherence to the statutory requirements has to be in toto. Section 10 (4) (a) of the Code mandates the Adjudicating Authority to admit the



application if it is complete. When the language of the Code is clear and explicit, the Adjudicating Authority has to give effect to it.

13. In view of the above, we are satisfied that the present application is complete and that the applicant corporate debtor has committed a default. The application therefore merits consideration and is Admitted.

14. A moratorium in terms of section 14 of the Code is being issued prohibiting forthwith the following:

- *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;*
- *transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- *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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

- *recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

It is further directed that:

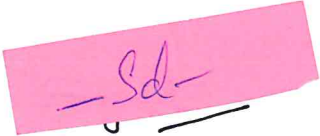
- *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*
- *The provisions of sub-section (1) of section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

15. We confirm the appointment of Mr. Arun Chadha, registration no. IBBI/IPA-001/IP-P00165/2017-2018/10334 as the Interim Resolution Professional. He shall take steps as envisaged under Section 15, 17 and 18 of the Code. Steps shall also be taken to serve the IT Dept. of the proposed Resolution and to file their Claim, if any. The IRP is directed to submit his interim report. A part from publication, he shall also issue notices to all creditors as reflected in the records of the Corporate Debtor.

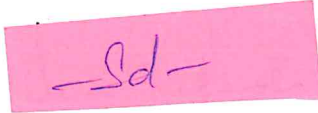


16. The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process as per sub-section (4) of Section 14 of the Code.

Let the copy of the order be supplied to the parties including the interim resolution professional.



L.N Gupta
Member (T)



Ina Malhotra
Member (J)